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MONTEREY COUNTY

BOARD OF SUPERVISORS

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January 11, 2022

Dear Chair Gilless and Board of Forestry Members:

On behalf of the Board of Supervisors of the County of Monterey, we want to thank your staff for working with local agencies over the last year and making adjustments to the draft regulations. The draft regulations have evolved to address some of our concerns, and we are pleased that they are closer to being practical for local level use. However, we continue to have significant concerns as to some provisions and the clear application of the draft regulations. We believe the best way to proceed would be for our staff to work directly with your staff. We suggest the formation of a land use working group, perhaps formed through the Rural County Representatives of California (RCRC). We hope that this close collaboration with local entities will ensure that these regulations can be made clearer and easier to apply at the local level, where they will be applied by land use jurisdictions on a daily basis.

We do not want to repeat comments that we submitted earlier (June 15, 2021 letter), but many of those same concerns remain for the following topics:

- Definitions
- Off-site road improvements for existing roads (now related to weight requirements)
- Exception Request process and workload
- Use of adopted Evacuation Plans, particularly in relation to dead-end roads
- Secondary access

Please see our earlier letter to view those concerns. As we stated earlier, providing an exception for the first single family dwelling on a vacant parcel will significantly reduce Monterey County's concerns with these regulations. However, the County believes the regulations are still overreaching.

The regulations should reflect requirements that individual property owners can feasibly accomplish and that, in keeping with constitutional requirements, are roughly proportional to proposed development's impacts. Many of the County's concerns relate to requirements for off-site road improvements that the draft regulations would require a private owner to undertake and the County to impose as a condition of project approval. These requirements may prohibit development, literally or functionally, and/or would lead to a significant number of exception requests, for which local government would be the ultimate appeal authority. The exception

processing workload would be significant for County staff and for the local fire authority, and would cause significant uncertainty for property owners. The County's recommended changes would greatly reduce the need for exception requests, as it has been requesting from the first workshop, and would make the exception process more workable.

The regulations should emphasize methods that local jurisdictions can achieve to address development proposals that have existing off-site infrastructure limitations. One example would be allowing evacuation plans to be approved by the local jurisdiction and local fire authority as a condition of approval of development on a property along that road; offering this option would provide relief to the property owner from having to file an exception request if the infrastructure limitation is causing the need for an exception.

With that said, the County offers the following specific comments on the draft regulations:

Regulatory Package—The County proposes the formation of a land use working group to work with your BOF staff to revise the draft regulations to ensure clarity and practical implementation at the local level. The County is not confident yet with the current draft, which contains incorrect internal references, missing sections, terms and regulations that need clarification, problematic retroactive application, and requires additional procedure and context. The examples are too numerous to list, but the County believes the issues may be quickly resolved with agency staffs working together.

Definitions

- The new term “Authority Having Jurisdiction” (AHJ) is useful in some sections such as Article 4. However, the term is too vague in many other sections; identification of the actual responsible agency in those instances would avoid uncertainty, inconsistency, and disagreement. The regulations for most of the Articles are applied by either CAL FIRE, the local fire agency, or the land use agency issuing construction permits. Clarifying which agency has authority under sections 1270.05 and 1270.06 would go a long way to ensure clarity and consistency.
- Some definitions include regulatory language, which should be in the regulatory sections (e.g., Existing Road).
- The removal of a definition for Agriculture is problematic, as we will explain below. It should be revised rather than removed.
- The change to the definition for Residential Unit means that “guesthouses,” which are just additional guest bedrooms without cooking facilities for occasional use, would be considered a separate residential unit with significant regulatory implications.

Section 1270.03—Exempting the first single family dwelling from off-site regulations (not from on-site regulations) would solve many of the implementation concerns Monterey County has identified. **Subsection (d)** includes a change to the applicability for agricultural lands. This change is problematic. Most SRA and VHFHSZ lands are grazing lands. These draft regulations would require significant off-site improvements for these areas that would be out of proportion to a property owner constructing a barn or other structure to support agricultural grazing uses. In addition, the new text appears to except and/or allow agricultural

processing plants. However, such uses can be large traffic generators. More thought should be given to this new text and its implementation implications.

Section 1270.05—as previously stated, this section could be used to establish the appropriate authority for most of these regulations to avoid confusion and disagreement over the term “Authority Having Jurisdiction.”

Section 1270.06—Please see the County’s comments contained in its June 15, 2021 letter. In addition, the use of “AHJ” in this section would cause much confusion. Also, timeframes should be provided for processing of exception requests. **Subsection (d)** does not allow due process when an AHJ decides to not “consider an exception request.” The County strongly disagrees with that approach. However, if the State is going to keep this provision, the State should provide criteria or standards for that type of substantial action.

Section 1273.12—The County appreciates the efforts made to create this section for standards for existing roads in response to concerns raised in the workshops. The County also appreciates the conversations with State staff to understand the intent of this regulation. However, the new section requiring that existing roads meet the 75,000 pound weight standard will effectively shut down all new building construction on County roads due to the significant cost associated with rebuilding a road to meet that load standard. The section is also incomplete or has errors, so it is unclear how the final regulation will read or be applied.

The County supports the efforts of Board of Forestry to protect the public safety. Allowing carefully controlled development to occur in these hazardous fire areas would benefit public safety, as new construction would be required to adhere to new standards, which would include enhanced water supply, more attention to fuel modification, potential areas for refuge, and construction that would be better able to withstand wildfire. The County has been administering the regulations in the State Responsibility Area for thirty years and began applying the existing regulations to the Very High Fire Hazard zone beginning July 1, 2021. While we applaud the Board of Forestry’s efforts, the County requests the Board consider our offer to work directly with State staff to ensure the regulations are clear to implement, the County’s recommended modifications have been considered, and consider the substantial effort and coordination of several counties to clarify and improve the draft regulations.

Sincerely,

Wendy Root Askew
Chair, Board of Supervisors

Enclosure: June 15, 2021 letter from Monterey County Board of Supervisors to Board of Forestry and Fire Protection

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