

MONTEREY COUNTY



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June 15, 2021

Dear Chair Gilles and Board of Forestry Members:

On behalf of the Board of Supervisors of the County of Monterey, we want to thank your staff for listening to our comments over the last few months and making adjustments to the draft regulations. The draft regulations have evolved to address some of the concerns and are closer to being practical for use at the local level. However, we continue to have some significant concerns. We are requesting additional changes by way of this letter.

The regulations should reflect requirements that individual property owners can feasibly accomplish and that, in keeping with constitutional requirements, are roughly proportional to proposed development's impacts. Many of our concerns relate to the requirements for off-site road improvements that the draft regulations would require a private owner to undertake and the County to impose as a condition of project approval. These requirements may prohibit development, literally or functionally, or would lead to a significant number of exception requests, for which local government would be the ultimate appeal authority. That exception processing workload would be significant for County staff and for the local fire authority, and would cause significant uncertainty for property owners. Moreover, the draft regulations' proposed limited standard for the exception would expose the County to potential liability, including a potential takings' challenge if a denial of an exception would lead to denial of all development on a parcel. Our recommended changes would greatly reduce the need for exception requests, as we have been requesting from the first workshop, and make the exception process more workable.

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



We provide the following specific comments on the draft regulations:

Regulatory Package—County of Monterey staff have participated in RCRC's thorough review of the draft and the County generally supports RCRC's suggestions to clarify the draft regulations and make them more workable for local governments to apply. We are providing a summary of some of our larger concerns in this letter:

Article 1—the regulations should have an effective date that provides time for applicants to design their projects to the new regulations once approved in final form.

Definitions—we suggested modifications to many definitions and added definitions for a few key words used in the regulations, including a definition for Inspection Entity.

Section 1270.06—the regulations should recognize feasibility and property rights in the exception process. We have recommended changes to include consideration of these topics into the draft regulations.

Section 1273.00—Our staff recently discussed our concern with Board of Forestry staff on how the regulations allow development on existing roads. Your staff informed us that the draft regulations are intended to allow such development to occur on existing roads while only requiring improvements within the property (Perimeter). We support that intent. However, the regulations do not yet read that way and need clarification.

The proposed regulations require onerous, and typically infeasible, improvements to off-site roads for small subdivisions or any change in a use permit or zoning, even if it results in just a minor increase in density or intensity. In subsection (c), we recommend the state establish thresholds for land use density and intensity that would be allowed without having to meet off-site road standards.

Section 1273.05—we encourage that biological protections be included in the regulations in this section and in other areas.

Section 1273.08—at one of the earlier workshops, your team working on the regulations identified that the dead-end road standard was being reduced because jurisdictions were not accurately applying the current standards related



to the cumulative dead-end road length. Clarifying the language would solve that issue. We support retaining the current dead-end road length requirements of up to one mile so as to not cause properties and infrastructure developed under the current regulations to become non-conforming to the new regulations.

Section 1273.12—we appreciate the efforts made to create this section for standards for existing roads in response to our concerns raised in the workshops. We also appreciate the recent conversation with your staff to understand the intent of this regulation.

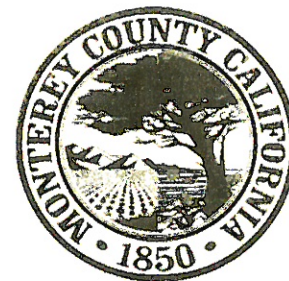
Section 1273.13—It is not clear when a requirement for a secondary road access would be triggered. The language should be clarified to describe what circumstances would trigger such a facility. In addition, the requirement to bring the secondary access to full road standard would be prohibitive, if not infeasible. Secondary roads should be all-weather access, but not be constructed to the full road standard.

Section 1276.02—we recommend that the strategic ridgeline regulations be applicable to new subdivisions where they can be incorporated into the overall design. Allowing them to also be designated elsewhere would only be acceptable if they do not require unconstitutional prohibition on development of private property. Local jurisdictions are not likely to designate strategic ridgelines that would require the local jurisdiction to prohibit all development on private property.

We also have identified that these regulations would result in physical changes to the environment and may have a significant effect on the environment. For example, the regulations may lead to additional road construction with its attendant potential environmental impacts. Accordingly, the BOF should prepare an Initial Study under the California Environmental Quality Act to analyze the potential environmental impacts of the proposed regulations and determine if the regulations can qualify for a Negative Declaration or would require preparation of an Environmental Impact Report.

We ask that the regulations be modified to reflect the comments received from the counties that will need to implement these regulations on a daily basis. Another round of public review should be provided for revisions to these important regulations.

We support the efforts of Board of Forestry staff to protect the public safety. Allowing carefully controlled development to occur in these hazardous fire areas



can be a benefit to public safety, as new construction would be required to adhere to new standards, which would include enhanced water supply, more attention to fuel modification, potential areas for refuge, and construction that would be better able to withstand wildfire. The County has been administering the regulations in the State Responsibility Area for thirty years, and will apply the existing regulations to the Very High Fire Hazard zone beginning July 1. While we applaud the Board of Forestry's efforts, we request the Board consider our recommended modifications and take into consideration the substantial effort and coordination of several counties to clarify and improve the draft regulations.

Sincerely,

Wendy Root Askew
Chair, Board of Supervisor