March 21, 2021

VIA ELECTRONIC MAIL

Board of Forestry and Fire Protection
PO Box 944246
Sacramento, CA 94244-2460
publiccomments@bof.ca.gov

Re: State Minimum Fire Safe Standards, 2021, Agenda Item 3(a)

Dear Honorable Board Members:

This firm represents State Alliance for Firesafe Road Regulations (“SAFRR”) with regard to the 2021 State Minimum Fire Safe Standards (“Standards” or “Project”) proposed to be adopted by the Board of Forestry and Fire Protection (“Board”). This letter is intended to inform the Board that the Standards cannot be adopted without environmental analysis required by the California Environmental Quality Act (“CEQA”). Moreover, as explained below, the Project is not exempt from CEQA.

I. The California Environmental Quality Act

a. Purpose of California’s Environmental Protection Statute

The California Environmental Quality Act (CEQA) is California's broadest environmental law. CEQA helps to guide public agencies such as the Board during issuance of permits and approval of projects. Courts have interpreted CEQA to afford the fullest protection of the environment within the reasonable scope of the statutes.

CEQA applies to all discretionary projects proposed to be conducted or approved by a public agency requiring discretionary government approval. See California Public Resources Code, §§1000 - 21178, and Title 14 Cal. Code Regs., § 753, and Chapter 3, §§ 15000 - 15387.
b. CEQA’s Broad Definition of a “Project” Includes All Phases of a Development

A ‘project’ is ‘the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment....’” Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora (2007) 155 Cal.App.4th 1214, 1222. This includes all phases of a project that are reasonably foreseeable, and all related projects that are directly linked to the project. CEQA Guidelines § 15378.

c. CEQA Has a Strong Presumption in Favor of EIR Preparation

A strong presumption in favor of requiring preparation of an Environmental Impact Report (“EIR”) is built into CEQA, which is reflected in what is known as the “fair argument” standard. Under this standard an agency must prepare an EIR whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. No Oil, Inc. v. City of Los Angeles (1974) 13 Cal.3d 68, 75, 82; Friends of “B” St. v. City of Haywood (1980) 106 Cal.App.3d 988, 1002.

“The EIR is the primary means of achieving the Legislature's considered declaration that it is the policy of this state to ‘take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.’ [Citation.] The EIR is therefore ‘the heart of CEQA.’ [Citations.] An EIR is an environmental “alarm bell” whose purpose is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 392.

II. Background Information Regarding PRC § 4290 and the SRA Fire Safe Regulations

Concerned about development in fire-prone areas, the legislature enacted a statute in 1987 to require fire safety standards for development. Among other things, the Board of Forestry and Fire Protection “shall adopt regulations implementing minimum fire safety standards related to defensible space that are applicable to state responsibility area lands under the authority of the department.” Public Resources Code § 4290(a). “These regulations apply to the perimeters and access to all residential, commercial, and industrial building construction within state responsibility areas approved after January 1, 1991.” Emphasis added. Among other things, the “regulations shall include … [r]oad standards for fire equipment access.” § 4290(a)(1).

The Board promulgated SRA Fire Safe Regulations (Cal. Code Regs., tit. 14, §§ 1270-1276) that became operative on May 30, 1991. The current version is dated July 2020. Questions initially arose as to whether the regulations applied to development on existing roads, or whether existing roads were grandfathered from regulation.

The county counsel of Amador County requested an opinion from the Office of the Attorney General in 1993 on the following question:

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

The attached Office of the Attorney General’s opinion\(^1\) concluded the regulations apply to existing roads, except for the two narrow exceptions in § 4290(a):\(^2\)

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

This remained settled law for decades, although some jurisdictions may not have consistently applied the regulations to pre-1991 roads and enforcement was weak.

In 2019, the Office of the Attorney General confirmed the decades-old understanding of the SRA Fire Safe Regulations when it commented on the proposed Paraiso Springs Resort located in a fire-prone area in Monterey County. While the office was largely focused on CEQA, the SRA Fire Safe Regulations were an important aspect of the analysis. The Attorney General’s Office wrote

The Project does not comply with the state’s dead-end road limitations and road width limitations applicable to the State Responsibility Area (SRA). . . . the County expresses its view that the dead end road limitation does not apply to the Project, because the road, having been built in the 19th century and maintained by the County, is not subject to the SRA regulations. Neither the regulations nor the statute setting forth the SRA requirements, however, include an exemption for historic roads or roads maintained by the county. In general, the SRA requirements apply to any application for new construction with only limited exceptions for certain parcel or tentative maps approved before 1991 and roads used solely for agriculture, mining or timber related purposes.\(^3\)

When Monterey County contended that its local code exempts existing roads from the regulation for width and a ban on long, dead-end roads, the Attorney General’s Office responded that whether a road “is a preexisting road is inconsequential,” and “a County Code exemption for

\(^1\) Office of the Attorney General Opinion No. 92-907 (March 17, 1993) attached as Exhibit A

\(^2\) § 4290(a) contains two exemptions: (1) the regulations do not apply where a building permit application was filed before January 1, 1991; and (2) the regulations do not apply to parcel and tentative subdivision maps approved before January 1, 1991 to the extent those maps depict and describe roads in accordance with the County’s authority, under the Subdivision Map Act, to regulate the design and improvement of subdivisions.

\(^3\) Letter from Deputy Attorney General Heather C. Leslie to Planning Commission of Monterey County, pp. 1-2 (July 9, 2019), attached as Exhibit B.
existing roads is inapposite.”

Fundamentally, “exempting a Project from the SRA regulations simply because [it] is a pre-existing road would undermine the intent of the SRA regulations.”

The application of the SRA Fire Safe Regulations to existing roads was reconfirmed by the Board’s Senior Board Counsel in October 2020 (attached). With regard to the failed attempt of Sonoma County to certify its ordinance as equal of exceeding the regulations, he wrote

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. [citations omitted].

The ongoing rulemaking purportedly is intended to implement SB 901, which extends the access regulations after July 1, 2021 beyond the SRA to also include

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 …

PRC § 4290(a). The additional lands are local responsibility areas (LRA).

The rulemaking also must implement § 4290(b):

The board shall, 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, as defined in subdivision (i) of Section 51177 of the Government Code, after July 1, 2021. These regulations shall include measures to preserve undeveloped ridgelines to reduce fire risk and improve fire protection. The board shall, by regulation, define “ridgeline” for purposes of this subdivision.

There is no suggestion in SB 901 that extending the requirements of the SRA to the LRA was to drastically weaken the access requirements including those in Article 2 that had been in effect for three decades in the SRA, and to abandon the basic intent set forth in § 1273.00 that “[r]oads and driveways, whether public or private, unless exempted under 14 CCR § 1270.02(d),

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4 Letter from Deputy Attorney General Nicole Rinke to Planning Commission of Monterey County, p. 2 (October 25, 2019), attached as Exhibit C.

5 Id.

6 Letter from Jeff Slaton, Senior Board Counsel, Board of Forestry and Fire Protection to Linda Schiltgen, Deputy County Counsel, County of Sonoma, p. 6 (October 23, 2020) attached as Exhibit D.
shall provide for safe access for emergency wildfire equipment and civilian evacuation concurrently, and shall provide unobstructed traffic circulation during a wildfire emergency consistent with 14 CCR §§ 1273.00 through 1273.09.”

III. The Standards Are Not Eligible for the Class 8 Exemption Under CEQA

It is my understanding that Board staff may attempt to apply the Class 8 categorical exemption to forgo CEQA review of the Standards. This exemption includes actions by regulatory agencies, as authorized by state law or local ordinance, to ensure the maintenance, restoration, enhancement, or protection of the environment. 14 Cal Code Regs § 15308. However, the regulatory process must involve procedures for protection of the environment. This exemption does not apply to construction activities or to relaxation of standards allowing environmental degradation.

The Board should also note that CEQA exemptions are to be construed narrowly and are not to be expanded beyond the scope of their plain language. See Save Our Carmel River v. Monterey Peninsula Water Mgmt. Dist. (2006) 141 Cal.App.4th 677, 697; Castaic Lake Water Agency v. City of Santa Clarita (1995) 41 Cal.App.4th 1257; Wildlife Alive v. Chickering (1976) 18 Cal.3d 190, 205. They must also be construed in light of their statutory authorization, which limits such exemptions to classes of projects that have been determined not to have significant effects on the environment – ensuring categorical exemptions are interpreted in a manner affording the greatest environmental protection. Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster (1997) 52 Cal.App.4th 1165, 1192; see also Save our Sch. v. Barstow Unified Sch. Distr. Bd. Of Educ. (2015) 240 Cal.App.4th 128, 140; Cnty. of Amador v. El Dorado Cnty. Water Agency (1999) 76 Cal.App.4th 931, 966. When determining if a project falls within a specific class of categorical exemption, courts generally look to the list of examples listed under the CEQA Guidelines, and reject the use of the exemption when the activity is not similar to the listed examples. Cal. Farm v. Cal. Wildlife (2006) 143 Cal.App.4th 173, 189–193 (rejecting Class 4, 13, and 25 categorical exemptions on basis of dissimilarity to listed examples); Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster, supra, at pp. 1193–1195 (rejecting Class 1 or Class 4 categorical exemptions).

a. The Project Will Relax Existing Standards

In this case, the Project would relax standards already in effect, The Project does not fit within the scope of the plain language of the Class 8 exemption because the Standards do not “ensure the maintenance, restoration, enhancement, or protection of the environment.” On the contrary the Project contemplates the relaxation of standards that will cause harm to the environment. The draft 2021 Regulations fundamentally undermine the stricter 2020 Regulations, unlocking thousands of existing parcels to new residential, commercial, and industrial development on existing subpar roads by excluding most of these parcels from most road standards. New development in fire-prone communities largely occurs on these existing substandard roads. The increased development and population intensity in high fire-prone communities and wildlands in the SRA and LRA will increase human caused ignitions and increase wildfire risks, resulting is significant impacts to public safety and the environment. The California Office of the Attorney General has noted that locating development in wildfire risk
areas “will itself increase the risk of fire” and increase the risk of exposing existing residents to an increased risk of fire, citing a plethora of reports.\textsuperscript{7}

The 2021 Fire Safe Regulations will drastically undermine the strict 2020 Regulations and provide loopholes that will encourage development in fire-prone communities and wildlands on subpar roads. Almost all new development on existing subpar roads will not be subject to the prior strict road specifications, and could result in significant residential, commercial and industrial development without mitigation for environmental effects related to increased wildfire risks, biological resources, greenhouse gas emissions, transportation, inadequate emergency access, hazards, vulnerable populations, evacuation plans and cumulative effects. In Article 2 of the 2021 Regs, although §1273.00 still says “shall provide for concurrent fire apparatus ingress and civilian evacuation, and shall provide unobstructed traffic circulation during a wildfire,” this is now only applied to development on NEW roads. Even the word “safe” has been removed. The Intent requirement no longer applies to any existing roads. Further, the 2021 Regs removed words “legally constructed” from requirement to exempt post-fire rebuilds, which unlocks even more parcels to build structures that would not have been allowed under the 2020 Regs. Existing roads is where almost all new development occurs.

Despite the State Attorney General confirming that the fire safe regulations apply to all new and existing roads, the 2021 regulations exclude most existing roads for new residential, commercial and industrial development from the strict standards of Article 2, hence creating additional exclusions to the road standards. The 2021 Fire Safe Regulations will unlock thousands of parcels statewide for development on existing subpar roads, do not provide for safe concurrent access and egress, and ignore mitigation for potentially significant environmental effects.

The 2021 Regs exclude the strict standards from applying to existing parcels on all existing roads for development. All existing parcels and even newly created parcels under three, whether residential, commercial or industrial, escape the regulations and are unlocked for new residential, commercial and industrial development on subpar roads unless a change in zoning or change in use permits that increases intensity or density is needed. There is no definition for “increases in intensity or density,” which could make this left to the discretion of local jurisdictions. The only requirement is a) that a road must be 14 ft. wide, with turnouts every 400 ft., with no more than half of the road be native surfaced, and b) grade can be up to 25% for 500 ft. There is no limit on length of dead-end roads, no requirement for turnarounds for fire apparatus, no requirements for curve radius to ensure fire apparatus can negotiate curves, no grade limitations under 25%, and no requirements for locked gates to have emergency means of operation. This unequivocally does not provide for safe concurrent access and egress. The stricter 2020 road standards are removed for these existing parcels, and even for existing roads for three or more new parcels that propose a change in zoning or use permits that will increase intensity or density they are significantly reduced by removing length limitation for dead-end or one-way roads. The removal of even those two standards will further unlock a substantial number of both existing and new parcels to development that proposes to cause an increase in intensity or density. Moreover, no new development is discouraged under this scenario. In fact,

\textsuperscript{7}Letter from Deputy Attorney General Nicole Rinke to Planning Commission of Monterey County, pp. 3-4 (March 20, 2019), attached as Exhibit E.
the opposite occurs, as new development can now occur on parcels that were locked for development since 1991 (e.g., previously locked include any parcel on dead-end roads over 1 mile long or on roads less than 18-20 ft. wide or with grades over 16%, up to 20% with mitigations.

The Board inserted a new statement under Purpose of the 2021 Regulations in Article 1:

§ 1270.02(d) By limiting Building construction in those areas where these minimum Wildfire protection standards are not satisfied, this reduces the risk of wildfires in these areas, which among other things protects the health, safety and welfare of residents, and protects natural resources and the environment.

The Board’s Initial Statement of Reasons, p14, discussed why it added the above clause (emphasis added with underline):

1270.02(d). Adds a statement declaring that limiting Building construction in instances where the minimum Wildfire protection standards are not satisfied reduces the risk of wildfires, which protects the health, safety and welfare of residents, and protects natural resources and the environment. As minimum standards, the Fire Safe Regulations establish a floor for fire safe development in the SRA and LRA VHFHSZ. Implicit in these standards is that Building construction that does not meet the minimum standards will not provide sufficient minimum Wildfire protection for residents, property, or natural resources and the environment and, therefore, would be unsafe. Yet, experience indicates a significant problem of several local jurisdictions approving new development that fails to meet all of the Fire Safe Regulation standards. Similarly, objections raised by local jurisdictions during the informal scoping process preceding this rulemaking focus heavily on concerns that the standards impose unreasonable costs and impair development. The purpose of the added statement is the clarification to regulated parties that the benefits and purpose of the minimum wildfire protection standards cannot be realized through partial compliance with the regulations. Thus, the amendment is necessary to ensure a proper understanding of the scope and purpose of the Fire Safe Regulations that is consistent with PRC § 4290 and to identify and promote the benefits of proper implementation of the minimum Wildfire protection standards.

Taken together, the above statements by the Board acknowledge that the prior 2020 standards impaired development, and that adherence to the fire-safe standards is important to protect residents, property or natural resources or the environment. Yet by substantially reducing the standards for all existing roads, the Board achieves the opposite result.

The Initial Statement of Reasons (p5) states:

- The Fire Safe Regulations do not provide enough clarity regarding fire safety standards for existing roads.

That statement is contrary to prior statements by both the Board and the state Attorney General, both of whom confirmed that the regulations apply to existing roads (see above, footnotes 4-6), yet the Board now has without analysis of the impacts, chosen to substantially reduce its regulations for all existing roads.
b. Specific Exceptions Prevent the Board from Deeming the Project Exempt from CEQA

Even if the Class 8 exemption applied, there are exceptions that prevent its usage. A project falling within a categorical exemption may nevertheless require environmental review if the project is subject to exceptions-to-the-exemptions listed under CEQA Guidelines § 15300.2, including projects involving: (a) locations involving environmental resources of hazardous or critical concern, (b) significant cumulative impact of successive projects of the same type in the same place, (c) reasonable possibility of significant environmental impacts due to unusual circumstances, (d) damage to scenic resources on State scenic highways, (e) locations listed as a hazardous waste site, or (f) substantial adverse changes to a historical resource. In this case, the Project may result in damage to scenic resources within official state designated scenic highways and may cause a substantial adverse change in the significant of historic resources. The Project may also impact on environmental resources of critical concern. Many such sites exist within the SRA and VHFHSZ within the LRA.

IV. Conclusion

In conclusion, the Project is not exempt from CEQA because it proposes the relaxation of existing standards which will cause a significant effect on the environment. The Board cannot approve the Standards until the required environmental review has been conducted. I may be contacted at 310-982-1760 or at jamie.hall@channellawgroup.com if you have any questions, comments or concerns.

Sincerely,

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

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

CONCLUSION

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

ANALYSIS

By legislation enacted in 1987 (Stats. 1987, ch. 955, § 2), the State Board of Forestry ("Board") was directed to adopt minimum fire safety standards for state responsibility area lands.¹

¹ On state responsibility area lands (see Pub. Resources Code, §§ 4126-4127; Cal. Code Regs., tit. 14, §§ 1220-1220.5), the financial responsibility of preventing and suppressing fires is primarily the responsibility of the state, as opposed to local or federal agencies. (Pub. Resources Code, § 4125.)
under the authority of the Department of Forestry and Fire Protection. Public Resources Code section 42902 states:

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

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

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

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

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

3. Defensible space is defined as:

"The area within the perimeter of a parcel, development, neighborhood or community where basic wild land fire protection practices and measures are implemented, providing the key point of defense from an approaching wildfire or defense against encroaching wild fires or escaping structure fires. The perimeter as used in this regulation is the area encompassing the parcel or parcels proposed for construction and/or development, excluding the physical structure itself. The area is characterized by the establishment and maintenance of emergency vehicle access, emergency water reserves, street names and building identification, and fuel modification measures." (Cal. Code Regs., tit. 14, § 1271.00.)

2.
Originally the regulations were to be applicable with respect to all building construction approved after July 1, 1989, but by subsequent legislation (Stats. 1989, ch. 60, § 1), the threshold date was changed to January 1, 1991. The regulations (Cal. Code Regs., tit. 14, §§ 1270-1276.03) in fact became operative on May 30, 1991.

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

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

Thus, although an application for a building permit is not made until after January 1, 1991, the proposed construction may garner an exemption if the parcel is covered by a parcel or tentative map approved prior to January 1, 1991 (provided that the final map for the tentative map is approved within the time prescribed by the local ordinance). However, this raises the question of the purpose of the building permit exception since virtually any application for a building permit will be preceded by a parcel or tentative map approval for the parcel upon which the construction is proposed, even one which may have been obtained in the distant past. A well-established rule of statutory construction holds that "[w]henever possible, effect should be given to the statute as a whole, and to its every word and clause, so that no part or provision will be useless or meaningless. . ." (Colombo Construction Co. v. Panama Union School Dist. (1982) 136 Cal.App.3d 868, 876; see Harris v. Capital Growth Investors XIV (1991) 52 Cal.3d 1149, 1159 ["In analyzing statutory language, we seek to give meaning to every word and phrase in the statute to accomplish a result consistent with the legislative purpose, i.e., the object to be achieved and the evil to be prevented by the legislation"]).

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

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

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

7. Statutory provisions for tentative maps and final maps first appeared in 1929 (Stats. 1929, ch. 838), while parcel maps were first required in 1971 (Stats. 1971, ch. 1446). (See Cal. Subdivision Map Act Practice (Cont.Ed.Bar 1987) §§ 1.2-1.3, pp. 3-5.)
Our task then is to search for an interpretation of section 4290 which is not only consistent with the legislative purpose but also furnishes independent significance to each of the two exceptions. We believe that the answer lies in the different manner in which each exception is phrased. The first is "where an application for a building permit was filed prior to January 1, 1991," and the second is "to parcel or tentative maps or other developments approved prior to January 1, 1991...." The "where" of the first exception implies a broad exemption encompassing all activity related to the building permit, whereas the "to" of the second exception implies an exemption which is limited to matters contained in the parcel or tentative map approval.

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

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

The Act vests cities and counties with the power to regulate and control the "design and improvement of subdivisions" (§ 66411) independent of the power to impose the specified conditions enumerated above. "Design" is defined as:

"... (1) street alignments, grades and widths; (2) drainage and sanitary facilities and utilities, including alignments and grades thereof; (3) location and size of all required easements and rights-of-way; (4) fire roads and firebreaks; (5) lot size and configuration; (6) traffic access; (7) grading; (8) land to be dedicated for park or recreational purposes; and (9) such other specific physical requirements in the plan and configuration of the entire subdivision as may be necessary to ensure consistency with, or implementation of, the general plan or any applicable specific plan." (§ 66418.)

"Improvement" is defined as:

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

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

Accordingly, we believe that when a person applies for a building permit after January 1, 1991, the Board's fire safety regulations would be inapplicable as to any matters approved prior to January 1, 1991, as part of the parcel or tentative map process.² By contrast, a person who applied for a building permit prior to January 1, 1991, would not be subject to any of the access or perimeter requirements set forth in the regulations.

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

On the other hand, we decline to construe the grandfather clause here so narrowly that all of the Board's fire safety regulations become applicable when the owner of a parcel covered by a parcel or tentative map approved prior to January 1, 1991, applies for a permit to build on that parcel after January 1, 1991. To do so would mean that the exception for approved tentative or parcel maps would afford the landowner nothing at the construction and development stage. Again, we are guided by the principle that a statute should be interpreted in such a way that no part or provision will be rendered useless or meaningless. (Colombo Construction Co. v. Panama Union School District, supra, 136 Cal.App. 868, 876.)

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

On the basis of the foregoing analysis and principles of statutory construction, we conclude that the fire safety standards adopted by the Board for development on state responsibility

9. Regulation 1270.02, for example, exempts "[r]oads required as a condition of tentative [or] parcel maps prior to the effective date of these regulations . . . ."
area lands apply to the perimeters and access to buildings constructed after January 1, 1991, on parcels created by parcel or tentative maps approved prior to January 1, 1991, to the extent that conditions relating to the perimeters and access to the buildings were not imposed as part of the approval of the parcel or tentative maps.

* * * * *
Exhibit B
July 9, 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 Recirculated Draft EIR [June 2019] (“RDEIR”) responding to public comments on the previous Recirculated DEIR [February 3, 2018] and Final EIR [March 14, 2019] (“FEIR”), including the comments we submitted on March 20, 2019, regarding wildfire risks associated with the proposed Paraiso Springs Resort Development (the “Project”). We have reviewed the additional information presented and acknowledge and appreciate that you have provided more information regarding wildfire risks associated with the proposed Project than was included in the previous analyses. While we thank you for including that additional information, we remain concerned that the risks of wildfire have not been adequately addressed.¹ Specifically, the Project still does not comply with state requirements for development in State Responsibility Areas. Additionally, the RDEIR does not comply with CEQA’s requirement to analyze and mitigate the Project’s wildfire impacts.

The Project does not comply with the requirements for State Responsibility Areas.

The Project does not comply with the state’s dead end road limitations and road width limitations applicable to State Responsibility Areas (SRA). (Cal. Code. Regs., tit. 14, § 1273.09 and 1273.01; adopted pursuant to Pub. Res. Code. § 4290.) In the RDEIR, the County expresses its view that the dead end road limitation does not apply to the Project because the road, having been built in the 19th century and maintained by the County, is not subject to the SRA regulations. (RDEIR, p. 62.) Neither the regulations nor the statute setting forth the SRA

¹ This letter is not intended, and should not be construed, as an exhaustive discussion of the RDEIR’s compliance with the California Environmental Quality Act (“CEQA”) or the Project’s compliance with other applicable legal requirements.
requirements, however, include an exemption for historic roads or roads maintained by the County. In general, the SRA requirements apply to any application for new construction with only limited exceptions for certain parcel or tentative maps approved before 1991 and roads used solely for agriculture, mining, or timber related purposes. (See Cal. Code. Regs., tit. 14, § 1270.02.)

The RDEIR further states that the Project meets the intent of the dead end road limitation, but does not provide any support for its understanding of that intent, nor a justification for why compliance with the intent would excuse non-compliance with the clear regulatory requirement. (RDEIR, p. 62.) The RDEIR suggests that mitigation measure 3.7-6a (regarding the Fire Protection Plan to be developed) is being applied to the Proposed Project as if the SRA requirements did apply to the Project. (RDEIR, p. 62.) However, the Fire Protection Plan does not propose to modify the dead end nature of the road. CEQA requires mitigation that is triggered by the need to avoid significant environmental impacts; CEQA mitigation may not be used to excuse non-compliance with independent state regulatory requirements.

Likewise the RDEIR suggest that the Project complies with state law requiring two 10-foot travel lands because 98% of the road would comply—only a “small area of 150 feet” due to topographical constraints would be limited to an 18-foot wide road. (RDEIR, p.61.) However, substantial compliance is not the state standard. A small section of inadequate road width could create a bottleneck that would hamper evacuation, particularly where emergency response vehicles are trying access the site at the very same time others are seeking to exit the site. While the SRA regulations provide a process for requesting exceptions to the standards (Cal. Code. Regs., tit. 14, §§ 1270.07 and 1270.08), the RDEIR does not suggest that an exception through this process has been requested or approved.

The RDEIR does not comply with CEQA’s requirement to analyze and mitigate the Project’s wildfire impacts.

The RDEIR considered the questions identified in section XX of the Updated CEQA Guidelines regarding wildfire risk (RDEIR, pp. 59-72), which we appreciate. The RDEIR did not, however, address the related but separate question in Section IX(g) of Appendix G regarding whether the Project would “expose people or structures, either directly or indirectly, to a significant risk of loss, injury, or death involving wildland fires.” This issue should also be addressed. (See CEQA Guidelines § 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]; 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].)
In addition, for the wildfire associated risks that the RDEIR did analyze—those in Section XX of Appendix G—the RDEIR concludes that there are potentially significant effects, but that these effects are less than significant after mitigation. The RDEIR proposes additional mitigation measures, but these measures largely rely on development of future fire prevention plans. With respect to this project and the proposed future plans, CEQA prohibits the deferral of mitigation. (See CEQA Guidelines § 15126.4(a)(1)(B).) While the development of mitigation measures may sometimes be appropriate, there is no reason here for this failure to prepare the evacuation plan 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 post-FEIR management plan was found to be improperly deferred mitigation where no basis was provided for why 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 EIR].)

In our previous comments, we also requested that the FEIR address evacuation in the event of fire. Specifically, we highlighted the need to consider: (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 point will face in the event of an evacuation due to the added users on the road, and (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. (March 20, 2019 letter, pp. 4-5). Again, we appreciate that you have now included an evacuation plan in the RDEIR, but find that it and the supporting analysis it relies upon falls short of addressing the full scope of issues we believe are required for analysis under CEQA in order to provide full information to decision makers and the public about the wildfire risks associated with the Project.

In addition, the RDEIR does not seem to disclose or address the possibility of a fire starting down canyon and potentially blocking Paraiso Springs Road altogether. While the RDEIR describes that the site will be designed to serve as a temporary refuge area during fire, which could conceivably help to mitigate the risk of a down canyon fire occurring that blocks evacuation via Paraiso springs Road, this is not fleshed out in any detail. The RDEIR also does not address the ability of emergency vehicles to efficiently access the site while the sole ingress and egress road is also being utilized for evacuation.²

² The letter from Keith Higgins, which is indirectly referenced in the RDEIR, includes just a conclusory comment on this issue—“The one lane on the road going toward the project site would remain open almost exclusively to inbound emergency access. In summary, the road is capable of handling incoming and outgoing traffic in a mass evacuation with no significant conflicts with the surrounding neighbor or incoming emergency vehicles.” (March 8, 2019 Letter from Keith Higgins, Traffic Engineer, referenced in Appendix 2 of the RDEIR, p. 140.)
Planning Commission of Monterey County
July 9, 2019
Page 4

We appreciate your consideration of our comments and respectfully request that you revise the RFEIR accordingly. If you have any questions or would like to discuss our comments, please feel free to contact us.

Sincerely,

[Signature]

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

For XAVIER BECERRA
Attorney General
Exhibit C
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"). 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

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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 D
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 Wheeles. 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.”

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.

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

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

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. Thus, if Sonoma County has stricter, greater, or enhanced requirements in its ordinance, the lack of certification by the Board does not preclude Sonoma County from deciding to apply these stricter requirements.

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

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

**Detailed Discussion**

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

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

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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 take 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, 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.

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

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

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

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

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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.

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. These citations are also unresponsive to the call of the question because §13-25(f) of the ordinance clearly states that existing road standards are governed by the Administrative Policy.

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

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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 E
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, 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.) 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

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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. 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].) It is well-accepted that building in wildland areas increases the risk and severity of fires. 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/115/13/3314.full.pdf); New York Times, Climate Change is Fueling Wildfires Nationwide, New Report Warns (November, 2018) (https://www.nytimes.com/2017/11/27/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/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 Panzier 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.) 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