

BOARD OF FORESTRY AND FIRE PROTECTION

P.O. Box 944246
SACRAMENTO, CA 94244-2460
Website: www.bof.fire.ca.gov
(916) 653-8007



October 1, 2008

Ms. Teri Ashby, Esq.
Deputy Attorney General

RE: Review of Calaveras County local fire safe ordinances.

Dear Ms. Ashby:

Board of Forestry and Fire Protection (Board) staff conducted a field review on September 12, 2008 at the request of the Tuolumne-Calaveras Unit (TCU). Following that review, staff compiled the following regarding the implementation of 14 CCR 1270 in Calaveras County. We are requesting your opinion in this matter.

Background: Calaveras County received final certification from the Board of its local SRA Fire Safe ordinances pursuant to PRC 4290 and 14 CCR 1270.01 and 1270.03 on April 28, 1992. These ordinances established minimum wildfire protection standards in conjunction with building construction and development in SRA. The County certification included:

- 1) Adoption of local ordinances that allow for "exceptions" to local certified ordinances (see 8.10.08 (q) and 8.10.48);
- 2) County designation of inspection authority for compliance with local ordinances (8.10.16); and
- 3) Maximum driveway grades of 16% (for elevations < 3000 ft (8.10.34).

The County has also established a set of "mitigations" that support "exceptions" per local code 8.10.48.

1) The Unit has observed past non-compliance with the Board's certified SRA Fire Safe Regulations for new development in Calaveras County related to steep driveway construction. Should the Board or Department intervene to facilitate implementation of the County's desired "mitigation" measures for steep driveways? Since certification of local ordinances is a Board of Forestry and Fire Protection responsibility, it appears that these mitigations (adopted since the original certification) would need to also be re-certified by the BOF.

Past internal decisions made by the County have resulted in approval of very steep driveways that exceed the minimum state or locally certified ordinance and some have been approved without proper "mitigations". Currently the local fire protection districts have stated that they have great concern about allowing steep driveways as they inhibit emergency access such as ambulances and fire engines.

The County building inspectors, who are the designated inspecting authority, intend to enforce County codes and will consider approving building permits that allow driveways that are greater than 16% grade only when acceptable "mitigations" are used and an "exceptions" to local ordinances are granted. Apparently applicants for building permits interpret one of the mitigations, "paving" greater than 16 % grades, as the only mitigation required. This is based on an applicants interpretation of local ordinance 8.10.340 Roads and driveways. (From Ord. 2701 § 2, 2002(part); Ord. 2226 § 1(part), 1992), see attachment Chapter titled 8.10 FIRE AND LIFE SAFETY REGULATIONS)

The County would like to reinforce that multiple mitigations (such as greater driveway width, curbs etc) may be necessary. Local builders and realtors are affected in that decisions to not permit building or requiring more expensive mitigations due to inability to meet state minimum or local certified ordinance is creating financial hardships or otherwise disallowing them to build on their property.

2) The Unit requested clarification of whether lots subdivided prior to 1991 are subject to SRA fire safe development rules (14 CCR 1270 et seq. authorized by PRC 4290).

PRC 4290 states *"These regulations do not apply where an application was filed prior to January 1, 1991, or to parcels or tentative map or other developments approved prior to January 1, 1991 if the final map the tentative map is approved in the time prescribed by local ordinances"* Section 14 CCR 1270.01 also states this.

Are properties with parcel or tentative maps approved before 1991, subject to the regulations under PRC 4290, 14 CCR 1270 et seq, or locally certified ordinances? See the attached AG opinion #92-807 dated March 17, 1993 that we think addresses the issue. In it, it is indicated that if the approval prior to 1991 was silent on these issues, then current regulations would apply.

3) The Unit seeks guidance on the obligations of an individual to improve to minimum state standards jointly used private roads once they have been issued a building permit.

Currently new homes are being built on large rural lots where a private lane accessing several of the properties does not meet minimum state standards or certified local rules. The Unit believes we have no authority to apply 14 CCR 1270 regulations to a private existing road unless the parcel has been split. Once the road enters the parcel it becomes a driveway where 14 CCR 1270 driveway regulations apply.

Also, the Unit indicated that there was an opinion, possibly involving Bruce Crane, in 2003 for Mariposa County addressing this situation.

4) Board staff would like to clarify the following authorities or questions to ensure the Board is proceeding within its authority.

- A. What authority does the Board have in reviewing or otherwise commenting on decisions being made by a certified local inspection authority administering certified local ordinance, specifically the appropriateness of granted "exceptions" to local ordinances for driveway grades?
- B. What authority does CAL FIRE have to review or otherwise comment on implementation of local certified fire safe ordinances where the "inspection authority" has been granted or somehow assumed by the County? Does 14 CCR 1270.04 Provisions for Application of these Regulations clearly state that CAL FIRE shall review development permits?
- C. Do structures built pre- 1991 that recently have burned down in wildfires require that the new building permit meets 14 CCR 1270 state standards or local certified ordinances?
- D. Can a "driveway", as defined in 14 CCR 1271.00 Definitions, serve up to two parcels, more than two parcels, or be limited to one parcel. (this issue was requested form AEU regarding questions from El Dorado County)

From 14 CCR 1271.00: *"Driveway: A vehicular access that serves no more than two buildings, with no more than three dwelling units on a single parcel, and any number of accessory buildings."*

Sincerely,



George D. Gentry
Executive Officer

Attachments:

- 1. Calaveras County certified local SRA Fire Safe ordinances p on April 28, 1992.
- 2. Calaveras County Chapter 8.10 FIRE AND LIFE SAFETY REGULATIONS, Ord. 2701 § 2, 2002
- 3. AG opinion #92-807 dated March 17, 1993



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 327-4254
Facsimile: (916) 327-2319
E-Mail: Teri.Ashby@doj.ca.gov

February 27, 2009

George Gentry
Executive Officer
Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

RE: Calaveras County Local Fire Safe Ordinances.

Dear Mr. Gentry:

You have asked for a legal opinion on various issues regarding local fire safe ordinances in general and Calaveras County ordinances in particular. I have set forth below the facts as I understand them from your written request and subsequent conversations with you, the applicable law and your specific questions followed by my analysis for each question.

Facts Giving Rise to the Issues Presented

Calaveras County (County) applied to the Board of Forestry and Fire Protection (Board) for certification of its local State Responsibility Area (SRA) fire safe ordinances in February, 1992. The Board reviewed and certified the County's local ordinances in April, 1992. For the most part, the ordinances were verbatim from the Board's SRA fire safe regulations, beginning with section 1270 of Title 14 of the California Code of Regulations. In 2007, the County revised some of its fire safe ordinances but failed to have these revisions certified by the Board. Some of these revised ordinances are less stringent than Board regulations. Two in particular relate to roads and driveway specifications. The originally certified County ordinance that prescribes grading requirements for roads and driveways followed Board regulations and allowed a maximum grade of 16%. The revised ordinance maintains the 16% grade limit but states "[a]ny driveway with a grade exceeding the maximum grade permitted shall be provided with an asphalt or concrete surface." (Calaveras Health & Saf. Code, § 8.10.340, subd. B.2.) Building permit applicants interpret this language as allowing exceptions to the 16% maximum grade limit provided the greater grade is paved with asphalt or concrete. This interpretation does not comply with the Board's regulations and has resulted in County approval of very steep driveways that

exceed the Board's requirements. In addition, the original certified ordinances included specifications for roadway width, surface, grades and radius that mirrored the Board's specifications. The revised ordinances delete these specifications and instead require all new roads to comply "with the latest, adopted version of the Calaveras County road ordinance." (Calaveras Health & Saf. Code § 8.10340, subd. D.1.) The County's road ordinance has not been certified by the Board.

Similar issues have arisen in other counties and the Department of Forestry and Fire Protection (Department) requests clarification from the Board as to (1) the authority of local jurisdictions over revised uncertified ordinances, (2) whether lots subdivided prior to 1991 are subject to SRA Fire Safe regulations and (3) whether new building permits can require individuals to improve jointly used private roads to minimum state standards.

Legal Background

Purpose and Authority for Fire Safe Regulations

State law requires the Board to adopt and enforce regulations necessary for the prevention and suppression of forest fires. (Pub. Resources Code § 4111.) In 1987 the Legislature enacted a statute directing the Board to specifically "adopt regulations implementing minimum fire safety standards related to defensible space" in state responsibility lands. (Pub. Resources Code § 4290.)¹ The regulations apply to the perimeters and access to all residential, commercial, and industrial building construction in state responsibility areas and must include (1) road standards for fire equipment access, (2) standards for signs identifying streets, roads, and buildings, (3) minimum private water supply reserves for emergency fire use, and (4) fuel breaks and greenbelts. (Ibid.) The purpose of these regulations is to provide for basic emergency access and perimeter wildfire protection measures in requirements for future design and construction of structures, subdivisions and developments in state responsibility areas (Cal. Code Regs., tit. §1270.01.)

These state fire safe regulations preempt local ordinances unless local ordinances provide standards that "*equal or exceed minimum regulations adopted by the state.*" (Pub. Resources Code § 4290)(italics added.) Moreover, local jurisdictions have no authority to enact ordinances that fail to provide the minimum standards necessary to provide for this basic emergency access and perimeter wildfire protection. The general authority of a county or city to make and enforce local ordinances is set forth in section 7 of article XI of the California Constitution and is subject to the limitations that it be exercised within territorial limits and be *subordinate to state law.* (*Candid Enterprises, Inc. v. Grossmont Union High School District* (1985) 29 Cal.3d 878, 885, italics added.)

¹The Board classifies "all lands within the state for the purpose of determining areas in which the financial responsibility of preventing and suppressing fires is primarily the responsibility of the state." Areas not so classified are primarily the responsibility of local or federal agencies. (Pub. Resources Code §§ 4125, 4126, 4127.)

Thus, the Board's fire safe regulations, subject to certain limitations (see Application of the Fire Safe Regulations section, below) set the minimum fire safety standards for basic emergency access and perimeter wildfire protection measures in state responsibility areas. Any local ordinances must meet or exceed the limitations of the Board's regulations or they are invalid and, in such instances, the Board's regulations supersede the local ordinances.

Application of the Fire Safe Regulations

It is important to note that a grandfather clause in Public Resources Code section 4290, provides that the Board's fire safe regulations do *not* apply "where an application for a building permit was filed prior to January 1, 1991, or to parcel or tentative maps or other developments approved prior to January 1, 1991, if the final map for the tentative map is approved with the time prescribed by the local ordinance." In analyzing this language, an Attorney General Opinion concludes that even though a person applies for a building permit after January 1, 1991, the Board's fire safe regulations are inapplicable to any matters approved prior to January 1, 1991, as part of the parcel or tentative map process. Conversely, to the extent that conditions relating to the perimeters and access to the buildings were not imposed as part of the approval of the parcel or tentative maps, the Board's regulations would apply to those constructions. (76 Ops. Cal.Atty.Gen. 19 (1993).) This interpretation of the statute's grandfather clause gives effect to the statute as a whole and to every word and clause (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal. 3d 1149, 1159) and complies with statutory construction law requiring that exceptions to the general rule of a statute are to be strictly construed. (*Da Vinci Group v. San Francisco Residential Rent etc. Bd.*(1992) 5 Cal.App.4th 24, 28.)

In summary, the Board's fire safe regulations apply only to buildings where construction permit applications were filed after January 1, 1991, *and* in the following three scenarios: (1) when the building is constructed on land for which no parcel or tentative map is required, (2) when the building is constructed on a parcel created by a parcel or tentative map approved *after* January 1, 1991, and (3) when the building is constructed on a parcel created by a parcel or tentative map approved *prior* to January 1, 1991, to the extent that conditions relating to the perimeters and access to the buildings were not imposed as part of the approval of the pre- 1991 parcel or tentative maps.

Inspection and Enforcement Authority

Both the Board and the Department are charged with enforcing all state forest and fire laws. (Pub. Resource Code §§ 4111, 4119.) State responsibility lands to which these fire safe regulations apply are under the authority of the Department (Pub. Resources Code §§ 4119, 4290) and the Department, or its duly authorized agent, is authorized to inspect the exteriors of all properties to ascertain compliance with all state forest and fire laws. (Pub. Resources Code § 4119.)

Local jurisdictions can assume inspection authority “where the Board’s regulations have been implemented through that jurisdiction’s building permit or subdivision approval process.” (Cal. Code Regs., tit. 14, § 1270.05 subd. (a)(3).) Local jurisdictions can implement the Board’s fire safe regulations by simply incorporating the Board’s regulations into the local ordinances or repeating the regulations verbatim in the local ordinances. Reports of violations must be provided to the Department’s unit that administers the Board’s regulations in that county. (Cal. Code Regs., tit. 14, § 1270.05 subd. (b).) Except as discussed below, local jurisdictions that maintain ordinances relating to fire safe requirements that are in any way different from the Board’s regulations do not have inspection authority under state law. (See, Cal. Code Regs., tit. 14, § 1270.05.)

Another way for local jurisdictions to obtain inspection authority is by having the Board certify their local ordinances as equal or exceeding the Board’s regulations. The Board allows local jurisdictions to apply to the Board for certification that their local ordinances equal or exceed the minimum standards of the Board’s regulations. (Cal. Code Regs., tit. §1270.03.) This is entirely voluntary but has the practical effect of providing local jurisdictions the ability to pass ordinances that contain alternative standards from the state regulations provided the practical effect of the alternative standards meets or exceeds the Board’s standards. By certifying local ordinances that may be different from the Board’s regulations, the Board confirms that the standards provided for in the local ordinances equal or exceed the Board’s standards. Moreover, certification provides the Department with assurance that the local ordinances containing alternative standards meet or exceed the Board’s minimum standards, and therefore, the Department can comfortably delegate its inspection authority to local jurisdictions with certified ordinances. However, delegation under these circumstances is not required under the regulations and the Department can retain inspection authority if it chooses. Certification does not negate a local jurisdiction’s duty to report violations to the Department pursuant to section 1270.05. Nor does initial certification allow local jurisdictions to retain delegated inspection authority for ordinances that have been amended, added to or otherwise changed without having the changes certified.

To summarize, the Department has enforcement authority for the fire safe regulations and inspects for compliance in state responsibility areas. This inspection authority is delegated to local jurisdictions in *only* two instances: (1) when local jurisdictions have incorporated the Board’s regulations or implemented them verbatim into their building ordinances or, (2) when the Department delegates its inspection authority to local jurisdictions whose local ordinances have been certified by the Board as equal or exceeding the Board’s standards. The Department inspects for compliance in every other instance.² When a local jurisdiction passes or amends an ordinance that contains different requirements from the Board’s fire safe regulations and fails to have that ordinance certified, the local jurisdiction loses inspection authority. by operation of law because the ordinances no longer meet the requirement necessary for the local jurisdiction to

² Local jurisdictions that assume state fire protection responsibility on SRA land also assume inspection authority. (Cal. Code Regs., tit. 14, § 1270.05 subd.(a)(2).)

retain inspection authority. Furthermore, even when the inspection authority has been delegated, the Department retains its authority to inspect and enforce state forest and fire laws . (Pub. Resource Code § 4119.)

Exceptions to Fire Safe Standards

Board regulations allow an inspection authority (the Department or a local jurisdiction) to allow for exceptions to the fire safe standards on a case by case basis. (Cal. Code Regs., tit. 14, § 1270.07.) A request for an exception must be made in writing to the inspection authority and include the specific section for which the exception is requested, material facts supporting the reason for the exception and details of the mitigation measure proposed. (Cal. Code Regs., tit. 14, § 1270.08.) An exception may be granted only if it is “necessary due to health, safety, environmental conditions, physical site limitations or other limiting conditions such as recorded historical sites” and if it “provides the same overall practical effect as these [fire safe] regulations towards providing defensible space.” (Cal. Code Regs., tit. 14, §§ 1270.07, 1271.00.) An exception may not allow avoidance of the standards. An exception is an “alternative...that provides mitigation of the problem.” (Cal. Code Regs., tit. 14, § 1271.00.)

Exceptions are explicitly defined in the Board’s regulations and do not provide any authority for local jurisdictions with inspection authority to pass ordinances that provide standards different from the Board’s. Exceptions are made on a case by case basis only.

Questions

Question A: “What authority does the Board have in reviewing or otherwise commenting on decisions being made by a certified local inspection authority administering certified local ordinances, specifically the appropriateness of granted ‘exceptions’ to local ordinances for driveway grades?”

Answer: The Board’s regulations do not provide a process for Board review of any part of the inspection or permitting process. However, the Board has the authority to “make and *enforce* such regulations as are necessary and proper for the organization, maintenance, government and direction of the fire protective system for the prevention and suppression of forest fires” (Pub. Resources Code, § 4111.) Thus, the Board can, if it chooses, pass regulations that allow for its review of decisions by inspection authorities, either the Department or local inspection authorities, provided the regulations are consistent with state law. With regard to “commenting” on decisions being made by a local inspection authority, the Board can certainly comment at any time on whether local jurisdictions are properly adhering to the Board’s regulations.

In the case of Calaveras County’s amended ordinance that provides for “exceptions” (paved with asphalt or concrete) to the 16% grade limit for driveways , there are several problems. First, local jurisdictions have no authority to pass ordinances that include exceptions

to the fire safe regulations. Exceptions are granted on a case by case basis only. (Cal. Code Regs., tit. 14, § 1270.08.) And, any exceptions must be necessary due to health, safety, environmental conditions, physical site limitations or other limiting conditions such as recorded historical sites. (Cal. Code Regs., tit. 14, § 1271.00.) The exception must provide mitigation of these types of problems. Simply paving a grade in excess of 16% does not solve the access problems caused by such grades. Second, Calaveras County's 16% grade "exception" is invalid because it is preempted by state law. The Board's regulations do not allow for driveway grades greater than 16% whether they are paved or not. (Cal. Code Regs., tit. 14, § 1273.03.) Third, if Calaveras County wants to allow alternative standards for roadway grades, the County must also provide for mitigations that provide basic emergency access and perimeter wildfire protection measures that are equal to or exceed the Board's measures. To ensure that the County's local ordinances do this, the county should have the ordinances certified. The County's post certification amendments regarding driveway grades were never certified and could not be certified absent sufficient mitigation measures to provide the basic emergency access and perimeter wildfire protection measures required by the Board.

Because Calaveras County's ordinances do not meet or exceed the requirements of the Board's regulations the ordinances are invalid and any permits based upon those ordinances are invalid. The County has the power to enforce its own ordinances to the extent they are *not* in conflict with general state law. (Cal. Const., art. XI, § 7, *Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 140.) The Board has the authority to inform local jurisdictions when they are violating state laws. (Pub. Resources Code § 4111.)

Question B: "What authority does CAL FIRE have to review or otherwise comment on implementation of local certified fire safe ordinances where the 'inspection authority' has been granted or somehow assumed by the County? Does 14 CCR 1270.04 Provisions for Application of Regulation clearly state that CAL FIRE shall review development permits?"

Answer: The Department is charged with enforcing all state forest and fire laws (Pub. Resource Code § 4119) and can comment on or report to the Board any violation it observes even where local ordinances have been certified and the Department's inspection authority has been delegated to the local jurisdiction. Moreover, certification of local ordinances does nothing more than certify that the ordinances meet or exceed the Board's minimum standards. Even when a local jurisdiction obtains certification, it does not have inspection authority unless the Department chooses to delegate that authority to the local jurisdiction. Inspection authority is not automatically assumed under the regulations when local ordinances are certified. (See, Cal. Code Regs., tit. 14 § 1270.05.) The Department may retract inspection authority delegated to a local jurisdiction if certified local ordinances are changed and the changes are not certified. Certification does not grant local jurisdictions the right to change certified ordinances and retain their inspection authority. But whether the local jurisdiction has inspection authority or not, the purpose of the fire safe regulations is to provide defensible space in state responsibility areas and any permit granted by a local jurisdiction that violates the Board's minimum fire safe standards would be invalid.

Section 1270.04 subdivision (a) clearly states that “local jurisdictions shall provide the Director with notice of application for building permits, tentative parcel maps, tentative maps, and use permits for construction or development within SRA.” Nowhere in the regulations is there anything to suggest that local jurisdictions are relieved of this duty once their ordinances are certified. Furthermore, subdivision (c) states that local jurisdictions “shall ensure that the applicable sections of this subchapter become a condition of approval of any applicable construction or development permit or map.” Failure to do this is a violation of state law. The Department, charged with enforcing state fire laws has every right to comment on such violations and report them to the Board.

Question C: “Do structures built pre-1991 that recently have burned down in wildfires require that the new building permit meets 14 CCR 1270 state standards or local certified ordinances?”

Answer: If the new structure is situated on property that is not subject to a pre-1991 parcel or tentative map, it must meet all state standards or certified ordinances. If the new structure is situated on property that is subject to a pre-1991 parcel or tentative map, the new building permit must meet all fire safe regulations relating to the perimeters and access conditions that were *not* imposed as part of the approval of the pre-1991 parcel or tentative. (See, 76 Ops. Cal. Atty. Gen. 19 (1993).)

Question D: “Can a ‘driveway’, as defined in 14 CCR 1271.00 Definitions, serve up to two parcels, more than two parcels, or be limited to one parcel?”

Answer: A driveway is limited to one parcel and then only when that parcel has no more than two buildings (not including accessory buildings) and those two buildings have no more than three dwelling units between them. Driveway is defined in section 1271.00 as “[a] vehicular access that serves no more than two buildings, with no more than three dwelling units on a single parcel, and any number of accessory buildings.” At first blush, this definition appears to be ambiguous, thus giving rise to your question regarding the number of parcels a driveway can serve. However, the number of parcels a driveway can serve becomes clear when the definition is read in conjunction with the definition of roads, streets and private lanes which are defined as “[v]ehicular access to more than one parcel; . . . or vehicular access to a single parcel with more than two buildings or four or more dwelling units.” (Cal. Code Regs., tit. 14, § 1271.00.) When interpreting statutory language, effect should be given to the language as a whole, to every word and clause so that no part or provision is rendered useless or meaningless. (*Colombo construction Co. v. Panama Union School Dist.* (1982) 136 Cal.App.3d 868, 876.) Words of a statute must be construed in context, keeping in mind the statutory purpose, and statutory sections relating to the same subject must be harmonized, both internally and with each other. (*Dyna-Med., Inc. v. Fair Employment and Housing Comm.* (1987) 43 Cal.3 1379, 1387.) Upon reading the definition of roads, streets and private lanes, it becomes clear that a driveway can only service one parcel, because if there is more than one parcel being accessed, the vehicular access becomes a road, street or private lane. Interpreting the definition of driveway as

George Gentry
February 27, 2009
Page 8

serving more than one parcel would render useless much of the definition of roads, streets and private lanes and would be contrary to statutory construction law.

If you have any questions or wish additional analysis, please do not hesitate to contact me.

Sincerely,

TERI H. ASHBY
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

THA:

SA2004101735
Document in ProLaw



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 327-4254
Facsimile: (916) 327-2319
E-Mail: Teri.Ashby@doj.ca.gov

March 2, 2010

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

RE: 1270 Fire Safe Regulations

Dear Chris:

Set forth below is my analysis of the issues raised by the latest section 1270 plead and Board Member Giacomini's comments. Hopefully this will clear up some of the ambiguities and concerns that have arisen regarding the section 1270 Fire Safe Regulations and the Board's authority and responsibilities.

It is my understanding the Board wishes to amend its Fire Safe Regulations to clarify some of the questions and issues that have arisen in the field regarding the scope of the Fire Safe Regulations, the Board's authority, Cal Fire's authority and the process for enforcing these regulations. There has been much discussion in committee meetings and correspondence regarding the problems that have arisen from the regulations as presently written. I have attempted to express the issues in a different manner to hopefully help eliminate the struggles that have been occurring.

There are only two main areas the Board should focus on when amending the Fire Safe Regulations. First is the scope of the regulations and second is the process for certifying local ordinances and inspecting the permitted construction.

SCOPE

Public Resources Code section 4290 sets out the scope of its requirements. The Board has no authority to broaden or restrict the scope of section 4290 in its regulations. The scope is what the legislature determined it to be and is set forth within the language of 4290. However, the Board can use its regulations to better explain the scope of 4290 for those attempting to comply with section 4290 in the field. The Board's regulation, section 1270.02, is an excellent place to explain when the Board's standards do not apply to post 1991 permits as determined in

the Attorney General opinion¹ that has been much discussed. However, the section should be also include when, according to section 4290, the Board's regulations *do* apply to eliminate the argument that the Board intended to omit certain applications and thereby raise a conflict with 4290.

It appears that many of the problems from the field arise out of the difficulty in interpreting how 4290 applies to the reconstruction of buildings burned in a fire. For example, can or must a local government condition a rebuilding permit on upgrading road widths² to meet the Board's standards? I don't know the answer to that question (there are no cases or Attorney General Opinions on this point) but the problem the question raises is not a Board nor a Cal Fire problem. Neither Cal Fire nor the Board permits building construction. That authority belongs to local city and county governments³ and nothing in Public Resources Code section 4290 provides the Board with any authority to decide what or how construction permits should be granted. Section 4290 only requires the Board to adopt minimum fire safety standards that local governments in state responsibility areas must apply to permits as set out in 4290. Thus, whether to attach conditions to permits for reconstruction after a fire is a local government decision subject only to state law restrictions. Whether section 4290 or other statutes may restrict or allow local governments to condition a rebuilding permit on meeting the Board's standards in other related matters is up to the local governments to decide based upon all state statutes that may authorize or restrict local government jurisdiction. Any permitting conditions or restrictions must be defended by the local government imposing those restrictions.⁴

PROCESS

There are two process matters that are unclear under the current regulations. One, is certification of local ordinances. The current regulations⁵ do not set out a process for the Board to certify local ordinances that may be different but equal or stricter than Board standards and questions have arisen regarding the need for recertification. The amendments attempt to address this problem.

¹ (76 Ops. Cal. Atty. Gen. 19 (1993).)

² The Board has established minimum road standards for fire equipment access as two nine-foot traffic lanes. (Cal. Code Regs., tit. 14, § 1273.01.)

³ A county or city may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws." (Cal. Const., art. XI, § 7.) This constitutional authority often referred to as the "police power," is as broad as the police power exercisable by the Legislature itself (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 140) and subordinate only to state law. (*Candid Enterprises, Inc. v. Grossmont Union High School District* (1985) 29 Cal.3d 878, 885.)

⁴ See, 78 Ops. Cal. Atty. Gen. 53 (1995) concluding that a city or county may condition the issuing of a building permit for the construction of a single-family residence on the requirement by ordinance of the installation of a paved driveway from the property line to the residence for emergency vehicle access.

⁵ (Cal. Code Regs., tit. 14, § 1270.03.)

The other process issue involves inspection authority. Cal Fire is charged with enforcing all state forest and fire laws. This authority includes inspection authority.⁶ The current regulations allow Cal Fire to delegate its inspection authority to local jurisdictions that have assumed state fire protection responsibility on SRA lands or where the Board's regulations have been implemented through local ordinances. This would include certification or verbatim inclusion of the Board's standards. However, there is no process for this delegation. It operates by regulation⁷ and this has led to local Cal Fire units not realizing or understanding when their inspection authority has been delegated. A formal delegation at the time of certification would alleviate this problem. The regulations should make clear that Cal Fire's inspection authority is being *delegated* not relinquished. Cal Fire should maintain its ultimate inspection authority as a check on local government inspections.

Hopefully this alleviates some of your questions and concerns. We can discuss this further at the committee meeting.

Sincerely,



TERI H. ASHBY
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

cc. Pam Giacomini, Board Member
George Gentry, Executive Officer

SA200410:735
30960939 do:

⁶(Pub. Resources Code, § 4119.)

⁷(Cal. Code Regs., tit. 14, § 1270.05.)

TO BE PUBLISHED THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

DANIEL E. LUNGREN
Attorney General

OPINION	:	
	:	No. 92-807
of	:	
	:	
DANIEL E. LUNGREN	:	<u>MARCH 17, 1993</u>
Attorney General	:	
	:	
GREGORY L. GONOT	:	
Deputy Attorney General	:	
	:	

THE HONORABLE JOHN F. HAHN, COUNTY COUNSEL, COUNTY OF AMADOR, has requested an opinion on the following question:

Do the fire safety standards adopted by the Board of Forestry for development on state responsibility area lands apply to the perimeters and access to buildings constructed after January 1, 1991, on parcels created by parcel or tentative maps approved prior to January 1, 1991?

CONCLUSION

The fire safety standards adopted by the Board of Forestry for development on state responsibility area lands apply to the perimeters and access to buildings constructed after January 1, 1991, on parcels created by parcel or tentative maps approved prior to January 1, 1991, to the extent that conditions relating to the perimeters and access to the buildings were not imposed as part of the approval of the parcel or tentative maps.

ANALYSIS

By legislation enacted in 1987 (Stats. 1987, ch. 955, § 2), the State Board of Forestry ("Board") was directed to adopt minimum fire safety standards for state responsibility area lands¹ under the authority of the Department of Forestry and Fire Protection. Public Resources Code section 4290² states:

"(a) The board shall adopt regulations implementing minimum fire safety standards related to defensible space which are applicable to state responsibility area lands under the authority of the department. These regulations apply to the perimeters and access to all residential, commercial, and industrial building construction within state responsibility areas approved after January 1, 1991. The board may not adopt building standards, as defined in Section 18909 of the Health and Safety Code, under the authority of this section. As an integral part of fire safety standards, the State Fire Marshal has the authority to adopt regulations for roof coverings and openings into the attic areas of buildings specified in Section 13108.5 of the Health and Safety Code. The regulations apply to the placement of mobile homes as defined by National Fire Protection Association standards. *These regulations do not apply where an application for a building permit was filed prior to January 1, 1991, or to parcel or tentative maps or other developments approved prior to January 1, 1991, if the final map for the tentative map is approved within the time prescribed by the local ordinance.* The regulations shall include all of the following:

- "(1) Road standards for fire equipment access.
- "(2) Standards for signs identifying streets, roads, and buildings.
- "(3) Minimum private water supply reserves for emergency fire use.
- "(4) Fuel breaks and greenbelts.

"(b) These regulations do not supersede local regulations which equal or exceed minimum regulations adopted by the state." (Emphasis added.)

As indicated in the statute, the Board's regulations are to help create "defensible space"³ for the protection of state responsibility areas against wildfires.

¹ On state responsibility area lands (see Pub. Resources Code, §§ 4126-4127; Cal. Code Regs., tit. 14, §§ 1220-1220.5), the financial responsibility of preventing and suppressing fires is primarily the responsibility of the state, as opposed to local or federal agencies. (Pub. Resources Code, § 4125.)

² All references hereafter to the Public Resources Code prior to footnote 8 are by section number only.

³ Defensible space is defined as:

"The area within the perimeter of a parcel, development, neighborhood or community where basic wild land fire protection practices and measures are implemented, providing the key point of defense from an

Originally the regulations were to be applicable with respect to all building construction approved after July 1, 1989, but by subsequent legislation (Stats. 1989, ch. 60, § 1), the threshold date was changed to January 1, 1991. The regulations (Cal. Code Regs., tit. 14, §§ 1270-1276.03)⁴ in fact became operative on May 30, 1991.

A "grandfather clause" in the underlying statute provides that "[t]hese regulations do not apply where an application for a building permit was filed prior to January 1, 1991, or to parcel or tentative maps or other developments approved prior to January 1, 1991, if the final map for the tentative map is approved within the time prescribed by the local ordinance." (§ 4290.) We are asked to determine whether the regulations apply to an application for a building permit filed *after* January 1, 1991, for a dwelling to be built on a parcel lawfully created by a parcel map or tentative map approved *prior* to January 1, 1991.

We begin by noting that the grandfather clause contains two ostensibly independent exceptions to the application of the regulations. One is directed at building permits and the other at subdivision maps.⁵ These exceptions were apparently designed by the Legislature to exempt construction and development activity already in the "pipeline" as of January 1, 1991. According to Regulation 1270.01, it is the "*future* design and construction of structures, subdivisions and development" (emphasis added) which is to trigger application of the regulations.

Thus, although an application for a building permit is not made until after January 1, 1991, the proposed construction may garner an exemption if the parcel is covered by a parcel or tentative map approved prior to January 1, 1991 (provided that the final map for the tentative map is approved within the time prescribed by the local ordinance).⁶ However, this raises the question of the purpose of the building permit exception since virtually any application for a building permit will be preceded by a parcel or tentative map approval for the parcel upon which the construction is proposed, even one which may have been obtained in the distant past.⁷ A well-established rule of statutory

approaching wildfire or defense against encroaching wild fires 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, street names and building identification, and fuel modification measures." (Cal. Code Regs., tit. 14, § 1271.00.)

⁴ All references hereafter to title 14 of the California Code of Regulations are by regulation number only.

⁵ A parcel map is filed when creating subdivisions of four or fewer parcels, while a tentative map and final map are filed when creating subdivisions of five or more parcels. (Gov. Code, §§ 66426, 66428.)

⁶ The approval of a final map is a ministerial function once the tentative map has been approved and the conditions that were attached to the tentative map have been fulfilled. (Gov. Code, §§ 66458, 66473, 66474.1; *Santa Monica Pines, Ltd. v. Rent Control Board* (1984) 35 Cal.3d 858, 865; *Youngblood v. Board of Supervisors* (1978) 22 Cal.3d 644, 653.)

⁷ Statutory provisions for tentative maps and final maps first appeared in 1929 (Stats. 1929, ch. 838), while parcel maps were first required in 1971 (Stats. 1971, ch. 1446). (See Cal. Subdivision Map Act Practice (Cont.Ed.Bar 1987) §§ 1.2-1.3, pp. 3-5.)

construction holds that "[w]henver possible, effect should be given to the statute as a whole, and to its every word and clause, so that no part or provision will be useless or meaningless. . . ." (*Colombo Construction Co. v. Panama Union School Dist.* (1982) 136 Cal.App.3d 868, 876; see *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1149, 1159 ["In analyzing statutory language, we seek to give meaning to every word and phrase in the statute to accomplish a result consistent with the legislative purpose, i.e., the object to be achieved and the evil to be prevented by the legislation"].)

Our task then is to search for an interpretation of section 4290 which is not only consistent with the legislative purpose but also furnishes independent significance to each of the two exceptions. We believe that the answer lies in the different manner in which each exception is phrased. The first is "where an application for a building permit was filed prior to January 1, 1991," and the second is "to parcel or tentative maps or other developments approved prior to January 1, 1991" The "where" of the first exception implies a broad exemption encompassing all activity related to the building permit, whereas the "to" of the second exception implies an exemption which is limited to matters contained in the parcel or tentative map approval.

Under this reading of section 4290, only those perimeter and access conditions which were imposed during the parcel or tentative map approval process would be immune from the effect of the regulations. Typically, parcel and tentative map approvals include requirements for the improvement of the parcels within the subdivision. The Subdivision Map Act (Gov. Code, §§ 66410-66499.37; "Act")⁸ establishes general criteria for land development planning in the creation of subdivisions throughout the state. Cities and counties are given authority under the legislation to regulate the design and improvement of divisions of land in their areas through a process of approving subdivision maps required to be filed by each subdivider. (§ 66411; *Santa Monica Pines, Ltd. v. Rent Control Board*, *supra*, 35 Cal.3d 858, 869; *South Central Coast Regional Com. v. Charles A. Pratt Construction Co.* (1982) 128 Cal.App.3d 830, 844-845.) A subdivider must obtain approval of the appropriate map before the subdivided parcels are offered for sale, or lease, or are financed. (§§ 66499.30, 66499.31; *Bright v. Board of Supervisors* (1977) 66 Cal.App.3d 191, 193-194.)

The Act sets forth procedures by which cities and counties may impose a variety of specific conditions when approving the subdivision maps. Such conditions typically cover streets, public access rights, drainage, public utility easements, and parks, among other improvements. (§§ 66475-66489; see *Associated Home Builders etc., Inc. v. City of Walnut Creek* (1971) 4 Cal.3d 633, 639-647; *Ayers v. City Council of Los Angeles* (1949) 34 Cal.2d 31, 37-43.)

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. "Design" is defined as:

". . . (1) street alignments, grades and widths; (2) drainage and sanitary facilities and utilities, including alignments and grades thereof; (3) location and size of all required easements and rights-of-way; (4) fire roads and firebreaks; (5) lot size and configuration; (6) traffic access; (7) grading; (8) land to be dedicated for park or

⁸ All references hereafter to the Business and Professions Code are by section number only.

recreational purposes; and (9) such other specific physical requirements in the plan and configuration of the entire subdivision as may be necessary to ensure consistency with, or implementation of, the general plan or any applicable specific plan." (§ 66418.)

"Improvement" is defined as:

". . . any street work and utilities to be installed, or agreed to be installed, by the subdivider on the land to be used for public or private streets, highways, ways, and easements, as are necessary for the general use of the lot owners in the subdivision and local neighborhood traffic and drainage needs as a condition precedent to the approval and acceptance of the final map thereof.

". . . also . . . any other specific improvements or types of improvements, the installation of which, either by the subdivider, by public agencies, by private utilities, by any other entity approved by the local agency, or by a combination thereof, is necessary to ensure consistency with, or implementation of, the general plan or any applicable specific plan." (§ 66419.)

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.⁹ By contrast, a person who applied for a building permit prior to January 1, 1991, would not be subject to any of the access or perimeter requirements set forth in the regulations.

In addition to preserving independent significance for the building permit exception, the aforementioned reading of Public Resources Code section 4290 comports with another principle of statutory construction, namely that "[e]xceptions to the general rule of a statute are to be strictly construed." (*Da Vinci Group v. San Francisco Residential Rent etc. Bd.* (1992) 5 Cal.App.4th 24, 28; see *Goins v. Board of Pension Commissioners* (1979) 96 Cal.App.3d 1005, 1009; see also *Board of Medical Quality Assurance v. Andrews* (1989) 211 Cal.App.3d 1346, 1355 [statutes conferring exemptions from regulatory schemes are narrowly construed].) More specifically, we have cited "the general rule that a grandfather clause, being contrary to the general rule expressed in a statute, must be narrowly construed. [Citations.]" (57 Ops.Cal.Atty.Gen. 284, 286 (1974).) A blanket exemption for all construction and development activity related to a parcel covered by an approved tentative or parcel map (provided the final map for the tentative map is approved within the time prescribed by the local ordinance) would violate these principles of statutory construction.

On the other hand, we decline to construe the grandfather clause here so narrowly that *all* of the Board's fire safety regulations become applicable when the owner of a parcel covered by a parcel or tentative map approved prior to January 1, 1991, applies for a permit to build on that parcel after January 1, 1991. To do so would mean that the exception for approved tentative or parcel maps would afford the landowner nothing at the construction and development stage. Again, we are guided

⁹ Regulation 1270.02, for example, exempts "[r]oads required as a condition of tentative [or] parcel maps prior to the effective date of these regulations"

by the principle that a statute should be interpreted in such a way that no part or provision will be rendered useless or meaningless. (*Colombo Construction Co. v. Panama Union School District, supra*, 136 Cal.App. 868, 876.)

Finally, we observe the rule that if more than one construction of a statute appears possible, we must adopt the one that leads to the most reasonable result. (*Industrial Indemnity Co. v. City and County of San Francisco* (1990) 218 Cal.App.3d 999, 1008.) An exemption from the regulations for those access and perimeter conditions which are included in the approval of a parcel or tentative map prior to January 1, 1991, serves to lock in reasonable entitlements while ensuring that other fire safety standards may be applied at the time a building permit is sought subsequent to January 1, 1991.

On the basis of the foregoing analysis and principles of statutory construction, we conclude that the fire safety standards adopted by the Board for development on state responsibility area lands apply to the perimeters and access to buildings constructed after January 1, 1991, on parcels created by parcel or tentative maps approved prior to January 1, 1991, to the extent that conditions relating to the perimeters and access to the buildings were not imposed as part of the approval of the parcel or tentative maps.

* * * * *