

June 17, 2020

Dear Edith:

We request that the Board of Forestry and Fire Protection (BOF) invoke its authority under CalFire regulation § 1270.05(c) “to inspect and enforce state forest and fire laws” with respect to five pending use permits in Sonoma County that are extremely problematic. Because the projects are located on only three roads within 16 miles of each another, field inspections could be completed in a half a day or less.

Under § 1270.05(e), inspections “shall occur prior to the issuance of the use permit.” The county may schedule hearings on these use permits within the next few months, so this request is timely. Pursuant to CalFire regulation § 1270.05(d), “[r]eports of violations shall be provided to the CAL FIRE Unit headquarters that administers SRA fire protection in the local jurisdiction.” We are unsure how to make a report to the correct unit, and request that you forward as appropriate.

By email dated May 4, 2020, Sonoma County Deputy Counsel Linda Schiltgen assured the BOF that currently “all commercial development use permits include a condition that the existing road must provide concurrent fire engine access and civilian evacuation.” Moreover, she stated “there must be 10 feet of vegetation clearance on each side of the road.”

In fact, Sonoma County is not applying these requirements. On June 1, 2020, we requested confirmation from the county that its “current” requirements are being applied to the following commercial cannabis cultivation projects that have pending conditional use permits:

- 4050 Grange Road (UPC17-0085) (10 feet wide; thick vegetation; 0.75 mile dead-end; see photo)
- 3700 Matanzas Creek Lane (UPC17-0083) (11-12 feet wide, steep drop-offs; 1-mile dead-end; see photo)
- 3803 Matanzas Creek Lane (UPC17-0065) (11-12 feet wide, steep drop-offs; 1-mile dead-end; see photo)
- 2000 Los Alamos Road (UPC17-0041) (5.6-mile dead-end, thick vegetation, 12 feet wide for upper mile, steep drop-offs, cliffs and many blind curves, then 10 feet wide private dirt road, see photo)
- 2260 Los Alamos Road (UPC18-0037) (5-mile dead-end, thick vegetation, 12 feet wide for upper mile, steep drops, cliffs and many blind curves, then 12 feet wide private gravel road, see photo)

The county has allowed four of these five projects (all except 3700 Matanzas Creek Lane) to operate without conditional use permits or fire prevention operating permits since 2017 (now the fourth growing season), contrary to law. With CalFire predicting an early fire season and these commercial operations being located in high or very high fire hazard severity zones, the county should cease jeopardizing the health and safety of firefighters and residents of these roads. The communities where these facilities are located were ordered to evacuate for a week during the 2017 Nuns Fire, and many homes and other buildings burned down.

Sonoma County responded to our June 1 request on June 3, 2020. Ms. Schiltgen stated that it is applying its defunct 2017 ordinance to these projects because the cannabis permit operations were submitted before January 1, 2020. Yet the county only referenced the California Fire Code relating to building permits, and the Sonoma County Code requiring that detailed plans be included with the permit application. None of these authorities relate to use permit applications. The county ignores that many of these projects require new building and road permit applications that have yet to be submitted, and which clearly will trigger the 2020 CalFire regulations.

Under its implementation of its 2017 ordinance, Sonoma County merely requires that a fire engine could likely drive on a road, with no more requirements. It does not even require that the fire engine can turn around to retreat from a life-threatening conflagration. For example, the attached fire inspection report for 2000 Los Alamos Road states access is sufficient because an “electric/hybrid vehicle was able to safely access the private road to the existing permitted structure.” The county’s application of its 2017 ordinance dismally fails to achieve the “same practical effect” as the CalFire requirements, and endangers firefighters and residents.

We appreciate that BOF staff have limited resources to conduct inspections, and cannot babysit every county or review every decision that is made throughout the state. But the BOF has wisely retained inspection authority, and should provide some oversight to rein in rogue jurisdictions. Overruling violations and dangerous decisions helps prevent a “race to the bottom” among jurisdictions who may compete for development with one another by vying to allow the laxest road safety standards.

Besides overruling Sonoma County’s decisions on these projects, understanding the county’s behavior will provide needed background to improve the BOF’s upcoming rulemaking. It will help the BOF understand how counties can game the system to bend or break the regulations. We believe the focus of that rulemaking should be to regulate all activities that increase occupancy, intensity, or fire risk, as stated by a BOF board member during the June meeting.

These inspections will assist the BOF’s decision making when Sonoma County reapplies for certification and can help avoid unintended consequences. In Sonoma County, an ideological County Counsel’s office, which serves as the county’s de facto fire marshal, knowingly applies its ordinance to avoid providing the same practical effect as the CalFire regulations.

We believe that Sonoma County should apply the 2020 CalFire regulations to these projects. If, the BOF were to decide that the county can apply its 2017 ordinance, the attached document “Application of the Exemption § 13-25(f) in 2017 Sonoma County Fire Code” should be of assistance.

How can there be safe concurrent civilian evacuation and fire engine ingress for commercial developments on 8-12-foot-wide roads, or on single lane 5-mile dead-end road with over 200 homes? We hope that you will clarify the legal requirements for Sonoma County, and direct it to stop ongoing projects on long, narrow dead-end roads pending their conformance to the CalFire standards.

Craig S. Harrison
Deborah Eppstein
Marylee Guinon

Attachments:

Fire Inspection Report, 2000 Los Alamos Road (April 12, 2019)

Application of the Exemption § 13-25(f) in 2017 Sonoma County Fire Code



Matanzas Creek Lane (11-12 feet wide)



Access from Grange Road (10 feet wide)



Los Alamos Road (12 feet wide for last mile)

**DEPARTMENT OF FORESTRY AND FIRE PROTECTION****Legal Services**

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September 1, 2020

Dear Mr. Harrison,

The Sonoma-Lake-Napa Unit (LNU) of the California Department of Forestry and Fire Protection (CAL FIRE) has received your communications regarding your concerns related to five pending Use Permit applications in Sonoma County.

As your communications note, LNU delegated the authorities of the Inspection Authority to Sonoma County pursuant to Title 14, Division 1.5, Chapter 7, Subchapter 2, Article 1, § 1270.05 effective January 1, 2016. In delegating Inspection Authority status to the County of Sonoma, CAL FIRE did not abrogate its authority to inspect and enforce state forest and fire laws. However, CAL FIRE does not step into conflict with delegated Inspection Authorities lightly. In the cases of the five Use Permits that you noted, CAL FIRE has inspected the roads as you requested, and it does not share your concerns. Therefore, CAL FIRE declines to countermand the delegated Inspection Authority as to those five projects.

Your communications also object that Sonoma County's current ordinances do not meet the "same practical effect" as the State Responsibility Area regulations. I understand that you have been working with the State Board of Forestry and Fire Protection (the Board) to express your concerns, as the Board, and not CAL FIRE, must make that determination.

If you have any question, please feel free to contact me by telephone (916.657.0561) or email (Toby.McCartt@fire.ca.gov).

Sincerely,

/s/

Toby A. McCartt
Assistant Chief Counsel

Cc: Chief Shana Jones, Unit Chief, CAL FIRE Sonoma-Lake-Napa Unit
James Williams, Fire Marshal/Fire Warden, County of Sonoma