

September 21, 2025

Board of Supervisors  
County of Lake  
255 N. Forbes Street  
Lakeport, CA 95453

***Sent via email only***

**Re: Public Comment — Do Not Form an Ad Hoc Committee Based on Resolution 2019-124; Rescind the Resolution and Align County Practice with the State Minimum Fire Safe Regulations (14 CCR, Subch. 2)**

Dear Chair Crandell, Vice Chair Rasmussen and Supervisors:

Thank you for your continued work on wildfire safety and for the opportunity to comment on the request to establish an Agriculture Road Standards Ad Hoc Committee. For the reasons set out below, the committee should not be formed because it would be premised on a resolution—Resolution 2019-124—that is materially flawed. The better course is to rescind Resolution 2019-124 and direct staff to apply the State Minimum Fire Safe Regulations (4290/SMFSR) based on actual road use, not road labels.

**Executive summary**

- Resolution 2019-124 contains dispositive legal errors: it misattributes the agriculture/mining road exemption to §1270.02 (instead of §1270.03(d)); its “no different and/or greater” phrasing comparing cannabis cultivation to conventional agriculture conflates Public Resources Code §§4290/4291 and invites a road label-first analysis contrary to the 4290/SMFSR’s use-based test. [16][1]
- Contrary to the Resolution’s claim, Napa County’s standards do not support a road labeling work-around to bypass 4290/SMFSR road safety requirements. Napa’s stated objective is to produce standards that equal or exceed the State Minimum Fire Safe Regulations; any exceptions are granted case-by-case under the codified process already articulated in the 4290/SMFSR.
- The Resolution incorrectly assumes Napa’s broader flexibility applies to all parcels in Napa County. In fact, Napa’s broader flexibility applies only to parcels entirely in the Local

Responsibility Area (LRA) and not in Very High Fire Hazard Severity Zone (VHFHSZ). Napa takes the opposite of a blanket re-labeling approach suggested by the Resolution.

[12][13][14]

- Napa’s definition of an “Agricultural Road” is a regulated, low-intensity road ( $\leq 40$  ADT (Average Daily Traffic, “ADT”)) with inter-visible turnouts and defined section/clearance, and it is not applicable to winery uses—undercutting the Resolution’s “vineyard” analogy.

[15]

- Forming a committee on the premise of Resolution 2019-124 would entrench these errors and prolong confusion. The request for Board direction itself hinges on Resolution 2019-124’s interpretation; reliance on a flawed resolution risks CEQA error and life-safety consequences. [18]

### **1) Why Resolution 2019-124 is fatally flawed and should be rescinded**

Resolution 2019-124 was adopted by your Board in 2019. In describing an exemption for “roads used for agriculture or mining,” it cites §1270.02(c); however, the governing text is §1270.03(d) (Scope): the road standards “shall not apply to Roads used **solely** for Agriculture; mining; or the management of timberland or harvesting of forest products.” Misattributing the section and omitting the critical term “solely” misstates both where the rule appears and what it requires. [16][1]

The controlling standard is the 4290/SMFSR’s use-based test. Under §1270.03(d), the road exemption applies **only** to Roads used **solely** for Agriculture/mining/timber; any residential or any commercial use along the route defeats it. Separately, a Driveway may not serve commercial or industrial uses “at any size or scale.” [1][2]

### **2) Napa’s standards — what they actually require (and why Resolution 2019-124 misreads them)**

Resolution 2019-124 treats “the Napa model” as if it authorizes exemption-by-labeling or a local pathway to sidestep the State Minimum Fire Safe Regulations (SMFSR) adopted under PRC §4290. Napa’s own standards say the opposite. [12]

Napa expressly states its objective is to “produce Standards which equal or exceed the 4290/SMFSR.” Where flexibility is available, exceptions are granted case-by-case under the process already codified in the 4290/SMFSR, with notice to CAL FIRE—that is, through documented, project-specific findings rather than by labels. [12][13] As explained in Section 4 below, Napa’s broader local discretion applies only on parcels entirely within the Local

Responsibility Area and not in a Very High Fire Hazard Severity Zone; otherwise, state-aligned standards govern. [14]

Napa’s definition of an “Agricultural Road” is strictly regulated and low-intensity. It is limited to no more than forty average daily trips, requires inter-visible turnouts and specified width/clearance and geometric standards, and is “not applicable to winery uses.” This undercuts any “vineyard” analogy for commercial access and confirms that Napa does not create a new exemption by relabeling roads; instead, it channels projects back to compliance or case-specific findings under the existing regulatory process. [15]

### **3) The “red-herrings”: MAUCRSA labeling and PRC §4291 do not change the §1270.03(d) test**

First, the “cannabis = agriculture” label does not control the exemption. MAUCRSA (Medicinal and Adult-Use Cannabis Regulation and Safety Act) defines commercial cannabis activity at the state level (see BPC §26001 and implementing regulations). A county cannot re-label state-licensed commercial activity as “non-commercial” to evade state minimum fire-safe standards; labels cannot change use. [17]

Second, PRC §4291 is about defensible space, not roads. PRC §4290 is the authority for the 4290/SMFSR (14 CCR, Subch. 2) that govern road and access standards; PRC §4291 concerns defensible space around structures and creates no road exemptions. Invoking §4291 to relax access requirements is therefore not applicable.

Again, what determines the exemption in 4290/SMFSR is actual use: under §1270.03(d), the road-standards exemption exists only for Roads **used solely** for Agriculture/mining/timber; any residential or any commercial use along the route defeats the exemption. Separately, the Driveway definition bars serving commercial or industrial uses “at any size or scale.” [1][2][5][6]

### **4) Where the SMFSR apply: SRA, LRA, and Very High Fire Hazard Severity Zones**

The Resolution incorrectly assumes Napa’s broader flexibility applies to all parcels in Napa County. In fact, Napa limits any broader local discretion to parcels entirely within the Local Responsibility Area (LRA) and not in a Very High Fire Hazard Severity Zone (VHFHSZ); projects in VHFHSZ must follow the stricter, state-aligned path. [12][13][14]

- State Responsibility Area (SRA): PRC §4290 and the SMFSR govern perimeters and access for residential, commercial, and industrial development in the SRA. [5]

- Local Responsibility Area (LRA): By statute, the SMFSR also apply within LRA Very High Fire Hazard Severity Zones for approvals issued on or after July 1, 2021. [16]
- Implication for “Napa model” claims: Any broader local flexibility Napa references is confined to parcels entirely in LRA and not in VHFHSZ; otherwise, projects must still meet state-aligned standards or obtain case-by-case exceptions under the codified process—not by relabeling roads. [14]

## **5) CEQA implications and administrative-record clarity**

Proceeding under Resolution 2019-124’s misstatements expose approvals to be set-aside under PRC §21168.5 for prejudicial abuse of discretion—either failure to proceed in the manner required by law or a decision unsupported by substantial evidence. PRC §21168.9 authorizes writs to void or suspend approvals and to direct specific corrective actions, with retained jurisdiction and potential fee awards. The Supreme Court’s decisions in *Vineyard and Sierra Club v. County of Fresno (Friant Ranch)* confirm that courts enforce reasoned analysis and will not defer to conclusory or legally flawed reasoning. [7][8][10][9][11]

**Notice to the Board.** These comments identify Resolution 2019-124’s specific legal inaccuracies and place the Board on notice that reliance on Resolution 2019-124 to bypass or dilute the 4290/SMFSR (14 CCR, Subch. 2) would risk failure to proceed in the manner required by law under PRC §21168.5. Continued use of the Resolution after this notice heightens that risk and invites the remedies available under PRC §21168.9, including vacatur/suspension and court-ordered corrective actions, as well as potential fee exposure. [7][8][11]

**Risk of confusion and reliance harms.** As discussed above, using a labeling device to imply an exemption confuses the Planning Commission and the public, harms applicants who invest in permits premised on a false “exemption,” and leaves communities dependent on substandard routes for emergency access and evacuation. A label-based approach creates a false impression of compliance when the 4290/SMFSR still apply, undermining life-safety outcomes and the integrity of the permitting process. [1][2][5][6]

**Recommended corrective course.** To avoid further confusion, reliance harms, and legal exposure, the best, safest, and proper course is to rescind Resolution 2019-124 and direct staff to apply the SMFSR based on actual road use, not labels, consistent with §1270.03(d) and the Driveway limitation. [1][2][16]

**Requested Board direction**

- 1) Do not form an Agriculture Road Standards Ad Hoc Committee premised on Resolution 2019-124. [18]
- 2) Rescind Resolution 2019-124 and suspend reliance on it for any road-standard determinations pending corrective action. [16]
- 3) Direct County Counsel to prepare a corrective action clarifying that the §1270.03(d) exemption is narrow and use-based (limited to Roads used solely for Agriculture/mining/timber) and that a Driveway cannot serve any commercial or industrial use. [1][2]
- 4) Clarify that “modeling after Napa” means meeting or exceeding the 4290/SMFSR and using case-by-case equivalency where legally available, with CAL FIRE notice—never creating exemptions by label. [12][13][14]
- 5) Direct staff to evaluate 4290/SMFSR compliance along the entire access route (not just on-site) for any project, and to require substantial evidence for any claim that a route is used **solely** for Agriculture; any residential or any commercial use on the route defeats the exemption. [1][5][6]

Respectfully submitted,

Thomas Lajcik

**Footnotes**

[1] Cal. Code Regs., tit. 14, §1270.03 (Scope), incl. subds. (a), (c)(3), (c)(4), and (d) (road standards do not apply only when Roads are used “solely” for Agriculture, mining, or timberland management/harvest).

[2] Cal. Code Regs., tit. 14, §1270.01, subd. (i) (Driveway definition: “A Driveway shall not serve commercial or industrial uses at any size or scale.”).

[3] CEQA Guidelines, Cal. Code Regs., tit. 14, §15124 (accurate, stable, finite project description) and §15126.2(a) (direct and reasonably foreseeable indirect effects).

[4] State Minimum Fire Safe Regulations establish minimum statewide standards; local jurisdictions may adopt equal or more stringent measures and may not create additional exemptions—see §§1270, 1270.05(c).

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[5] Cal. Code Regs., tit. 14, §1270.03 (application to perimeters and access; application for a use permit; road construction/extension).

[6] Cal. Code Regs., tit. 14, §1273.00 (Intent—standards intended to provide safe access for emergency wildfire equipment and safe concurrent civilian evacuation).

[7] Pub. Res. Code §21168.5 (prejudicial abuse of discretion—failure to proceed in the manner required by law or lack of substantial evidence).

[8] Pub. Res. Code §21168.9 (CEQA remedies; writ to set aside approvals, suspend activities, and direct specific corrective action; retained jurisdiction).

[9] *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502 (Friant Ranch) (requiring reasoned analysis connecting facts to conclusions).

[10] *Vineyard Area Citizens v. City of Rancho Cordova* (2007) 40 Cal.4th 412 (water-supply/analysis standards).

[11] *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 88–89 (use of an erroneous legal standard is a “failure to proceed in the manner required by law”).

[12] Napa County Road & Street Standards, §1(k) (objective to produce standards that equal or exceed the SMFSR).

[13] Napa County Road & Street Standards, §3 (exceptions must provide the same overall practical effect (SOPE); case-by-case; forwarded to CAL FIRE SLN).

[14] Napa County Road & Street Standards, §5 (broader flexibility only for parcels entirely within LRA and not in VHFHSZ; VHFHSZ follows Section 3/SOPE).

[15] Napa County Road & Street Standards, §14(i) (Agricultural Road — ≤40 ADT, inter-visible turnouts; not applicable to winery uses).

[16] Resolution No. 2019-124 (Board of Supervisors, Aug. 27, 2019) (miscitation to §1270.02 and “no different and/or greater application” language).

[17] Bus. & Prof. Code §26001 and MAUCRSA implementing regulations (state-level definition of “commercial cannabis activity”; local re-labeling cannot avoid state minimum safety rules).

[18] “Legislation Text – Request for Board Direction re: Ad Hoc Committee for Development of Agriculture Road Standards” (Sept. 23, 2025) (staff memo framing the committee request as grounded in Resolution 2019-124 and the Napa reference).