



CEAC Infrastructure and Development Policy Committee

CEAC Spring Conference

Friday, May 14, 2021|1:00 pm - 2:15 pm

Zoom Meeting:

<https://us02web.zoom.us/j/81412761608?pwd=ZWZhZTTNGZVRvY3IzK1NWZHh2cW5lZz09>

Meeting ID: 814 1276 1608

Passcode: CEAC2021

AGENDA

Chair, Trisha Tillotson, Nevada County
Vice Chair, Rebecca Taber, Placer County
Vice Chair, Warren Lai, Contra Costa County

- | | | |
|---------|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1:00 pm | I. | Welcome and Opening Remarks
<i>Trisha Tillotson, Chair, Nevada County</i> |
| 1:05 pm | II. | Legislative Update – Impact Fees, Broadband, Map Act
<i>Chris Lee, CSAC, Legislative Representative</i>
<i>Marina Espinoza, CSAC, Legislative Analyst</i>
Attachment One: CEAC Infrastructure and Development Bill Report
Attachment Two: Summary of Development Impact Fee Bills |
| 1:20 pm | III. | Board of Forestry 45-Day Rulemaking Entitled “State Minimum Fire Safe Standards, 2021”
<i>Catherine Freeman, CSAC, Legislative Representative</i>
Attachment Three: Coalition Letter on Proposed Revisions to the February 8th State Minimum Fire Safe Regulations |
| 1:50 pm | IV. | Public Utilities Commission Rule 20 Electrical Undergrounding – Panel Discussion
<i>Trisha Tillotson, Nevada County, Director of Public Works</i>
<i>Bill Morgan, San Diego County, Deputy Director of the Engineering Services Division</i>
<i>Lawrence Hirsch, San Diego County, Utilities Coordinator</i>
Attachment Four: CSAC Opening Comments on Proposed Phase 1 Decision Revising Electric Rule 20
Attachment Five: CSAC Reply Comments on Proposed Phase 1 Decision Revising Electric Rule 20

Full text of the CPUC’s Proposed Phase 1 Decision is available here . |
| 2:15 pm | V. | Adjournment |

Zoom call-in instructions:

Topic: Infrastructure and Development Policy Committee

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CEAC Infrastructure and Development Policy Committee

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LIST OF ATTACHMENTS

Legislative Update – Impact Fees, Broadband, Map Act

Attachment OneCEAC Infrastructure and Development Bill Report

Attachment TwoSummary of Development Impact Fee Bills

Board of Forestry 45-Day Rulemaking Entitled “State Minimum Fire Safe Standards, 2021”

Attachment ThreeCoalition Letter on Proposed Revisions to the
February 8th State Minimum Fire Safe Regulations

Public Utilities Commission Rule 20 Electrical Undergrounding – Panel Discussion

Attachment FourCSAC Opening Comments on Proposed Phase 1 Decision
Revising Electric Rule 20

Attachment FiveCSAC Reply Comments on Proposed Phase 1 Decision
Revising Electric Rule 20

Attachment One
CEAC Infrastructure and Development Bill Report

CEAC Infrastructure & Development Committee Legislative Bill Tracking Report

By Chris Lee 5/6/2021

[AB 41](#) **(Wood D) Broadband infrastructure deployment.**

Introduced: 12/7/2020

Status: 4/27/2021-From committee: Do pass and re-refer to Com. on APPR. (Ayes 11. Noes 2.) (April 26). Re-referred to Com. on APPR.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Current law prohibits each fixed internet service provider from engaging in specified activities relating to the provision of fixed broadband internet access service. This bill would require each fixed internet service provider, upon entering into an agreement with an individual or entity to deploy broadband infrastructure, to notify individuals and entities within that same census block of the agreement and of means to connect to, or benefit from, the broadband infrastructure or to join the agreement. The bill would require each fixed internet service provider to maintain a publicly accessible map on its internet website showing the broadband infrastructure that the provider has deployed and a publicly accessible database of binding quotes that it has provided to individuals and entities that request the deployment of broadband infrastructure.

CSAC Position

Watch

[AB 59](#) **(Gabriel D) Mitigation Fee Act: fees: notice and timelines.**

Introduced: 12/7/2020

Status: 4/30/2021-Failed Deadline pursuant to Rule 61(a)(2). (Last location was L. GOV. on 1/11/2021) (May be acted upon Jan 2022)

Desk	2 year	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Current law authorizes any party to protest the imposition of a fee, dedication, reservation, or other exactions imposed on a development project within 90 or 120 days of the imposition of the fee, as applicable, and specifies procedures for those protests and actions. The Mitigation Fee Act imposes the same requirements on a local agency for a new or increased fee for public facilities. Current law, for specified fees, requires any judicial action or proceeding to attack, review, set aside, void, or annul an ordinance, resolution, or motion adopting a new fee or service charge or modifying an existing fee or service charge to be commenced within 120 days of the effective date of the ordinance, resolution, or motion. Current law also provides that, if an ordinance, resolution, or motion provides for an automatic adjustment in a fee or service charge and the adjustment results in an increase in the fee or service charge, that any action to attack, review, set aside, void, or annul the increase to be commenced within 120 days of the increase. This bill would increase, for fees and service charges and for fees for specified public facilities, the time for mailing the notice of the time and place of the meeting to at least 45 days before the meeting.

CSAC Position

Pending

[AB 537](#) **(Quirk D) Communications: wireless telecommunications and broadband facilities.**

Introduced: 2/10/2021

Status: 4/29/2021-From committee: Do pass and re-refer to Com. on APPR. (Ayes 13. Noes 0.) (April 28). Re-referred to Com. on APPR.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Current law requires a collocation or siting application for a wireless telecommunications facility be deemed approved if a city or county fails to approve or disapprove the application within the time periods specified in applicable FCC decisions, all required public notices have been provided regarding the application, and the applicant has provided a notice to the city or county that the time period has lapsed. Under existing law, eligible facilities requests, defined to include any request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment, removal of transmission equipment, or replacement of transmission equipment, are exempt from these requirements. This bill would remove the exemption for eligible facilities requests defined above. The bill would require that the time periods described above be determined pursuant to specified FCC rules.

CSAC Position

Oppose_Unless_Amended

[AB 571](#) **(Mayes I) Planning and zoning: density bonuses: affordable housing.**

Introduced: 2/11/2021

Status: 5/4/2021-Re-referred to Com. on APPR.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: The Density Bonus Law requires a city or county to provide a developer that proposes a housing development in the city or county with a density bonus and other incentives or concessions for the production of lower income housing units, or for the donation of land within the development, if the developer agrees to, among other things, construct a specified percentage of units for very low income, low-income, or moderate-income households or qualifying residents, including lower income students. Current law requires the amount of a density bonus and the number of incentives or concessions a qualifying developer receives to be pursuant to a certain formula based on the total number of units in the housing development, as specified. This bill would prohibit affordable housing impact fees, including inclusionary zoning fees and in-lieu fees, from being imposed on a housing development's affordable units.

CSAC Position

Pending

[AB 602](#) (Grayson D) Development fees: impact fee nexus study.

Introduced: 2/11/2021

Status: 5/5/2021-Re-referred to Com. on APPR.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Current law requires a city, county, or special district that has an internet website to make available on its internet website certain information, as applicable, including its current schedule of fees and exactions. This bill, among other things, would require, on and after January 1, 2022, a city, county, or special district that conducts an impact fee nexus study to follow specific standards and practices, including, but not limited to, (1) that prior to the adoption of an associated development fee, an impact fee nexus study be adopted, (2) that the study identify the existing level of service for each public facility, identify the proposed new level of service, and include an explanation of why the new level of service is necessary, and (3) if the study is adopted after July 1, 2022, either calculate a fee levied or imposed on a housing development project proportionately to the square footage of the proposed units, or make specified findings explaining why square footage is not an appropriate metric to calculate the fees.

CSAC Position

Oppose_Unless_Amended

[AB 678](#) (Grayson D) Housing development projects: fees and exactions cap.

Introduced: 2/12/2021

Status: 4/30/2021-Failed Deadline pursuant to Rule 61(a)(2). (Last location was L. GOV. on 3/25/2021) (May be acted upon Jan 2022)

Desk	2 year	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Would prohibit a city or county from imposing a specified fee or exaction if the total dollar amount of the fees and exactions that a city or county would impose on a proposed housing development is greater than 12% of the city's or county's median home price unless approved by the Department of Housing and Community Development. The bill would authorize a city or county to seek approval from the department to impose a fee or an exaction that would result in the total dollar amount of fees and exactions exceeding that limitation by making a specified finding and submitting a completed application for a waiver. The bill would require the department to develop a standard form application for a waiver in conjunction with the Governor's Office of Planning and Research.

CSAC Position

Pending

[AB 803](#) (Boerner Horvath D) Starter Home Revitalization Act of 2021.

Introduced: 2/16/2021

Status: 4/29/2021-From committee: Do pass and re-refer to Com. on APPR. (Ayes 8. Noes 0.) (April 28). Re-referred to Com. on APPR.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. Current law provides for various incentives intended to facilitate and expedite the construction of affordable housing. This bill would authorize a development proponent to submit an application for the construction of a small home lot development, as defined, that meets specified criteria. The bill would require a small home lot development to be located on a parcel that is no larger than 5 acres, is substantially surrounded by qualified urban uses, as defined, and is zoned for multifamily residential use.

CSAC Position

Pending

[AB 1016](#) (Rivas, Robert D) Local planning: streamlined housing development: nonprofit corporations.**Introduced:** 2/18/2021**Status:** 4/30/2021-Failed Deadline pursuant to Rule 61(a)(2). (Last location was H. & C.D. on 3/18/2021)(May be acted upon Jan 2022)

Desk	2 year	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Would authorize a development proponent to submit for approval, and require a local government to approve, a housing development, as specified, pursuant to a streamlined, ministerial process if it meets certain objective planning standards, including that the development be built or developed by a qualified nonprofit corporation and have 25 or fewer units. The bill would require the development proponent to submit a notice of intent to submit an application to the local government, following which the local government is required to conduct a scoping consultation regarding the proposed development with any California Native American tribe that is traditionally and culturally affiliated with the geographic area, as provided.

CSAC Position

Pending

[AB 1166](#) (Grayson D) Communications: wireless telecommunications facilities.**Introduced:** 2/18/2021**Status:** 3/22/2021-Re-referred to Com. on L. GOV.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Current law requires that a collocation or siting application for a wireless telecommunications facility be deemed approved if a city or county fails to approve or disapprove the application within the reasonable time periods specified in applicable FCC decisions, as defined, all required public notices have been provided regarding the application, and the applicant has provided a notice to the city or county that the reasonable time period has lapsed. This bill would require that the reasonable time periods described above be determined pursuant to specified FCC rules, as defined, instead of applicable FCC decisions. The bill would require the time period for a city or county to approve or disapprove a collocation or siting application to commence when the applicant takes the first procedural step that the city or county requires as part of its applicable regulatory review process.

CSAC Position

Pending

[AB 1342](#) (Gray D) Public utility poles: attachments.**Introduced:** 2/19/2021**Status:** 2/22/2021-Read first time.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Current law includes legislative findings that public utilities have dedicated a portion of their utility pole support structures to cable television corporations for pole attachments and declares that the provision by public utilities of surplus space and excess capacity for pole attachments is a public utility service delivered by public utilities to cable television corporations and is in the interests of the people of California. Under current law, whenever a public utility and a cable television corporation or association of cable television corporations are unable to agree upon the terms, conditions, or annual compensation for pole attachments or the terms, conditions, or costs of rearrangements, the commission is required to establish and enforce the rates, terms, and conditions for pole attachments and rearrangements so as to ensure a public utility the recovery of specified funds. This bill would make nonsubstantive changes to those provisions.

CSAC Position

Watch

[AB 1447](#) (Cooley D) The Rural California Infrastructure Act.**Introduced:** 2/19/2021**Status:** 5/4/2021-Re-referred to Com. on APPR.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: The Bergeson-Peace Infrastructure and Economic Development Bank Act establishes the Infrastructure and Economic Development Bank (I-Bank) and authorizes it to, among other things, issue bonds, make loans, and provide other financial assistance to various types of projects that constitute economic development facilities or public development facilities. The act establishes in the State Treasury the California Infrastructure and Economic Development Bank Fund (I-Bank Fund) for

the purpose of implementing the objectives and provisions of the act and continuously appropriates moneys in the fund, except as prescribed. This bill, authorize the I-Bank to establish the Rural California Infrastructure Program for the purpose of making competitive grant awards to eligible local agencies for rural infrastructure projects, as prescribed. authorize the I-Bank to establish the Rural California Infrastructure Program for the purpose of making competitive grant awards to eligible local agencies for rural infrastructure projects, as prescribed.

CSAC Position
Watch

SB 9

(Atkins D) Housing development: approvals.

Introduced: 12/7/2020

Status: 4/30/2021-Set for hearing May 10.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: The Planning and Zoning Law provides for the creation of accessory dwelling units by local ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, in accordance with specified standards and conditions. This bill, among other things, would require a proposed housing development containing no more than 2 residential units within a single-family residential zone to be considered ministerially, without discretionary review or hearing, if the proposed housing development meets certain requirements, including, but not limited to, that the proposed housing development would not require demolition or alteration of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income, that the proposed housing development does not allow for the demolition of more than 25% of the existing exterior structural walls, except as provided, and that the development is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

CSAC Position
Support_If_Amended

SB 318

(Melendez R) Land use: development fee or charge: audit: auditor standards.

Introduced: 2/4/2021

Status: 4/30/2021-Failed Deadline pursuant to Rule 61(a)(2). (Last location was GOV. & F. on 2/17/2021)(May be acted upon Jan 2022)

Desk	2 year	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: The Mitigation Fee Act authorizes a local agency to retain an independent auditor if requested to conduct an audit to determine whether a fee or charge is reasonable, provided, among other conditions, that the person who requests the audit deposits with the local agency the amount of the local agency's reasonable estimate of the cost of that audit, except as provided. This bill would require that the independent auditor be a certified public accountant, as defined, or a firm, as defined, of certified public accountants. The bill would prohibit the local agency from retaining an independent auditor that the local agency contracted with for any reason during the preceding 10 years, as provided. The bill would also prohibit an independent auditor that is retained by a local agency to conduct the audit from soliciting or accepting employment from the local agency for 5 years following the completion of the audit and all subsequent challenges related to the audit.

CSAC Position
Pending

SB 319

(Melendez R) Land use: development fees: audit.

Introduced: 2/4/2021

Status: 5/4/2021-In Assembly. Read first time. Held at Desk.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Current law authorizes a person to request an audit to determine whether a fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product, public facility, or service provided by the local agency. If a local agency does not comply with the above-described disclosure requirement for 3 consecutive years, existing law prohibits the local agency from requiring that person to make a specified deposit and requires the local agency to pay the cost of the audit. This bill, additionally, would require that audit to include each consecutive year the local agency did not comply with the disclosure requirement. The bill would make clarifying changes to that provision.

CSAC Position
Watch

SB 378**(Gonzalez D) Local government: broadband infrastructure development project permit processing: microtrenching permit processing ordinance.****Introduced:** 2/10/2021**Status:** 5/4/2021-Read second time and amended. Re-referred to Com. on APPR.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Would require a local agency to allow, except as provided, microtrenching for the installation of underground fiber if the installation in the microtrench is limited to fiber. The bill would also require, to the extent necessary, a local agency with jurisdiction to approve excavations to adopt or amend existing ordinances, codes, or construction rules to allow for microtrenching. The bill would provide that these provisions do not supersede, nullify, or otherwise alter the requirements to comply with specified safety standards.

CSAC Position

Pending

SB 556**(Dodd D) Street light poles, traffic signal poles: small wireless facilities attachments.****Introduced:** 2/18/2021**Status:** 5/4/2021-From committee with author's amendments. Read second time and amended. Re-referred to Com. on APPR.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Would prohibit a local government or local publicly owned electric utility from unreasonably denying the leasing or licensing of its street light poles or traffic signal poles to communications service providers for the purpose of placing small wireless facilities on those poles. The bill would require that street light poles and traffic signal poles be made available for the placement of small wireless facilities under fair, reasonable, and nondiscriminatory fees, as provided. The bill would authorize a local government or local publicly owned electric utility to condition access to its street light poles or traffic signal poles on reasonable terms and conditions, including reasonable aesthetic and safety standards. The bill would specify time periods for various actions relative to requests for placement of a small wireless facility by a communications service provider on a street light pole or traffic signal pole.

CSAC Position

Pending

SB 695**(Ochoa Bogh R) Mitigation Fee Act: housing developments.****Introduced:** 2/19/2021**Status:** 4/30/2021-Failed Deadline pursuant to Rule 61(a)(2). (Last location was GOV. & F. on 3/18/2021)(May be acted upon Jan 2022)

Desk	2 year	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Would prohibit a local agency from imposing a housing impact requirement adopted by the local agency on a housing development project, as defined, unless specified requirements are satisfied by the local agency, including that the local agency prepare and adopt a nexus study, as specified. The bill, for purposes of these provisions, defines "housing impact requirement" as a fee imposed under the Mitigation Fee Act, dedications of parkland or in-lieu fees imposed under the Quimby Act, or a construction excise tax. This bill would require a local agency to adopt a nexus study that is used to demonstrate compliance with these provisions, subject to specified public participation requirements. This bill would prohibit a housing impact requirement from exceeding the amount necessary to maintain the existing level of service identified in the nexus study for the type of capital facility for which the housing impact requirement is imposed.

CSAC Position

Pending

Total Measures: 17**Total Tracking Forms: 17**

Attachment Two
Summary of Development Impact Fee Bills



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Graham Knaus

May 5, 2021

To: CEAC Infrastructure and Development Policy Committee

From: Chris Lee, CSAC Legislative Representative
Marina Espinoza, CSAC legislative Analyst

RE: Summary of Development Impact Fee Bills

At the start of the legislative session several legislators introduced bills related to impact fees on residential development. CSAC staff have been monitoring these measures closely and are advocating for our CSAC [Board-adopted impact fee principles](#).

Below are brief summaries and status updates for the impact fee bills that were introduced during the current legislative session, including AB 602 (Grayson), which is currently moving through the legislative process, and other impact fee bills of interest—some of which have been stalled.

AB 602 (Grayson) – Impact Fee Nexus Study

CSAC currently holds an [“oppose unless amended”](#) position on this measure, as we continue to work to align the bill with CSAC’s impact fee principles.

[AB 602](#) would require, on and after January 1, 2022, a city, county, or special district that conducts an impact fee nexus study to follow specific standards and practices, including:

- From the period beginning January 1, 2022, update nexus studies every 8 years.
- Calculate a fee levied or imposed on a housing development project proportionately to the square footage of the proposed units, or make specified findings explaining why square footage is not an appropriate metric to calculate the fees.
- If a nexus study supports the increase of an *existing* fee, the local agency shall review the assumptions of the nexus study supporting the original fee and evaluate the amount of fees collected under the original fee.
- Requires nexus studies to identify the existing level of service for each public facility, identify the proposed new level of service, and include an explanation of why the new level of service is necessary.
- Requires nexus studies to consider targeting fees geographically (i.e. rather than jurisdiction-wide) or make a finding explaining why it is not appropriate.

- Requires large jurisdictions (counties with populations of 250,000 or greater) to adopt a capital improvement plan as a part of the nexus study. CSAC is opposed to this requirement.

The bill includes the following online posting requirements: 1) a written fee schedule or a link directly to the schedule on the county's website, 2) posting information received from development proponents related to total impact fees and exactions associated with a development projects.

Finally, the bill would require the Department of Housing and Community Development to create a nexus fee study template. Although currently intended to be a voluntary tool for local agencies, CSAC has instead requested the creation of a clearinghouse for local agency nexus studies.

Other Impact Fee Bills of Interest

AB 59 (Gabriel) – **Mitigation Fee Act Notices and Timeline:** Would prohibit a local agency, when defending a protest or action filed for a fee or service charge, or for fees for specified public facilities, from using as evidence, or relying on in any way, data not made available to the public pursuant to the bill's provisions. AB 59 would also increase, for fees and service charges and for fees for specified public facilities, the time for mailing the notice of the time and place of the public meeting to at least 45 days before the meeting.

This is now a two-year bill. CSAC would oppose this measure if it were to move in its current form.

AB 678 (Grayson) – **Housing Development Fees and Exactions Cap:** Would impose various requirements on local governments and limit their ability to charge fees or exactions on housing developments. SB 678 would also require local agencies to post information related to the fees and exactions they impose to their website.

The author has committed to not moving this bill during the current legislative session. CSAC would oppose this measure if it were to move in its current form.

SB 695 (Ochoa-Bogh) – **Mitigation Fee Act:** Would prohibit local agencies from imposing "housing impact requirements" on housing projects unless specified requirements are satisfied by the local agency, including adoption of a nexus study. Extends new nexus study requirements to charges, exactions, dedications of parkland, and construction excise taxes that are currently outside of the scope of the Mitigation Fee Act. SB 695 would also prohibit housing impact requirements from exceeding the amount necessary to maintain the existing level of service identified in the nexus

study for the type of capital facility for which the housing impact requirement is imposed.

This is now a two-year bill. CSAC would oppose this measure if it were to move in its current form.

Development Fee Audit Requirements

[SB 318 \(Melendez\)](#) would require that the independent auditor responsible for determining whether a fee or charge is reasonable be a certified public accountant and would impose additional requirements on the independent auditor that local agencies may retain to conduct these audits.

[SB 319 \(Melendez \)](#) would require local agencies that do not comply with impact fee annual report requirements for three years to include each year they did not comply with these requirements in requested audits.

CSAC is currently neutral on SB 318 and SB 319, which are relatively narrow and designed to address a specific concern from the author's district.

Attachment Three
Coalition Letter on Proposed Revisions to the February 8th State
Minimum Fire Safe Regulations



February 18, 2021

Edith Hannigan
State Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

Transmittal Via E-mail: edith.hannigan@bof.ca.gov

RE: Proposed Revisions to the February 8th State Minimum Fire Safe Regulations

Dear Ms. Hannigan:

The revisions to the February 8th draft of the State Minimum Fire Safe Regulations (Regulations) proposed by the Rural County Representatives of California (RCRC), the California State Association of Counties (CSAC), and the Urban Counties of California (UCC) are attached in red-line format. Our three organizations represent all fifty-eight California counties – i.e., the local jurisdictions with greatest experience applying the Board of forestry's (the Board) regulations for over 30 years, and the greatest responsibilities under the current proposal.

Local jurisdictions have a unique role in implementing the Board's regulations, and therefore a unique perspective in this rulemaking process. These regulations cannot succeed in achieving the Board's wildfire safety goals without partnership and cooperation between the Board and counties. We hope and expect that the Board will give the concerns expressed by locally-elected officials and technical experts the respect and consideration they are due.

In addition to the red-line text, the county organizations offer the following comments on several items of substance in the most recent draft Regulations:

The "Thresholds for Limiting Development on Existing Roads" are not appropriate.

The February 8th draft retains Board staff's essential proposal to create massive "no build" zones throughout California. The precise road width and grade triggering these building prohibitions may have changed, but the basic proposal to hold individual

single-family homeowners responsible for offsite public roads that they do not control, and cannot possibly afford to fix, remains the Regulations' most troubling feature.

As explained in depth in prior oral and written comments, this proposal is fundamentally unfair, will exacerbate California's already severe housing crisis, and may result in regulatory takings liability for local governments and the Board. These adverse consequences do not depend upon whether the road width triggering the Regulations' "no build" provisions is set at 20 feet, 14 feet, or something else. Board staff have been unable to provide any estimate of the number of acres, parcels, or people impacted by the proposed prohibitions, at any level, and efforts to tweak the thresholds are thus based on speculation rather than data.¹

The proposal to prevent all "building construction" – including individual homes and Accessory Dwelling Units (ADUs) on parcels with no other viable use – is fundamentally flawed and should be removed in its entirety. Local governments are certainly sensitive to the Board's concerns over development in areas where access is less-than-optimal. These concerns are most appropriately addressed through a "buckets" structure as described below, which would greatly improve fire safety by limiting any larger developments in these areas, and any development in excess of the property owners' reasonable expectations based on current zoning.

The proposed limitation on ADUs and wildfire rebuilds is especially inappropriate.

The foregoing flaws are exacerbated in the case of ADUs and disaster rebuilds. Regarding the former, California's state policy strongly promotes ADU construction – as recognized in the Board's own emergency regulations. The Legislature *has already* "contemplat[ed] if there is a point at which a road providing access to an ADU...is of such substandard quality that to build...along it would be creating or replicating an excessively hazardous situation" – and has specifically rejected the outright prohibition of ADU construction as proposed by staff.

Government Code Section 65852.2 explicitly delineates the extent to which ADU development may be restricted in areas based on "the impact of accessory dwelling units on traffic flow and public safety" and provides that, notwithstanding such impacts, "a local agency shall ministerially approve" ADU construction on any residential or

¹ Several commentators have suggested that California explore tax incentives or voluntary buyout programs to encourage property owners to relinquish development rights for properties in fire prone areas. (Such programs have been used successfully in other states to reduce exposure to flood risk.) While beyond the scope of these regulations, it is worth noting that such mechanisms represent an appropriate and lawful means of reducing the risks presented by existing development rights, when those rights cannot simply be taken away by regulation.

mixed-use parcel meeting certain minimal requirements (Government Code Section 65852.2, subdivisions (a), (e)). Board's staff's proposal contravenes the spirit, and quite possibly the letter, of this provision and asks the Board to improperly substitute its judgment for that of the Legislature. This suggestion should be firmly rejected.

The proposal to flatly prohibit rebuilding of existing homes and businesses lost due to disaster within these "no-build" areas is more severe than the prior draft regulations and is especially ill-conceived. Rebuilding an existing home or business creates no new impact, no heightened fire risk, and no increased fire serve need. There is no nexus to require upgrades to existing public roads as a condition of rebuilding these structures.

Moreover, prohibiting homeowners and small businesses who have lost everything from rebuilding their homes is unfair, particularly to under-insured and lower-income residents who cannot simply afford to move elsewhere. The resulting displacement would also hinder achievement of the region's housing goals, further exacerbating the housing and homelessness crisis. Board staff's concern for "replicating an excessively hazardous situation" is notable, but this does not justify dispossessing residents of their homes and livelihoods. And, as noted above, this effort would almost certainly generate regulatory takings challenges. These provisions should be removed in their entirety.

The "aggregate risk threshold" proposal is fatally flawed and not implementable.

As a threshold matter, the intended operation of the proposed "aggregate risk threshold" is not clear. Section 1270.03.02(a) provides that "*Building Construction shall not be approved* where Access is provided by Roads that do not meet the minimum requirements in § 1273.05.02," but Section 1270.05.03 indicates that the "aggregate risk" provision applies "*[p]rior to approving any Building Construction...where Access is provided by an existing Road or Roads that do not meet the requirements in § 1273.05.02*" – an apparent contradiction.

Regardless, the underlying concept is flawed and not fixable. Many local jurisdictions will not have precise data regarding the "estimated daily vehicle trips" for each road within their boundaries. The expense and burden to perform these calculations for every single road (often comprising many hundreds or thousands of lineal miles) is severe, and would constitute an unreimbursed state mandate. More importantly, this proposal would place the entire burden of upgrading the road on the first property owner who seeks to build a home or small business after the "aggregate risk threshold" has been triggered - which replicates the fairness, housing constraint, and takings issues described above.

The Board's concern for cumulative impacts of multiple small developments is understandable. As discussed in greater detail below, there are reasonable options for addressing that concern – but this is not one of them. These “aggregate risk” provisions should be removed in their entirety.

"Option 2" represents the best approach for Section 1270.03(c).

Aside from the “no build” features discussed above, the general approach for tiering laid out in Section 1270.03(b)-(c) is a step in the right direction. Requiring all non-exempt Building Construction to improve onsite roads, while holding larger developments responsible for the public roads accessing their property, represents the right approach to balance public safety and private burden. Of the proposed tiering proposals, “Option 2” represents the best approach. As explained in greater detail in the attached margin comments, we suggest setting the specific thresholds under this option at 15 residential units, and equivalent amounts of commercial and industrial square footage.

As noted above, counties are sensitive to the Board’s concerns regarding the cumulative impact of multiple small developments served by public roads that do not meet current standards. We would propose to address this concern by establishing an alternative trigger for offsite road upgrades whenever Building Construction exceeds the density or intensity allowed by current (July 1, 2021) zoning by more than 20%. This will effectively “cap” the amount of small development allowed without upgrades and without interfering with property owners’ reasonable expectations (the critical inquiry for regulatory takings – and basic fairness).

The proposal to involuntarily transfer inspection responsibilities to local governments contravenes Public Resources Code Sections 4119 and 4290.

Unlike prior drafts of the Regulations, the most recent draft proposes to limit CalFIRE’s inspection responsibility and authority to the State Responsibility Area (SRA), and make local jurisdictions primarily responsible for inspections in the Local Responsibility Area Very High Fire Hazard Severity Zone (LRA VHFHSZ) (without a delegation from CalFIRE). While many local jurisdictions will desire to have this responsibility delegated to them in both SRA and LRA VHFHSZ, the Board lacks legal authority to compel unwilling local governments to perform these inspection and enforcement functions in either area.

Public Resources Code Section 4119 gives CalFIRE responsibility to “enforce the state forest and fire laws” and “inspect all properties...subject to the state forest and fire laws.” By its terms, this provision is not limited to the SRA. Further, Public Resources Code Section 4125 – which gives local governments primary responsibility for “prevention and suppression of fires” – says nothing about state law enforcement,

which remains CalFIRE's responsibility. Local governments would not have the ability to obstruct CalFIRE enforcement efforts in either the SRA or LRA VHFHSZ, and the Board cannot do so either. Further, nothing in Section 4290 gives the Board the power to regulate enforcement or inspection responsibilities, particularly where those matters are fully covered by state law.

As drafted, the proposed Regulations will not qualify for the “Class 8” Categorical Exemption, and will require full review under the California Environmental Quality Act.

The current draft of the Regulations would require individual building construction, in many areas, to substantially upgrade existing roads. Unlike larger projects, these individual buildings are typically ministerially permitted, and do not themselves undergo California Environmental Quality Act (CEQA) review. Consequently, adoption of these regulations represents the *only* opportunity for environmental review of the impacts of these road expansions – and CEQA *requires* that such review be performed.

Board staff has suggested that the Board may attempt to apply the Class 8 categorical exemption to forego CEQA review of the regulations. That is quite clearly erroneous and would open the regulations to legal challenge and potentially years of delay. The Class 8 exemption applies to "actions taken by regulatory agencies...to *assure* the maintenance, restoration, enhancement, or protection of the environment...."² The courts have explained that such "assurance" is not provided - and the exemption does not apply - where actions taken to address one environmental concern could result in other potentially significant effects.³ Like this case, that matter concerned a regulation that "encouraged third parties to pave roads." The court found it reasonably foreseeable that the regulation would actually result in such road improvements taking place, for which CEQA review was required. This circumstance is no different.

Moreover, even if the Class 8 exemption might otherwise fit, categorical exemptions may not be applied "where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances."⁴ In this case, the unusual circumstance of a *statewide regulation*, involving substantial road construction (among other activities) *often in remote, ecologically sensitive areas*,

² CEQA Guidelines section 15308.

³ *California Unions for Reliable Energy v. Mojave Desert Air Quality Management Dist.* (2009) 178 Cal.App.4th 1225.

⁴ CEQA Guidelines section 15300.2.

plainly creates a reasonable possibility of significant impact, rendering the Class 8 exemption doubly inappropriate.

As drafted, the Regulations will require an economic impact assessment under the Administrative Procedures Act, including an evaluation of effect on housing costs.

The Administrative Procedures Act (APA) requires administrative agencies to prepare an economic impact assessment of proposed regulations, including consideration of the effect of the proposed regulatory action on housing costs (Government Code Sections 11346.2(b)(2)-(5), 11346.3, 11346.5(a)(7)-(12)). "Mere speculative belief is not sufficient to support an agency declaration of its initial determination about economic impact. Rather, the agency must provide in the record any facts, evidence, documents, testimony, or other evidence upon which it relies for its initial determination...These provisions plainly call for an evaluation based on facts." (*Western States Petroleum Assn. v. Board of Equalization* (2013) 57 Cal.4th 401.) The *Western States* court further indicated that the assessment must include some quantification of the economic impact of the regulation, developed using proper methodology. In this case, Board staff have been unable, as yet, to provide any estimate of the extent of area affected by the "no build" provisions (or other development limitations), and consequently have no basis for any compliant estimate of the costs imposed by these regulations on businesses in general and housing in particular. This fails to comply with the APA, and, if not remedied, may open the regulation to successful legal challenge.

Our organizations have prepared the attached red-line revisions (with explanatory comments) to address the foregoing concerns. We invite members of the Board's careful review, and we look forward to addressing the Board directly at the forthcoming workshop.

Thank you for your consideration.

Sincerely,

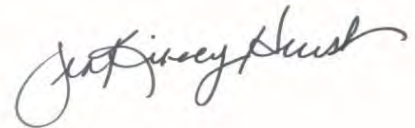
Edith Hannigan
Proposed Revisions to the February 8th
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Cc: Wade Crowfoot, Secretary, Natural Resources Agency
Hazel Miranda, Deputy Legislative Secretary, Office of the Governor
Keith Gilles, Chair, Board of Forestry
Matt Dias, Executive Officer, Board of Forestry

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**Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 7
Subchapter 2, Articles 1-5
“State Minimum Fire Safe Regulations, 2021”**

Subchapter 2. ~~SRA~~ State Minimum Fire Safe Regulations

Article 1. Administration

§ 1270.00. Title.

These regulations shall be known as the “~~SRA/VHFHSZ~~ State Minimum Fire Safe Regulations,” and shall constitute the basic wildfire protection standards of the California Board of Forestry and Fire Protection.

Note: Authority cited: Section 4290, Public Resources Code.
Reference: Sections 4102, 4126, 4127 and 4290, Public Resources Code.

§ 1270.01. Definitions ~~Purpose~~

(a) Access: The ability or means to enter or approach the Perimeter of Building Construction subject to this Subchapter. Access includes the Roads on a route from the nearest Collector Road to the Perimeter of the Building Construction.

(b) Agriculture: Land used for agricultural purposes as defined in a local jurisdiction's zoning ordinances.

(c) Building: Any structure used or intended for supporting or sheltering any use or occupancy, except Utility and

Commented [AJW1]: As indicated in our prior comments, this revision from the prior draft is unnecessarily both under and over-inclusive.

As applied to individual homebuilding and small businesses, requiring them to improve miles of “substandard” “local” public roads from the nearest Collector remains an insurmountable burden - as it is mostly these “local” roads that do not meet the Regulations’ “built roads” requirements in the first place. On the other hand, it may be undesirable to relieve truly large developments from any obligation to improve deficiencies on Collector roads that they will be heavily impacting. A “one-size-fits-all” approach here in reality fits none.

All of that said, these concerns may be mitigated, and this definition made workable, through the revisions suggested later in this document.

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Miscellaneous Group U buildings.

(d) Board: California Board of Forestry and Fire Protection.

(e) Building Construction: any modification to a parcel(s), Road(s), Driveway(s), or Structure(s) that increases the number of Residential Units; ~~increases the service capacitysize of a commercial enterprise or commercial or industrial use by 800 square feet or more; or increases the number of persons on the premises of a commercial or industrial site. Subject to the provisions of § 1270.03.01 (Exemptions), § 1270.03.02 (Substandard Roads), and § 1270.03.03 (Aggregate Risk),~~ "Building Construction" does not include the replacement of damaged or destroyed structures due to ~~disaster or other cause.~~

(f) CAL FIRE: California Department of Forestry and Fire Protection.

(g) Collector Road: Roads identified by a local jurisdiction as a major or minor, or general, collector road in conformance with the procedures in the US Federal Highway Administration "Highway Functional Classification Concepts, Criteria, and Procedures," 2013 Edition.

(h) Dead-end ~~R~~Road: A ~~R~~oad that has only one point of vehicular ingress/egress, including cul-de-sacs and ~~looped-Looped~~ ~~R~~Roads.

(i) Defensible ~~s~~Space: An area ~~extending one hundred (100) feet or greater from the exterior of a building where~~ mitigation measures have been completed and are maintained to reduce structure loss from wildfire. ~~The area within the perimeter of a parcel, development, neighborhood or community where basic~~

Commented [AJW2]: The proposed commercial/industrial thresholds - "service capacity" and "number of persons" - are unclear, difficult to accurately calculate, and often subjective.

Counties strongly recommend replacing these provisions with objective metrics familiar to both local regulators and the building industry. Specifically, we recommend using square footage triggers, with a minimum threshold established to filter out those minor additions that will not generally increase fire risk or service needs. This approach - and the proposed "de minimis" threshold - are commonly used in local impact fee assessment, which is similarly aimed at identifying and quantifying the public service implications of various types and sizes of development. See, e.g., https://sfplanning.org/sites/default/files/for ms/Impact_Fee_Schedule.pdf

Commented [AJW3]: As explained in our cover letter, local governments strongly object to the draft's proposed restrictions on rebuilding, where there is no increase in existing fire risk or service needs.

Moreover, the "replacement" exception should (1) be consistently worded throughout the Regulations, and (2) should not be limited to declared disasters. Rebuilding homes or businesses lost to due other causes - e.g., an individual house fire - does not increase fire risk or services needs - and there is consequently no justification for imposing the full suite of improvements mandated by these regulations on such rebuilding.

Commented [AJW4]: The requirement that "defensible space" must extend 100 feet (which was not included in the prior draft) is a substantive regulation that should not be included within this definitional provision. Further, necessary and beneficial defensible space measures may extend less than 100 feet in some cases - e.g., if the structure is located more closely to the property line - and this absolute requirement is consequently inappropriate.

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~~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.~~

(j) Development: As defined in section 66418.1 of the California Government Code.

(k) Director: Director of the Department of Forestry and Fire Protection or their designee.

(l) Driveway: A vehicular access that serves up to two (2) parcels with no more than two (2) ~~*Residential~~ ~~Units~~ each, not including accessory or junior accessory dwelling units exempt pursuant to § 1270.03.01 (Exemptions), and any number of non-commercial or non-industrial Utility or Miscellaneous Group U buildings on each parcel. A Driveway shall not serve commercial or industrial uses at any size or scale of more than 7,200 square feet.

~~Distance Measurements: All specified or referenced distances are measured along the ground, unless otherwise stated.~~

(m) Exception: An alternative means or method to achieve substantial compliance with a ~~to the~~ specified standard requested by the applicant subject to § 1270.07 (Exceptions to

Commented [AJW5]: Added for clarity, and conformity with the definition of "Road" set forth below.

Commented [AJW6]: This change is suggested for conformity with the general exemption of ADUs/JADUs from these regulations - and the legislative policy underlying that exclusion.

Commented [AJW7]: "Commercial uses" may range from small-scale activities without full-time employees to major places of public assembly, and are not all created equal. To avoid unnecessarily overburdening truly small businesses, commercial/industrial uses below a certain threshold should be allowed to meet the driveways standards, rather than the full road standard. The proposed 7,200 sq. ft. threshold is based on the conversion metric explained in Section 1270.03, below, based on review of fire impact studies.

Commented [AJW8]: Reference to substantial compliance added for conformity with Section 1270.07.

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Standards) that may be necessary due to health, safety, environmental conditions, physical site limitations or other limiting conditions, such as recorded historical sites, that provides mitigation of the problem.

(n) Fire Apparatus: A vehicle designed to be used under emergency conditions to transport personnel and equipment or to support the suppression of fires or mitigation of other hazardous situations. The fire authority identifies which Fire Apparatus will be needed during emergency conditions.

(o) Fire Hydrant: A valved connection on a water supply or storage system for the purpose of providing water for fire protection and suppression operations. Fire Hydrant outlets shall be of sizes designated by the local fire authority and shall have ~~having either one two and a half (2 1/2) inch or one four and a half (4 1/2) inch outlet, with~~ male American National Fire Hose Screw Threads (NH), ~~used to supply fire apparatus and hoses with water.~~ For the purposes of this Subchapter, this term shall be inclusive of the term "hydrant head."

(p) Fire Valve: see Fire Hydrant.

(q) Fuel Break: A strategically located area where the volume and arrangement of vegetation has been managed to limit fire intensity, fire severity, rate of spread, crown fire potential, and/or ember production.

~~Fuel modification area: An area where the volume of flammable vegetation has been reduced, providing reduced fire intensity and duration.~~

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(r) Greenbelts: Agricultural lands, open space, parks, wildlands, or a combination thereof, as designated by ~~cities, counties, special districts and other jurisdictions~~ the Local Jurisdiction, which surround or are adjacent to a city or urbanized area, and restrict or prohibit development. ~~A facility or land use, designed for a use other than fire protection, which will slow or resist the spread of a wildfire. Includes parking lots, irrigated or landscaped areas, golf courses, parks, playgrounds, maintained vineyards, orchards or annual crops that do not cure in the field.~~

(s) Greenways: Linear open spaces or corridors that link parks and neighborhoods within a community through natural or manmade trails and paths.

(t) Hammerhead/T: A road or driveway that provides a "T" shaped, three-point turnaround space for emergency equipment, being no narrower than the ~~the~~ Road that serves it.

(u) Hazardous Land Use: A land use that presents a significantly elevated potential for the ignition, prolonged duration, or increased intensity of a wildfire due to the presence of flammable materials, liquids, or gasses, or features that initiate or sustain combustion. Such uses are determined by the local jurisdiction and may include, but are not limited to, power-generation and distribution facilities, wood processing or storage sites, flammable gas or liquids processing or storage sites, or shooting ranges.

~~Hydrant: A valved connection on a water supply or storage~~

Commented [AJW9]: This change is suggested for conformity with Sections 1276.04 and 1276.05. (Also, "special districts and other jurisdictions" that are not involved in the approval of Building Construction - and any lands they may choose to designate as greenbelts for their own purposes - are not properly subject to these regulations.)

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~~system, having either one two and a half (2 1/2) inch or one four and a half (4 1/2) inch outlet, with male American National Fire Hose Screw Threads (NH), used to supply fire apparatus and hoses with water.~~

(v) Local Fire Authority: A fire department, agency, division, district, or other governmental body responsible for regulating and/or enforcing minimum fire safety standards applicable to Building Construction.

(w) Local Jurisdiction: ~~Any~~ The county, city, city/county agency or department, or ~~any~~ locally authorized district that has authority to approve or has the authority to regulate Building Construction within a geographic area. ~~issues or approves building permits, use permits, tentative maps or tentative parcel maps, or has authority to regulate development and construction activity.~~

(x) Local Responsibility Area (LRA): Those areas of land classified by the Board where the financial responsibility of preventing and suppressing wildfires is not that of the state or federal government, pursuant to Public Resources Code (PRC) section 4125.

(y) Local Road: Roads identified by a local jurisdiction as a local road in conformance with the procedures in the US Federal Highway Administration "Highway Functional Classification Concepts, Criteria, and Procedures," 2013 Edition.

(z) Looped Road: Roads that loop back upon themselves. A road that has two or more points of connection onto a through road is

Commented [AJW10]: The definition of "Local Jurisdiction," upon whom substantial responsibilities devolve, should (1) explicitly include cities, who have such responsibilities in many LRA VHFHZ areas, and (2) should be focused on the public entity with the greatest responsibility for supervising or approving the Building Construction as a whole. (Cf. CEQA Guidelines section 15051(b).) We have suggested revisions to the proposed language to achieve this and avoid overbreadth.

not a Looped Road.

(~~aaa~~) Municipal-Type Water System: A system having water pipes servicing fire hydrants and designed to furnish, over and above domestic consumption, a minimum of 250 gpm (950 L/min) at 20 psi (138 kPa) residual pressure for a 2-hour duration. [NFPA 1142 3.3.16, 2017]

(~~aabb~~) Occupancy: The purpose for which a ~~b~~Building, or part thereof, is used or intended to be used.

(~~bbcc~~) One-way ~~r~~Road: A minimum of one ~~t~~Traffic ~~l~~Lane width designed for traffic flow in one direction only.

(~~eedd~~) ~~Perimeter or Perimeter of Building Construction~~: The boundary of the parcel or subdivision map within which lies any Building Construction subject to this Subchapter.

Commented [AJW11]: The term "perimeter of building construction" is used throughout the draft and may be confusing without clarification (since "Building Construction" generally refers to the physical construction activity, rather than the parcel or subdivision upon which it occurs). Further, the term "Perimeter" appears almost entirely in proximity to "Building Construction," apparently intending the meaning conveyed by this definition. We have consequently suggested these revisions for clarity.

(~~deee~~) Residential ~~u~~Unit: Any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking and/or sanitation for one or more persons. Manufactured homes, mobilehomes, and factory-built housing are considered residential units, ~~for the purposes of mandatory measures required in 14 CCR § 1270.01(e), unless being sited or installed as an accessory or junior accessory dwelling unit in accordance with § 1270.03.01 (Exemptions).~~

(~~eeff~~) Ridgeline: The line of intersection of two opposing slope aspects running parallel to the long axis of the highest elevation of land that is identified by the local jurisdiction as strategically important for the protection of structures from wildfire, or the suppression of wildfire in accordance with

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Section 1276.03.

(ffgg) Road: Vehicular access to more than two (2) parcels; more than four (4) residential units, not including accessory or junior accessory dwelling units exempt pursuant to § 1270.03.01 (Exemptions); or access to any industrial or commercial use of more than 7,200 square feet. ~~occupancy.~~ This is a general term inclusive of all other terms such as fire lane, public street, private street, parking lot lane, and access roadway. ~~includes public and private streets and lanes.~~

Commented [AJW12]: See above comment regarding commercial/industrial driveways.

(gghh) Road or ~~Driveway~~ Structures: Bridges, culverts, and other appurtenant structures which supplement the ~~Traffic Lane~~ or ~~Shoulders~~.

~~Same Practical Effect: As used in this subchapter, means an exception or alternative with the capability of applying accepted wildland fire suppression strategies and tactics, and provisions for fire fighter safety, including:~~

- ~~(a) access for emergency wildland fire equipment,~~
- ~~(b) safe civilian evacuation,~~
- ~~(c) signing that avoids delays in emergency equipment response,~~
- ~~(d) available and accessible water to effectively attack wildfire or defend a structure from wildfire, and~~
- ~~(e) fuel modification sufficient for civilian and fire fighter safety.~~

(hhii) Shoulder: Vehicular access adjacent to the ~~Traffic Lane~~ that can support the weight of a vehicle and provides appropriate traction.

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~~(jjj)~~ State Responsibility Area (SRA): As defined in Public Resources Code sections 4126-4127; and the California Code of Regulations, title 14, division 1.5, chapter 7, article 1, sections 1220-1220.5.

~~(jjk)~~ Structure: That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

~~(kll)~~ Subdivision: As defined in section 66424 of the Government Code.

~~(llm)~~ Substantial Compliance: The Exception satisfies the purpose of the minimum standards even though the formal requirements are not satisfied~~Nearly complete satisfaction of all material requirements consistent with the purpose of the applicable State Minimum Fire Safe Regulations even though the formal requirements are not satisfied.~~

Commented [AJW13]: The proposed definition appears to derive from provisions of the Education Code addressing school funding audits (EC § 41344.1), and has no judicial construction or precedent in the land use arena. It's also unclear what "nearly complete satisfaction" means in this context, which may lead to confusion and disputes.

We recommend retaining the alternate formulation of "substantial compliance" proposed in the prior draft regulations.

~~(mnn)~~ Substantial Evidence: Enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, in light of the whole record of evidence, even though other conclusions might also be reached. Argument, speculation, unsubstantiated opinion or narrative, or evidence which is clearly erroneous or inaccurate does not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

~~(noo)~~ Traffic Lane: The portion of a ~~Road~~ or ~~Driveway~~ that provides a single line of vehicle travel. A Traffic Lane may

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carry traffic in both directions

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(epp) Turnaround: A portion of a ~~R~~oad or ~~d~~riveway, unobstructed by parking, which allows for a safe opposite change of direction for emergency equipment. Design of such area may be a hammerhead/T or terminus bulb.

(ppq) Turnouts: A widening in a ~~R~~oad or ~~d~~riveway to allow vehicles to pass.

(qrr) Utility and Miscellaneous Group U building: A ~~s~~tructure of an accessory character or a miscellaneous ~~s~~tructure not classified in any specific ~~o~~ccupancy permitted, constructed, equipped, and maintained to conform to the requirements of Title 24, California Building Standards Code.

(rss) Vertical clearance: The minimum specified height of a bridge or overhead projection above the ~~R~~oad or ~~d~~riveway.

(stt) Very High Fire Hazard Severity Zone (VHFHSZ): As defined in Government Code section 51177(i).

(tuu) Wildfire: As defined in Public Resources Code Section 4103 and 4104.

~~(a) These regulations have been prepared and adopted for the purpose of establishing minimum wildfire protection standards in conjunction with building, construction and development in the State Responsibility Area (SRA).~~

~~(b) The future design and construction of structures, subdivisions and developments in the SRA shall provide for basic emergency access and perimeter wildfire protection measures as specified in the following articles.~~

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~~(c) These measures shall provide for emergency access; signing and building numbering; private water supply reserves for emergency fire use; and vegetation modification. The fire protection standards which follow shall specify the minimums for such measures.~~

Note: Authority cited: Section 4290, Public Resources Code.
Reference: Sections 4290 and 4291, Public Resources Code.

§ 1270.02. Purpose. ~~Scope~~

(a) These regulations have been prepared and adopted for the purpose of establishing minimum wildfire protection standards in conjunction with ~~building, construction and development~~ Building Construction in the State Responsibility Area (SRA) and, after July 1, 2021, the Very High Fire Hazard Severity Zones as defined in Government Code § 51177(i) (VHFHSZ).

(b) ~~The future design and construction of structures, subdivisions and developments~~ Building Construction in the SRA and after July 1, 2021, the VHFHSZ shall provide for basic emergency access and perimeter wildfire protection in accordance with the ~~standards measures as~~ specified in the following articles.

(c) These ~~measures~~ standards shall provide for emergency access and egress; signing and building numbering; private water supply reserves for emergency fire use; ~~and~~ vegetation modification, Fuel Breaks, Greenbelts, and measures to preserve undeveloped Ridgelines, as applicable. The ~~fire protection standards~~

Commented [AJW14]: This change is suggested for grammatical clarity.

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regulations which follow shall specify the minimums for such ~~measures~~ standards.

~~(a) These regulations shall apply to:~~

~~(1) the perimeters and access to all residential, commercial, and industrial building construction within the SRA approved after January 1, 1991 except as set forth below in subsections (b) through (d), inclusive, and (f);~~

~~(2) the siting of newly installed commercial modulars, manufactured homes, mobilehomes, and factory built housing, as defined in Health and Safety Code sections 18001.8, 18007, 18008, and 19971, except where being sited or installed as an accessory or junior accessory dwelling unit as set forth in subsection (d) below;~~

~~(3) all tentative and parcel maps or other developments approved after January 1, 1991; and~~

~~(4) applications for building permits on a parcel approved in a pre-1991 parcel or tentative map 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 map.~~

~~(b) These regulations do not apply where an application for a building permit is filed after January 1, 1991 for building construction on a parcel that was formed from a parcel map or tentative map (if the final map for the tentative map is approved within the time prescribed by the local ordinance) approved prior to January 1, 1991, to the extent that conditions relating to the perimeters and access to the buildings were~~

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~~imposed by the parcel map or final tentative map approved prior to January 1, 1991.~~

~~(c) (1) At the discretion of the local jurisdiction, and subject to any requirements imposed by the local jurisdiction to ensure reasonable ingress, egress, and capacity for evacuation and emergency response during a wildfire, these regulations shall not apply to the reconstruction or repair of legally constructed residential, commercial, or industrial buildings due to a wildfire, to the extent that the reconstruction or repair does not:~~

~~(A) increase the square footage of the residential, commercial, or industrial building or buildings that previously existed; or~~

~~(B) change the use of the building or buildings that had existed previously; or~~

~~(C) construct a new building or buildings that did not previously exist on the site.~~

~~(2) Nothing in this subsection shall be construed to alter the extent to which these regulations apply to the reconstruction or repair of a legally constructed residential, commercial, or industrial building for reasons unrelated to a wildfire.~~

~~(d) These regulations do not apply to the creation of accessory or junior accessory dwelling units that comply with Government Code sections 65852.2 or 65852.22, or any local ordinances enacted thereunder, as applicable, including any local ordinances requiring provisions for fire and life safety.~~

~~(e) Unless otherwise exempt pursuant to this subchapter,~~

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~~affected activities include, but are not limited to:~~

~~(1) permitting or approval of new parcels, excluding lot line adjustments as specified in Government Code (GC) section 66412(d);~~

~~(2) application for a building permit for new building construction;~~

~~(3) application for a use permit; and~~

~~(4) road construction.~~

~~(f) EXEMPTION: Roads used solely for agricultural, mining, or the management and harvesting of wood products.~~

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

§ 1270.03. ~~Scope. Provisions for Application of The Regulations~~

(a) Except as otherwise provided in this Subchapter, Ttthese regulations shall apply to:

(1) the ~~p~~Perimeters and ~~a~~Access to all residential, commercial, and industrial ~~b~~Building ~~e~~Construction within the SRA approved after January 1, 1991 and those approved after July 1, 2021 within the VHFHSZ, except as set forth below in ~~subsections~~ § 1271.03.01 (Exemptions); ~~(b.)through (d), inclusive, and (f);~~

(2) the siting of newly installed commercial modulars, manufactured homes, mobilehomes, and factory-built housing, as defined in Health and Safety Code sections 18001.8, 18007, 18008, and 19971, except where being sited or installed as an

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accessory or junior accessory dwelling unit as set forth in ~~subsection (d) § 1271.02~~ § 1270.03.01 (Exemptions) below;

(3) all tentative and parcel maps or other ~~developments~~ within the SRA approved after January 1, 1991 and those approved after July 1, 2021 within the VHFHSZ ~~approved after January 1, 1991~~; and

(4) applications for building permits on a parcel approved in a pre-1991 parcel map (including a parcel map waiver pursuant to Government Code section 66428) or tentative map to the extent that ~~matterseconditions~~ relating to the perimeters and access to the buildings were not approved imposed as part of ~~the approval of~~ the parcel or tentative map process.

(b) All Building Construction shall comply with the minimum standards in this Subchapter within the Perimeter of the Building Construction subject to this Subchapter except as set forth below in § 1271.03.01 (Exemptions).

(c)

OPTION ONE

Where Building Construction meets any the following criteria, the provisions of this Subchapter shall further apply to any Road or Road Structure that provides Access to the Building Construction: ~~(e) Where Building Construction requires a tentative and final map pursuant to the Subdivision Map Act, the provisions of this Subchapter shall further apply to any Road or Road Structure that provides Access to the Building Construction.~~

Commented [AJW15]: PRC 4290 provides that these regulations apply with the LRA VHFHSZ "after July 1, 2021." As originally written, this section could have been interpreted to apply these regulations to subdivision maps within the LRA VHFHSZ approved prior to that date, which would be plainly contrary to statute.

Commented [AJW16]: "Parcel Map Waivers" under the specified statute are effectively the equivalent of parcel maps, and appear within the scope of PRC 4290's exclusion for "parcel or tentative maps or other developments approved prior to January 1, 1991..."

Commented [AJW17]: Similar changes were suggested in our prior comments, and reflect the fact that perimeter and access requirements for subdivisions are not always expressed as formal conditions (i.e., they are sometimes depicted visually on the map document instead). See also See 76 Ops.Cal.Atty.Gen. 19 (1993):

"The Act vests cities and counties with the power to regulate and control the 'design and improvement of subdivisions' (§ 66411) independent of the power to impose the specified conditions enumerated above...Accordingly, we believe that when a person applies for a building permit after January 1, 1991, the Board's fire safety regulations would be inapplicable as to any MATTERS APPROVED prior to January 1, 1991, as part of the parcel or tentative map process."

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(1) The **OPTION TWO**

~~(e) Where Building Construction is consists of XX-15 or more Residential Units;+~~

~~(2) The Building Construction increases the service capacitysize of commercial or industrial uses by 27,000 square feet or moreXX%; or increases the number of workers on the site of any use by XX%; or~~

~~(3) The Building Construction exceeds the density or intensity permitted on the parcel or parcels within the Perimeter under the zoning applicable on July 1, 2021 by 20% or morethe provisions of this Subchapter shall further apply to any Road or Road Structure that provides Access to the Building Construction.~~

OPTION THREE

~~(e) Where Building Construction meets the following criteria, the provisions of this Subchapter shall further apply to any Road or Road Structure that provides Access to the Building Construction: Unless otherwise exempt pursuant to this subchapter, affected activities include, but are not limited to:~~

~~(1) permitting or approval of new parcels, excluding lot line adjustments as specified in Government Code (GC) section 66412(d);~~

~~(2) application for a change in zoning building permit for new building construction;+~~

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Commented [HE18]: These numbers could also be square footage rather than the number of units/people served/people on site. Open to other suggestions

Commented [AJW19]: As indicated in our cover letter, counties strongly support Option 2. We further recommend the 15 unit/27,000 square foot threshold for the reasons expressed in our prior comments, i.e.:

15 residential units is a well-established "medium-size project" threshold - specifically for fire protection and water system requirements. See, e.g., Cal. Code Regs., tit. 25, §§ 1300, 2300 (fire protection equipment requirements for mobilehome and special occupancy parks); HSC 116275 (public water system regulations).

The conversion rate of 1 residential unit equals 1,800 square feet of commercial or industrial space was developed based on a review of local fire impact fee studies (which evaluate the respective fire service needs and impacts of various types and sizes of development).

Commented [AJW20]: As explained in our cover letter, counties are sensitive to concerns expressed by Board members and staff regarding the "cumulative impact" of multiple small developments. The suggested additional limitation will effectively limit such cumulative impacts based on current zoning - and avoid regulatory takings concerns, since property owners have no reasonable expectation of developing in excess of what current zoning permits.

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Commented [HE21]: This option is based on existing language in § 1270.02 Scope, subsection (e)- see westlaw

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~~(3) application for a change in use permit; and~~

~~(4) road construction.~~

~~This subchapter shall be applied as follows:~~

~~(a) the local jurisdictions shall provide the Director of the California Department of Forestry and Fire Protection (CAL FIRE) or their designee with notice of applications for building permits, tentative parcel maps, tentative maps, and installation or use permits for construction or development within the SRA.~~

~~(b) the Director or their designee may review and make fire protection recommendations on applicable construction or development permits or maps provided by the local jurisdiction.~~

~~(c) the local jurisdiction shall ensure that the applicable sections of this subchapter become a condition of approval of any applicable construction or development permit or map.~~

~~Note: Authority cited: Section 4290, Public Resources Code.~~

~~Reference: Sections 4290 and 4291, Public Resources Code.~~

§ 1270.03.01 Exemptions

(a) These regulations do not apply where an application for a building permit ~~in the SRA~~ is filed after January 1, 1991 for ~~Building~~ ~~e~~Construction on a parcel that was formed from a parcel map (including a parcel map waiver pursuant to Government Code section 66428) or tentative map (if the final map for the tentative map is approved within the time prescribed by the local ordinance) approved prior to January 1, 1991, to the extent that ~~conditions matters~~ relating to the ~~p~~Perimeters and

Commented [AJW22]: See prior comments regarding the pre-1991 subdivision exemption.

Commented [AJW23]: The exemption set forth in PRC 4290(a) "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" is not limited to the SRA, and would thus equally apply to building permits in the LRA VHFHSZ if the statutory conditions are met.

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~~a~~Access to the ~~b~~Buildings were ~~imposed by~~approved as part of the parcel map or final tentative map approved prior to January 1, 1991.

(1) For this exemption to apply, the parcel map or tentative map that was approved prior to January 1, 1991, shall have imposed conditions or otherwise regulated the design and improvement of the subdivision relating to the Perimeters and Access to the Building Construction that is the subject of the building permit application filed after January 1, 1991.

(2) These regulations shall apply to the Building Construction to the extent that ~~conditions-matters~~ relating to the Perimeters and Access to the buildings were not ~~imposed~~ approved as part of ~~the approval of~~ the parcel map or tentative map process.

(b) At the discretion of the local jurisdiction, and subject to any requirements imposed by the local jurisdiction to ensure reasonable ingress, egress, and capacity for evacuation and emergency response during a wildfire, these regulations shall not apply to the reconstruction or repair of ~~legally constructed~~ residential, commercial, or industrial buildings due to a ~~wildfire, disaster or other cause~~. ~~Nothing in this subsection shall be construed to alter the extent to which these regulations apply to the reconstruction or repair of a legally constructed residential, commercial, or industrial building for reasons unrelated to a wildfire.~~ This exemption is applicable to reconstruction or repair ~~after a wildfire only~~ to the extent

Commented [AJW24]:

The verbiage used to describe scope of this exemption should match the language used in the definition of "Building Construction" (§ 1270.01(e)), to avoid confusion. The policy concerns regarding that scope are addressed in comments on that section, and in our cover letter.

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that the reconstruction or repair does not:

(1) increase the square footage of the ~~residential,~~
commercial, or industrial building or buildings that previously
existed by more than 20%;

(2) Increase the number of residential units; or

(3) change the use of the building or buildings that had
existed previously; or

(4) construct a new building or buildings that did not
previously exist on the site; and

(4) and that encroach on the minimum setback requirements
in § 1276.03 Building and Parcel Siting and Setbacks.

(c) ~~Except as otherwise provided in §§ 1270.03.02 (Substandard
Roads) and 1270.03.03 (Aggregate Risk), Tt~~These regulations do
not apply to the creation of accessory or junior accessory
dwelling units that comply with Government Code sections 65852.2
or 65852.22, or any local ordinances enacted thereunder, as
applicable, including any local ordinances requiring provisions
for fire and life safety.

(d) ~~EXEMPTION: Roads~~ These regulations shall not apply to Roads
used solely for ~~a~~Agriculture~~at~~, mining, or the management and
harvesting of wood products.

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

~~§ 1270.03.02 Substandard Roads.~~

~~(a) Notwithstanding any other provision in this Subchapter,~~

Commented [AJW25]: The suggested 20% increase limitation appears reasonable for commercial and industrial uses - subject to our overarching comments on the scope of the rebuilding exemption.

Commented [AJW26]: Square footage is not a useful proxy for fire (or traffic) impacts from residential uses. The residents of a "McMansion" do not generate more or less fire risk than those of a modest single-family home. The rebuilding limitation should instead be focused on the metric that does directly drive fire service impacts and needs - i.e., number of residential units. (The proposed percentage limitation is also unfair to lower income homeowners, as it would effectively allow wealthy owners of large houses more flexibility in rebuilding than their disadvantaged neighbors who lost smaller houses.)

Commented [AJW27]: As originally drafted, the conjunctive "and" was not entirely clear, and could have created confusion regarding whether rebuilding a pre-existing structure whose building envelope encroached upon the setbacks was (or was not) exempt under this section.

Commented [AJW28]: As set forth in our cover comments, the proposed limitation on this exemption contravenes statutory policy and is not appropriate.

Commented [AJW29]: As explained in our cover comments, the proposed provisions addressing "Substandard Roads" and "Aggregate Risk" are deeply flawed in both concept and drafting, and should be removed in their entirety.

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~~Building Construction shall not be approved where Access is provided by Roads that do not meet the minimum requirements in § 1273.05.02 (Built Roads), to the extent the Road remains below the minimum requirements.~~

~~(b) Notwithstanding any other provisions in this Subchapter, Building Construction shall not be approved when the Building Construction would cause a Road used to provide Access to the Building Construction does not meet the minimum requirements in § 1273.05.02 (Built Roads) to exceed the aggregate risk threshold calculated in conformance with § 1270.03.03 (Aggregate Risk).~~

~~(c) Notwithstanding any other provision in this Subchapter, exemptions from these standards enumerated in § 1270.03.01(c) (Exemptions — ADUs) shall not apply when Access to the Building Construction is provided by Roads that do not meet the minimum requirements in § 1273.05.02 (Built Roads) or the Building Construction would cause the Access to exceed the aggregate risk threshold in § 1270.03.03 (Aggregate Risk).~~

~~Note: Authority cited: Section 4290, Public Resources Code.
Reference: Sections 4290 and 4291, Public Resources Code.~~

~~§1270.03.03 Aggregate Risk~~

~~(a) Prior to approving any Building Construction subject to this Subchapter where Access is provided by an existing Road or Roads that do not meet the requirements in § 1273.05.02 (Built Roads), a Local Jurisdiction shall calculate, for each Road:~~

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~~(1) the total estimated daily vehicle trips per Residential Unit, commercial use, and/or industrial use that existed along each Road on July 1, 2021;~~

~~(2) the total estimated daily vehicle trips per Residential Unit, commercial use, and/or industrial use existing along each Road on the date the Building Construction is received by the Local Jurisdiction for approval; and~~

~~(3) the total estimated increased in daily vehicle trips on each Road per Residential Unit, commercial use, and/or industrial use that would result from approving the proposed Building Construction.~~

~~(b) Pursuant to § 1270.03.02 (Substandard Roads), Building Construction shall not be approved~~

~~(1) where Access is provided by a Road which has experienced a doubling in its total estimated daily vehicle trips since July 1, 2021;~~

~~(2) where the Building Construction would cause the total estimated daily vehicle trips experienced on a Road on July 1, 2021 to double, or where the Building Construction would cause a Road to cross a threshold such that if the Building Construction was approved, the Road would experience a doubling in its total estimated daily vehicle trips since July 1, 2021.~~

~~(c) Estimated daily vehicle trips per Residential Unit shall be calculated using a factor of 5.11 daily vehicle trips per Residential Unit.~~

~~(d) Estimated daily vehicle trips per commercial use shall be~~

Commented [HE30]: Is this "doubling" threshold appropriate? Too small? Too high?

Commented [HE31]: Looking for recommendations on thresholds for commercial and industrial uses

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~~calculated....~~

~~(c) Estimated daily vehicle trips per industrial use shall be calculated....~~

~~Note: Authority cited: Section 4290, Public Resources Code.~~

~~Reference: Sections 4290 and 4291, Public Resources Code.~~

§ 1270.04. Local Regulations ~~Ordinances~~.

~~(a) These regulations shall serve as the minimum wildfire protection standards applied in SRA and VHFHSZ. However, these regulations do not supersede local regulations which equal or exceed the standards of this Subchapter. Nothing contained in these regulations shall be considered as abrogating the provisions of any ordinance, rule or regulation of any state or local jurisdiction provided that such ordinance, rule, or regulation is equal to or exceeds these minimum standards.~~

~~(b) A Local regulations equals or exceeds a the minimum standards of this Subchapter only if, at a minimum, the local regulations as a whole also fully complies comply with the corresponding minimum standards in this Subchapter. (b) Counties may submit their local ordinances for certification via email to the Board, and the Board may certify them as equaling or exceeding these regulations when they provide the same practical effect. If the Board determines that the local requirements do not equal or exceed these regulations, it shall not certify the local ordinance.~~

~~(c) A Local Jurisdiction shall not apply exemptions to Building~~

Commented [AJW32]: The provisions of this section have been revised to allow for a holistic evaluation of whether local ordinances "equal or exceed" Fire Safe Regulations. Local ordinances may be structured differently than these regulations, but nonetheless, as a whole, establish requirements that are equally or more stringent in every particular. Requiring a siloed "one-for-one" comparison of each individual regulation and ordinance provision is unnecessarily constraining, and does not serve the purposes of this section.

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Construction that are not enumerated in this Subchapter.

(1) Exceptions requested and approved in conformance with [§ 1270.06 \(Exceptions\)](#) may be granted on a case-by-case basis.

(2) Exemptions not enumerated in these regulations shall not be granted.

~~(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.~~

(d) A Local Jurisdiction or local fire authority may notify the Board upon **its** commencement of any revisions to relevant local regulations. The Board may provide technical assistance to the **requesting** agency during the revision drafting process. ~~The Board's certification of local ordinances pursuant to this section is rendered invalid when previously certified ordinances are subsequently amended by local jurisdictions, or the regulations are amended by the Board, without Board re-certification of the amended ordinances. The Board's regulations supersede the amended local ordinance(s) when the amended local ordinance(s) are not re-certified by the Board. Amendments made by local jurisdictions to previously certified ordinances shall be submitted for re-certification.~~

(e) The Local Jurisdiction or local fire authority may submit their draft regulation to the Board at least 90 days before the first meeting of the Local Jurisdiction or local fire authority at which the proposed draft will be presented to the public.

Commented [AJW33]: This is intended to clarify that this technical assistance process may only be invoked by the agency responsible for promulgating and adopting the local regulations.

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(f) The Board may provide recommendations on the draft within 60 days.

(g) ~~Notwithstanding a local regulation that equals or exceeds the State Minimum Fire Safe Regulations,~~ a local jurisdiction shall require Building Construction to comply with the State Minimum Fire Safe Regulations in accordance with the provisions of this Subchapter.

Note: Authority cited: Section 4290, Public Resources Code.
Reference: Sections 4290 and 4291, Public Resources Code.

§ 1270.05. Inspections.

Inspections shall conform to the following requirements:

(a) Inspections ~~in the SRA~~ shall be made by:

- (1) the Director, or
- (2) local jurisdictions that have assumed state fire protection responsibility on SRA lands, or
- (3) local jurisdictions where the inspection duties have been formally delegated by ~~CAL FIRE~~ the Director to the local jurisdiction, pursuant to subsection (b).

(b) The Director may delegate inspection authority to a Local Jurisdiction subject to all of the following criteria:

(1) The Local Jurisdiction represents, to the Director's satisfaction, that the Local Jurisdiction has appropriate resources to responsibly perform the delegated inspection authority.

(2) The Local Jurisdiction acknowledges that CAL FIRE's

Commented [AJW34]: The statement "notwithstanding a local regulation..." is unclear, as by definition, compliance with a local regulation that equals or exceeds the State Regulations will satisfy the underlying Regulations themselves. (In other words, there is nothing to be "notwithstanding.")

Commented [AJW35]: As explained in our cover letter, PRC 4119 gives CalFIRE responsibility to "enforce the state forest and fire laws" and "inspect all properties...subject to the state forest and fire laws." These provisions are not anywhere limited to the SRA - nor expressly or implicitly abrogated by PRC 4125. The newly proposed provisions purporting to impose these duties directly upon local jurisdictions (which were not in the prior draft) have consequently been removed.

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authority under subsection (c) shall not be waived or restricted.

(3) The Director may impose additional ~~reporting requirements~~criteria on a proposed delegation of inspection authority as the Director deems necessary and appropriate to ensure that the delegated inspection authority is performed responsibly.

(4) The Local Jurisdiction consents to the delegation of inspection authority.

(5) The Director may in their discretion revoke the delegation at any time.

(6) The delegation of inspection authority, and any subsequent revocation of the delegation, shall be documented in writing, and retained on file at the CAL FIRE Unit headquarters that administers SRA fire protection in the Local Jurisdiction. ~~Nothing in this section abrogates CAL FIRE's authority to inspect and enforce state forest and fire laws even when the inspection duties have been delegated pursuant to this section.~~

~~(e) Inspections in the VHFHSZ shall be made by the local jurisdiction. Reports of violations shall be provided to the CAL FIRE Unit headquarters that administers SRA fire protection in the local jurisdiction.~~

(d) Nothing in this section abrogates CAL FIRE's authority to inspect and enforce state forest and fire laws ~~in the SRA~~ even when the inspection duties have been delegated pursuant to this section. ~~When inspections are conducted, they shall occur prior~~

Commented [AJW36]: The reference to "additional criteria" is open-ended, and could unintentionally result in either underground regulations (if substantive additional "criteria" are consistently imposed across jurisdictions) or arbitrary decision-making (if such "criteria" are inconsistently imposed).

During earlier workshops, Board staff identified reporting requirements as the type of delegation "criteria" envisioned, which would not raise such concerns. We recommend that the regulation be clarified and limited accordingly.

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~~to: the issuance of the use permit or certificate of occupancy; the recordation of the parcel map or final map; the filing of a notice of completion; or the final inspection of any project or building permit.~~

(e) Reports of violations ~~within the SRA~~ shall be provided to the CAL FIRE Unit headquarters that administers SRA fire protection in the local jurisdiction.

(f) Inspections conducted by the Director shall be limited to confirming compliance with the State Minimum Fire Safe Regulations. ~~Inspections conducted by the local jurisdiction or fire authority shall confirm compliance with the State Minimum Fire Safe Regulations. A local jurisdiction may, in its discretion, conduct additional inspections with respect to a local regulation that equals or exceeds the State Minimum Fire Safe Regulations.~~

(g) The Local Jurisdiction shall ~~ensure~~ require that any applicable Building Construction complies with the applicable sections of this Subchapter.

Note: Authority cited: Section 4290, Public Resources Code.
Reference: Sections 4102, 4119, 4125, 4290 and 4291, Public Resources Code.

§ 1270.06. Exceptions to Standards.

(a) The requirements in this section apply only to requests for Exceptions from the standards in the State Minimum Fire Safe Regulations. Requests for exceptions, variances, or other

Commented [AJW37]: Absolutely "ensuring" compliance may be beyond the power of even the most diligent local government. "Requiring" compliance is more appropriate, and consistent with the prior language of this section.

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administrative relief from a local regulation that equals or exceeds the State Minimum Fire Safe Regulations shall be processed in accordance with procedures established by the Local Jurisdiction.

(ba) Upon request by the applicant, an ~~e~~Exceptions to a standards within this ~~s~~Subchapter or to local jurisdiction certified ordinances may be granted ~~allowed~~ by the inspection entity in accordance with ~~listed in~~ [§ 1270.05 \(Inspections\)](#), where the exceptions provide the same practical effect as these regulations towards providing defensible space.

(1) Exceptions shall only be granted where the Exception provides for Substantial Compliance with the minimum standards provided in this Subchapter.

(2) Exceptions granted by the inspection entity ~~listed in~~ ~~14 CCR § 1270.05~~ shall be made on a case-by-case basis only, shall be in writing, and shall be supported by Substantial Evidence. Exceptions granted by the inspection entity ~~listed in~~ ~~14 CCR § 1270.05~~ shall be forwarded to the Board and the appropriate CAL FIRE Unit Office that administers SRA fire protection in that county. Exceptions shall be retained on file at both offices for a period of no less than five (5) years. ~~and shall be retained on file at the Unit Office.~~

~~(3) Building Construction prohibited by §§ 1270.03.02 (Substandard Roads) or 1270.03.03 (Aggregate Risk) shall not be eligible for an exception.~~

(bc) Requests for an ~~e~~Exception shall be made in writing to the

Commented [AJW38]: The prior draft regulations included requests for relief from local ordinances that "meet or exceed" the State Regulations within the Exception process. Those provisions have now been removed, and it is consequently necessary to specify how such requests will be processed. This clarity will benefit both the regulated public and Local Jurisdictions.

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Commented [AJW39]: Sub. (3) has been removed for conformity with the deletion of the referenced provisions.

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inspection entity ~~listed in 14 CCR § 1270.05~~ by the applicant or the applicant's authorized representative.

(1) ~~At a minimum, the~~ Exception requests shall state

(i) the specific section(s) for which an eException is requested;

(ii) material facts supporting the necessity for an Exception contention of the applicant;

(iii) material facts demonstrating the proposed alternative mean(s) Substantially Complies with the State Minimum Fire Safe Regulation for which the Exception is requested; the details of the exception proposed, and

(iv) a map showing the proposed location and siting of the eException, including address or parcel number, as applicable.

(2) Local jurisdictions acting as inspection entities pursuant to ~~listed in~~ § 1270.05 (Inspections) may establish additional procedures or requirements for eException requests.

(ed) Where an exception is not granted by the inspection entity, the applicant may appeal such denial to the local jurisdiction. The local jurisdiction may establish or utilize an appeal process consistent with existing local building or planning department appeal processes to adjudicate any appeals of

of inspection entity decisions under this section.

~~Exceptions that have been denied.~~

(1) In addition to local requirements, the local

Commented [AJW40]: Local jurisdictions may (or may not) desire to authorize interested parties (e.g., neighbors) to appeal Exceptions that have been granted by the inspection entity. The regulations should not preclude such appeals, but should instead leave that decision to the local jurisdiction.

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jurisdiction shall consult with the inspection entity prior to making a determination on an appeal.

(2) The inspection entity shall timely provide documentation ~~demonstrating how~~ explaining its conclusion that the requested Exception does not substantially comply with the standards in this Subchapter. ~~Before the local jurisdiction makes a determination on an appeal, the inspection authority shall be consulted and shall provide to that local jurisdiction documentation outlining the effects of the requested exception on wildfire protection.~~

(e) If an appeal is granted, the local jurisdiction shall make written findings of the Exception's Substantial Compliance, as defined § 1270.01 (Definitions), with the minimum standards in this Subchapter, supported by Substantial Evidence. ~~that the decision meets the intent of providing defensible space consistent with these regulations.~~ Such findings shall include a written statement of reasons for overriding the decision of the inspection entity. A written copy of these findings shall be provided to the Board and the CAL FIRE Unit headquarters that administers SRA fire protection in that local jurisdiction.

Note: Authority cited: Section 4290, Public Resources Code.
Reference: Sections 4290 and 4291, Public Resources Code.

§ 1270.07. Distance Measurements.

All specified or referenced distances are measured along the ground, unless otherwise stated.

Commented [AJW41]: The draft's language could be interpreted to imply that the inspection authority's conclusion is necessarily factually correct - which is inconsistent with the provision for appeal. Further, the regulation should require that these materials be timely provided - and avoid any implication that the appeals body cannot proceed if such materials are not provided within a reasonable period of time.

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Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

Article 2. ~~Emergency~~ Access and Egress

§ 1273.00. Safe Access and Egress ~~Intent~~.

(a) ~~Roads, and Driveways, and Road or Driveway Structures,~~
whether public or private, unless exempted under ~~14 CCR §~~
1270.03.01 (Exemptions) ~~1270.02(e)~~, shall provide for safe
access for emergency wildfire equipment and civilian evacuation
concurrently, and shall provide unobstructed traffic circulation
during a wildfire emergency ~~consistent with 14 CCR §§ 1273.00~~
~~through 1273.09,~~ as set forth in this Article.

(b)(1) The provisions of this Article shall apply to any Road,
Driveway, or Road or Driveway Structure, whether newly
constructed, approved, or existing, within the Perimeter of any
Building Construction subject to this Subchapter except as set
forth in § 1271.03.01 (Exemptions).

(2) The provisions of this Article shall further apply to
any existing Road, Driveway, or Road or Driveway Structure that
provides Access to Building Construction meeting the criteria in
§ 1270.03 (Scope ~~— see options for discussion~~).

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.01. Horizontal and Vertical Curves / Curb Radii ~~Width~~.

(a) No road or road structure shall have a horizontal inside

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radius of curvature (measured from the centerline of the inside lane) of less than fifty (50) feet. Additional surface width of four (4) feet shall be added to curves of 50-100 feet radius; one (1) foot shall be added to curves of 100-200 feet, as illustrated on Figure 1 and Figure 2.

(1) Flexible plastic posts to delineate the shoulder and/or provide separation for cyclists may be placed within the required radius upon approval by the local jurisdiction.

(2) A design that does not meet the requirements of subsection (a) may be approved where the operating speed is 15 miles per hour (mph) or less and the horizontal curve is designed and modeled by a licensed professional engineer demonstrating that emergency responders can negotiate the proposed horizontal inside radius.

(b) At intersections where on-street parking and bike lanes may be present, the effective turning radius shall not be less than fifty (50) feet as illustrated in Figure 3 below.

(1) Smaller curb radii or curb extensions may be installed at intersections where width allows to minimize pedestrian exposure and collision severity as long as the effective turning radius is not less than fifty (50) feet.

(2) At intersections in areas without on-street parking and/or bike lanes where speeds approaching the intersection are less than 15 mph, and traffic volumes on the receiving road are less than 120 vehicles per hour during either an evacuation event or during the peak commute hour, whichever is a higher

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volume, curb radii of twenty (20) feet may be approved, as illustrated in Figure 4, if designed by a professional engineer demonstrating that emergency responders can negotiate the turn safely, including the use of opposing travel lanes.

(c) The length of vertical curves of roads, exclusive of gutters, ditches, and drainage structures designed to hold or divert water, shall be not less than one hundred (100) feet. Vertical curves less than one hundred (100) feet may be approved when designed by a professional engineer demonstrating that emergency responders can physically negotiate the road.

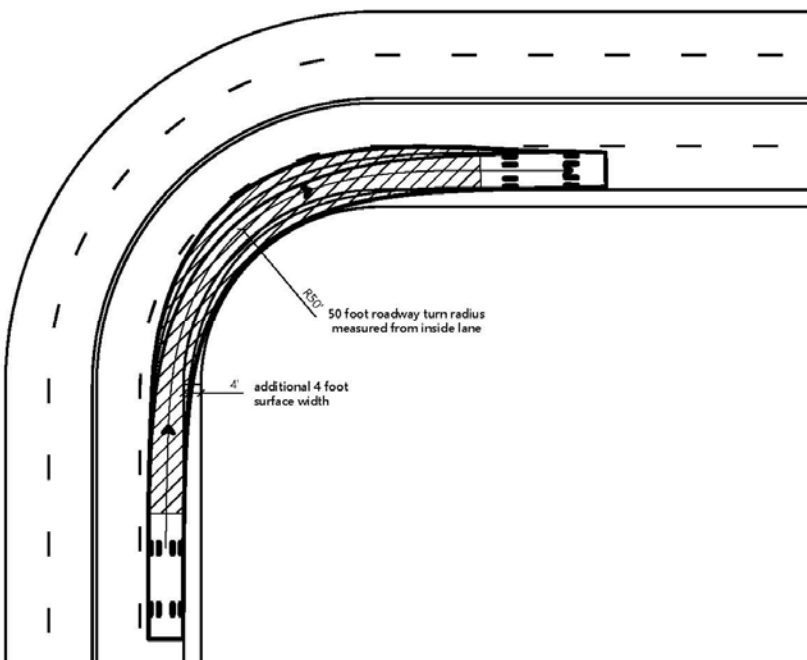


Figure 1

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Effective Turning Radius for Horizontal Curvature with 50 Foot Radius

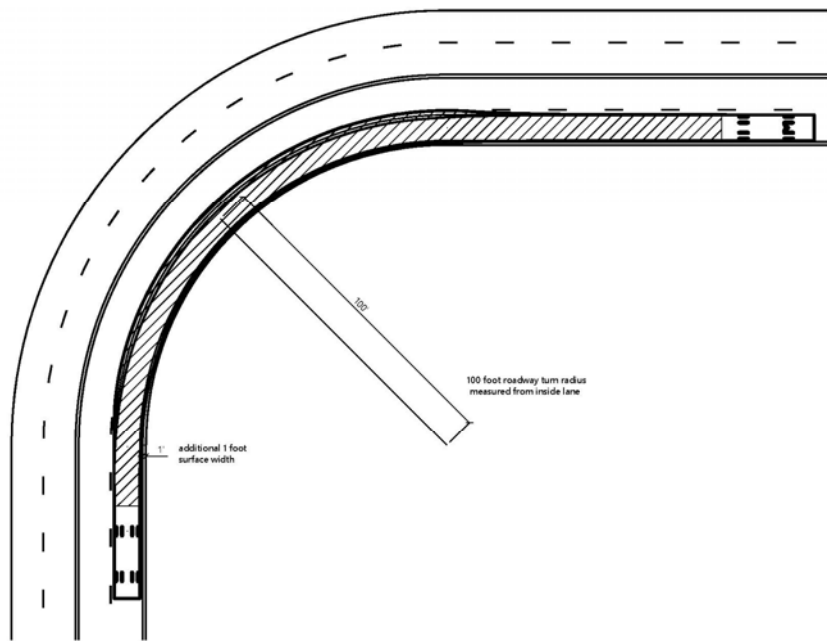


Figure 2
Effective Turning Radius for Horizontal Curvature with 100 Foot Radius

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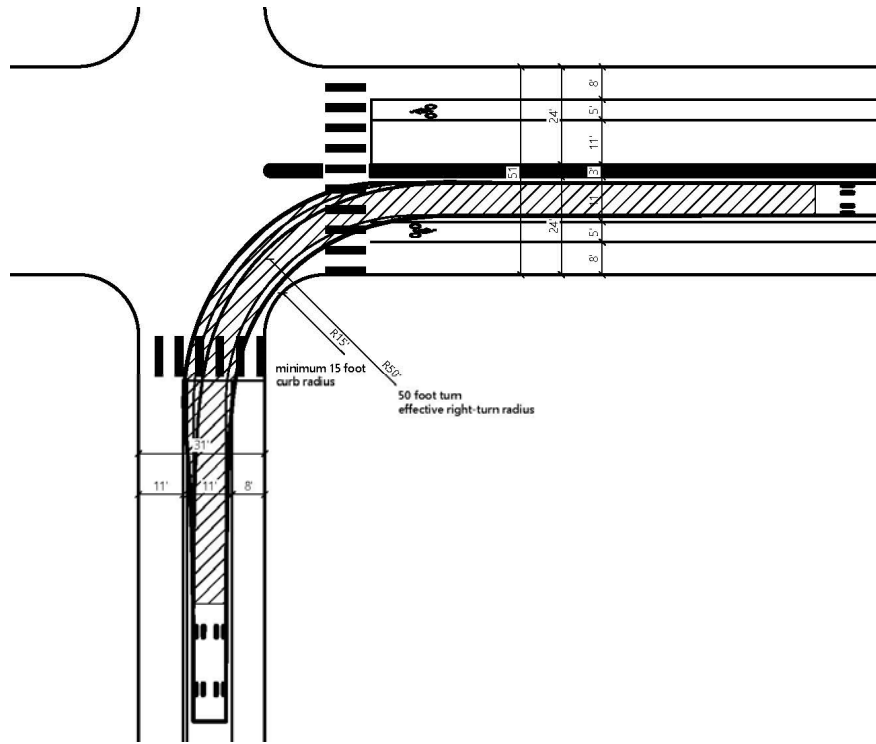


Figure 3
Effective Turning Radius for Intersections with Bike Lanes or Parking

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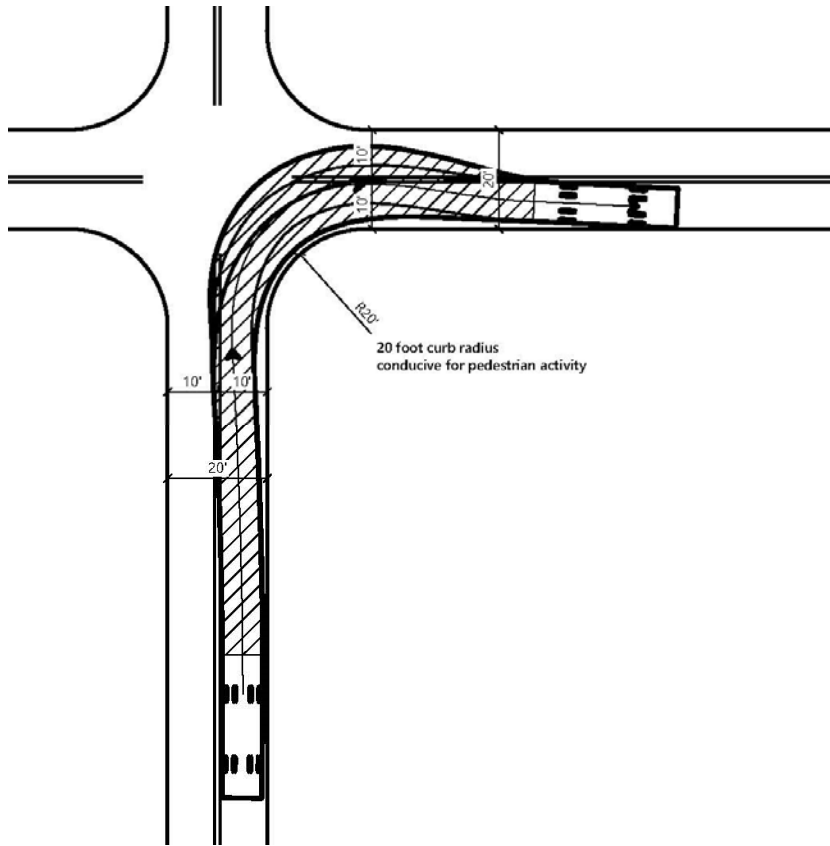


Figure 4
Effective Turning Radius for 20 Foot Wide Road Intersection

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~~(a) All roads shall be constructed to provide a minimum of two ten (10) foot traffic lanes, not including shoulder and striping. These traffic lanes shall provide for two way traffic flow to support emergency vehicle and civilian egress, unless other standards are provided in this article or additional requirements are mandated by local jurisdictions or local subdivision requirements. Vertical clearances shall conform to the requirements in California Vehicle Code section 35250.~~

~~(b) All one way roads shall be constructed to provide a minimum of one twelve (12) foot traffic lane, not including shoulders. The local jurisdiction may approve one-way roads.~~

~~(1) All one way roads shall, at both ends, connect to a road with two traffic lanes providing for travel in different directions, and shall provide access to an area currently zoned for no more than ten (10) residential units.~~

~~(2) In no case shall a one way road exceed 2,640 feet in length. A turnout shall be placed and constructed at approximately the midpoint of each one way road.~~

~~(c) All driveways shall be constructed to provide a minimum of one (1) ten (10) foot traffic lane, fourteen (14) feet unobstructed horizontal clearance, and unobstructed vertical clearance of thirteen feet, six inches (13' 6").~~

Note: Authority cited: Section 4290, Public Resources Code.
Reference: Sections 4290 and 4291, Public Resources Code.

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§ 1273.02. Road Surfaces.

(a) Roads shall be designed and maintained to support the imposed load of fire apparatus weighing ~~at least~~ 75,000 pounds. ~~and provide an aggregate base.~~ The material of the Road shall be non-erodible (including, but not limited to, a binding agent, gravel, lime slurry, or pavement) and designed to support the required weight at all times, including during saturation. Roads with a grade of greater than 16% have additional surface treatment requirements specified in [§ 1273.04 \(Grades\)](#).

(b) Where the local fire authority certifies that the fire apparatus used is of a lower weight, the local jurisdiction may approve Roads designed to support a lower apparatus weight. If the Road is designed for lower weight than required in § 1273.02(a), then it shall be identified through signage as described in Article 4. In no case shall a Road be designed to support a weight below 36,000 pounds. ~~Driveways and road and driveway structures shall be designed and maintained to support at least 40,000 pounds.~~

~~(c) When necessary, the local fire authority or the Local Jurisdiction may require Roads be designed to support a vehicle weight up to 100,000 pounds.~~

~~(d)~~ Project proponent shall provide engineering specifications to support design, if requested by the ~~Local authority having~~ Jurisdiction.

Note: Authority cited: Section 4290, Public Resources Code.
Reference: Sections 4290 and 4291, Public Resources Code.

Commented [AJW42]: The deleted subdivision is superfluous, in light of local jurisdictions' existing authority to establish standards that exceed these regulations.

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§ 1273.03. Elevated or Bridge Structures. ~~Grades.~~

(a) Appropriate signing, including but not limited to weight or vertical clearance limitations, one-way road or single traffic lane conditions, or bridge weight rating limits, shall reflect the capability of each bridge. Refer to [Article 3](#) for signage requirements.

(b) Where a bridge or an elevated surface is part of a Road, it shall be designed and constructed to accommodate a gross vehicle weight rating of 75,000 pounds. Vehicle load limits shall be posted at both entrances to bridges.

(1) Bridges or elevated surfaces may be designed for a lower apparatus weight if approved by the local jurisdiction verifying that the apparatus used will be under the load weight of the bridge. If the bridge is designed for a lower weight, then it shall be identified through signage as required in [Article 3](#). In no case shall the bridge be designed to support a weight below 36,000 pounds.

(2) American Association of State Highway and Transportation Officials (AASHTO) structure design standards, which focuses on axle load requirements, may be considered in lieu of total vehicle weight if bridges and elevated structures are designed and certified by a professional engineer.

~~(3) When necessary, the local fire authority and/or the local jurisdiction may require bridges or elevated structures be designed to support a vehicle weight up to 100,000 pounds.~~

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(c) Where elevated surfaces designed for emergency vehicle use are adjacent to surfaces which are not designed for such use, barriers, signs, and/or other distinguishing features, as approved by the Local Jurisdiction, shall be installed and maintained.

(d) A bridge with only one Traffic Lane may be authorized by the Local Jurisdiction; however, it shall provide for unobstructed visibility from one end to the other and Turnouts at both ends. Single lane bridges shall be implemented consistent with requirements outlined in § 1273.05.01.

(e) Bridges shall be constructed of non-combustible materials, unless otherwise approved by the Local Jurisdiction.

~~(a) At no point shall the grade for all roads and driveways exceed 16 percent.~~

~~(b) The grade may exceed 16%, not to exceed 20%, with approval from the local authority having jurisdiction and with mitigations to provide for same practical effect.~~

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.04. Road Grades. ~~Radius.~~

(a) The grades for all Roads shall not exceed sixteen (16) percent.

(b) A Local Jurisdiction may approve Road grades of 16 to 20 percent with proper mitigation to prevent slippage (including, but not limited to, aggregate treatments, binding agents, and/or

Commented [AJW43]: This requirement appears reasonable for new bridges, but may be highly problematic as applied to existing bridges (i.e., in connection with developments above the threshold set forth in Section 1276.03(c)). There are a number of existing bridges in California constructed with wooden elements, many of which are historic structures that would be difficult (or impossible) for even the most well-resourced developer to replace. (Additional information on this subject may be found in CalTrans extensive inventories of California's bridge stock: <https://dot.ca.gov/programs/environmental-analysis/cultural-studies/california-historical-bridges-tunnels#surveys>) Blanket preclusion of development in areas accessed by these bridges, without consideration of their vulnerability, condition, etc. is unnecessary and inappropriate. We recommend granting the Local Jurisdiction the authority to permit such development where conditions warrant.

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paving) and scaping. Roads exceeding 16 percent shall be designed by a licensed engineer shall meet the intent of the surface treatments outlined in Table 1.

(c) A Local Jurisdiction retains the authority to require lower percent grade and additional surfacing requirements.

Table 1. Example Treatments for Grades of 16-20%

<u>Grade Range</u>	<u>Surface Treatment</u>	<u>Additional Design Requirements</u>
<u>16.01-18%</u>	<u>Minimum 2" Hot Mix Asphalt (HMA) over 5" of Class 2 Aggregate Base (AB)</u>	
<u>18.01-20%</u>	<u>Minimum 3" HMA over 5" of Class 2 AB or approved equal designed by licensed engineer</u>	<u>Includes a transition zone of 100' of road immediately before and after with a grade less than 16%: sustained grades of 18% shall be limited to a maximum length of 300 feet</u>

Commented [AJW44]: 10% appears more restrictive than necessary here. 16% better conforms to the general grade standard for roads.

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(d) Grade transitions shall be constructed and designed to accommodate maximum approach and departure angles of twelve (12) degrees.

~~(a) No road or road structure shall have a horizontal inside radius of curvature of less than fifty (50) feet. An additional surface width of four (4) feet shall be added to curves of 50-100 feet radius; two (2) feet to those from 100-200 feet.~~

~~(b) The length of vertical curves in roadways, exclusive of gutters, ditches, and drainage structures designed to hold or divert water, shall be not less than one hundred (100) feet.~~

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.05. Road Dimensions and Clearances. Turnarounds.

Roads subject to this Subchapter shall conform to the requirements in this section.

~~(a) Turnarounds are required on driveways and dead end roads.~~

~~(b) The minimum turning radius for a turnaround shall be forty (40) feet, not including parking, in accordance with the figures in 14 CCR §§ 1273.05(e) and 1273.05(f). If a hammerhead/T is used instead, the top of the "T" shall be a minimum of sixty (60) feet in length.~~

~~(c) Driveways exceeding 150 feet in length, but less than 800 feet in length, shall provide a turnout near the midpoint of the~~

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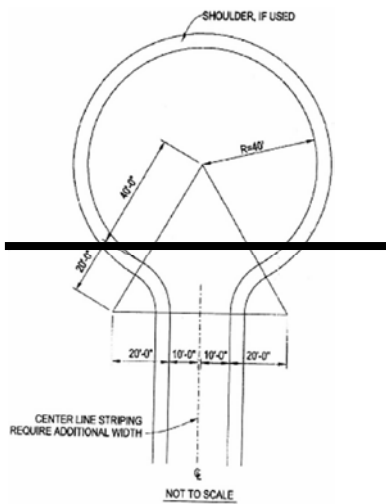
~~driveway. Where the driveway exceeds 800 feet, turnouts shall be provided no more than 400 feet apart.~~

~~(d) A turnaround shall be provided on driveways over 300 feet in length and shall be within fifty (50) feet of the building.~~

~~(d) Each dead-end road shall have a turnaround constructed at its terminus. Where parcels are zoned five (5) acres or larger, turnarounds shall be provided at a maximum of 1,320 foot intervals.~~

~~(c) Figure A. Turnarounds on roads with two ten foot traffic lanes.~~

~~Figure A/Image 1 is a visual representation of paragraph (b).~~



Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

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§ 1273.05.01 Road Width and Horizontal Clearances

(a) All bidirectional Roads shall be constructed to provide a minimum of two ten (10) foot Traffic Lanes, not including Shoulders ~~or striping~~. Where topographic or other limitations require the two Traffic Lanes to be constructed non-adjacently, each Traffic Lane shall be constructed to provide a minimum of twelve (12) feet.

(b) All One-way Roads shall be constructed to provide a minimum of one twelve (12) foot Traffic Lane.

(c) One-way Roads shall maintain a clear width of 20 feet. Bidirectional Roads with a center median shall maintain a clear width of 20 feet on either side of the median. This clear width may include bike lanes, Shoulders, or flexible barriers used as traffic calming devices or to delineate a bicycle facility, or for other uses.

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.05.02 Built Roads

~~(a) Notwithstanding any other provision in this Subchapter, Building Construction, including Building Construction enumerated in § 1270.03(b) and § 1270.03.01(b) and (c), shall not be approved where the Local Roads providing Access to the Building Construction do not provide for at one (1) least fourteen (14) foot Traffic Lane for a distance of at least twenty two (22) feet for a distance of **XX** feet.~~

Commented [AJW45]: Former Subs. (a) and (b) have been removed for conformity with the revisions explained earlier.

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~~(b) Notwithstanding any other provision in this Subchapter, Building Construction, including Building Construction enumerated in § 1270.03(b) and § 1270.03.01(b) and (c), shall not be approved where the grade of the Local Roads providing Access to the Building Construction exceeds 20% over a distance of **xx** linear feet.~~

(ea) Notwithstanding any other provision in this Subchapter, Building Construction meeting the criteria in § 1270.03(c) shall not be approved where a Dead-end Road exceeds one (1) mile in length in a very high fire hazard severity zone in the SRA, designated pursuant to Government Code § 51178 and 14 CCR § 1280.01, or VHFHSZ in the LRA, as measured from the intersecting through Road. When such Building Construction includes a Road connecting the Dead-end Road to a through Road, thus shortening the length of the Dead-end Road, the Local Jurisdiction may approve the construction.

~~(db) When the provisions of this Subchapter would otherwise apply to a Road or Road Structure that provides Access to Building Construction, the Building Construction may be approved, notwithstanding such provisions, Notwithstanding any other provision in this Subchapter, Building Construction may be approved whenif the Local Roads serving as Access to the Building Construction provide for more than one (1) fourteen (14) foot Traffic Lane but less than the minimum Road width standard in § 1273.05.01 when the Local Roads meet the following criteria:~~

Commented [AJW46]: This change is intended to more clearly express when these provisions apply (i.e., only to developments over threshold determined in § 1270.03(c)), as set forth in Board staff's memo, Attachment 1.

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(1) None of the Local Roads are native-surfaced for more than 50% of the Road's length; and

(2) Each Local Road provides Turnouts in compliance with § 1273.05.07 or maintains a twenty (20) foot clear space suitable to serve as a Traffic Lane for the length of the Road. This clear space shall be free of vegetation, debris, fences, or other materials that impede traffic flow, but may include flexible posts or barriers in compliance with § 1273.01(a)(1).

Note: Authority cited: Section 4290, Public Resources Code.
Reference: Sections 4290 and 4291, Public Resources Code, Section 51178 Government Code.

§ 1273.05.03 Road Vertical Clearances

Roads shall provide for a minimum of thirteen feet and six inches (13' 6") of unobstructed vertical clearance.

Note: Authority cited: Section 4290, Public Resources Code.
Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.05.04 Maximum Lengths of One-Way Roads

In no case shall a one-way road exceed 2,640 feet in length.

Note: Authority cited: Section 4290, Public Resources Code.
Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.05.05 Maximum Lengths of Dead-end Roads

(a) The maximum length of a Dead-end Road shall not exceed the following cumulative lengths:

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- (1) parcels zoned for less than one acre - 800 feet
- (2) parcels zoned for 1 acre to 4.99 acres - 1,320 feet
- (3) parcels zoned for 5 acres or larger - 2,640 feet

(b) All Dead-end Roads shall meet the Turnaround requirements in § 1273.05.07.

(c) All Dead-end Roads shall meet the width requirements in § 1273.05.01.

(d) Each Dead-end Road or group of dead-end roads shall be connected directly to a through road (a road that is connected to other roads at both ends).

(e) The length of all Dead-end Roads or group of dead-end roads shall be measured from the center line of the through road it connects to, to the terminus of the Dead-end Road or group of dead-end roads at its farthest point.

(f) Where a Dead-end Road provides access to differing zoned parcel sizes requiring different length limits, the shortest allowable length shall apply.

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

~~§ 1273.05.06 Secondary Access/Egress~~

~~(a) When this Subchapter is applicable to Building Construction, such Building Construction may be required by the fire authority to provide for secondary access.~~

~~(1) The fire authority may require secondary access where~~

Commented [AJW47]: Dead-end roads sometimes connect to other dead-end roads - which appears permissible, so long as the aggregate length of all such roads does not exceed the prescribed length. This change is intended to clarify that.

Commented [AJW48]: The deleted "secondary access" section is superfluous and unnecessary, in light of local jurisdictions' existing authority to adopt standards that exceed these regulations. Further, as indicated in our prior comments (and those of Monterey County), the draft language was substantially unclear and confusing.

To the extent that this section was intended to provide additional options for otherwise-prohibited development on dead-end roads, that is unclear from the language (which provides that provision of secondary access "does not exempt any Road from meeting the minimum requirements in this Subchapter") - and, in any event, the requirements of this provision are impracticable and burdensome, and unlikely to be useable by any but the largest developments (where it represents the most questionable policy). Moreover, the utility of these provisions is further undermined by the (new) requirement that the secondary access must "[b]e of equal construction standard to the primary Road." As a result, the net effect of these provisions is that development may be permitted on a non-compliant dead-end road, if the non-compliance is fully remedied by building another compliant road. Such a circular provision is unnecessary and its inclusion here confusing.

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~~the length of existing Roads exceed the maximum Dead end or one way distances in this Subchapter.~~

~~(2) The fire authority may require secondary access when existing Roads are insufficient due to terrain, location, potential fire or life-safety hazards or other factors that could limit access, or if vehicle congestion, railways, or weather conditions could impair the single entry point.~~

~~(3) The fire authority may require secondary access for any Building Construction where the site population or activity attendance is anticipated to exceed 100 people.~~

~~(b) Secondary access routes shall:~~

~~(1) Be of equal construction standard to the primary Road. The secondary access does not have to be rated to carry the same quantity of traffic as the primary Road.~~

~~(2) Not exceed the dead end Road length requirements outlined in § 1273.05.05.~~

~~(3) Not be a Road with a locked gate or limited access, and shall provide for legal and deeded access that serves as a typical travel way to and from the Building Construction. A secured secondary access may be provided if it meets the requirements in § 1273.06.~~

~~(4) Shall connect a user to an alternative route that would not be affected by a closure to the primary access route, to the extent practicable.~~

~~(c) The installation of a secondary access does not exempt any~~

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~~Road from meeting the minimum requirements in this Subchapter.~~

~~Note: Authority cited: Section 4290, Public Resources Code.~~

~~Reference: Sections 4290 and 4291, Public Resources Code.~~

§ 1273.05. ~~07-06~~ Turnouts

(a) Turnouts shall be a minimum of twelve (12) feet wide from the shoulder stripe, twenty-two (22) feet long with a minimum twenty-five (25) foot taper on each end and be facilitated outside of the Traffic Lane to accommodate one passenger vehicle as illustrated on Figure 5.

(b) On One-way Roads Dead-end Roads, a Turnout shall be located at approximately the midpoint of the Road.

(c) Turnouts shall be provided no more than 400 feet apart on One-way Roads or on Roads that do not meet the width requirements.

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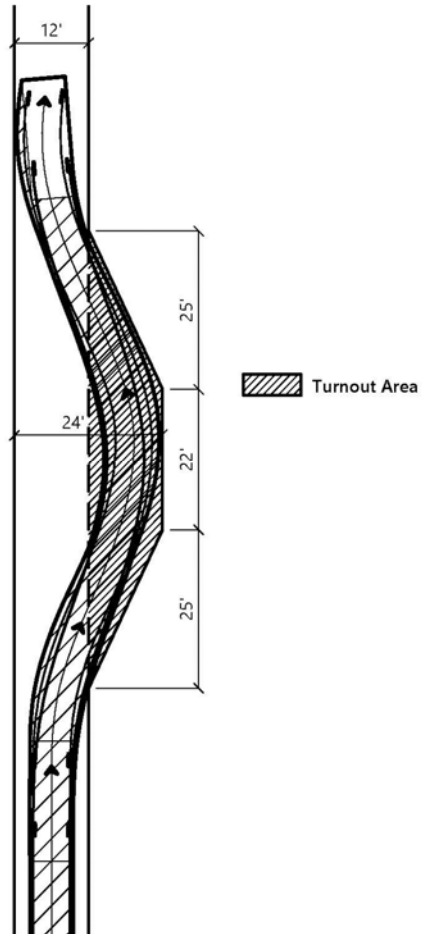


Figure 5
Turnout Dimensions

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Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.05.08 Turnarounds

(a) Each Dead-end Road shall have a Turnaround constructed at its terminus. Where a Dead-end Road crosses parcels zoned for five (5) acres or larger, a Turnaround shall also be provided halfway along the Dead-end Road.

(b) The minimum turning radius for a Turnaround shall be forty (40) feet, not including parking, in accordance with Figure 6.1 below. If a hammerhead/T is used instead, the top of the "T" shall be a minimum of sixty (60) feet in length.

(c) Turnarounds with a radius smaller than 40 feet, shown in Figures 6.2 and 6.3 below, may be approved by the local jurisdiction when physical constraints prohibit the ability to install a 40-foot Turnaround.

(d) The center of the Turnaround shall remain clear of vegetation or decorative elements.

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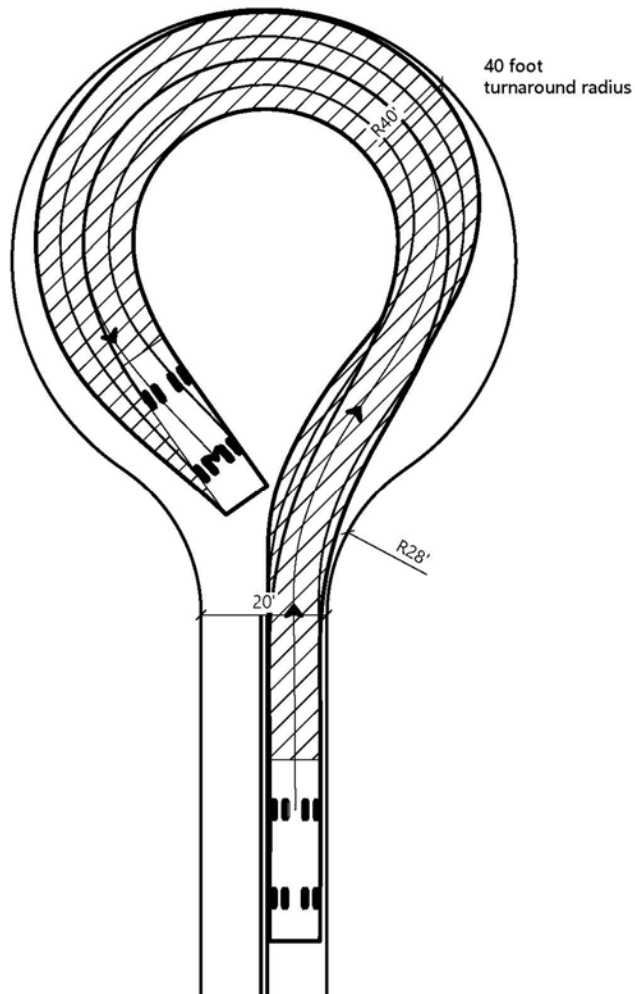


Figure 6.1
Turnarounds with 40-foot radius

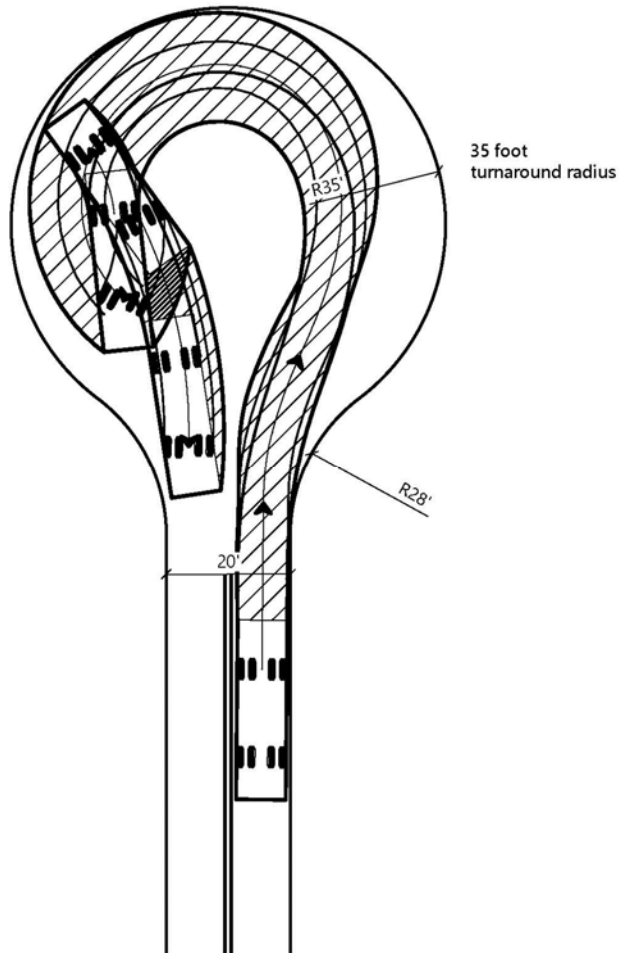


Figure 6.2
Turnarounds with 35-foot radius

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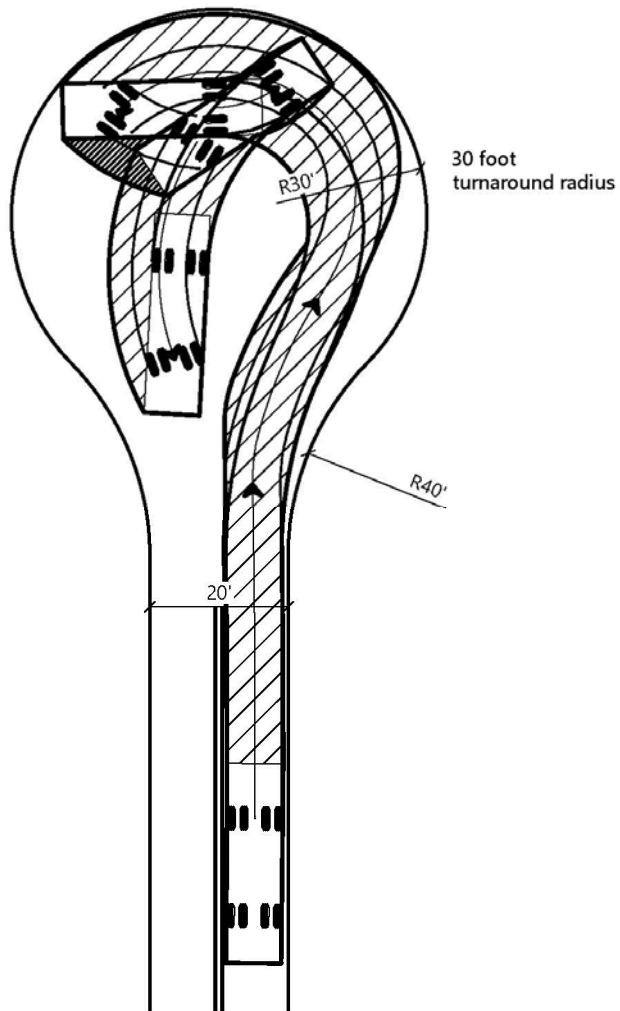


Figure 6.3
Turnarounds with 30-foot radius

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Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.06 Security Gates-Turnouts

(a) Security gates shall not be installed without approval from the Local Jurisdiction. Where security gates are installed, they shall have an approved means of emergency operation. Electronic gates shall have a manual method of opening in case of electronic failure. The manual method shall be maintained operational at all times.

(b) Gate entrances shall be at least two (2) feet wider than the width of the Road or Driveway, as shown in Figure 7 below. Where a gate is installed across an existing Road or Driveway, the gate shall be no less than ten (10) feet wide, with a minimum width of fourteen (14) feet unobstructed horizontal clearance and unobstructed vertical clearance of thirteen feet, six inches (13' 6"). Clearance shall be maintained at all times.

(c) Where a One-way Road with a single Traffic Lane provides access to a gated entrance, a forty (40) foot turning radius shall be used as illustrated on Figure 7.

(d) All gates providing access from a Road to a Driveway shall be located at least thirty (30) feet from the Road and shall open in direction of travel to allow a vehicle to stop without obstructing traffic on that Road, in accordance with Figure 7.

Commented [AJW49]: The requirement for 14-foot horizontal clearance appears to conflict with the provision for 10-foot wide gates.

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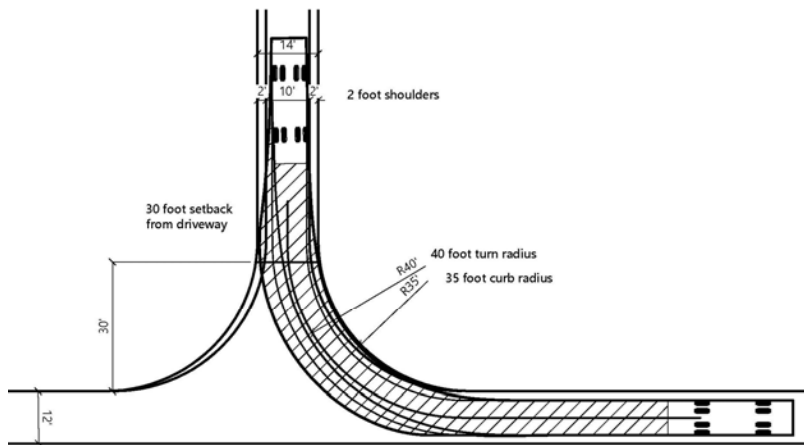


Figure 7
Effective Turn Radius for Gated Entrances/Driveways with Twelve Foot One-Way Main Road

~~Turnouts shall be a minimum of twelve (12) feet wide and thirty (30) feet long with a minimum twenty five (25) foot taper on each end.~~

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.07 Driveways. Road and Driveway Structures.

Driveways subject to this Subchapter shall conform to the requirements in § 1273.07.01 through 1273.07.07, inclusive.

~~(a) Appropriate signing, including but not limited to weight or vertical clearance limitations, one way road or single traffic~~

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~~lane conditions, shall reflect the capability of each bridge.~~

~~(b) Where a bridge or an elevated surface is part of a fire apparatus access road, the bridge shall be constructed and maintained in accordance with the American Association of State and Highway Transportation Officials Standard Specifications for Highway Bridges, 17th Edition, published 2002 (known as AASHTO HB 17), hereby incorporated by reference. Bridges and elevated surfaces shall be designed for a live load sufficient to carry the imposed loads of fire apparatus. Vehicle load limits shall be posted at both entrances to bridges when required by the local authority having jurisdiction.~~

~~(c) Where elevated surfaces designed for emergency vehicle use are adjacent to surfaces which are not designed for such use, barriers, or signs, or both, as approved by the local authority having jurisdiction, shall be installed and maintained.~~

~~(d) A bridge with only one traffic lane may be authorized by the local jurisdiction; however, it shall provide for unobstructed visibility from one end to the other and turnouts at both ends.~~

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.07.01 Driveway Width

All Driveways shall be constructed to provide a minimum of one

(1) ten (10) foot Traffic Lane, fourteen (14) feet unobstructed horizontal clearance, and unobstructed vertical clearance of

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thirteen feet, six inches (13' 6"). This vertical clearance shall be maintained at all times by the property owner.

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.07.02 Driveway Turnarounds

(a) A Turnaround shall be provided on Driveways over 300 feet in length and shall be within fifty (50) feet of the building.

(b) The minimum turning radius for a Turnaround shall be forty (40) feet, not including parking, in accordance with Figure 8.1 below.

(c) Turnarounds with a radius smaller than 40 feet as shown in Figure 8.2 and Figure 8.3. may be approved by the Local Jurisdiction when physical constraints do not allow for a 40-foot turnaround. If a hammerhead/T is used instead, the top of the "T" shall be a minimum of sixty (60) feet in length.

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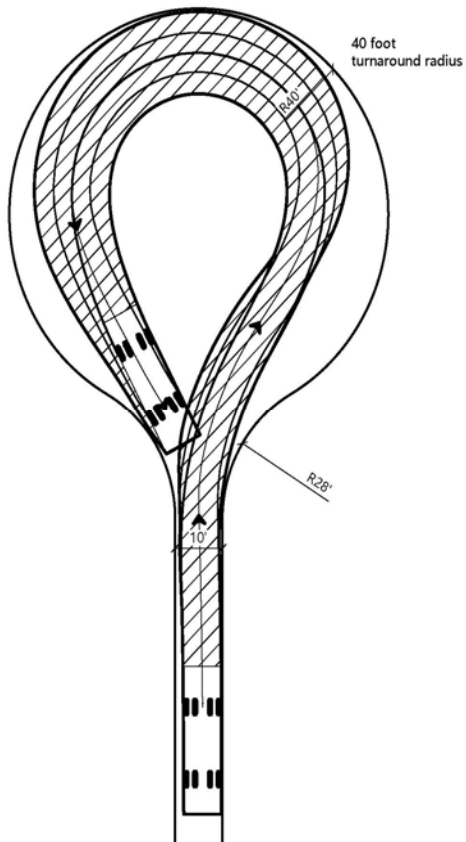


Figure 8.1
Turnarounds for Driveways with Ten Foot Road Width - 40 Foot Turnaround Radius

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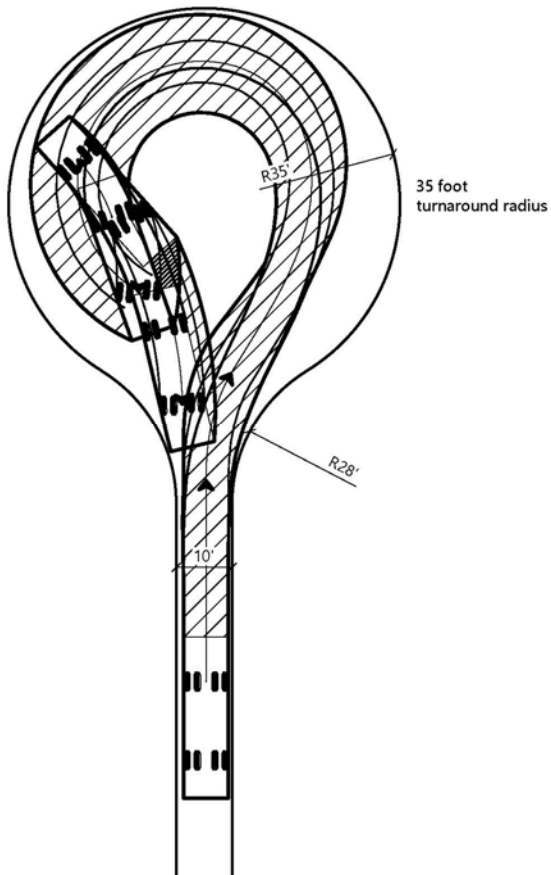


Figure 8.2
Turnarounds for Driveways with Ten Foot Road Width - 35 Foot Turnaround Radius

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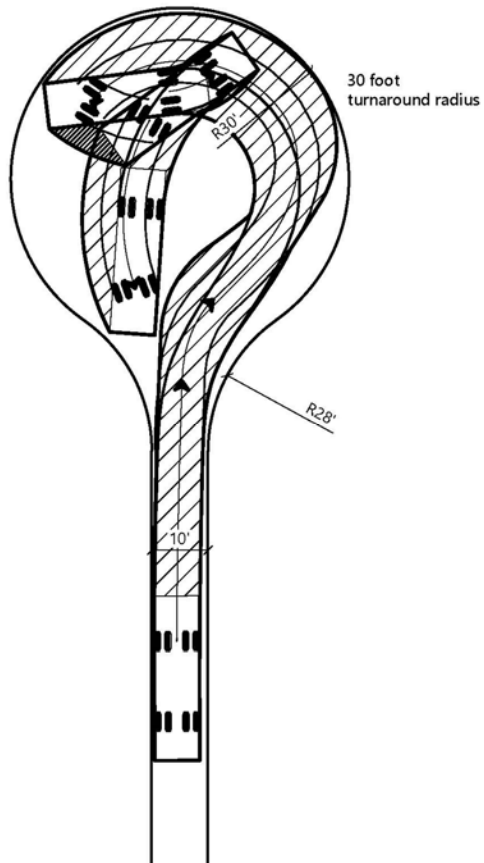


Figure 8.3
Turnarounds for Driveways with Ten Foot Road Width - 30 Foot Turnaround Radius

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Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.07.03 Driveway Turnouts

(a) Driveways that are less than 20 feet wide and exceed 150 feet in length shall require a Turnout.

(b) Driveways greater than 150 feet in length and less than 800 feet in length shall provide a Turnout (as shown in § 1273.05.07, Figure 5) near the midpoint of the Driveway. Where the Driveway exceeds 800 feet, Turnouts shall be provided no more than 400 feet apart.

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.07.04 Driveway Structures

(a) Driveway structures shall be designed and maintained to support at least 75,000 pounds.

(1) ~~Driveway structures~~ ~~Bridges or elevated surfaces~~ may be designed for a lower apparatus weight if the local fire official verifies that the fire apparatus used will be under the load weight of the bridge.

(2) If the ~~Driveway structures~~ ~~bridge~~ is designed for a lower weight, then it shall be identified through signage as described in Article 4.

(3) In no case shall the ~~Driveway structures~~ ~~bridge~~ be

Commented [AJW50]: Use of differing terminology in the various subdivisions of this section (e.g., structure vs. bridge) creates ambiguity and unnecessary confusion.

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designed to support a weight below 36,000 pounds.

(b) AASHTO structure design standards, which focus on axle load requirements, may be considered in lieu of total vehicle weight if designed and verified by a professional engineer.

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.07.05. Driveway Grades and Surfaces. ~~Dead-end Roads.~~

(a) Driveways shall meet the grade requirements outlined in § [1273.04](#).

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.07.06. Driveway Vertical Clearances

Driveways shall provide for a minimum of thirteen feet, six inches (13' 6") of unobstructed vertical clearance.

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.07.07 Driveway Surfaces

Driveways shall be designed and maintained to support at least 36,000 pounds.

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

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~~§ 1273.08 Dead End Roads~~

~~(a) The maximum length of a dead end road, including all dead end roads accessed from that dead end road, shall not exceed the following cumulative lengths, regardless of the number of parcels served:~~

~~parcels zoned for less than one acre — 800 feet~~

~~parcels zoned for 1 acre to 4.99 acres — 1,320 feet~~

~~parcels zoned for 5 acres to 19.99 acres — 2,640 feet~~

~~parcels zoned for 20 acres or larger — 5,280 feet~~

~~All lengths shall be measured from the edge of the road surface at the intersection that begins the road to the end of the road surface at its farthest point. Where a dead end road crosses areas of differing zoned parcel sizes requiring different length limits, the shortest allowable length shall apply.~~

~~(b) See 14 CCR § 1273.05 for dead end road turnaround requirements.~~

~~Note: Authority cited: Section 4290, Public Resources Code.~~

~~Reference: Sections 4290 and 4291, Public Resources Code.~~

~~§ 1273.09. Gate Entrances.~~

~~(a) Gate entrances shall be at least two (2) feet wider than the width of the traffic lane(s) serving that gate and a minimum width of fourteen (14) feet unobstructed horizontal clearance and unobstructed vertical clearance of thirteen feet, six inches (13' 6").~~

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~~(b) All gates providing access from a road to a driveway shall be located at least thirty (30) feet from the roadway and shall open to allow a vehicle to stop without obstructing traffic on that road.~~

~~(c) Where a one-way road with a single traffic lane provides access to a gated entrance, a forty (40) foot turning radius shall be used.~~

~~(d) Security gates shall not be installed without approval. Where security gates are installed, they shall have an approved means of emergency operation. Approval shall be by the local authority having jurisdiction. The security gates and the emergency operation shall be maintained operational at all times.~~

~~Note: Authority cited: Section 4290, Public Resources Code.~~

~~Reference: Sections 4290 and 4291, Public Resources Code.~~

Article 3. Signing and Building Numbering

§ 1274.00. Road Name Signs. ~~Intent~~

(a) All Road signs erected after the effective date of the regulations amending this section shall conform to the requirements of the California Manual of Uniform Traffic Control Devices (CA MUTCD).

~~(ab)~~ Newly constructed or approved ~~roads~~ ~~must~~ shall be identified by a name or number through a consistent system that provides for sequenced or patterned numbering and ~~for~~ non-

Commented [AJW51]: Consistent with statements made by Board staff at numerous public events that this regulation is not retroactive, this change is intended to avoid any implication that these regulations "retroactively" require replacement of existing road signs by public agencies.

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duplicative naming within each local jurisdiction. This section does not require any entity to rename or renumber existing roads, ~~nor shall a road providing access only to a single commercial or industrial occupancy require naming or numbering.~~

(~~b~~c) The size of letters, numbers, and symbols for road signs shall be a minimum four (4) inch letter height, half inch (.5) inch stroke, reflectorized, contrasting with the background color of the sign.

~~To facilitate locating a fire and to avoid delays in response, all newly constructed or approved roads and buildings shall be designated by names or numbers posted on signs clearly visible and legible from the road. This section shall not restrict the size of letters or numbers appearing on road signs for other purposes.~~

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

§ 1274.01. Road Signs Installation, Location, and Visibility.

~~(a) Road signs shall be visible and legible from both directions of vehicle travel for a distance of at least one hundred (100) feet.~~

(~~a~~b) Signs required by this article identifying intersecting roads shall be placed at the intersection of those roads.

(~~b~~e) A sign identifying traffic access or flow limitations, including but not limited to weight or vertical clearance

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limitations, ~~at~~Dead-end ~~at~~Roads, ~~on~~One-way ~~at~~Roads, or single lane Roads and bridges ~~conditions~~, shall be placed:

(1) at the intersection preceding the traffic access limitation, and

(2) no more than one hundred (100) feet before such traffic access limitation.

(~~cd~~) Road signs required by this article shall be posted at the beginning of construction and shall be maintained thereafter.

(d) Road signs shall meet the minimum sign retroreflectivity requirements in the CA MUTCD. Signs that are not required to meet the retroreflectivity requirements (e.g. blue or brown backgrounds) shall be retroreflective or illuminated to show the same shape and color by both day and night.

Note: Authority cited: Section 4290, Public Resources Code.
Reference: Sections 4290 and 4291, Public Resources Code.

§ 1274.03. Addresses for Buildings.

(a) All buildings shall be issued an address by the local jurisdiction. Utility and miscellaneous Group U buildings are not required to have a separate address if located on the same parcel as another building for which an address has been issued. ~~which conforms to that jurisdiction's overall address system. Utility and miscellaneous Group U buildings are not required to have a separate address; however, each residential unit within a building shall be separately identified.~~

Commented [AJW52]: Requiring every accessory building to have a separate address is unnecessary, and could overload local addressing systems (especially if applied to existing buildings). The proposed revisions achieve the apparent intent of this provision by limiting the requirement to accessory buildings that are not co-located with a main building to which an address has been issued.

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~~(b) The size of letters, numbers, and symbols for addresses shall conform to~~ consistent with the standards in the California Fire Code, California Code of Regulations title 24, part 9.

~~(eb)~~ Addresses for residential buildings shall be reflectorized.

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

~~§ 1274.04. Address Installation, Location, and Visibility.~~

~~(a) All buildings shall have a permanently posted address which shall be plainly legible and visible from the road fronting the property.~~

~~(b) Where access is by means of a private road and the address identification cannot be viewed from the public way, an unobstructed sign or other means shall be used so that the address is visible from the public way.~~

~~(c) Address signs along one-way roads shall be visible from both directions.~~

~~(d) Where multiple addresses are required at a single driveway, they shall be mounted on a single sign or post.~~

~~(e) Where a road provides access solely to a single commercial or industrial business, the address sign shall be placed at the nearest road intersection providing access to that site, or otherwise posted to provide for unobstructed visibility from that intersection.~~

~~(f) In all cases, the address shall be posted at the beginning~~

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~~of construction and shall be maintained thereafter.~~

~~Note: Authority cited: Section 4290, Public Resources Code.~~

~~Reference: Sections 4290 and 4291, Public Resources Code.~~

Article 4. Water Supply. ~~Emergency Water Standards~~

§ 1275.00. Application. ~~Intent~~

(a) Except where otherwise indicated, ~~the provisions of this~~
~~Article shall apply~~ only to all Building Construction meeting
the criteria in § 1270.03(c). ~~in the tentative and parcel map~~
~~process when new parcels are approved by the local jurisdiction~~
~~having authority.~~

(b) These regulations shall apply only to newly constructed
water and wastewater facilities that primarily serve new
development, and shall not apply to water or wastewater
facilities that are not newly constructed, or to water or
wastewater facilities, whether existing, upgraded, or newly
constructed, that primarily serve existing development. For
purposes of this subdivision, "water and wastewater facilities"
includes, but is not limited to, water storage tanks and
reservoirs, pump stations, treatment facilities, regulator
stations, fire hydrants, and similar water and wastewater system
devices. ~~These regulations shall not apply to repair to,~~
~~replacement of, or upgrades to existing water and wastewater~~
~~facilities. This may include, but is not limited to water~~
~~storage tanks and reservoirs, pump stations, treatment~~

Commented [AJW53]: This draft proposes to substantially expand the water supply requirements from the subdivision stage, to all Building Construction. While this is reasonable and sensible for some requirements, it is overly burdensome for others.

As with the road standards, a tiered and balanced approach toward water supply requirements is critical. Having a modernized, fully built, community scale water system is plainly desirable for any development; however, requiring individuals and small businesses to construct such systems, at their own expense, as a condition of any "Building Construction" is inequitable, and would place homeownership (among other things) further out of reach for all but the richest Californians.

We recommend making the full suite of requirements applicable to larger developments, with more tailored applicability in the case of smaller developments.

Commented [AJW54]: The language proposed in the draft was somewhat confusing, as the first sentence mentioned existing infrastructure, whereas the second mentioned existing development - which is not the same thing. (Existing infrastructure may serve new development, and vice-versa.) Our recommended language more clearly expresses the intent discussed on the record at Board workshops with water agency representatives.

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~~facilities, regulator stations, fire hydrants, and similar water and wastewater system devices that serve existing or primarily serve existing development.~~

~~Emergency water for wildfire protection shall be available, accessible, and maintained in quantities and locations specified in the statute and these regulations in order to attack a wildfire or defend property from a wildfire.~~

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

§ 1275.01. Approved Water Supply. ~~Application~~

(a) Water supply for all Building Construction, of any size, shall meet or exceed the California Fire Code, California Code of Regulations Title 24, Part 9. Notwithstanding Section 1270.06, the provisions of Sections 104.8 and 104.9 of the International Fire Code regarding modifications and alternative materials and methods shall apply to the requirements set forth in this subdivision.

(b) Where a municipal-type water supply is not available, the Local Jurisdiction shall utilize the National Fire Protection Association (NFPA) 1142, "Standard on Water Supplies for Suburban and Rural Fire Fighting," 2017 Edition, as referenced in the California Fire Code, California Code of Regulations Title 24, Part 9, Appendix B and Appendix BB. Notwithstanding Section 1270.06, the provisions of Sections 1.4, 1.5, and 1.6 of

Commented [AJW55]: If these regulations incorporate substantive requirements from the Fire Code, they must also incorporate the corresponding Fire Code provisions that ameliorate those requirements and make them practicable. Selective incorporation of the mandates, but not the limitations, from the International Fire Code would create an inflexible scheme substantially more burdensome than either the International Code Council or the State Fire Marshal ever intended.

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NFPA 1142 regarding equivalency, alternatives, and modifications shall apply to the requirements set forth in this subdivision.

(c) All Building Construction of any size shall install a water supply for structure defense. Such protection shall be installed and made serviceable prior to and during the time of construction, except when alternative methods of protection are provided and approved by the Local Jurisdiction.

(d) Nothing in this article prohibits the combined storage of emergency wildfire and structural firefighting water supplies unless so prohibited by local ordinance or specified by the local fire agency. Water supplies required under the California Fire Code or other law or regulation may also be used to satisfy the requirements of this article, so long as the full amount of water supply required by this article is provided

(e) Where freeze or crash protection is required by the ~~Local Jurisdictions having authority~~, such protection measures shall be provided.

~~The provisions of this article shall apply in the tentative and parcel map process when new parcels are approved by the local jurisdiction having authority.~~

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

§ 1275.02. Identification of Water Sources. ~~Water Supply.~~

(a) Hydrants, fire valves, or water access located along a

Commented [AJW56]: As noted above relating to the Fire Code, selective incorporation of NFPA requirements, without the limitations upon those requirements, would create a scheme unintended by NFPA's drafters or any California policymaker.

The proposed new Exception regime in these regulations (which eliminates the "same practical effect" standard) is substantially less flexible than the NFPA's adjustment provisions - and those latter provisions are part-and-parcel of the NFPA, and should continue to govern any substantive requirements imported from the NFPA.

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Commented [AJW57]: This proposal clarifies that these regulations and the California Fire Code do not require duplicative water supplies, so long as the largest amount of water required under either regulation is provided. This has apparently been a source of dispute and confusion in some jurisdictions.

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Driveway shall be identified by at least (1) reflectorized blue marker, with a minimum dimension of three (3) inches. This marker shall be mounted on a fire retardant sign post. The sign post shall be located and mounted as specified by the local fire authority.

(b) Fire Hydrants, Fire Valves, or water access located along a Road shall be identified by a reflectorized blue marker, with a minimum dimension of three (3) inches. This marker shall be mounted on a fire-retardant sign post. The sign post shall be within three (3) feet of the Fire Hydrant, Fire Valve, or water access. The sign shall be no fewer than three (3) nor greater than five (5) feet above ground, in a horizontal position, and visible from the Road, or as specified by the local fire authority. ~~Additional requirements may be specified by the local fire authority.~~

~~(a) When a water supply for structure defense is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction except when alternative methods of protection are provided and approved by the local authority having jurisdiction.~~

~~(b) Water systems equaling or exceeding the California Fire Code, California Code of Regulations title 24, part 9, or, where a municipal type water supply is unavailable, National Fire Protection Association (NFPA) 1142, "Standard on Water Supplies for Suburban and Rural Fire Fighting," 2017 Edition, hereby~~

Commented [AJW58]: The deleted text is superfluous in light of local jurisdictions' existing authority to prescribe higher standards.

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~~incorporated by reference, shall be accepted as meeting the requirements of this article.~~

~~(c) Such emergency water may be provided in a fire agency mobile water tender, or naturally occurring or man made containment structure, as long as the specified quantity is immediately available.~~

~~(d) Nothing in this article prohibits the combined storage of emergency wildfire and structural firefighting water supplies unless so prohibited by local ordinance or specified by the local fire agency.~~

~~(e) Where freeze or crash protection is required by local jurisdictions having authority, such protection measures shall be provided.~~

Note: Authority cited: Section 4290, Public Resources Code.
Reference: Sections 4290 and 4291, Public Resources Code.

§ 1275.03. Access to Water Sources. Hydrants and Fire Valves.

(a) Break away locks or similar systems approved by the Local Jurisdiction shall provide fire fighters with access to any water connections, valves, or controls that are normally secured by gates, doors, or other locking systems.

~~(a) The hydrant or fire valve shall be eighteen (18) inches above the finished surface. Its location in relation to the road or driveway and to the building(s) or structure(s) it serves shall comply with California Fire Code, California Code of~~

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~~Regulations title 24, part 9, Chapter 5, and Appendix C.~~

~~(b) The hydrant head shall be a two and half (2 1/2) inch National Hose male thread with cap for pressure and gravity flow systems and four and a half (4 1/2) inch for draft systems.~~

~~(c) Hydrants shall be wet or dry barrel and have suitable freeze or crash protection as required by the local jurisdiction.~~

Note: Authority cited: Section 4290, Public Resources Code.
Reference: Sections 4290 and 4291, Public Resources Code.

§ 1275.04. Municipal Water System Hydrants and Fire Valves.

~~Signing of Water Sources~~

(a) The municipal hydrant or fire valve shall be eighteen (18) inches above the finished surface. Its location in relation to the Road or Driveway and to the building(s) or structure(s) it serves shall comply with California Fire Code, California Code of Regulations Title 24, Part 9, Chapter 5, and Appendix C.

Notwithstanding Section 1270.06, the provisions of Sections 104.8 and 104.9 of the International Fire Code regarding modifications and alternative materials and methods shall apply to the requirements set forth in this subdivision.

(b) The municipal hydrant head shall sizes designated by the local jurisdiction, in consultation with the local fire authority, and shall have male American National Fire Hose Screw Threads (NH).

(c) Where municipal water supply hydrant systems are not

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practical due to the absence of a municipal water supply, or other limiting factors, a performance-based water supply alternative approved by the Local Jurisdiction, in consultation with the fire authority, shall be designed and installed to meet the minimum fire flow water supply requirements of 250 gallons per minute (gpm) for two (2) hours.

~~(a) Each hydrant, fire valve, or access to water shall be identified as follows:~~

~~(1) if located along a driveway, a reflectorized blue marker, with a minimum dimension of three (3) inches shall be located on the driveway address sign and mounted on a fire retardant post, or~~

~~(2) if located along a road,~~

~~(i) a reflectorized blue marker, with a minimum dimension of three (3) inches, shall be mounted on a fire retardant post. The sign post shall be within three (3) feet of said hydrant or fire valve, with the sign no less than three (3) feet nor greater than five (5) feet above ground, in a horizontal position and visible from the driveway, or~~

~~(ii) as specified in the State Fire Marshal's Guidelines for Fire Hydrant Markings Along State Highways and Freeways, May 1988.~~

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

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§ 1275.05. Dry Hydrants

When dry hydrants have been approved by the local jurisdiction, the requirements of NFPA 1142 (2017) Chapter 8 (8.3, 8.4, 8.5, 8.6, 8.7 and 8.8) shall be met. ~~Notwithstanding Section 1270.06, the provisions of Sections 1.4, 1.5, and 1.6 of NFPA 1142 regarding equivalency, alternatives, and modifications shall apply to the requirements set forth in this subdivision.~~

Note: Authority cited: Section 4290, Public Resources Code.
Reference: Sections 4290 and 4291, Public Resources Code.

§ 1275.06. Mobile Water Supply (Water Tenders)

(a) Fire water delivery systems that rely on mobile water supply (water tenders) shall only be permitted under ~~either of the following conditions:~~

(1) During the construction phase of a new development, prior to the permanent fire water delivery system installation;
or,

(2) When the local jurisdiction determines that all other means of water supply is not practical.

(b) The mobile water supply shall, within 5 minutes of the arrival of the first apparatus on-scene, be capable of providing the apparatus with 250 gpm for a 2-hour duration.

(c) Mobile water supplies may use NFPA 1142 (2017) Annex C to achieve minimum fire flow requirements. ~~Notwithstanding Section~~

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1270.06, the provisions of Sections 1.4, 1.5, and 1.6 of NFPA 1142 regarding equivalency, alternatives, and modifications shall apply to the requirements set forth in this subdivision.

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

§ 1275.07. Protection of Water Supply Infrastructure from Wildfire.

(a) All water supply infrastructure shall be protected from wildfire radiant heat, convective heat, and embers by at least one of the following:

(1) underground burial; or

(2) construction of non-combustible materials, fittings and valves, such as concrete or metal; or

(3) maintenance of a 100-foot, slope-adjusted defensible space immediately surrounding the infrastructure; or

(4) placement within a building constructed to the requirements of the California Building Code (California Code of Regulations Title 24, Part 2) Chapter 7A.

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

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Article 5. Building Siting, Setbacks, and Fuel Modification ~~Fuel Modification Standards~~

§ 1276.00. Applicability ~~Intent~~

(a) All Building Construction subject to these standards shall comply with the following provisions of this Article: [§ 1276.02 \(Building and Parcel Siting and Setbacks\)](#); [§ 1276.03 \(Ridgelines\)](#); and [§ 1276.07 \(Disposal of Flammable Vegetation and Fuels\)](#)

(b) When Building Construction meets the criteria in [§ 1270.03\(c\) \(Scope\)](#), the following provisions of this article shall apply: [§ 1276.01 \(Design Plan\)](#); [§ 1276.02 \(Building and Parcel Siting and Setbacks\)](#); [§ 1276.03 \(Ridgelines\)](#); [§ 1276.04 \(Fuel Breaks\)](#); [§ 1276.05 \(Greenbelts, Greenways, Open Spaces and Parks\)](#); [§ 1276.06 \(Maintenance of Fuel Breaks\)](#); and [§ 1276.07 \(Disposal of Flammable Vegetation and Fuels\)](#).

~~To reduce the intensity of a wildfire by reducing the volume and density of flammable vegetation, the strategic siting of fuel modification and greenbelts shall provide for increased safety for emergency fire equipment and evacuating civilians by its utilization around structures and roads, including driveways, and a point of attack or defense from a wildfire.~~

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

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§ 1276.01. ~~Design Plan Setback for Structure Defensible Space~~

(a) Building Construction meeting the criteria in [§ 1270.03\(c\) \(Scope\)](#) shall provide a design plan or map that includes the proposed location of building envelopes; Defensible Space setbacks; Fuel Breaks and any access to them; Greenbelts, Greenways, and other open space or parks; Roads and Driveways access and access locations; topography, including slope or grade; and any proposed alternate performance-based standards for approval by the Local Jurisdiction.

(b) To the degree the information required in § 1276.02(a) is provided for on other maps or plans required by the Local Jurisdictions, those maps or plans may be used to satisfy this section.

~~(a) All parcels shall provide a minimum thirty (30) foot setback for all buildings from all property lines and/or the center of a road.~~

~~(b) When a thirty (30) foot setback is not possible for practical reasons, which may include but are not limited to parcel dimensions or size, topographic limitations, or other easements, the local jurisdiction shall provide for same practical effect.~~

~~(i) Same practical effect requirements shall reduce the likelihood of home to home ignition.~~

~~(ii) Same practical effect options may include, but are not limited to, noncombustible block walls or fences; five (5) feet~~

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~~of noncombustible material horizontally around the structure;
installing hardscape landscaping or reducing exposed windows on
the side of the structure with a less than thirty (30) foot
setback; or additional structure hardening such as those
required in the California Building Code, California Code of
Regulations title 24, part 2, Chapter 7A.~~

~~(c) Structures constructed in the SRA are required to comply
with the defensible space regulations in Title 14. Natural
Resources Division 1.5. Department of Forestry and Fire
Protection Chapter 7. Fire Protection Subchapter 3. Fire
Hazard.~~ Note: Authority cited: Section 4290, Public Resources
Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1276.02. Building and Parcel Siting and Setbacks. ~~Maintenance
of Defensible Space Measures~~

(a) All parcels shall provide a minimum thirty (30) foot setback
for all ~~B~~buildings from all property lines and/or the center of
a ~~R~~road.

(b) When a thirty (30) foot setback is not ~~possible for~~
~~practical reasons~~practicable, which may include but are not
limited to, parcel dimensions or size; topographic limitations;
development density requirements or other development patterns
that promote low-carbon emission outcomes; sensitive habitat; or
other site constraints ~~easements~~, the design plan or other
documentation shall detail alternate methods approved by the

Commented [AJW59]: "Not possible" is an unduly high standard (as many things may be theoretically "possible" that are not feasible or practical). "Impracticable" appears to better express the intent of this section.

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Local Jurisdiction resulting in the same performance-based outcome.

(c) ~~Alternate methods~~ ~~Same practical effect options~~ may include, but are not limited to: non-combustible block walls or fences; five (5) feet of non-combustible material extending five (5) feet horizontally from the further extent of the building; installing hardscape landscaping or reducing exposed windows on the side of the structure with a less than thirty (30) foot setback; or additional structure hardening that exceeds the requirements in the California Building Code, California Code of Regulations Title 24, Part 2, Chapter 7A.

~~To ensure continued maintenance of commonly owned properties in conformance with these standards and to assure continued availability, access, and utilization of the defensible space provided by these standards during a wildfire, provisions for annual maintenance shall be provided in emergency access covenants or similar binding agreements.~~

Note: Authority cited: Section 4290, Public Resources Code.
Reference: Sections 4290 and 4291, Public Resources Code.

§ 1276.03. Ridgelines. ~~Disposal of Flammable Vegetation and Fuels~~

(a) The Local Jurisdiction shall identify strategic Ridgelines, if any, in consultation with the local fire authority. Strategic Ridgelines shall be identified through an assessment of the

following factors:

(1) Topography;

(2) Vegetation;

(3) Proximity to any existing or proposed residential, commercial, or industrial land uses;

(4) Ability to support effective fire suppression; and

(5) Other factors, if any, deemed relevant by the Local Jurisdiction and local fire authority.

(b) Preservation of undeveloped Ridgelines identified as strategically important shall be required, as follows:

(e1) Building Construction on undeveloped Ridgelines identified as strategically important is prohibited, except that the Local Jurisdiction may authorize construction of a wireless telecommunications facility, as defined in Government Code section 65850.6, subdivision (d)(2), if it determines that prohibiting such construction is not necessary to reduce fire risk or improve fire protection.

(e2) The Local Jurisdiction may implement further specific requirements to preserve undeveloped Ridgelines.

~~Disposal, including chipping, burying, burning or removal to a site approved by the local jurisdiction, of flammable vegetation and fuels caused by site development and construction, road and driveway construction, and fuel modification shall be completed prior to completion of road construction or final inspection of a building permit.~~

Commented [AJW60]: By itself, a requirement to "preserve" a ridgeline is not clear. These revisions clarify that Local Jurisdictions preserve ridgelines by implementing the specified development restrictions.

Commented [AJW61]: PRC 4290 specifically requires preservation only of "undeveloped" ridgelines.

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Commented [AJW62]: California state policy strongly supports expansion of wireless telecommunications service (including broadband internet access) and associated infrastructure - which is often located in high-elevation areas such as ridgelines in rural areas. (In addition to the cited Government Code section, see also Public Utilities Code section 281, etc.) Further, such telecommunications infrastructure often enhances public safety communications, thereby assisting fire suppression efforts and improving safety.

PRC 4290 provides for "preserv[ation of] undeveloped ridgelines to reduce fire risk and improve fire protection" - and should not bar expansion of telecommunications infrastructure where those concerns are not implicated.

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Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

§ 1276.04. Fuel Breaks ~~Greenbelts~~

(a) When Building Construction meets the criteria in § 1270.03(c) (Scope), the Local Jurisdiction shall determine the need and location for Fuel Breaks in consultation with the local fire authority.

(b) Fuel Breaks required by the Local Jurisdiction shall be located, designed, and maintained in a condition that reduces the potential of damaging radiant and convective heat or ember exposure to access routes, buildings, or infrastructure within Development.

(c) Fuel Breaks may be required at locations such as, but not limited to:

(1) Directly adjacent to Defensible Space to reduce radiant and convective heat exposure, ember impacts or support fire suppression tactics;

(2) Directly adjacent to Roads to manage radiant and convective heat exposure or ember impacts; increase evacuation safety; or support fire suppression tactics;

(3) Directly adjacent to a Hazardous Land Use to limit the spread of fire from such uses; reduce radiant and convective heat exposure; or support fire suppression tactics;

(4) Strategically located along Ridgelines, in Greenbelts,

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or other locations to manage reduce radiant and convective heat exposure, ember impacts, or support community level fire suppression tactics.

(d) Where applicable, Fuel Breaks shall be consistent with the CAL FIRE Unit Fire Management Plan or Contract County Fire Plan.

(e) Fuel Breaks shall be completed prior to the commencement of any permitted construction.

(f) Fuel Breaks shall be constructed using the most ecologically and site appropriate treatment option, such as, but not limited to, prescribed burning, manual treatment, mechanical treatment, prescribed herbivory, and targeted ground application of herbicides.

(g) Fuel Breaks constructed pursuant to this section shall have, at a minimum, one point of access for fire fighters and any required equipment. The specific number of access points and access requirements shall be determined by the Local Jurisdiction in consultation with the local fire authority.

~~Subdivision and other developments, which propose greenbelts as a part of the development plan, shall locate said greenbelts strategically as a separation between wildland fuels and structures. The locations shall be approved by the local authority having jurisdiction and may be consistent with the CAL FIRE Unit Fire Management Plan or Contract County Fire Plan.~~

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

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§ 1276.05. Greenbelts, Greenways, Open Spaces and Parks

(a) Where a Greenbelt, Greenway, open space, park, landscaped or natural area, or portions thereof, is intended to serve as a Fuel Break, the space or relevant portion thereof shall conform with the requirements in [§ 1276.04 \(Fuel Breaks\)](#).

(b) Local Jurisdictions may require Greenbelts or Greenways or other open areas for the purpose of providing potential areas of refuge for the public or firefighters or other values.

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

§ 1276.06. Maintenance of Fuel Breaks

(a) Maintenance mechanisms shall be established for Fuel Breaks required by the Local Jurisdiction pursuant to Section 1276.04 ~~Annual maintenance requirements shall be included in the initial Fuel Break prescriptions~~ to ensure the fire behavior objectives and thresholds are maintained over time.

(b) The mechanisms required shall be binding upon the property for which the Fuel Break is established, shall ensure adequate maintenance levels, and may include written agreements or equivalent, permanent fees, taxes, or assessments, assessments through a homeowners' association, or similar funding mechanisms to ~~To ensure continued maintenance of commonly owned properties in conformance with these requirements and to assure continued~~

Commented [AJW63]: The revised language of this provision more clearly and precisely reflects the development processes and funding mechanisms provided under California law. These changes reflect local jurisdiction extensive experience administering these mechanisms, and are requested to avoid implementation difficulties.

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availability, access, and utilization of the Fuel Breaks provided by these standards during a wildfire, ~~provisions for annual maintenance shall be provided in emergency access covenants or similar binding agreements.~~

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

§ 1276.07 Disposal of Flammable Vegetation and Fuels

The disposal, including burning or removal to a site approved by the local jurisdiction of flammable vegetation and fuels caused by site development and construction, road and driveway construction and the cumulative effects of disposal methods shall be in accordance with all applicable laws and regulations.

Note: Authority cited: Section 4290, Public Resources Code.

Reference: Sections 4290 and 4291, Public Resources Code.

Attachment Four
CSAC Opening Comments on Proposed Phase 1 Decision Revising
Electric Rule 20

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider
Revisions to Electric Rule 20 and Related
Matters.

Rulemaking 17-05-010
(Filed May 11, 2017)

**OPENING COMMENTS OF THE CALIFORNIA STATE ASSOCIATION OF
COUNTIES ON THE PROPOSED PHASE 1 DECISION REVISING ELECTRIC RULE
20 AND ENHANCING PROGRAM OVERSIGHT**

April 27, 2021

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Rulemaking 17-05-010
(Filed May 11, 2017)

**OPENING COMMENTS OF THE CALIFORNIA STATE ASSOCIATION OF
COUNTIES ON THE PROPOSED PHASE 1 DECISION REVISING ELECTRIC RULE
20 AND ENHANCING PROGRAM OVERSIGHT**

The California State Association of Counties (CSAC) respectfully submits these Opening Comments in response to the Proposed Phase 1 Decision Revising Electric Rule 20 and Enhancing Program Oversight (Proposed Phase 1 Decision), issued in this Rulemaking (R.) 17-05-010 (Electric Rule 20) on April 7, 2021. These Opening Comments are timely filed and served pursuant to the Commission's Rules of Practice and Procedure.

**I.
BACKGROUND**

CSAC is a nonprofit mutual benefit corporation under the California Nonprofit Mutual Benefit Corporation Law. CSAC is a lobbying, advocacy and service organization which represents all 58 counties of the State of California. CSAC is focused on advancing the vital public interest in effective, efficient, and responsive local government. CSAC, under the name of the County Boards of Supervisors Association of California began meeting in 1895 and was later renamed CSAC in 1991 and is based in Sacramento, California. CSAC's long-term objective is to significantly improve the fiscal health of all California counties so they can adequately meet the demand for vital public programs and services. CSAC has also been actively participating in the de-energization rulemaking (R.18-12-005) and the public safety power shutoff investigation (I.19-11-013).

II. SUMMARY

On February 13, 2020, the Administrative Law Judge (ALJ) issued a Ruling (1) Issuing and Entering into the Record an Energy Division Staff Proposal for Improving the Electric Tariff Rule 20 Undergrounding Program; (2) Requesting Comments on the Pacific Gas and Electric Company's Rule 20A Audit Report; and (3) Setting a Schedule for Comment (February 13 ALJ Ruling). CSAC submitted Opening Comments on the February 13 ALJ Ruling on April 21, 2020.

On September 3, 2020, the ALJ issued a subsequent Ruling asking for party comments on several issues regarding Rule 20 reform, in light of developments related to COVID-19 (September 3 ALJ Ruling). The September 3 ALJ Ruling directed parties to reference earlier comment(s) and indicate any change in position in light of COVID-19. CSAC submitted Opening Comments on the September 3 ALJ Ruling on October 6, 2020 and Reply Comments on October 27, 2020.

On April 7, 2021, California Public Utilities Commission (CPUC) President Batjer issued the Proposed Phase 1 Decision Revising Electric Rule 20 and Enhancing Program Oversight.

III. CSAC COMMENTS ON WHETHER TO MODIFY, REPLACE OR DISCONTINUE THE RULE 20A PROGRAM

A. Project Eligibility Criteria

CSAC supports the decision to decline to implement the February Staff Proposal's suggested modifications to the first two eligibility criteria and to address the Rule 20A project eligibility criteria more broadly in Phase 2 of this proceeding.¹ CSAC also supports the Phase 1 Proposed Decision's inclusion statewide of a specific project criterion regarding limited or

¹ Proposed Phase 1 Decision, at p. 15.

impeded wheelchair access that is not compliant with the Americans with Disabilities Act.²

CSAC remains supportive of utilization of the Rule 20A program to improve community aesthetics and continues to encourage the Commission to expand the project eligibility criteria to add safety and reliability to the criteria.

B. Inequitable Usage of Ratepayer Funds

CSAC supports the Proposed Phase 1 Decision to decline to sunset the Rule 20A program.³ As noted in previous comments submitted, CSAC strongly opposes sunseting the Rule 20A program and replacing it with a modified Rule 20B program with tiered ratepayer contributions, which would create barriers for small and disadvantaged communities in completing undergrounding projects.⁴ CSAC remains ready to engage with the Commission as it considers whether to further modify the Rule 20A program to support projects located in underserved or disadvantaged communities in Phase 2 of this proceeding, while continuing to serve all communities.

C. Rule 20A Work Credit System

CSAC is disappointed to see the proposed decision to discontinue approval of new work credits for allocation by the utilities after December 31, 2022 and to ban work credit trading with limited exceptions.⁵ We urge the Commission to require continued allocation of work credits until it develops an economically and legally feasible alternative to the Rule 20A program in Phase 2 of this proceeding.

² *Id.*

³ *Id.*, at p. 17.

⁴ *See, e.g.*, Opening Comments of the California State Association of Counties on the Administrative Law Judge's Ruling Requesting Comments, submitted in this proceeding on October 6, 2020 (October 6 CSAC Opening Comments), at p. 2.

⁵ Proposed Phase 1 Decision, at p. 35, Ordering Paragraph 1.

CSAC remains supportive of continued work credit trading, as it benefits communities in need of additional credits to complete projects. The proposed decision to prohibit work credit trading significantly affects three counties (Mariposa, Trinity, and Alpine), which would be effectively precluded from trading or donating work credits altogether, since there are no incorporated cities within the boundaries of these counties. We urge the Commission to allow those three counties to trade or donate their remaining work credits with any other jurisdiction given their unique circumstances as compared to the other 536 cities and counties in California.

CSAC appreciates the Commission's decision to explore other opportunities for supporting active Rule 20A projects in Phase 2 of this proceeding. CSAC also supports the decision to not move forward with the suggestion included in the February Staff Proposal to authorize a grant program as an alternative to the existing work credit system. CSAC is prepared to work with the Commission and other stakeholders on a workable alternative.

IV.

CSAC COMMENTS ON WHETHER TO MODIFY PROGRAM MANAGEMENT REQUIREMENTS OR ENHANCE OVERSIGHT OF THE RULE 20 PROGRAM

A. PG&E Audit Report

CSAC reiterates its support for efforts to promote greater transparency and to improve accountability, including implementation of checks, balances, and disclosures for the utilities to adhere to in order to allow local governments to validate final utility undergrounding district costs. CSAC is particularly supportive of requiring utilities to provide additional information and documentation on the Rule 20A program, including information on program procedures and guidelines in a publicly available and accessible format, along with a program handbook.

B. Rule 20 Program Improvements

CSAC supports the Commission's efforts to improve the Rule 20 program by enhancing oversight and imposing additional requirements on the electric utilities for the Rule 20A program in the future. As noted in previous comments, CSAC strongly believes that making modifications to the Rule 20A program, such as those included in the Proposed Phase 1 Decision, will strengthen it, and will make it more successful than making some of the other major reforms included in the February Staff Proposal.

CSAC is supportive of requiring PG&E and the other electric utilities to implement the program improvements included in the Proposed Phase 1 Decision, including those requiring that the electric utilities:

- Work with stakeholders, including CSAC and other local governments, to draft an updated version of the Rule 20 Guidebook for all electric utilities
- Establish or modify an existing Rule 20 one-way balancing account, with subaccounts for tracking actual program expenses for each Rule 20 subprogram
- Report information to the Commission annually about the projects, expenditures, and work credit balances for all communities in its service territory
- Provide annual updates to each community about their Rule 20 projects, expenditures, and work credit balance
- Retain documentation on the items laid out on page 27 of the Proposed Phase 1 Decision related to their Rule 20 programs for a minimum of fifteen years from the completion of the project report.⁶

⁶ Proposed Phase 1 Decision, at pp. 21-22 and 27.

C. Phase 2 Issues and Extension of Statutory Deadline

CSAC supports the extension of the statutory deadline for Phase 2 of this proceeding to 12 months after the effective date of the Proposed Phase 1 Decision.⁷ This will allow the Commission and stakeholders to deliberate on some of the outstanding issues discussed in the February Staff Proposal and in the Proposed Phase 1 Decision. CSAC also urges the Commission to host multiple workshops around the state in Phase 2 of the proceeding to allow counties to more easily participate and provide their perspectives about potential changes to the Rule 20 program.

V. CONCLUSION

CSAC appreciates the opportunity to submit these Opening Comments in response to the Proposed Phase 1 Decision. CSAC supports the decision to decline to sunset the Rule 20A program and supports the Commission's plan to consider additional changes to the public interest criteria in Phase 2 of this proceeding. However, CSAC opposes the proposed decision to ban work credit trading immediately with limited exceptions. Finally, CSAC supports the Commission's efforts to enhance transparency and accountability and to impose additional requirements on the electric utilities, which would increase oversight of the Rule 20A program. CSAC is committed to working with the Commission and other stakeholders to continue to make improvements to the Rule 20A program to support communities with active projects and to address the challenges that disadvantaged communities face in accessing the Rule 20A program.

⁷ Proposed Phase 1 Decision, at p. 28.

Respectfully submitted,

April 27, 2021

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Attachment Five
CSAC Reply Comments on Proposed Phase 1 Decision Revising
Electric Rule 20

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider
Revisions to Electric Rule 20 and Related
Matters.

Rulemaking 17-05-010
(Filed May 11, 2017)

**REPLY COMMENTS OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES
ON THE PROPOSED PHASE 1 DECISION REVISING ELECTRIC RULE 20 AND
ENHANCING PROGRAM OVERSIGHT**

May 3, 2021

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider
Revisions to Electric Rule 20 and Related
Matters.

Rulemaking 17-05-010
(Filed May 11, 2017)

**REPLY COMMENTS OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES
ON THE PROPOSED PHASE 1 DECISION REVISING ELECTRIC RULE 20 AND
ENHANCING PROGRAM OVERSIGHT**

The California State Association of Counties (CSAC) respectfully submits these Reply Comments in response to the Proposed Phase 1 Decision Revising Electric Rule 20 and Enhancing Program Oversight (Proposed Phase 1 Decision), issued in this Rulemaking (R.) 17-05-010 (Electric Rule 20) on April 7, 2021. These Reply Comments are timely filed and served pursuant to the Commission’s Rules of Practice and Procedure.

**I.
CSAC AGREES WITH PARTIES WHO OPPOSE THE DISCONTINUANCE OF NEW
WORK CREDIT ALLOCATIONS AFTER DECEMBER 31, 2022**

CSAC appreciates the Commission’s decision to decline to sunset the program. However, by discontinuing new work credit allocations after December 31, 2022, the Commission would effectively eliminate the Rule 20A program. CSAC shares the concerns raised in the League of California Cities’ (Cal Cities) Opening Comments, which state that:

Cal Cities strongly opposes the Proposed Decision’s discontinuance of new work credit allocations after December 31, 2022, and its ban on trading, selling, or donating unused work credits. Cal Cities wishes to point out the Proposed Decision on these issues rests on a factual error—that, notwithstanding the Proposed Decision’s statement to the contrary, the practical impact of these decisions will be to sunset Rule 20A, leaving a large balance of unused, unusable work credits. Such a result is unacceptable, and appears to go unaddressed in Phase 2 of this rulemaking proceeding, as defined by the Proposed Decision.¹

¹ Opening Comments of Cal Cities, at p. 3.

CSAC is concerned about the discontinuance of new work allocations after December 31, 2022 and the ban on trading, selling, or donating of unused work credits. CSAC agrees that, while the Commission has stated that it declines to sunset the program in the Proposed Phase 1 Decision, discontinuing work credit allocations after December 31, 2022 would, ultimately, result in the elimination of the program.

II. CSAC AGREES WITH PARTIES WHO OPPOSE BANNING THE SALE, TRADE, OR DONATION OF UNUSED WORK CREDITS

CSAC opposes banning the sale, trade, or donation of unused work credits and agrees with the issues raised in Cal Cities' Opening Comments, which state that:

Work credit selling, trading, and donating is the only existing mechanism identified in the record that is available to ensure that both: (1) the \$1.56 billion in unused Rule 20A work credits can fully be utilized to further the purposes of the Rule 20A program, and (2) communities that have thus far been unable to use work credits are able to derive some benefit from their ratepayer contributions.²

However, if the Commission decides to move forward with the decision to ban the sale, trade, or donation of unused work credits, we support Cal Cities' request urging the Commission to clarify the effective date and to recognize valid agreements executed prior to that date, as stated in Cal Cities' Opening Comments:

If the CPUC ultimately decides to ban the sale, trade, or donation of unused work credits, the CPUC should work to ensure that the decision is implemented in an equitable manner that gives communities reasonable assurances that investments and agreements made in good faith prior to the Proposed Decision's effective date are recognized and permitted to proceed.³

CSAC agrees with the Comments of The Utility Reform Network (TURN) as related to the communities that have been unable to complete an undergrounding project, including two of the

² Opening Comments of Cal Cities, at p. 6.

³ Opening Comments of Cal Cities, at p. 6.

three counties that do not have any cities and are therefore unable to even donate any remaining work credits to a local community:

Without the ability to trade the work credits ..., residents of these 82 communities would have paid into the Rule 20A program for decades and received no benefit in return while a handful of communities received hundreds of millions of dollars. This result would precisely illustrate the meaning of inequity, and it would also directly contradict the Commission's goal of integrating equity and access considerations into its proceedings. TURN urges the Commission to allow these communities to trade their work credits and receive some benefit for the rates that their residents have paid into the program over several decades.⁴

CSAC's preference would be for the Commission to allow jurisdictions to continue to sell, trade, and donate work credits. However, if the Commission decides to move forward with the proposed decision to prohibit these practices, we encourage the Commission to clarify the effective date for this ban and to honor investments and agreements completed prior to that date.

III. CSAC AGREES THAT IN-FLIGHT PROJECTS SHOULD BE EXEMPTED FROM THE PROPOSED ELIMINATION OF THE 5-YEAR BORROW PERIOD

CSAC agrees with the concerns raised in Pacific Gas and Electric's (PG&E) Opening Comments, which note that:

The proposed elimination of what is commonly known as the 5-year borrow has significant and immediate impact to current projects.⁵

CSAC agrees that these projects should be exempted from the proposed elimination of the 5-year borrow period, as these projects are currently underway and will face serious consequences if the 5-year borrow period is eliminated.

IV. CONCLUSION

CSAC appreciates the opportunity to submit these Reply Comments. CSAC shares some of the concerns other parties have expressed in their Opening Comments, including the concern

⁴ Opening Comments of TURN, at p. 3.

⁵ Opening Comments of PG&E, at p. 1.

over the discontinuance of the allocation of work credits after December 31, 2022. CSAC also opposes the proposed decision to prohibit the sale, trade, or donation of unused work credits. However, if the Commission decides to ultimately impose a ban these practices, we support Cal Cities' request that the Commission clarify the effective date for the ban and honor agreements completed prior to that date. Finally, we support PG&E's request to exempt in-flight projects from being subject to the requirements that would be imposed by the elimination of the 5-year borrow period.

Respectfully submitted,

May 3, 2021

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