July 7, 2020

To: Board Members

From: Edith Hannigan, Land Use Planning Policy Manager

**Re: Amending 14 CCR §§ 1299.01-1299.05**

# Background

In order to clarify and make specific the defensible space requirements in Public Resource Code Section 4291, the Board of Forestry & Fire Protection has adopted regulations in Title 14, Division 1.5, Chapter 7, Subchapter 3, Article 3 related to fire hazard fuel reduction around building and structures (“Defensible Space Regulations”). In addition to the standards for achieving defensible space, these regulations reference two guidebooks.

The regulations specify that the Department of Forestry and Fire Protection's *“Property Inspection Guide, 2000 version, April 2000,”*is **not** a mandatory regulatory document, whereas the State Board of Forestry and Fire Protection's, *“General Guidelines for Creating Defensible Space, February 8, 2006”* is incorporated by reference and considered a regulatory document.

Both of those documents are over a decade old, and emerging evidence regarding structure ignitability from vegetation, especially in the first five feet of the structure, demonstrates a need to revisit the regulatory standards in the above-mentioned Article.

**Process**

Board staff have been collaborating with Chiefs Hawks and Bigelow of the Wildfire Prevention Engineering division at the Office of the State Fire Marshal to review the existing regulations and guidebooks for potential areas of revisions. This work is occurring while AB 3074 (Friedman) makes its way through the legislative process. AB 3074 would establish a zone of enhanced vegetation management in the first five feet around a structure, in addition to the existing “Zone 1” within the first 30 feet and “Zone 2” in the next 31-100 feet. This bill would also require the Board to update a guidance document, in consultation with the Department, that contains guidance related to fuels management as well as suggestions to reduce the flammability of other non-vegetated sources of combustion that are commonly located near structures. The legislative process is always unpredictable, but particularly so during this COVID-19 emergency.

In addition to the Board’s informal rulemaking development process and prior to the Board’s compliance with the requirements of the Administrative Procedures Act (ie, the 45-day notice), these regulatory amendments will also require approval from OSFM and CAL FIRE executive teams. Depending on the results of the economic and fiscal impact statement analysis (STD 399), these regulations may also require a signature from the Department of Finance, which we cannot request without approval from the Governor’s Office.

Either of those processes can add months to this timeline, but our goal is to work as efficiently as possible for an April 1, 2021 effective date for these regulations. The hope is this amended regulatory text prepared over the summer can easily include any new requirements from AB 3074 so if the bill is signed we can immediately engage with the executive offices mentioned above.

**Status**

Attached is the current proposed amendments to the Defensible Space Regulations. These amendments create a new “Zone 0” (the 0-5 feet around a structure), but due to the uncertainty regarding the final text of AB 3074 there are no proposed new requirements for Zone 0 that didn’t already exist in Zone 1 or Zone 2. These amendments also address some general clean-up and re-organize the requirements for each zone into a more intuitive format.

**Next steps**

Before the August 19 Board meeting, we’ll be scheduling a workshop with agency partners, academics, non-governmental organizations, and the public to further refine these proposed amendments. A new draft rule plead will be available at the Joint Committee meeting on August 18 for discussion.

The deadline to pass bills out of the Legislature is August 31, and the Governor has until September 30 (or 30 days after passage, whichever is sooner) to sign or veto bills. Hopefully at the Board’s September 23 meeting, we will have a clearer picture of how PRC 4291 might be amended and we can begin addressing those amendments in the rule plead.

Both of the guidebooks referenced in the Defensible Space Regulations are being deleted from the regulations. No guidebooks will be referenced or incorporated into the amended regulations; instead after the regulations are made effective Board and OSFM staff will collaborate on a guidebook that meets any specified requirements in PRC 4291 as well as the needs of defensible space inspectors, the public, and defensible space educators.

Thank you.