

December 11, 2023

TO: Members of the Board of Supervisors, Sue Hennike - Assistant CAO & Clerk of the Board

RE: Hazardous Vegetation and Defensible Space Ordinance

Please find EDCARs Response to the Assistant CAO Response listed below. You will find the [county response to our original letter in blue](#), and [EDCARs additional responses in purple below](#).

The El Dorado County Association of Realtors (EDCAR) greatly appreciates that your team has allowed our leadership to provide our professional insight on the proposed changes to the Hazardous Waste and Defensible Space Ordinance. We believe that the proposed changes may have unintended impacts on homeowners in El Dorado County, and we hope you take the following into consideration.

Thank you for taking the time and energy to hear our members concerns, please consider the following:

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- 1. 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, chaparral 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.

- 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.

EDCAR Response to EDC Reponse:

The Natural Hazard Disclosure Statement (NHD) required by law (many property owners hire an outside agency to prepare) identifies if the property is in a Very High fire Severity zone, and not in a High Fire Severity zone. Until another map is made available to the public that identifies the high fire severity zone, property owners will not know that they need to comply with this ordinance.

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- 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 Realtor® 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 transactions 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 inspections. 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 times 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.

- 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 Response to EDC Reponse:

Please clarify that “real property” for this requirement only pertains to the seller of any improved property having a single family residence, and perhaps an accessory dwelling unit, or junior accessory dwelling unit, and a manufactured home in a mobile home park.

- **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.

- **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 Response to EDC Reponse:

The Association would like to reiterate our request for 180 days after the close of escrow for the buyer to achieve compliance with a report. 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.

- 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.

- 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.

- 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 Hazard Severity Zones.

- **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.

EDCAR Response to EDC Reponse:

When obtaining a permit to remove an oak tree required by an inspection report, please provide an exemption for mitigation measures; such as re-planting a tree or paying mitigation fees.

3. 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.

EDCAR Additional Comments:

In 2022 there were 2,507 single family residential sales in El Dorado County, and 105 manufactured /mobile home sales in mobile home parks, for a total of 2,612 closed transactions on the western slope (this information was obtained through the Multiple Listing Service Records, not including the Tahoe Basin). The county needs to be prepared to inspect and re-inspect properties over 5,000 times in the course of a year based on these statistics.

EDCAR recognizes that this is a complicated and lengthy process for the county, and we appreciate your efforts in making modifications that will benefit property owners and the real estate profession.

Thank you again for taking these comments into consideration, and if you have any further questions please reach out to our leadership.

Sincerely,



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Kimberly Beal
2023 EDCAR Government Affairs Director
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#52

Supervisor meeting December 12, 2023

Tim McNulty

I stand firmly to oppose the replacement of Ordinance no 5101. The old ordinance 5101 section 08.09.170 clearly defines penalties and the max fine amounts. This has been removed and no new max penalty amounts have been placed in the document. This leaves the door open for the county to fine homeowners whatever they want.

In the new document on page 10 section 3 states that a greater clearance distance, up to 300 feet than required in this chapter may be required when the inspection report is by the investigating official and supported by the enforcement official. It used to read that the greater distance may be required by state law, and local ordinance. This was left up to the state and local law not just an inspector to adjust to a higher distance. Also sheds and ag buildings did not require this clearance and the cal fair plan does not either.

If you want to help Homeowners in this county how about you investigate conflicting ordinances like the Oak Canopy Protection Act and adjust that? So that homeowners can remove those trees in the 100-foot area around homes. For owners that are impacted by this Oak Canopy Protection Act Cal fire when inspecting the homes for the existing ordinance, 5101 won't let anyone remove tagged oak or deem it a hazard that is within the 5-foot zone even if the tree hits the house.

This greatly affects me as I have a 5-acre lot with 4.75 acres of oak canopy that are all protected and tagged. I am on the Cal fair plan with a score of 3 for slope and 3 for trees if I were allowed to cut those trees in the 100-foot area my score would go down to a 3 potentially allowing me to get insurance on the open market. If PG&E can cut down oaks in a protected area why can't I be allowed to?

#52

No way

Daniel Lance <danlanco4527@msn.com>

Tue 12/12/2023 2:03 PM

To: BOS-Clerk of the Board <edc.cob@edcgov.us>

LATE DISTRIBUTION

DATE BOS Lev'd 12/12/23

As a resident of (city) I am opposed to Ordinance 5186. It appears to be invasive to my privacy, places undo financial hardship on homeowners (who do not have financial means to address fire safety) and will negatively affect future home sales. Please vote no on this ordinance. Please develop a plan that works with your community and does not punish us or invade our privacy.

Dan Lance, concerned resident

----- Forwarded
Sent from my iPhone

public comment #52

Board of Supervisors Meeting - Dec 12, 2023 - Agenda Item #52 - File #23-1644

kevinwmccarty@pm.me <kevinwmccarty@pm.me>

Mon 12/11/2023 4:16 PM

To: BOS-Clerk of the Board <edc.cob@edcgov.us>

Cc: BOS-District I <bosone@edcgov.us>; BOS-District II <bostwo@edcgov.us>; BOS-District III <bosthree@edcgov.us>; BOS-District IV <bosfour@edcgov.us>; BOS-District V <bosfive@edcgov.us>

LATE DISTRIBUTION
BOS Revd 12/12/23

📎 1 attachments (214 KB)

Kevin W. McCarty - Public Comment - Board of Supervisors Agenda Item 23-1644 - 12.11.2023 - Signed.pdf;

ATTN: El Dorado County, Clerk of the Board of Supervisors:

Attached is a letter submitted as a public comment on Agenda Item #52, file #23-1644, regarding Ordinance 5186 amending Chapter 8.09 "Hazardous Vegetation and Defensible Space".

Please ensure this public comment is added to the record and included for consideration at the Board meeting set for tomorrow, December 12th, 2023.

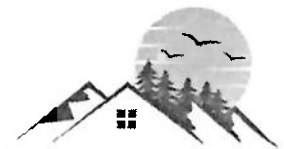
Regards,

Kevin McCarty
CEO / Managing Member



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Kevin McCarty for Supervisor 2024
PO Box 244
Somerset, CA 95684



December 11, 2023

El Dorado County
Board of Supervisors
330 Fair Lane, Building A
Placerville, CA 95667

ATTN: El Dorado County, Board of Supervisors:

This comment is for Agenda Item #23-1644 related to Ordinance 5186 proposing amendments to Chapter 8.09 "Hazardous Vegetation and Defensible Space". My name is Kevin W. McCarty. I am a resident of Somerset, candidate for District 2 Supervisor, and board member of the Omo Ranch Fire Safe Council, though today I speak strictly as a resident and concerned citizen.

I believe this proposed ordinance would be aptly described as the "ADA of wildfire" in that it represents an *unfunded mandate*, with noble aims and goals on the surface, but threatening to use draconian means and methods to achieve them. Everyone wants to reduce the risk of wildfire and be safe when it occurs. However, government policy always needs to be mindful that the 'cure' is not worse than the 'disease'.

As a preface to my comments, it is appropriate to note that as a rural resident and board member of our local Fire Safe Council (FSC), I care deeply about increasing our community's resilience to wildfire and generally all measures supportive of this cause. Our property lies mere miles from the ignition point of the Caldor Fire, and I believe that property owners who are demonstrably negligent in maintaining their defensible space should be on the radar of county code enforcement officials to remedy as a last resort.

With that said, by taking the 100-foot defensible space requirement under California Code and pushing active enforcement onto all individual property owners, without any financial assistance from the county, state, or federal government, the County is proposing a cure that threatens to be worse than the disease.

Ordinance 5186 as written will create code enforcement cases for a large percentage of rural property owners overnight, not just the negligent ones as a last resort. Forcing every real estate transaction to undergo an inspection by a handful of certified inspectors threatens to pose an undue burden on the people and real estate market of our county. Just as CEQA effectively created the industry of environmental reports and inspections, this ordinance proposes to do the same for vegetation / defensible space inspections, since local Fire chiefs will need the help of 3rd party contractors to meet the artificial demand.

Also regarding CEQA, a question: will this ordinance automatically serve as CEQA exemption for each instance of fuel reduction, in perpetuity? CCR section 15304 relates to "minor" alterations in the condition of land and vegetation, and references fuel management within 30 feet of a structure – up to 100 feet from a structure in "extra hazardous fire conditions". On one hand, thousands of instances of vegetation removal – in some cases involving several acres of clearing at a time – extrapolated indefinitely into the future, would represent a *major* alteration of land conditions, not minor. Second, the ordinance applies

#52

Comments regarding Agenda Item 23-1644, Hazardous Vegetation and Defensible Space Ordinance

Lester Lubetkin <lesterlubetkin@gmail.com>

Mon 12/11/2023 9:21 PM

To: BOS-Clerk of the Board <edc.cob@edcgov.us>

LATE DISTRIBUTION
DATE BOS Rcvd 12/12/23

📎 1 attachments (29 KB)

Ordinance 5186 Comments.pdf;

Attached please find my comments regarding Agenda Item 23-1644, scheduled for the Dec 12, 2023 Board of Supervisors Meeting. Thank you very much,

Lester Lubetkin

December 11, 2023

Comments regarding El Dorado County board of Supervisors Agenda Item 23-1644, Proposed Ordinance 5186, Hazardous Vegetation and Defensible Space, to be heard December 12, 2023:

Dear Board of Supervisors;

The need for residents within our County to create and maintain defensible space around their homes is essential for our communities to become more wildfire-resilient. To that end, I applaud County Staff and assistance from other outside organizations in working to improve the County Vegetation Management Ordinance.

However, I also feel that it is essential that we maintain the rural character of our County and conserve the native plant and plant communities that make our County such a delightful place to live. Particularly in the more rural portions of our County, landscaping is primarily using the native vegetation. Lets make sure that the Ordinance or the implementation of the Ordinance do not destroy the valuable characteristics and plant communities.

To that end, **I am concerned about the use of the terms “clearance”, “clear” and “buffer” as used in the draft Ordinance.** These terms seem to suggest that all vegetation should be removed, which is not the intention of the State’s defensible space code and is inconsistent with the guidance, direction, and science around defensible space. More and more, we hear of insurance companies and the contractors used by insurance companies requiring landowners to remove all of the trees or other vegetation, thinking that will improve the wildfire resilience of homes. The science around wildfires and wildfire management has shown that well spaced vegetation and removal of ladder fuels allows for defensible space and helps to keep the fire on the ground (rather than in the tree canopy).

As an example, in Section 8.09.030 - Definitions, in the definition of Defensible Space, it states that defensible space “means the **buffer** that Responsible Person(s) is(are) required to create on their property **between a “Structure” and the plants, brush, and trees** or other items surrounding the “Structure” that could ignite in the event of a fire. By this definition, the buffer is between the structure and the plants - strongly suggesting the buffer is a cleared area. Defensible space should be the well managed vegetated area between the structure and more “unmanaged” vegetation.

I ask that the terms “buffer”, “clearance” and “cleared” either be defined or other terms used to more accurately describe the intent of defensible space.

As this Ordinance is implemented, it will be critical that there is a well crafted public information and outreach effort that includes well-prepared examples of appropriate defensible space in the many natural settings we have across the County, stretching from the blue oak woodlands and chaparral in the western part of the County, to the mixed conifer and hardwood communities in the mid-elevations to the conifer forests of the higher elevations. Defensible space can look very different in different areas, and the landowners that are trying to comply with the Ordinance, along with those implementing the Ordinance need to have a way to see that they are taking appropriate actions.

Thank you for the opportunity to comment on this proposed Ordinance.

Lester Lubetkin
4902 Dowell Lane
Placerville, CA