

County of Santa Clara
Department of Planning and Development



DATE: December 7, 2021

TO: Fire Marshal's Office – Appeal Hearing Officer (Chief Estrada)

FROM: Robert Cain, Associate Planner

SUBJECT: Appeal of CAL Fire Exception Denial for PLN18-8580

RECOMMENDED ACTION

Consideration of an Appeal of the decision of CAL Fire to deny an exception request from the SRA/VHFHSZ Fire Safe Regulations (Fire Safe Regulations) regarding access road standards in the State Responsibility Area (SRA). Owners/Appellants: Emmanuel Bagnas and Marilyn Ingles-Bagnas. Property address/location: 16501 Sanborn Road, Saratoga. Assessor's Parcel No.: 517-37-003. Zoning: HS. Supervisorial District: 5. File No.: PLN18-8580-APL1. CEQA: Deemed not to be a project under CEQA.

Possible Actions:

- a. Deny the appeal, thereby upholding CAL Fire's denial of the exception request and requiring access road improvements as a condition of approval for the property at 16501 Sanborn Road (APN: 517-37-003), Saratoga.
- b. Grant the appeal, thereby allowing the project to proceed with an exception to specific provisions of the Fire Safe Regulations.

PROJECT DESCRIPTION

Project Setting

The subject property is located at 16501 Sanborn Road (APN 517-37-003), and is approximately 4 acres (gross) in size. The property is undeveloped, and the Applicant is proposing a single-family residence (on APN 517-37-003) and associated site improvements (with shared water on 517-37-001 and through an ingress easement on neighboring properties). The General Plan land use designation is Hillsides, and the Zoning is HS (Hillside). The property is located within the SRA, which is defined in Public Resources Code section 4125 as areas where the State is financially responsible for fire suppression and prevention. CAL Fire is considered the “*inspection entity*” for projects located within the SRA for purposes of determining compliance with the state Fire Safe Regulations.

The subject property is accessed via an easement through 16500 Sanborn Road (APN 517-37-004) and 16505 Sanborn Road (APN 517-37-002), which connects to Sanborn Road, a County-maintained road, at a point that is approximately 10,000 feet from State Highway 9.

Sanborn Road appears to vary in width from 14.5 to 22 feet. Access to the subject property requires crossing a bridge near the connection to Sanborn Road. Just past the proposed driveway, Sanborn turns into a private road named Ambrose Road.

The Applicant was awaiting a public hearing on a concurrent land use application for Building Site Approval on slopes greater than 30%, Grading Approval, and a Variance (PLN18-8580) when a Modification to the project was required in order to relocate all required grading into an existing access easement, as the neighboring property owners did not consent to grading on their properties outside of the easement (refer to Attachment E). The Modification was received by the Department of Planning and Development on February 20, 2020 and is currently deemed incomplete. As part of the review of this Modification application, CAL Fire provided comments that the project, as proposed, did not meet the existing Board of Forestry Fire Safe Regulations.

Discussion of Fire Safe Regulations Exception Process

The State SRA/VHFHSZ Fire Safe Regulations are contained in Title 14 of the California Code of Regulations, beginning at § 1270.00 (refer to Attachment C and Table A below). The Fire Safe Regulations detail the basic wildfire protection standards of the California Board of Forestry and Fire Protection, which apply to the SRA and the local Very High Fire Hazard Severity Zone (VHFHSZ). For projects in the SRA, CAL Fire makes the initial determination regarding whether the proposed project would comply with the Fire Safe Regulations, such as the subject application. If CAL Fire determines that the project would not comply, then § 1270.06 of the Regulations establishes a process for applicants to request exceptions to the standards (refer to Attachment F and Table A below).

The first step in the exception process is for Applicants to request an exception from the inspection entity. For projects in the SRA, CAL Fire makes the initial decision to approve or deny the exception request. If CAL Fire denies the exception, the applicant may appeal that decision to the local jurisdiction (County of Santa Clara). Subsection 1270.06 (c) of the Fire Safe Regulations states “(w)here an exception is not granted by the inspection entity, the applicant may appeal such denial to the local jurisdiction. The local jurisdiction may establish or utilize an appeal process consistent with existing local building or planning department appeal processes.” The County established a specific process for considering these exception appeals, which is codified in Article 8 of Chapter C1 of the County Ordinance (C1-100 through C1-105). For appeals of exception denials from CAL Fire, the Ordinance Code provides that the Fire Staff designated by the Fire Marshal for such purposes shall hear this appeal, in consultation with the Building Official and the Director of the Roads and Airports Department.

Standard of Review on Appeal of CAL Fire Exception Decision

When making a decision on an appeal of an exception request denied by CAL Fire, the local jurisdiction must comply with the following requirements in Section 1270.06 of the Fire Safe Regulations:

- (a) Upon request by the applicant, exceptions to standards within this subchapter or to local jurisdiction certified ordinances may be allowed by the inspection entity listed in 14 CCR § 1270.05, where the exceptions provide the same practical effect as these regulations towards providing defensible space.
- (d) Before the local jurisdiction makes a determination on an appeal, the inspection authority [CAL Fire] shall be consulted and shall provide to that local jurisdiction documentation outlining the effects of the requested exception on wildfire protection.
- (e) If an appeal is granted, the local jurisdiction shall make findings that the decision meets the intent of providing defensible space consistent with these regulations. Such findings shall include a statement of reasons for the decision. A written copy of these findings shall be provided to the CAL Fire Unit headquarters that administers SRA fire protection in that local jurisdiction.

Section 1271.00 defines “*same practical effect*” as follows:

[A]n exception or alternative with the capability of applying accepted wildland fire suppression strategies and tactics, and provisions for fire fighter safety, including:

- (a) access for emergency wildland fire equipment,
- (b) safe civilian evacuation,
- (c) signing that avoids delays in emergency equipment response,
- (d) available and accessible water to effectively attack wildfire or defend a structure from wildfire, and
- (e) fuel modification sufficient for civilian and fire fighter safety.

Discussion of Applicable Fire Safe Regulations

There are two provisions of the Fire Safe Regulations at issue in this appeal, both of which relate to emergency access. First, access roads to the property are required to meet the Fire Safe Regulations standards from the beginning of the SRA to the property. This would be from State Highway 9 to the property. § 1273.01 (a) requires that “*(a)ll roads shall be constructed to provide a minimum of two ten (10) foot traffic lanes, not including shoulder and striping.*” § 1273.02 (a) requires that “*(r)oads shall be designed and maintained to support the imposed load of fire apparatus weighing at least 75,000 pounds and provide an aggregate base.*”

Second, § 1273.08 (a) sets the maximum length of dead-end roads based partially on the zoning density and provides that, where a dead-end road crosses areas of differing zoned parcel sizes requiring different length limits, the shortest allowable length shall apply (refer

to Table A, below). Sanborn Road is a dead-end road, and this project is located approximately 1.9 miles from State Highway 9, the nearest collector road. The longest a dead-end road may be is 1 mile (for parcels zoned 20 acres or larger), but several of the residences along Sanborn Road are between 1 and 4.99 acres. Per § 1273.08 (a), dead-end roads shall not exceed the designated length regardless of the number of parcels served, and for parcels zoned 1 to 4.99 acres that maximum length is 1,320 feet.

On February 22, 2021, the Applicant was sent an Incomplete Letter from the Department. It included several incomplete items from CAL Fire:

- Access roads to the property shall provide a minimum of two ten (10) foot traffic lanes and support 75,000 lbs. This access standard will be required from the beginning of the State Responsibility Area (SRA) to the property. This would be from Highway 9 to the property. See CAL Fire Code Reference Attachment – “Access Road.”
- This project location is beyond the maximum length of a dead-end road. See CAL Fire Code Reference Attachment – “Dead End Roads.”
- Bridge shall be designed for a live load sufficient to carry the imposed loads of fire apparatus and have appropriate signing. See CAL Fire Code Reference Attachment – Bridge Standards.”
- Minimum turning radius for a turnaround shall be forty (40) feet or a hammerhead/T within 50 feet of the building. See CAL Fire Code Reference Attachment – “Turnarounds – Turning Radius.”

On August 12, 2021, the Applicant applied to CAL Fire for an exception, stating that “(t)here are sections of this road that are not physically able to be widened due to the topography and existing conditions. The same is true for the dead-end road condition. This is an existing condition that cannot be improved. In lieu of these required access measures we propose several additional levels of protection for the building and property site.” The Applicant offered to install fire sprinklers which exceed the residential standard, two dry hydrants on site, and four 5,000-gallon water tanks, three of which would be dedicated for fire protection (refer to Attachment B). On August 17, 2021, CAL Fire informed the Applicant that the exception would not be granted (refer to Attachment C).

CAL Fire further instructed the Applicant that the CAL Fire decision was appealable to the local jurisdiction (the County). On August 22, 2021, the Applicant requested an appeal of the CAL Fire determination to deny the exception to the County. As previously noted, the application for a Modification to the concurrent land use application is incomplete for processing a final decision.

REASONS FOR RECOMMENDATION

The appeal hearing on the exception request shall be heard by the Fire Staff designated by the Fire Marshal, and shall consider the entire scope of the exception request, including the proceedings and conclusions of the original decision-maker (CAL Fire), and the merits of the cases made by the appellants/applicants.

California Environmental Quality Act (CEQA) Review

A determination regarding the applicability of the California Environmental Quality Act (CEQA) to the proposed project will be made at the approvability stage of the project for the concurrent land use application. This appeal of the Fire Safe Regulations exception determination made by CAL Fire is not subject to CEQA.

Appeal Summary & Response to Appeal

The Applicant is appealing CAL Fire's denial of an exception to the SRA/VHFHSZ Fire Safe Regulations on the basis that the requirements for access are infeasible and erroneously applied. The Appellant further argues that *"(t)he decision of CalFire staff denying the applicants' Request for Exception to Standards is erroneous because it is arbitrary and capricious and unsupported by substantial evidence. In CalFire's letter denying the applicants' request, CalFire staff failed to identify any facts, reasonable inferences drawn from facts, or expert opinions based upon facts that would justify its denial."* The relevant code sections cited by CAL Fire are listed below in Table A for reference, with the findings that CAL Fire could not make identified in **bold**, followed by a summary of the Applicant's grounds for appeal and Staff's response. The below regulations apply to new development or construction in the State Response Area that fall within the scope of these regulations.

Table A: Fire Safe Regulations in question

<u>SRA/VHFHSZ Fire Safe Regulations</u>	
§ 1273.01 (a)	All roads shall be constructed to provide a minimum of two ten (10) foot traffic lanes, not including shoulder and striping. These traffic lanes shall provide for two-way traffic flow to support emergency vehicle and civilian egress, unless other standards are provided in this article or additional requirements are mandated by local jurisdictions or local subdivision requirements. Vertical clearances shall conform to the requirements in California Vehicle Code section 35250.
§ 1273.02 (a)	Roads shall be designed and maintained to support the imposed load of fire apparatus weighing at least 75,000 pounds and provide an aggregate base.
§ 1273.08 (a)	The maximum length of a dead-end road, including all dead-end roads accessed from that dead-end road, shall not exceed the following cumulative lengths, regardless of the number of parcels served: parcels zoned for less than one acre - 800 feet parcels zoned for 1 acre to 4.99 acres - 1,320 feet parcels zoned for 5 acres to 19.99 acres - 2,640 feet parcels zoned for 20 acres or larger - 5,280 feet

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

The Applicant states that upgrades to Sanborn road are legally, financially, and physically infeasible, that their project would improve fire access through on-site improvements consistent with the Fire Safe Regulations, and, as the new residence will be built to current Fire Code standards, it does not pose a significant new risk. The Applicant identified five main grounds for appeal, each of which is summarized below, followed by Staff's response to each appeal issue:

1. The proposed project design meets the intent of the Fire Safe Regulations.

Applicant's Reason for Appeal: Based on the opinion of a fire consultant, Connor McGill, P.E. of the firm The Fire Consultants, Inc., the project design features (including: *"nearly three times the required amount of onsite water storage," "a commercial grade sprinkler system,"* and *"two standpipes, including one located at the hammerhead which could be used to suppress wildfire threat surrounding the property"*) would meet the intent of the Regulations *"by providing onsite fire suppression capability that would offset any challenges or response delays caused by the condition of Sanborn Road."*

Staff's Response: Staff defers to the appeals hearing officer as to whether on-site improvements meet the intent of Article 2 (as described in § 1273.00), to *"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."*

2. Sanborn Road already provides fire access to the many properties already developed along it

Appellant's Reason for Appeal: The Applicant asserts that the existing road is already used for fire access purposes, and that the *"existing condition of Sanborn Road is not caused by the project, and denying the project would not fix that condition."*

Staff's Response: The existence of other developments along Sanborn Road has no bearing on whether the proposed project complies with the Fire Safe Regulations. Additionally, the regulations in question do not retroactively apply to existing, approved development. The Fire Safe Regulations apply to all residential, commercial, and industrial building construction in the SRA approved after January 1, 1991, and require an exception to the standards be reviewed on a case-by-case basis.

3. The existing road, while not meeting the standards, does meet the intent of the Regulations in terms of road width.

Applicant's Reason for Appeal: The Applicant asserts that much of the road meets or exceeds the requirements, and therefore *“provides passing space for both wildfire equipment and civilian evacuation concurrently during an emergency.”*

Staff Response: Staff defers to the appeals hearing officer as to whether the road width is sufficient, noting that it does not meet the standards for its entire length. This assertion only addresses the road width issue, not the dead-end road length issue.

4. Application of these Regulations would be unfair and unconstitutional.

Applicant's Reason for Appeal: The Applicant asserts that requiring improvements to Sanborn Road, in addition to being physically impossible and cost prohibitive, would result in an *“unconstitutional exaction, and would effectively render their property undevelopable, even while other property owners in the area have been allowed to develop their properties consistent with applicable zoning.”*

Staff Response: The scope of a Fire Safe Regulation exception appeal is limited to whether the proposed exceptions would provide the same practical effect as the Fire Safe Regulations toward providing defensible space.

5. CAL Fire's denial of an Exception is erroneous as it is not supported by evidence.

Applicant's Reason for Appeal: The Applicant asserts that in their response, CAL Fire failed to *“cite any evidence or to provide any explanation in support of”* the determination that the proposed project does not provide the same practical effect as the access regulations.

Staff Response: Section 1270.06 provides no such requirement for CAL Fire at the time of an exception denial, but does require that CAL Fire be consulted and provide documentation outlining the effects of the requested exception on wildfire protection before the local jurisdiction makes a determination on the exception appeal.

ADDITIONAL INFORMATION

Consultation with CAL Fire Staff

As noted in the “Standard of Review on Appeal of CAL Fire Exception Decision” section of this report, pursuant to Section 1270.06(d) of the Fire Safe Regulations, *“before the local jurisdiction makes a determination on an appeal, the inspection authority [CAL Fire] shall be consulted and shall provide to that local jurisdiction [the County] documentation outlining the effects of the requested exception on wildfire protection.”* Additionally, pursuant to Section 1270.06(e) of the Fire Safe Regulations, *“if an appeal is granted, the*

local jurisdiction [appeal hearing officer] shall make findings that the decision meets the intent of providing defensible space consistent with these regulations. Such findings shall include a statement of reasons for the decision. A written copy of these findings shall be provided to the CAL Fire Unit headquarters that administers SRA fire protection in that local jurisdiction.”

County Staff has informed CAL Fire Staff of this appeal and provided CAL Fire a copy of the staff report and appeal record. CAL Fire staff was requested to provide the required documentation outlining the effects of the requested exception on wildfire protection. If County Staff receives a response, said documentation will be uploaded to the Fire Safe Regulation Appeals webpage, and supplementation information for this application record. Additionally, CAL Fire Staff was invited to the hearing. The CAL Fire Staff contact information was provided to the Appeal Hearing Officer.

Consultation with Director of Roads and Airports and Building Official

Pursuant to Ordinance Code Section C1-104, as part of the County’s process for implementation of the State Minimum Fire Safe Regulations, the Appeal Hearing Officer (Fire Staff designated by the Fire Marshal for projects within the SRA) shall consult with the Director of Roads and Airports (Director of R & A) and Department of Planning and Development Building Official (Building Official) in making the decision. The Director of R & A and Building Official were provided a copy of the subject appeal and provided a copy of the appeal record. Both officials or their designees will be present at the hearing to provide further consultation.

Proposed Fire Safe Regulations Amendments

The Board of Forestry and Fire Protection is currently considering amendments to the Fire Safe Regulations. Currently proposed are separate standards for existing roads which are less strict than the current standards for all roads, and exempting existing roads that meet minimum standards for “existing roads” from the dead-end road requirements. The Board of Forestry, at its meeting on June 22, 2021, continued the matter to consider proposed amendments to the regulations presented by various jurisdictions and other interested parties throughout the State. The County has requested that the Board exempt single-family residences on existing lots along existing roads entirely from road access standards; however, County Staff is uncertain if the County’s comments will be accepted by the Board of Forestry in its final adoption of new regulations.

BACKGROUND

Public Noticing

As a result of the Appeal, and pursuant to the County of Santa Clara Ordinance Code Section C12-449, notice of the meeting to hear the appeal was mailed to all real property owners within 300-feet of the subject property on November 22, 2021.

Public Comments

As of the preparation of this report, no public comments were received by the Department for the subject application appeal (PLN18-8580-APL1). Any comments received will be posted to the Fire Safe Appeals website.

STAFF REPORT REVIEW

Project Planner: Robert Cain, Associate Planner, (408) 299-5706,
robert.cain@pln.sccgov.org.

Reviewed by: Leza Mikhail, Planning Manager (408) 299-5773,
leza.mikhail@pln.sccgov.org.

ATTACHMENTS:

- Attachment A - CAL Fire Exception Denial Appeal Request (PDF)
- Attachment B - CAL Fire Exception Request (PDF)
- Attachment C - CAL Fire Exception Request Denial (PDF)
- Attachment D - Updated Alternative Material and Methods Request (PDF)
- Attachment E - Project and Parcel History (PDF)
- Attachment F - SRA VHFHSZ Fire Safe Regulations (PDF)
- Attachment G - Initial CAL Fire Comments (PDF)

ATTACHMENT A



ANDREW L. FABER
PEGGY L. SPRINGGAY
SAMUEL L. FARB
JAMES P. CASHMAN
STEVEN J. CASAD
NANCY J. JOHNSON
JEROLD A. REITON
JONATHAN D. WOLF
KATHLEEN K. SIPLE
KEVIN F. KELLEY
MARK MAKIEWICZ
JOLIE HOUSTON
BRIAN L. SHETLER
HARRY A. LOPEZ

CHARLES W. VOLPE
CHRISTINE H. LONG
AARON M. VALENTI
CHRISTIAN E. PICONE
SUSAN E. BISHOP
SANDRA G. SEPÚLVEDA
MICHAEL B. IJAMS
KIMBERLY G. FLORES
DAWN C. SWEATT
TYLER A. SHEWEY
JAMES F. LANDRUM, JR.
MICHAEL J. CHENG
C. DAVID SPENCE
JOSHUA BORGER

TEN ALMADEN BOULEVARD
ELEVENTH FLOOR
SAN JOSE, CALIFORNIA 95113-2233

TELEPHONE: (408) 286-5800
FACSIMILE: (408) 998-5388

www.berliner.com
Branch Offices
Merced, CA • Modesto, CA

THOMAS P. MURPHY
ALESHIA M. WHITE
EILEEN P. KENNEDY
ALEXANDRIA N. NGUYEN
GHAZALEH MODARRESI
ANDREW J. DIGNAN
ERIK RAMAKRISHNAN
LEILA N. SOCKOLOV
BEAU C. CORREIA
TIMOTHY K. BOONE
ANGELA SHAW
DAVID A. BELLUMORI
BENJAMIN M. JOHNSON

MARY T. NGUYEN
STEPHEN C. SCORDELIS
ELLEN M. TAYLOR
NATHAN C. BRADY
BRANDON L. REBBOAH
LINDSAY I. WALCZAK
IRIS C. CHIU
MAKAYLA A. WHITNEY
MARISA J. MARTINSON
MARIA I. PALOMARES
BENJAMIN H. WOHLFORD
CHRISTIAN D. WICK
JENNIFER N. WISE

FOUNDERS

SANFORD A. BERLINER (d. 2020)
SAMUEL J. COHEN

OF COUNSEL

STEVEN L. HALLGRIMSON
FRANK R. UBHAUS
RALPH J. SWANSON

NANCY L. BRANDT
LESLIE KALIM MCHUGH
BRADLEY HEBERT

[August 23, 2021]

FILED ONLINE

Colleen A. Tsuchimoto, Sr. Planner
Santa Clara County
Department of Planning and Development
70 West Hedding Street, 7th Floor
San Jose, CA 95110-1705

Re: Appeal of Decision of CalFire Denying Request for Exception to Standards for
Property at 16501 Sanborn Road (PLN18-8580 APL1)

Dear Ms. Tsuchimoto:

This appeal is on behalf of Emmanuel and Marilyn Bagnas, the owners of the above referenced property. The applicants propose to develop their property with a single-family residence, which is a permitted use of the site. The California Department of Forestry and Fire Protection (“CalFire”) has commented that Sanborn Road, the County road providing access to the property, does not comply with Sections 1273.01 (Width) and 1273.08 (Dead-end Roads) of the State Minimum Fire Safe Regulations (the “Regulations”). In response to CalFire’s comments, County planning staff has indicated that the proposed single-family residence cannot be approved unless the road is expanded and widened consistent with the Regulations, or unless a Request for Exception to Standards is granted pursuant to Section 1270.06 of the Regulations.

On August 12, 2021, this firm filed a Request for Exception to Standards with CalFire on behalf of the applicants. The request was supported by an Alternate Means and Methods Report (the “AMMR”) provided by Mr. Conner McGill, a California registered Fire Protection Engineer with The Fire Consultant’s, Inc. The request was denied by CalFire staff on August 17, 2021. The applicants now wish to appeal CalFire’s decision pursuant to Ordinance No. NS-1100.134. At the time of this writing, Ordinance No. NS-1100.134 is still a draft ordinance, but we are informed and believe that it is expected to be adopted and in effect by the time this appeal is heard.

Pursuant to proposed Section C1-104 of the Santa Clara County Ordinance Code, if CalFire, as the Inspection Entity, denies a Request for Exception to Standards from the State Minimum Fire Safe Regulations, the property owner may file an appeal to the Department of Planning and Development. The appeal shall be accompanied by “an explanation of why the Exception decision was erroneous.” This letter is intended to meet the requirement for such an explanation. The letter is accompanied by the following documents, which have been uploaded to the planning file for this appeal:

- 1) The Master Application Form signed by the applicants authorizing the filing of this appeal on their behalf;
- 2) A copy of the Request for Exception to Standards to CalFire, dated August 12, 2021;
- 3) A version of the AMMR provided to CalFire on August 12, 2021, which updated the version of the AMMR attached to the original Request for Exception to Standards by including a close-up of the property site plan; and
- 4) CalFire’s August 17, 2021 denial letter, articulating CalFire’s final decision on the Request for Exception to Standards and advising that the applicant may appeal the decision to the County.

Because both Section 1270.06 and Ordinance No. NS-1100.134 are silent as to the standard of review on appeal, the standard of review is de novo, and the County decision-maker may apply his or her independent judgment to determine whether the applicants have demonstrated an alternate means or method to achieve the intent of Sections 1273.01 and 1273.08.¹ No special deference should be accorded to CalFire’s decision.

The decision of CalFire staff denying the applicants’ Request for Exception to Standards is erroneous because it is arbitrary and capricious and unsupported by substantial evidence. In CalFire’s letter denying the applicants’ request, CalFire staff failed to identify any facts, reasonable inferences drawn from facts, or expert opinions based upon facts that would justify its denial. In contrast, and by way of summary, the applicants’ Request for Exception to Standards set forth the following evidence and arguments:

- The project would provide an access driveway with a hammerhead turnaround that would improve fire access to the site consistent with the Regulations. Moreover, the proposed residence would be constructed to current Fire Code standards, and therefore is not anticipated to pose a significant new safety hazard. Nonetheless, the project would exceed fire safety standards by: (1) providing nearly three times the required amount of onsite water storage; (2) providing a commercial grade sprinkler system;

¹ See 14 Cal. Code Regs, tit. 14, § 1270.06 (“Upon request by the applicant, exceptions to standards within this subchapter or to local jurisdiction certified ordinances may be allowed by the inspection entity listed in 14 CCR §1270.05, where the exceptions provide the same practical effect as these regulations towards providing defensible space.”)

and (3) providing two standpipes, including one located at the hammerhead which could be used to suppress wildfire threat surrounding the property.

- In the professional opinion of Mr. McGill, the foregoing project design features would meet the intent of Sections 1273.01 and 1273.08 of the Regulations by providing onsite fire suppression capability that would offset any challenges or response delays caused by the condition of Sanborn Road. This opinion is supported by a detailed factual analysis in the AMMR.
- Most of the properties along Sanborn Road are already developed with houses or for public recreation uses, and the road is already used to provide fire access to those properties. The existing condition of Sanborn Road is not caused by the project, and denying the project would not fix that condition.
- Although portions of Sanborn Road do not meet the width requirements of Section 1273.01 of the Regulations, much of the road does meet or exceed these requirements. This is demonstrated in a survey attached to the Request for Exception to Standards. Because much of the road is compliant, it provides passing space for both wildfire equipment and civilian evacuation concurrently during an emergency.
- A reasonable inference can be drawn that the widening and extension of Sanborn Road by private property owners in connection with the development of a single-family residence is legally, financially, and physically infeasible. The survey attached to the Request for Exception to Standards shows that widening Sanborn Road is physically impossible due to the locations of hills and ravines adjacent to the road. Requiring the applicants to widen and extend the road as a condition of approval would constitute an unconstitutional exaction, and would effectively render their property undevelopable, even while other property owners in the area have been allowed to develop their properties consistent with applicable zoning. This result would be grossly unfair considering that the applicants are proposing to exceed fire safety standards by providing onsite fire suppression capabilities.

In response to the foregoing evidence and argument, CalFire's denial letter states that:

While the proposed mitigations that include a NFPA 13R system, on-site dry hydrants, and approximately 20,000 gallons of available water supplied by water tanks may provide benefits to structural fire fighting and some wildland fire fighting; they would not provide the same practical effect as roads meeting the minimum specifications described in the SRA Fire Safe Regulations toward safe access.

The letter fails to cite any evidence or to provide any explanation in support of this conclusory statement.

As such, CalFire's decision was not supported by substantial evidence and was erroneous. For all the reasons set forth in the applicants' Request for Exception to Standards to CalFire, the

Colleen A. Tsuchimoto
August 23, 2021

proposed project would meet the intent of the Regulations through alternate means and methods. The applicants therefore respectfully request that the County decision-maker grant their request so that their development application may proceed.

Very truly yours,

BERLINER COHEN, LLP

A handwritten signature in black ink, appearing to read 'ERIK RAMAKRISHNAN', with a small dot at the end.

ERIK RAMAKRISHNAN

erik.ramakrishnan@berliner.com

Enclosures (See Planning File)

1. Master Application Form, Signed by Applicants
2. Request for Exception to Standards to CalFire, dated August 12, 2021
3. Updated AMMR to CalFire, dated August 12, 2021
4. CalFire Denial of Request, dated August 17, 2021

ATTACHMENT B



ANDREW L. FABER
PEGGY L. SPRINGGAY
SAMUEL L. FARB
JAMES P. CASHMAN
STEVEN J. CASAD
NANCY J. JOHNSON
JEROLD A. REITON
JONATHAN D. WOLF
KATHLEEN K. SIPLE
KEVIN F. KELLEY
MARK MAKIEWICZ
JOLIE HOUSTON
BRIAN L. SHETLER
HARRY A. LOPEZ

CHARLES W. VOLPE
CHRISTINE H. LONG
AARON M. VALENTI
CHRISTIAN E. PICONE
SUSAN E. BISHOP
SANDRA G. SEPÚLVEDA
MICHAEL B. IJAMS
KIMBERLY G. FLORES
DAWN C. SWEATT
TYLER A. SHEWEY
JAMES F. LANDRUM, JR.
MICHAEL J. CHENG
C. DAVID SPENCE
JOSHUA BORGER

TEN ALMADEN BOULEVARD
ELEVENTH FLOOR
SAN JOSE, CALIFORNIA 95113-2233

TELEPHONE: (408) 286-5800
FACSIMILE: (408) 998-5388

www.berliner.com
Branch Offices
Merced, CA • Modesto, CA

THOMAS P. MURPHY
ALESHIA M. WHITE
EILEEN P. KENNEDY
ALEXANDRIA N. NGUYEN
GHAZALEH MODARRESI
ANDREW J. DIGNAN
ERIK RAMAKRISHNAN
LEILA N. SOCKOLOV
BEAU C. CORREIA
TIMOTHY K. BOONE
ANGELA SHAW
DAVID A. BELLUMORI
BENJAMIN M. JOHNSON

MARY T. NGUYEN
STEPHEN C. SCORDELIS
ELLEN M. TAYLOR
NATHAN C. BRADY
BRANDON L. REBBOAH
LINDSAY I. WALCZAK
IRIS C. CHIU
MAKAYLA A. WHITNEY
MARISA J. MARTINSON
MARIA I. PALOMARES
BENJAMIN H. WOHLFORD
CHRISTIAN D. WICK
JENNIFER N. WISE

FOUNDERS

SANFORD A. BERLINER (d. 2020)
SAMUEL J. COHEN

OF COUNSEL

STEVEN L. HALLGRIMSON
FRANK R. UBHAUS
RALPH J. SWANSON

NANCY L. BRANDT
LESLIE KALIM MCHUGH
BRADLEY HEBERT

August 12, 2021

VIA U.S. AND ELECTRONIC MAIL

Colleen A. Tsuchimoto, Sr. Planner
Santa Clara County
Department of Planning and Development
70 West Hedding Street, 7th Floor
San Jose, CA 95110-1705

Re: Request for Exception to Standards Pursuant to 14 CCR § 1270.6,
PLN18-8580 (16501 Sanborn Road, APN 517-37-003)

Dear Ms. Tsuchimoto:

Berliner Cohen LLP has been engaged by Marilyn and Manny Bagnas in connection with the above referenced application to submit this request for exception to standards pursuant to Code of California Regulations, title 14, § 1270.06. According to CalFire staff, this request should be submitted to the planning department to be forwarded to CalFire. Your assistance in directing the request accordingly is appreciated.

This request is accompanied by an Alternate Means and Methods Report (the "AMMR"), which is attached hereto as **Attachment 1**. The AMMR was prepared by Connor McGill, P.E. of The Fire Consultants, Inc.¹ Mr. McGill is a Fire Protection Engineer registered in California who holds a master's degree in Fire Protection Engineering from California Polytechnic University, San Luis Obispo. The AMMR sets forth how our clients' proposed land use development uses

¹ More information about The Fire Consultants, Inc. is available here: <http://thefireconsultants.com/about-the-fire-consultants.html>.

alternate means and methods to achieve the intent of the SRA/VHFHSV Fire Safe Regulations, California Code of Regulations, title 14, § 1270.00 (the “Regulations”).

Our clients propose to build a single-family home on land zoned Hillside (HS) located at 16501 Sanborn Road in unincorporated Santa Clara County. This request for exception to standards responds to comments contained in the February 22, 2021 incomplete letter from the Santa Clara County Department of Planning and Development, which is attached hereto as **Attachment 2**. Comment Nos. 7 and 8 in the incomplete letter state as follows:

7. Access roads to the property shall provide a minimum of two ten (10) foot traffic lanes and support 75,000 lbs. This access standard will be required from the beginning of the State Responsibility Area (SRA) to the property. This would be from Highway 9 to the property. See CalFire Code Reference Attachment – “Access Road.”
8. This project location is beyond the maximum length of a dead-end road. See CalFire Code Reference Attachment – “Dead End Roads.”

Reference was made in the letter to the following two sections of the Regulations: Section 1273.01 (Width) and Section 1273.08 (Dead-end Roads). I am informed that both the County and CalFire maintain that the project does not comply with these regulations because Sanborn Road is not, for its entire length, a two-lane road with 10-foot lanes, and because it terminates near the project site at a private road known as Ambrose Road.

The purpose of this letter is to request exceptions to Sections 1273.01 and 1273.08 of the Regulations. However, as an initial matter, please be advised that this request is being made under protest. An exception is unnecessary because, for reasons explained in Part IV of my letter of April 16, 2021, which is included in **Attachment 3** to this letter, the Regulations are not written to require improvement of existing roads as a condition to construct a single-family home on a residentially zoned lot. I am informed that CalFire and the County only recently began to construe the Regulations to require such offsite improvements. Also, for reasons explained in Part III of the same letter and in a subsequent letter dated May 21, 2021, which is also included in **Attachment 3**, denying the proposed project, or conditioning it upon the requirement to widen or extend Sanborn Road, would constitute a taking in violation of the Fifth Amendment to the United States Constitution and Article I, Section 19 of the California Constitution. Our clients are not responsible for the existing condition of Sanborn Road, and requiring them to extend or widen the road for the benefit of the entire community as a condition of developing their property is patently confiscatory.

Requiring our clients to widen or extend Sanborn Road is also financially, legally, and physically infeasible, and would require a substantial amount of environmental destruction in a rural hillside environment. To demonstrate the impossibility of widening the road, we engaged a licensed surveyor to survey a segment of Sanborn Road near the subject property. A copy of the survey is attached to this letter as **Attachment 4**. The survey shows the widths of paved surfaces, many but not all of which meet or exceed the 20-foot requirement in Section 1273.01 of the Regulations. In those locations where 20 feet of right-of-way is not provided, photographs attached to the survey demonstrate that the road cannot be widened because it is bounded by hillside on one side and a cliff or ravine on the other, making it virtually impossible to increase the width of the pavement. Because strict compliance with the Regulations as construed by CalFire

and the County is not possible, the failure to grant this request for an exception to standards would effectively render our client's property undevelopable.

All that our clients proposed to do is to develop their property for a permitted use in a manner consistent with other properties along Sanborn Road. As stated in Table 2.20-1 of the County's Zoning Ordinance, a single-family residence is a permitted use in the HS Zoning District. Sanborn Road is already developed with multiple existing single-family residences. Unlike older residences in their neighborhood, our clients' residence would be constructed to the latest California Fire Code standards. In fact, as explained in further detail below and in the attached AMMR, they will be exceeding fire standards to address potential increased response times caused by the condition of Sanborn Road. Consequently, they will not be creating a significant new fire hazard, and they should be allowed to develop their property in a like manner as similarly situated property owners on Sanborn Road.

In circumstances like these where strict compliance with the Regulations is not practicable and would prevent a property owner from using and enjoying their property, Section 1270.06 of the Regulations provides a process for requesting an exception to standards. A copy of Section 1270.06 is attached to this letter as **Attachment 5** for convenience of reference. Section 1270.06 states that the request should be made to the applicable inspection entity, which in this case is CalFire, and that an appeal to the inspection entity's determination may be taken to the local jurisdiction. The required finding for an exception is that the proposed project will provide alternate means and methods of achieving the same practical effect of the applicable Regulations from which an exception is sought. The exception shall be in writing and shall provide the following:

- The specific sections of the Regulations from which exceptions are requested;
- A map showing the proposed location and siting of the exception;
- Material facts supporting the contention of the applicant; and
- Details of the exception proposed.

As indicated above, our clients are seeking exceptions from Section 1273.01 (Width) and Section 1273.08 (Dead-end Roads) of the Regulations. **Attachment 6** includes four maps showing the location of the property and surrounding areas, and **Attachment 7** shows a site plan for the project, which includes the locations of water tanks and fire hydrants proposed by our clients. Finally, the AMMR attached as **Attachment 1** demonstrates how the project will use alternate means and methods to meet the intent of Section 1273.01 and 1273.08 by mitigating for any increased response times that may be caused by existing conditions of Sanborn Road.

As explained in the AMMR, the proposed project would exceed onsite fire suppression system standards in that the residence will include a NFPA 13R system instead of NFPA 13D and an increased sprinkler design density. Additionally, the project's private on-site driveway would be provided with a compliant fire apparatus turnaround and 32-foot-long fire department turnout, which would improve access both to the site and surroundings. To assist with any potential wildfire threat around the property, two on-site fire hydrants are being provided to assist with firefighting efforts. One would be located near the home, and the other would be located at the

August 12, 2021

turnout. Finally, the property would provide 20,000 gallons of water stored onsite, which is almost three times the required amount for fire suppression purposes. These project design features will offset potential increased response times due to the condition of Sanborn Road, and in the opinion of Mr. McGill, the proposed project will therefore meet the intent of the Regulations.

Because strict compliance with the Regulations as interpreted by CalFire and the County is not possible, and because the proposed project will provide alternate means and methods of achieving the same practical effect of the applicable Regulations from which an exception is sought, the request for an exception should be granted.

Very truly yours,

BERLINER COHEN, LLP



ERIK RAMAKRISHNAN

erik.ramakrishnan@berliner.com

Attachments:

1. Alternate Means and Methods Report
2. Incomplete Letter Dated February 22, 2021
3. Correspondence Dated April 16, 2021 and May 21, 2021
4. Survey of Sanborn Road
5. California Code of Regulations, title 14, section 1270.06
6. Maps Showing Location of Proposed Project
7. Site plan

Cc: Alex Goff, Deputy Fire Marshal, Santa Clara County, Alex.Goff@sccfd.org; Marcus Hernandez, Fire Marshal, CalFire Battalion 1608, Marcus.Hernandez2@fire.ca.gov; County Counsel; Christopher Hoem, christopher.hoem@bos.sccgov.org; Leza Mikhail, leza.mikhail@pln.sccgov.org

Attachment 1: Alternate Means and Methods Report

REQUEST FOR CAL FIRE EXCEPTION
EXISTING FIRE ACCESS ROAD

16501 Sanborn Road
Saratoga, CA 95070

Date: August 9, 2021

Project Description: 16501 Sanborn Road is the proposed site for a new single-family home. The project also includes a new bridge and driveway leading to the single-family home. The driveway is a minimum of 18ft in width, with a maximum grade of 20%, provided with a turn out halfway up and a full hammerhead turn around at the residence.

Code Section: 2019 California Code of Regulations Title 14 Division 1.5 Chapter 7 Subchapter 2 Article 1 Section 1270.06, and Article 2 Section 1273.01 and 1273.08.

Code Requirement: Section 1273.01 Width. All roads shall be constructed to provide a minimum of two ten (10) foot traffic lanes, not including shoulder and striping. Vertical clearances shall conform to the requirements in California Vehicle Code Section 35250.

Section 1273.08 Dead-end Roads. The maximum length of a dead-end road, including all dead-end roads accessed from that dead-end road, shall not exceed the following cumulative lengths, regardless of the number of parcels served:

Parcels zoned for 1 acre to 4.99 acres – 1,320 feet
Parcels zoned for 5 acres to 19.99 acres – 2,640 feet
Parcels zoned for 20 acres or larger – 5,280 feet

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

Section 1270.06 Exceptions to Standards. Upon request by the applicant, exceptions to standards within this subchapter or to local jurisdiction certified ordinances may be allowed by the inspection entity listed in 14 CCR § 1270.05 where the exceptions provide the same practical effect as these regulations towards providing defensible space. Exceptions granted by the inspection entity listed in 14 CCR § 1270.05 shall be made on a case-by-case basis only. Exceptions granted by the inspection entity listed in 14 CCR § 1270.05 shall be forwarded to the appropriate CAL FIRE Unit Office that administers

SRA fire protection in that county and shall be retained on file at the Unit Office.

Requests for an exception shall be made in writing to the inspection entity listed in 14 CCR § 1270.05 by the applicant or the applicant's authorized representative. At a minimum, the request shall state the specific section(s) for which an exception is requested, material facts supporting the contention of the applicant, the details of the exception proposed, and a map showing the proposed location and siting of the exception. Local jurisdictions listed in 14 CCR section 1270.05 may establish additional procedures or requirements for exception requests.

Code Intent:

The intent of Section 1273.01 is to provide road access for emergency use and perimeter wildfire protection measures. The twenty (20) foot wide road allows for easier site access for firefighting efforts. The intent of Section 1273.08 is to provide access to two access points along any road longer than the length specified to improve the accessibility of remote facilities and wildfire fighting efforts. The intent of Section 1270.06 is to provide a means to apply for an exception to requirements listed in the subsection when it is not feasible to accomplish. This is accomplished by providing an alternative means or method to the requirement that offsets the lack of the requirement.

Request:

The single-family home is accessed off Sanborn Road, an existing two-lane road that connects to Highway 9 approximately 1.9 miles from the proposed site location. Sanborn Road terminates in the opposite direction from Highway 9 at a private road identified as Ambrose Road. Part of Sanborn Road near 16501 Sanborn has been surveyed and varies in width from approximately 14.5 feet wide to 22 feet wide in some locations not including shoulder space. There are sections of this road that are not physically able to be widened due to the topography and existing conditions. The same is true for the dead-end road condition. This is an existing condition that cannot be improved. In lieu of these required access measures we propose several additional levels of protection for the building and property site:

1. The residential single-family home will include a NFPA 13R system instead of NFPA 13D and an increased sprinkler design density of 0.1 gpm/ft² instead of 0.05 gpm/ft². This is a 100% increase in the density required by NFPA 13R. The hydraulics will be calculated using the NFPA 13R four (4) head calculation instead of the NFPA 13D two (2) head calculation.

NFPA 13R also requires sprinkler protected garages where 13D does not. The system will have an independent supply line that is connected to the fire water tank system that can provide up to 20,000 gallons.

2. Two on-site dry hydrants will be provided, connected to the on-site fire protection water storage tanks. One hydrant will be adjacent to the residence at least 50 feet from the house next to the compliant fire apparatus turn around, and the other will be adjacent to the provided turnout approximately halfway up the driveway.
3. The site will be provided with four (4) inter-connected 5,000-gallon water tanks that will serve the sprinkler system and hydrant system. This will provide approximately 20,000 gallons of available water connected to a well that should be capable of providing between 15 gpm and 25 gpm based on neighboring wells. The domestic water supply will utilize one of these tanks but will be zoned by a check valve so that it will not pull water from the 3 dedicated lines but the fire hydrant and sprinkler system may utilize the domestic tank.

Justification:

The existing conditions of Sanborn Road provide a two-lane fire apparatus access road that varies in width from 14 feet to 22 feet. Access to the proposed residence will be provided via a driveway off Sanborn Road. The driveway is a minimum of 18 feet wide and provided with a compliant fire apparatus turnaround as shown in the attached sketch. The minimum driveway width for Saratoga according to Santa Clara County Fire is 14 feet. Although Sanborn Road does not meet the required 20-foot width for the entire length, this is an existing two-lane road that the fire department currently utilizes for access to other properties on Sanborn Road. To offset the potential for the narrower section of the road to increase Fire Department response time, the residence will be provided with an upgraded sprinkler system (NFPA 13R in lieu of 13D) that will also provide more water to a fire (0.1 gpm/ft² over 0.05 gpm/ft²). In the event of a fire inside the single-family home, this will increase the likelihood that the sprinkler system will adequately suppress or extinguish the fire. The increased protection provided by the NFPA 13R system and increased sprinkler density is considered to offset an increase in response time due to the diminished access road width for portions of the existing Sanborn Road.

While the property site is accessed on an existing public dead-end road, the private on-site driveway will be provided with a compliant

fire apparatus turnaround and 32-foot-long fire department turn out. In an effort to assist with any potential wildfire threat around the property, on-site fire hydrants are being provided to assist with fire fighting efforts.

The site is not served by a local water purveyor. In rural and suburban areas where adequate and reliable water supply systems do not exist, the fire code official is authorized to utilize NFPA 1142, *Standard on Water Supplies for Suburban and Rural Firefighting*. The minimum required fire water supply for the structure according to the 2017 edition of NFPA 1142 *Water Supplies for Suburban and Rural Fire Fighting* is calculated by Equation 4.2.1:

[4.2.1]

$$WS_{\min} = \frac{VS_{\text{tot}}}{OHC}(CC)$$

where:

WS_{\min} = minimum water supply in gal (For results in L, multiply by 3.785.)

VS_{tot} = total volume of structure in ft^3 (If volume is measured in m^3 , multiply by 35.3.)

OHC = occupancy hazard classification number

CC = construction classification number

The total estimated volume of the residence is ~50,000 cubic feet, the Occupancy Hazard Classification (OHC) number is 7 according to Section 5.2.5.2 for dwellings, and the Classification of Construction (CC) is 1.0 for dwelling in accordance with Section 6.2.2. Based on Equation 4.2.1, the minimum water supply for the residence approximately 7,142 gallons. The residence is provided with an on-site water storage capacity of 20,000 gallons to supply the on-site fire hydrants. This provides almost three times the required water supply to help fight fire efforts in the area around the house as the supply is connected to the two dry hydrants. One hydrant will be directly adjacent the residence (56 feet) and an additional one will be provided at the beginning of the fire department turnout approximately halfway between the house and Sanborn Road. These hydrants can also be used to support wildfire fighting efforts in the area. The provided fire apparatus turn around and additional hydrants for fire suppression efforts provide additional protection to offset the existing road conditions.

Conclusion: Given the existing road conditions on Sanborn Road, the proposed additional protections, as described above, provide significant increases in fire protection measures. These additional protections go above what is required per code, to offset potential challenges or delays due to for fire department access along the public road. It is our professional opinion that these alternatives described above provide a level of safety and fire protection equivalent to that prescribed by the code.

Prepared by:

THE FIRE CONSULTANTS, INC


Connor McGill, P.E.

CAM/KEG:cm

21-2476 /RQCM 16501 Sanborn Road Fire Access



August 9, 2021
Date

Attachment 2: Incomplete Letter Dated February 22, 2021

County of Santa Clara

Department of Planning and Development
Planning Office

County Government Center, East Wing, 7th Floor
70 West Hedding Street
San Jose, California 95110-1705
(408) 299-5770 FAX (408) 288-9198
www.sccplanning.org



February 22, 2021

Manny Bagnas

VIA EMAIL ONLY Delivered to Owner and Applicant

FILE NUMBER: PLN18-8580 (R2)
SUBJECT: Building Site Approval with Architectural Review,
Grading Approval, Variance
SITE LOCATION: 16501 Sanborn Rd. (APN 517-37-003)
DATE RECEIVED: January 22, 2021

Dear Mr. Bagnas:

Your applications for Major Modification of Building Site Approval with Architectural Review, Grading Approval, and Variance are **incomplete** and the plans do not meet the requirements.

In order for application processing to resume, you must resolve the following issues and submit the information listed below. Resubmittals are made by electronic submittal and must include all requested information along with a completed application form (which is used to track the resubmittal). Once the information is submitted, the Planning Office will distribute the plans, reports and/or information to the appropriate staff or agency for review.

If you have any questions about the information being requested, you should first call the person whose name is listed as the contact person for that item. He or she represents a particular specialty or office and can provide details about the requested information.

**AN APPOINTMENT IS REQUIRED FOR THIS RESUBMITTAL.
PLEASE CONTACT ME AT (408) 299-5797, Colleen.Tsuchimoto@pln.sccgov.org TO
SCHEDULE A RESUBMITTAL REVIEW APPOINTMENT.**

Planning

Contact Colleen Tsuchimoto at (408) 299-5797 / Colleen.Tsuchimoto@pln.sccgov.org for information regarding the following items:

1. Please revise the plans to show the access road widening improvements, and fire truck turnaround requirements as detailed in Land Development Engineering, Fire Marshal's Office and CalFire comments No. 4 to 10 below. Any additions such as supporting retaining walls with section details must also be incorporated into the plan set.
2. Grading quantities on plans need to reflect the additional work required of the access road and fire truck turnaround (volume and cut/fill heights). Please update the cover sheet with grading quantities to reflect the new access road and driveway design.
3. If location of water tanks will be modified, please include new location on site plan.

Note: See Additional Information/Issues of Concern section relating to meeting the Grading Ordinance findings.

Land Development Engineering

Contact Ed Duazo at (408) 299-5733 / Ed.Duazo@pln.sccgov.org for information regarding the following items:

4. The fire truck turnaround is intended not only to serve the residence, but also to serve as the turnaround at the terminus of the private road. As such, the access preceding the fire truck turnaround is to be constructed per County Standard Road Detail SD2 or per CalFire/County Fire Marshal requirements, whichever is more restrictive. Road shoulder may be replaced by a retaining wall to support the outboard edge of pavement. In the plans, provide sufficient right-of-way for the road and turnaround, as well as any improvements required to construct and maintain the roadway/turnaround (e.g., retaining walls, slopes, etc.). (Note: Per discussion with the County Fire Marshal's Office and CalFire, the fire truck turnaround does not currently satisfy CalFire requirements and will require modification.)
5. Several roadway and grading cross-sections do not match what is shown in the plan view. Review and revise the roadway and grading cross sections to eliminate any discrepancies.

Fire Marshal's Office

Contact Alex Goff at (408) 299-5763 / Alex.Goff@sccfd.org regarding the following items:

6. Revise plans to meet the following requirements:
 - (a) Minimum fire department turnout dimensions to be a 30 ft. length, 10 ft. width and 2-25 ft. tapers.
 - (b) Site Plan to show minimum driveable width for access roads (serving 3 or more properties) per PRC-4290.
 - (c) Plans to state fire department access (access road and driveway) to be made of an "all weather" material capable of holding 75,000 pounds.
 - (d) Plans to show sign at bridge showing weight capacity with a minimum of 75,000 pounds (37.5 tons). Bridge to meet AASHTO HB-17.

Calfire

Contact Marcus Hernandez at Marcus.Hernandez2@fire.ca.gov regarding the following items:

This project is located within the State Responsibility Area (SRA) and will need to follow all requirements of **California Code of Regulations Title 14 Natural Resources Division 1.5 Department of Forestry Chapter 7 – Fire Protection Subchapter 2 SRA Fire Safe Regulations Articles 1-5.**

7. Access roads to the property shall provide a minimum of two ten (10) foot traffic lanes and support 75,000 lbs. This access standard will be required from the beginning of the State Responsibility Area (SRA) to the property. This would be from Highway 9 to the property. See CalFire Code Reference Attachment – “Access Road.”
8. This project location is beyond the maximum length of a dead-end road. See CalFire Code Reference Attachment – “Dead End Roads.”
9. Bridge shall be designed for a live load sufficient to carry the imposed loads of fire apparatus and have appropriate signing. See CalFire Code Reference Attachment – Bridge Standards.”
10. Minimum turning radius for a turnaround shall be forty (40) feet or a hammerhead/T within 50 feet of the building. See CalFire Code Reference Attachment – “Turnarounds – Turning Radius.”

ADDITIONAL INFORMATION/ISSUES OF CONCERN

Note: The following is a list of additional information or issues of concern. These items are not required to deem a project complete for processing, but are information only.

Planning

Contact Colleen Tsuchimoto at (408) 299-5797/Colleen.Tsuchimoto@pln.sccgov.org) for information regarding the following item(s).

11. As many details of the project are incomplete and/or not provided on the plans, the next revised set of plans may result in additional incomplete comments that are not identified within this letter. Staff recommends setting up an appointment to go over the minimum necessary requirements//information when have information ready to discuss.
12. The grading plans appear to show excessive grading to establish the water tanks to support the use. There appear to be closer locations closer to the home on the same parcel of land to establish fire access water. Staff would recommend revising the design of the project to reduce the grading and relocate the water tanks closer to the residence and access points. Revised grading plans should demonstrate conformance with all findings of Section C12-433 of the Santa Clara County Grading Ordinance specifically:
 - (a) The amount, design, location, and nature of any proposed grading is necessary to establish or maintain a use presently permitted by law on the property.

- (b) Grading and associated improvements will conform with the natural terrain and existing topography of the site as much as possible, and should not create a significant visual scar.

Note: County Staff will not likely be able to support the project as currently designed. The grading is excessive and does not meet County Grading findings or General Plan policies. Additionally, the required significant modifications to the driveway design (fire truck turnaround) would add additional excessive grading with added retaining walls and encroachment into the 25 ft. setback from top bank of the creek. Such modifications will not likely be supported.

13. It has come to County Staff attention that it may be difficult to accomplish complying with the County Fire Marshal/CalFire standards, which was discussed at our meeting on February 11, 2021, with the applicant, property owners, CalFire, Fire Marshall's Office, Land Development Engineering and Planning in attendance. Please note that the proposed project will be required to be signed off by CalFire in order to approve the project. If the applicant cannot meet the requirements of CalFire, County Planning will not likely be able to support the project.

In submitting this land use application, the owner/applicant included an initial application fee. Application fees are categorized as "fixed fees" and "billable fees", based on the particular application type(s). "Fixed fee" applications do not require any additional fees to continue processing. However, when funds associated with a "billable fee" application have been spent, an additional deposit will be required to continue processing the application.

If the requested information is not submitted within 180 days, you will be required to pay a fee of 10% of the application fee at the time the information is submitted. All requested information must be submitted within 1 year of the date of this letter and will not be accepted after 1 year. PARTIAL RESUBMITTALS WILL NOT BE PROCESSED. Fees required at the time of resubmittal will be those in effect at that time.

If you have any additional questions regarding this application, please call me at (408) 299-5797, or contact me at Colleen.Tsuchimoto@pln.sccgov.org

Sincerely,

Colleen A. Tsuchimoto

Colleen A. Tsuchimoto

Senior Planner

Cc: Ed Duazo, Darrell Wong - Land Development Engineering
Alex Goff - Fire Marshal's Office
Marcus Hernandez - CalFire

Applicant: Ekundayo Sowunmi –

Cal Fire Code Reference Attachment

ACCESS ROADS

§ 1270.02. Scope

(a) These regulations shall apply to:

(1) the perimeters and access to all residential, commercial, and industrial building construction within the SRA approved after January 1, 1991 except as set forth below in subsection (b.);

§ 1273.00. Intent

Roads and driveways, whether public or private, unless exempted under 14 CCR § 1270.02(d), shall provide for safe access for emergency wildfire equipment and civilian evacuation concurrently, and shall provide unobstructed traffic circulation during a wildfire emergency consistent with 14 CCR §§ 1273.00 through 1273.09.

§ 1273.01. Width.

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

§ 1273.02. Road Surfaces

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

DEAD END ROADS

§ 1271.00. Definitions

Dead-end road: A road that has only one point of vehicular ingress/egress, including cul-de-sacs and looped roads.

Road: Vehicular access to more than two (2) parcels; more than four (4) residential units; or access to any industrial or commercial occupancy. Includes public and private streets and lanes.

§ 1273.08. Dead-end Roads

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

parcels zoned for less than one acre - 800 feet

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

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

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

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

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

BRIDGE STANDARDS

§ 1273.07. Road and Driveway Structures

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

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

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

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

TURNAROUNDS – TURNING RADIUS

§ 1273.05. Turnarounds

(a) Turnarounds are required on driveways and dead-end roads.

(b) The minimum turning radius for a turnaround shall be forty (40) feet, not including parking, in accordance with the figures in 14 CCR §§ 1273.05(e) and 1273.05(f). If a hammerhead/T is used instead, the top of the “T” shall be a minimum of sixty (60) feet in length.

(c) Driveways exceeding 150 feet in length, but less than 800 feet in length, shall provide a turnout near the midpoint of the driveway. Where the driveway exceeds 800 feet, turnouts shall be provided no more than 400 feet apart.

(d) A turnaround shall be provided on driveways over 300 feet in length and shall be within fifty (50) feet of the building.

DEFENSIBLE SPACE – VEGETATION MAINTENANCE

This property will need to comply with the vegetation maintenance requirements of Public Resource Code (PRC) 4291.

§ 1276.01. Setback for Structure Defensible Space.

Structures constructed in the SRA are required to comply with the defensible space regulations in Title 14. Natural Resources Division 1.5. Department of Forestry and Fire Protection Chapter 7. Fire Protection Subchapter 3. Fire Hazard.

Attachment 3: Correspondence Dated April 16, 2021 and May 21, 2021



ANDREW L. FABER
PEGGY L. SPRINGGAY
SAMUEL L. FARB
JAMES P. CASHMAN
STEVEN J. CASAD
NANCY J. JOHNSON
JEROLD A. REITON
JONATHAN D. WOLF
KATHLEEN K. SIPLE
KEVIN F. KELLEY
MARK MAKIEWICZ
JOLIE HOUSTON
BRIAN L. SHETLER
HARRY A. LOPEZ

CHARLES W. VOLPE
CHRISTINE H. LONG
AARON M. VALENTI
CHRISTIAN E. PICONE
SUSAN E. BISHOP
SANDRA G. SEPÚLVEDA
MICHAEL B. IJAMS
KIMBERLY G. FLORES
DAWN C. SWEATT
TYLER A. SHEWEY
JAMES F. LANDRUM, JR.
MICHAEL J. CHENG
C. DAVID SPENCE
JOSHUA BORGER

TEN ALMADEN BOULEVARD
ELEVENTH FLOOR
SAN JOSE, CALIFORNIA 95113-2233

TELEPHONE: (408) 286-5800
FACSIMILE: (408) 998-5388

www.berliner.com
Branch Offices
Merced, CA • Modesto, CA

THOMAS P. MURPHY
ALESHIA M. WHITE
EILEEN P. KENNEDY
ALEXANDRIA N. NGUYEN
GHAZALEH MODARRESI
ANDREW J. DIGNAN
ERIK RAMAKRISHNAN
LEILA N. SOCKOLOV
BEAU C. CORREIA
TIMOTHY K. BOONE
ANGELA HOFFMAN SHAW
DAVID A. BELLUMORI

BENJAMIN M. JOHNSON
MARY T. NGUYEN
STEPHEN C. SCORDELIS
ELLEN M. TAYLOR
BRANDON L. REBBOAH
LINDSAY I. HOVER
CHRISTIAN SIMON
MAKAYLA A. WHITNEY
MARISA J. MARTINSON
MARIA I. PALOMARES
CHRISTIAN D. WICK

FOUNDERS

SANFORD A. BERLINER (d. 2020)
SAMUEL J. COHEN

OF COUNSEL

STEVEN L. HALLGRIMSON
FRANK R. UBHAUS
RALPH J. SWANSON

NANCY L. BRANDT
LESLIE KALIM MCHUGH
BRADLEY HEBERT

April 16, 2021

VIA ELECTRONIC AND U.S. MAIL

Colleen A. Tsuchimoto, Sr. Planner
Santa Clara County
Department of Planning and Development
70 West Hedding Street, 7th Floor
San Jose, CA 95110-1705

Re: Incomplete Letter to Manny Bagnas dated February 22, 2021,
PLN18-8580 (Building Site Approval), 16501 Sanborn Road

Dear Ms. Tsuchimoto:

I am writing on behalf of applicants Manny and Marilyn Bagnas in response to the above referenced incomplete letter, which is enclosed for your reference. The letter pertains to the applicants' proposal to construct a single-family home on the subject property. The purpose of this letter is to address Comment No. 7 from CalFire in the incomplete letter, which states that as a condition of their proposed development project, the applicants are required to widen Sanborn Road from Highway 9 to their property. This comment is problematic for the following reasons:

- (1) Widening Sanborn Road would be infeasible;
- (2) Prejudging the project and imposing conditions of approval is beyond the scope of the application review process;
- (3) The requirement to widen Sanborn Road would constitute a taking;
- (4) The CalFire regulations cited in the incomplete letter do not require offsite improvements; and

April 16, 2021

- (5) Even if CalFire regulations required construction of offsite improvements, the applicants would be entitled to request an exception that should be considered as part of the review of the development project, and not at the application stage.

Each of these issues is discussed in greater detail below.

I. Widening Sanborn Road Would be Infeasible

As an initial matter, widening Sanborn Road from Highway 9 to the subject property would be infeasible. The distance from Highway 9 to the property is approximately two miles, and the applicants do not own any right-of-way along the route. In addition to the fact that a two mile road-widening project would be cost prohibitive as a condition to construct a single-family home, the applicants do not have the ability to compel private property owners to sell right-of-way to them. In some places, it also is physically impossible to widen the road due to the location of watercourses and hillsides.

II. Comment No. 7 Is Premature

Comment No. 7 does not identify a submittal requirement that is missing from the applicants' application. Instead, it states a condition of project approval. Insofar as the road-widening is infeasible, Comment No. 7 is also tantamount to a denial of the project. This is improper, particularly at the application stage.

Applications for land use entitlements for development projects are governed by the Permit Streamlining Act, Government Code Section 65920, et seq. Government Code Section 65943 provides a process for reviewing applications for completeness, and Sections 65940 and 65941 require each local agency to prepare a list of submittal requirements to be used to determine completeness. The purpose of the process is not to prejudge a development project, but rather is to determine whether the applicant has provided the materials the local agency needs for its review of the project application.

Here, it is entirely unclear what the applicants are expected to provide in response to Comment No. 7. Comment No. 7 does not identify an item on an application submittal checklist that the applicants have failed to provide to the County. Instead, it states an infeasible condition of project approval.

The time to consider the merits of the project and to impose conditions of approval comes after the application is deemed complete. Even if the requirement to widen Sanborn Road were an appropriate condition of approval, consideration of the application should not be held up pending satisfaction of that requirement. The applicants are entitled to a fair process in the consideration of their development proposal, and that process should not be delayed or prevented from moving forward when the County will have the opportunity to impose conditions later as part of its approval of the development project.

III. The Requirement to Widen Sanborn Road Would Constitute a Taking

Under three different legal doctrines, the requirement to widen Sanborn Road would constitute a taking without just compensation in violation of the Fifth Amendment to the United States Constitution. First, the requirement is disproportionate to the impacts of the applicants' proposed single-family development project, and therefore violates the essential nexus and rough proportionality test announced by the United States Supreme Court in *Dolan v. City of Tigard* (1994) 512 U.S. 374 ("*Dolan*"). Second, the requirement constitutes a per se taking as described by the United States Supreme Court in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003 ("*Lucas*"). Finally, applying the test announced by the United States Supreme Court in *Penn Central Transportation Co. v. City of New York* (1978) 438 U.S. 104 ("*Penn Central*"), the requirement constitutes a regulatory taking.

A. Unconstitutional Condition

In *Dolan*, a convenience store owner applied for a permit to expand the store. As a condition of its approval of the project, the city required the owner to dedicate land and to develop a pedestrian and bicycle pathway along an adjacent creek to relieve traffic congestion. The United States Supreme Court explained that normally a requirement for a property owner to dedicate private property to the public constitutes a per se taking that requires just compensation. The court further explained that compensation may not be required when a property owner voluntarily seeks approval of a development project and the dedication is required as a condition of project approval. However, in this case there must be an essential nexus between the dedication requirement and the potential deleterious impacts of the project, and the dedication requirement must be roughly proportional to those impacts. Otherwise, the dedication requirement is extortionate, and constitutes a taking.

The *Dolan* court accepted that the store expansion project would contribute to traffic congestion and that the extension of a pedestrian and bicycle pathway could help alleviate traffic congestion, so that an essential nexus existed between the dedication requirement and the project's impacts. Nonetheless, the requirement to dedicate land and to develop the pathway was out of all proportion with the project's likely incremental impact on local traffic congestion. On that basis, the court held that the requirement was an unconstitutional condition.

Dolan's unconstitutional conditions doctrine has not been limited to the requirement to dedicate property to the public. In *Koontz v. St. Johns River Water Management District* (2013) 570 U.S. 595 ("*Koontz*"), the United States Supreme Court applied the doctrine in the context of a condition to provide offsite mitigation or to pay an in lieu fee. Long before either *Dolan* or *Koontz* were decided, the court in *Scrutton v. County of Sacramento* (1969) 275 Cal.App.2d 412 ("*Scrutton*") reached a similar decision in holding that a property owner could not be required to provide offsite mitigation as a condition of approval of a rezoning application. There, as a condition of approval of an application to rezone property for multifamily residential use, the county required the property owner to agree to pave an offsite street. Because any benefit of the street paving to the property owner was greatly outweighed by the benefit to the community at large, the court held

April 16, 2021

that the character of the government's action was tantamount to a taking of private property without just compensation.

Like in *Dolan*, *Koontz*, and *Scrutton*, the requirement here to widen Sanborn Road is out of all proportion with the proposed project's impacts. Sanborn Road is an existing road with several existing residences. The applicants' proposed new home, which will be built to modern fire safety standards, will not create an incrementally significant need for fire service that justifies requiring the applicants to perform the physically and legally impossible and cost prohibitive task of widening Sanborn Road. Also, like in *Scrutton*, any benefit to the applicants' property of the road-widening would be far outweighed by the benefit to the community at large. Accordingly, the requirement is an unconstitutional condition.

B. Per Se Taking

The requirement to widen Sanborn Road would also constitute a per se taking under the United States Supreme Court's analysis in *Lucas*. In that case, a South Carolina environmental law effectively prohibited landowners from developing two vacant oceanfront lots because of the potential impacts of development on adjacent public beaches. Because the law deprived the owners of all economically beneficial use of their property, the court held that the law constituted a per se taking in violation of the Fifth Amendment.

The same logic applies here. Again, it is not physically, legally, or financially feasible for the applicants to widen Sanborn Road all the way to their property. To impose such a requirement effectively renders their property undevelopable, thereby depriving them of all economically beneficial use of the property. Therefore, the road-widening requirement would constitute a per se taking and is unconstitutional as applied to the instant facts.

C. Regulatory Taking

Finally, the requirement to widen Sanborn Road would constitute a regulatory taking under the test announced by the court in *Penn Central*. In that case, the United States Supreme Court held that a regulation on the use of private property may constitute a taking in violation of the Fifth Amendment even if it does not deprive the property of all economically beneficial use if the regulation "goes too far." The court explained that whether a regulation goes too far depends upon three factors, including: (1) the economic effect on the landowner; (2) the extent of the regulation's interference with investment-backed expectations; and (3) the character of the governmental action.

Applying the *Penn Central* factors, the court in *Avenida San Juan Partnership v. City of San Clemente* (2011) 201 Cal.App.4th 1256, held that downzoning a parcel from low density residential to very low density residential constituted a regulatory taking in violation of the Fifth Amendment because new restrictions on the parcel substantially lowered its value and defeated the property owner's investment-backed expectations of what they could do with their property. Additionally, the parcel was singled out for special zoning regulations because neighboring property owners wanted the land to remain open space for their benefit. In that regard, the downzoning was akin to taking a conservation easement in the property for the benefit of the

April 16, 2021

community and at the expense of the property owner. Thus, the downzoning was in the character of a taking rather than an ordinary exercise of the city's police power.¹

Similarly, here, the cost to widen Sanborn Road would be exorbitant, so that the requirement would have a significant economic effect on the property. The road-widening requirement would also interfere with the applicants' investment-backed expectations because it would effectively make it impossible to develop their land for a single-family home, which was the purpose for which they acquired the site. The character of the requirement would be to impose on them a burden that the community as a whole should bear. Several properties along the two-mile stretch of Sanborn Road in question have already been developed with single-family homes. Those properties would all benefit from the road widening, but none of them would be required to contribute to the cost. Singling the applicants out for special burdens in this manner goes beyond an ordinary exercise of the police power and therefore constitutes an uncompensated regulatory taking in violation of the Fifth Amendment.

IV. CalFire's Regulations Do Not Require Offsite Improvements

The incomplete letter does not cite a regulation that requires the applicants to widen existing, offsite roads. The letter cites CalFire's SRA/VHFHSZ Fire Safe Regulations, California Code of Regulations, Title 14, Sections 1270.00, et seq. Section 1273.01 of these regulations, which addresses road and driveway widths, states that: "All roads shall be constructed to provide a minimum of two ten (10) foot traffic lanes, not including shoulder and striping," and further that "[a]ll driveways shall be constructed to provide a minimum of one (1) ten (10) foot traffic lane."

The key here is that roads and driveways "shall be constructed" to the specified standards. The use of the future tense indicates that the regulation applies prospectively only; in other words, only to new roads and driveways that are proposed as part of a development project. Thus, for example, if the applicants were proposing a subdivision, any roads within the subdivision would need to provide two 10-foot lanes. Similarly, a driveway for a new single-family home on a stand-alone parcel would need to comply with the regulation's requirements for driveways. But Section 1273.01 does not state anything about reconstructing or improving existing, offsite improvements.

That CalFire's regulations were intended to apply prospectively rather than to existing improvements is implied from Section 1270.02, which applies the regulations only to new developments permitted after the regulations' 1991 effective date. Certainly, there could be fire safety benefits in requiring older developments to come into compliance with the regulations, but in what presumably was an attempt to balance fire safety with property rights, the regulations do not require such retroactive compliance. Likewise, they should not be construed to require reconstruction of roads that predate the regulations.

For these reasons, it is clear that Section 1273.01 does not require the applicants to widen Sanborn Road. Even if the regulation were ambiguous, however, under the doctrine of constitutional

¹ Importantly, a regulation may effectuate a regulatory taking even if it offers a potential public safety benefit. The inquiry is not into the legitimacy of the regulation's purpose, but into its character and effect. See *McDougal v. County of Imperial* (1991) 942 F.2d 668, 676.

April 16, 2021

avoidance, a statute should not be construed to violate the Constitution if any other possible construction remains available.² Here, CalFire's regulations do not clearly require the applicants to construct (or reconstruct) offsite improvements. Therefore, even if Section 1273.01 were ambiguous, to avoid the constitutional issues discussed in the previous section, the regulation should not be construed to require the widening of offsite public rights-of-way.

V. Even if CalFire's Regulations Required Offsite Improvements, the Applicants Would Be Entitled to Request an Exception

Section 1270.60 of CalFire's regulations provides a process to request an exemption from standards. Thus, even if CalFire's regulations required the applicants to construct offsite improvements by widening Sanborn Road, they would be entitled to request an exception. Assuming that an exception were necessary for their project, the applicants should not be deprived of the opportunity to seek one by having their project prejudged and held up at the application stage.

For all the foregoing reasons, Comment No. 7 of the County's February 22 completeness letter fails to identify any criteria that should be used by the County in evaluating the project application for completeness. I would appreciate if a representative of the County would contact me at his or her earliest convenience to discuss these matters further. I may be reached at (408) 286-5800, or at the email address below.

BERLINER COHEN, LLP



ERIK RAMAKRISHNAN

erik.ramakrishnan@berliner.com

Cc: County Counsel
Enclosure

² See 58 Cal.Jur.3d, Statutes § 105.

County of Santa Clara

Department of Planning and Development
Planning Office

County Government Center, East Wing, 7th Floor
70 West Hedding Street
San Jose, California 95110-1705
(408) 299-5770 FAX (408) 288-9198
www.sccplanning.org



February 22, 2021

Manny Bagnas

VIA EMAIL ONLY Delivered to Owner and Applicant

FILE NUMBER: PLN18-8580 (R2)
SUBJECT: Building Site Approval with Architectural Review,
Grading Approval, Variance
SITE LOCATION: 16501 Sanborn Rd. (APN 517-37-003)
DATE RECEIVED: January 22, 2021

Dear Mr. Bagnas:

Your applications for Major Modification of Building Site Approval with Architectural Review, Grading Approval, and Variance are **incomplete** and the plans do not meet the requirements.

In order for application processing to resume, you must resolve the following issues and submit the information listed below. Resubmittals are made by electronic submittal and must include all requested information along with a completed application form (which is used to track the resubmittal). Once the information is submitted, the Planning Office will distribute the plans, reports and/or information to the appropriate staff or agency for review.

If you have any questions about the information being requested, you should first call the person whose name is listed as the contact person for that item. He or she represents a particular specialty or office and can provide details about the requested information.

**AN APPOINTMENT IS REQUIRED FOR THIS RESUBMITTAL.
PLEASE CONTACT ME AT (408) 299-5797, Colleen.Tsuchimoto@pln.sccgov.org TO
SCHEDULE A RESUBMITTAL REVIEW APPOINTMENT.**

Planning

Contact Colleen Tsuchimoto at (408) 299-5797 / Colleen.Tsuchimoto@pln.sccgov.org for information regarding the following items:

1. Please revise the plans to show the access road widening improvements, and fire truck turnaround requirements as detailed in Land Development Engineering, Fire Marshal's Office and CalFire comments No. 4 to 10 below. Any additions such as supporting retaining walls with section details must also be incorporated into the plan set.
2. Grading quantities on plans need to reflect the additional work required of the access road and fire truck turnaround (volume and cut/fill heights). Please update the cover sheet with grading quantities to reflect the new access road and driveway design.
3. If location of water tanks will be modified, please include new location on site plan.

Note: See Additional Information/Issues of Concern section relating to meeting the Grading Ordinance findings.

Land Development Engineering

Contact Ed Duazo at (408) 299-5733 / Ed.Duazo@pln.sccgov.org for information regarding the following items:

4. The fire truck turnaround is intended not only to serve the residence, but also to serve as the turnaround at the terminus of the private road. As such, the access preceding the fire truck turnaround is to be constructed per County Standard Road Detail SD2 or per CalFire/County Fire Marshal requirements, whichever is more restrictive. Road shoulder may be replaced by a retaining wall to support the outboard edge of pavement. In the plans, provide sufficient right-of-way for the road and turnaround, as well as any improvements required to construct and maintain the roadway/turnaround (e.g., retaining walls, slopes, etc.). (Note: Per discussion with the County Fire Marshal's Office and CalFire, the fire truck turnaround does not currently satisfy CalFire requirements and will require modification.)
5. Several roadway and grading cross-sections do not match what is shown in the plan view. Review and revise the roadway and grading cross sections to eliminate any discrepancies.

Fire Marshal's Office

Contact Alex Goff at (408) 299-5763 / Alex.Goff@sccfd.org regarding the following items:

6. Revise plans to meet the following requirements:
 - (a) Minimum fire department turnout dimensions to be a 30 ft. length, 10 ft. width and 2-25 ft. tapers.
 - (b) Site Plan to show minimum driveable width for access roads (serving 3 or more properties) per PRC-4290.
 - (c) Plans to state fire department access (access road and driveway) to be made of an "all weather" material capable of holding 75,000 pounds.
 - (d) Plans to show sign at bridge showing weight capacity with a minimum of 75,000 pounds (37.5 tons). Bridge to meet AASHTO HB-17.

Calfire

Contact Marcus Hernandez at Marcus.Hernandez2@fire.ca.gov regarding the following items:

This project is located within the State Responsibility Area (SRA) and will need to follow all requirements of **California Code of Regulations Title 14 Natural Resources Division 1.5 Department of Forestry Chapter 7 – Fire Protection Subchapter 2 SRA Fire Safe Regulations Articles 1-5.**

7. Access roads to the property shall provide a minimum of two ten (10) foot traffic lanes and support 75,000 lbs. This access standard will be required from the beginning of the State Responsibility Area (SRA) to the property. This would be from Highway 9 to the property. See CalFire Code Reference Attachment – “Access Road.”
8. This project location is beyond the maximum length of a dead-end road. See CalFire Code Reference Attachment – “Dead End Roads.”
9. Bridge shall be designed for a live load sufficient to carry the imposed loads of fire apparatus and have appropriate signing. See CalFire Code Reference Attachment – Bridge Standards.”
10. Minimum turning radius for a turnaround shall be forty (40) feet or a hammerhead/T within 50 feet of the building. See CalFire Code Reference Attachment – “Turnarounds – Turning Radius.”

ADDITIONAL INFORMATION/ISSUES OF CONCERN

Note: The following is a list of additional information or issues of concern. These items are not required to deem a project complete for processing, but are information only.

Planning

Contact Colleen Tsuchimoto at (408) 299-5797/Colleen.Tsuchimoto@pln.sccgov.org) for information regarding the following item(s).

11. As many details of the project are incomplete and/or not provided on the plans, the next revised set of plans may result in additional incomplete comments that are not identified within this letter. Staff recommends setting up an appointment to go over the minimum necessary requirements//information when have information ready to discuss.
12. The grading plans appear to show excessive grading to establish the water tanks to support the use. There appear to be closer locations closer to the home on the same parcel of land to establish fire access water. Staff would recommend revising the design of the project to reduce the grading and relocate the water tanks closer to the residence and access points. Revised grading plans should demonstrate conformance with all findings of Section C12-433 of the Santa Clara County Grading Ordinance specifically:
 - (a) The amount, design, location, and nature of any proposed grading is necessary to establish or maintain a use presently permitted by law on the property.

- (b) Grading and associated improvements will conform with the natural terrain and existing topography of the site as much as possible, and should not create a significant visual scar.

Note: County Staff will not likely be able to support the project as currently designed. The grading is excessive and does not meet County Grading findings or General Plan policies. Additionally, the required significant modifications to the driveway design (fire truck turnaround) would add additional excessive grading with added retaining walls and encroachment into the 25 ft. setback from top bank of the creek. Such modifications will not likely be supported.

13. It has come to County Staff attention that it may be difficult to accomplish complying with the County Fire Marshal/CalFire standards, which was discussed at our meeting on February 11, 2021, with the applicant, property owners, CalFire, Fire Marshall's Office, Land Development Engineering and Planning in attendance. Please note that the proposed project will be required to be signed off by CalFire in order to approve the project. If the applicant cannot meet the requirements of CalFire, County Planning will not likely be able to support the project.

In submitting this land use application, the owner/applicant included an initial application fee. Application fees are categorized as "fixed fees" and "billable fees", based on the particular application type(s). "Fixed fee" applications do not require any additional fees to continue processing. However, when funds associated with a "billable fee" application have been spent, an additional deposit will be required to continue processing the application.

If the requested information is not submitted within 180 days, you will be required to pay a fee of 10% of the application fee at the time the information is submitted. All requested information must be submitted within 1 year of the date of this letter and will not be accepted after 1 year. PARTIAL RESUBMITTALS WILL NOT BE PROCESSED. Fees required at the time of resubmittal will be those in effect at that time.

If you have any additional questions regarding this application, please call me at (408) 299-5797, or contact me at Colleen.Tsuchimoto@pln.sccgov.org

Sincerely,

Colleen A. Tsuchimoto

Colleen A. Tsuchimoto

Senior Planner

Cc: Ed Duazo, Darrell Wong - Land Development Engineering
Alex Goff - Fire Marshal's Office
Marcus Hernandez - CalFire

Applicant: Ekundayo Sowunmi

Cal Fire Code Reference Attachment

ACCESS ROADS

§ 1270.02. Scope

(a) These regulations shall apply to:

(1) the perimeters and access to all residential, commercial, and industrial building construction within the SRA approved after January 1, 1991 except as set forth below in subsection (b.);

§ 1273.00. Intent

Roads and driveways, whether public or private, unless exempted under 14 CCR § 1270.02(d), shall provide for safe access for emergency wildfire equipment and civilian evacuation concurrently, and shall provide unobstructed traffic circulation during a wildfire emergency consistent with 14 CCR §§ 1273.00 through 1273.09.

§ 1273.01. Width.

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

§ 1273.02. Road Surfaces

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

DEAD END ROADS

§ 1271.00. Definitions

Dead-end road: A road that has only one point of vehicular ingress/egress, including cul-de-sacs and looped roads.

Road: Vehicular access to more than two (2) parcels; more than four (4) residential units; or access to any industrial or commercial occupancy. Includes public and private streets and lanes.

§ 1273.08. Dead-end Roads

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

parcels zoned for less than one acre - 800 feet

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

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

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

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

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

BRIDGE STANDARDS

§ 1273.07. Road and Driveway Structures

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

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

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

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

TURNAROUNDS – TURNING RADIUS

§ 1273.05. Turnarounds

(a) Turnarounds are required on driveways and dead-end roads.

(b) The minimum turning radius for a turnaround shall be forty (40) feet, not including parking, in accordance with the figures in 14 CCR §§ 1273.05(e) and 1273.05(f). If a hammerhead/T is used instead, the top of the “T” shall be a minimum of sixty (60) feet in length.

(c) Driveways exceeding 150 feet in length, but less than 800 feet in length, shall provide a turnout near the midpoint of the driveway. Where the driveway exceeds 800 feet, turnouts shall be provided no more than 400 feet apart.

(d) A turnaround shall be provided on driveways over 300 feet in length and shall be within fifty (50) feet of the building.

DEFENSIBLE SPACE – VEGETATION MAINTENANCE

This property will need to comply with the vegetation maintenance requirements of Public Resource Code (PRC) 4291.

§ 1276.01. Setback for Structure Defensible Space.

Structures constructed in the SRA are required to comply with the defensible space regulations in Title 14. Natural Resources Division 1.5. Department of Forestry and Fire Protection Chapter 7. Fire Protection Subchapter 3. Fire Hazard.



ANDREW L. FABER
PEGGY L. SPRINGGAY
SAMUEL L. FARB
JAMES P. CASHMAN
STEVEN J. CASAD
NANCY J. JOHNSON
JEROLD A. REITON
JONATHAN D. WOLF
KATHLEEN K. SIPLE
KEVIN F. KELLEY
MARK MAKIEWICZ
JOLIE HOUSTON
BRIAN L. SHETLER
HARRY A. LOPEZ

CHARLES W. VOLPE
CHRISTINE H. LONG
AARON M. VALENTI
CHRISTIAN E. PICONE
SUSAN E. BISHOP
SANDRA G. SEPÚLVEDA
MICHAEL B. IJAMS
KIMBERLY G. FLORES
DAWN C. SWEATT
TYLER A. SHEWEY
JAMES F. LANDRUM, JR.
MICHAEL J. CHENG
C. DAVID SPENCE
JOSHUA BORGER

TEN ALMADEN BOULEVARD
ELEVENTH FLOOR
SAN JOSE, CALIFORNIA 95113-2233

TELEPHONE: (408) 286-5800
FACSIMILE: (408) 998-5388

www.berliner.com
Branch Offices
Merced, CA • Modesto, CA

THOMAS P. MURPHY
ALESHIA M. WHITE
EILEEN P. KENNEDY
ALEXANDRIA N. NGUYEN
GHAZALEH MODARRESI
ANDREW J. DIGNAN
ERIK RAMAKRISHNAN
LEILA N. SOCKOLOV
BEAU C. CORREIA
TIMOTHY K. BOONE
ANGELA SHAW
DAVID A. BELLUMORI

BENJAMIN M. JOHNSON
MARY T. NGUYEN
STEPHEN C. SCORDELIS
ELLEN M. TAYLOR
NATHAN C. BRADY
BRANDON L. REBBOAH
LINDSAY I. WALCZAK
IRIS C. CHIU
MAKAYLA A. WHITNEY
MARISA J. MARTINSON
MARIA I. PALOMARES
CHRISTIAN D. WICK

FOUNDERS

SANFORD A. BERLINER (d. 2020)
SAMUEL J. COHEN

OF COUNSEL

STEVEN L. HALLGRIMSON
FRANK R. UBHAUS
RALPH J. SWANSON

NANCY L. BRANDT
LESLIE KALIM MCHUGH
BRADLEY HEBERT

May 21, 2021

VIA ELECTRONIC AND U.S. MAIL

Colleen A. Tsuchimoto, Sr. Planner
Santa Clara County
Department of Planning and Development
70 West Hedding Street, 7th Floor
San Jose, CA 95110-1705
Email: Colleen.Tsuchimoto@pln.sccgov.org

Re: Response to Letter Dated April 30, 2021, re property located at
16501 Sanborn Road (PLN18-8580, Building Site Approval)

Dear Ms. Tsuchimoto:

I am writing in response to your April 30, 2021 letter to me in the above referenced matter. If the County Counsel's Office has been engaged to assist in this matter, please advise me of the name of the attorney to whom I should direct correspondence.

Please be advised that to exhaust remedies before taking further action, our client intends to seek an exception from standards under Section 1270.06 of the SRA/VHFHSV Regulations. I would also like to respond to your comment that the *Nollan/Dolan* essential nexus and rough proportionality tests do not apply here because "development projects are routinely required to comply with standards and regulations aimed at protecting public health, safety, and the environment." In this regard, please see *Alliance for Responsible Planning v. Taylor* ("*Taylor*"), a Third District Court of Appeal decision certified for publication on May 4, 2021, a copy of which is enclosed for reference.

Taylor involved a ballot measure approved by El Dorado County voters in 2016 that amended the county's general plan to delete reference to transportation improvement fees.

Colleen A. Tsuchimoto, Sr. Planner
May 20, 2021

Previously, the County allowed property owners to pay transportation improvement fees to address their fair share of the cost of transportation improvements necessitated by development. In place of this option, the measure required that before any discretionary approval could be given to a project by the county, “[a]ll necessary road capacity improvements” would be required to be “fully completed to prevent cumulative traffic impacts from new development from reaching Level of Service F during peak hours upon any highways, arterial roads and their intersections during weekday, peak-hour periods in unincorporated areas of the county.” (Opn. at pp. 2-3.) In other words, if a development project would have a cumulatively considerable impact on traffic conditions, the property owner would be required as a condition of project approval to complete all traffic improvements necessary to mitigate those conditions rather than merely contributing the property owner’s fair share of the cost of such improvements.

The court held that the ballot measure violated the *Nollan/Dolan* standard. As observed by the court, “one can hardly condition approval” of an ordinary development project “on building half an interchange.” (Opn. at p. 15.) The court went on to reject the argument that the measure was simply an ordinary land use regulation. As the court explained, requiring a property owner to pay more than its fair share of the cost of necessary traffic improvements went too far, so that the requirement to complete such improvements could not be characterized as an ordinary health and safety requirement. (*Id.* at 17.)

Just as requiring someone to build “half an interchange” as a condition of constructing a development project goes too far, so does requiring a property owner to reconstruct two miles of public roadways as a condition of developing a single-family residence. Assuming the SRA/VHFHSV Regulations require our clients to reconstruct a two-mile segment of a public roadway (which is an interpretation of the regulations with which we continue to disagree), then like in the case of the ballot measure in *Taylor*, the *Nollan/Dolan* standard applies, and requiring those improvements would constitute a taking.

Yours sincerely,

BERLINER COHEN, LLP



ERIK RAMAKRISHNAN
erik.ramakrishnan@berliner.com

ER:shx

Cc: County Counsel (county.counsel@cco.sccgov.org)
Enclosure

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(El Dorado)

ALLIANCE FOR RESPONSIBLE PLANNING,

Plaintiff and Appellant,

v.

TAYLOR et al.,

Defendants and Appellants;

COUNTY OF EL DORADO et al.,

Defendants and Respondents.

C085712

(Super. Ct. No. PC20160346)

Defendants Sue Taylor et al. (Taylor) appeal from a judgment granting in part plaintiffs Alliance for Responsible Planning's (Alliance) petition for a writ of mandate. On appeal, Taylor contends the trial court erred in (1) prematurely considering the facial challenge; (2) granting Alliance's petition as to certain policies implemented by Measure E; and (3) granting Alliance's petition as to Measure E's eighth implementation statement.

Alliance has also raised several protective contentions. As we affirm the judgment in the trial court, we need not reach those contentions. Defendants El Dorado County Board of Supervisors and County of El Dorado have also filed a brief on appeal.

We affirm the judgment.

FACTS AND PROCEDURAL HISTORY

Measure E

El Dorado County voters adopted Measure E in June 2016. Measure E's stated purpose was to end the practice of "paper roads." Prior to Measure E, if a project requiring discretionary approval would increase traffic beyond certain thresholds, the project could be approved so long as the developer contributed its proportional share of traffic impact fees to cover the cost of future road improvements, and so long as the necessary traffic-mitigating improvements were included in the County's 10- or 20-year (depending on the project type) Capital Improvement Program. Measure E sought to end the practice of developments going forward, while traffic-mitigating road improvements remained on paper.

As pertinent to this appeal, Measure E modified El Dorado County General Plan Policies TC-Xa 3 and TC-Xf as follows (we note that line outs are deletions, underlines are inclusions.) Measure E also amended several other General Plan policies and added four new policies. Unless noted, those changes, are not pertinent to this appeal.

Policy TC-Xa 3:

~~"Developer paid traffic impact fees combined with any other available funds shall fully pay for building~~ All necessary road capacity improvements shall be fully completed to prevent ~~to fully offset and mitigate all direct and cumulative traffic impacts from new development~~ from reaching Level of Service F during peak hours upon any highways, arterial roads and their intersections during weekday, peak-hour periods in unincorporated areas of

the county before any form of discretionary approval can be given to a project.”

“Level of service is a measure of traffic congestion at intersections, which ranges from A (little or no delay) to F (extreme traffic delay).” (*American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal.App.4th 1062, 1080.) Policy TC-Xa 1 refers to Level of Service F as “gridlock, stop-and-go.”

Policy TC-Xf:

“At the time of approval of a tentative map for a single family residential subdivision of five or more parcels that worsens (defined as a project that triggers Policy TC-Xe [A] or [B] or [C]) traffic on the County road system, the County shall ~~do one of the following: (1) condition the project to construct all road improvements necessary to maintain or attain Level of Service standards detailed in this Transportation and Circulation Element based on existing traffic plus traffic generated from the development plus forecasted traffic growth at 10-years from project submittal; or (2) ensure the commencement of construction of the necessary road improvements are included in the County’s 10-year CIP [Capital Improvement Program].~~

“For all other discretionary projects that worsen (defined as a project that triggers Policy TC-Xe [A] or [B] or [C]) traffic on the County road system, the County shall ~~do one of the following: (1) condition the project to construct all road improvements necessary to maintain or attain Level of Service standards detailed in this Transportation and Circulation Element; or (2) ensure the construction of the necessary road improvements are included in the County’s 20-year CIP.~~”

Measure E also provided nine statements under the heading, “Implementation.” At issue here, the eighth implementation statement provided: “LOS [Level of Service]

traffic levels on Highway 50 on-off ramps and road segments shall be determined by Caltrans and fully accepted by the County for traffic planning purposes.”

After Measure E passed, the El Dorado County’s Chief Administrative Office, the County Counsel, and the Community Development Agency prepared a memo (County memo) addressing Measure E’s potential impacts. The memo cited “a number of potential legal conflicts, ambiguities, and internal inconsistencies” in Measure E and made recommendations for ascertaining voter intent and resolving implementation issues.

As to policy TC-Xa 3, the memo cited two possible literal constructions. One being that before any discretionary project is approved, every road improvement needed to prevent gridlock — including over \$400 million in programmed traffic mitigation projects — must first be completed. This would entail a “de facto moratorium on all projects requiring some form of discretionary approval.” It would also likely provoke unconstitutional takings claims litigation, the memo warned.

The memo went on to describe “[a] different, but still literal application,” whereby discretionary approval would require a developer to first complete necessary road improvements addressing traffic “from their proposed development combined with other development in the future (i.e. ‘cumulative’)” Under this construction, discretionary projects not impacting traffic (cell towers, fence height variance, etc.) could be approved without completing road improvements.

The memo cautioned, however, that, “this approach does not resolve a potentially significant and insurmountable hurdle” for other discretionary projects. A small business, for example, proposing a commercial parcel generating enough vehicle trips that when combined with future development would trigger the need for major road infrastructure improvements, “would need to fully complete the improvement before its design review could be approved.” And the County, for its part, could not legally, under *Dolan v. City of Tigard* (1994) 512 U.S. 374 [129 L.Ed.2d 304] (*Dolan*), condition approval on building improvements that far exceed the project’s impact. “The only

alternative,” the memo explained, “is for the small business to wait until the County or another private party fully completes the improvement.”

The memo called both approaches problematic. It went on to explain that because a literal reading would lead to absurd or unconstitutional consequences, statutory construction must be employed. Calling TC-Xf the more specific policy, the memo proposed reading the more general TC-Xa 3 in light of TC-Xf.

To that, the memo concluded that TC-Xa 3’s timing requirements “should be interpreted as a concurrency requirement rather than a strict condition precedent to discretionary action by the County.” Thus, “rather than a literal interpretation of Measure E’s TC-Xa 3,” TC-Xa 3 would be applied such that satisfying TC-Xf would also satisfy TC-Xa 3.

The memo also noted that a pre-election impartial analysis prepared for Measure E, identified a potential inconsistency between TC-Xa 3 and TC-Xf. That analysis provided in part: “The effect of these amendments is unclear, in large part because the amendment to Policy TC-Xa — requiring completion of necessary road improvements *before* project approval — appears to conflict with the part of Policy TC-Xf left unchanged by this measure — allowing the County to approve a project so long as it conditions the project to construct the necessary road improvements.”

The memo also cited an analysis by Measure E proponents, urging an interpretation ensuring, under *Dolan*, a rational nexus between a project’s impact and the exactions imposed. The analysis went on to state: “discretionary projects that have no cumulative traffic impacts may not be conditioned or denied because necessary road capacity improvements have not been completed. The claim that this initiative language would prohibit discretionary approvals of any kind no matter how small is therefore completely unfounded.” The analysis also explained that when read together with TC-Xf, discretionary approvals not contributing to cumulative traffic impacts would not be affected by Measure E.

As to TC-Xf, the memo explained that Measure E changes conditions of approval for new discretionary projects, requiring projects to construct specific road improvements rather than simply paying traffic impact mitigation fees. This would likely disproportionately affect small developments. While larger developments might phase in improvements and spread costs over many new homes and businesses, smaller developments would be problematic: “If such a project is projected to cause [a Level of Service] deficiency, and the County cannot legally condition the project to build the necessary improvement (because it fails the ‘rough proportionality’ test), the County will likely have to deny the project based on General Plan inconsistency.”

The memo cited as an example, a project projected to “worsen” traffic (defined in the General Plan as increasing traffic 2 percent daily or at peak hours, adding at least 10 trips during peak hours, or adding 100 or more daily trips). That project could be conditioned to complete a necessary interchange improvement, but “[c]onditioning a project in this manner would likely fail the ‘rough proportionality’ requirement pursuant to *Dolan v. City of Tigard*[, *supra*,] 512 U.S.687.” Alternatively, the developer could wait for the County or another private party to complete the interchange improvements.

The memo proposed redefining “worsen” in the General Plan to set a higher traffic threshold, so smaller projects could move forward, but noted the redefinition “would require a separate County-initiated General Plan amendment and associated environmental review.”

Finally, as to implementation statement eight, requiring the county to “fully accept[]” Caltrans’ determination of Highway 50 traffic, the memo concluded it was inconsistent with existing General Plan policy, and revising the General Plan policy to conform would be problematic. The memo explained that requiring the county to abdicate responsibility to Caltrans contravenes TC-Xd, which requires the County Department of Transportation to select the traffic analysis period for calculating Level of Service. “This is particularly important,” the memo explained, “given that the County

typically focuses on weekday peak hour traffic volumes . . . whereas Caltrans often looks at the entire seven day week and/or annual average daily traffic.”

The memo also noted that Caltrans Highway 50 Level of Service conclusions, include a disclaimer that they are not “intended to address design policies and procedures,” and cited several conflicting traffic findings between the County and Caltrans. Describing Caltrans findings as “overstated,” the memo concluded that conditioning projects to mitigate gridlock conditions on unsubstantiated Highway 50 findings would open the County to “rough proportionality” claims.

The County Board of Supervisors ultimately chose not to adopt the implementation program proposed in the memo.

The Challenge to Measure E

Soon after Measure E passed, Alliance petitioned for a writ of mandate as well as declaratory and injunctive relief, seeking to have Measure E declared invalid. Alliance argued, among other things, that Measure E violated the unconstitutional conditions doctrine.

Alliance maintained that conditions imposed by Measure E were exactions, exceeding fair share and lacking a reasonable relationship to the harm flowing from a development. It argued TC-Xa 3 and TC-Xf, as amended, were subject to several interpretations, all of which imposed unconstitutional conditions. A developer would either have to construct every programmed traffic-mitigating improvement or merely those necessary to prevent traffic resulting from its own development along with other cumulative developments. Both cases exceeded fair share in that developers must construct road improvements to serve other developments — “[a] project cannot build half of a lane or a small percentage of an interchange or state highway.”

As to implementation statement eight, Alliance argued it was inconsistent with policy TC-Xd in that it sought to delegate to Caltrans authority to determine Level of

Service conditions, when that responsibility is assigned to the County Department of Transportation.

Taylor (who had moved unopposed to intervene) argued the facial challenge was not ripe for judicial review because the Board of Supervisors had not yet adopted implementation guidelines for Measure E.

On the merits, Taylor disputed that all \$400+ million programed traffic improvements had to be completed before any project is approved. Pointing to the County memo, Taylor argued its interpretation of Policy TC-Xa 3 in light of TC-Xf “provide[d] a path for the County decision makers to fulfill their obligation to, wherever possible, construe an initiative measure to ensure its validity.” She urged that by reading TC-Xa 3 and TC-Xf together, “discretionary projects that have no cumulative traffic impacts may not be conditioned or denied because necessary road capacity improvements have not been completed.”

Further, “[i]f the project’s impacts will cause traffic to exceed standards, then the project could construct the needed improvements (possibly with contribution from the County and/or under a reimbursement agreement), or the project could be denied until” others complete the project. She later reiterated, “Measure E does not change the fair share analysis, it simply provides that where a project will result in traffic exceeding [Level of Service] F, the necessary improvements must be built before the project. How that is accomplished is not specified in Measure E and could be accomplished in a variety of ways. An applicant could choose to build the improvements, or wait until other development can/will contribute, or until the County builds the improvement.”

As to implementation statement eight, Taylor argued it was included to require the use of Caltrans data on Highway 50, because Caltrans has detectors on Highway 50 capable of collecting real time data, and the County does not: “The County could then use that data to determine level of service, as required under General Plan policy TC-Xd.”

The county filed a brief, that while noting, “Measure E undoubtedly could have been drafted clearer,” urged the court not to engage in analysis or definitive interpretation of Measure E beyond determining whether Measure E is capable of constitutional interpretation and implementation.

The Trial Court Grants the Petition

The trial court granted the petition in part, striking several amendments to the General Plan including changes to policies TC-Xa 3 and TC-Xf, as well as implementation statement eight. Doing so, the court concluded the petition was not premature, as the challenges “do not rest on speculation as to the meaning of the policies as enacted by initiative or require interpretation by the County in the first instance.”

The court found the amendments to Policies TC-Xa 3 and TC-Xf violate the takings clause by conditioning approval on the developer paying more than its fair share for the cost of traffic mitigation arising from the development. The court explained, an “owner/developer seeking approval of a single project is expressly solely responsible to pay for construction of all road improvements necessary to bring the traffic volume on the roads affected by the project to a specified [Level of Service] level. This would require property owners/developers to pay for not only the project’s incremental impact to traffic congestion of the County road system, but also be responsible to pay for improvements that arise from the cumulative effect of other projects, and in some instances to pay for projected future increases in traffic. This clearly exceeds the developer’s fair share in that it is not roughly proportional to the project’s traffic impact it seeks to address.”

As to Taylor’s proposal to read TC-Xa 3 and TC-Xf together, relieving discretionary projects having no cumulative traffic impacts, the court explained that the amendments do not become constitutional simply because they might be inapplicable where traffic does not increase beyond a certain threshold.

It similarly rejected Taylor’s assertion that conditioning necessary improvements could be constitutionally construed, “possibly” though County funding contributions or reimbursements — or denying the project until the improvements were completed by others. The court noted that Measure E places improvement construction solely on the developer’s shoulders, while at the same time, it fails to mandate that improvement costs exceeding the developer’s fair share be reimbursed. The court noted that Measure E, instead, struck the portion of Policy TC-Xg allowing the County to reimburse a project for improvements exceeding the developer’s fair share.

Moreover, denying the project until someone else constructs the mandated improvements is still impermissible as it attempts to coerce the property owners to construct the improvements or be forced to wait an indefinite period of time for someone else to construct the improvements.

As to implementation statement eight, the trial court found it in conflict with the General Plan. While Policy TC-Xd requires that analysis periods be based on the County Department of Transportation’s professional judgment, statement eight places the determination of traffic levels in Caltrans’s hands, “which would presumably include selection of analysis periods, even though policy TC-X[d] mandates that analysis periods shall be based upon the professional judgment of the County Department of Transportation.”

DISCUSSION

I

Ripeness

On appeal, Taylor first contends the trial court’s consideration of the facial challenge to Measure E was premature because it required speculation as to how the provisions would apply to various project applications. She also argues the trial court failed to account for the memo’s detailed implementation plan showing Measure E could

be interpreted and applied in a constitutional manner. She writes: “the voters approved the policies, but the County was not given an opportunity to even interpret and implement Measure E, despite the fact that County staff had prepared implementing guidelines and had concluded that Measure E could be implemented in an effective and constitutional way in the context of the General Plan.” We disagree.

“ ‘A controversy is “ripe” when it has reached, but has not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made.’ ” (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 171 (*Pacific Legal Foundation*)). To that end, we first determine if the issues raised are “sufficiently concrete to allow judicial resolution even in the absence of a precise factual context.” (*Id.* at p. 170.) If so, we then consider “ ‘the hardship to the parties of withholding court consideration’ . . . ” (*Id.* at p. 171.)

These tests are satisfied here. Nothing precludes resolution of the controversy, as the facial allegation does not depend on the application of the measure to a particular petitioner or future County interpretation. As we explain below, the constitutional challenge to Measure E turns on whether the challenged amendments are reasonably susceptible to a constitutional interpretation. (See *Yee v. City of Escondido, Cal.* (1992) 503 U.S. 519, 534 [118 L.Ed.2d 153] [“As this allegation does not depend on the extent to which petitioners are deprived of the economic use of their particular pieces of property or the extent to which these particular petitioners are compensated, petitioners’ facial challenge is ripe”]; see also *Today’s Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 218 [“To resolve a facial challenge, we consider ‘only the text of the measure itself, not its application to the particular circumstances’ of this case”].)

Further, because the challenged amendments are not susceptible to a constitutional interpretation, delaying consideration could only serve to impose unconstitutional conditions or delay on developers and spur unnecessary litigation. (See *Pacific Legal*

Foundation, supra, 33 Cal.3d at p. 170 [“the requirement should not prevent courts from resolving concrete disputes if the consequence of a deferred decision will be lingering uncertainty in the law, especially when there is widespread public interest in the answer to a particular legal question”].)

We therefore turn to the merits.

II

Policies TC-Xa 3 and TC-Xf

On the merits, Taylor contends the trial court erred in granting the petition as to amended Policies TC-Xa 3 and TC-Xf. She argues TC-Xa 3 simply governs the timing of infrastructure completion — not who pays or how much. And requiring traffic mitigation before approving new developments is not unconstitutional. She adds that before Measure E, developers could secure approval by contributing to a 10- or 20-year improvement fund: “The unfortunate result was that development projects got built, but the road improvements needed to absorb the traffic did not get built for 10 years, or 20 years, or longer.” Measure E effectively directs new development to parts of the County where road infrastructure is already sufficient.

As before the trial court, Taylor argues that nothing in Measure E requires the next developer to build every programmed road improvement prior to approval. Rather, discretionary projects need only complete necessary road capacity improvements to prevent traffic from reaching peak-hour gridlock. And discretionary projects not causing such impacts are unaffected. To that end, Taylor argues TC-Xa 3 should be read in light of TC-Xf, such that discretionary projects not causing cumulative traffic impacts would not be conditioned or denied based on unfinished road improvements.

Taylor also echoes her argument before the trial court that nothing in Measure E forces the County to approve a project while imposing conditions to construct improvements benefiting other developers. Rather, a project causing traffic to exceed

standards “could construct the needed improvements (possibly with contribution from the County and/or under a reimbursement agreement), or the project could be denied until such time as the road facility project(s) were completed by the County or others.” Finally, Taylor maintains that Measure E is simply a land use control, setting forth the circumstances under which a discretionary project may be approved.

Alliance responds that Policies TC-Xa 3 and TC-Xf are incapable of constitutional construction. Whether TC-Xa 3 requires all programed improvements be completed, or merely improvements addressing cumulative traffic impacts, a project must construct improvements going beyond its fair share. As to TC-Xf, Alliance questions the propriety of reading TC-Xf as the more specific and controlling policy, and in any event, by requiring improvement to address cumulative growth, TC-Xf also imposes conditions exceeding fair share.

The County has also filed a brief, arguing, inter alia, that definitive interpretation of Measure E is unnecessary to resolve the facial challenge. The County also argues that Measure E is invalid if it compels or relies on a subsequent County act, and the County has no obligation to adopt a staff implementation program in the abstract.

We agree with Alliance and the County.

We note that the County also argues Measure E is preempted under state law if it unduly burdens the County’s ability to provide affordable housing. As we conclude the challenged provisions are unconstitutional, we do not reach this contention.

III

Standard of Review and Applicable Law

“An initiative measure ‘ “must be upheld unless [its] unconstitutionality clearly, positively, and unmistakably appears.” ’ ” (*Pala Band of Mission Indians v. Board of Supervisors* (1997) 54 Cal.App.4th 565, 574.) For a facial challenge to succeed, the plaintiff must demonstrate “the challenged portion will result in legally impermissible

outcomes ‘in the generality or great majority of cases, the minimum showing we have required for a facial challenge to the constitutionality of a statute.’ ” (*Larson v. City and County of San Francisco* (2011) 192 Cal.App.4th 1263, 1280 (*Larson*) quoting *San Remo Hotel v. City and County of San Francisco* (2002) 27 Cal.4th 643, 673.) Under this test, “we may not invalidate a statute simply because in some future hypothetical situation constitutional problems may arise” (*California Teachers Assn v. State of California* (1999) 20 Cal.4th 327, 347.) Conversely, we may not “ ‘uphold the law simply because in some hypothetical situation it might lead to a permissible result.’ ” (*Larson*, at p. 1280.) And to be sure, “ ‘[j]udicial deference to the electoral process does not compel judicial apathy towards patently invalid legislative acts.’ ” (*Save Lafayette v. City of Lafayette* (2018) 20 Cal.App.5th 657, 665.)

In evaluating whether a statute effects an unconstitutional exaction, under *Nollan–Dolan* and their progeny, we “first determine whether the ‘essential nexus’ exists between the ‘legitimate state interest’ and the permit condition” (*Dolan*, *supra*, 512 U.S. at p. 386; see also *Nollan v. California Coastal Com* (1987) 483 U.S. 825, 837 [97 L.Ed.2d 677].) If so, we determine if the degree of exaction demanded by the condition bears the required relationship to the projected impact of the proposed development. (*Dolan*, at p. 388.) There must be “rough proportionality” between the property the government demands and the social costs of the applicant’s proposal. (*Koontz v. St. Johns River Water Management Dist.* (2013) 570 U.S. 595, 605–606 [186 L.Ed.2d 697] (*Koontz*).) Put another way, “[u]nder *Nollan* and *Dolan* the government may choose whether and how a permit applicant is required to mitigate the impacts of a proposed development, but it may not leverage its legitimate interest in mitigation to pursue governmental ends that lack an essential nexus and rough proportionality to those impacts.” (*Koontz*, at p. 606.)

Finally, an unlawful condition need not only be for land — demands for money can also violate *Nollan–Dolan*. (*Koontz*, *supra*, 570 U.S. at p. 619.)

IV

Analysis

Laudable as traffic mitigation is, “there are outer limits to how this may be done.” (*Dolan, supra*, 512 U.S. at p. 396.) Here, we agree with the trial court that amended Policies TC-Xa 3 and TC-Xf are unconstitutional. Both interpretations of Policy TC-Xa 3 identified in the County memo ran afoul of *Nollan–Dolan*. If TC-Xa 3 requires the completion of “[a]ll necessary road capacity improvements” to prevent peak-hour gridlock, it plainly casts a wider net than the harm resulting from an individual project. Thus, rough proportionality is unsatisfied and mostly likely essential nexus is as well.

Similarly, if TC-Xa 3 demands only mitigation addressing traffic from the discretionary project combined with “cumulative traffic impacts from new development,” a developer must still complete improvements addressing impacts beyond its own. Thus, this too exceeds rough proportionality. (*Dolan, supra*, 512 U.S. at p. 391 [rough proportionality requires the government “make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development”].) Further, there is an inherent difficulty in conditioning approval on the completion of a specific mitigation project — as Alliance notes, one can hardly condition approval on building half an interchange.

Along those lines, Taylor’s suggestion that a project “could construct the needed improvements (possibly with contribution from the County and/or under a reimbursement agreement)” is unavailing. For one, as the trial court pointed out, Measure E, removes the portion of Policy TC-Xg authorizing the county to reimburse applicants for road improvements that significantly benefit other developments. The excised language is as follows: “For road improvements that provide significant benefit to other development, the County may allow a project to fund its fair share of improvement costs through traffic

impact fees or receive reimbursement from impact fees for construction of improvements beyond the project's fair share.”

For another, while presumably nothing precludes the County from reaching a reimbursement agreement, we may not “ ‘uphold the law simply because in some hypothetical situation it might lead to a permissible result.’ ” (*Larson, supra*, 192 Cal.App.4th at p. 1280.)

Similarly unavailing is Taylor's suggestion that a developer can simply wait until others complete the improvements. As explained in *Koontz*: “The principles that undergird our decisions in *Nollan* and *Dolan* do not change depending on whether the government approves a permit on the condition that the applicant turn over property or denies a permit because the applicant refuses to do so.” (*Koontz, supra*, 570 U.S. at p. 606.)

Reading TC-Xa 3 in light of TC-Xf yields no more success. Incorporating TC-Xf's concurrency requirement would, as the memo explained, affect projects that “worsen” traffic — defined as a 2 percent increase in daily or peak hour traffic, 10 additional peak hour trips, or 100 additional daily trips. If such projects are single family residential subdivisions of five or more parcels, they would be conditioned to construct improvements to maintain Level of Services standards based on existing traffic “plus traffic generated from the development, plus forecasted traffic growth at 10-years from project submittal.” All other such projects must construct improvements addressing existing traffic plus traffic generated from the development.

In either case, a developer must construct improvements exceeding the extent of the project's own impact. While the County memo proposed redefining “worsen” to set a higher threshold, exempting more projects from TC-Xf's, that would not cure the disproportionate impact to affected projects. Moreover, an initiative is invalid if its constitutionality depends on a future county act. (See *Citizens for Jobs and the Economy v. County of Orange* (2002) 94 Cal.App.4th 1311, 1333 [initiative may not declare

legislative policy and direct that certain events take place to implement that policy]; *City of San Diego v. Dunkl* (2001) 86 Cal.App.4th 384, 399 [“The electorate has the power to initiate legislative acts, but not administrative ones”]; *Pala Band of Mission Indians v. Board of Supervisors*, *supra*, 54 Cal.App.4th at p. 576 [noting constitutional initiative did “not rely on future legislative action”].)

Finally, we reject Taylor’s claim that Measure E is a land use control. Our supreme court explained the difference between a lawful land use control and an unlawful taking in *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, 463. There, a challenge was brought to a city ordinance requiring new residential developments, with 20 or more units, to sell at least 15 percent of units at a price affordable to low or moderate income households. (*Id.* at p. 442.) Finding the ordinance did not violate *Nollan-Dolan*, our supreme court explained that no exaction took place: “the ordinance does not require a developer to give up a property interest for which the government would have been required to pay just compensation under the takings clause outside of the permit process.” (*Id.* at p. 461.) Instead, requiring the developer to sell a portion of its units at affordable housing prices, “simply places a restriction on the way the developer may use its property by limiting the price for which the developer may offer some of its units for sale.” (*Ibid.*)

Here, by contrast, under Measure E a developer must give up a property interest as a condition of approval: the developer must complete or construct road improvements. The challenged portion of the initiative therefore may not be upheld as a land use control.

The trial court properly struck Measure E’s amendments to Policies TC-Xa 3 and TC-Xf.

Implementation Statement Eight

Finally, Taylor contends the trial court erred in granting Alliance's petition as to implementation statement eight, which states: " '[Level of Service] traffic levels on Highway 50 on-off ramps and road segments shall be determined by Caltrans and fully accepted by the County for traffic planning purposes.' " The trial court found the statement in conflict with Policy TC-Xd, which states in part: "Analysis periods shall be based on the professional judgment of the Department of Transportation which shall consider periods including, but not limited to, Weekday Average Daily Traffic (ADT), AM Peak Hour, and PM Peak hour traffic volumes."

On appeal, Taylor argues implementation statement eight can be read together with TC-Xd so as to give meaning to each and allow for internal consistency. She cites purported conflicts between Caltrans and County determinations of traffic levels on segments of Highway 50. "Accordingly," she argues, "Measure E's implementation [statement] eight does not conflict with the County Department of Transportation's authority to exercise 'professional judgment' in analyzing [Level of Service], it simply informs the process by requiring that the data collected by Caltrans be taken into account and used by the County. TC-X[d] discusses the process of analyzing [Level of Service] and notes various sources of data. These two provisions may be read together without conflict." We cannot agree.

As the trial court concluded, implementation statement eight "directly conflicts with and contradicts a policy of the Traffic and Circulation Element of the general plan." Statement eight places the determination of traffic Level of Service squarely with Caltrans. Yet Policy TC-Xd — which Measure E leaves unaltered — requires that traffic be calculated based on Highway Capacity Manual, and as part of that determination

requires the County Department of Transportation to use “professional judgment” in selecting the traffic analysis periods.

It is difficult to square that command with implementation statement eight’s requirement that Level of Service “be determined by Caltrans and fully accepted by the County for traffic planning purposes.” Taylor’s suggestions that statement eight simply informs the process, by requiring the County to use and consider Caltrans data, does not in our view harmonize these conflicting directives. Given that the General Plan purports to place power with the County while statement eight places subsuming authority with Caltrans, we agree with the trial court that statement eight is in conflict with the General Plan. We accordingly conclude the trial court properly granted the petition as to statement eight.

DISPOSITION

The judgment is affirmed. Taylor shall pay Alliance’s costs on appeal. (Cal. Rules of Court, rule 8.278.)

HULL, Acting P. J.

We concur:

MURRAY, J.

HOCH, J.

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(El Dorado)

ALLIANCE FOR RESPONSIBLE PLANNING,

Plaintiff and Appellant,

v.

SUE TAYLOR et al.,

Defendants and Appellants;

COUNTY OF EL DORADO et al.,

Defendants and Respondents.

C085712

(Super. Ct. No. PC20160346)

ORDER CERTIFYING
OPINION FOR
PUBLICATION

APPEAL from a judgment of the Superior Court of El Dorado County,
Warren C. Stracener, Judge. Affirmed.

James L. Brunello for Plaintiff and Appellant.

Law Offices of Donald B. Mooney, Marsha A. Burch and Donald B. Mooney for
Defendants and Appellants.

Michael J. Ciccozzi, County Counsel, Breann M. Moebius, Deputy County
Counsel, for Defendants and Respondents.

THE COURT:

The opinion in the above-entitled matter filed on April 19, 2021, was not certified for publication in the Official Reports. For good cause it now appears that the opinion should be published in the Official Reports and it is so ordered.

BY THE COURT:

_____,
HULL, Acting P. J.

_____,
MURRAY, J.

_____,
HOCH, J.

Attachment 4: Survey of Sanborn Road

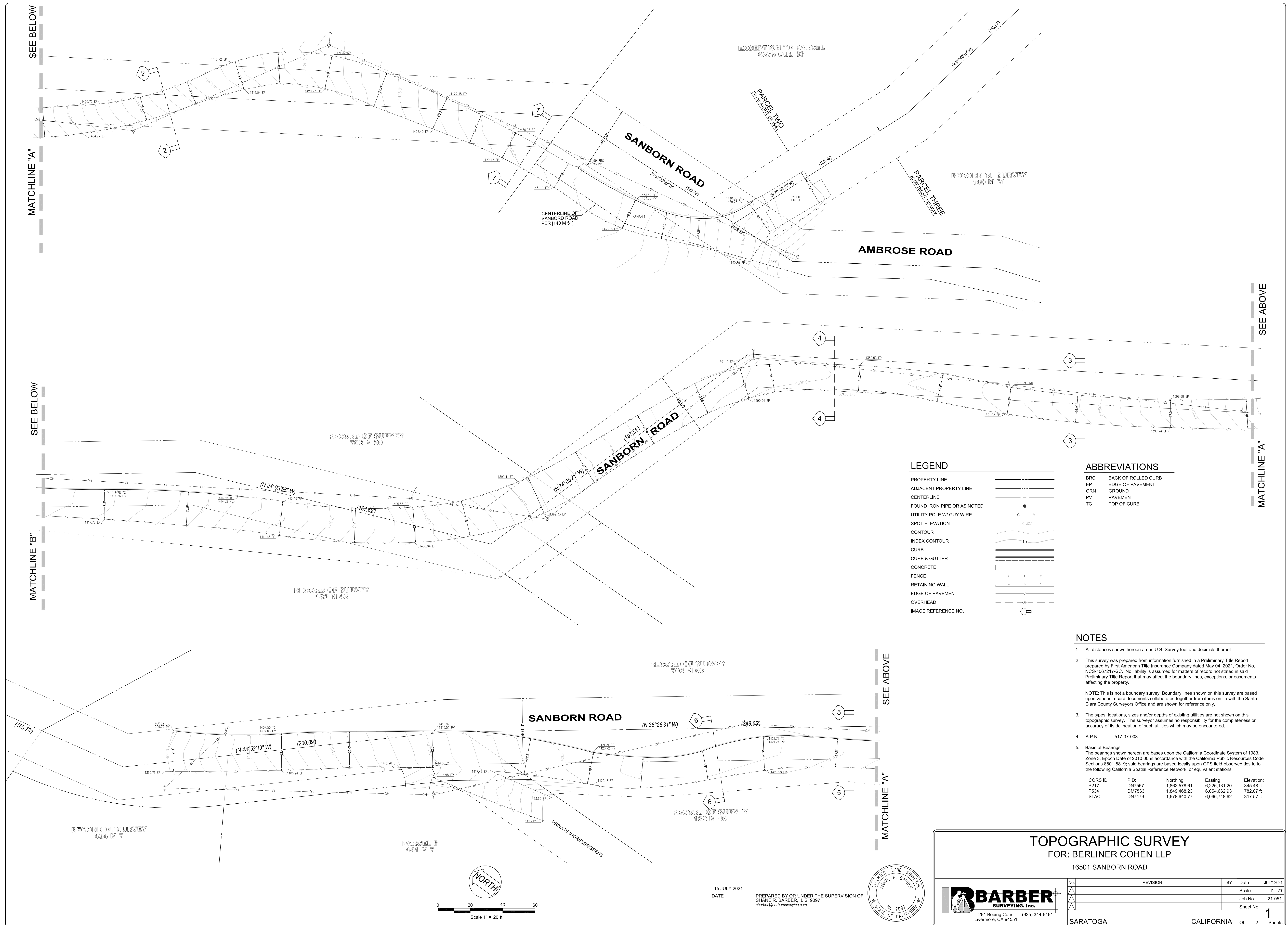




IMAGE 01



IMAGE 02



IMAGE 03




IMAGE 04



IMAGE 05



IMAGE 06

TOPOGRAPHIC SURVEY				
FOR: BERLINER COHEN LLP				
16501 SANBORN ROAD				
 261 Boeing Court Livermore, CA 94551 (925) 344-6461	No.	REVISION	BY	Date: JULY 2021
				Scale: N/A
				Job No. 21-051
				Sheet No. 2
SARATOGA		CALIFORNIA		

Attachment 5: California Code of Regulations, title 14, section 1270.06

14 CCR 1270.06

This document is current through Register 2021, No. 28, July 9, 2021

CA - Barclays Official California Code of Regulations > TITLE 14. NATURAL RESOURCES > DIVISION 1.5. DEPARTMENT OF FORESTRY AND FIRE PROTECTION > CHAPTER 7. FIRE PROTECTION > SUBCHAPTER 2. SRA/VHFHSV FIRE SAFE REGULATIONS > ARTICLE 1. ADMINISTRATION

§ 1270.06.Exceptions to Standards

- (a) Upon request by the applicant, exceptions to standards within this subchapter or to local jurisdiction certified ordinances may be allowed by the inspection entity listed in *14 CCR §1270.05*, where the exceptions provide the same practical effect as these regulations towards providing defensible space. Exceptions granted by the inspection entity listed in *14 CCR §1270.05* shall be made on a case-by-case basis only. Exceptions granted by the inspection entity listed in *14 CCR §1270.05* shall be forwarded to the appropriate CAL FIRE Unit Office that administers SRA fire protection in that county and shall be retained on file at the Unit Office.
- (b) Requests for an exception shall be made in writing to the inspection entity listed in *14 CCR §1270.05* by the applicant or the applicant's authorized representative. At a minimum, the request shall state the specific section(s) for which an exception is requested, material facts supporting the contention of the applicant, the details of the exception proposed, and a map showing the proposed location and siting of the exception. Local jurisdictions listed in *14 CCR section 1270.05* may establish additional procedures or requirements for exception requests.
- (c) Where an exception is not granted by the inspection entity, the applicant may appeal such denial to the local jurisdiction. The local jurisdiction may establish or utilize an appeal process consistent with existing local building or planning department appeal processes.
- (d) Before the local jurisdiction makes a determination on an appeal, the inspection authority shall be consulted and shall provide to that local jurisdiction documentation outlining the effects of the requested exception on wildfire protection.
- (e) If an appeal is granted, the local jurisdiction shall make findings that the decision meets the intent of providing defensible space consistent with these regulations. Such findings shall include a statement of reasons for the decision. A written copy of these findings shall be provided to the CAL FIRE Unit headquarters that administers SRA fire protection in that local jurisdiction.

Statutory Authority

AUTHORITY:

Note: Authority cited: [Section 4290, Public Resources Code](#). Reference: [Sections 4290 and 4291, Public Resources Code](#).

History

HISTORY:

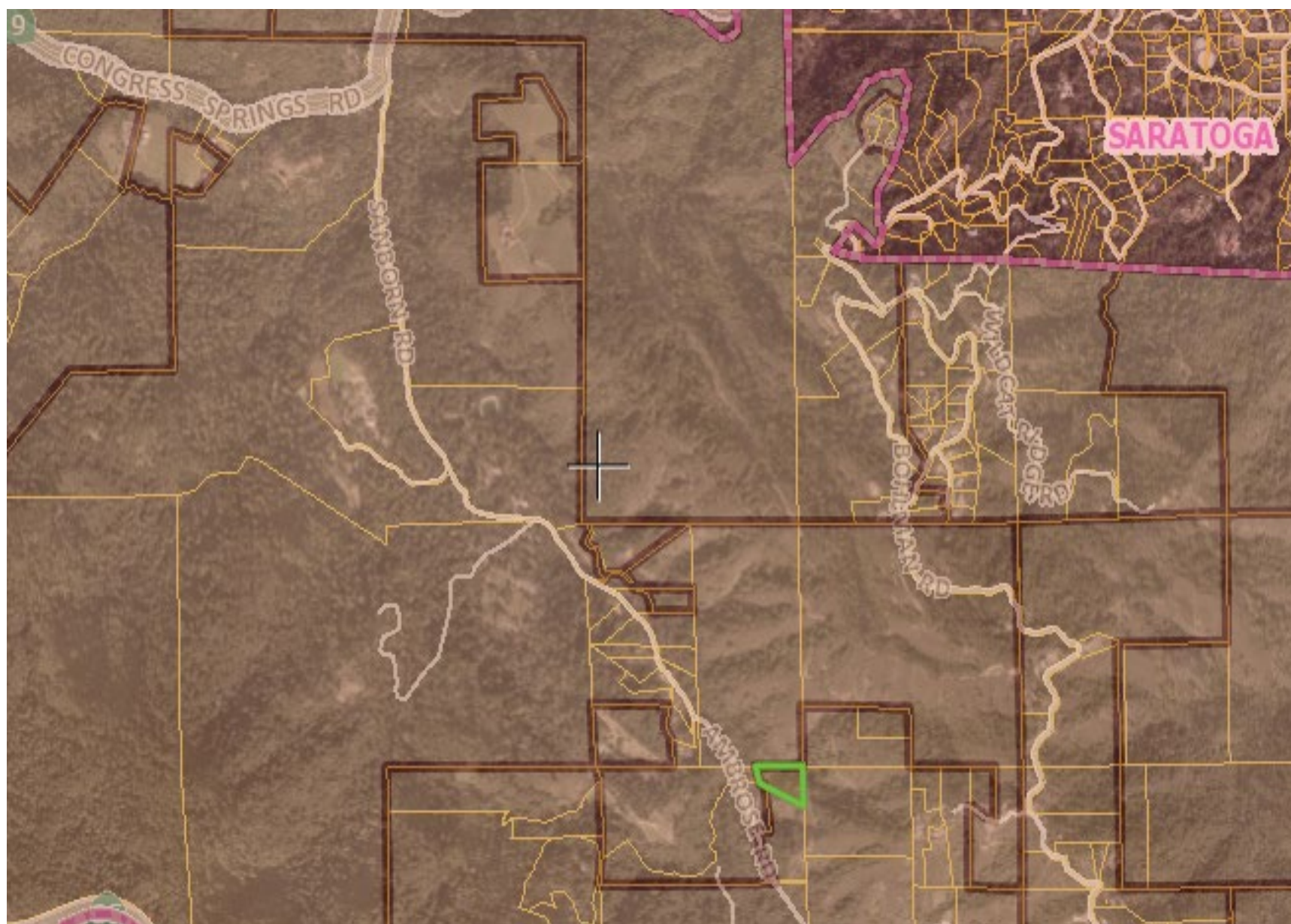
1. New section filed 5-30-91; operative 5-30-91 pursuant to [Government Code section 11346.2\(d\)](#) (Register 91, No. 27).
2. Amendment filed 1-31-2013; operative 4-1-2013 (Register 2013, No. 5).
3. Amendment of section heading and section filed 9-6-2019; operative 1-1-2020 (Register 2019, No. 36).

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

Copyright © 2019 by Barclays Law Publishers All rights reservedBARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS Copyright © 2021 by Barclays Law Publishers All rights reserved

End of Document

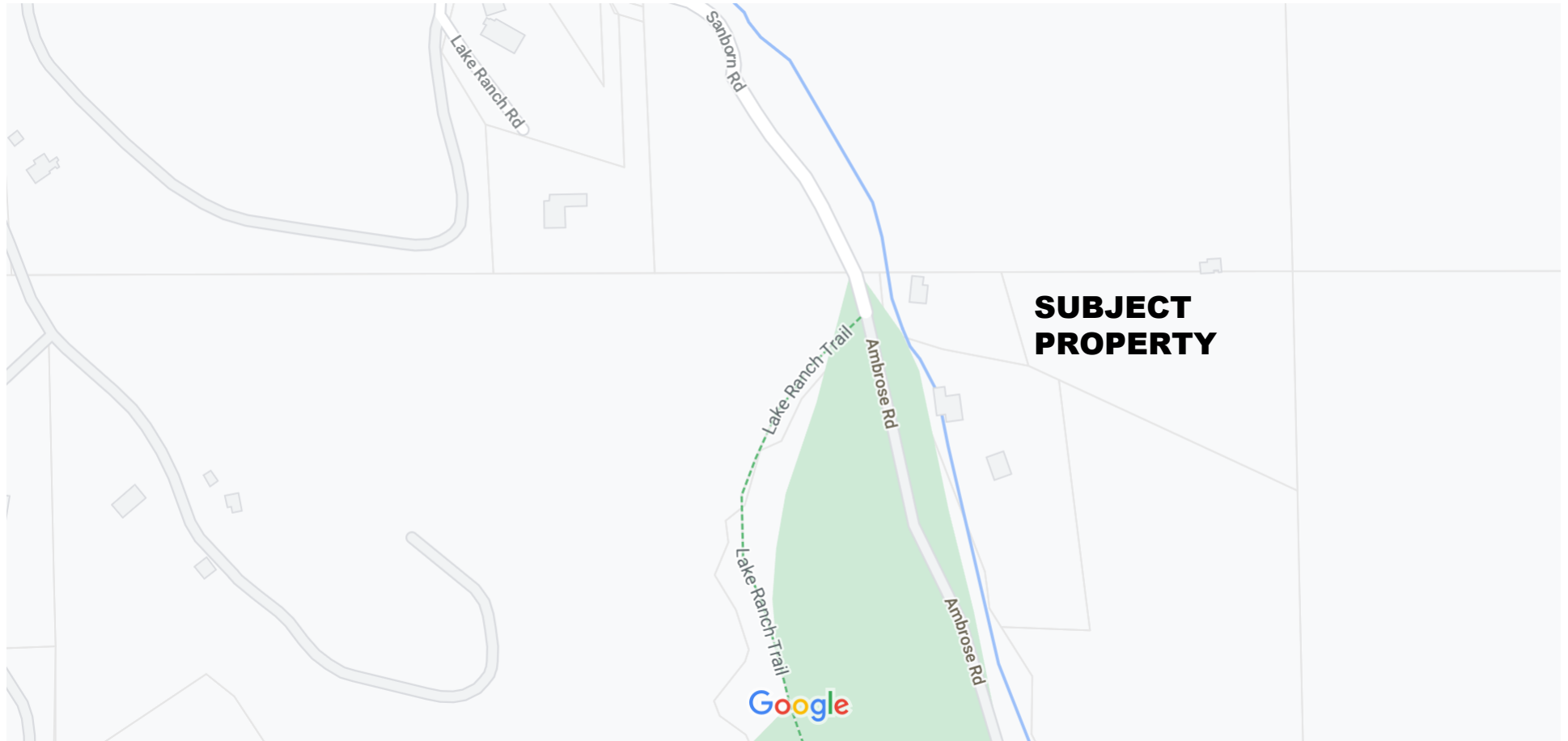
Attachment 6: Maps Showing Location of Proposed Project





Map data ©2021 200 ft

**SUBJECT SITE TO
SOUTH OF THIS SHEET
ALONG SANBORN ROAD**



Map data ©2021 200 ft

Attachment 7: Site plan

ATTACHMENT C

To: Erik Ramakrishnan

Re: Request for Exception - 16501 SANBORNE ROAD SARATOGA CA 95070

Good afternoon,

After reviewing the exception request for 16501 SANBORNE ROAD SARATOGA CA 95070 (PLN18-8580) concerning the SRA Fire Safe Regulations § 1273.01. Width and § 1273.08. Dead-end Roads. The CAL FIRE Santa Clara Unit will not grant an exception as the inspection entity for this project (PLN18-8580) concerning § 1273.01. Width and § 1273.08. Dead-end Road of the SRA Fire Safe Regulations. With projects that are currently in the State Responsibility Area, the CAL FIRE Santa Clara Unit encourages conformance with the fire protection recommendations for access described in the current version of the SRA Fire Safe Regulations (California Code of Regulations Title 14 Natural Resources Division 1.5 Department of Forestry Chapter 7 - Fire Protection Subchapter 2 SRA Fire Safe Regulations Articles 1-5).

Limiting building construction in those areas where these minimum wildfire protection standards are not satisfied reduces the risk of wildfires in these areas, which protects the health, safety, and welfare of residents, and protects natural resources and the environment.

The CAL FIRE Santa Clara Unit recommends providing safe access for emergency wildfire equipment and civilian evacuation concurrently, with the intent of providing unobstructed traffic circulation during a wildfire emergency. Both the road width and dead-end road length that provide access to this project location vary greatly from the specifications described in the Fire Safe Regulations.

While the proposed mitigations that include a NFPA 13R system, on-site dry hydrants, and approximately 20,000 gallons of available water supplied by water tanks may provide benefits to structural fire fighting and some wildland fire fighting; they would not provide the same practical effect as roads meeting the minimum specifications described in the SRA Fire Safe Regulations towards safe access.

Article 2 Emergency Access and Egress

§ 1273.00. Intent

Roads and driveways, whether public or private, unless exempted under 14 CCR § 1270.02(d), shall provide for safe access for emergency wildfire equipment and civilian evacuation concurrently, and shall provide unobstructed traffic circulation during a wildfire emergency consistent with 14 CCR §§ 1273.00 through 1273.09.

§ 1273.01. Width.

(a) All roads shall be constructed to provide a minimum of two ten (10) foot traffic lanes, not including shoulder and striping. These traffic lanes shall provide for two-way traffic

flow to support emergency vehicle and civilian egress, unless other standards are provided in this article or additional requirements are mandated by local jurisdictions or local subdivision requirements. Vertical clearances shall conform to the requirements in California Vehicle Code section 35250.

§ 1273.08. Dead-end Roads

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

parcels zoned for less than one acre - 800 feet

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

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

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

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

The CAL FIRE Santa Clara Unit provides comments as fire protection recommendations based on the current version of the SRA Fire Safe Recommendations as written. Although the CAL FIRE Santa Clara Unit will not grant an exemption as the "inspection entity," we do not prohibit the applicant from requesting an exception from your local decision-making agency / the "local jurisdiction" as described in § 1270.06. Exceptions to Standards.

Marcus Hernandez

Battalion Chief

CAL FIRE

ATTACHMENT D

REQUEST FOR CAL FIRE EXCEPTION
EXISTING FIRE ACCESS ROAD

16501 Sanborn Road
Saratoga, CA 95070

Date: August 13, 2021

Project Description: 16501 Sanborn Road is the proposed site for a new single-family home. The project also includes a new bridge and driveway leading to the single-family home. The driveway is a minimum of 18ft in width, with a maximum grade of 20%, provided with a turn out halfway up and a full hammerhead turn around at the residence.

Code Section: 2019 California Code of Regulations Title 14 Division 1.5 Chapter 7 Subchapter 2 Article 1 Section 1270.06, and Article 2 Section 1273.01 and 1273.08.

Code Requirement: Section 1273.01 Width. All roads shall be constructed to provide a minimum of two ten (10) foot traffic lanes, not including shoulder and striping. Vertical clearances shall conform to the requirements in California Vehicle Code Section 35250.

Section 1273.08 Dead-end Roads. The maximum length of a dead-end road, including all dead-end roads accessed from that dead-end road, shall not exceed the following cumulative lengths, regardless of the number of parcels served:

Parcels zoned for 1 acre to 4.99 acres – 1,320 feet
Parcels zoned for 5 acres to 19.99 acres – 2,640 feet
Parcels zoned for 20 acres or larger – 5,280 feet

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

Section 1270.06 Exceptions to Standards. Upon request by the applicant, exceptions to standards within this subchapter or to local jurisdiction certified ordinances may be allowed by the inspection entity listed in 14 CCR § 1270.05 where the exceptions provide the same practical effect as these regulations towards providing defensible space. Exceptions granted by the inspection entity listed in 14 CCR § 1270.05 shall be made on a case-by-case basis only. Exceptions granted by the inspection entity listed in 14 CCR § 1270.05 shall be forwarded to the appropriate CAL FIRE Unit Office that administers

SRA fire protection in that county and shall be retained on file at the Unit Office.

Requests for an exception shall be made in writing to the inspection entity listed in 14 CCR § 1270.05 by the applicant or the applicant's authorized representative. At a minimum, the request shall state the specific section(s) for which an exception is requested, material facts supporting the contention of the applicant, the details of the exception proposed, and a map showing the proposed location and siting of the exception. Local jurisdictions listed in 14 CCR section 1270.05 may establish additional procedures or requirements for exception requests.

Code Intent:

The intent of Section 1273.01 is to provide road access for emergency use and perimeter wildfire protection measures. The twenty (20) foot wide road allows for easier site access for firefighting efforts. The intent of Section 1273.08 is to provide access to two access points along any road longer than the length specified to improve the accessibility of remote facilities and wildfire fighting efforts. The intent of Section 1270.06 is to provide a means to apply for an exception to requirements listed in the subsection when it is not feasible to accomplish. This is accomplished by providing an alternative means or method to the requirement that offsets the lack of the requirement.

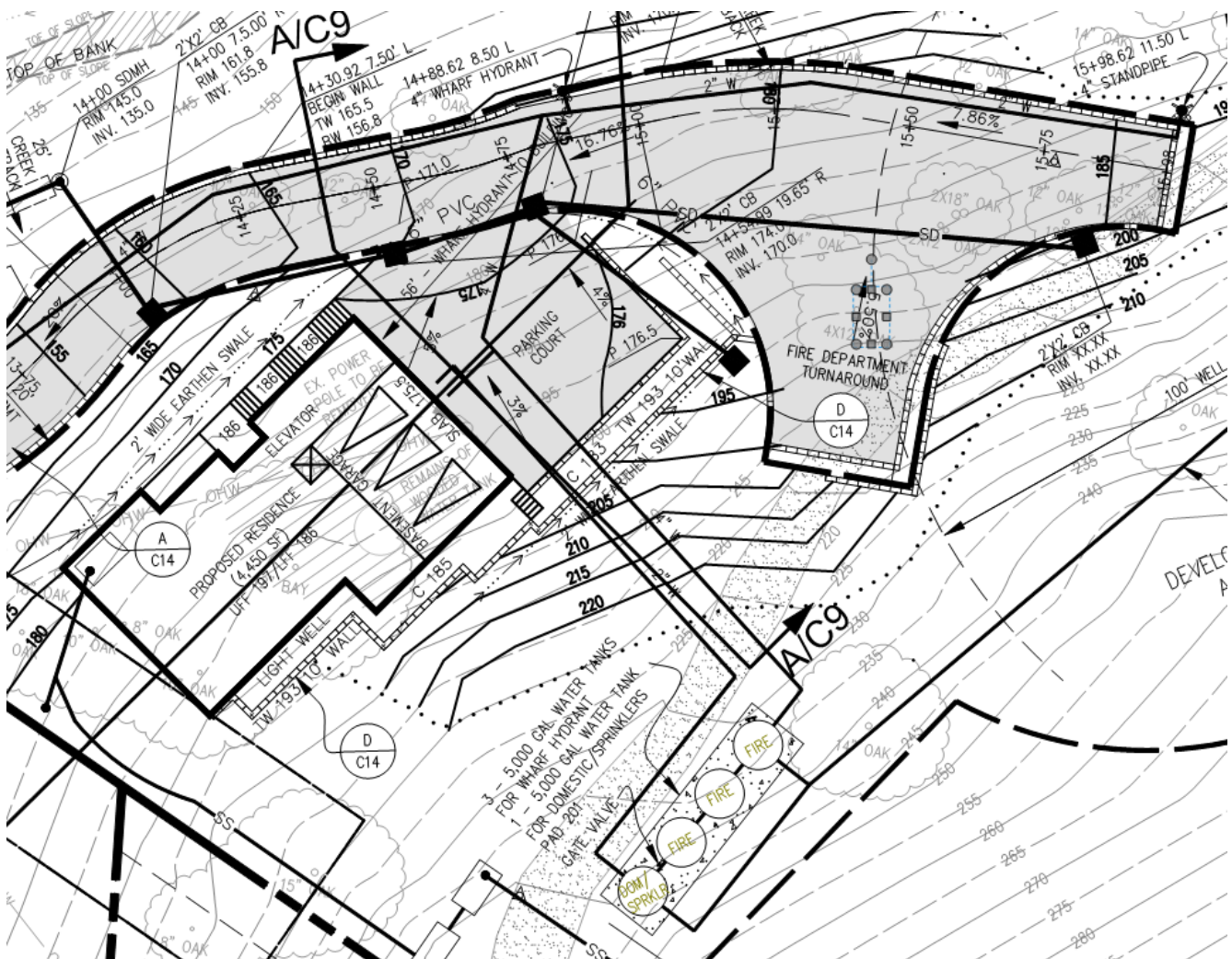
Request:

The single-family home is accessed off Sanborn Road, an existing two-lane road that connects to Highway 9 approximately 1.9 miles from the proposed site location. Sanborn Road terminates in the opposite direction from Highway 9 at a private road identified as Ambrose Road. Part of Sanborn Road near 16501 Sanborn has been surveyed and varies in width from approximately 14.5 feet wide to 22 feet wide in some locations not including shoulder space. There are sections of this road that are not physically able to be widened due to the topography and existing conditions. The same is true for the dead-end road condition. This is an existing condition that cannot be improved. In lieu of these required access measures we propose several additional levels of protection for the building and property site:

1. The residential single-family home will include a NFPA 13R system instead of NFPA 13D and an increased sprinkler design density of 0.1 gpm/ft² instead of 0.05 gpm/ft². This is a 100% increase in the density required by NFPA 13R. The hydraulics will be calculated using the NFPA 13R four (4) head calculation instead of the NFPA 13D two (2) head calculation.

NFPA 13R also requires sprinkler protected garages where 13D does not. The system will have an independent supply line that is connected to the fire water tank system that can provide up to 20,000 gallons.

2. Two on-site dry hydrants will be provided, connected to the on-site fire protection water storage tanks. One hydrant will be adjacent to the residence at least 50 feet from the house next to the compliant fire apparatus turn around, and the other will be adjacent to the provided turnout approximately halfway up the driveway.
3. The site will be provided with four (4) inter-connected 5,000-gallon water tanks that will serve the sprinkler system and hydrant system. This will provide approximately 20,000 gallons of available water connected to a well that should be capable of providing between 15 gpm and 25 gpm based on neighboring wells. The domestic water supply will utilize one of these tanks but will be zoned by a check valve so that it will not pull water from the 3 dedicated lines but the fire hydrant and sprinkler system may utilize the domestic tank.



Justification:

The existing conditions of Sanborn Road provide a two-lane fire apparatus access road that varies in width from 14 feet to 22 feet. Access to the proposed residence will be provided via a driveway off Sanborn Road. The driveway is a minimum of 18 feet wide and provided with a compliant fire apparatus turnaround as shown in the attached sketch. The minimum driveway width for Saratoga according to Santa Clara County Fire is 14 feet. Although Sanborn Road does not meet the required 20-foot width for the entire length, this is an existing two-lane road that the fire department currently utilizes for access to other properties on Sanborn Road. To offset the potential for the narrower section of the road to increase Fire Department response time, the residence will be provided with an upgraded sprinkler system (NFPA 13R in lieu of 13D) that will also provide more water to a fire (0.1 gpm/ft² over 0.05 gpm/ft²). In the event of a fire inside the single-family home, this will increase the likelihood that the sprinkler system will adequately suppress or extinguish the fire. The increased protection provided by the NFPA 13R system and

increased sprinkler density is considered to offset an increase in response time due to the diminished access road width for portions of the existing Sanborn Road.

While the property site is accessed on an existing public dead-end road, the private on-site driveway will be provided with a compliant fire apparatus turnaround and 32-foot-long fire department turn out. In an effort to assist with any potential wildfire threat around the property, on-site fire hydrants are being provided to assist with fire fighting efforts.

The site is not served by a local water purveyor. In rural and suburban areas where adequate and reliable water supply systems do not exist, the fire code official is authorized to utilize NFPA 1142, *Standard on Water Supplies for Suburban and Rural Firefighting*. The minimum required fire water supply for the structure according to the 2017 edition of NFPA 1142 *Water Supplies for Suburban and Rural Fire Fighting* is calculated by Equation 4.2.1:

[4.2.1]

$$WS_{min} = \frac{VS_{tot}}{OHC}(CC)$$

where:

WS_{min} = minimum water supply in gal (For results in L, multiply by 3.785.)

VS_{tot} = total volume of structure in ft^3 (If volume is measured in m^3 , multiply by 35.3.)

OHC = occupancy hazard classification number

CC = construction classification number

The total estimated volume of the residence is ~50,000 cubic feet, the Occupancy Hazard Classification (OHC) number is 7 according to Section 5.2.5.2 for dwellings, and the Classification of Construction (CC) is 1.0 for dwelling in accordance with Section 6.2.2. Based on Equation 4.2.1, the minimum water supply for the residence approximately 7,142 gallons. The residence is provided with an on-site water storage capacity of 20,000 gallons to supply the on-site fire hydrants. This provides almost three times the required water supply to help fight fire efforts in the area around the house as the supply is connected to the two dry hydrants. One hydrant will be directly adjacent the residence (56 feet) and an additional one will be provided at the beginning of the fire department turnout approximately halfway between the house and Sanborn Road. These hydrants can also be used to support wildfire fighting efforts in the area. The provided fire apparatus turn around and additional hydrants for fire suppression efforts provide additional protection to offset the existing road conditions.

Conclusion: Given the existing road conditions on Sanborn Road, the proposed additional protections, as described above, provide significant increases in fire protection measures. These additional protections go above what is required per code, to offset potential challenges or delays due to for fire department access along the public road. It is our professional opinion that these alternatives described above provide a level of safety and fire protection equivalent to that prescribed by the code.

Prepared by:

THE FIRE CONSULTANTS, INC


Connor McGill, P.E.

CAM/KEG:cm

21-2476 /RQCM 16501 Sanborn Road Fire Access



August 13, 2021
Date

ATTACHMENT E

County of Santa Clara

Department of Planning and Development

County Government Center, East Wing, 7th Floor
70 West Hedding Street
San Jose, CA 95110
Phone: (408) 299-5700
www.sccplandev.org



PARCEL AND DEVELOPMENT HISTORY FOR APN 517-37-003

Prior to 1961, all of the involved parcels were part of one large parcel owned by the Robinson family. The southern portion of Parcel APN 517-37-002 was called out as a separate 1-Acre lot in a Record of Survey Map from June 1961 (Book 134, Page1).

A November 1961 Record of Survey Map shows the northern portion of APN 517-37-002, as well as APN 517-37-003 and 517-37-004 as one 5-acre parcel. The right-of-way easement is shown to provide access to APN 517-37-001 (Book 140, Page 51).

Parcels 517-37-003 and 517-37-004 were divided at some point between 1961 and 1975, method unknown. Most likely through a gift deed prior to 1969.

A Record of Survey Map from June 1975 shows Parcel APN 517-37-003 with the right-of-way easement along the boundary between Parcels APN 517-37-002 and 517-37-004 (Book 357, Page 56).

On May 12, 2003, the Bagnas family first applied for Building Site Approval with Architectural Review and Grading Approval for a single family residence and associated improvements as concurrent planning applications. This was following a pre-screening on the subject in 2002. This application was deemed incomplete on June 11, 2003. The project was resubmitted on July 14, 2005 and again deemed incomplete. A second resubmittal on February 23, 2006 also included a Variance for the side setback. This project was deemed complete on March 27, 2006 and subsequently expired.

On August 11, 2008 a Grading Violation was issued, halting the project.

On October 19, 2010 the project restarted as a Building Site Approval with Architectural Review and Grading Approval as concurrent planning applications following a pre-screening earlier that year. This was deemed incomplete on December 2, 2010. A Variance application was added in the resubmittal on March 4, 2011 for front and side setbacks. The project was deemed complete on April 21, 2011. The ASA Committee approved the project on August 11, 2011.

On February 23, 2012, the Applicant submitted an application for a Grading Permit with Land Development Engineering (LDE). The Grading Permit was issued on September 16, 2016. Grading construction work began shortly after September 2016. The Grading Permit was valid for two years, and was due to expire on September 16, 2018.

On August 8, 2013, the ASA Committee approved of an extension of time to allow an additional two years for the owner to obtain building and grading permits for the project. This made the new expiration date for the BA and G August 26, 2015. These approvals expired.

On November 5, 2013, the Applicant submitted applications for Building Permits into Building Plan Check. The Building Permits were not issued, as there were pending incomplete items for Planning, Environmental Health and Roads Dept. The Building Permit application expired on December 31, 2016.

On March 9, 2018 the owner submitted new applications for a BA, G and V land use entitlement, as the land use entitlements expired in August 2015. The applicant submitted the same plans that were approved in 2011. Staff deemed the application incomplete, requesting the notarized easement documentation be obtained and updates to plan to meet County standards for the driveway.

On May 22, 2018, LDE Staff became aware that notarized consent/authorization from the neighbor (ASA Committee Condition Nos. 41 and 44 above), was not obtained for work in the easement. Subsequently a stop work order was issued for all grading construction activity for the driveway.

On August 24, 2018, the applicant submitted revised plans to proposed all grading within the established easement, as the owner was unable to obtain the necessary notarized consent/authorization forms. The design modified the grading for access to the property in order to eliminate any grading that extended onto the neighbor's property, located south of the site. This revised application was deemed incomplete on September 19, 2018 as the proposed driveway still did not meet current County standards for Fire Marshal access and LDE. After several other resubmittals, the application was deemed complete for processing on November 25, 2019.

On December 10, 2019, LDE Staff inspected the subject property in response to a complaint related to alleged stormwater violations. At that time, LDE Staff issued a 'Stop Work' and noted that the property displayed visual discharge into a nearby creek, and the property was not compliant with stormwater requirements for erosion control, run-on/off control, construction site entrance concerns, sediment control, active treatment systems, and the site was in poor site management. At the time of this inspection, the observed stormwater violations did not affect the Applicant's BA and G applications. LDE Staff also required the Applicant to request a reinspection by December 17, 2019.

On December 17, 2019, LDE Staff re-inspected the property and confirmed the continued stormwater violations. At that time, LDE Staff also verified unpermitted fill that was placed onto the neighbor's property, located at the immediate south neighboring lot (16505 Sanborn Rd.), during the initial construction of the driveway. As previously noted, due to the fact that the neighbor did not provide authorization for this fill, the fill is unpermitted. Staff was unaware that this unpermitted fill existed until December 17, 2019. Planning Staff was notified by LDE on

January 3, 2020, confirming the violations. This was after the subject application was noticed for the January 16, 2020 Zoning Administration Hearing. This unpermitted fill was not addressed in the updated plans deemed complete on November 25, 2019.

On January 3, 2020, a public notice was mailed to all property owners within a 300-foot radius of the subject property and an interested-parties list, and was also published in the Post Record on January 3, 2020.

On January 16, 2020 the Zoning Administrator continued the project to allow the applicant time to address the unpermitted grading work. The Permit Streamlining Act deadline for decision was April 23, 2020.

On February 20, 2020 applicant submitted Major Modification of BSA, Grading and Variance including modified plans in response to the continuance items. On March 20, 2020 the Major Modification Application was deemed incomplete. On July 8, 2020 the applicant resubmitted plans, which were again deemed incomplete on August 5, 2020. On January 22, 2021 the applicant resubmitted plans, which were again deemed incomplete on February 22, 2021. This is the current status of the application.

Prior submittals also included plans for a single-family residence on APN 517-37-001 under a separate planning number (File 8224), which are not included in the current application and not addressed in this time line.

ATTACHMENT F

Title 14. Natural Resources

Division 1.5. Department of Forestry and Fire Protection

Chapter 7. Fire Protection [FNA2]

Subchapter 2. SRA/Vhfhsv Fire Safe Regulations

Article 1. Administration

14 CCR § 1270

Article 1. Administration

§ 1270.00. Title.

These regulations shall be known as the “SRA/VHFHSZ Fire Safe Regulations,” and shall constitute the basic wildfire protection standards of the California Board of Forestry and Fire Protection.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4102, 4126, 4127 and 4290, Public Resources Code.

§ 1270.01. Purpose.

- (a) These regulations have been prepared and adopted for the purpose of establishing minimum wildfire protection standards in conjunction with building, construction and development in the State Responsibility Area (SRA) and, after July 1, 2021, the Very High Fire Hazard Severity Zones as defined in Government Code § 51177(i) (VHFHSZ).
- (b) The future design and construction of structures, subdivisions and developments in the SRA and, after July 1, 2021, the VHFHSZ shall provide for basic emergency access and perimeter wildfire protection measures as specified in the following articles.
- (c) These measures shall provide for emergency access; signing and building numbering; private water supply reserves for emergency fire use; and vegetation modification. The fire protection standards which follow shall specify the minimums for such measures.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1270.02. Scope.

- (a) These regulations shall apply to:

- (1) the perimeters and access to all residential, commercial, and industrial building construction within the SRA approved after January 1, 1991, and those approved after July 1, 2021 within the VHFHSZ, except as set forth below in subsections (b) through (d), inclusive, and (f);

(2) the siting of newly installed commercial modulars, manufactured homes, mobilehomes, and factory-built housing, as defined in Health and Safety Code sections 18001.8, 18007, 18008, and 19971, except where being sited or installed as an accessory or junior accessory dwelling unit as set forth in subsection (d) below;

(3) all tentative and parcel maps or other developments approved after January 1, 1991; and

(4) applications for building permits on a parcel approved in a pre-1991 parcel or tentative map 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 map.

(b) These regulations do not apply where an application for a building permit is filed after January 1, 1991 for building construction on a parcel that was formed from a parcel map or tentative map (if the final map for the tentative map is approved within the time prescribed by the local ordinance) approved prior to January 1, 1991, to the extent that conditions relating to the perimeters and access to the buildings were imposed by the parcel map or final tentative map approved prior to January 1, 1991.

(c) (1) At the discretion of the local jurisdiction, and subject to any requirements imposed by the local jurisdiction to ensure reasonable ingress, egress, and capacity for evacuation and emergency response during a wildfire, these regulations shall not apply to the reconstruction or repair of legally constructed residential, commercial, or industrial buildings due to a wildfire, to the extent that the reconstruction or repair does not:

(A) increase the square footage of the residential, commercial, or industrial building or buildings that previously existed; or

(B) change the use of the building or buildings that had existed previously; or

(C) construct a new building or buildings that did not previously exist on the site.

(2) Nothing in this subsection shall be construed to alter the extent to which these regulations apply to the reconstruction or repair of a legally constructed residential, commercial, or industrial building for reasons unrelated to a wildfire.

(d) These regulations do not apply to the creation of accessory or junior accessory dwelling units that comply with Government Code sections 65852.2 or 65852.22, or any local ordinances enacted thereunder, as applicable, including any local ordinances requiring provisions for fire and life safety.

(e) Unless otherwise exempt pursuant to this subchapter, affected activities include, but are not limited to:

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

- (2) application for a building permit for new building construction;
- (3) application for a use permit; and
- (4) road construction.

(f) EXEMPTION: Roads used solely for agricultural, mining, or the management and harvesting of wood products.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1270.03. Provisions for Application of These Regulations.

This subchapter shall be applied as follows:

- (a) the local jurisdictions shall provide the Director of the California Department of Forestry and Fire Protection (CAL FIRE) or their designee with notice of applications for building permits, tentative parcel maps, tentative maps, and installation or use permits for construction or development within the SRA or, after July 1, 2021, the VHFHSZ.
- (b) the Director or their designee may review and make fire protection recommendations on applicable construction or development permits or maps provided by the local jurisdiction.
- (c) the local jurisdiction shall ensure that the applicable sections of this subchapter become a condition of approval of any applicable construction or development permit or map.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1270.04. Local Ordinances.

- (a) Nothing contained in these regulations shall be considered as abrogating the provisions of any ordinance, rule, or regulation of any state or local jurisdiction provided that such ordinance, rule, or regulation is equal to or exceeds these minimum standards.
- (b) Counties may submit their local ordinances for certification via email to the Board, and the Board may certify them as equaling or exceeding these regulations when they provide the same practical effect. If the Board determines that the local requirements do not equal or exceed these regulations, it shall not certify the local ordinance.
- (c) When the Board grants certification, the local ordinances, in lieu of these regulations, shall be applied as described in 14 CCR § 1270.02 and used as the basis for inspections performed under 14 CCR § 1270.05.
- (d) The Board's certification of local ordinances pursuant to this section is rendered invalid when previously certified ordinances are subsequently amended by local jurisdictions, or the regulations are amended by the Board, without Board re-certification of the amended ordinances. The Board's regulations supersede the amended local

ordinance(s) when the amended local ordinance(s) are not re-certified by the Board. Amendments made by local jurisdictions to previously certified ordinances shall be submitted for re-certification.

Note: Authority cited: Sections 4111 and 4290, Public Resources Code. Reference: Sections 4117 and 4290, Public Resources Code.

§ 1270.05. Inspections.

Inspections shall conform to the following requirements:

(a) Inspection shall be made by:

(1) the Director, or

(2) local jurisdictions that have assumed state fire protection responsibility on SRA lands, or

(3) local jurisdictions where the inspection duties have been formally delegated by CAL FIRE to the local jurisdiction.

(b) Nothing in this section abrogates CAL FIRE's authority to inspect and enforce state forest and fire laws even when the inspection duties have been delegated pursuant to this section.

(c) Reports of violations shall be provided to the CAL FIRE Unit headquarters that administers SRA fire protection in the local jurisdiction.

(d) When inspections are conducted, they shall occur prior to: the issuance of the use permit or certificate of occupancy; the recordation of the parcel map or final map; the filing of a notice of completion; or the final inspection of any project or building permit.

Note: Authority cited: Sections 4111, 4119 and 4290, Public Resources Code. Reference: Section 4290, Public Resources Code.

§ 1270.06. Exceptions to Standards.

(a) Upon request by the applicant, exceptions to standards within this subchapter or to local jurisdiction certified ordinances may be allowed by the inspection entity listed in 14 CCR § 1270.05, where the exceptions provide the same practical effect as these regulations towards providing defensible space. Exceptions granted by the inspection entity listed in 14 CCR § 1270.05 shall be made on a case-by-case basis only. Exceptions granted by the inspection entity listed in 14 CCR § 1270.05 shall be forwarded to the appropriate CAL FIRE Unit Office that administers SRA fire protection in that county and shall be retained on file at the Unit Office.

(b) Requests for an exception shall be made in writing to the inspection entity listed in 14 CCR § 1270.05 by the applicant or the applicant's authorized representative. At a minimum, the request shall state the specific section(s) for which an exception is requested, material facts supporting the contention of the applicant, the details of the exception proposed, and a map showing the proposed location and siting of the

exception. Local jurisdictions listed in 14 CCR section 1270.05 may establish additional procedures or requirements for exception requests.

(c) Where an exception is not granted by the inspection entity, the applicant may appeal such denial to the local jurisdiction. The local jurisdiction may establish or utilize an appeal process consistent with existing local building or planning department appeal processes.

(d) Before the local jurisdiction makes a determination on an appeal, the inspection authority shall be consulted and shall provide to that local jurisdiction documentation outlining the effects of the requested exception on wildfire protection.

(e) If an appeal is granted, the local jurisdiction shall make findings that the decision meets the intent of providing defensible space consistent with these regulations. Such findings shall include a statement of reasons for the decision. A written copy of these findings shall be provided to the CAL FIRE Unit headquarters that administers SRA fire protection in that local jurisdiction.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1271.00. Definitions.

Agriculture: Land used for agricultural purposes as defined in a local jurisdiction's zoning ordinances.

Building: Any structure used or intended for supporting or sheltering any use or occupancy, except Utility and Miscellaneous Group U buildings.

CAL FIRE: California Department of Forestry and Fire Protection.

Dead-end road: A road that has only one point of vehicular ingress/egress, including cul-de-sacs and looped roads.

Defensible space: The area within the perimeter of a parcel, development, neighborhood or community where basic wildland fire protection practices and measures are implemented, providing the key point of defense from an approaching wildfire or defense against encroaching wildfires 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, road names and building identification, and fuel modification measures.

Development: As defined in section 66418.1 of the California Government Code.

Director: Director of the Department of Forestry and Fire Protection or their designee.

Driveway: A vehicular access that serves up to two (2) parcels with no more than two (2) residential units and any number of non-commercial or industrial buildings on each parcel.

Distance Measurements: All specified or referenced distances are measured along the ground, unless otherwise stated.

EXCEPTION: An alternative to the specified standard requested by the applicant that may be necessary due to health, safety, environmental conditions, physical site limitations or other limiting conditions, such as recorded historical sites, that provides mitigation of the problem.

Fire valve: see hydrant.

Fuel modification area: An area where the volume of flammable vegetation has been reduced, providing reduced fire intensity and duration.

Greenbelts: A facility or land-use, designed for a use other than fire protection, which will slow or resist the spread of a wildfire. Includes parking lots, irrigated or landscaped areas, golf courses, parks, playgrounds, maintained vineyards, orchards or annual crops that do not cure in the field.

Hammerhead/T: A road or driveway that provides a "T" shaped, three-point turnaround space for emergency equipment, being no narrower than the road that serves it.

Hydrant: A valved connection on a water supply or storage system, having either one two and a half (2 1/2) inch or one four and a half (4 1/2) inch outlet, with male American National Fire Hose Screw Threads (NH), used to supply fire apparatus and hoses with water.

Local Jurisdiction: Any county, city/county agency or department, or any locally authorized district that issues or approves building permits, use permits, tentative maps or tentative parcel maps, or has authority to regulate development and construction activity.

Occupancy: The purpose for which a building, or part thereof, is used or intended to be used.

One-way road: A minimum of one traffic lane width designed for traffic flow in one direction only.

Residential unit: Any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking and/or sanitation for one or more persons. Manufactured homes, mobilehomes, and factory-built housing are considered residential units for the purposes of mandatory measures required in 14 CCR § 1270.01(c), unless being sited or installed as an accessory or junior accessory dwelling unit in accordance with 14 CCR § 1270.02(d).

Road: Vehicular access to more than two (2) parcels; more than four (4) residential units; or access to any industrial or commercial occupancy. Includes public and private streets and lanes.

Road or driveway structures: Bridges, culverts, and other appurtenant structures which supplement the traffic lane or shoulders.

Same Practical Effect: As used in this subchapter, means an exception or alternative with the capability of applying accepted wildland fire suppression strategies and tactics, and provisions for fire fighter safety, including:

- (a) access for emergency wildland fire equipment,
- (b) safe civilian evacuation,
- (c) signing that avoids delays in emergency equipment response,
- (d) available and accessible water to effectively attack wildfire or defend a structure from wildfire, and
- (e) fuel modification sufficient for civilian and fire fighter safety.

Shoulder: Vehicular access adjacent to the traffic lane.

State Board of Forestry and Fire Protection (Board): As defined in Public Resources Code section 730.

State Responsibility Area (SRA): As defined in Public Resources Code sections 4126-4127; and the California Code of Regulations, title 14, division 1.5, chapter 7, article 1, sections 1220-1220.5.

Structure: That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

Subdivision: As defined in section 66424 of the Government Code.

Traffic lane: The portion of a road or driveway that provides a single line of vehicle travel.

Turnaround: A road or driveway, unobstructed by parking, which allows for a safe opposite change of direction for emergency equipment. Design of such area may be a hammerhead/T or terminus bulb.

Turnouts: A widening in a road or driveway to allow vehicles to pass.

Utility and Miscellaneous Group U building: A structure of an accessory character or a miscellaneous structure not classified in any specific occupancy permitted, constructed, equipped, and maintained to conform to the requirements of Title 24, California Building Standards Code.

Vertical clearance: The minimum specified height of a bridge or overhead projection above the road or driveway.

Wildfire: As defined in Public Resources Code Section 4103 and 4104.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

Article 2. Emergency Access and Egress

§ 1273.00. Intent.

Roads and driveways, whether public or private, unless exempted under 14 CCR § 1270.02(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.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.01. Width.

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

(b) All one-way roads shall be constructed to provide a minimum of one twelve (12) foot traffic lane, not including shoulders. The local jurisdiction may approve one-way roads.

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

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

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

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.02. Road Surfaces.

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

(b) Driveways and road and driveway structures shall be designed and maintained to support at least 40,000 pounds.

(c) Project proponent shall provide engineering specifications to support design, if requested by the local authority having jurisdiction.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.03. Grades.

- (a) At no point shall the grade for all roads and driveways exceed 16 percent.
- (b) The grade may exceed 16%, not to exceed 20%, with approval from the local authority having jurisdiction and with mitigations to provide for same practical effect.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.04. Radius.

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

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.05. Turnarounds.

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

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

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

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

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.06. Turnouts.

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

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.07. Road and Driveway Structures.

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

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

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

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

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.08. Dead-end Roads.

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

parcels zoned for less than one acre - 800 feet

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

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

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

All lengths shall be measured from the edge of the road surface at the intersection that begins the road to the end of the road surface at its farthest point. Where a dead-end

road crosses areas of differing zoned parcel sizes requiring different length limits, the shortest allowable length shall apply.

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

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1273.09. Gate Entrances.

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

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

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

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

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

Article 3. Signing and Building Numbering

§ 1274.00. Intent.

To facilitate locating a fire and to avoid delays in response, all newly constructed or approved roads and buildings shall be designated by names or numbers posted on signs clearly visible and legible from the road. This section shall not restrict the size of letters or numbers appearing on road signs for other purposes.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1274.01. Road Signs.

(a) Newly constructed or approved roads must be identified by a name or number through a consistent system that provides for sequenced or patterned numbering and/or non-duplicative naming within each local jurisdiction. This section does not require any entity to rename or renumber existing roads, nor shall a road providing access only to a single commercial or industrial occupancy require naming or numbering.

(b) The size of letters, numbers, and symbols for road signs shall be a minimum four (4) inch letter height, half inch (.5) inch stroke, reflectorized, contrasting with the background color of the sign.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1274.02. Road Sign Installation, Location, and Visibility.

(a) Road signs shall be visible and legible from both directions of vehicle travel for a distance of at least one hundred (100) feet.

(b) Signs required by this article identifying intersecting roads shall be placed at the intersection of those roads.

(c) A sign identifying traffic access or flow limitations, including but not limited to weight or vertical clearance limitations, dead-end roads, one-way roads, or single lane conditions, shall be placed:

(i) at the intersection preceding the traffic access limitation, and

(ii) no more than one hundred (100) feet before such traffic access limitation.

(d) Road signs required by this article shall be posted at the beginning of construction and shall be maintained thereafter.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1274.03. Addresses for Buildings.

(a) All buildings shall be issued an address by the local jurisdiction which conforms to that jurisdiction's overall address system. Utility and miscellaneous Group U buildings are not required to have a separate address; however, each residential unit within a building shall be separately identified.

(b) The size of letters, numbers, and symbols for addresses shall conform to the standards in the California Fire Code, California Code of Regulations title 24, part 9.

(c) Addresses for residential buildings shall be reflectorized.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1274.04. Address Installation, Location, and Visibility.

(a) All buildings shall have a permanently posted address which shall be plainly legible and visible from the road fronting the property.

(b) Where access is by means of a private road and the address identification cannot be viewed from the public way, an unobstructed sign or other means shall be used so that the address is visible from the public way.

- (c) Address signs along one-way roads shall be visible from both directions.
- (d) Where multiple addresses are required at a single driveway, they shall be mounted on a single sign or post.
- (e) Where a road provides access solely to a single commercial or industrial business, the address sign shall be placed at the nearest road intersection providing access to that site, or otherwise posted to provide for unobstructed visibility from that intersection.
- (f) In all cases, the address shall be posted at the beginning of construction and shall be maintained thereafter.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

Article 4. Emergency Water Standards

§ 1275.00. Intent.

Emergency water for wildfire protection shall be available, accessible, and maintained in quantities and locations specified in the statute and these regulations in order to attack a wildfire or defend property from a wildfire.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1275.01. Application.

The provisions of this article shall apply in the tentative and parcel map process when new parcels are approved by the local jurisdiction having authority.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1275.02. Water Supply.

- (a) When a water supply for structure defense is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction except when alternative methods of protection are provided and approved by the local authority having jurisdiction.
- (b) Water systems equaling or exceeding the California Fire Code, California Code of Regulations title 24, part 9, or, where a municipal-type water supply is unavailable, National Fire Protection Association (NFPA) 1142, "Standard on Water Supplies for Suburban and Rural Fire Fighting," 2017 Edition, hereby incorporated by reference, shall be accepted as meeting the requirements of this article.
- (c) Such emergency water may be provided in a fire agency mobile water tender, or naturally occurring or man made containment structure, as long as the specified quantity is immediately available.

(d) Nothing in this article prohibits the combined storage of emergency wildfire and structural firefighting water supplies unless so prohibited by local ordinance or specified by the local fire agency.

(e) Where freeze or crash protection is required by local jurisdictions having authority, such protection measures shall be provided.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1275.03. Hydrants and Fire Valves.

(a) The hydrant or fire valve shall be eighteen (18) inches above the finished surface. Its location in relation to the road or driveway and to the building(s) or structure(s) it serves shall comply with California Fire Code, California Code of Regulations title 24, part 9, Chapter 5, and Appendix C.

(b) The hydrant head shall be a two and half (2 1/2) inch National Hose male thread with cap for pressure and gravity flow systems and four and a half (4 1/2) inch for draft systems.

(c) Hydrants shall be wet or dry barrel and have suitable freeze or crash protection as required by the local jurisdiction.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1275.04. Signing of Water Sources.

(a) Each hydrant, fire valve, or access to water shall be identified as follows:

(1) if located along a driveway, a reflectorized blue marker, with a minimum dimension of three (3) inches shall be located on the driveway address sign and mounted on a fire retardant post, or

(2) if located along a road,

(i) a reflectorized blue marker, with a minimum dimension of three (3) inches, shall be mounted on a fire retardant post. The sign post shall be within three (3) feet of said hydrant or fire valve, with the sign no less than three (3) feet nor greater than five (5) feet above ground, in a horizontal position and visible from the driveway, or

(ii) as specified in the State Fire Marshal's Guidelines for Fire Hydrant Markings Along State Highways and Freeways, May 1988.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

Article 5. Fuel Modification Standards

§ 1276.00. Intent.

To reduce the intensity of a wildfire by reducing the volume and density of flammable vegetation, the strategic siting of fuel modification and greenbelts shall provide for increased safety for emergency fire equipment and evacuating civilians by its utilization around structures and roads, including driveways, and a point of attack or defense from a wildfire.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1276.01. Setback for Structure Defensible Space.

(a) All parcels shall provide a minimum thirty (30) foot setback for all buildings from all property lines and/or the center of a road.

(b) When a thirty (30) foot setback is not possible for practical reasons, which may include but are not limited to parcel dimensions or size, topographic limitations, or other easements, the local jurisdiction shall provide for same practical effect.

(i) Same practical effect requirements shall reduce the likelihood of home-to-home ignition.

(ii) Same practical effect options may include, but are not limited to, noncombustible block walls or fences; five (5) feet of noncombustible material horizontally around the structure; installing hardscape landscaping or reducing exposed windows on the side of the structure with a less than thirty (30) foot setback; or additional structure hardening such as those required in the California Building Code, California Code of Regulations title 24, part 2, Chapter 7A.

(c) Structures constructed in the SRA are required to comply with the defensible space regulations in Title 14. Natural Resources Division 1.5. Department of Forestry and Fire Protection Chapter 7. Fire Protection Subchapter 3. Fire Hazard.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1276.02. Maintenance of Defensible Space Measures.

To ensure continued maintenance of commonly owned properties in conformance with these standards and to assure continued availability, access, and utilization of the defensible space provided by these standards during a wildfire, provisions for annual maintenance shall be provided in emergency access covenants or similar binding agreements.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1276.03. Disposal of Flammable Vegetation and Fuels.

Disposal, including chipping, burying, burning or removal to a site approved by the local jurisdiction, of flammable vegetation and fuels caused by site development and construction, road and driveway construction, and fuel modification shall be completed prior to completion of road construction or final inspection of a building permit.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

§ 1276.04. Greenbelts.

Subdivision and other developments, which propose greenbelts as a part of the development plan, shall locate said greenbelts strategically as a separation between wildland fuels and structures. The locations shall be approved by the local authority having jurisdiction and may be consistent with the CAL FIRE Unit Fire Management Plan or Contract County Fire Plan.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.

ATTACHMENT G

From: [Hernandez, Marcus](#)
To: [Tsuchimoto, Colleen](#)
Cc: [EXT.Alex.Goff](#)
Subject: [EXTERNAL] Re: Santa Clara County E-Referral : Record No. PLN18-8580, Comments Due February 6, 2021
Date: Tuesday, February 9, 2021 10:09:43 PM
Attachments: [Outlook-FF72A718.png](#)

Good evening Colleen,

This project (Record No. PLN18-8580) is located within the State Responsibility Area (SRA) and will need to follow all requirements of **California Code of Regulations Title 14 Natural Resources Division 1.5 Department of Forestry Chapter 7 - Fire Protection Subchapter 2 SRA Fire Safe Regulations Articles 1-5.**

Including the following,

1) Access roads to the property shall provide a minimum of two ten (10) foot traffic lanes and support 75,000 lbs. This access standard will be required from the beginning of the State Responsibility Area (SRA) to the property. This would be from Highway 9 to the property.

§ 1270.02. Scope

(a) These regulations shall apply to:

(1) the perimeters and access to all residential, commercial, and industrial building construction within the SRA approved after January 1, 1991 except as set forth below in subsection (b.);

§ 1273.00. Intent

Roads and driveways, whether public or private, unless exempted under 14 CCR § 1270.02(d), shall provide for safe access for emergency wildfire equipment and civilian evacuation concurrently, and shall provide unobstructed traffic circulation during a wildfire emergency consistent with 14 CCR §§ 1273.00 through 1273.09.

§ 1273.01. Width.

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

§ 1273.02. Road Surfaces

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

2) This project location is beyond the maximum length of a dead-end road.

§ 1271.00. Definitions

Dead-end road: A road that has only one point of vehicular ingress/egress, including cul-de-sacs and looped roads.

Road: Vehicular access to more than two (2) parcels; more than four (4) residential units; or access to any industrial or commercial occupancy. Includes public and private streets and lanes.

§ 1273.08. Dead-end Roads

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

parcels zoned for less than one acre - 800 feet

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

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

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

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

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

3) Bridge shall be designed for a live load sufficient to carry the imposed loads of fire apparatus and have appropriate signing.

§ 1273.07. Road and Driveway Structures

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

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

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

n, shall be installed and maintained.

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

4) Minimum turning radius for a turnaround shall be forty (40) feet or a hammerhead/T within 50 feet of the building.

§ 1273.05. Turnarounds

(a) Turnarounds are required on driveways and dead-end roads.

(b) The minimum turning radius for a turnaround shall be forty (40) feet, not including parking, in accordance with the figures in 14 CCR §§ 1273.05(e) and 1273.05(f). If a hammerhead/T is used instead, the top of the “T” shall be a minimum of sixty (60) feet in length.

(c) Driveways exceeding 150 feet in length, but less than 800 feet in length, shall provide a turnout near the midpoint of the driveway. Where the driveway exceeds 800 feet, turnouts shall be provided no more than 400 feet apart.

(d) A turnaround shall be provided on driveways over 300 feet in length and shall be within fifty (50) feet of the building.

5) This property will need to comply with the vegetation maintenance requirements of Public Resource Code (PRC) 4291.

§ 1276.01. Setback for Structure Defensible Space.

(c) Structures constructed in the SRA are required to comply with the defensible space regulations in Title 14. Natural Resources Division 1.5. Department of Forestry and Fire Protection Chapter 7. Fire Protection Subchapter 3. Fire Hazard.

Best Regards,

Marcus Hernandez

Fire Marshal

Morgan Hill Fire Department

CAL FIRE

Battalion 1608

From: Tsuchimoto, Colleen <Colleen.Tsuchimoto@pln.sccgov.org>

Sent: Friday, January 22, 2021 2:23 PM

To: Hernandez, Marcus; Duazo, Ed; Goff, Alex; Camacho, Leo; Lee, Darrin; Wong, Darrell

Subject: Santa Clara County E-Referral : Record No. PLN18-8580, Comments Due February 6, 2021

Warning: this message is from an external user and should be treated with caution.

Dear Referral Agencies/Divisions:

This is an electronic review for a planning application.

Please provide your comments/conditions on the following project to Colleen Tsuchimoto by February 6, 2021.

Project description: Resubmittal for Building Site Approval, Grading Approval, Variance for residence

See project plans attached for your review. If you need further information, contact project planner Colleen Tsuchimoto.

You may notice a resubmittal referral in Acella for the Bagnas property off Sanborn Rd. The applicant has made design changes such as grading, access road changes etc. to accommodate current County standards.

Roads and DEH previously deemed this application complete. Please check to see if your conditions need to be updated as there many revisions to these plans.

Fire Marshal, LDE, and Planning staff will be reviewing based on the last set of incomplete comments.

The project has also been modified to separate this parcel from the neighboring lot. Previously 2 parcels of land were combined on one set of plans. There are many issued with developing the other lot, hence one parcel is being considered at this time.

If you are not/no longer the correct person to receive this referral, please inform us by replying to this email.

Thanks,
Colleen

Colleen A. Tsuchimoto

Senior Planner I Habitat Conservation Plan Program Manager

**Department of Planning and Development
County of Santa Clara**

70 W. Hedding Street | 7th Floor | East Wing
San Jose | CA 95110

Please consider the environment before printing this email.

Please visit our [website](#).

Click [here](#) to look up unincorporated property zoning information.



Due to the immediate need of the Department of Planning and Development staff to support the County-wide effort regarding the COVID-19 Pandemic; there will be a delay in our ability to respond to telephone calls and emails.

Please note that the Department has procedures for electronic submittals. Please check our website at <https://www.sccgov.org/sites/dpd/Pages/DPD.aspx> for updates.

Confidentiality Notice: This email message and/or its attachments may contain information that is confidential or restricted. It is intended only for the individuals named as recipients in the message. If you are not an authorized recipient, you are prohibited from using, delivering, distributing, printing, copying, or disclosing the message or content to others and must delete.