



County of El Dorado

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December 6, 2023

Debra Miller, President
and
Kimberly Beal, Government Affairs Director
El Dorado County Association of Realtors
PO Box 627
Shingle Springs, CA 95687

RE: Hazardous Vegetation and Defensible Space Ordinance

Dear Ms. Miller and Ms. Beal:

Please find the County's response(s) to EDCAR member concerns in your letter dated November 30, 2023.

- Section 8.09.020 – Findings – Item C Reads:** *“All parcels in the County have been identified and designated as being within either a State Responsibility Area (SRA) or Local Responsibility Area (LRA) Moderate, High or Very High Fire Hazard Severity Zone by the California Department of Forestry and Fire Protection (CAL FIRE) in accordance with the most current edition of the Fire and Resource Assessment Program (FRAP) Map. The County is located in a mountainous and/or hilly region of Northern California. The County has a diverse and complex landscape which includes mountains, forests, chapparal or grass covered wildlands which have the potential to fuel a catastrophic fire event;”*

EDCAR Feedback:

When did Cal Fire designate all parcels in the County as being within either a State Responsibility Area (SRA) or Local Responsibility Area (LRA) Moderate, High or Very High Fire Hazard Severity Zone in accordance with the most current edition of the Fire Resource Assessment Program (FRAP) Map? When will the Map be available to the public?

EDC Response:

SRA Designation: The Board of Forestry and Fire Protection (CAL FIRE) is responsible for determining the SRA ([PRC 4125](#)) Statute has been in place since 1965 and amended July 1, 1998. SRA is remapped every 5 years to reflect any potential changes in SRA lands and was last updated July 8, 2020

Fire Hazard Severity Zones (FHSZ): Classification of lands within SRA into FHSZ has been required since 1985 and amended 2021 (PRC 4201-4204). The maps were last updated 2007. The most current map is available to public now. Revised maps are currently in regulatory review. Adoption of the new maps is expected in January 2024. The maps expected to adopted can be found on the website for the Office of the State Fire Marshal, at osfm.fire.ca.gov.

EDCAR Feedback:

The State requires that a Natural Hazard Disclosure Statement be prepared and given to all Buyers of Real Property. One of the six potential Hazardous areas to be disclosed is when the property is located in a Very High Fire Hazard Severity Zone. With the adoption of this local Ordinance will Sellers be required to disclose whether a property is in a Moderate or High Fire Hazard Severity Zone?

EDC Response:

Sellers are already required to disclose this, per PRC 4136 and CIV 1102.3.

2. Section 8.09.070 – Duty to Remove and Abate Hazardous Vegetation and Combustible

Material-Item C Reads: *“Prior to the close of any Real Estate Transaction subject to Civil Code section 1102.19 within the County, the seller of any real property shall obtain a defensible space inspection report from an Investigating Official that the property is in compliance with this Chapter and provide that report to the buyer at or before the close of escrow. If the property inspected is found not in compliance with this Chapter the Responsible Person(s) will need to perform the necessary wildfire protection measures as specified within the inspection report and have the property inspected again prior to escrow or the buyer shall agree to achieve compliance within 90 days as specified in this Chapter. If an Investigating Official is unable to provide a defensible space inspection report at the time of escrow, the buyer shall request a report from an Investigating Official stating the property is in compliance with this Chapter within 90 days after the close of escrow, unless otherwise approved by the Enforcement Official. Nothing in this subsection, including the existence of an agreement between a buyer and a seller, shall limit the ability of the Enforcement Official to enforce the provisions of this Chapter.”*

EDCAR Feedback:

In general, the Realtors Associations are opposed to Point of Sale regulations. It is important to state that REALTORS are in support of the policy in home hardening and defensible space for homeowners. The association has no objections to the physical requirements of the inspection, but rather has serious concerns over the mandate that this policy is be carried out primarily through sales of homes.

The purchase of a home is often one of the most significant financial and complex transaction that a person makes in their lifetime. Combined with today's limited inventory, high prices and mortgage rates, the dream of buying a home can be complicated with a variety of contingencies that have limited homeownership opportunities to fewer households. Although the purpose of this inspection is good policy and justifiable in today's extreme fire prone environment, it doesn't make sense to solely enforce these inspection requirements on those few households that are trying to sell or buy a home.

By only requiring an inspection of homes that recently sold, it will take El Dorado County decades to have achieved any significant compliance in obtaining the inspection. According to our research, by the year 2050 there would be just under two-thirds compliance within the total number homes in the County. With the risk of fires being so severe, it is impractical to enact such an important policy that only is triggered at the infrequent time of when a home is sold or transferred. Public safety measures, such as this proposed ordinance, should not be imposed on a small class of people (homebuyers and sellers) when the benefits of enforcement serve the greater good of the entire community.

EDC Response:

The State of California has determined that disclosures *shall* occur in connection with real estate transactions. The Proposed Ordinance is consistent with state law. Real Estate transactions are not the only means of checking properties for compliance. CAL FIRE has had a statewide goal of inspecting 250,000 parcels annually since 2015 and performs two-to-three thousand inspections annually within the County. In addition, since the adoption of the ordinance in 2019, the County or its contractors have performed several hundred inspections annually in areas pre-identified for outreach and education and performs inspections on properties on which complaints are received. The County's Office of Wildfire Preparedness and Resilience (OWPR), working with the El Dorado County Fire Safe Council, has also trained over 70 defensible space assessors to work in their communities in a volunteer capacity to educate residents about how they can protect their properties and connect them with resources to help get the work done. Some local fire agencies, such as El Dorado County Fire and Lake Valley Fire Protection District also perform defensible space inspections within their districts. OWPR has set a goal of contacting each improved parcel, through inspection or assessment by all allied agencies and organizations, once every seven years. The passage of AB 38 by the legislature provides one additional opportunity to ensure homeowners are aware of their responsibilities.

EDCAR Feedback:

Does the requirement for inspections of "real property" include vacant parcels, commercial-industrial improved property, and manufactured homes in Mobile Home Parks?

EDC Response:

Pursuant to Civil Code section 1102, the requirement applies to "single family residential property." This is defined in Business and Professions Code section 10018.08 and includes "a mobile home or manufactured home when offered for sale or sold through a real estate broker pursuant to section 10136.1." Civil Code section 1102.2 provides several exemptions to the requirement, which the Realtors Association should review, one of which is "Sales or transfers of any portion of a property not constituting single-family residential property." In summary, mobile and manufactured homes are included but commercial-industrial improved property is not.

EDCAR Feedback:

Add language that the seller may provide the buyer a defensible space inspection report obtained within the six-month period preceding the date the seller enters into a transaction to sell real property, or after the seller enters into a transaction to sell real property and prior to close of escrow. (AB 38 provides language supporting this.)

EDC Response:

We agree adding this language to the ordinance will be helpful.

EDCAR Feedback:

Instead of 90 days allow 180 days after the close of escrow for the buyer to achieve compliance with a report, whether the report is obtained during or after the close of escrow. Weather conditions alone may not provide the opportunity to obtain an inspection report during escrow or immediately after the close of escrow. And obtaining quotes from service providers and then scheduling the work may take longer than 90 days. **(AB 38 states the buyer shall obtain documentation of compliance within one year of the date of the close of escrow.)**

EDC Response:

It is important to remember that state law already requires all properties subject to PRC 4291 be in compliance at all times. Though Civil Code section 1102.19 allows up to one year for a buyer to provide documentation of that compliance *where a local vegetation management ordinance doesn't exist*, that does not exempt that owner from being in compliance with state or local defensible space requirements presently and at all times. The Defensible Space working group recommends that the Board of Supervisors provide a 90-day grace period for a buyer to obtain documentation of compliance. This is a shorter grace period than offered by the State in the absence of the presence of a local ordinance; however, the Working Group determined that scheduling a reinspection with the new property owner should be a priority in order to provide the opportunity to educate the homeowner about their responsibilities and offer potential resources that might assist that homeowner in getting the work done. There is no intent to use this inspection to penalize a homeowner. The Board of Supervisors does have latitude to extend this period should it choose to do so.

EDCAR Feedback:

The California Association of Realtors Fire Hardening and Defensible Space Disclosure and Addendum (FHDS) allows a seller and buyer to determine which party shall obtain compliance.

EDC Response:

The County cannot comment on the California Association of Realtors form and whether it complies with the meaning and intent of Civil Code section 1102.19.

EDCAR Feedback:

Will all Investigating Officials be required to submit their Defensible Space Inspection Reports to the County or another agency? Will the public have access to property Inspection Reports?

EDC Response:

All Investigative Officials collect inspection data in the same software platform, to which the County has access. Inspection Reports are public records, subject to disclosure under the California Public Records Act. Information regarding a complainant, where the inspection was triggered by a complaint, is confidential and will not be disclosed.

EDCAR Feedback:

AB 38 Only requires a point of sale Inspection of real property located in a High or Very High Hazard Severity Zone. Why is El Dorado County requesting inspections in some areas that are Moderate or No Fire Hazard Severity Zones when AB 38 does not require it?

EDC Response:

The ordinance mirrors the Civil Code in this regard. section 8.09.070 C. begins, "Prior to the close of any Real Estate Transaction subject to Civil Code section 1102.19..." Real estate transaction inspections are only required in High or Very High Fire Hazard Severity Zones.

3. **Item D.4 Reads:** *"The Responsible Person(s) who perform Hazardous Vegetation management activities that remove or dispose of Vegetation is required to comply with all federal, state, or local environmental protection laws and obtain permits when necessary. Environmental protection laws include, but are not limited to, threatened and endangered species, water quality, air quality, and cultural/archeological resources."*

EDCAR Feedback:

Should a Defensible Space Inspection Report require the removal of an Oak tree, will the property owner be required to obtain a permit to remove the tree?

EDC Response:

The Responsible Person is obligated to take action consistent with the findings in the Inspection Report to bring their property into compliance with state and local law. As with any other work on one's property, the Responsible Person must obtain the necessary clearances, permits, etc., to the extent applicable.

4. **Section 8.09.110. – Enforcement Procedure – Reads:** *"A request that such Hazardous Vegetation, and/or Combustible Materials be removed or Abated by the date specified in the notice, which shall be no less than 15 calendar days following the mailing or posting of the Notice;"*

EDCAR Feedback:

Instead of 15 calendar days make it 60 calendar days following the mailing or posting of the notice.

EDC Response:

When a property is inspected, the Investigative Official has the discretion to extend the time for compliance depending upon the particular circumstances of that property. It is not until there is a determination that the Responsible Person(s) is(are) non-responsive or refuse to bring the property into compliance after multiple contacts. These contacts by the Investigative Official may be spread out over several months or more. Only then is the matter referred to OWPR for further handling. The Proposed Ordinance then requires the County, through the OWPR, to engage in a meet and confer process with the Responsible Person(s). The length of this process is determined by the Enforcement Official and may last several months or more. It is only after all of the time described above passes that the matter is enforcement.

By the time the Notice and Order is issued, the conditions have existed for several months or more. The Notice is NOT the first tool accessed in the OWPR toolbox; it is the final tool. Defensible space is a timely need. By the time the Notice is issued, it is quite possible that time has taken this issue into the next fire season. The 15 days is a reasonable timeline to give the Responsible Person(s) one last opportunity to comply after having been given many months in the process. First, it is important to note that such a notice would only be sent or

posted if the meet and confer process has failed, which generally means the property owner is either non-responsive or has refused to comply despite having the means to do so. In such instances, the Enforcement Official has discretion to determine the appropriate amount of time that is reasonable to obtain compliance. The goal is compliance, not assessing penalties, so the Enforcement Official will provide sufficient time for compliance, if they feel there is a chance the property owner will begin to cooperate. The Enforcement Official must have flexibility given the wide variety of situations that will arise, and there may be instances in which a threat is so extreme or imminent that the 15 day timeframe may be appropriate. The property owner also has the opportunity to appeal a notice. The appeals process pauses any further enforcement action until the appeal has been adjudicated.

If you have any other questions, please feel free to contact me.

Sincerely,



Sue Hennike
Assistant Chief Administrative Officer