

## Communication from Public

**Name:** Jamie T. Hall

**Date Submitted:** 03/27/2025 08:00 PM

**Council File No:** 24-1471

**Comments for Public Posting:** Dear Members of the Energy and Environment Committee: This firm represents Bruno Naylor (“Naylor” or “Appellant”), a resident in the immediate neighborhood of the proposed new one-story 3,036 square foot single-family dwelling with a pool, on a vacant lot of approximately 5,469 square feet (“Project”). On November 22, 2024 Naylor filed an appeal, which will be heard by the Energy and Environment Committee on April 1, 2025. The attached letter supplements the bases for Naylor’s appeal and partially responds to the Staff Report issued on March 27, 2025.

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March 27, 2025

## **VIA ELECTRONIC UPLOAD AND E-MAIL**

Energy and Environment Committee  
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**Re: CEQA Appeal for Tree Removal Project Located at 10453 Sandal Lane;  
BPW-2024-0635; Council File No. 24-1471**

Dear City Clerk:

This firm represents Bruno Naylor ("Naylor" or "Appellant"), a resident in the immediate neighborhood of the proposed new one-story 3,036 square foot single-family dwelling with a pool, on a vacant lot of approximately 5,469 square feet ("Project"). On or about November 13, 2024 the Board of Public Works ("BPW") or ("Board") approved a request to remove three protected trees and two street trees which include one Southern California Black Walnut tree, one Coast Life Oak tree, one Toyon tree, one Jacaranda tree, and one Silk tree for the construction of the Project and required street widening. Thereafter, on November 22, 2024 Naylor filed an appeal, which will be heard by the Energy and Environment Committee on April 1, 2025. This letter supplements the bases for Naylor's appeal and partially responds to the Staff Report issued on March 27, 2025.

### **I. The City's Belated Publication of the Staff Report is Prejudicial to Petitioner**

The City published a 561-page Staff Report for the Appeal on Thursday, March 27, 2025. Los Angeles Municipal Code ("LAMC") Section 197.01 states as follows:

**"Time to File Additional Documents.** Any and all additional argument, whether in support of or in opposition to the CEQA Appeal, including any staff report responding to the CEQA

Appeal, and any additional evidence, must be filed with the City Clerk at least five (5) days prior to the date set for the public meeting."

The City has therefore given Appellant less than 24 hours to respond to a massive Staff Report (which includes an expert report from Meridian Consultants and Marcus C. England). Notably, the expert report from Meridian Consultants is dated February 2025 and the expert report from Marcus C. England is dated January 29, 2025. These reports were prepared well in advance of the hearing for this Project and *yet were withheld from Appellant*. Mr. Naylor is clearly prejudiced by this last-minute document dump by the City.

Application of LAMC Section 197.01 would preclude Appellant from being able to meaningfully respond to the Staff Report by retaining experts to refute the newly published evidence in response to the Appeal. Under state law, specifically California Code of Civil Procedure 1094.5, project opponents must be given a fair hearing. This requires an opportunity to be heard "at a meaningful time and in a meaningful manner." Further, one court has opined that due process "contemplates a *meaningful opportunity* to present evidence contrary [to an application] and a *meaningful consideration* of that evidence." *Natural Resources Defense Council v. Fish & Game Com.* (1994) 28 Cal.App.4th 1104, 1126. Appellant has not been provided a meaningful opportunity to fully consider the new rebuttal evidence presented by the City in the Staff Report and present contrary evidence.

Appellant requests a continuance of this appeal hearing in order to cure the prejudice to Mr. Naylor. Without a continuance, the City will have failed to meet its legal obligations to provide a fair hearing.

## **II. The City Cannot Deny Appellant the Right to Appeal Issuance of Tree Removal Permit**

The Staff Report states the following:

To the extent the appeal seeks to challenge the Protected Trees and Replant Permit approved by the BPW on November 13, 2024 on grounds other than an alleged failure to comply with CEQA, City staff recommends the Committee recommend the City Council deny the appeal as without legal basis and sustain the BPW's permit issuance. The City's Protected Tree Ordinance, at LAMC section 46.05, provides the right to appeal a determination concerning a protected tree removal permit application solely to the permit applicant. Appellant Naylor is not the permit applicant here, and thus, has no standing to challenge the permit pursuant to the terms of the Protected Tree Ordinance. Appellant Naylor's challenge, thus, is based solely upon its CEQA arguments.

Staff Report at p. 7-8 (emphasis added).

Local procedural rules and statutory provisions limiting the right to appeal to adjacent owners and applicants simply do not pass legal muster. Principles of due process require that a right of appeal must be provided for aggrieved parties with justiciable property interests in the decision. *Concerned Citizens of Murphy's v. Jackson* (1977) 72 Cal.App.3d 1021, 1026-27. In

*Concerned Citizens of Murphy's*, the Court considered an ordinance denying a right of appeal to plaintiffs who owned property within 700 yards of an approved project, only **one** of whom owned property adjoining the project site. *Id.* at p. 1022, n1. The clerk rejected all appeals on the basis that the County ordinance allowed appeals only by the applicant. *Id.* at p. 1022. The Court determined that all appellants had substantial property interests at stake by owning property which “might be affected by the proposed use of the property for which the conditional use permit was sought.” *Id.* at p. 1026. Applying provisions of the Government Code requiring notice to property owners within 300 feet of a conditional use approval, the Court determined that the County had improperly denied the right of appeal as to all plaintiffs—not just the owner of adjoining property. *Id.* at p. 1027. **If an applicant has a right to appeal, any interested person adversely affected has a similar right inasmuch as constitutional due process requires that notice and opportunity for hearing be given to such interested persons.** *Id.* at pp. 1026-27. There can be no disputing that the Naylor family, owners of property *directly across the street*, have a substantial property interest sufficient to entitle Appellant a right of appeal. As such, LAMC section 46.05 is unlawful.<sup>1</sup>

### **III. The Project is Not Exempt from CEQA as a lass 3 Activity Due to Unusual Circumstances**

The Class 3 exemption is also not available due to “unusual circumstances.” Application of the so-called “single family home exemption” is limited by the factors described in section 15300.2.” An exemption should be denied if one of the exceptions listed in section 15300.2 of the Guidelines applies. Section 15300.2, subdivision (c), of the Guidelines provides for one such exception and states that if there is a “reasonable possibility” of a “significant effect on the environment due to unusual circumstances,” then the categorical exception cannot apply. A “circumstance is ‘unusual’ . . . judged relative to the typical circumstances related to an otherwise typically exempt project.” *Voices for Rural Living v. El Dorado Irr. Dist.* (2012) 209 Cal.App.4th 1096, 1108–09. Here, there is an unusual circumstance in that Sandale Lane is a dead-end road that does not comply with the State Minimum Fire Safe Regulations (“Regulations”). Development of a new dwelling unit on a road that is not accessed by a roadway that conforms with minimum fire safety protocols will cause a significant effect on the environment because it will preclude fire personal from accessing the parcel in the event of an emergency— which we all know in light of the recent fires in the Pacific Palisades can cause catastrophic damage to the natural environment.

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<sup>1</sup> A challenge to the application of an ordinance to a petitioner is timely where suit is filed within 90 days of the agency decision. *Avenida San Juan Partnership v. City of San Clemente* (2011) 201 Cal.App.4th 1256, 1263. A court independently reviews whether a City violates an appellant’s due process rights. *In re Jonathan V.* (2018) 19 Cal.App.5th 236, 241.

**a. State Minimum Fire Safe Regulations**

In 2018, Senate Bill 901<sup>2</sup> mandated the expansion of the scope of California’s regulations regarding minimum fire safety standards to include those lands classified and designated as Very High Fire Hazard Severity Zones (“VHFHSZ”), as defined in subdivision (i) of Government Code § 51177<sup>3</sup>, to include Local Responsibility Areas. These regulations were extended to those portions of incorporated cities such as the City of Los Angeles that were designated as VHFHSZ. The California Board of Forestry and Fire Protection adopted the Minimum Fire Safe Regulations (“Regulations”) in 2021. The Regulations went into effect on April 1, 2023. The purpose of such regulations is to establish *minimum* fire safety standards for residential, commercial, and industrial development, provide basic emergency access and perimeter wildfire protection, protect undeveloped ridgelines, and reduce fire risk. 14 CCR § 1273.02<sup>4</sup>. These regulations were adopted after extensive consultation with fire professionals and community members. A true and correct copy of the Regulations are attached hereto as **Exhibit A**. The

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<sup>2</sup> Per the Legislative Counsel’s Digest, paragraph 6, SB 901 included the following:

“This bill would also require the state forestry board to adopt regulations implementing minimum fire safety standards that are applicable to lands classified and designated as **very high fire hazard severity zones** and would require the regulations to **apply to the perimeters and access to all residential**, commercial, and industrial building construction **within lands classified and designated as very high fire hazard severity zones**, as defined, after July 1, 2021. The bill would further require the state forestry board to, on and after July 1, 2021, periodically update regulations for fuel breaks and greenbelts near communities to provide greater fire safety for the perimeters to all residential, commercial, and industrial building construction within state responsibility areas **and lands classified and designated as very high fire hazard severity zones** after that date. The bill would require the state forestry board, on or before July 1, 2022, to develop criteria and maintain a “Fire Risk Reduction Community” list of local agencies located in a state responsibility area **or** a very high fire hazard severity zone that meet best practices for local fire planning.” (Emphasis added.)

<sup>3</sup> Government Code section 51177 (i) now defines VHFHSZ as:

“Very high fire hazard severity zone” means an area designated as a very high fire hazard severity zone by the State Fire Marshal pursuant to Section 51178 that is **not** a state responsibility area. (As amended in 2021, effective 1/1/2022.; Emphasis added.)

<sup>4</sup> Cal. Code Regs. Tit. 14, § 1270.02, entitled “Purpose” states as follows:

- (a) Subchapter 2 has been prepared and adopted for the purpose of establishing state minimum Wildfire protection standards in conjunction with Building, construction, and Development in the State Responsibility Area (SRA) and, after July 1, 2021, the Very High Fire Hazard Severity Zones, as defined in Government Code § 51177(i) (VHFHSZ).
- (b) The future design and construction of Structures, subdivisions and Developments in the SRA and, after July 1, 2021, the VHFHSZ shall provide for basic emergency access and perimeter Wildfire protection measures as specified in the following articles.
- (c) These standards shall provide for emergency access; signing and Building numbering; private water supply reserves for emergency fire use; vegetation modification, Fuel Breaks, Greenbelts, and measures to preserve Undeveloped Ridgelines. Subchapter 2 specifies the minimums for such measures.

Project in question is located in a Very High Fire Hazard Severity Zone as documented in ZIMAS. Therefore, it is subject to the Regulations<sup>5</sup>.

▼ Additional	
Airport Hazard	None
Coastal Zone	None
Farmland	Area Not Mapped
Urban Agriculture Incentive Zone	YES
Very High Fire Hazard Severity Zone	Yes
Fire District No. 1	No
Flood Zone	Outside Flood Zone
Watercourse	No
Methane Hazard Site	None
High Wind Velocity Areas	No
Special Grading Area (BOE Basic Grid Map A-13372)	Yes
Wells	None
Sea Level Rise Area	No
Oil Well Adjacency	No

#### b. Minimum Standards Set Forth in Regulations

Article 2 of the State Minimum Fire Safe Regulations, Section 1273 pertains to the standards for "Ingress and Egress" roads and driveways. The intent of these standards is clearly stated: "Roads, and Driveways, whether public or private, unless exempted under 14 CCR §1270.03(d) **shall provide for safe access for emergency wildfire equipment and civilian evacuation concurrently**, and shall provide unobstructed traffic circulations during a wildfire emergency consistent with 14 CCR §§1273 through 1273.09."

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<sup>5</sup> The Regulations provide for exceptions pursuant to 14 CCR 12070.03(b) for pre-1991 parcel maps. However, only those improvements that were *specifically authorized* via previously approved parcel maps are exempted from the Regulations. There is an Attorney General Opinion from 1993 that directly addresses this exemption. Addressing fire safety regulations and their statutory interpretation in 1993, the Attorney General noted: "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."<sup>5</sup> 76 Ops.Cal Atty.19, No. 92- 807. This 1993 Attorney General Opinion is attached as **Exhibit B**. The Board of Forestry has also provided guidance of the scope of this exemption. The Final Statement of Reasons adopted by the Board for the Regulations pursuant to *Government Code Section 11346.9(a)* states as follows:

"While the Board is unaware of any court decision specifically addressing PRC § 4290 or the regulations, the Office of the California Attorney General has commented on the statute and regulations, and its interpretation in those comments may provide helpful guidance. The first was in a 1993 Attorney General Opinion (76 Ops.Cal Atty.19, No. 92- 807), which opined that **the regulations apply generally to all building construction after 1991 and that the statutory exemption related to pre-1991 parcels was to be narrowly construed to exempt construction and development activity already in the "pipeline" as of 1991**. The Board amended the regulations in 2013 in part to ensure consistency with the 1993 Attorney General Opinion."

The Project at 10453 Sandal Lane was not "in the pipeline" as of 1991.

Section 1273.08(a) of the Regulations sets forth standards for dead end streets. They are as follows:

(a) The maximum length of a Dead-end Road, including all Dead-end Roads accessed from that Dead-end Road, shall not exceed the following cumulative lengths, regardless of the number of parcels served:

parcels zoned for less than one acre - 800 feet

parcels zoned for 1 acre to 4.99 acres - 1,320 feet

parcels zoned for 5 acres to 19.99 acres - 2,640 feet

parcels zoned for 20 acres or larger - 5,280 feet

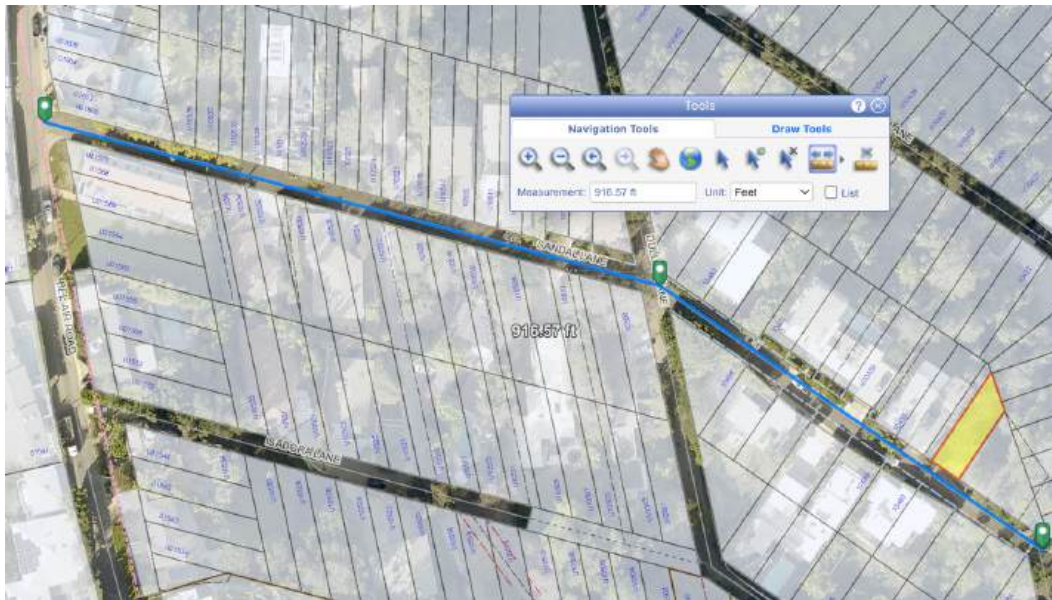
All lengths shall be measured from the edge of the Road surface at the intersection that begins the Road to the end of the Road surface at its farthest point. Where a dead-end road crosses areas of differing zoned parcel sizes requiring different length limits, the shortest allowable length shall apply.

Sandal Lane is a dead-end street. In fact, the roads ends just beyond the parcel proposed to be developed. A picture of the end of the street is shown below.





All of the parcels that abut Sandal Lane are less than one acre in size. As such, Sandal Lane – as a dead-end street – cannot exceed **800 feet**. Sandal Lane is more than 800 feet long as measured from the intersection of Sandale Lane and Bel-Air Road to the end of the road. It is approximately 915 feet long. This was calculated using the measuring tool in Navigate LA.



It should also be noted that Sandal Lane is an extremely dangerous road and was the site of a severe accident in 2010. The City paid out a \$1.9 million settlement after a person sued the City when their car careened off a steep embankment along Sandal Lane. The claimant suffered a broken leg, fractured pelvis and a deep gash across their chest, and was treated in the intensive care unit of UCLA Medical Center, according to the LA Times. A true and correct copy of the LA Times Article detailing this settlement is attached hereto as **Exhibit C**.

The bottom line is that Sandal Lane is a dangerous dead-end road that does not comply with the State Minimum Fire Safe Regulations.

**c. The City Refuses to Comply with Minimum Requirements Set Forth in the State Minimum Fire Safe Regulations**

The City has previously taken the position that the Regulations *only* apply when new roads are constructed. For example, on February 6, 2025 the Department of City Planning issued an Appeal Recommendations Report<sup>6</sup> for 3003 Runyon Canyon Road that stated as follows:

“The project does not violate the State Minimum Fire Safe Regulations per CCR Title 14 Natural Resources, Division 1.5 Department of Forestry and Fire Protection, Chapter 7 Fire Protection, Subchapter 2 SRA/VHFHSZ Regulations which establishes minimum wildfire protection standards for projects located in a State Responsibility Area (SRA),

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<sup>6</sup> This report can be accessed at [https://clkrep.lacity.org/online/docs/2024/24-1371\\_misc\\_2-05-25.pdf](https://clkrep.lacity.org/online/docs/2024/24-1371_misc_2-05-25.pdf)



and after July 1, 2021, in a Very High Fire Hazard Severity Zone as defined in Government Code Section 51177(i). Specifically, Title 14, CCR Section 1273.01 requires the following:

1273.01. Width.

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

The subject parcel does not have access via two ten (10) foot traffic lanes. However, Government Code Section 1273.01 only applies to new roads being constructed as it states “all roads **shall be constructed...**”. It is not retroactively applied to existing roads that do not meet the dimensional requirement. If it did, that would effectively create a moratorium on all new construction in hillside areas within the entire state - ADUs, building additions, new homes on vacant parcels. The subject project at 3003 N. Runyon Canyon Road will not introduce any features that will change the physical dimensions of the surrounding roadways and/or require the construction of any new roadways. The site is currently accessed via a Private Driveway that itself is accessed from the existing North Runyon Canyon Road which is a paved fire road that is closed to motor vehicle access. The appellant assertion that the project would be responsible to widen the off-site surrounding roadway widths is not supported by the applicable laws and regulations.”

Department of City Planning Appeal Recommendation Report dated February 6, 2025.

The City’s position is completely without legal justification and remarkable in light of the brush fire that erupted in light of the recent wildlife events the City recently suffered. In 2019, the County of Monterey made the same argument – saying the regulations did not apply to existing roads. The Attorney General’s office sent a letter to the County completely refuting this narrow construction of the state regulations. The AG letter states:

Finally, we note that exempting the Project from the SRA regulations simply because Paraiso Springs Road is a pre-existing road would **undermine the intent** of the **SRA regulations**. SRA regulations are **meant** to ensure that “[t]he future design and construction of structures, subdivisions and developments in the SRA shall provide for **basic emergency access ....**” (Cal. Code Regs., tit. 14, § 1270.01(b).)

...

**It is the construction of a new project that triggers the application of the SRA regulations**; the fact that the Project is being constructed at the **end of an existing road does not negate**

the triggering **effect** of the **new construction**. A contrary interpretation would incentivize development without adequate evacuation routes and emergency access in the SRA rather than prevent it.

(**Exhibit D**<sup>7</sup>, pp. 2-3, *emph. added* [Oct. 25, 2019 Attorney General’s Comment on the Paraiso Springs Resort Project]; see also **Exhibit E**<sup>8</sup> [Attorney General’s March 20, 2019 comment on the same project – Need to comply with roadway width and other requirements in State Responsibility Areas – predates application of requirements to LRAs]. The Attorney General has clearly provided guidance that is the construction of a new project that triggers the application of the regulations – not construction of a new road.

Moreover, the “scope” of the Regulations is much broader than the City contends. The Regulations at 14 CCR § 1276.03(c) state as follows:

(c) Affected activities include, but are not limited to:

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

(2) **application for a Building permit for new construction not relating to an existing Structure;**

(3) application for a use permit;

(4) Road construction including construction of a Road that does not currently exist, or extension of an existing Road.

14 CCR § 1276.03(c) (*emphasis added*).

Moreover, Section 1270.03(a)(1) of the Regulations<sup>9</sup> state that they apply to “(1) the perimeters and access to *all* residential, commercial, and industrial Building construction within the SRA approved after January 1, 1991, and those approved after July 1, 2021 within the VHFHSZ, except as set forth below in subsection (b).”

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<sup>7</sup> **Exhibit D** is also available at:

<https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/comments-paraiso-final-eir.pdf>

<sup>8</sup> **Exhibit E** is available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/comments-paraiso-springs-resort-feir.pdf>

<sup>9</sup> Public Resources Code 4290(a) similarly states as follows: “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, and within lands classified and designated as very high fire hazard severity zones, as defined in subdivision (i) of Section 51177 of the Government Code after July 1, 2021.”

The Senior Board Counsel for the Board of Forestry and Fire Protection<sup>10</sup>, Jeff Sloan, wrote a letter to the County of Sonoma regarding the County's requested certification of a proposed local fire safe ordinance as equaling or exceeding the Board's Fire Safe Regulations (14 CCR § 1270 et seq.). See **Exhibit H**. This letter again confirms that the Regulations apply to existing roads. The letter states as follows:

“Throughout the certification process, Sonoma County has repeatedly maintained that Public Resources Code section 4290 and the Fire Safe Regulations do not apply to existing roads. Sonoma County's position is **incompatible** with the plain language of PRC § 4290, the Fire Safe Regulations, and opinions and letters issued by the Attorney General of California. More importantly, the Fire Safe Regulations themselves – which constitute the basis for the certification determination – clearly provide no exemption for existing roads, and it is these regulations that the Sonoma County ordinance must equal or exceed. This represents a fundamental and intractable disagreement between the Board and Sonoma County. Sonoma County's position on existing roads, standing alone, is a legitimate basis for determining that the ordinance does not equal or exceed the Fire Safe Regulations.

Board of Forestry Letter to County of Sonoma dated October 23, 2020 (emphasis added).

Finally, on or about August 17, 2022, the Board of Forestry published a Final Statement of Reasons<sup>11</sup> (FSOR) for the State Minimum Fire Safe Regulations pursuant to Government Code Section 11346.9(a). The FSOR again confirms that the Regulations apply to existing roads, stating as follows:

**General Response to Comments Regarding Existing Roads:**

Public Resources Code (PRC) § 4290 expressly states that the regulations apply “to the perimeters and access to all residential, commercial, and industrial building construction...” The statute also references roads in multiple places without suggesting an intent to distinguish between existing and new roads. The Board is unaware of any authority suggesting that building construction accessed from existing roads should be treated differently than on new roads.

Further, the regulations do not differentiate between building construction on new roads and building construction on existing roads. The regulations define the term “road”

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<sup>10</sup> The City was also put on notice that it was not complying with the State Minimum Fire Safe Regulations by the Santa Monica Mountains Conservancy (“Conservancy”), a state and trustee agency. The Conservancy wrote to the Department of City Planning and Los Angeles Department of Building and Safety on May 15, 2023 and yet the City persists in ignoring the Regulations. A copy of this letter is attached as **Exhibit G**.

<sup>11</sup> The Final Statement of Reasons can be accessed at the following link:  
<https://www.dropbox.com/scl/fi/xa03uiu2jy3cflv2q1x46/2022-08-17-FSOR-Final-Statment-of-Reasons-BOF-PDF-copy-2.pdf?rlkey=acqun4lqpb37w59zo4u3bisc3&st=lxye8i0u&dl=0>

in 14 CCR § 1271 without distinguishing between new and existing roads. Section 1273.00 requires all “roads, whether public or private,” to satisfy the regulatory requirements (unless exempted under 14 CCR § 1270.02(d)), and again makes no distinction between new and existing roads. When addressing the width of roads, 14 CCR § 1273.01 applies that section to “all roads.” In short, the regulations do not provide a basis for distinguishing between building construction on new roads and building construction on existing roads.

While the Board is unaware of any court decision specifically addressing PRC § 4290 or the regulations, the Office of the California Attorney General has commented on the statute and regulations, and its interpretation in those comments may provide helpful guidance. The first was in a 1993 Attorney General Opinion (76 Ops.Cal Atty.19, No. 92-807), which opined that the regulations apply generally to all building construction after 1991 and that the statutory exemption related to pre-1991 parcels was to be narrowly construed to exempt construction and development activity already in the “pipeline” as of 1991. The Board amended the regulations in 2013 in part to ensure consistency with the 1993 Attorney General Opinion.

More recently, and prior to the expansion of the regulations into the VHFHSZ in July 2021, the Office of the Attorney General provided a letter, dated October 25, 2019, to the Planning Commission of Monterey County regarding the Paraiso Springs Resort project. That letter reviewed the Board’s regulations regarding existing roads and stated, in pertinent part:

“[W]hether Paraiso Springs Road is an existing road is inconsequential. Paraiso Springs Road will now be the sole access to the new commercial construction within an SRA.”

“SRA regulations explicitly “apply to: (1) the perimeters and *access* to all residential, commercial, and industrial building construction within the SRA approved after January 1, 1991...” (Emphasis in original.) “Thus, the Monterey County Code exemption for existing roads is inapposite – the Paraiso Springs Road is now “access” to a Project that falls within the scope of the SRA regulations.”

“Finally, we note that exempting the Project from the SRA regulations simply because Paraiso Springs Road is a pre-existing road would undermine the intent of the SRA regulations. SRA regulations are meant to ensure that “[t]he future design and construction of structures, subdivisions and developments in the SRA shall provide for basic emergency access...”

“While this road may have been exempt from the SRA width and dead-end road limitations prior to development of the Project, there is no basis for an interpretation that allows construction within the SRA of a large new resort that would depend upon the use of that road for the sole emergency access to and

evacuation from the Project. It is the construction of a new project that triggers the application of the SRA regulations; the fact that the Project is being constructed at the end of an existing road does not negate the triggering effect of the new construction. A contrary interpretation would incentivize development without adequate evacuation routes and emergency access in the SRA rather than prevent it.”

“While comments addressing the application of the minimum fire safe regulations to development that is accessed from existing roads do not address the proposal, the information described above may be relevant to those that remain interested in this issue.”

Final Statement of Reasons for Reasons, August 17, 2022 (emphasis added).

In sum, the overwhelming body of legal authority demonstrates that the City’s position that the Regulations do not apply to existing roads – is flawed.

#### **IV. Conclusion**

The City’s belated publication of a 561-page Staff Report with two expert reports (one of which is almost 60 days old) is prejudicial to Appellant, who cannot meaningfully respond to the evidence presented and simultaneously comply with LAMC Section 197.01. If the City does not continue this hearing as requested by Appellant, then Mr., Naylor’s right to a fair hearing and due process will be violated. Additionally, the City’s contention that it may limit appeals to applicants for Tree Removal Permits is constitutionally flawed. Mr. Naylor is entitled to file an appeal of that permit notwithstanding any contrary provision in the Protected Tree Ordinance. Finally, the Project is not exempt from CEQA because the Project *will* have a significant effect on the environment. The Project is not consistent with the State Minimum Fire Safe Regulations and therefore the Project will have a significant effect on the environment. Based on the foregoing, the appeal should be granted.

Thank you for your consideration of this matter. I may be contacted at [jamie.hall@channellawgroup.com](mailto:jamie.hall@channellawgroup.com) if you have any questions, comments or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jamie T. Hall', written in a cursive style.

Jamie T. Hall

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# **Exhibit A**

California Code of Regulations

Title 14 Natural Resources

Division 1.5 – Department of Forestry and Fire Protection

Chapter 7 – Fire Protection

Subchapter 2 – State Minimum Fire Safe Regulations

Article 2 – Ingress and Egress

§ 1273.00 - Intent

§ 1273.01 - Width

§ 1273.02 - Road Surface

§ 1273.03 - Grades

§ 1273.04 - Radius

§ 1273.05 - Turnarounds

§ 1273.06 - Turnouts

§ 1273.07 - Road and Driveway Structures

§ 1273.08 - Dead-End Roads

§ 1273.09 - Gate Entrances



### **§ 1273.00 - Intent**

Roads, and Driveways, whether public or private, unless exempted under 14 CCR § [1270.03\(d\)](#), shall provide for safe access for emergency Wildfire equipment and civilian evacuation concurrently, and shall provide unobstructed traffic circulation during a Wildfire emergency consistent with 14 CCR §§ [1273.00](#) through [1273.09](#).

### **§ 1273.01 - Width**

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

(b) All One-way Roads shall be constructed to provide a minimum of one twelve (12) foot traffic lane, not including Shoulders. The Local Jurisdiction may approve One-way Roads.

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

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

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

### **§ 1273.02 - Road Surface**

(a) Roads shall be designed and maintained to support the imposed load of Fire Apparatus weighing at least 75,000 pounds, and provide an aggregate base.

(b) Road and Driveway Structures shall be designed and maintained to support at least 40,000 pounds.

(c) Project proponent shall provide engineering specifications to support design, if requested by the Local Jurisdiction.

### **§ 1273.03 - Grades**

- (a) At no point shall the grade for all Roads and Driveways exceed 16 percent.
- (b) The grade may exceed 16%, not to exceed 20%, with approval from the Local Jurisdiction and with mitigations to provide for Same Practical Effect.

### **§ 1273.04 – Radius**

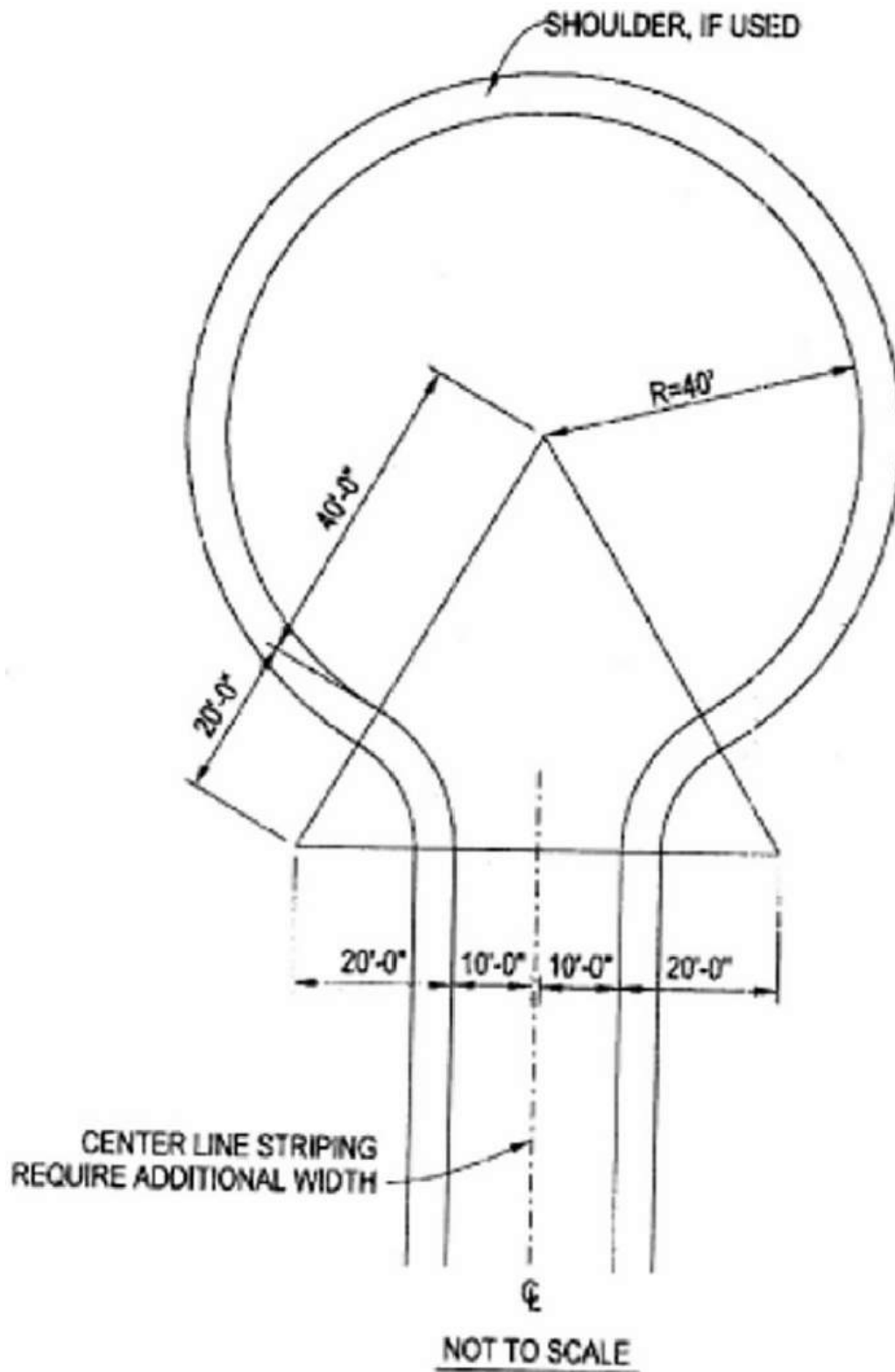
- (a) No Road or Road Structure shall have a horizontal inside radius of curvature of less than fifty (50) feet. An additional surface width of four (4) feet shall be added to curves of 50-100 feet radius; two (2) feet to those from 100-200 feet.
- (b) The length of vertical curves in *Roadways*, exclusive of gutters, ditches, and drainage structures designed to hold or divert water, shall be not less than one hundred (100) feet.

### **§ 1273.05 – Turnarounds**

- (a) Turnarounds are required on Driveways and Dead-end Roads.
- (b) The minimum turning radius for a turnaround shall be forty (40) feet, not including parking, in accordance with the figures in 14 CCR §§ [1273.05\(e\)](#) and [1273.05\(f\)](#). If a hammerhead/T is used instead, the top of the "T" shall be a minimum of sixty (60) feet in length.
- (c) Driveways exceeding 150 feet in length, but less than 800 feet in length, shall provide a turnout near the midpoint of the Driveway. Where the driveway exceeds 800 feet, turnouts shall be provided no more than 400 feet apart.
- (d) A turnaround shall be provided on Driveways over 300 feet in length and shall be within fifty (50) feet of the building.
- (d) Each Dead-end Road shall have a turnaround constructed at its terminus. Where parcels are zoned five (5) acres or larger, turnarounds shall be provided at a maximum of 1,320 foot intervals.

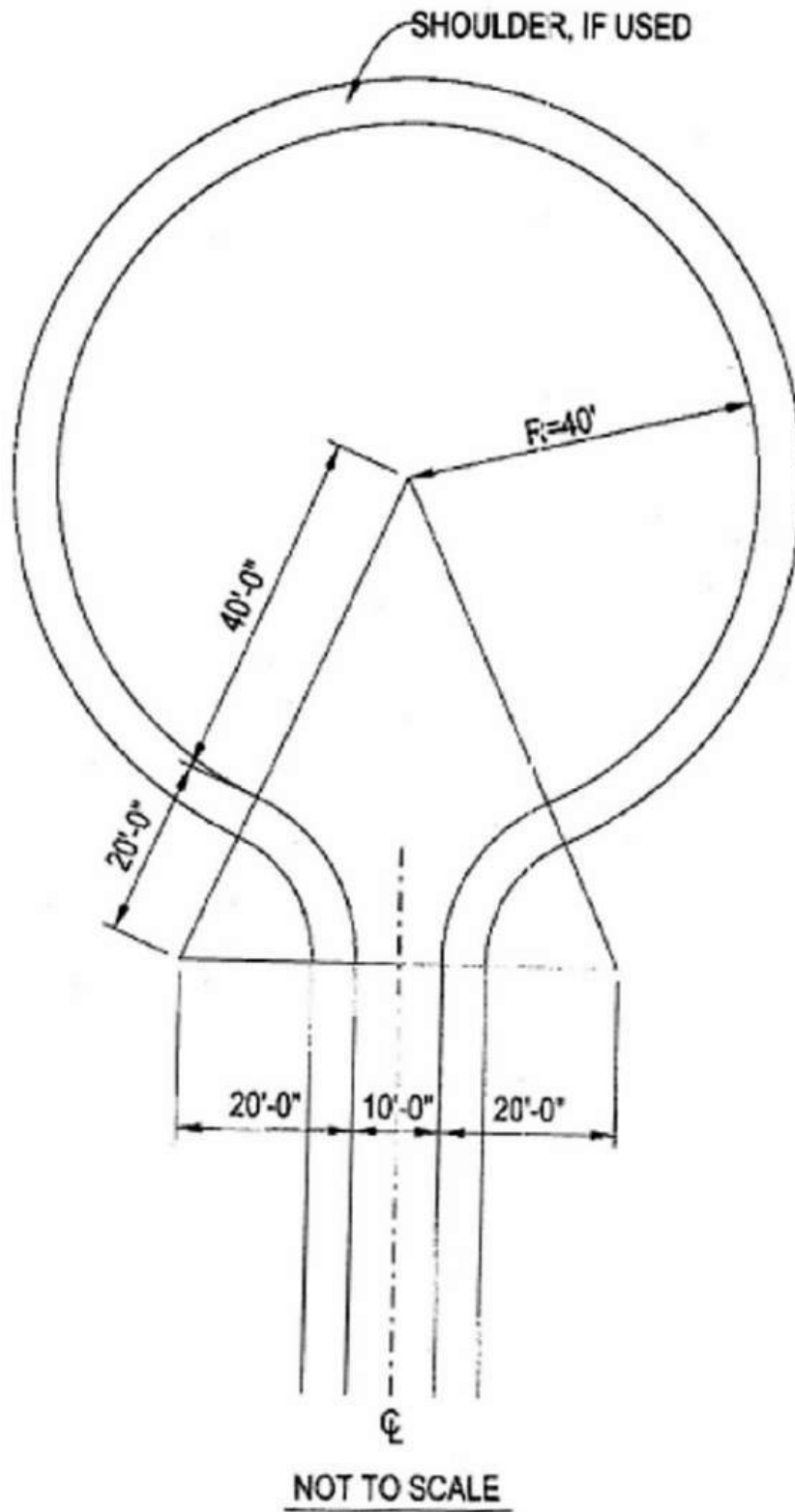
(e) Figure A. Turnarounds on roads with two ten-foot traffic lanes.

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



(f) Figure B. Turnarounds on driveways with one ten-foot traffic lane.

Figure B/Image 2 is a visual representation of paragraph (b).



### **§ 1273.06 – Turnouts**

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

### **§ 1273.07 - Road and Driveway Structures**

(a) Appropriate signing, including but not limited to weight or vertical clearance limitations, One-way Road or single traffic lane conditions, shall reflect the capability of each bridge.

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

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

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

### **§ 1273.08 - Dead-End Roads**

(a) The maximum length of a Dead-end Road, including all Dead-end Roads accessed from that Dead-end Road, shall not exceed the following cumulative lengths, regardless of the number of parcels served:

parcels zoned for less than one acre - 800 feet

parcels zoned for 1 acre to 4.99 acres - 1,320 feet

parcels zoned for 5 acres to 19.99 acres - 2,640 feet

parcels zoned for 20 acres or larger - 5,280 feet

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

(b) See 14 CCR § [1273.05](#) for dead-end road turnaround requirements.

**§ 1273.09 - Gate Entrances**

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

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

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

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

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# **Exhibit B**



TO BE PUBLISHED THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL  
State of California

DANIEL E. LUNGREN  
Attorney General

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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 lands<sup>1/</sup>

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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.)

under the authority of the Department of Forestry and Fire Protection. Public Resources Code section 4290<sup>2</sup> 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"<sup>3</sup> for the protection of state responsibility areas against wildfires.

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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 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.)

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)<sup>4/</sup> 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.<sup>5/</sup> 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).<sup>6/</sup> 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.<sup>7/</sup> A well-established rule of statutory 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"].)

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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.)

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")<sup>8/</sup> 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 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

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

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.<sup>9/</sup> 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 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

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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 . . . ."

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.

\* \* \* \* \*

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# **Exhibit C**



CALIFORNIA

## L.A. City Council OKs \$1.9-million crash settlement to Sofia Vergara's ex-boyfriend



Nick Loeb and then-girlfriend Sofia Vergara at the 2013 Screen Actors Guild Awards at Los Angeles's Shrine Auditorium. (John Shearer / Associated Press)

**By Erica Evans**

Aug. 17, 2016 2:45 PM PT

The Los Angeles City Council voted Wednesday to spend \$1.9 million to settle a lawsuit filed by “Modern Family” star Sofia Vergara’s ex-boyfriend, Nick Loeb, over a car crash that left him seriously injured.

Loeb, 41, a Florida politician turned L.A. businessman, claims the crash happened as a result of the city’s failure to adequately maintain the road.

On Aug. 23, 2010, Loeb was driving on Crater Lane between Sandal Lane and Lisbon Lane in Bel-Air when his car careened off a steep embankment.

Loeb suffered a broken leg, fractured pelvis and a deep gash across his chest, and was treated in the intensive care unit of UCLA Medical Center, according to media reports.

In his suit, Loeb says the road was dangerous, deteriorated and overgrown and that the city had failed to repair it or block it off to public access, despite prior complaints.

According to court documents, Loeb’s car, a rented SUV, hit a section of raised asphalt and went off the road. Loeb said he jumped out of his car while it was sliding down the hill, injuring himself.

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The court documents also stated that Loeb drove past a number of signs warning against using Sandal Lane as a through street.

Following the incident, the city constructed barriers preventing entry into the road.

The settlement payment was approved 12-0 with Councilmen Gil Cedillo, Jose Huizar and David Ryu absent.

**ALSO**

## [Comedian Katt Williams charged with battery at Los Angeles hotel](#)

## [Suit filed to permit Californians to carry guns openly in public](#)

## [He's one of L.A. City Hall's most powerful politicians. He's also having problems paying his bills on time](#)

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Aug. 30, 2024



#### **Voices**

#### **Lopez: L.A.'s cracked, ruptured sidewalks are a scandal. Where is City Hall?**

Aug. 17, 2024



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# **Exhibit D**



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October 25, 2019

Planning Commission of Monterey County  
Monterey County Resource Management Agency  
Attn: Mike Novo  
1441 Schilling Place – South, 2<sup>nd</sup> Floor  
Salinas, CA 93901  
*Sent via email: novom@co.monterey.ca.us*

**Re: Paraiso Springs Resort, Project No. PLN040183**

Dear Mr. Novo and Commissioners,

We appreciate your preparation of a Final Environment Impact Report ("FEIR") responding to public comments on the previous two Recirculated Draft Environmental Impact Reports ("RDEIRs"), including the comments we submitted on March 20, 2019 and July 9, 2019 regarding wildfire risks associated with the proposed Paraiso Springs Resort Development (the "Project"). After reviewing the additional information presented, we acknowledge and appreciate that you have provided more information regarding wildfire risks associated with the proposed Project and have revised certain mitigation measures to address some of those wildfire risks. While the additional information improves the Project and the environmental documents, we remain concerned that the Project still does not comply with state evacuation and fire suppression access requirements for development in a State Responsibility Area ("SRA").<sup>1</sup> In addition, the FEIR's discussion of the wildfire risks associated with the Project, particularly related to evacuation in the event of a wildfire, remains inadequate.

The Project does not comply with the state's dead-end road limitations and road width limitations applicable to development within an SRA. (Cal. Code. Regs., tit. 14, §§ 1273.08 and 1273.01; adopted pursuant to Pub. Resources Code § 4290.) In response to our July 9, 2019 comments regarding the Project's failure to comply with SRA regulations, the FEIR claims that Paraiso Springs Road is an existing road and thus exempt from such regulations. (FEIR, p. 617.) In support of such an exemption, the FEIR cites to Monterey County Code section 18.56.020(B)(2)(a) which states "[r]egulations contained in this chapter do not apply to the following building, construction, or development activities... (a) Existing structures, roads,

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<sup>1</sup> This letter is not intended, and should not be construed, as an exhaustive discussion of the FEIR's compliance with the California Environmental Quality Act ("CEQA") or the Project's compliance with other applicable legal requirements.



streets and private lanes or facilities.” (FEIR, p. 23.) However, neither the Monterey County Code nor the SRA regulations support an exemption for this Project for several reasons.

First, whether Paraiso Springs Road is an existing road is inconsequential. Paraiso Springs Road will now be the *sole* access to new commercial construction within an SRA. (February 2018 RDEIR, p. 2-45.) SRA regulations explicitly “apply to: (1) the perimeters and *access to* all residential, commercial, and industrial building construction within the SRA approved after January 1, 1991....” (Cal. Code Regs., tit. 14, § 1270.02, emphasis added.) It is indisputable that the Project involves commercial building construction within the SRA approved after January 1, 1991. Thus, the Monterey County Code exemption for existing roads is inapposite – the Paraiso Springs Road is now “access” to a Project that falls within the scope of the SRA regulations. In addition, the SRA regulations do not expressly exempt all existing roads. (14 Cal. Code Regs., tit. 14, § 1270.02(d) [exempting “[r]oads used solely for agricultural, mining, or the management and harvesting of wood products”].) The Monterey County Code cannot be read to apply less stringent standards than the SRA regulations because counties that assume responsibility for fire prevention and suppression in SRAs must “provide[] the same or higher intensity of fire protection to these lands as is provided under existing levels of state protection in other comparable areas of the state.” (Cal. Code Regs., tit. 14, § 1658.)

Second, contrary to the assertions in the FEIR (p. 22), the problems with the existing road cannot be cured through an exception pursuant to California Code of Regulations, title 14, section 1270.06 (outlining a process to apply for an exception to the applicability of the SRA regulations). An exception under that regulation still must provide “the same practical effect as” the SRA regulations. As the FEIR acknowledges, “the Fire Protection Plan cannot modify the dead-end nature of the road” (p. 618). Accordingly, the practical effect of prohibiting dead-end roads of certain lengths in an SRA, which are important to timely evacuation and fire suppression access, cannot be achieved through an exception. In addition, the Project applicant has not applied for an exception. (FEIR, p. 23.)

Third, annexation of Project land into the Mission-Soledad Rural Fire Protection District will not cure violations of the SRA regulations (see FEIR, p. 23 [describing annexation].) Annexation does not exempt a project from SRA regulations. Land can be both within a fire protection district and within the SRA. (Health & Saf. Code § 13811.)

Finally, we note that exempting the Project from the SRA regulations simply because Paraiso Springs Road is a pre-existing road would undermine the intent of the SRA regulations. SRA regulations are meant to ensure that “[t]he future design and construction of structures, subdivisions and developments in the SRA shall provide for basic emergency access....” (Cal. Code Regs., tit. 14, § 1270.01(b).) Constructing a new resort that includes a nearly 150,000 square foot hotel, an over 18,000 square foot “hamlet” with a spa and retail buildings, and over 75 timeshare units (February 2018 RDEIR, pp. 2-20, 2-27) at the end of a narrow road that exceeds the dead-end road regulations undermines emergency access in the SRA. While this road may have been exempt from SRA width and dead-end road limitations prior to development

of the Project, there is no basis for an interpretation that allows construction within the SRA of a large new resort that would depend upon the use of that road for the sole emergency access to and evacuation from the Project. It is the construction of a new project that triggers the application of the SRA regulations; the fact that the Project is being constructed at the end of an existing road does not negate the triggering effect of the new construction. A contrary interpretation would incentivize development without adequate evacuation routes and emergency access in the SRA rather than prevent it.

From a CEQA perspective, the concerns with SRA non-compliance are exacerbated by the gaps that remain in the disclosures the County is providing related to the wildfire risks associated with the Project and specifically the risks associated with evacuation. We will not reiterate our previous comments here, but at this time note the following continuing concerns related to evacuation: (1) the analysis related to evacuees trying to leave the site while emergency response personnel are trying to access the site remains inadequate and conclusory (FEIR, p. 623 [citing back to the Fire Protection Plan and the Wildland Fire Evacuation Plan, which identifies the issue (June 2019 RDEIR, p. 164), but does not describe how it will be addressed]); and (2) the reasonableness of the evacuation time – estimated to be a minimum of 17-18 minutes - has not been defined or compared to a standard of significance, nor is it supported by substantial evidence (June 2019 RDEIR, pp. 61, 140, 141-142).<sup>2</sup>

We appreciate your consideration of our comments and respectfully request that you refrain from certifying the FEIR until it is revised accordingly and refrain from approving the Project until it complies with the SRA. If you have any questions or would like to discuss our comments, please feel free to contact us.

Sincerely,



NICOLE U. RINKE

Deputy Attorney General

HEATHER LESLIE

Deputy Attorney General

For XAVIER BECERRA  
Attorney General

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<sup>2</sup> We also note that some of our previous comments have not been as fully addressed as would be desirable to fully inform decision-makers and the public. For example, the FEIR assumes that the Project will exacerbate wildfire risk, but does not describe the risk in any detail, making it more difficult to evaluate and address that risk and the associated issues related to evacuation. (See June 2019 RDEIR, p. 64.)



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# **Exhibit E**



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March 20, 2019

Planning Commission of Monterey County  
Monterey County Resource Management Agency  
Attn: Mike Novo  
1441 Schilling Place – South, 2<sup>nd</sup> Floor  
Salinas, CA 93901  
*Sent via email: novom@co.monterey.ca.us*

**Re: Paraiso Springs Resort, Project No. PLN040183**

Dear Mr. Novo and Commissioners,

Our office has reviewed the Final Environmental Impact Report ("FEIR") and the Recirculated Draft Environmental Impact Report ("DEIR") for the proposed Paraiso Springs Resort Development ("Project") and respectfully submits the following comments. We request that you consider our comments prior to certifying the FEIR. We spoke with County Counsel and staff on March 20, 2019 and alerted them we would be submitting comments prior to your consideration of the FEIR at your March 27, 2019 Planning Commission meeting.

The Attorney General's Office submits these comments pursuant to the Attorney General's independent power and duty to protect the environment and natural resources of the State from pollution, impairment, or destruction, and in furtherance of the public interest. (See Cal. Const., art. V, § 13; Gov. Code, §§ 12511, 12600-12612; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.)<sup>1</sup> In the wake of the State's deadliest wildfires this past year and the increased occurrence of fires anticipated throughout the State in coming years, it is particularly important that local jurisdictions carefully review and consider new developments in fire prone areas. This is particularly important for new developments proposed in the wildland urban interface or in other relatively undeveloped and remote areas, like the area where the Project is proposed.

Paraiso Springs Resort, LLC, proposes to develop a spa resort along the floor of a canyon in the foothills at the end of rural Paraiso Springs Road in a "very high fire sensitivity

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<sup>1</sup> This letter is not intended, and should not be construed, as an exhaustive discussion of the FEIR's and DEIR's compliance with the California Environmental Quality Act ("CEQA") or the Project's compliance with other applicable legal requirements.

zone.” The Project site is bordered to the east by grazing and farm land, and to the north, south and west by the Santa Lucia Mountains. (DEIR 2-1.) The Project site was previously operated as a commercial hot springs resort beginning in 1874. (DEIR 3-137.) The site has seen several fires over the years that have destroyed various structures on the Property, including a fire in 1891 that destroyed one of the more substantial buildings on the property, a fire in 1928 that destroyed the hotel, the bathhouse, a garage, the dance hall, and some other smaller buildings, and another major fire in 1954 that destroyed the rebuilt hotel and annex. (DEIR 2-15, 3-137-3-138.)

Paraiso Springs Road, the sole ingress and egress to the site,<sup>2</sup> is a narrow, two-lane road varying in width from 16 to 22 feet that dead ends at the Project site. (DEIR 2-45.) The road currently serves approximately 90 vehicles per day associated with single-family residences and local vineyards. (DEIR 3-329.) The Project would include the development of 103 hotel rooms, 77 multi-bedroom timeshare units, three restaurants, entertainment facilities, and various spa amenities at the end of this narrow two-lane rural road. (DEIR 2-17 – 2-18.) It is anticipated that there would be several hundred people at the resort on peak days. With the Project at 100% occupancy, there would be over 400 additional vehicle trips per day on the road. (DEIR 3-336.)<sup>3</sup> Additionally, because of parking limitations at the proposed Project site and limitations with the capacity of the rural access road, the Project proposes to shuttle in many of the guests and 90% of all employees from a parking lot nearly two miles away. (DEIR 3-335 – 3-336.)

Monterey County, as the lead agency, has prepared a FEIR for the proposed Project. Despite the acknowledgment that the Project is located in a “very high fire sensitivity zone,” the FEIR fails to adequately address the risk of fire in several important respects.<sup>4</sup>

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<sup>2</sup> In response to CalFire’s comments on the DEIR, the FEIR suggests that there is a service road for ingress and egress at the rear of the development. (FEIR, Response to comment letter No. 18, 2-12.) The response cites to maps within the DEIR. (*Ibid.*) These maps show service roads *within* the development, but these roads do not appear to provide ingress and egress *to the Project site*.

<sup>3</sup> We note that several commenters questioned whether the traffic analysis for the Project underestimated the trips that will be associated with the Project. (See, e.g., FEIR, Comment Letter 10 (p 20-23).) While we have not evaluated the adequacy of the traffic analysis, we are concerned that the number of visitors accessing the site may be even higher than anticipated in the FEIR, which would exacerbate our concerns regarding the risks associated with wildfires and the FEIR’s inadequate analysis of those risks.

<sup>4</sup> We understand that LandWatch submitted comments to the County on January 15, 2019 raising many of these same issues. The FEIR does not include a response to these comments.

**I. THE FEIR MUST ANALYZE THE INCREASED RISK OF WILDFIRE THAT WILL RESULT FROM THE PROJECT.**

The FEIR does not, but should, analyze the increased risk of wildfire that will result from siting the proposed development within a high fire sensitivity zone. The DEIR discussed emergency access to the site in the event of fire and onsite measures to provide fire protection.<sup>5</sup> However, the DEIR did not disclose that locating new development in a high fire sensitivity zone will itself increase the risk of fire and, as a result, increase the risk of exposing existing residents in the area as well as guests and employees of the resort to an increased risk of fire. (See CEQA Guidelines Section 15126.2, subd. (a) [requiring the evaluation of potentially significant environmental impacts of locating development in areas susceptible to hazardous conditions such as wildfire risk areas, especially as identified in hazard maps and risk assessments].)<sup>6</sup> It is well-accepted that building in wildland areas increases the risk and severity of fires.<sup>7</sup> The California

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<sup>5</sup> A preliminary fire protection plan was prepared for the Project. (DEIR 2-55.) Fire protection elements include hydrants, sprinkler systems, and the use of fire-resistant building materials. (DEIR 2-55 – 2-56.) The Project also includes vegetation management for defensible space. (See e.g., DEIR 3-81 – 3-80.) Cal Fire's Department of Forestry and Fire Protection commented on, among other issues, the adequacy of the vegetation management discussed in the DEIR. (FEIR Comment Letter 18.) In response to these comments, the FEIR simply refers back to the DEIR and does not provide any additional commitments or project modifications. (FEIR, Responses to Comment Letter 18, 2-12.)

<sup>6</sup> Our comments are based on the CEQA Guidelines in effect prior to the recent 2019 update, but it is worth noting that the update confirms and clarifies the need to consider wildfire risks as part of the environmental review for new developments subject to CEQA.

<sup>7</sup> See, e.g., Rapid Growth of the U.S. Wildland-Urban Interface Raises Wildfire Risk (February 6, 2018) (<https://www.pnas.org/content/pnas/115/13/3314.full.pdf>); *New York Times*, Climate Change is Fueling Wildfires Nationwide, New Report Warns (November, 2018) (<https://www.nytimes.com/interactive/2018/11/27/climate/wildfire-global-warming.html>); *Scientific American*, Living on the Edge: Wildfires Pose a Growing Risk to Homes Built Near Wilderness Areas (<https://www.scientificamerican.com/article/living-on-the-edge-wildfires-pose-a-growing-risk-to-homes-built-near-wilderness-areas/>); *USDA*, Wildfire, Wildlands, and People: Understanding and Preparing for Wildfire in the Wildland-Urban Interface (January 2013) ([https://www.fs.fed.us/rm/pubs/rmrs\\_gtr299.pdf](https://www.fs.fed.us/rm/pubs/rmrs_gtr299.pdf)). While these articles and reports largely focus on the risks of locating housing within fire-prone areas, the same risks would appear to apply for commercial establishments offering overnight lodging. The issue with locating development in these areas is that most fires are human induced, so bringing people into wildland areas creates an increased risk that fire will occur. (*Ibid.*) In addition, the risks of fire are exacerbated because development in wildland areas alters the natural environment (e.g., it fragments native vegetation, introduces nonnatives species, and disturbs soils). (See Rapid Growth of the U.S. Wildland-Urban Interface Raises Wildfire Risk (February 6, 2018) (<https://www.pnas.org/content/pnas/115/13/3314.full.pdf>)). Further, fire management in developed wildland areas is more challenging because it is more difficult to fight fires in these

Supreme Court has confirmed that this kind of risk must be considered as part of the CEQA analysis for a proposed project. (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 388 [holding that while CEQA does not require consideration of the environment's effect on a project, it does require analysis of the project's impacts on the existing environment].)

Concerns regarding the Project's impact on the occurrence of wildfires were raised in public comments on the DEIR. For example, Lois Panziera noted that "[w]hen more people are added to a high severity fire area, the potential for fires will occur." (FEIR, Letter 7, Comment 75.) In response, the FEIR simply refers back to the DEIR. (FEIR 2-58 – 2-59.) However, as explained above, the DEIR did not address the increased risk of fires that will result from locating new development within a high fire sensitivity zone. The County should address these issues prior to certifying the FEIR.

## **II. THE FEIR SHOULD ADDRESS EVACUATION IN THE EVENT OF FIRE.**

Based upon the onsite fire fighting infrastructure (sprinkler systems, etc.) and the Project proponent's commitment to develop a fire protection plan, the DEIR concludes that the "occupants would be protected to the extent possible in the case of fire" such that the potential impacts associated with wildfire hazards would be less than significant. (DEIR 3-215 – 3-216.) The DEIR describes emergency access to the site, but does *not* address: (i) the evacuation of employees and guests in the event of a fire, (ii) the increased challenges that existing users of the sole ingress and egress road will face in the event of an evacuation due to the added users on the road, or (iii) the increased challenges that firefighters and emergency responders would face accessing the site and preventing the spread of a wildfire due to the simultaneous evacuation of guests and employees from the Project and neighboring areas. The EIR should include a more robust discussion of the fire hazards and describe the evacuation plan for guests and employees, as well as neighboring residents and existing users of Paraiso Springs Road. (See *Clews Land & Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161, 194 [discussing whether or not the EIR adequately considered the risk of fire to future users of the project site, including acceptable evacuation plans]; *California Clean Energy Committee v. County of Placer* (Cal. Ct. App., Dec. 22, 2015, No. C072680) 2015 WL 9412772 [concluding that the EIR failed to adequately evaluate evacuation issues associated with the project].)

In response to public comments, including from CalFire's Department of Forestry and Fire Protection, asking about evacuation plans (see Comment Letter 18 starting on FEIR 2-11), the FEIR promises that a final Fire Protection Plan that includes evacuation procedures will be developed. (FEIR 2-12.) Meaningful analysis of the risk of fire and evacuation plans should not be deferred until after the FEIR is certified and the Project is approved. (See CEQA Guidelines

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landscapes and fire management strategies that allow natural fires to burn are not an option. (*Ibid.*; see also *USDA, Wildfire, Wildlands, and People: Understanding and Preparing for Wildfire in the Wildland-Urban Interface* (January 2013) ([https://www.fs.fed.us/rm/pubs/rmrs\\_gtr299.pdf](https://www.fs.fed.us/rm/pubs/rmrs_gtr299.pdf)).)



Section 15126.4(a)(1)(B).) While the deferment of mitigation measures may sometimes be appropriate, here no basis has been provided for why the evacuation plan was not already prepared as part of the DEIR or FEIR, nor have any performance standards or potential mitigation measures been identified. (*Ibid*; see also, e.g., *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 671 [mitigation measure that included development of a post-FEIR management plan was found to be improperly deferred mitigation where no basis was provided for why the development of mitigation measures needed to be deferred to future plans and, no specific criteria, performance standards, or potential mitigation measures were set forth in the EIR].) In addition, based on the discussion in the DEIR, we are concerned that the Fire Protection Plan, when it is developed, may not adequately address the totality of issues related to evacuation (see above).

### **III. THE PROJECT MUST COMPLY WITH THE REQUIREMENTS FOR STATE RESPONSIBILITY AREAS.**

The Project is located in a State Responsibility Area, which is an area for which the Board of Forestry and Fire Protection has designated the State to be financially responsible for preventing and suppressing fires. (Pub. Resources Code, § 4102.) Local jurisdictions may adopt standards for wildfire protections in State Responsibility Areas, but those standards must be at least as stringent as the State's minimum standards and be certified by the State. (Pub. Resources Code, § 4117.) Monterey County has adopted standards for this purpose. (Monterey County Code, §§ 18.56.010 – 18.56.100.) The proposed Project does not appear to comply with these standards.

First, Paraiso Springs Road is a dead end road that terminates at the proposed Project location. Both the County and State standards limit dead end roads to a cumulative length not to exceed 5,280 feet. (Monterey County Code § 18.56.060(11); Cal. Code. Regs., tit. 14, § 1273.09.) The Paraiso Springs Road that would serve as the sole ingress and egress for the Project is 1.9 miles long or 10,032 feet according to Google maps, nearly double the allowable limit. The FEIR and DEIR do not address the Project's failure to comply with the length limitation for dead end roads in State Responsibility Areas.

Second, the width of Paraiso Springs Road will not comply with the local or State standards. State standards generally require a minimum of two 10-foot traffic lanes. (Cal. Code Regs., tit. 14, § 1273.01.)<sup>8</sup> The Project proposes to widen "*the majority of Paraiso Springs Road to either 18 or 20 feet wide.*" (DEIR 3-340.) However, the FEIR explains that the road will only be widened "where feasible". (FEIR 2-10). The Project proponent should commit to widening not just a majority of the road, but the entirety of the road, to a distance that complies with the applicable standards.

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<sup>8</sup> The County requires that all roads have a minimum of two 9-foot traffic lanes. (Monterey County Code, § 18.56.060(3).) Therefore, the State's more stringent requirement would control.

**IV. THE PROJECT SHOULD PROVIDE PROXIMAL ACCESS TO A FIRE STATION.**

Despite a request from the local fire district, the Project proponent has declined to construct a small fire station onsite, concluding that it would be “incompatible with resort operations.” (DEIR 3-307.) The closest fire station is nine miles away, which the program Google Maps reports is an 18-minute drive. The DEIR claims the fire station is within the 15 minutes recommended by the applicable Monterey County General Plan. (DEIR 3-307.) Public comments on the DEIR noted the Project site is not within a 15-minute response time from the Soledad fire station. (See, e.g., Letter 7, Comment 74 starting on FEIR 2-33 and Letter 8, Comment 5 starting on FEIR 2-61). Rather than provide factual support for the DEIR’s claim that the fire station is within 15 minutes from the Project site or revise the Project so that it complies with the Monterey County General Plan recommendation, the FEIR simply restates the DEIR’s conclusion that “the project would not warrant construction of new or expanded facilities in order to maintain ... response times....” (FEIR 2-11). The FEIR should be revised to accurately reflect the distance of the nearest fire station to the Project site and should require compliance with the policy prescribed by the General Plan—preferably with construction of a fire station onsite as requested by the local fire district.

We appreciate your consideration of our comments and respectfully request that you defer certification of the FEIR and approval of the Project until you more fully address the risks of wildfire associated with the Project. If you have any questions or would like to discuss our comments, please feel free to contact us.

Sincerely,



NICOLE U. RINKE  
Deputy Attorney General  
HEATHER C. LESLIE  
Deputy Attorney General

For XAVIER BECERRA  
Attorney General

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# **Exhibit F**



**BOARD OF FORESTRY AND FIRE PROTECTION**

THE NATURAL RESOURCES AGENCY  
STATE OF CALIFORNIA

**KEITH GILLESS, CHAIR**

Wade Crowfoot, *Secretary*  
Gavin Newsom, *Governor*

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October 23, 2020

Linda Schiltgen  
Deputy County Counsel  
County of Sonoma  
[Linda.Schiltgen@sonoma-county.org](mailto:Linda.Schiltgen@sonoma-county.org)

**Re: BOF Certification Questions: Sonoma County Responses**

Dear Ms. Schiltgen:

The Board is in receipt of your letter dated October 18, 2020, and addressed to Board of Forestry and Fire Protection (Board) Chair Keith Gilless and Vice Chair Darcy Wheelles. It has been distributed to the Board members for consideration. Because your letter provides responses to questions posed by Board staff, please accept this response by Board staff on their behalf.

**Background**

A brief summary is appropriate for context. For several months, the Board, its staff, and representatives from the County of Sonoma (Sonoma County) have been engaged in discussions relative to the potential certification of Sonoma County's local fire safe ordinance as equaling or exceeding the Board's Fire Safe Regulations (14 CCR § 1270 et seq.). Board members and staff have expressed concerns about portions of Sonoma County's ordinance that either omit standards included in the Fire Safe Regulations or set standards that, on their face, appear to be less stringent than the Fire Safe Standards. At the September 22, 2020, Joint Committee Meeting of the Board, Board staff were directed to provide Sonoma County with a list of specific questions posed by both Board members and staff, that, if answered, would allow Board staff to properly evaluate the local ordinance and enable staff to make a recommendation to the Board in favor of certification. By letter dated October 12, 2020, Board staff issued those questions to Sonoma County. By your letter dated October 18, 2020, Sonoma County provided its responses for Board staff consideration.

When being presented with the myriad of issues related to certification, it is important not to lose sight of the fundamental task before the Board. The Board is reviewing the Sonoma County ordinance pursuant to 14 CCR § 1270.04 to decide whether to exercise its discretion "to certify [the ordinance] as equaling or exceeding [the Board's regulations] when they provide

the same practical effect.”<sup>1</sup> While it is generally not difficult to determine whether a particular provision of an ordinance equals or exceeds a corresponding provision in the Board’s regulations, the same cannot be said for determining whether a local ordinance that fails to equal or exceed the Board’s regulation nonetheless provides the *same practical effect*. To aid in this determination, the Board’s regulations provide a detailed definition of the term *same practical effect*. With these tools, the Board must evaluate each provision of a local ordinance and compare it to the corresponding provision in the Board’s regulations to determine whether the local ordinance provision equals or exceeds the Board’s regulation or provides the same practical effect. Still, the task before the Board is challenging and requires careful and deliberate consideration, especially when applying the complex definition of *same practical effect*.

### **Summary of Staff Findings**

At its core, the Board’s task is fundamentally a very narrow inquiry: *For each substantive requirement in the Fire Safe Regulations, does the local ordinance have a provision that equals or exceeds or has the same practical effect as that Fire Safe Regulation standard?*

Board staff have completed their review of Sonoma County’s responses and continue to have significant concerns that the ordinance does not satisfy the Board’s standards for certification. Sonoma County’s responses pertaining to standards for existing roads and for ingress/egress that allows concurrent civilian evacuation are of particular concern. Accordingly, Board staff lack an evidentiary basis to support a recommendation for certification. Board staff have enclosed an updated matrix, dated to reflect the upcoming November 3, 2020, Joint Committee Meeting of the Board, that provides more specific observations and staff recommendations.<sup>2</sup>

This is an appropriate point to address Sonoma County’s position that if the Board does not certify its ordinance, then Sonoma County is prevented from enjoying the benefits of the portions of its ordinance that it believes clearly equal or exceed the Fire Safe Regulations. The Board would like to reiterate to Sonoma County that certification of its ordinance by the Board is not required for Sonoma County to apply its own standards that go above and beyond the state minimum standards. Board certification is a creature of regulation, the benefit of which is to publicly document a mutual understanding of the Board and the local jurisdiction that a local ordinance equals or exceeds the Fire Safe Regulations. Under Public Resources Code § 4290, subdivision (c), the Board’s minimum standards do not supersede any Sonoma County

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<sup>1</sup> References in this letter to the “equal or exceed” standard includes this “same practical effect” standard.

<sup>2</sup> The attached November 3, 2020, matrix represents Board staff’s current evaluation and recommendations to the Board, and supersedes any prior matrix, whether final or draft, including the deliberative draft September 4th matrix, which apparently Sonoma County misunderstood to be something more than merely an informal tool to facilitate productive discussion in advance of the September Board meeting.

ordinance that equals or exceeds the minimum state standards.<sup>3</sup> Thus, if Sonoma County has stricter, greater, or enhanced requirements in its ordinance, the lack of certification by the Board does not preclude Sonoma County from deciding to apply these stricter requirements.

Turning now to Sonoma County's responses, it is worth mentioning that it is unnecessary for Board staff to address each individual response. The purpose of the exercise is to provide Board staff sufficient information so that it may complete its evaluation of Sonoma County's ordinance and issue a recommendation for the Board's consideration. As noted above, the certification determination is made in light of the language of the local ordinance and any documents incorporated by reference. Supplemental information, such as Sonoma County's responses, merely illuminates the local jurisdiction's interpretation of its ordinance and how it equals or exceeds the Fire Safe Regulations.

In any event, Sonoma County's responses reflect a number of recurring issues of concern to Board staff that can be summarized generally without focusing on the content of specific responses or specific sections of the ordinance. Board staff have consistently expressed concerns that the Sonoma County ordinance and Administrative Policy do not articulate specific minimum standards for each type of road referenced in the ordinance and Administrative Policy<sup>4</sup> nor does it articulate what standards govern the fire official's assessment that a road provides concurrent civilian evacuation. Board staff's questions were particularized and specific attempts to identify those standards so that Board staff could evaluate where they equal or exceed the Fire Safe Regulations.

### **Detailed Discussion**

Board staff acknowledge that some of Sonoma County's responses on certain other issues resolved Board concerns or provided additional clarity. This letter focuses on major issues that preclude the Board staff from issuing a recommendation in favor of certification. Board staff refer interested parties to the staff-prepared final matrix for the November 3, 2020, Board meeting for a more comprehensive discussion of portions of the ordinance that equal or exceed the Fire Safe Regulations.

Sonoma County's ordinance and responses to staff questions on the following topics are inadequate. Sonoma County's responses do not provide the requested citations nor identify the specific standards that Sonoma County contends apply. Instead, the responses reiterate

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<sup>3</sup> It is necessary to acknowledge that the statute does not include a "same practical effect" standard. A local ordinance applied pursuant to Public Resources Code § 4290(c), without obtaining Board certification, must "equal" or "exceed" the Fire Safe Regulations in the ordinarily understood sense of those words. Thus, a non-certified local ordinance applied by a local jurisdiction is potentially subject to a stricter legal standard than is required for certification under 14 CCR § 1270.04.

<sup>4</sup> The ordinance and Administrative Policy contemplate new roads, existing roads, existing public roads, existing private roads, and existing roads approved on a discretionary basis and a ministerial basis. Sonoma County is entitled to have as many subcategories as it chooses, but each must have an established standard that equals or exceeds the Fire Safe Regulations.

positions that, while not unimportant, are nonetheless irrelevant to the narrow certification inquiry before the Board.

We will first address the various arguments that are not relevant to and therefore do not inform staff's analysis.

**Sonoma County Argument 1: Some portions of the ordinance equal or exceed the Fire Safe Regulations**

Sonoma County's introductory paragraph includes a chart outlining several provisions showing how its ordinance equals or exceeds the Fire Safe Regulations. This general claim is reiterated in response to several questions.

The Board acknowledges that many elements of Sonoma County's standards clearly equal and exceed the minimum standards of the Fire Safe Regulations. This has been well established in documents provided for Board consideration, as well as testimony at several Board and Joint Committee Meetings this year. However, exceeding the Fire Safe Regulations in certain aspects does not excuse an ordinance's failure to equal or exceed other standards imposed by the Fire Safe Regulations.

Thus, the Board's determination that one provision of a local ordinance equals or exceeds the Fire Safe Regulations has no bearing on the Board's consideration of other unrelated provisions of the local ordinance. This argument is an unnecessary distraction and does not inform whether all provisions satisfy the certification standard. As such, the Board does not focus on these statements when applying the certification standard.

**Sonoma County Argument 2: Takings / Inability to secure easements for expanding roads**

Another argument advanced in Sonoma County's preliminary comments asserts that the Fire Safe Regulations effect an unconstitutional "taking" of private property for public use because they make a landowner individually responsible for upgrading existing roads that serve other parcels. Other variations of this argument suggest that the Fire Safe Regulations encourage Not-In-My-Backyard (NIMBY) opposition to prevent development or allow a landowner to extort a neighbor by refusing to sell an easement to facilitate road widening to comply with state standards. These arguments are also reiterated in response to several questions seeking clarity about Sonoma County's standards and how they equal or exceed the Fire Safe Regulation.

The Fire Safe Regulations have not been legally challenged, let alone invalidated, as being unconstitutional in any sense. They are binding as minimum standards on Sonoma County, notwithstanding speculative practical inconveniences at the local level. It is Sonoma County's prerogative to impose those burdens on individual landowners instead of exercising other options at its disposal, such as eminent domain. In any event, the issue of who bears financial responsibility for upgrading existing roads that serve as access to new building construction has no bearing on whether road standards in Sonoma County's ordinance – such as minimum road

widths – equal or exceed the corresponding standard in the Fire Safe Regulations. As such, the Board does not focus on this argument when evaluating the ordinance for compliance with its certification standard.

### **Sonoma County Argument 3: Fire Safe Regulation Exception Process**

Another argument advanced in Sonoma County’s preliminary comments asserts inadequacies in the Fire Safe Regulations’ “exception process” (14 CCR § 1270.06), including a loophole authorizing local jurisdictions to waive any requirement in the Fire Safe Regulations. This argument is reiterated in response to several questions.

While the Board appreciates Sonoma County’s comments and will certainly takes these into account to consider whether regulatory changes are warranted to address this point, Sonoma County’s concerns regarding 14 CCR § 1270.06 do not have bearing on the present issues related to certification of Sonoma County’s ordinance, for multiple reasons. First, Sonoma County adopted its own “exceptions to standards” provision, § 13-23, in its ordinance. Notwithstanding certain staff comments in the matrix, the Board may determine that these provisions equal or exceed the minimum standards in § 1270.06. Second, assuming for the sake of argument that 14 CCR § 1270.06 allows for “behind closed doors” determinations, or fails to provide a thorough open and public process, this is irrelevant as to whether *other* sections of Sonoma County’s ordinance equal or exceed the Board’s minimum standards. Finally, to the extent Sonoma County finds the minimum standards in 14 CCR § 1270.06 unsatisfactory, the regulation expressly states that local jurisdictions “may establish additional procedures or requirements for exception requests.” Thus, to the extent Sonoma County believes that the Board’s exception standards in § 1270.06 are deficient, Sonoma County may remedy these by imposing additional requirements. Consequently, the Board does not focus on this argument when evaluating the ordinance for compliance with its certification standard.

### **Sonoma Ordinance Issue 1: Existing Road Standards**

We now turn to Sonoma County’s discussion of the specific standards and citations in response to the Board staff’s questions relating to existing road standards and the concurrent evacuation requirement. Sonoma County’s responses continue to make conclusory statements about the quality of its ordinance and Administrative Policy. Board staff are repeatedly told that these documents have “clear standards” and a “strict set of requirements,” but do not reference actual standards or citations. Board staff needs this information to properly evaluate the ordinance for certification. Without it, Board staff are compelled to conclude that no such standards exist and recommend to the Board that Sonoma County’s ordinance does not satisfy the certification standard for existing roads.

Throughout the certification process, Sonoma County has repeatedly maintained that Public Resources Code section 4290 and the Fire Safe Regulations do not apply to existing roads. Sonoma County's position is incompatible with the plain language of PRC § 4290,<sup>5</sup> the Fire Safe Regulations,<sup>6</sup> and opinions and letters issued by the Attorney General of California.<sup>7</sup> More importantly, the Fire Safe Regulations themselves – which constitute the basis for the certification determination – clearly provide no exemption for existing roads, and it is these regulations that the Sonoma County ordinance must equal or exceed. This represents a fundamental and intractable disagreement between the Board and Sonoma County. Sonoma County's position on existing roads, standing alone, is a legitimate basis for determining that the ordinance does not equal or exceed the Fire Safe Regulations.

Moreover, Sonoma County's position has a discernible impact on it characterizes its ordinance, and the amount of effort necessary for Board staff to parse its assertions for accuracy and compliance with the certification standard. Specifically, any assertion Sonoma County makes about "roads" requires the Board to evaluate whether Sonoma County intends to apply that standard to existing roads.

Setting aside this fundamental disagreement as to the applicability of the Fire Safe Regulations, Sonoma County has argued that, in the alternative, even though it believes existing roads are exempt, Sonoma County's Administrative policy nonetheless applies to existing roads and equals or exceeds the Fire Safe Regulations.

Board staff have reviewed the ordinance and Administrative Policy in great detail. The only specific standard identified in the Administrative Policy is a 12-foot width requirement for existing private roads. On its face, this falls short of the minimum road standard in 14 CCR § 1273.01. That is a significant obstacle to Board certification. More concerning, however, is that the policy provides no standards for other types of existing roads. As noted before, the Administrative Policy contemplates a public/private distinction, as well as a discretionary/ministerial distinction. No standards for these types of existing roads exist in the ordinance or Administrative Policy. Until these deficiencies are remedied to the Board's satisfaction, Sonoma County's ordinance and Administrative Policy is conclusively ineligible for certification. As Sonoma County's responses fail to provide the requested information with sufficient detail, Board staff can only conclude that no such standards exist and recommend to the Board that the ordinance does not meet the certification standard.

Additionally, Sonoma County's reliance on the Administrative Policy as setting the exclusive standard for existing roads raises concerns beyond the road width issues. The Fire Safe

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<sup>5</sup> "These regulations apply to the perimeters and access to all residential, commercial, and industrial building construction within state responsibility areas... ." (Emphasis added.)

<sup>6</sup> See 14 CCR § 1270.02 which includes the same language in fn5 and includes an exemption for roads that is limited to agricultural, mining, and timber-related operations.

<sup>7</sup> See, e.g., AG Opinion No. 92-807 (1993); AG letter to Monterey County Planning Commission (Oct. 25, 2019).

Regulations set other standards for roads, such as grade, surface requirements, radius, turnouts, turnarounds, and dead end roads. However, the Administrative Policy is silent on those issues, and Sonoma County's responses do not identify what standard, if any, apply for those existing road requirements, and where they can be located in the ordinance or Administrative Policy.

In this respect, Sonoma County's response to Question 1.1.3.3 is emblematic. The Board staff posed a direct request seeking specific information: "For convenience and reference, please complete the following table by filling in the specific ordinance section or Administrative Policy section that addresses the specified SRA Fire Safe Regulation." One axis of the referenced table identified (with citations) all of the above-referenced road requirements in the Fire Safe Regulations that Sonoma County's ordinance must equal or exceed. Along the other axis, the table identified all of the categories of existing roads referenced in the Administrative Policy. Sonoma County's task was to provide an ordinance or Administrative Policy citation in each box.

Board staff believed the table provided the best and simplest opportunity for Sonoma County to provide the information necessary to support certification with respect to requirements for existing roads. Sonoma County's response does not provide any relevant or informative citations. For two columns, Sonoma County cross-referenced six of its other responses to unrelated questions. The County responses did not comply with the call of the question to provide a citation, nor could any relevant citations or standards be discerned from the referenced answers. In fact, some of the cited responses made no mention of the relevant terms. With respect to the remaining categories of existing road standards (public/private and ministerial/discretionary), Sonoma County referenced provisions of its ordinance that apply to *new* roads.<sup>8</sup> These citations are also unresponsive to the call of the question because §13-25(f) of the ordinance clearly states that existing road standards are governed by the Administrative Policy.

In the last couple of weeks, Sonoma County has advanced a new argument indicating that its adoption of an optional appendix from the California Fire Code satisfies the requirement for establishing road requirement standards that satisfy the Fire Safe Regulations. As Board staff made clear in a prefacing comment to Question 2.2 and subsequent follow up questions, compliance with the California Fire Code does not ensure compliance with the Fire Safe Regulations. Those standards are relevant only to the extent that they equal or exceed the Fire Safe Regulations. The Board staff's follow up questions on this point quoted a number of the appendix standards which Sonoma County revised so that the standard may also be satisfied by compliance "with the Sonoma County Fire Safe Standards or as approved by the fire code official." The reference to the Sonoma County standard is a circular reference to the very

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<sup>8</sup> If Sonoma County intends the particular referenced ordinance provisions to apply both to new roads and existing roads, the ordinance and Administrative Policy will require substantial revision.

standard that Sonoma County has been unable to identify to Board staff. Additionally, it appears that the fire code official has unfettered discretion to impose any standard – including a lesser standard or no standard at all. Sonoma County’s responses do not contradict this reasoning or clarify the requirements. Board staff stand by the position that Sonoma County’s adoption of the California Fire Code Appendix is meaningless in connection with establishing that the Sonoma County ordinance and Administrative Policy provide minimum standards that equal or exceed the Fire Safe Regulations’ road requirement standards.

Again, Sonoma County has had repeated opportunities to identify and provide citations for these standards. Sonoma County repeatedly declines to do so. Until Sonoma County can provide direct and adequate responses to the Board’s important questions, the Board has no evidentiary basis to support a decision to certify the Sonoma County ordinance.

### **Sonoma County Ordinance Issue 2: Concurrent civilian evacuation**

A distinct component of the Fire Safe Regulations that is somewhat related to the road conditions issue is that emergency access requirements must accommodate ingress and egress for emergency vehicles *and concurrent civilian evacuation*. Board members and staff have asked Sonoma County on prior occasions to clarify how Sonoma County’s ordinance and Administrative Policy satisfy this requirement.

The Administrative Policy states, in an introductory paragraph, that a Fire Inspector will perform an evaluation to “confirm that the proposed development equals or exceeds the below requirements, and the proposed development shall be safely accessed and served in the case of a wildfire, with adequate ingress, egress and the capacity for concurrent evacuation and emergency response.”

We acknowledge and appreciate that Sonoma County confirms in its responses that the concurrent evacuation standard is an additional standard to equaling or exceeding “the below requirements.” However, Sonoma County does not articulate what standards guide the Fire Official in making that determination.

The first requirement following that statement in the Administrative Policy highlights the importance of that query. The requirement sets a road width standard for existing private roads at 12-ft plus 1-foot of vegetation clearance on both sides. This leads Board staff to question how a 12-foot road, which falls short of the Fire Safe Regulation road width requirement, could be certified as ensuring concurrent civilian evacuation during a wildfire. Nor does this section of the Administrative Policy provide guidance as to what standards guide the Fire Official in making a subjective determination. Absent clarification – which did not occur in response to the Board staff’s questions – the Board is appropriately reluctant in determining that the ordinance and Administrative Policy equal or exceed the Fire Safe Regulations.



In addition, Sonoma County routinely refers Board staff to §§ 13-62 and 13-63, in response to Board staff's concerns about the lack of specific articulable standards in the ordinance and Administrative Policy. Sonoma County's reliance is misplaced, however, as those sections merely confer discretionary authority to require compliance with additional fire safety measures. Critically, permissive authority provides no assurances to the Board that additional requirements will be imposed at the level contemplated by the Fire Safe Regulations.

### **Conclusion**

In conclusion, Sonoma County's responses to questions issued by Board staff fail to resolve a number of significant concerns expressed by Board members and staff over the preceding months. The question before the Board at the November 3, 2020, Board meeting is whether the Sonoma County ordinance equals or exceeds the substantive requirements in the Fire Safe Regulations. At this time, the Sonoma County ordinance and Administrative Policy include requirements that fall short of the Fire Safe Regulations and omit standards that are required as a counterpart to other provisions of the Fire Safe Regulations. Until Sonoma County addresses these infirmities, Board staff lack a basis to recommend, and the Board lacks a legal basis to certify, the ordinance as equaling or exceeding the Fire Safe Regulations.

Consistent with our prior communications and correspondence, this letter reflects only the position of Board staff. We wish to be transparent with Sonoma County regarding our ongoing concerns and how we intend to advise the Board in advance of the November Board meeting. Ultimately, the Board will be responsible for making its own assessment on the question of whether the Sonoma County ordinance should be certified as equaling or exceeding the Fire Safe Regulations. Similarly, we respect the right of Sonoma County to disagree with Board staff positions expressed in this letter or the enclosed matrix when the matter is considered by the Board's Joint Committee on November 3, 2020.

Respectfully,



Jeff Slaton  
Senior Board Counsel  
Board of Forestry and Fire Protection  
[Jeffrey.Slaton@bof.ca.gov](mailto:Jeffrey.Slaton@bof.ca.gov)

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# **Exhibit G**

**SANTA MONICA MOUNTAINS CONSERVANCY**

KING GILLETTE RANCH  
26800 MULHOLLAND HIGHWAY  
CALABASAS, CA 91302  
PHONE (310) 589-3200  
FAX (310) 589-3200  
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May 15, 2023

Vince Bertoni, Director  
Department of City of Planning  
City of Los Angeles  
201 N. Figueroa Street  
Los Angeles, California 90012

Bihn Phan, Chief  
Permit and Engineering Bureau  
Los Angeles Department of Building and Safety  
201 N. Figueroa Street  
Los Angeles, California 90012

**City of Los Angeles Obligation to Enforce State Minimum Fire Safe  
Regulations Pursuant to Public Resource Code Section 4290**

Dear Mssrs. Bertoni and Phan:

The Santa Monica Mountains Conservancy (Conservancy), the principal State planning agency for the Santa Monica Mountains Zone, finds that City of Los Angeles departments analyzing projects and issuing building permits in Very High Fire Hazard Severity Zones as defined in subdivision (i) of Section 51177 of the Government Code frequently do not comply with State Minimum Fire Safe Regulations pursuant to Public Resource Code Section 4290. These regulations include *restrictions* on development on roadways less than 20 feet wide and on dead-end roads over 800 feet for safe concurrent ingress and egress in the event of an emergency. Yet, the City continues to approve hillside development on roads that do not conform to these regulations with deleterious environmental and safety results.

As of July 1, 2021, per SB 901 and the actions of the State Board of Forestry and Fire Protection, the State Minimum Fire Safe Regulations (Regulations) were expanded to now apply to Local Responsibility Areas not just State Responsibility Areas. As a result, any City building permits approved after July 1, 2021 in Very High Fire Hazard Severity Zones must comply with these minimum State regulations. Such permits and permit applications pertain to new construction not relating to an existing structure and to road construction both for new roads and extensions of existing roads. As a local jurisdiction, the City must provide the Director of Cal Fire with notice of all applications for building

permits, tentative parcel maps, tentative maps, and installation or use permits for construction or development within Very High Fire Hazard Severity Zones. The Director may then make recommendations on the applicable construction, development permits or maps provided by the local jurisdiction (14 CCR 1270.04).

More specifically, Article 2 of the Regulations, Sections 1273 et seq., address Ingress and Egress. The intent of this portion of the Regulations is to require that: “Roads, and Driveways, whether public or private, unless exempted under 14 CCR §1270.03(d) shall provide for safe access for emergency Wildfire equipment and civilian evacuation *concurrently*, and shall provide unobstructed traffic circulations during a Wildfire emergency consistent with 14 CCR §§1273 through 1273.09. Section 1270.03(d) only exempts roads used solely for agriculture, mining, or the management of timberland or harvesting of forest products.

Ingress and Egress Regulations: minimum roadway Width (Section 1273.01) and maximum Dead-End Road length (Section 1273.08).

Section 1273.01(a) requires that:

All roads be constructed “to provide a minimum of two ten (10) foot traffic lanes, not including shoulder and striping. These traffic lanes shall provide for two-way traffic flow to support emergency vehicle and civilian egress, unless other standards are provided in this article or additional requirements are mandated by Local Jurisdictions or local subdivision requirements.

As specified in Section 1273.08(a):

(a) The maximum length of a Dead-end Road, including all Dead-end Roads accessed from that Dead-end Road, shall not exceed the following cumulative lengths, regardless of the number of parcels served:

Parcels zoned for less than one acre – 800 feet  
Parcels zoned for 1 acre to 4.99 acres – 1,320 feet

A dead-end road is defined in Section 1270.01(e) of the Regulations as: “A road that has only one point of vehicular ingress/egress, including cul-de-sacs and Roads that loop back on themselves.”

Vince Bertoni and Bihn Phan  
City Obligation to Enforce State Minimum Safe Fire Regulations  
May 15, 2023  
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The Conservancy appreciates your addressing of these concerns. Please direct any future correspondence to Paul Edelman of our staff by email at [edelman@smmc.ca.gov](mailto:edelman@smmc.ca.gov), by phone at 310-589-3200 ext. 128, or at the above letterhead address.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Ortega, Jr.', with a stylized flourish extending from the end.

RUDY J. ORTEGA, JR.  
Chairperson