

Is Fire Safety a Priority in Rural Sonoma County?

PROPERTY DEVELOPMENT IN HIGH FIRE HAZARD ZONES

The devastating Sonoma County wildfires of 2017-2020 are behind us, but there is continued public concern about potential danger, destruction, and death in future wildfire events. Wildfires threaten people, property, and first responders; the risk is magnified when roads are too narrow for an incoming emergency vehicle to pass people fleeing a fire.

The safety of the people shall be the highest law.

Marcus Tullius Cicero
103 – 43 BCE

The State of California amended its fire safety regulations in 2020 to reduce risk to first responders. The California State Minimum Fire Safe Regulations [FSR] added a prohibition of new development on roads deemed too narrow for simultaneous ingress and egress of emergency vehicles and civilian traffic. Another amendment reduced the number and scope of permissible exceptions to road-width requirements, thereby limiting local authorities' flexibility for issuing new development permits on roads that don't comply with the standards.

Sonoma County has its own Fire Safety Ordinance, Chapter 13 of the Municipal Code. The latest version was adopted December 6, 2022 and replaced a 2020 ordinance. A significant change in the County ordinance is the inclusion of the following language: "The 2022 California Fire Code as adopted by reference and amended in this article, shall constitute the county fire code." Why is this significant? Because it isn't in previous versions of County fire safety ordinances. It's a representation that the County commits to following State law; everything in the following report relies on that commitment.

In spring of 2023, a group of Sonoma County residents made a formal complaint to the Sonoma County Civil Grand Jury regarding the County's amended fire code. The complaint states that California fire safety regulations now require local government to restrict property development where limited access roads in high fire-risk areas put property owners and firefighters at risk. The complaint alleges that Sonoma County continues to authorize development in violation of State law, and that County permitting officials and County Counsel have refused to explain why the County continues to issue these permits.

The Civil Grand Jury investigated these allegations and concludes that Permit Sonoma is fulfilling its obligation to evaluate the safety conditions for new construction permits on one-way and dead-end roads. It also concludes that in making these determinations, Permit Sonoma works with local and regional fire officials in accordance with statutory requirements. We found no evidence that County or fire safety leaders weren't being transparent: both types of officials were willing to discuss the laws as written, the underlying concerns—which are very real—and their approach to resolving the issues.

So why would the Grand Jury publish this report? These new State laws highlight safety issues that affect first responders and citizens every time there's a fire, and we believe that calling attention to the discrepancy between the statute and our local ordinance is in the public interest.

Interpreting statutory requirements and/or liability is beyond the scope of the Civil Grand Jury; it's the province of the Court. However, the Grand Jury is concerned about the extent to which private property owners have been informed of the development restrictions in the State fire safety regulations. As this report will outline, statutory limits on new development may require

permitting restraint that materially devalues hundreds or thousands of Sonoma County properties-or, if ignored, could put first responders at additional risk whenever new development is authorized on a road that doesn't meet State minimum fire safety standards.

STATE FIRE SAFETY REQUIREMENTS

Fire safety law in California is contained in dozens of statutes ranging from the Penal Code to worker health and safety regulations to the State Building Code. The principal law governing property development and fire safety is detailed in the California Board of Forestry and Fire Protection's [State Minimum Fire Safe Regulations](#).

There are more than 2,500 words in the State law, but this report will focus on only a few of them:

- A **Dead-end Road** has only one point of vehicular ingress/egress.
- A **One-way Road** is a road, no more than half a mile long, that connects to two-way roads at either end.
- **Defensible Space** is the area within the perimeter of a parcel or community where wildland fire protection practices must be implemented, including the establishment and maintenance of emergency vehicle access and fuel reduction.
- **State Responsibility Area (SRA)** means areas of the state in which the financial responsibility of preventing and suppressing fires has been determined by the board to be primarily the responsibility of the State.

Why do these words matter?

Fire safety rules for property development are specifically restrictive depending on where the road is, and which type of road serves the property. California state law says *two-way roads* in the SRA must have at least two 10-foot-wide lanes and "provide for two-way traffic flow to support emergency vehicle and civilian egress." *One-way* roads must be at least 12 feet wide (and no more than 2,640 feet long) and connect to a two-way road at either end. *Dead-end* roads have various length restrictions, maxing out at one mile in areas zoned for 20-acre minimum lot sizes (and are considerably shorter for areas with higher-density zoning). *All* roads must provide safe and *concurrent* access for emergency fire equipment and civilian evacuation, and they must provide unobstructed traffic circulation during a wildfire emergency.

Who Enforces the Law?

That's more complicated. The California State Fire Marshal is charged with implementing the statute but is allowed to delegate this authority to local fire-safety officials and, as is the case in most of Sonoma County, local fire officials in turn have delegated their permitting and inspection authority to Permit Sonoma for applications in the unincorporated areas of Sonoma County. All nine cities in the County have retained this role for themselves.

"But, but... wait a minute! MY house is on a dead-end road that isn't 20 feet wide. Do I have to move? Or pay to have the road widened?"

No, of course not; homes permitted prior to passage of the amended requirements in 2020 are legacies, and neither you nor the County are required to widen your road. The requirements only apply to new construction permits issued after the statute changed in 2020.

Permit Sonoma is the entity that issues new construction permits in Sonoma County, including the “State Responsibility Area.” It does this work because local, regional, and State fire safety teams chose Permit Sonoma to do this work. (If the fire safety hierarchy wanted to take back this authority, it could.) And finally, the California Attorney General is responsible for prosecuting any violation of the State fire safety regulations.

THE COMPLAINT

The citizens’ complaint: several applicants wanted to build new structures on narrow dead-end roads. Permit Sonoma issued building permits for this new construction, allegedly in violation of the State Minimum Fire Safe Regulations of the California Code of Regulationsⁱ. In particular, the complaint specifies six locations where concurrent vehicle ingress and egress isn’t possible, on roads that fail to meet the State requirements for width and/or length of access roads in high and very high fire-hazard areas.

Did Permit Sonoma Issue New Construction Permits in High Fire Risk Zones?

Yes! Quite a few of them, actually.

So, Permit Sonoma broke the law?

Well, no. It’s more complicated than that.

THE FACTS AS THE GRAND JURY FOUND THEM

Permit Sonoma has, in fact, issued permits for development on roads that don’t meet State FSR definitions for permissible one-way and dead-end roads; this county has hundreds of roads that don’t allow for concurrent ingress and egress of fire safety equipment and civilian traffic. But the language of the statute *may* let Permit Sonoma work around this significant restriction: it also states that the authority having jurisdiction may, following inspection of any issues with concurrent ingress and egress, grant an exception to the requirements if:

- A permit applicant can satisfy local fire safety officials by providing adequate mitigation.
- The permitting agency inspects the access road to determine whether the proposed mitigation would be acceptable.
- Local fire safety officials are notified of the intent to grant exceptions, and
- Local fire safety officials concur (or don’t object) to issuance of the permit.
- Parcels defined prior to 1971, whether or not a structure had been built, are exempt.

What kinds of mitigation will be adequate? This is determined on a case-by-case basis, but ranges from clearing roadside vegetation, to adding wide spots in the road, to making sure that visibility allows two-way traffic with clear views. The number of prospective workers or residents is another consideration: developments that will significantly increase the population on the road are considered differently than developments that will involve small numbers of additional people on site.

The Grand Jury explored the subject of mitigation in conversations with Permit Sonoma and all the large county fire protection districts. Fire district representatives were all Fire Marshal rank or above. Without exception, they agreed that mitigation was an acceptable and pragmatic approach to a complex issue. However, we have also learned that mitigation options are not publicly

recognized or completely described in public-facing documents or in online documentation. Only Sonoma Valley Fire District could point the Grand Jury to a section on its website that codifies, in plain English, the mitigation approach that has been described to us by Permit Sonoma and several other fire districts. This is the only time the Grand Jury has seen a fire district’s policies and procedures for approving mitigating factors in permitting clearly spelled out.

HOW THE GRAND JURY INVESTIGATED

The Grand Jury started by reading and rereading the complaint – which sounds obvious, but the complaint had more than 20,000 words of supporting documentation, so it took some time. We then considered the underlying laws, and the minutes and supporting documentation of State Board of Forestry and Fire Protection meetings discussing major amendments to the State Fire Safety Regulations. Armed with what seem to be contradictions between State FSR and Sonoma County ordinance, we moved on to discussions with a broad range of subject matter experts including representatives of the State Board, the State Fire Marshal’s Office, local and regional fire safety officials, and representatives of local permitting agencies. These documents and discussions provided valuable context.

<p>Ordinance: a law set forth by a governmental authority - specifically: a municipal regulation (e.g., Sonoma County)</p> <p>Statute: a law enacted by the legislative branch of a government (e.g., the State of California)</p> <p><i>Merriam-Webster Dictionary</i></p>

HOW DID THE DIFFERENCES BETWEEN STATUTE AND ORDINANCE OCCUR?

The **State Board** is charged with determining and administering California’s fire safety regulations. The **Department of Forestry and Fire Protection** (CAL FIRE) is the entity that actually fights fires; the **State Fire Marshal** heads the part of CAL FIRE responsible for fire protection and enforcing fire safety regulations.

Prior to December 2020, local fire safety ordinances were “*certified*” by the State Board, ensuring that the County was compliant with State requirements. Sonoma County’s 2017 Fire Safety Ordinance (which predated the October 2017 Tubbs Fire) included a provision that applications for new construction—on roads that didn’t meet county fire safety standards, would only be allowed if Permit Sonoma granted an exception due to mitigation providing the “same practical effect” as state fire safety law. *The State Board certified Sonoma County’s 2017 Fire Safety Ordinance.*

Following the major fires in 2017, 2018 and 2019 in Sonoma County and elsewhere, the State Board debated and eventually adopted several more-restrictive statutory provisions, including eliminating a turnout every quarter of a mile and, significantly, eliminating the use of “same practical effect” as a basis for granting exceptions. In other words, the statute went from “Do this, or something pretty much like it” to “Do this. No exceptions.” The changes to state law, while subtle, were significantly more restrictive; in consequence, Sonoma County’s 2017 ordinance was no longer fully compliant with state law. The Sonoma County Board of Supervisors then proposed a new ordinance to the State Board—and *the State Board refused to certify it.*

Sonoma County wasn’t the only county with concerns about the new state regulations; at least two other counties filed similar proposed ordinances and were denied certification. Sonoma County pushed forward, and in November 2020 communicated its intent to request certification even

though State Board staff said they wouldn't endorse the proposed certification—leaving it up to State Board members to either hold the line on the Board's regulations or certify an ordinance that staff reported was noncompliant with the new state law.

The State Board found another path: stop certifying local ordinances! That decision left Sonoma County free to pass its own ordinance. In effect, the State shifted responsibility to the County, making it choose between two seemingly bad options:

- deny permits because the roads are non-compliant with the FSR and risk litigation for 'taking' property development rights; or
- approve new permits on roads that don't meet FSR requirements, and risk future legal challenges to these permits based on the discrepancy between statute and ordinance.

The citizen's complaint included correspondence between Sonoma County officials and the State Board demonstrating that the County wanted fewer development restrictions in its local ordinance than the State Board required in its amended law. A review of these documents with State Board personnel was consistent with our interpretation.

The citizens went on to complain that:

1. The County is allowing new development on unsafe roads in fire-prone areas.
2. The County has put public and firefighter safety at risk by applying exceptions and exemptions that do not follow the State FSRs
and
3. The County has knowingly ignored dead-end road-length limits by allowing new development on existing roads and these requirements cannot be waived via exception.
4. The County has misused the exception mechanism regarding minimum road width.
5. The County has violated FSRs by not limiting exceptions to structures within a single development parcel.
6. The County is allowing agricultural exemptions on roads that are not solely used for agriculture, mining, or timber.

GRAND JURY OBSERVATIONS AND CONCLUSIONS

As listed above, the complaints received by the Grand Jury fall into two groups:

- public and first responder *safety is at risk*; and
- *specific provisions* in the State Fire Safety Regulations *are being violated*.

We investigated each of these classes of complaint categorically: safety questions were discussed at length with local and State fire safety officials; transparency questions were addressed with permitting personnel; and specific allegations were considered by looking at the types of mitigation that professional first responders found to be acceptable—and by asking, "what do you do when there's a problem?" Here's what we learned:

Public and Firefighter Safety Concerns:

1. The County is allowing new development on unsafe roads in fire-prone areas.
2. The County has put public and firefighter safety at risk by applying exceptions and exemptions that do not follow the State FSRs.

The State FSR is clear: there should be no new development on roads that don't allow concurrent vehicle ingress and egress unless local fire safety officials sign off. This ignores the many billions of dollars of undeveloped property on 'noncompliant' roads in the State of California: enforcement that precludes all new development might be politically impossible. We asked fire safety officials how they reconcile this conundrum, and the answers were effectively unanimous: new development is a consideration, but not the issue. None of the respondents felt that local permitting agencies were adding significant public or firefighter risk with the new development that has been authorized since the FSR was changed in 2020.

As one fire chief noted: "It's the firefighter's burden" to keep the public safe in inherently unsafe conditions. Road width and dead-end length are issues regardless of permissions to build typical new structures. Construction of buildings that materially increase the amount of traffic or the number of people on site calls for more substantial mitigation, and in some cases has been denied when suitable safety mitigations couldn't be identified. Every fire safety official we interviewed was quick to acknowledge that substandard roads are common; that first responders recognize this risk and do their best to communicate these risks with each other in advance of response; and that permitting officials engage fire safety officers in construction permit reviews when unsafe conditions are present. Every one of them said that they believed the local permitting officials were doing the job as expected and required.

Public safety, however, is a separate consideration; there is no practical way for a Grand Jury to determine whether the public interest will be better served by more restrictive development than the County currently requires (but the State seems to demand). That's a political matter which Grand Juries are expressly precluded from considering and a legal question that the Courts may someday be required to answer. Either way, it isn't something this Grand Jury will address.

FSR-Specific Issues in the Complaint

3. The County has knowingly ignored dead-end road-length limits by allowing new development on existing roads and these requirements cannot be waived via exception.
4. Sonoma County has misused the exception mechanism regarding minimum road width.
5. The County has violated FSRs by not limiting exceptions to structures within a single development parcel.
6. The County is allowing agricultural exemptions on roads that are not solely used for agriculture, mining, or timber.

Fully investigating these complaints requires a deep dive into the language of the laws. For those who wish to understand the arguments, the appendix of this report links to the applicable sections of the statute and the ordinance; the language is materially different.

Issue 3. Dead end road length limits are being ignored:

According to the FSR, dead end roads can't be more than one mile long when zoning requires 20 acres or more per parcel, and as zoning density goes up, allowable road lengths get shorter.

According to the complainants, the County is granting development permits on long dead-end roads—such as Los Alamos Road in eastern Sonoma County—and any new development on these roads is precluded by law.

Observations: Road length limits were a feature of our discussions with fire safety officials, none of whom expressed any additional concern about new development on dead end roads. *All* housing on roads like this (and there are many in the county) is a problem for first responders; however, none of the chiefs we spoke with said restricting new development would materially improve first responder safety.

Issue 4. Exceptions are being granted for minimum road width:

The FSR language is clear: two-way roads need to be at least 20 feet wide, and one-way roads need to be at least 12 feet wide (and cannot be longer than ½ mile); either way, shoulders are also required which means additional hardscape width.

Observations: There are many, many roads in this county that don't meet these requirements. Trying to identify them all would take concerted effort from a GIS (Geographic Information System) mapping team armed with geospatial image recognition tools and a great deal of patience. Enforcing these constraints would also severely limit future residential and agricultural development in the County.

These requirements are difficult to mitigate. Many of these roads are private; the status of shared maintenance agreements is unknown; and the cost of making a substandard road wide (or short) enough to meet the requirements is substantial.

Issue 5. Exceptions and Exemptions are granted in violation of statute:

An *exemption* is a circumstance that means statutory requirements do not apply. An *exception* is an alternative to a standard that may be necessary (due to health, safety, and physical site limitations or other conditions) to mitigate a problem. There are several possible “Exceptions” that allow development in circumstances that would otherwise violate the State FSR.

Observations: This is the essential incongruity between statute and ordinance. The statute limits “Same Practical Effect” *exceptions* to mitigation of “Defensible Space” so *very* few permits for development in high fire risk areas are allowed by statute. The County ordinance is less restrictive: it interprets the definition of “Same Practical Effect” to allow mitigation plans in more cases, even when FSR road width and length limits preclude them.

The State FSR *defines* “Same Practical Effect” this way:

§ 1270.01. Definitions: (aa) 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:

- (1) access for emergency wildland fire equipment
- (2) safe civilian evacuation
- (3) signing that avoids delays in emergency equipment response
- (4) available and accessible water to effectively attack Wildfire or defend a Structure from Wildfire,
- (5) fuel modification sufficient for civilian and fire fighter safety.

Fire Safety in Rural Sonoma County

As you can see, this is a generalized statement: the definition makes it sound like “Same Practical Effect” mitigations are allowed if they provide for fire fighter and public safety.

BUT... § 1270.07 says “an Exception to standards within this Subchapter may be allowed by the Inspection entity in accordance with 14 CCR § 1270.06 (Inspections) where the Exceptions provide the Same Practical Effect as these regulations towards providing Defensible Space...” *And this is the only place in the entire FSR where Same Practical Effect exceptions are cited.* A reasonable person might infer—as the complainants did—that the only application of Same Practical Effect exceptions relates to mitigation of defensible space requirements.

Our discussions with counsel for the State Board focused on this discrepancy; partially because it was highlighted in the complaint but also because it is the heart of the disagreement in correspondence between County Counsel and counsel to the State Board. State Board representatives were clear with us that the more restrictive interpretation was intentional: “Same Practical Effect” exceptions *only* apply to defensible space requirements. But—and it’s a big But—the State Board could have persisted in this interpretation by refusing to certify the County ordinance; instead, the State stopped certifying all local ordinances, thereby avoiding the political consequences of this highly restrictive position.

A statewide search for clarifying litigation has turned up nothing. Discussions with fire safety chiefs on this matter were no more illuminating: none of them believe that rules denying all mitigation programs would be practically acceptable. We concur.

The appendix includes links to the complete State Fire Safety Regulations and the County Fire Safety Ordinance for readers who wish to fully understand the issues and the laws.

SUMMATION

The complaint was well worth investigating, but we ultimately concluded:

- The specific allegations of new developments on roads that appear to be deficient according to the State FSR are correct, but we found no evidence that any of these developments would add material danger to inherently dangerous circumstances.
- The statutory requirements defined by the State Board of Forestry and Fire Protection regarding ingress and egress are clear to both fire safety officials and the Grand Jury, but none of the fire safety officials we interviewed said they believed that strict adherence to these regulations would materially benefit first responders or the public.
- There is enough ambiguity in the language of the State FSR to make it arguable that local permitting officials (and their Supervisors) have the authority to allow mitigating efforts.

The County *could* simultaneously improve public awareness of development in dangerous circumstances while increasing first responder input into permitted development on roads that don't meet the State standards. Specifically, the Grand Jury believes that Permit Sonoma can achieve both goals by requiring public notice and authoritative review of any development that occurs on a substandard road within the State Responsibility Area. Permit Sonoma has a variety of tools it can apply towards this end, ranging from simply requiring permit applicants to confirm that access roads meet FSR requirements (and propose a mitigation plan if they don't) to adding FSR non-compliance to the list of conditions that trigger formal Design Review requirements.

Permit Sonoma also can formally engage and inform fire safety officials in development of specific mitigation plans and, more importantly, include them in publications that inform the public about these dangerous conditions. Finally, we believe the public interest would be very well served by informing property owners about the inherent dangers of development on roads that will be problematic during wildfires. The County is well equipped to employ GIS technologies (now used to create parcel maps, and also to describe active wildfire boundaries) to map every road in the SRA that doesn't meet State Minimum Fire Safe Regulations. The public should see for themselves—with graphic depiction—where the risks are, and the improvement in first responder safety will make these recommendations a win for everyone.

FINDINGS

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

RECOMMENDATIONS

- R1. By November 1, 2024, the Board of Supervisors will direct Permit Sonoma to publish an applicant's guide to fire safety ingress and egress requirements and mitigation procedures for applications on roads that don't meet FSR requirements.
- R2. By November 1, 2024, the Board of Supervisors will direct Permit Sonoma to include administrative review of *all* exceptional fire safety mitigation plans to the list of permits needing approval by either Permit Sonoma Design Review Committee or Permit Sonoma Project Review Advisory Committee.
- R3. By November 1, 2024, the Board of Supervisors will direct Permit Sonoma to meet and confer with all independent Fire Prevention agencies to review its mitigation and appeal procedures by February 1, 2025.
- R4. By November 1, 2024, the Board of Supervisors will direct Permit Sonoma to identify and map all roads within the SRA that don't meet State FSR standards and publish that map on the County Department of Emergency Management website by February 28, 2025.

REQUIRED RESPONSES

Pursuant to Penal Code §§ 933 and 933.05, the grand jury requires responses as follows:

- Sonoma County Board of Supervisors (R1, R2, R3, R4)
- The governing body indicated above should be aware that their comments and responses must be conducted subject to the notice, agenda, and open meeting requirements of the Brown Act.

APPENDICES

California [Board of Forestry & Fire Protection](#):

[State Minimum Fire Safe Regulations](#)

[https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I67C78930A76C11ED82EDF8F326A06467&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I67C78930A76C11ED82EDF8F326A06467&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default))

[2017 Sonoma County Fire Safety Ordinance 6184](#)

<https://mcclibraryfunctions.azurewebsites.us/api/ordinanceDownload/16331/804801/pdf>

[2020 Sonoma County Fire Safety Ordinance 6318](#)

<https://mcclibraryfunctions.azurewebsites.us/api/ordinanceDownload/16331/1037942/pdf>

Sec. 13-22.01 Purpose. This article is adopted for the purpose of establishing minimum fire safe standards for development within the unincorporated area of the county located in the State Responsibility Area subject to the provisions of California Code of Regulations, Title 14 Natural Resources Code, Division 1.5, Chapter 7, Subchapter 2, Article 1-5, SRA Fire Safe Regulations verbatim, or certified and the Local Responsibility Area (LRA) when authorized by Sonoma County Fire Code as amended when not subject to other regulated building standards. **Where a development subject to the provisions of this article cannot meet a specified standard, an exception to the standard may be applied for pursuant to Section 13- 23.**

[2022 Sonoma County Fire Safety Ordinance 6396](#)

The 2022 California Fire Code as adopted by reference and amended in this article, shall constitute the County Fire Code. ...

https://library.municode.com/ca/sonoma_county/ordinances/code_of_ordinances?nodeId=1187672

Sonoma Valley Fire District mitigation plan:

[Alternate Materials, Design and Methods:](#)

https://docs.google.com/document/d/1jyhuLIH0UKHuO9JZ-KGWMOF6SW6e37_MtKHYPkd00vrc/edit?usp=sharing

ⁱ CC Regulations Title 14, Division 1.5, Chapter 7, Subchapter 2