



COUNTY OF SAN DIEGO • DEPARTMENT OF PLANNING AND LAND USE

DATE: February 17, 2010

TO: Fire Appeals Board

SUBJECT: Marc Halcon (Covert Canyon LLC), Major Use Permit 3300 07-011 (P), Alpine Subregional Plan, District 2

SUMMARY:

Overview

The proposed project is a weapons training facility for local law enforcement and military groups that includes live munitions training activities for local and national security purposes. The project site is located within the California Department of Forestry and Fire Protection (CAL FIRE) State Responsibility Area for Wildland protection. Structural fire protection would be provided by the San Diego Rural Fire Protection District (SDRFPD). The project is subject to the State Responsibility Area (SRA) Fire Safe Regulations in California Code of Regulations, title 14, section 1270 et seq. and the County Consolidated Fire Code, both of which establish maximum dead-end road lengths based upon the zoning of properties served by the road.

The subject property, and all properties which the access road crosses, are zoned for 5-acre or larger parcels. Accordingly, the project is subject to a 2,640 dead-end road length limit. The project site is located at 19150/19191 High Glen Road, approximately 10,560 feet (2 miles) from Japatal Road which provides the first opportunity for two-way access.

Because the project exceeds maximum dead-end length standards, the applicant will require an "exception" from the SRA Fire Safe Regulations, which requires a determination that measures to be provided will accomplish the "same overall practical effect" of complying with the maximum length requirement. Similarly, the applicant will require a "modification" of the same maximum length limit in the Consolidated Fire Code, and for that, it must be found that there are practical difficulties with complying with the Code, that compliance is impracticable, that the modification is in compliance with the intent and purpose of the Code, and that the modification does not lessen health, life and fire safety requirements.

The Department of Planning and Land Use reviewed the applicant's request for an exception to the standards and determined that same practical effect cannot be found due to the significant exceedance of the dead-end road limit and the failure to identify or propose mitigation measures that would provide an equivalent measure of safety.

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The applicant is appealing this determination.

Issues to be Considered by the Fire Appeals Board

1. Does the project comply with primary access requirements for width, surface treatments, and fuel modification zones along roadways pursuant to the SRA Fire Safe Regulations?
2. Does the project comply with the maximum dead-end road length of 2,640 feet under both the SRA Fire Safe Regulations and the Consolidated Fire Code?
3. If the project does not comply with the SRA Fire Safe Regulations, does the project include measures that would provide an equivalent measure of safety for emergency access and evacuation, to allow for a finding of "same practical effect?"

BACKGROUND:

The project site is accessed via an unimproved, private dirt road, High Glen Road, which varies between 12 and 14 feet in width. High Glen Road connects to Japatal Road, which is located approximately 10,560 feet (2 miles) south of the subject property. The first mile of High Glen Road is a private access road that serves both the project site and other residences. After the first mile, High Glen Road becomes a national forest road. A special use permit has been granted by the U.S. Department of Agriculture (Cleveland National Forest, Sue Code: 753) for a 14-foot wide, 1.15-mile long road over federal lands to access the project area. Two gates are located along High Glen Road that delineate the boundaries for the Cleveland National Forest. There is no secondary point of access to the project site.

The subject property is located in a rural setting characterized by generally mountainous terrain vegetated with mixed chaparral, oak woodlands, and grasslands. The fire hazard rating for the site is Very High as mapped by CALFIRE. The nearest fire station is the CALFIRE Lyons Valley Fire Station #32 located approximately 11 miles or 20 minutes from the project site.

The applicant prepared a Fire Protection Plan that calls for new buildings to comply with San Diego County Building Code standards, including "Enhanced" building requirements (includes fire sprinklers) and the provision of 200 feet (three zones) of fuel modification around all structures. The applicant has also proposed to provide an additional water tank and to implement a shelter-in-place program.

PROJECT ISSUES:

Deficient Primary Access:

1. Access to the site is provided by High Glen Road, an approximately 12-14 foot private road. The primary access does not comply with the SRA Fire Safe Regulations requirement for an 18 foot wide road or the Consolidated Fire Code

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requirement for a 24 foot wide road. The applicant has not demonstrated that access rights can be acquired from the U.S. Forest Service to widen the road to fire code standards or to provide necessary fuel modification zones along the roadway. The substandard road width would not allow simultaneous firefighter ingress and civilian evacuation.

2. The primary access is restricted by 2 gates which are secured by padlocks and can only be manually opened by key. There is no assurance that all users of the proposed facility would possess keys to open the gates.
3. The unimproved primary access road does not provide the minimum surface treatment requirements for use by fire apparatus.

Dead-end Road Exceedance:

The proposed facility is located at the end of a 10,560 foot dead-end road. The SRA Fire Safe Regulations and the Consolidated Fire Code limit the maximum allowable length of dead-end roads which serve properties zoned for lot sizes of 5-19.99 acres to 2,640 feet. The project would exceed the dead-end road limit by 4 times the established standard.

The applicant has appealed the Department of Planning and Land Use's determination that the project relies on a road that exceeds the maximum dead-end road length allowed under the SRA Fire Safe Regulations and that a finding of "same practical effect" cannot be made. The applicant cited the following reasons for his appeal:

1. Same Practical Effect should be weighed against an access that is only 25% over a maximum 5,280 feet based upon a 40-acre minimum lot size currently in effect under Forest Conservation Initiative (FCI); rather than the doubling of the allowed distance required under 8-acre lot size.

Response: Both State and County Fire Codes establish dead-end road limits based on zoning. The project site is zoned for 8-acre lot sizes and is therefore subject to a 2,640 foot standard.

2. Consideration should be given to the unique character of the project that it is not the usual residential or commercial/industrial development that adds residents/occupants, flammable structures, and permanent uses that would be exposed to fire potential 24 hours a day, seven days a week.

Response: The SRA Fire Safe Regulations section 1270.02(c) includes "*applications for use permits*"; therefore, the project is subject to the regulations. The unique character of the proposed use would not improve firefighter access or civilian evacuation from the site.

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3. Additional facts about the site's accessibility need to be considered. During the Horse Thief Canyon Fire of 2006, CALFIRE utilized the Covert Canyon site as a staging area for fire operations. Fire trucks from CALFIRE accessed the property. Fire trucks associated with SDG&E maintenance operations regularly access the site. Finally, Loveland Reservoir, located less than four miles from the site, provides a limitless supply of water for water drops by helicopters.

Response: The use of the site as a staging area during a wildfire event does not mean that the site meets minimum fire safety requirements for a permanent use regulated by State and County fire codes.

4. The following project features adequately address Same Practical Effect for the secondary access issue.

a. **Provide and maintain a fire safety staging and protect in place facility**

A fire staging area and protect in place facility will be provided, surrounded by the appropriately-seized fuel management zone (200 feet). The facility shall provide a fire-safe refuge for up to 24 people for a 4-6 hour period. The concept for the structure is similar to commercially-available "FireArc" Chamber, which provide internal ventilation. The structure will be constructed of fireproof steel cladding, fire rated CMU, or equivalent. In addition, commercially available personal fire shelters will be stored in the fire staging area. As an alternative approved, the existing 1,600 square foot residence on-site, which is sprinklered and would maintain an approved 200 foot fuel management zone, should be considered.

Response: Safe evacuation is always the first option when there is a threat of wildfire. Shelter-in-place programs are not intended to be used in lieu of providing code complaint primary access. Evacuation from the site would be hindered by the narrow and poor condition of the primary access. The proposed shelter-in-place program (and its components detailed below by the applicant), do not provide any mitigation for the project's deficient primary access.

b. **Helicopter Evacuation**

As part of the existing Mishap Plan, Covert Canyon has registered with Lifeflight of San Diego. Lifeflight has the coordinates of the site. Emergency landing by Lifeflight is provided for by an FAA-approved landing strip that already exists on-site and can be used for emergency evacuations.

Response: San Diego Lifeflight is no longer in business. Air evacuation during a fire also compromises the safety of aerial firefighting activities.

c. **Maintenance of primary access road**

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The primary access road will be maintained to the maximum allowable width and in the safest possible condition as allowed by the Cleveland National Forest (CNF) Special Use Permit, already in possession by the Owner/Applicant. The schedule of the maintenance will be provided to the County. In addition, permission will be sought from CNF to provide turn-outs or turnarounds at appropriate intervals. Signs that indicate turn-out location would be installed, contingent upon CNF approval.

Response: As previously described, the primary access road does not meet requirements of either State or County fire codes and the applicant has not demonstrated that they can acquire easement rights to construct necessary improvements to achieve compliance.

d. No flammable structure proposed

The Project will propose no new flammable structures. Any new structures will be made of non-flammable steel (fire rated) or concrete (CMU or equivalent). Cargo boxes have previously been identified for storage and activity buildings for the project. These containers are not permanent in nature, can be made fire resistant, and can be removed from the site upon termination of the use as a range training facility.

Response: The SRA Fire Safe Regulations do not distinguish between use permit applications which propose new flammable structures and those which do not. The issue is placing humans in harm's way.

e. Provide additional water tank

An additional 5,000 gallon water supply tank would be installed to supplement the existing 10,000 gallon tank, along with a piping system to provide additional fire suppression capability. The existing 500-gallon portable water tank will be maintained and available for use at all times.

Response: The proposal is a minimum code requirement. Water facilities or availability do not improve access and therefore is not considered to be mitigation for access deficiencies.

f. Onsite ponds provide additional water source

Three separate seasonal ponds exist on site. During the dry season (summer and fall months), one pond will be maintained full from onsite well sources. Note that as recently as the Horse Thief Canyon Fire of July 23, 2006; these ponds were used by CALFIRE helicopters in fire suppression activities.

Response: See response to 4f above.

SUBJECT: Marc Halcon (Covert Canyon LLC), Major Use Permit 3300 07-011 (P), Alpine Subregional Plan, District 2

g. Fire Training Regimen for Covert Canyon Staff and Users

An approved training regiment and Mishap Plan (already in effect) will be prepared and incorporated into all training programs that specifically addresses actions to be taken in the event of a fire or other emergency requiring evacuation. Following the regiment will be mandatory for all users. County may review and offer suggestions for the procedures developed as part of the training regimen.

Response: This is a component of a shelter-in-place program. See response to 4a above.

h. Special Training for Covert Canyon Staff

All Covert Canyon staff will undergo fire safety training through CALFIRE or other County-approved training program.

Response: This is a component of a shelter-in-place program. See response to 4a above.

i. Restricted to Military and Law Enforcement Users

The facility is not available to the general public and civilian clubs will be prohibited. This will ensure that only properly trained and supervised individuals are using the facility. Interest in Covert Canyon by these organizations has been substantiated by submitted letters.

Response: This is a component of a shelter-in-place program. See response to 4a above.

j. Limitation on the number of vehicles allowed

A limit of 12 vehicles at any one time will be allowed on the site that are associated with training activities to limit the potential for congestion during a required evacuation.

Response: This is a component of a shelter-in-place program. See response to 4a above.

k. Incendiary/Flammable Ammunition will not be used

The use of incendiary or flammable ammunition will be prohibited. In addition, bullet impact areas on the range beams will be maintained free of flammable vegetation at all times, in accordance with standard firing range practices.

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Response: This is a component of a shelter-in-place program. See response to 4a above.

I. Monitoring of Fire Conditions

During all training activities, monitoring of fire conditions will be required. A fire notification alert system has already been developed and is employed with CALFIRE in Cover Canyon.

Response: This is a component of a shelter-in-place program. See response to 4a above.

m. Immediate shut down when a fire is present

With notification of a fire within 5 miles through the monitoring system above, all Covert Canyon activities will cease and safe evacuation will occur as directed in the training regimen or Mishap Plan. If safe evacuation is not possible, shelter in place procedures will occur. As noted in measure #2, an FAA-approved landing strip exists on the property and can be used for emergency evacuations.

Response: This is a component of a shelter-in-place program. See response to 4a above.

5. The following Military and Law Enforcement Agencies have shown interest and approval of the project via letters submitted:

Department of the Navy
U.S. Marine Corps
U.S. Immigration and Customs Enforcement
U.S. Coast Guard

Response: The support of these agencies do not provide mitigation for primary access deficiencies or the excessive dead-end road length.

DEPARTMENT BASIS OF DETERMINATION:

1. The primary access road, High Glen Road, is substandard and does not comply with the SRA Fire Safe Regulations. The 12-14 foot wide dirt road does not meet the 18 foot width requirement of the SRA Fire Safe Regulations. The applicant also has not demonstrated that easement rights can be obtained from the U.S. Forestry Service to widen the road to standards or to perform code required fuel modification along roadways.
2. The dead-end road length limit for the project is 2,640 feet pursuant to the SRA Fire Safe Regulations, which establish dead-end road limits based on zoning. The nearest public

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road that provides two-way travel is Japtaul Road, which is located approximately 10,560 feet from the project site. Thus, the proposed access is four times the maximum allowable length limit for a dead-end road.

3. Same Practical Effect cannot be found due to the severe deficiencies with the primary access road and the lack of any secondary access routes. The applicant's proposal to implement operational restrictions, provide additional water tanks, increase fuel modification zones, and develop a shelter-in-place program would not provide residents and emergency personnel as safe of an access as would compliance with the maximum dead-end road limit requirements.

cc:

Marc Halcon, Covert Canyon LLC, 5590 Ruffin Road, San Diego, CA 92124
RBF Consulting, Attn: Jeff Barfield. 9755 Clairemont Mesa Blvd., Suite 100, San Diego, CA 92124
RBF Consulting, Attn: Daniel Hortert. 9755 Clairemont Mesa Blvd., Suite 100, San Diego, CA 92124
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George Kvaas, Ramona Assoc LLC, 8812 La Mesa Blvd, La Mesa, CA 91941-5107
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David Nissen, Battalion Chief, San Diego Rural Fire Protection District, 14145
Alpine Community Planning Group

email cc:

Donna Beddow, Planning Manager, Department of Planning and Land Use
Brian Baca, Chief, Department of Planning and Land Use
Ed Sinsay, DPW Team Leader, Department of Public Works
Ralph Steinhoff, Fire Services Coordinator, Dept. of Planning and Land Use
Paul Dawson, Fire Services Coordinator, Dept. of Planning and Land Use
Pam Elias, Code Enforcement Manager, Dept. of Planning and Land Use
Adam Wilson, District Two, County of San Diego Board of Supervisors

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ATTACHMENTS:

Attachment A – Planning Documentation

Attachment B – Applicant's Documentation

CONTACT PERSON:

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Mail Station

patrick.brown@sdcounty.ca.gov.

E-mail

AUTHORIZED REPRESENTATIVE:

Eric R. Baca, Chief
For

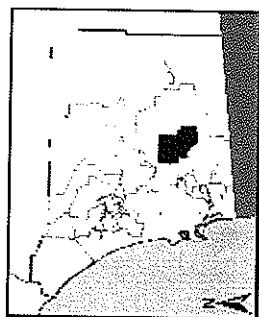
ERIC GIBSON, DIRECTOR

Attachment A

Planning Documentation

**Covert Canyon
P07-011
Vicinity Map**

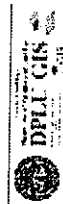
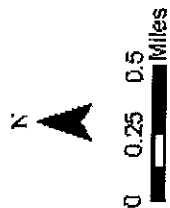
Alpine Community Planning Area



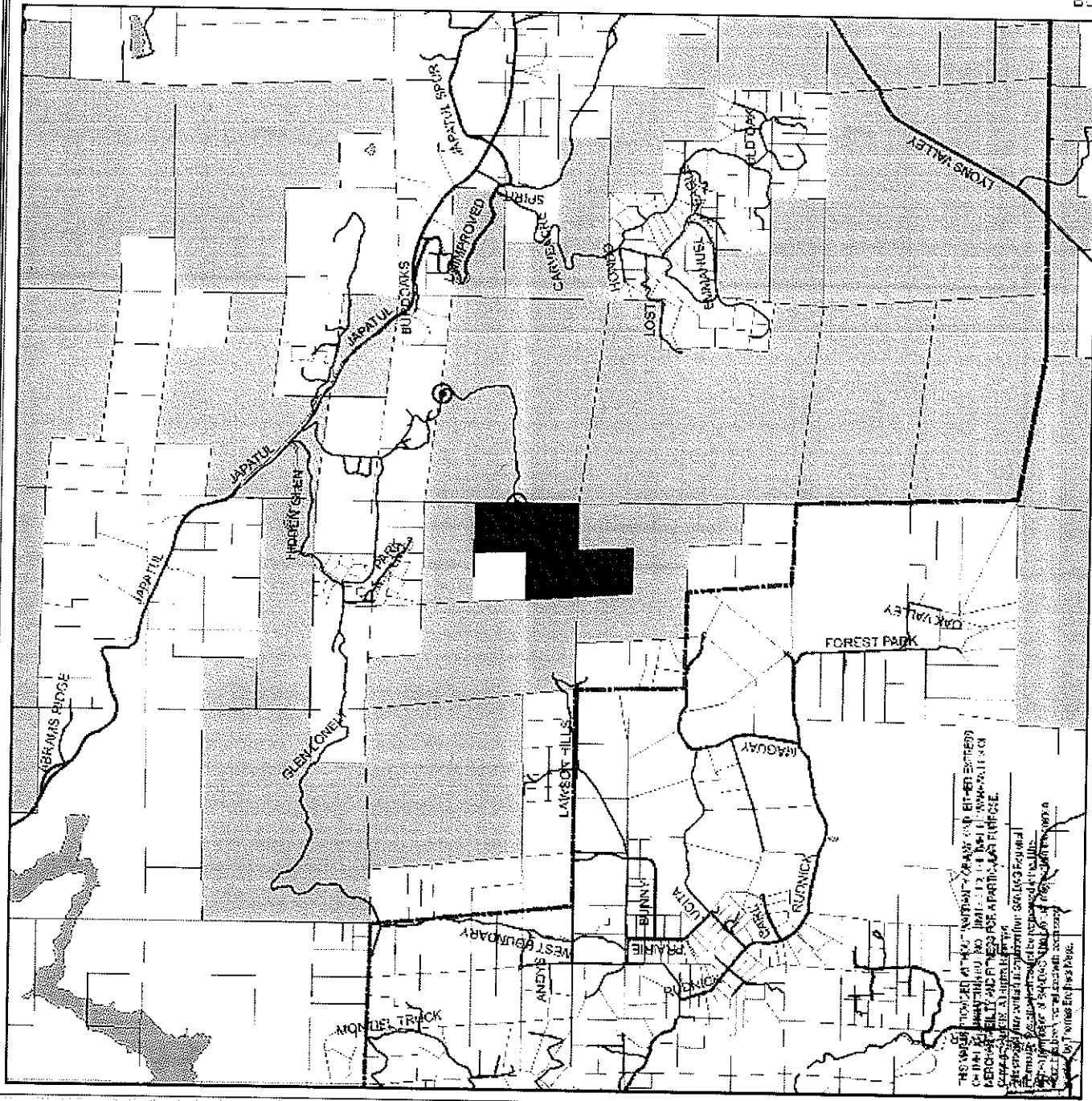
Legend

- ☐ Gates
☐ Roads
☐ Access
☐ Parcels
☒ Site

US Forest Service Ownership



0.22847 eV



**Covert Canyon
P07-011
2008 True Color Aerial**

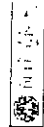
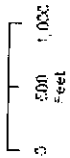
Alpine
Community Planning Area

● Gates

— Access Road

— Roads

□ Site



Scale 250,000:1 True Color Aerial Imagery for 2008



Attachment B

Applicant Documentation



January 15, 2010

JN 25-102677.001

Brian Baca, Chief
Department of Planning and Land Use
5201 Ruffin Road Suite B
San Diego, CA 92123

Subject: Covert Canyon Project, P07-011; Appeal from Determination Made by Fire Code Official

Dear Mr. Baca:

This correspondence is in response to your letter dated December 17, 2010. Your letter advises me, as the applicant's representative, that following review of additional information provided, the Department still cannot support the Covert Canyon Major Use Permit (Project) application, and intends to forward a recommendation of denial to the Planning Commission. You again indicate that your recommendation is based on the determinations by the San Diego County Fire Authority and the San Diego Rural Fire Protection District that even with the revisions to the proposed project and additional fire protection and prevention measures, the project will be unable to comply with County Fire Code and Title 14 provisions. The project revisions and fire safety measures that are proposed were identified and explained in our December 4, 2009 letter to you (attached).

This letter serves as the Applicant's appeal of your decision to the Regional Fire Board of Appeals from the Fire Code Official(s) determination, pursuant to Sec. 96.1.APP.108 of the County Fire Code. The basis of our appeal remains as previously summarized in our October 14, 2009 letter to the Department (also attached) with the following additions.

The Department has failed to be specific about the inconsistency of the proposed access with applicable fire regulations as the grounds for its decision; and

The Department has ignored Section 1270.07 of the California SRA Fire Safe Regulations. That provision allows for exceptions to standards and mitigated practices "where the exception provides the same overall practical effect as these regulations toward providing defensible space". Same Practical Effect in the SRA regulations is defined to mean "an exception or alternative with the capability of applying accepted wildland fire suppression strategies and tactics". The Project proposes a group of alternative fire safe measures which meet this standard. By ignoring these alternatives, the Department has not conducted a proper review and thus failed to properly exercise its discretion.

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Brian Baca, Chief
Department of Planning and Land Use
January 15, 2010
Page 2

Please call if you have any questions about the reasons for our appeal. We look forward to the opportunity before the Regional Fire Board. In the interest of economy, I suggest this appeal and our prior appeal be heard at the same time.

Sincerely,



Jeff Barfield, AICP
Vice President, Planning

Cc: Marc Halcon, Covert Canyon LLC
Robert Wright, Esq.

Attachments

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December 4, 2009

Brian Baca, Chief
Department of Planning and Land Use
5201 Ruffin Road, Suite B
San Diego, CA 92123

**Subject: Covert Canyon Project, P07-011;
Fire Safety/ Emergency Access Design Features to Achieve Same Practical Effect**

Dear Mr. Baca:

This letter is provided in follow-up to our meeting of November 18, to discuss the Department's letter dated September 15 to me expressing concerns over the Project's lack of secondary access and its intent to forward a recommendation of denial. Once again, thank you for meeting with us to discuss this initial conclusion and providing us this opportunity to summarize the project description and design features we would provide to ensure a fire-safe facility, meeting the requirement for a "same practical effect" (SPE) to secondary access, as provided for under Title 14, Section 1270.07.

Please note that we believe the context of SPE should more accurately be weighed against an access that is only 25% over a maximum 5,280 feet based upon a 40-acre minimum lot size currently in effect under F.C. I., rather than the doubling of the allowed distance required under an 8-acre lot size. It also should consider the unique character of the project that is not the usual residential or commercial/industrial development that adds residents/occupants, flammable structures, and permanent uses that would be exposed to fire potential 24 hours a day, seven days a week. To the contrary, the Covert Canyon Project is limited in potential exposure to a fire emergency.

The relatively remote nature of the property, together with its location within an area approved for shooting had much to do with its selection as the site for the proposed facility. The applicant preferred a site removed from residential uses or other development, yet close enough in travel time for potential users to access it in a relatively short drive time. The location and safety issues were taken into consideration when the facility was approved by the Department of the Navy in 2006.

Some additional facts about the site's accessibility need be considered. During the Horse Thief Canyon fire of 2006, Cal Fire utilized the Covert Canyon site as a staging area for fire operations. Fire trucks from Cal Fire accessed the property. Fire trucks associated with SDG&E maintenance operations regularly access the site. Finally, Loveland Reservoir, located less than four miles from the site, provides a limitless supply of water for water drops by helicopters.

With the above facts in mind, the Covert Canyon project proposes that a combination of many or all of the following project features would adequately address the secondary access issue. These features would be

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incorporated into the project description and conditions of approval and thoroughly discussed in a revised Fire Management Plan (FMP). The major use permit, if required, would incorporate these measures into the facility's operation and documentation can be provided that the measures have been implemented. All of the proposed measures can be substantiated.

1. Provide and maintain a fire safety staging and protect in place facility.

A fire staging area and protect in place facility will be provided, surrounded by the appropriately-sized fuel management zone (200 feet). The facility shall provide fire-safe refuge for up to 24 people for a 4 to 6-hour period. The concept for the structure is similar to commercially-available "FireArc" Chamber, which provide internal ventilation. The structure will be constructed of fireproof steel cladding, fire rated CMU, or equivalent. In addition, commercially available personal fire shelters will be stored in the fire staging area. As an alternative approach, the existing 1,600 square foot residence on-site, which is sprinklered and would maintain an-approved 200-foot fuel management zone, should be considered.

2. Helicopter Evacuation

As part of the existing Mishap Plan, Covert Canyon has registered with Lifeflight of San Diego. Lifeflight has the coordinates of the site. Emergency landing by Lifeflight is provided for by an FAA-approved landing strip that already exists on-site and can be used for emergency evacuations.

3. Maintenance of primary access road.

The primary access road will be maintained to the maximum allowable width and in the safest possible condition as allowed by the Cleveland National Forest Special Use Permit, already in possession by the Owner/Applicant. The schedule of maintenance will be provided to the County. In addition, permission will be sought from CNF to provide turn-outs or turn-arounds at appropriate intervals. Signs that indicate turn-out locations will be installed, contingent upon CNF approval.

4. No flammable structures proposed.

The Project will propose no new flammable structures. Any new structures will be made of non-flammable steel (fire rated) or concrete (CMU or equivalent). Cargo boxes have previously been identified for storage and activity buildings for the project. These containers are not permanent in nature, can be made fire resistant, and can be removed from the site upon termination of the use as a range training facility.

5. Provide additional water tank.

An additional 5,000 gallon water supply tank would be installed to supplement the existing 10,000 gallon tank, along with a piping system to provide additional fire suppression capability. The existing 500-gallon portable water tank will be maintained and available for use at all times.

6. Onsite ponds provide additional water source.

Three separate seasonal ponds exist on site. During the dry season (summer and fall months), one pond will be maintained full from onsite well sources. Note that as recently as the Horse Thief Canyon fire of July 23, 2006, these ponds were used by Cal Fire helicopters in fire suppression activities.

7. Fire Training Regimen for Covert Canyon Staff and Users

An approved training regimen and Mishap Plan (already in effect) will be prepared and incorporated into all training programs that specifically addresses actions to be taken in the event of a fire or other emergency requiring evacuation. Following the regimen will be mandatory for all users. County may review and offer suggestions for the procedures developed as part of the training regimen.

8. Special Training for Covert Canyon Staff

All Covert Canyon staff will undergo fire safety training through Cal Fire or other County-approved training program.

9. Restricted to military and law enforcement users.

The facility is not available to the general public and civilian clubs will be prohibited. This will insure that only properly trained and supervised individuals are using the facility. Interest in Covert Canyon by these organizations is substantiated by the letters enclosed.

10. Limitation on the number of vehicles allowed.

A limit of 12 vehicles at any one time will be allowed on the site that are associated with training activities to limit the potential for congestion during a required evacuation.

11. Incendiary/ Flammable Ammunition will not be used.

The use of incendiary or flammable ammunition will be prohibited. In addition, bullet impact areas on the range berms will be maintained free of flammable vegetation at all times, in accordance with standard firing range specifications.

12. Monitoring of Fire Conditions

During all training activities, monitoring of fire conditions will be required. A fire notification alert system has already been developed and is employed with Cal Fire for Covert Canyon.

13. Immediate shut down when a fire is present.

With notification of a fire within 5 miles through the monitoring system above, all Covert Canyon activities will cease and safe evacuation will occur as directed in the training regimen or Mishap Plan. If safe evacuation is not possible, shelter in place procedures will occur. As noted in Measure # 2, an FAA-approved landing strip exists on the property and can be used for emergency evacuations.

These items, individually, would provide significant safety improvements over existing conditions without the Covert Canyon project. Collectively, with Covert Canyon operating, these measures would address the most serious emergency/fire access condition. The conditions are plausible and they can be verifiably implemented.

Military and Law Enforcement Interest and Approvals

Lastly, in our November 18 meeting, we discussed the interest shown from military and law enforcement agencies. We have enclosed a sample of interest letters and letters approving the Covert Canyon facility from military and law enforcement agencies, which include:

- Department of the Navy
- U. S. Marine Corps
- U.S. Immigration and Customs Enforcement
- U.S. Coast Guard

We request that you consider the foregoing facts, evaluate these potential measures, and reconsider your initial conclusion concerning access to the Covert Canyon site. Our suggestion is that we focus our next efforts on the preparation and review of a revised FMP. Following that, a better, more conclusive decision on the future processing of the major use permit application would be expected. Please call me if you have any questions.

Sincerely,



Jeff Barfield, AICP
Vice President, Planning

Enclosures

CC: Marc Halcon, Covert Canyon LLC
Robert Wright, Esq.

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October 14, 2009

Brian Baca, Chief
Department of Planning and Land Use
5201 Ruffin Road, Suite B
San Diego, CA 92123

**Subject: Covert Canyon Project, P07-011; Appeal from Determination Made
by Fire Code Official**

Dear Mr. Baca:

This correspondence is in response to your letter dated September 15, 2009. Your letter advises me, as the applicant's representative, that the Department cannot support the Covert Canyon Major Use Permit (Project) application, and intends to forward a recommendation of denial to the Planning Commission. You indicate that your recommendation is based on the San Diego County Fire Authority and the San Diego Rural Fire Protection District determinations that the proposed project will be unable to comply with County Fire Code and Title 14 provisions. Those determinations are presented in a letter to the Department from the Fire Services Coordinator and focus primarily on dead-end road length and secondary access requirements.

This letter serves as the Applicant's appeal to the Regional Fire Board of Appeals from the Fire Code Officials' determinations, pursuant to Sec. 96.1.APP.108 of the County Fire Code. The basis of our appeal is summarized below.

Concurrently, we have requested of the Department's Project Manager for the Project, Patrick Brown, that a meeting be arranged to discuss the Department's intended recommendation, as was offered in your letter of September 15. The purpose of this meeting is to present our position that the Fire Officials' determinations have been made prematurely and without allowing us adequate time to provide a Fire Management Plan (FMP) that addresses the fire concerns just now presented by the Fire Officials. We also want to discuss the contradictions in direction that have been provided to us regarding the review of the project by Department Staff and Fire Officials. These contradictory directions, in part, form the basis of the appeal, therefore we would like the opportunity to discuss them with you at the meeting. We have requested Mr. Dave Nissen, Fire Chief of the Rural Fire Protection District and Mr. Ralph Steinhoff, County Fire Services Coordinator, to be in attendance at this meeting along with appropriate County Staff.



Basis for Appeal

The Fire Officials and the Department have not allowed the Applicant adequate opportunity to address fire concerns.

During a project issue resolution (PIR) process in March of this year, following receipt of the Applicant's first iteration comment letter, the Department directed the Applicant to concentrate efforts in two other subject areas (noise and restoration). Both of these efforts were made and project plans and information were submitted to the County for further review. During this period, it was recommended to us not to proceed with other project analyses until the County completed the review and was satisfied with the information and plans submitted.

The Applicant withheld work on the FMP pending this determination. It is questionable for the Fire Official to conclude that it is "doubtful" measures can be taken to mitigate fire and evacuation concerns without providing the Applicant adequate opportunity to present an FMP addressing these concerns. In addition, neither Fire Official has offered us an opportunity to discuss their issues regarding the FMP, road improvements, or secondary access and possible solutions to these fire access issues.

The Fire Officials fail to consider the unique nature of the Project and apply fire access standards without regard to the character of the Project.

In this case, the Fire Officials are failing to exercise reasonable discretion in reviewing the Project. Under both Title 14 and the County Fire Code, the Fire Official may consider alternative measures to achieve the same practical effect for fire safety. These could be in the form of project description revisions, onsite measures to protect in place users of the facility, or even possible aerial evacuation. The Project proposes a low intensity use that includes no new dwellings or flammable structures. The law enforcement training to occur is transitory in nature, and can be controlled in terms of how and when it operates, unlike residential and most commercial and industrial uses. Those involved in the training are military or law enforcement professionals, accustomed to following strict instructions on all aspects of their professional training and conduct. In addition, those participating in the training are provided transportation to and from the site in vans, controlling when and how egress occurs and reducing the number of vehicles involved. The Applicant is considering a number of measures and strategies that, when combined, will assure that those involved in the training are protected from the risk of fire and have an adequate means of emergency evacuation.

The Fire Officials have provided contradictory information to the Department and the Applicant.

In preparing responses to the Department's March, 2009 comment letter, we contacted the Rural Fire Protection District seeking the District's comments on the FMP. We sought these comments because County Staff had indicated no response from the District had been received and thus was recommending County-standard private road improvements for the project, without regard for the unique characteristics of the project or other measures that might be applied for the same practical effect.

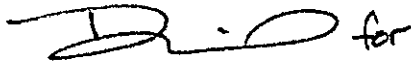


In telephone discussions in March with a member of my staff, Mr. Nissen indicated that he was in agreement with the FMP that had been filed and was only waiting for payment of the Fire Mitigation Fee before forwarding his comments to the County. Our concern that the Fire Mitigation Fee was being requested in advance of MUP approval had already been brought to the attention of County staff, with no resolution.

In the September 9, 2009 letter to the Department's Project Manager, Mr. Steinhoff references a correspondence received in February from Mr. Nissen, prior to our staff's communication with Mr. Nissen, in which Mr. Nissen indicates "that he cannot support this project." Because we were unaware of this correspondence, and because this contradicted what was told to our staff in March, we have inquired into the February correspondence Mr. Steinhoff references. We have since been informed that there was never a formal correspondence but rather a possible email. Upon further request for documentation, we are now advised the decision was based on a telephone conversation and no official documentation exists prior to the September 15th, 2009 determination. This raises our concerns that we have not been properly advised of important communications and reviews that have influenced how the project is perceived in terms of the Fire Code and Title 14. Had we known of these communications, we could have addressed them prior to a final determination.

In summary, we believe the decision of the Fire Officials is premature, that the Applicant has not been provided an opportunity to respond to fire access concerns, and that the decision to recommend denial ignores Fire Code and Title 14 provisions that allow for discretion in applying standards. We are hoping that the requested meeting will clarify these points and that the Fire Official will defer a recommendation on the Project pending a revised FMP and Project Description submittal. Please call me if you have any questions regarding this appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Barfield", followed by the word "for" in a cursive script.

Jeff Barfield, AICP
Vice President, Planning