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VIA EMAIL AND US MAIL

Hon. Marqueece Harris-Dawson, President
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Re: Pre-Litigation Demand to Comply with State Minimum Fire Safe Regulations, Cal. Code Regs. tit. 14 § 1270.00 et seq;

Dear Hon. Harris-Dawson and City Attorney Feldstein:

This firm represents the Federation of Hillside and Canyon Associations ("Hillside Federation"), a 501(c)(3) non-profit organization that was founded in 1952. The Hillside Federation represents 47 homeowner and resident associations with approximately 250,000 constituents spanning the Santa Monica Mountains. The Hillside Federation's mission is to promote those policies and programs which will best preserve the natural topography and wildlife of the mountains and hillsides for the benefit of all the people of Los Angeles.

The Hillside Federation is writing to demand that the City comply with the "State Minimum Fire Safe Regulations" ("Regulations") codified at Cal. Code Regs. tit. 14 § 1270.00 et seq.¹ with regard to proposed development projects located in Very High Fire Hazard Severity Zones ("VHFHSZ"). As explained below, the Department of City Planning has taken the position that the Regulations only apply when a new road is constructed. This position is

¹ The Regulations can be accessed at <https://www.law.cornell.edu/regulations/california/title-14/division-1.5/chapter-7/subchapter-2>

completely without legal support and the Hillside Federation demands that the City commit to compliance with the law.

I. The City's Pattern of Refusing to Order Street Improvements on Substandard Streets in Sensitive Hillside Areas of The City Is a Deadly Policy Failure.

Los Angeles, a city known for its sprawling urban landscape, scenic vistas, and diverse neighborhoods, has faced a long history of devastating wildfires. The combination of urban expansion, high winds, dry conditions, and dense vegetation places much of the City at risk of wildfires, which have caused significant property damage, loss of life, and destruction of the environment over the years. In response to these recurring disasters, both the City of Los Angeles' General Plan Framework and numerous Community Plans with hillside areas have acknowledged the inherent dangers posed by wildfires. However, despite these plans' recognition of the threat, a significant policy gap persists. One of the most glaring oversights is the City's failure to require new development projects to widen the streets as part of the development process, a crucial action for ensuring proper emergency access during wildfire events.

The history of wildfires in Los Angeles is marked by frequent, intense fire seasons, each leaving a lasting mark on the city's communities. In the early 20th century, many of the wildfires were smaller in scale, but by the latter half of the century, fire seasons became progressively more severe due to urbanization, climate change, and increased human activity in the wildland-urban interface areas. Major wildfires such as the Bel Air Fire of 1961 and the more recent Getty Fire in 2019 have left entire neighborhoods scorched, destroying homes and properties, and displacing thousands of residents.²

The intensity and frequency of these fires have only increased in recent decades, exacerbated by the region's Mediterranean climate, which features dry summers and autumns coupled with occasional droughts. The 2017 and 2018 fire seasons were some of the most devastating in California's history, with fires such as the Thomas Fire and Woolsey Fire encroaching on Los Angeles, burning hundreds of thousands of acres and causing billions of dollars in damages. The ongoing wildfires have highlighted the City's vulnerability to fire hazards, particularly in neighborhoods adjacent to wooded hillsides, canyons, and open spaces that are prone to ignition.

Recognizing the growing threat of wildfires, the City of Los Angeles incorporated fire risk mitigation strategies into its General Plan Framework and the community plans of the City's General Plan. The General Plan is a long-term policy document that outlines the city's vision for its future development, encompassing land use, infrastructure, and environmental protection. The plan acknowledges that many areas within the city are in high-risk fire zones and identifies

² A historical archive of some of the more famous fires in Los Angeles can be accessed at https://www.lafire.com/famous_fires/fires.htm

strategies to reduce wildfire vulnerability through zoning regulations, fire-resistant building codes, and improved emergency response protocols.

The City's General Plan Framework states: "As development occurs, the Fire Department reviews environmental impact reports and subdivisions applications for needed facilities. Where appropriate, construction of new facilities is required as a condition of development." Consistent with this observation, Framework Policy 9.17.4 provides: "Consider the Fire Department's concerns and, where feasible adhere to them, regarding the quality of the area's fire protection and emergency medical services when developing general plan amendments and zone changes, or considering discretionary land use permits." Many concerned community observers have noticed that in recent years that Fire Department has not been commenting on discretionary permits, perhaps due to a failure to properly fund this critical safety activity or internal pressure to stand down, and as a result City decision makers have taken the Department's silence as "permission" to green light waivers of street improvements to enhance emergency access in sensitive areas of the City.

Generally, the City's fire hazard mapping system, known as the Fire Hazard Severity Zones (FHSZ), designates specific areas at high, very high, and moderate risk levels for wildfires. Areas with high and very high ratings include neighborhoods such as the rugged mountainous areas of the western portions of the City like Woodland Hills, Pacific Palisades, Mandeville Canyon, Bel Air, Laurel Canyon, Hollywood Hills, Griffith Park, Runyon Canyon, and on the eastern end of the Santa Monica Mountains like Los Feliz, Glassell Park, Mount Washington, and El Sereno all of which have experienced devastating fires in recent decades. The General Plan recommends strategies such as defensible space (creating a buffer zone around structures to protect against wildfires), fire-resistant landscaping, and infrastructure improvements, particularly in neighborhoods near fire-prone areas.

Additionally, the Los Angeles Fire Department (LAFD) and emergency response agencies have developed plans for quicker evacuations and firefighting operations, considering factors like road access, traffic, and infrastructure. In this context, one would expect that the City's commitment to fire safety would lead to comprehensive measures for fire safety infrastructure, especially regarding the wide, accessible streets necessary for emergency vehicles.

The Bel Air-Beverly Crest Community Plan implements the General Plan Framework stating: "The intensity of land use in the mountain and hillside areas and the density of the population which can be accommodated thereon, should be limited in accordance with the following:

- The adequacy of the existing and assured street circulation system, both within the area and in peripheral areas, to accommodate traffic.
- The availability of sewers, drainage facilities, fire protection services and facilities, and other public facilities."

The Northeast Community Plan, part of Los Angeles' broader set of community plans, specifically addresses areas like Eagle Rock, Highland Park, Glassell Park, Mount Washington, and the eastern sections of the San Fernando Valley, some of which fall within high-risk fire zones. This localized community plan, the result of a decade of hard-fought community activism to protect the plan area's residents from irresponsible development. This Plan takes into account the specific fire hazards faced by these neighborhoods and seeks to implement strategies for reducing fire risks, particularly through zoning and land use regulations that ensure defensible spaces and accessible routes for firefighting personnel and evacuation.

For instance, the Northeast Community Plan generally noted a history of poor City enforcement of land use and building laws: "Lack of effective enforcement of government regulations pertaining to construction, land use, and signage." It also called out the problem of overdevelopment in hillside areas without infrastructure capacities: "Development exceeding infrastructure and service capabilities, particularly in hillside areas." It also stated the new plan should emphasize: "Protecting public safety, health, and welfare by improving enforcement of building and zoning codes." This Community Plan foresaw the risks of failure of the City to address infrastructure inadequacies of neighborhoods subdivided when population was much smaller.

The Northeast Community Plan expressly called for requiring development to consider infrastructure limitations:

"This requires that standards for adequacy of infrastructure and services must be established and published as part of the environmental review process for the plan **along with margins of safety**. Three categories of adequacy for facilities and services are:

- Essential: required to maintain fundamental community integrity and health, i.e. water and energy supply, solid waste and wastewater disposal, health services
- Vital: required to provide for the general safety and civil order, i.e. police and fire protection, schools
- Civilizing: necessary for maintaining communal welfare and quality of life, i.e. libraries, recreational areas, open space, cultural resource" (Emphasis added.)

The Northeast Community Plan pointed out the deficient nature of many hillside streets: "Extensive hillside areas remain unbuilt because they were subdivided at a time when no infrastructure improvements or access was required or provided for" This was an express reference to streets scraped out by a bulldozer but never paved.

Based upon findings like this, and unlike the generalness of some other community plans in the City, the Northeast Community Plan contained specific policies and programs intended to enforce laws related to safety and access issues in hillside areas:

"Limit development according to the adequacy of the existing and assured street circulation system within the Plan Area and surrounding areas.

Program: The Plan Map significantly reduces plan designations and corresponding zones in areas located at the base of hillside communities previously designated Medium density residential to reduce impact on access in hillside areas.

Program: Implementation of the Plan is, in part, based on continued application of the Citywide Hillside Ordinance and the Mount Washington/Glassell Park Specific Plan.

1-5.2 Ensure the availability of paved streets, adequate sewers, drainage facilities, fire protection services and facilities, and other emergency services and public utilities to support development in hillside areas.

Program: Decision makers should adopt findings which address the availability of these services and utilities as part of any decision relating to hillside residential development.

Program: Continue the implementation of the Citywide Hillside Ordinance.

1-5.3 Consider the steepness of the topography and the geologic stability in any proposal for development within the Plan area.

Program: The Plan Map retains restrictive land use designations and zones in hillside areas because of topography, geologic stability, and restricted access.”

However, despite the express recognition of fire risk in both the General Plan Framework and the City’s multiple community plans that constitute its General Plan, **one glaring problem remains: the City has failed to require developers to widen streets located in hillside fire-prone and limited access areas.** Many of these General Plan directives have simply been ignored by City Planners and Planning Commissions in service of *development at any cost* – including the safety of existing residents.

Street access is crucial for firefighting and evacuation efforts. Narrow streets, which are common in older neighborhoods, restrict the movement of large fire trucks and emergency vehicles. During a wildfire, these narrow streets can become a bottleneck, preventing first responders from reaching burning areas quickly, or slowing down evacuations and response times. In a city constantly at risk from wildfires, this failure to require street widening in vulnerable areas is seen as an oversight that exposes the city’s residents to further risks.

One of the most critical issues in addressing fire safety is the need for adequate emergency vehicle access. Fire trucks and emergency vehicles require a wide clearance to navigate safely, particularly in densely populated areas or neighborhoods surrounded by vegetation. Narrow roads often lead to congestion during fires, slowing down response times and complicating evacuations.

After a fire in Laurel Canyon in 1979 that burned 23 houses, the Los Angeles Fire Department (“LAFD”) prepared an after-action report³ dated October 5, 1979. One of the key conclusions was as follows: “Narrow streets, some practically inaccessible to fire apparatus, coupled with hordes of sight seer, residents and numerous teams from the news media, clogged the streets with autos and foot traffic.” Despite the passage of over 45 years, these conditions remain **largely the same**. In the exact same spot where this fire occurred, LAFD Deputy Chief Charles Butler explained to ABC 7 news of the extreme danger that narrow, substandard roads continue to pose to public safety.



This video may be accessed at <https://www.youtube.com/watch?v=AT1742bQ5oE>.

Concurrent ingress and egress on roads less than 20 feet wide is almost impossible. Pictures of fire trucks and other first responders attempting to navigate through substandard roads in the City are shown below:

³ This report is available at https://www.lafire.com/famous_fires/1979-0916_KirkwoodBowlFire/091679_kirkwood_F225_BC9.htm





The Los Angeles City Planning Department and the Los Angeles Department of Building and Safety (LADBS) have failed to implement General Plan Framework and Community Plan policies that mandate street widenings in fire-prone areas as a condition of new development. While the City has introduced fire-resistant building codes and regulations that affect building design and landscaping, the issue of road access remains largely unaddressed. Developers are often permitted to build projects without requiring any changes to the existing street infrastructure, even in areas identified as high fire risk zones.

This inaction has been compounded by political and economic pressures that prioritize development over infrastructure improvements. New development projects, particularly in areas with rising real estate demand, often receive approval without requiring significant improvements to road access. This has created a situation where areas identified as high fire risk zones continue to develop without addressing the basic need for wider streets and improved access for fire-fighting and emergency vehicles. These practices have become absolutely unacceptable to the residents of Los Angeles who are weary of City bureaucrats, planning commissioners, and other decisionmakers refusing to demonstrate the least bit of concern for the lives and property investment made by the current residents of the City who work here and pay the taxes for the City's operation.

The City's General Plans are required by state law to provide a metric for infrastructure and safety. The City of Los Angeles' failure to require street widening for new development projects in fire-prone areas represents a critical oversight in fire safety and emergency preparedness. As the frequency and intensity of wildfires continue to rise, Los Angeles must reconsider its development policies in fire prone areas and take a more proactive approach to fire safety infrastructure. Ensuring that streets are wide enough for fire trucks and emergency vehicles to operate effectively during a crisis could be one of the simplest yet most impactful measures to protect residents, property, and the City's response capacity in future fire seasons.

The City's Pacific Palisades neighborhood lies in smoldering ruin. At least 12 City residents died there, some frail and unable to evacuate, and others desperate to try to save their homes when the Fire Department was unable to respond to the wind driven flying embers. Runyon Canyon Park was the epicenter of the Sunset Fire and caused massive chaos when mandatory evacuations were ordered by the City. And yet the City is poised to approve a Project in the middle of Runyon Canyon Park that does not comply with the State Minimum Fire Safe Regulations. As if it learned nothing. A picture of the Sunset Fire is shown below from below the homes that were forced to be evacuated.





How many more deaths and billions of dollars of property damages will it take for the residents to lose complete confidence in the ability of the City's leadership to value and protect human life over profits of developers? What will it take for the Mayor and City Council to appoint people to the City Planning/Building Departments/Planning Commissions who do not make their living from the real estate development industry? The current appointees have shown callous disregard to the duty to balance reasonable development interests with proper safety mitigations as simple as street widening to provide a better margin of safety in a climate change world.

Waiver of safety regulations, an act that simply puts more profit into the pockets of real estate developers, was always unacceptable, but today it is simply reckless. ***This background and history, highlights how the conscious attempt of City bureaucrats and uncaring City decision makers to purposely misinterpret mandatory state fire safety regulations to exempt themselves, and their patron real estate developers, from state wildfire safety requirements, as detailed herein, is unconscionable.***

II. State Minimum Fire Safe Regulations

In 2018, Senate Bill 901⁴ 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 § 51177⁵, 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. Thereafter, the Board of Forestry adopted implementing regulations. The California Board of Forestry and Fire Protection adopted the Minimum Fire Safe 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 § 1273.02⁶. These regulations were adopted after extensive consultation with fire professionals and community members.

III. 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

⁴ 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.)

⁵ 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.)

⁶ 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.

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.”

For “roads,” Section 12.73.01(a) of the Regulations require the following:

- (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.

Cal. Code Regs. tit. 14 § 1273.01(a) (emphasis added). In other words, 20-foot-wide roadways are required.

For “driveways⁷,” Section 1273.01(c) of the Regulations requires the following:

“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").”

Cal. Code Regs. tit. 14 § 1273.01(c).

The Regulations also set forth other requirements for one-way roads, as well as turnouts, turnarounds and gates. 14 CCR §§1273 through 1273.11. Moreover, Article 5 of the Regulations sets forth building siting requirements, setback standards and fuel modification provisions. 14 CCR §§1276.00 through 1276.05.

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

The Department of City Planning (“Department”) has taken the position that the Regulations *only* apply when new roads are constructed. For example, in an appeal currently pending for a Project located at 3003 Runyon Canyon Road, the Department issued an Appeal Recommendations Report⁸ that stated as follows:

⁷ A “driveway is defined as follows per 14 CCR Section 1270.01(i): “Driveway: A vehicular pathway that serves no more than four (4) Residential Units and any number of non-commercial or non-industrial Utility or Miscellaneous Group U Buildings on each parcel. A Driveway shall not serve commercial or industrial uses at any size or scale.”

⁸ This report can be accessed at https://clkrep.lacity.org/online/docs/2024/24-1371_misc_2-05-25.pdf

“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), 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 the middle of Runyon Canyon on January 8, 2025 and burned 43 acres. 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 A**⁹, pp. 2-3, *emph. added* [Oct. 25, 2019 Attorney General’s Comment on the Paraiso Springs Resort Project]; see also **Exhibit B**¹⁰ [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 Regulations¹¹ state that they apply to “(1) the perimeters and access to *all* residential, commercial, and industrial Building construction within

⁹ **Exhibit A** is also available at:

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

¹⁰ **Exhibit B** is available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/comments-paraiso-springs-resort-feir.pdf>

¹¹ 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

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).”

The Senior Board Counsel for the Board of Forestry and Fire Protection, 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 C**. 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 Reasons¹² (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”

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.”

¹² The Final Statement of Reasons can be accessed at the following link:
<https://www.dropbox.com/scl/fi/xa03uiu2jy3cfly2q1x46/2022-08-17-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.

V. The City is Routinely Approving Permits in Violation of the State Minimum Fire Safe Regulations

The Hillside Federation is aware that the City is routinely approving both discretionary and ministerial permits for new development projects in the Very High Fire Hazard Severity Zones that do not comply with the State Minimum Fire Safe Regulations. For example, on or about December 19, 2024 the City approved a permit for a project at 423 N. Saltillo notwithstanding the fact that Saltillo was less than 20 feet wide.¹³ Also, on or about June 18, 2024, the City approved a permit to a developer for a project at 504 W. Avenue 44th notwithstanding the fact that West Avenue 44th at this location is less than 20 feet wide¹⁴. Also, on November 13, 2024 the City approved a permit for a project at 10453 Sandal even though Sandal Lane is a dead end road that exceeds the maximum length of 800 feet per 14 CCR § 1273.08(a). Also, in 2022 the City issued a building permit for a large multi-purpose building on the campus of Mount Saint Mary’ at 12001 Chalon Road even though the parcel was accessed by a roadway of less than 20 feet in width¹⁵. Finally, on August 8, 2024 the City granted a permit for the project at 3003 Runyon Canyon even though the driveway used to access the property does not have the required turnouts per 14 CCR § 1273.06 or meet the gate entrance standards

¹³ The Letter of Determination can be accessed at <https://planning.lacity.gov/pdiscaseinfo/document/MjQ3Mzk0/fe3b456d-e5a5-4f0e-9fa7-879f1ff43502/pdd>

¹⁴ The Letter of Determination can be accessed at <https://planning.lacity.gov/pdiscaseinfo/document/MTgyMzk0/fe3b456d-e5a5-4f0e-9fa7-879f1ff43502/pdd>

¹⁵ The City took the position that the Regulations did not apply because the building permit application was submitted prior to the Regulations becoming applicable to the City of Los Angeles (i.e. the applicant had obtained vested rights) However, the date of application is irrelevant. Section 1270.03(a)(1) of the Regulations 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).” Applicability is based on approval date, not application date.

set forth at 14 CCR § 1273.09. For the projects at 423 N. Saltillo and 504 W. Avenue 44th the Zoning Administrator issued a Zoning Administrator's Deviation ("ZAD") to deviate from the 20-foot roadway requirement in the City's Hillside Ordinance, which is codified at Los Angeles Municipal Code Section 12.21 C.10(i)(3). However, the State Minimum Fire Safe Regulations provide for the *minimum* standards – the City cannot unilaterally impose a more lenient standard. Section 1270.05 of the Regulations states as follows:

- (a) Subchapter 2 shall serve as the minimum Wildfire protection standards applied in SRA and VHFHSZ. However, Subchapter 2 does not supersede local regulations which equal or exceed the standards of this Subchapter.
- (b) A local regulation equals or exceeds a minimum standard of this Subchapter only if, at a minimum, the local regulation also fully complies with the corresponding minimum standard in this Subchapter.
- (c) A Local Jurisdiction shall not apply exemptions to Subchapter 2 that are not enumerated in Subchapter 2. Exceptions requested and approved in conformance with § 1270.07 (Exceptions to Standards) may be granted on a case-by-case basis.
- (d) Notwithstanding a local regulation that equals or exceeds the State Minimum Fire Safe Regulations, Building construction shall comply with the State Minimum Fire Safe Regulations.

14 CCR § 1270.05.

The Regulations provide a mechanism for "exceptions" to standards, but they can only be granted when the exceptions provide the "same practical effect." 14 CCR § 1270.07(a). Granting a deviation via a ZAD from the 20-foot continuous paved roadway requirement clearly does not have the "same practical effect" as the minimum width requirement in the Regulations. The Attorney General disposed of this argument when they wrote to the County of Monterey in 2019:

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.)

Oct. 25, 2019 Attorney General Comment on the Paraiso Springs Resort Project (emphasis added). The City has similarly not applied for an exception from the Regulations to the Hillside Federation's knowledge.

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 D**.


The evidence is clear that the City is not complying with the State minimum Fire Safe Regulations because it does believe that the Regulations are applicable unless a new road is constructed. That is simply not the case. The City has engaged in a pattern and practice of violating the Regulations.

VI. Demand to Comply with State Minimum Fire Safe Regulations

The Pacific Palisades fire is merely a reminder that Los Angeles is situated in a region extremely prone to wildfire. The City will face even higher risks as climate change increases the danger to the City's residents and their significant property investments. If the City does not requirement infrastructure improvements at the time of new development, when will it be required/constructed? The answer is never. As stated in the Introduction, it is truly unconscionable for the City to refuse to acknowledge and adhere to the State Minimum Fire Safe Regulations under these dire circumstances. The residents of Los Angeles deserve better than the way their own lives have been devalued in the pursuit of profits. If the City does not unconditionally commit to adhering to these Regulations and retract its current unlawful interpretation within **10 days of the receipt of this letter**, the Hillside Federation will be compelled to take appropriate legal action in Los Angeles County Superior Court and will seek declaratory and injunctive relief.

Thank you for your consideration of this matter. I may be contacted at jamie.hall@channellawgroup.com.

Sincerely,



Jamie T. Hall

Exhibits:

- A. October 25, 2019 Attorney General's Comment on the Paraiso Springs Resort Project
- B. March 20, 2019 Attorney General's Comment on the Paraiso Springs Resort Project

- C. October 23, 2020 Board of Forestry Letter to County of Sonoma
- D. May 15, 2023 Santa Monica Mountains Conservancy Letter to the Department of City Planning and Los Angeles Department of Building and Safety

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EXHIBIT A

October 25, 2019 Attorney General's Comment on
the Paraiso Springs Resort Project



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October 25, 2019

Planning Commission of Monterey County
Monterey County Resource Management Agency
Attn: Mike Novo
1441 Schilling Place – South, 2nd 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").¹ 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,

¹ 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).²

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

² 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.)

EXHIBIT B

March 20, 2019 Attorney General's Comment
on the Paraiso Springs Resort Project



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March 20, 2019

Planning Commission of Monterey County
Monterey County Resource Management Agency
Attn: Mike Novo
1441 Schilling Place – South, 2nd 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.)¹ 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

¹ 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,² 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.)³ 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.⁴

² 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*.

³ 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.

⁴ 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.⁵ 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].)⁶ It is well-accepted that building in wildland areas increases the risk and severity of fires.⁷ The California

⁵ 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.)

⁶ 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.

⁷ 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). 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

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).)

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.)⁸ 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.


⁸ 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

EXHIBIT C

October 23, 2020 Board of Forestry Letter
to County of Sonoma

BOARD OF FORESTRY AND FIRE PROTECTION

THE NATURAL RESOURCES AGENCY
STATE OF CALIFORNIA

KEITH GILLESS, CHAIR

Wade Crowfoot, *Secretary*
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October 23, 2020

Linda Schiltgen
Deputy County Counsel
County of Sonoma
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.”¹ 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.²

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

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

² 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.³ 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 Policy⁴ 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

³ 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.

⁴ 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 § 4290,⁵ the Fire Safe Regulations,⁶ and opinions and letters issued by the Attorney General of California.⁷ 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

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

⁶ 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.

⁷ 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.⁸ 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

⁸ 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

EXHIBIT D

May 15, 2023 Santa Monica Mountains
Conservancy Letter to the Department of City
Planning and Los Angeles Department of Building
and Safety

SANTA MONICA MOUNTAINS CONSERVANCY

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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, by phone at 310-589-3200 ext. 128, or at the above letterhead address.

Sincerely,

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

RUDY J. ORTEGA, JR.
Chairperson