

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations**

[Notice Published January 24, 2006]

**15 -Day Notice of Public Hearing for Modifications to Proposed Regulation
Defensible Space, 2005**

PUBLIC HEARING DATE

Pursuant to the requirements of Government Code § 11346.8(c), and Title 1 of the California Code of Regulations § 44, the California State Board of Forestry and Fire Protection (Board) is providing notice of changes made to proposed regulations listed below which were the subject of a regulatory hearings on December 13, 2005 and January 5, 2006. These changes are being proposed in response to comments received on adoption of new fire protection regulations in Division 1.5, Chapter 7 Fire Protection, Subchapter 3., Article 3. Fire Hazard Reduction Around Buildings and Structures, Defensible Space. § 1299.

The Board will hold a public hearing to adopt final rule language. The public hearing is to be held 9:00 a.m. on Wednesday, February 8, 2006, at the Resources Building Auditorium, 1st Floor, 1416 Ninth Street, Sacramento, California

PUBLIC COMMENTS

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the 15-Day Notice. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M., on Tuesday, February 7, 2006. The Board will consider only written comments received at the Board office by that time (in addition to those comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

UPDATED INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board of Forestry and Fire Protection (Board) held public hearings on December 13, 2005 and January 5, 2006, on the adoption of 14 CCR, Division 1.5, Chapter 7 Fire Protection, Subchapter 3., Article 3. Fire Hazard Reduction Around Buildings and Structures, Defensible Space, § 1299, on a permanent basis. The proposed regulation is necessary to implement and make specific amendments to Public Resources Code 4291 made under Senate Bill (SB) 1369 which became effective on January 1, 2005.

During these hearing the Board received comments from the public both in writing and in testimony. The Board considered all written and oral comments before them at the hearing. The Board discussed the comments received and determined they wished to consider adopting some of the proposed rule modification offered either in writing or orally at the hearing. The Board directed staff during the January 5, 2006, hearing to provide potential changes to final regulatory language to the public in a 15-day notice (GC § 11346.8(c)). The Board may adopt any one individual proposed change, a selected group of the proposed changes, or all of the proposed changes. The means of identifying the proposed changes is stated later in this notice.

The revisions made to the originally proposed rules pertain to section 1299 (d) and the "General Guidelines to Implement Performance Based Defensible Space Regulation under PRC 4291" referred to in section 1299 (d) and termed throughout this document as "Guidelines". The nature of the changes to the Guidelines involve minor general grammatical, clerical and consistency edits; minor changes to the fuel modification prescriptions; documentation of homeowner responsibility to protect environmental

values; edits for consistency with recent changes to PRC 4291 made as a result of SB 502. The edits include the following:

- Vegetation spacing recommendations including spacing requirements for “groups” of vegetation, consistency of graphics and text relating to spacing between trees, and lower cost prescriptions that meet hazard reduction goals.
- Terminology clarification for “defensible space”, “fuels”, “flammability and combustible growth”, and “ladder fuels”.
- Photographic examples of completed Chaparral setting defensible space treatment.
- Clearing standards that are consistent with SB 502.
- Documentation of consistency with Categorical Exemption status by addressing protection measures for TES protection, snags retention, WLPZ/riparian vegetation protection, Scenic Highways, air quality and archeological and homeowner responsibility for other applicable laws (ESA, air quality cultural, WDR).
- Various grammatical and organizational edits.
- Provision for retaining large woody debris recruitment.

These revisions are expected to improve efficient implementation and interpretation of the rule, reducing confusion and improving compliance. No cost or environmental impacts to the regulated community or agencies involved result due to revisions.

PURPOSE AND NECESSITY OF MODIFICATIONS TO TEXT OF PROPOSED REGULATION

The following are specific changes made to the regulation and referenced Guidelines:

14 CCR § 1299 (page 1, line 10): The phrase “defensible space criteria“ was deleted to avoid redundancy in the intent statement.

14 CCR § 1299 (d) : The word “shall” was deleted and replaced with other language to communicate that the “Guidelines” are recommendations to help people comply with section 1299 and PRC 4291. The Guidelines are not mandatory. The regulation (§ 1299) states a goal (provide a fuelbreak by disrupting the vertical and/or horizontal continuity of flammable and combustible vegetation with the goal of reducing fire intensity) which can be achieved by a number of vegetation management methods other than those described in the Guidelines.

Guidelines title (page1): The Guidelines title was changed for clarity and indicates that the Guidelines are not mandatory.

Guidelines Contents (page 2): Section C. title changed to more clearly and simply state section content.

Guidelines Section A. (page 3, paragraphs 1-5, bullets 1-2; page 4, bullets 1-2): These revisions were made to improve grammar and writing style to more simply and clearly communicate to the public and CDF fire inspection officials the purpose and need for defensible space fuel modification. One notable change was to replace the many terms used to describe a dwelling with a uniform term “building or structure” which is defined in the Guidelines. This change was necessary to ensure uniform application of the Guidelines is achieved for any building on the property, not just the primary dwelling or home.

Guidelines Section A. (page 4, bullet 3 and paragraph 3): These amendments add documentation homeowner requirements to comply with other applicable environmental laws. These changes are necessary to demonstrate the Guidelines’ consistency with Categorical Exemption 14 CCR 15300. The amendments more clearly describe homeowner responsibility for compliance with other applicable laws (Endangered Species Act, air quality burning permits, Waste Discharge Reports), specifically statutory provisions requiring protection of threatened and endangered species, water quality, air quality, and cultural/archeological resources.

Guidelines Section B. (page 4 and 5): Definitions were added to add clarify terms used in the Guidelines. These definitions were added to help to improve efficient implementation and interpretation of rule, reducing confusion and improving compliance.

Guidelines Section C. (page 5): Section C. title changed to more clearly and simply state section content.

Guidelines Section C.1. (page 5): Clearing standards for the zero to 30 foot perimeter from a building or structure were amended to be consistent with SB 502. This Bill was passed in 2005 amending PRC 4291 to allow well-pruned and maintained vegetation to be retained within the 0-30 foot zone.

Guidelines Section C.2. (page 5): The term “in height “ is redundant and was deleted.

Guidelines Section C.3. (page 5): Amendments were made to allow retention of large woody debris (snags). This change was necessary for consistency with other contemporary fire plans, such as the Nevada County Fire Plan of 2005.

Guidelines Section C.4a. (page 6, paragraphs 1 and 3): These revisions were made to improve grammar and writing style to more simply and clearly communicate to the public and CDF fire inspection officials the vegetation clearing standard related to this clearing option.

Guidelines Section C.4a. (page 6, paragraph 2): In addition to minor grammatical changes, amendments were made to allow spacing requirements for “groups” of vegetation. The Board recognized that routine vegetation modification practices often allow “islands” of isolated vegetation to be retained while still achieving hazard reduction goals. The standards for the grouping size were based on review of technical documents that discussed varying standards for different types of vegetation. The 10 foot maximum group width is in the middle of the width ranges provided by technical

documents, and should be considered a general guideline as opposed to a scientifically documented limit.

Guidelines Section C.4a. (page 6, graphics): Amendments were made to improve clarity of graphics and provide consistency of the tree spacing graphic with the *Plant Spacing Guidelines* in another section of the Guidelines.

Guidelines Section C.4a. (page 7): These revisions were made to improve grammar and writing style and provide a photo credit.

Guidelines Case Examples (page 8): These revisions were made to improve grammar and writing style and provide a photo of a chaparral setting in southern California to better communicate desired defensible spaces conditions.

Guidelines Section C.4b. (page 9): The introductory paragraph was deleted and replaced with language that is more clear and concise. Also, clearing standards for the 30 feet to 100 feet perimeter under the continuous canopy option were amended to be consistent with SB 502 and address resource protection concerns associated with recommending removal of all surface fuels.

AMENDMENTS TO INITIAL STATEMENT OF REASONS (ISOR)

The ISOR published on October 28, 2005, is amended to:

1) Incorporate documentation of regulatory consistency with Guidelines for California Environmental Quality Act 14 CCR, Section 3, and Article 19, section 15300.2 [Categorical Exemption] Exception and PRC subsection 21080(b)(4), Specific actions necessary to or mitigate an emergency;

2) Add an alternative considered related to adopting a non-regulatory resolution;

3) Incorporate technical documents relied upon that were brought forward to the Board during public hearings and considered by the Board as part of the regulation adoption process.

Consistency with Guidelines for California Environmental Quality Act 14 CCR, Section 3, and Article 19, section 15300.2 [Categorical Exemption] Exception and PRC section 21080(b)(4), Specific actions necessary to or mitigate an emergency: The California Environmental Quality Act (CEQA) requires review, evaluation and environmental documentation of potential significant environmental impacts from a qualified project. The Board's rulemaking process was initially determined to be categorically exempt from environmental documentation in accordance with 14 CCR 1153(b) (1), Declaration of Categorical Exemptions and with 14 CCR 15304 (i). The Board evaluated 14 CCR 15300.2 Exception [exceptions to determination of categorical exemption] and found the project (rulemaking) is consistent with the categorical exemption exception requirements. This finding is based on analysis provided in the ISOR regarding an initial review of potential significant adverse environmental effects. The initial review evaluated water quality, fish/wildlife and plant habitat, and aesthetic settings.

The initial review in the ISOR did not specifically cover several natural resource concerns which were highlighted by the public during the hearings. These included

review of potential significant effects to arthropod species and invasion native plants from fuel modification, air quality impacts, cumulative effects of treatments, historical or archeological impacts, significant effects from unusual circumstances, and Scenic Highways. Additional review of these issues was conducted by the Board. The review incorporated technical documents brought to the Board as part of the public hearing process on potential significant adverse environmental impacts. A summary of the analysis for the issues follows:

Adverse effects on arthropod species and invasion native plants from fuel modification: The Board has reviewed and considered impacts of fuel modification to arthropods. The effects involved changes in population due changes in suitable habitat and invasion of non-native ants. The Board found that technical documents reviewed clearly evaluate and demonstrate impacts to arthropods from the combined effects of development and fuel modifications around homes in the Santa Monica Mountains of Los Angeles (LA) county. The impacts documented in the report are specific to the effects of implementing the LA county fire clearing local ordinances combined with the effects related to general residential development. These ordinances require such things as 200 feet of fuel modification around homes, removal of vegetation to standards greater than those required by the proposed regulation, use of irrigated plants, and removal of native vegetation and replacement with some non-native vegetation. The study found that changes in arthropod populations due to clearing standards under the LA county ordinance create a significant effect. While individual population levels clearly changed between treated and untreated areas, extrapolation of significant effects at a landscape level/watershed level is not clear. Also, there is no connection between the large scale effects of the fuel modification unrelated to development.

The Board found that the research was very valuable in furthering the discussion on consideration of practical fuel treatments that are consistent with ecological goals. The Board regulation uses many of the clearing recommendations that are consistent with the study's recommendations of ways to minimize arthropods impacts from fuel modification. The Board's recommendations in the Guidelines which are consistent with the study's recommendations to reduce effects include: not exclusively requiring irrigated fuel modification zones; not requiring introduction of non native plant species in place of native species; leaving native plants; limiting the fuel modification zone to 100 feet or less; and allowing the retention of organic debris and isolated stumps/root wads.

Air quality impacts: Concerns raised by one air pollution control district indicates that intensifying fuel modification and possible connected disposal by burning could results in significant impacts to non-attainment air basins. Guidelines address the need to conduct activities consistent with air quality laws and permits. When done in compliance with laws and other regulatory permits (if necessary), no significant impacts are expected. When fuel modification and disposal by burning is performed consistent with air quality regulations and permits, such activities would be conducted under the terms of the air quality basin plan. Requirements would include obtaining permits to ensure that volume and timing of burning is done at appropriate periods and coordinated with other discharge activities to ensure discharges volumes and dispersions are insignificant. Additionally, the end result of project implementation is likely to

decrease total emission from burning wildland fuels. The reduction in fuels has a direct impact in reducing acreage and intensity of wildfire which emits an uncontrolled quantity of pollutants.

Cumulative effects of treatments: The ISOR evaluated the possible cumulative effects from vegetation disturbance to the ground or surface fuels. Additional analysis involved a county by county assessment of potential affected broad vegetative land covers (shrub, grassland, conifer forest, hardwood woodlands). This assessment confirmed that the vast majority of the vegetation treatments (over 80% of all vegetation types) were not in conifer forest setting where heavy equipment and greater disturbance to surface fuels and trees could occur. Over 50% of the project scope is in grassland and hardwood landcover types. Treatments to ground cover consistent with the Guidelines and other permits (as needed) in these areas are not likely to result in potential significant adverse environmental impacts because treatments likely involve grass mowing, weed trimming, and pruning. In locations where brush or tree removal occurs, Guidelines recommend retaining surface litter and riparian vegetation to avoid erosion, not requiring removal of all standing vegetation, and homeowners compliance with water quality, TES and other laws and permits as necessary to avoid significant effects on natural resources.

Historical or archeological impacts: The Board found that there is a low probability of impacts to historical sites as the project scope is highly populated residential developments where identification of any significant historic features has already been determined and protection measures are obvious. Additionally, newer residential areas are approved by county general plan revisions which require individual CEQA Environmental Impact Reports. These reports require review of potential significant effects on historic impacts. The reviews would have also revealed significant sites, and provided mitigation and notorious identification to protect sites. Finally, fuel modification which uses heavy equipment to remove large, often commercially valuable trees, are required to be reviewed for potential significant historical and archeological values by qualified individuals in accordance with requirements in the Forest Practice Rules. The requirements for archaeological reviews as described in section 14 CCR 929 [939, 959] include review by trained registered professionals, protection of significant archaeological and historic sites identified, and CDF oversight in review of survey findings.

Significant effects from unusual circumstances: No unusual circumstances typically associated with residential housing in SRA were identified by the Board. Those brought forward to the Board, specifically, non-attainment air basins and TMDL listed watercourses, were considered. The Board found that vegetation treatments done in accordance with the Guidelines and with water quality and air quality laws and permits would not result in a potential significant adverse environmental effect.

Scenic Highways: An initial assessment of the operation impacts from vegetation treatment recommended by the proposed Guidelines to designated or candidate Scenic Highways was conducted. This assessment found that the vegetation treatment standards recommended in the Guidelines do not include activities which would disqualify potential segments of highways from the Scenic Highway

nomination requirements. Vegetation management practices prohibited or inconsistent with Scenic Highways designation (clearcutting) are not recommended actions in the proposed regulation.

After considering the information brought to the Board at the public hearings, the Board found the regulation and Guidelines are consistent with the requirements for a Categorical Exemption under 14 CCR 15300 et seq.. The Board evaluated the project under 14 CCR 15300.2 and found the project (rulemaking) does not fall into the exceptions under the Categorical Exemption. The Board found that minor effects may be possible, but no reasonable possibility of significant adverse environmental effects exists.

The Board found that the typical actions required for fuel hazard reduction around homes, as summarized in the regulation and Guidelines, do not require environmental mitigation measures to avoid potential significant impacts. This finding is based on analysis described above demonstrating rule consistency with the CEQA Categorical Exemption requirements, inclusion within the proposed Guidelines of information and notification to the public of responsibilities for environmental protection requirements, input from public trust resource agencies indicating minimal concerns of potential significant adverse environmental effects, and specific vegetation clearing standards that are consistent with technical literature for balancing potential environmental impacts with public safety needs resulting from fuel hazard reduction goals.

The Board further finds that the proposed action is consistent with PRC 4291. The proposed action requires no greater extent or intensity of vegetation treatment than as required in PRC 4291.

In addition to the above finding of rule consistency with the CEQA Categorical Exemption requirements, the Board finds that the proposed action is consistent with PRC subsection 21080(b) (4), Specific actions necessary to prevent or mitigate an emergency. Section 21080 identifies types of projects requiring an EIR and activities excluded from requiring an EIR. Section 21080(b)(4) specifically identifies that actions necessary to prevent or mitigate an emergency are not subject to the requirements of Section 21080. The Board has found, based in part on information provided in the ISOR, that an emergency exists and the activity proposed is necessary to prevent or mitigate forest fire emergencies.

Alternatives Considered: An alternative considered by the Board was related to publishing the Guidelines by resolution, and not proceed with a regulatory action. This alternative was rejected as the Board found that a regulatory filing would be more effective in achieving public accomplishment of hazard reduction than a non-binding education program alone.

Additional Relevant Documents Relied Upon: Additional documents were provided for the Board's consideration during the rulemaking process to supplement previous information submitted to the Board and referenced in the *Initial Statement of Reasons*. The documents assisted the Board in identifying potential adverse environmental effects, and vegetation treatments methods that were consistent with the goals of the under lying statute and the needs of the public. The documents are on file in the official rulemaking file located at California Department Forestry and Fire Protection, Room 1506-17, 1416 9th Street, Sacramento, CA.

TECHNICAL DOCUMENTS

1. Nevada County Fire Plan. 2005. Appendix- Defensible Space Fuel Management Prescription.
2. Longcore, Travis and Rich, Catherine. May 30, 2002. Protection of Environmentally Sensitive Habitat Areas in Proposed Local Coastal Plan for the City of Malibu. The Urban Wildlands Group, Inc.
3. Longcore, Travis. 2003. Ecological Effects of Fuel Modification on Arthropods and Other Wildlife in an Urbanizing Wildland. The Urban Wildlands Group.
4. California Department of Forestry and Fire Protection. Fire Resource Assessment Program (FRAP). 2005. Backyard Acres to Maintain Fire Safe.
5. Keeley, John et al. 2004. Lessons From the October 2003 Wildfires in Southern California. Journal of Forestry.
6. Brooks, Matthew L et al. July 2004. Effects of Invasive Alien Plants on Fire Regimes. BioScience.
7. Greenlaw, Charles. December 13, 2005. "Defensible Space" Fuel Reduction Around Your Home in the Woods. Forest Landowner of California.
8. Berryman, Ron. Fall 2005. Wildfire and Your Property. Forest Landowner of California.
9. California Codes. December 12, 2005. Street and Highways Code Section 260-284. www.leginfo.ca.gov
10. California State Scenic Routes. December 12, 2005. List of California State Scenic Routes. www.en.wikipedia.org
11. County of Santa Barbara. Living with Fire- A Guide for Homeowners in Santa Barbara County. Fire Safe Council.
12. Meriam, Kyle E et al. April 2006. Fuel Breaks Affect Nonnative Species Abundance in Californian Plant Community. Ecological Applications.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-9418

The designated backup person in the event Mr. Zimny is not available is Doug Wickizer, California Department of Forestry and Fire Protection, at the above address and phone number (916) 653-5602.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

A copy of the express terms of the proposed regulation is available on request.

A copy of the express terms of the proposed regulation is also available on the Board of Forestry and Fire Protection web page:

http://www.fire.ca.gov/bof/board/board_proposed_rule_packages.html.

Additionally, all the information considered as the basis for this proposed regulation (i.e., rulemaking file) is available to the public at the Board's office listed above.

TEXT OF MODIFIED REGULATIONS

In order to clearly indicate those sections proposed for change in this 15-day notice, the text is presented in the following format:

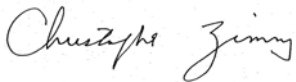
The Board has illustrated changes to the original text in the following manner:

- language originally proposed is UNDERLINED
- additions to the originally proposed language is DOUBLE-UNDERLINED
- deletions to the originally proposed language is ~~SINGLE STRIKEOUT~~

Notice of the 15 day comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.



Christopher Zimny
Regulations Coordinator
Board of Forestry and Fire Protection