

Public Comments/Correspondence

Ordinance 23-08

Adopting requirements for fuel breaks on certain parcels in both the state responsibility and local responsibility areas within the fire district, adopting findings of fact regarding fire hazards in the fire district, adopting findings of exemption under the California Environmental Quality Act, and repealing ordinance 23-04; and find that Ordinance No. 23-08 is exempt from the California Environmental Quality Act for the reasons stated in the ordinance.

Date	Person	Comments
09/06/2023 First Reading	City of Orinda	Written Correspondence
09/06/2023 First Reading	Charles Porges	Written Correspondence
09/06/2023 First Reading	Tyler Rust	Written Correspondence
09/06/2023 First Reading	Michael Bowen	Written Correspondence
09/06/2023 First Reading	California Native Plant Society	Written Correspondence
09/06/2023 First Reading	Stephen M Silla	Written Correspondence
09/06/2023 First Reading	Julia Hunting	Written Correspondence
09/06/2023 First Reading	Barbara Leitner	Written Correspondence
09/06/2023 First Reading	Ann Walgenbach	Written Correspondence
09/06/2023 First Reading	Mayor Miller, City of Orinda	Public Comment - expressed concerns
09/06/2023 First Reading	Barbara Leitner	Public Comment requesting verification that her letter had been received.
09/06/2023 First Reading	Marc Evans	Public Comment expressing support
09/20/2023 Second Reading	City of Orinda	Written Correspondence
09/20/2023 Second Reading	EBMUD	Written Correspondence
09/20/2023 Second Reading	Sandy Pearson	Written Correspondence
09/20/2023 Second Reading	Sandy Pearson	Written Correspondence
09/20/2023 Second Reading	Sandy Pearson	Written Correspondence
09/20/2023 Second Reading	Greenfire Law	Written Correspondence on behalf of Orinda residents, Sandy Pearson and Anita K. Pearson
09/20/2023 Second Reading	Kalpana Ravinarayanan	Written Correspondence
09/20/2023 Second Reading	Jonathan Goodwin	Written Correspondence
09/20/2023 Second Reading	Suzanne Jones	Written Correspondence
09/20/2023 Second Reading	Judi Wellens	Written Correspondence
09/20/2023 Second Reading	Bob Finch, Wilder HOA	Written Correspondence
09/20/2023 Second Reading	Daniel Burrows	Written Correspondence
09/20/2023 Second Reading	Jonathan Goodwin	Written Correspondence
09/20/2023 Second Reading	Sandy Pearson	Written Correspondence
09/20/2023 Second Reading	jrikeda	Written Correspondence
09/20/2023 Second Reading	Sheida Vakili	Written Correspondence
09/20/2023 Second Reading	Bob Finch	Written Correspondence
09/20/2023 Second Reading	Marc Evans	Written Correspondence
09/20/2023 Second Reading	Sandy Pearson	Public Comment distributed copies of a Diablo Fire Safe Council brochure (the MOFD District referred to her) and Ecologically Sound Practices for Vegetation Management
09/20/2023 Second Reading	Jonathan Goodwin	Public Comment thanking the Pearson family
09/20/2023 Second Reading	Sandy Pearson,	Public Comment expressing objections
09/20/2023 Second Reading	Mayor Miller, City of Orinda	Public Comment Mayor Miller acknowledged the positive changes in the Ordinance, such as the adjustments related to trees, but also raised

		questions about the exemption of scenic trees. She emphasized the City's desire to collaborate with the Fire District
09/20/2023 Second Reading	Mark Evans, Moraga-Orinda Firewise Network	Public Comment voiced support
09/20/2023 Second Reading	Jonathan Goodwin	Public Comment voiced his concerns
09/20/2023 Second Reading	Steve Hoyt	Public Comment expressed his support for the Ordinance
09/20/2023 Second Reading	Don Thompson	Public Comment requested the mulch be clarified in amendments 23-03 and 23-08, and the language in the two ordinances should be brought into alignment or conformance for consistency
09/20/2023 Second Reading	Robert Finch	Public Comment acknowledged receipt clarifying that the Wilder Community is not subject to Ordinance 23-08 but is subject to a separate regulation called the Wildfire Hazard Assessment and Plan (WHAP)
09/20/2023 Second Reading	Ben Zarrin	Public Comment expressed agreement with the public comment and requested if there is a way to spell out or clarify the information
11/15/23 Regular Meeting	Mike Fedorov	Written Correspondence



City of Orinda
22 Orinda Way • Orinda • California • 94563

September 6, 2023

Honorable President and Directors
Moraga-Orinda Fire Protection District
1280 Moraga Way
Moraga, CA 94556

RE: Proposed Ordinance 23-08

Dear Hon. President Jex and Directors Jorgens, Danzinger, Roemer, and Hasler,

We appreciate our working relationship between our elected leaders and staff, which we recognize to be of paramount importance to our residents as we work to make our community more resilient to wildfire.

The Orinda City Council considered the District's proposed Ordinance 23-08 at our meeting of Tuesday, September 5, 2023, and are providing the following comments for your consideration at your Special Meeting to introduce Ordinance 23-08 to be held this evening, September 6th. As the information regarding proposed Ordinance 23-08, which is to replace Ordinance 23-04, was not available until Thursday, August 31st and the staff report was not available until after 4 p.m. on Friday, September 1st, the City was not able to undertake a comprehensive review. We received written comments from community members which are attached for reference. In addition, residents addressed the Council on the matter, and we encouraged them to all provide their input directly to the Fire Board. If time permits, the video of last night's meeting is also available to you via this link (this item began at minute 41:45 of the meeting): <http://orindaca.igam2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=2389&MinutesID=1769&FileFormat=pdf&Format=Minutes&MediaFileFormat=mp4>

The City Council is very invested in the efforts of the District to make our community safer from wildfire and recognizes that the District's primary focus is on fire suppression and prevention. The City offers its broader perspective that takes into account other factors and aspects of life in Orinda including hardening against landslides and preserving the natural environment in a balanced approach for which Orinda is known.

We see our roles as supportive of one another and respectfully request that you consider our comments which arise from the public input that we received together with the Council's consideration of Proposed Ordinance no. 23-08. We understand that as of today, the definition of the parcels to which this Ordinance applies, Communities at Risk, include all parcels in the district. Owners of Parcels of One Acre or Less must maintain the entire parcel in compliance with the code and those with larger parcels must comply as to 100 feet. We also understand that as between the ordinance most members of the public are more familiar with today, MOFD Ordinance 23-03 (Section 4(f) of MOFD Ordinance 23-08), the more restrictive requirement applies in the case of overlap with the proposed Ordinance 23-08. Given that these

ordinances will apply to our constituents in common and to our City-owned parcels, we hope you will consider our comments:

- The existing Ordinance and the proposed Ordinance are confusing and lack easy-to-understand guidance for those wishing to comply, and both lack objective criteria that concerns the Council as it has led to the perception of unequal application of the Ordinance.
- We understand a threat of litigation may have initiated the need to bolster what was set forth in Ordinance 23-04, and that has created a sense of urgency, hence proposed Ordinance 23-08. However, given the concerns that we heard and share, in order to avoid the continuation of the current legal challenges, or a new lawsuit, it is advisable for the District to slow down and engage in a community consultation to ensure a shared understanding of alternatives which were considered, including how other communities have approached the matter and how to best communicate to property owners how they can comply with the District's requirements.
- It is unclear if the rationale from which the new requirements were drawn contemplated application to already developed and established communities. If not, these requirements may be more onerous than understood and have the unintended consequences of not being accompanied by landscape plans, geological hazard abatement district considerations, and habitat protection plans that would be designed to mitigate the environmental effects of the Ordinance.
- The lack of templates and/or models that illustrate what is being required and how to meet the objectives of the Fuel Break requirements and the sometimes-competing obligations to protect sensitive areas and other environmental considerations, is contributing to the community concerns and lack of understanding. Providing templates and/or models is essential.
- Such templates are also necessary to illustrate to a homeowner how to apply for a Modification.
- The lack of clear and objective criteria raises concerns about how the Ordinance can be applied evenly and equally to all property owners. The Fire District should ensure consistency in how these Ordinance provisions are implemented.
- On-the-ground experience shows that compliance in and of itself is not necessarily bringing the totality of considerations into play. For example, one property owner takes the level of clearance to such a degree as to impact creek banks potentially causing landslides and water quality issues whereas a measured approach would have met the goals of the Ordinance without causing environmental harm had the homeowner known the rules were different for a creek area.
- Providing more resources to assist residents to understand and meet their obligations is necessary, as in many situations, property owners are unable to do so without such assistance. As there is a cost to comply, and some view this as an unfunded mandate, the District providing access to a biologist, Geotech resources, or other services, when a property owner seeks a modification, for example, could mitigate these concerns. This would also contribute to an increased level of consistency in implementation.

We were gratified by your proposal yesterday to Mayor Miller and City Manager Biggs to include language pursuant to which trees less than Fifteen (15) feet would require limbing up one-third of their height to augment the currently proposed language, which states that trees be maintained to remove Ladder Fuels so that foliage, twig or branches are greater than 6 feet above the ground (Section 4 (a)(F)).

It is clear from what we heard and from our own understanding that additional investment of time and in public engagement is necessary. The City stands ready to assist the District in whatever ways we can to navigate this important issue. We would be happy to co-host with the District and engage in possible

forums or town halls to foster that community consultation. In addition, while we could use the existing Fire Board/City Council 2 X 2 Committee as a sounding board as well, given the fact that the fuel break requirements impact Moraga as well, a joint meeting of the Orinda City Council, Moraga Town Council, and Fire Board may be desirable.

We look forward to ongoing positive engagement with the Fire District on these many matters of shared concern and hope that our comments are helpful as you consider your next steps.

Sincerely yours,



Inga Miller
Mayor

Attachments: Written Public Comment – Orinda City Council Meeting September 5, 2023

cc: City Council
City Manager
City Attorney



Communications Received from the Public

SEPTEMBER 5, 2023 CITY COUNCIL MEETING

ADDITIONAL INFO FROM STAFF – ITEM H.1

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MOFD Staff Report for their 9/6 Meeting	1-6

ITEM H.1 – MOFD PROPOSED ORDINANCE

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Jim Hanson	10-12
Sandy Pearson	13-23
Stephen Silla	24
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Julia Hunting	29-31
Dave Winnacker	32-48
Lindy Novak	49
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Moraga-Orinda Fire District

TO: Board of Directors

FROM: Dave Winnacker, Fire Chief

DATE: September 6, 2023

SUBJECT: **Item 4.1 Introduce and waive the reading of Ordinance No. 23-08, An ordinance of the Moraga-Orinda fire district of Contra Costa County, California, adopting requirements for fuel breaks on certain parcels in both the state responsibility and local responsibility areas within the fire district, adopting findings of fact regarding fire hazards in the fire district, adopting findings of exemption under the California Environmental Quality Act, and repealing ordinance 23-04.**

BACKGROUND

On February 15, 2023, MOFD Ordinance No. 23-04 was adopted, which established fuel break requirements on all parcels within the Fire District. The standards under MOFD Ordinance No. 23-04 were as follows:

A Fuel Break under Ordinance No. 23-04 required the removal or modification of fuel, maintained on an annual basis by June 1 of each year, or on a recurring basis as determined by the Fire Code Official, in a manner that will prevent the transmission of fire.

Specifically:

Annual grasses cut to less than 3"

Removal of all Hazardous Vegetation

Removal of non-irrigated brush

Removal of all Combustible Material

Removal of dead, diseased, or dying trees

Maintain trees to remove Ladder Fuels so that foliage, twigs, or branches are greater than 6 feet above the ground

- a. Parcels of One Acre or Less. The entire Parcel shall be maintained in accordance with the requirements for a Fuel Break.
- b. Parcels Greater Than One Acre. A Fuel Break of 100 feet shall be created and maintained around the entire perimeter of the Parcel.
- c. Multiple contiguous Parcels owned by the same Person may be treated as a single Parcel, upon request of the owner, lessee or Person in control of the Parcel and with the approval of the Fire Code Official, if a Fuel Break of 100 feet around the perimeter of the area considered to be a single Parcel is provided.

Ordinance No. 23-04 also addressed possible environmental concerns with the creation of fuel breaks as follows:

Environmental Concerns. Creation of Fuel Breaks shall not result in the taking of

endangered, rare, or threatened plant or animal species, significant erosion, or sedimentation of surface waters. When these or other conditions make it impractical to create and maintain a required Fuel Break, the person who owns, leases, or controls the Parcel or Parcels shall request a Modification of the Fuel Break requirement.

AMENDED FUEL BREAK ORDINANCE (ORDINANCE NO. 23-08)

Subsequent to the adoption of Ordinance No. 23-04, concerns were raised by members of the public that the District did not adequately address potential adverse environmental impacts associated with that Ordinance under the California Environmental Quality Act ("CEQA"). The District disagrees with those concerns.

Nonetheless, Ordinance No. 23-08 is now proposed to repeal Ordinance No. 23-04, modify the fuel break requirements to address wildfire hazards created by local conditions and environmental concerns, and to specifically determine that Ordinance No. 23-08 is exempt from CEQA for the reasons stated in the ordinance.

As stated in Ordinance No. 23-08, the California Legislature has made numerous findings of the threats posed by wildfires, including the following:

1. Catastrophic wildfires pose an urgent threat to lives, properties, and resources in California.
2. Preventive measures are therefore needed to ensure the preservation of the public peace, health, or safety.

A. Proposed Standards

1. Affected Parcels

Instead of the fuel break standards applying to every parcel in the District, fuel breaks will be required on the following parcels in the Fire District, identified as the "Affected Parcels."

- (1) All Parcels within the District located within a "Community at Risk" as identified in the publication entitled, "Communities at Risk from Wild Fires," produced by the California Department of Forestry and Fire Protection, Fire and Resource Assessment Program pursuant to the National Fire Plan, federal Fiscal Year 2001 Department of the Interior and Related Agencies Appropriations Act (Public Law 106-291).

<https://osfm.fire.ca.gov/divisions/community-wildfire-preparedness-and-mitigation/fire-plan/communities-at-risk/>

- (2) All Parcels within the District that are immediately adjoining to a "Community at Risk" within the District, or are immediately adjoining to a "Community at Risk" outside the District's boundaries

2. Fuel Break Standards

The fuel break standards are modified as follows:

- (1) A Fuel Break requires the removal or modification of fuel, maintained on an annual basis by June 1 of each year, or on a recurring basis as determined by the Fire Code Official, in a manner that will prevent the transmission of fire.

Specifically:

- (A) Grasses cut to less than 3".
 - (B) Removal of all Hazardous Vegetation.
 - (C) Non-irrigated brush removed such that the minimum space between shrubs is as follows:
 - a. On flat or mild slopes (less than 20%): Two times the height of the shrub
 - b. On mild to moderate slopes (20-40%): Four times the height of the shrub
 - c. On moderate to steep slopes (greater than 40%): Six times the height of the shrub.
 - (D) Removal of all Combustible Material.
 - (E) Removal of dead, diseased, or dying trees.
 - (F) Maintain trees to remove Ladder Fuels so that foliage, twigs, or branches are greater than 6 feet above the ground.
- (2) The standards for construction of Fuel Breaks in this Ordinance shall comply with the standards for construction of fuel breaks as outlined in the Fire Safe Regulations, which are as follows:
- (A) The volume and arrangement of vegetation in a Fuel Break shall be managed to limit fire intensity, fire severity, rate of spread, crown fire potential, and/or ember production. Cal. Code of Regulations, title 14, section 1270.01(n).
 - (B) Fuel Breaks shall be constructed using the most ecologically and site appropriate treatment option, such as, but not limited to, prescribed burning, manual treatment, mechanical treatment, prescribed herbivory, and targeted ground application of herbicides. Cal. Code of Regulations, title 14, section 1276.03(f).

3. Location of Fuel Breaks

The location of fuel breaks on Affected Parcels remains unchanged from Ordinance No. 23-04. Specifically:

A person who owns, leases, or controls one or more Affected Parcels within the Fire District shall comply with following fuel break standards:

- (1) **Parcels of One Acre or Less.** The entire Parcel shall be maintained in accordance with the requirements for a Fuel Break.
- (2) **Parcels Greater Than One Acre.** A Fuel Break of 100 feet shall be created and maintained around the entire perimeter of the Parcel in accordance with the requirements for a Fuel Break.

- (3) Multiple contiguous Affected Parcels owned by the same Person may be treated as a single Parcel, upon request of the Person that owns, leases, or controls one or more of the Affected Parcels and with the approval of the Fire Code Official, if a Fuel Break of 100 feet around the perimeter of the area considered to be a single Parcel is provided. Such requests shall be processed as Modifications under the Ordinance.

4. Addressing Environmental Concerns

In addressing environmental concerns, Ordinance # 23-08 provides:

- (1) The Fuel Break requirements of this Ordinance shall not impact any environmental resources of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies. Such areas include, but are not limited to, sites included on any list compiled pursuant to Government Code section 65962.5 (hazardous waste sites), and designated historical resources.
- (2) The Fuel Break requirements of this Ordinance shall be interpreted and applied to avoid the taking of endangered, rare, or threatened plant or animal species, significant erosion and sedimentation of surface waters, and the removal of healthy, mature, scenic trees.
- (3) When these conditions exist, persons who own, lease or control the Affected Parcel or Parcels at issue shall request a Modification of the fuel mitigation requirements and the Fire Code Official shall issue Modifications consistent with the above referenced requirements.

Ordinance # 23-08 also provides that a person requesting a Modification under the Ordinance may also submit an individualized fire protection plan designed to address concerns due to health, safety, environmental conditions, physical site limitations or other limiting conditions, such as recorded historical sites, that provides mitigation of the problem. Submitted fire protection plans shall be consistent with the standards for fire protection plans provided in Section 4903 of Chapter 49 of the State Fire Code.

5. Modification Requests

Ordinance # 23-08 more fully explains the standards for considering a Modification request, as well as the process for a person making a Modification request,

Ordinance # 23-08 also provides that, if a Modification request is denied, the person may appeal that denial to the Board of Directors.

6. Penalties

Ordinance # 23-08 maintains the substantive penalty provisions in Ordinance # 23-04, with some modifications as follows:

Every violation of any regulatory or prohibitory provision of this Ordinance is expressly declared to be a public nuisance. Failure to comply with the Fuel Break requirements of this

Ordinance may result in the issuance of an Administrative Citation under Ordinance 21-01 or its successor ordinance, or otherwise ordered by the Fire Code Official to be abated in accordance with law, and nothing in this Section 6 shall limit the Fire District from pursuing other available legal remedies for violations of this Ordinance, including but not limited to civil penalties. In addition, any Person who violates any provision of this Ordinance shall be guilty of an infraction or misdemeanor in accordance with Health and Safety Code Section 13871.

B. CEQA Determinations

Ordinance # 23-08 also makes the following CEQA Determinations, as more fully explained in the Ordinance:

- (1) The Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to the following categorical exemptions in the CEQA Guidelines: Section 15307 (actions taken as authorized by law to assure protection of natural resources), and Section 15308 (actions taken as authorized by law to assure protection of the environment). Reducing the severity of wildfire through this Ordinance would reduce the significant environmental impacts caused by uncontrolled wildfire and assure the maintenance, restoration, enhancement, and protection of the Fire District's natural resources and environment. There are no significant or potentially significant negative environmental impacts from this Ordinance.

No exception identified in CEQA Guideline Section 15300.2 applies to this Ordinance.

- (2) The Ordinance is statutorily exempt from CEQA pursuant to CEQA Guidelines Section 15269 and Public Resources Code section 21080(a)(4) as specific actions necessary to prevent or mitigate an emergency.
- (3) It can be seen with certainty that there is no possibility that the Ordinance may have a significant impact on the environment pursuant to CEQA Guidelines section 15601(b)(3).
- (4) Each exemption stands as a separate and independent basis for determining the Ordinance is not subject to CEQA.

The Ordinance is proposed for the protection of the environment, including human health and property. The regulatory enactment would require affected properties to remove combustible materials as fuel breaks.

These requirements will be beneficial to the environment by preventing the emergence and spread of wildfires, which can cause immense environmental harm. Further, the Ordinance contains provisions requiring it to be interpreted and implemented in a manner that avoids environmental impacts, and directs property owners to seek modification of the applicable requirements if compliance would cause any such impacts.

RECOMMENDATION

Staff Recommendation: 1) Discuss; 2) Deliberate; 3) Introduce and waive the reading of Ordinance No. 23-08, An ordinance of the Moraga-Orinda fire district of Contra Costa County, California, adopting requirements for fuel breaks on certain parcels in both the state responsibility and local responsibility areas within the fire district, adopting findings of fact regarding fire hazards in the fire district, adopting findings of exemption under the California Environmental Quality Act, and repealing ordinance 23-04; 4) Provide direction to Staff

ATTACHMENT

[Attachment: 23-08, Fuel Break Ordinance \(9-6-23\).pdf](#)

From: History Dojo
Sent: Monday, September 4, 2023 11:18 AM
To: Inga Miller; Darlene Gee; Latika Malkani; Brandyn Iverson; Janet Riley; Sheri Smith
Subject: MOFD Code 23.04 Sec 4 (b)(1)(B)

Dear Orinda City Council,

I am writing to add my name and voice to object to the recent imposition of MOFD Code Section 23.04 Sec. 4 (b) (1) (B), requiring the removal of hazardous vegetation on parcels greater than one acre through the creation of a 100' fuel break around the entire perimeter of the Parcel. I feel that this code is a burden upon the owners of parcels larger than one acre, is equivalent to a tax upon these parcels in the form of mandated maintenance, and does not effectively prevent the threat of wildfires.

I reside at 616 Miner Road in Orinda, a property situated on an easement of the Bodfish Land Trust, a property protected by the John Muir Land Trust. Under the terms of the trust it is my responsibility to maintain the land trust without any financial support from John Muir Land Trust. The requirement under Code 23.04 Sec. 4 (b)(1)(B) that I maintain a 100' fuel break around the perimeter of a seven acre land trust is a burden upon me financially, and which cannot be completed without endangering the protected species and habitat present on the Bodfish Land Trust. After meeting with MOFD and showing them these protected areas, it was determined that the fuel break would not be possible around the perimeter of the property, nor anywhere that protected species and habitat were discovered. Nevertheless, there still remains extensive acreage to be cleared, representing annual financial expenses imposed upon me by MOFD. As of this date I have already spent over \$1200 on fire abatement around the Bodfish Land Trust, and spent over fifteen hours of my own time cutting and clearing brush to conform with the MOFD fire codes. At the meeting with MOFD, I requested clear documentation of the annual requirements for this code, but unfortunately MOFD has not responded with this documentation. This leaves me without clear guidance on the ongoing costs and requirements for compliance with the code.

The passage of the new requirements by MOFD is equivalent to a new tax upon homeowners. The code has placed upon me and other property owners a new financial burden to be met every year, without clear understanding of what the requirements are. Indeed, this year the expense was very significant, and the application of the code was open to the determination of the MOFD. Next year the application of the code may change, and my expenses may be more or less. This new tax upon homeowners is confusing and burdensome.

When I met with the fire marshal, I suggested that we create a fuel break that would conform with the wildfire strategy already in place. The North Orinda Fire Break was created in anticipation that the wildfire threat was greatest from the north, pushing south because of the Diablo Winds that return every Fall. A fuel break along the northern boundary of my acreage would be in keeping with that same strategy. A fuel break along the western, southern and eastern boundary would not aid in the success of that strategy. It seems that the application of a 100' fuel break around every property is a "cookie cutter" approach to wildfire prevention, and not informed by the current strategy pursued by the City of Orinda and the MOFD.

Please reflect upon the new MOFD Code 23.04 Sec 4 (b) (1) (B) requirements. I encourage you to consider what this code represents to homeowners in terms of burden and expense. I would like to see a new code to replace this code enacted. I encourage you to revisit this issue and change the code.

Sincerely,
Tyler Rust

September 4, 2023

Honorable Mayor Miller and Councilors:

I am increasingly concerned about the fact that the City of Orinda has ceded so much of its authority to the Moraga Orinda Fire District. I am extremely concerned about the deteriorating tone of the civic conversation on the topics of fuel management, fire protection and natural resource protection and enhancement. I am appalled by the aggressive posture MOFD has taken towards the very community it is supposed to serve. We can do better.

The purpose of this letter is to urge you to do all within your power to help establish a public forum for advancing fuel management, fire prevention and natural resource conservation. Doing so will help Orinda advance and enhance each of these important priorities in a civil and constructive way. It will also help alleviate concerns that MOFD is pursuing fire protection to the exclusion of what makes Orinda scenically beautiful and socially appealing. There are many precedents statewide to turn to. Each shares an earnest effort to engage with the community and address multiple and often seemingly conflicting priorities collaboratively. With all due respect, the Fire Safe Councils, with their singular focus on fire safety, are not up to this task as presently comprised.

I would like to share some not-unique personal experiences and impressions in hopes that they can help illustrate my concern.

My family takes fire prevention seriously. We've removed an entire forest, installed attic screens and gutter guards, built rain catchments to keep soil and vegetation moisture content high during summer months. We've expended in excess of \$50,000 on fuel management and home hardening. I volunteer to pull French broom (ladder fuel on steroids) and practice rotational grazing on a nearby horse pasture to keep vegetation levels down. I've removed a 1/3-acre brush field and restored a native grass meadow in its place. I've happily utilized Orinda's well-organized chipper program. Our new reality of extended dry periods and higher fire risk requires such actions. I am a natural ally to MOFD, and I consider myself a good citizen: The Moraga Orinda Fire District disagrees.

In appreciation for my efforts, I have received two pre-citations and a fine. The first contact addressed a lonely rose branch extending towards the street, but remained silent on the backdrop of our home; 25 bark-beetle infested dying and dangerously flammable Douglas fir trees which I subsequently but proactively removed without MOFD asking, primarily because they posed a huge fire risk. The second citation I received was for the now horizontal and far less flammable temporarily staged logs from my new shaded fuel break and associated wood chips. And although I live on an active landslide, and am participating in litigation concerning a nearby active landslide that closed a private road, I am now to understand that the last few remaining shrubs holding the upper El Toyonal hillside in place must be removed, which will simply promote more French Broom, an even higher fire risk. I suppose that next we shall learn that our iconic oaks (or what is left of them after PG&E butchered them) must go, and that street trees are forbidden.

But at least I'm not alone in being punished for my sincere and costly efforts. The East Bay Municipal Utility District and East Bay Regional Park District, who have collectively invested untold career decades and millions of dollars into fuel reduction and land management on their uniquely beautiful lands that we all love to hike on and be surrounded by are branded "non-compliant" land managers by Chief

Winnacker and his acolytes, who seem to take pleasure in abusing partners. Chief Winnacker refuses to publicly acknowledge that the Park District's Fire District is a "real" fire agency, nor will he honor their titles in public. Even our elected leaders are publicly condemned for "not doing enough" though they've appropriated millions of dollars for fuel management statewide. It seems nothing is enough to satisfy MOFD leadership, which brings me to the topic of the newly proposed ordinance.

You may recall the last time MOFD tried to ram a new ordinance down the City Council's throat. Chief Winnacker lobbied forcefully for it in Council Chambers while his acolytes booed then-Councilmember Miller for having the temerity to question the language of the ordinance. It would seem some in the audience forgot the purpose of an elected City Council. The aggressive tone of MOFD's attacks combined with their lucrative fine system and expansive legislative efforts frighten me. Call me old-fashioned, but I prefer to be governed by an elected City Council.

In the coming days I'm sure you will hear a lot about CEQA, the environment, fire risk, and more. You may even wade into the MOFD proposed ordinance language, which reads even to the trained eye like unintelligible magical realism. But I am urging you to consider a different question. Do we want to live in a community that is scenically beautiful, socially respectful, and civically engaged, or not?

Our community has made incredible progress in the last few years, learning valuable lessons along the way, but a problem 100 years in the making won't be solved in a year or two. We are all in this together, and we are all sincerely attempting to make Orinda safer while protecting the beauty and nature that attracted so many of us here. Therefore, I urge the Council to help the community strive to reach consensus on a strategy embraced by the entire community. That is why I urge you to do all within your power to help establish a public forum for advancing fuel management, fire prevention and natural resource conservation as coequal goals. We can do this.

Thank you for your consideration of this letter.

Very sincerely,

A handwritten signature in blue ink, appearing to be 'MB', followed by a horizontal line extending to the right.

Michael Bowen

Orinda

From: Jim Hanson
Sent: Tuesday, September 5, 2023 12:32 PM
To: City Clerk
Cc: Lesley Hunt
Subject: letter H-1, City council agenda
Attachments: Item H-1, CNPS East Bay, 9-5-23.pdf

Hello, attached is our letter for H-1 on the Council agenda this eve.

thank you,

Jim Hanson, Conservation Chair



CALIFORNIA
NATIVE PLANT SOCIETY

East Bay Chapter www.cnps.org
P.O. Box 5597 Elwood Station Berkeley, CA 94705

September 5, 2023

Mayor Miller and Members of Orinda City Council
City Of Orinda
22 Orinda Way
Orinda, CA 94563

Via email: cityclerk@cityoforinda.org

RE: Item H-1 - Moraga Orinda Fire District Proposed Ordinance 23-08 Regarding Fuel Break Requirements on Certain Parcels

Dear Mayor Miller, Vice Mayor Darlene Gee, and Council Members Brandyn Iverson, Latika Malkani, Janet Riley,

The East Bay Chapter of the California Native Plant Society follows and comments on vegetation management plans to support practices that also conserve the region's diverse and rich native flora.

This summer one of our members, Sandy Pearson, spoke to us about elements of the Moraga Orinda Fire District's newly-adopted ordinance, including the requirement to treat a 100' wide strip around the property line of larger parcels, as well as the level of vegetation removal specified in the ordinance. For instance, grasses are to be cut below 3" and all hazardous vegetation, non-irrigated brush, and combustible material must be removed within this 100' strip.

In 2019, District staff made time to meet and discuss vegetation management practices with CNPS and other environmental organizations when the Emergency Fuel Break project was being planned and implemented. Last year we commented on MOFD's plan for the current Tunnel East Bay Hills Fuel Break Project. The District included several CNPS recommendations in the Tunnel Project plan.

It may be fair to say that how we respond to changing fire seasons and increasing aridity due to our effects on the climate is complex for fire personnel and the public alike. We are all seeking ways to combine effective fuel management and conserve native plants and wildlife habitat in a dramatically-changing fire regime. However, even the California Fire Science Consortium, a research clearinghouse, provides little scientifically-based guidance on how to achieve this objective in oak woodland, shrub, and grassland, systems like ours.

Indeed, fire personnel are now being asked to decide on vegetation management in diverse, finely ecologically-tuned landscapes. Our response to a changing fire regime can and should be part of the public's discourse and understanding. It seems we're all in this together.

There are practices for properties in the Tunnel East Bay Hills Fuel Break Project plan (page 2-8) that include several native plant conservation measures, such as:

- Prioritize removal of remove invasive plants and noxious weeds
- Selectively mow /cut live native understory species (e.g., snowberry, fern, etc.) to 6 inches or more to allow for regrowth.
- Strategically retain native shrub species (e.g., elderberry, manzanita, toyon, coffeeberry) to reduce fuel load while retaining natural woodland structure;

As part of this discussion, can the native flora conservation measures being used in the Tunnel Project's overall wildfire prevention strategy also be incorporated for larger private properties?

Regarding grasslands, the vegetation treatment for grasslands by the East Bay Regional Park District as outlined in the environmental document for the Wildfire Hazard Reduction and Resource Management Plan (WHRRPM) states that mowing heights for grasslands should be no lower than 4" to prevent scalping of native perennial bunchgrasses and desirable forbs. We note that this grassland management practice has been used by EBRPD for what's coming on one-and-a-half decades. Can evaluation of this grassland practice be useful for larger properties in Orinda?

Another resource comes from the Marin Wildfire Prevention Authority (MWPA) that was formed to develop common standards from the experience and knowledge of member fire agencies across Marin County. The MWPA developed and published "Ecologically Sound Practices for Vegetation Management" a document that relies on ongoing evaluation of vegetation management practices to set and calibrate priorities. For instance, they follow a "house out" approach that prioritizes fire risk reduction strategies in and around communities ahead of fuel breaks in remote wildlands. Of note, the Moraga Orinda Fire Department has also been helping residential property owners to "harden" their homes against wildfires.

In dealing with the new fire regimes, we appreciate that Orinda City Council's interest in wildfire risk reduction practices that combine effective fuel management with the conservation of native plants and wildlife habitat.

Sincerely,



Lesley Hunt, President



Jim Hanson, Conservation Chair

Cc: Chief Winnacker, Moraga Orinda Fire Department

Subject:

FW: correction to MOFD comments

From: Sandy Pearson <sandypears101@gmail.com>

Date: September 5, 2023 at 1:59:06 PM PDT

To: Inga Miller <imiller@cityoforinda.org>, Darlene Gee <dgee@cityoforinda.org>, Brandyn Iverson <biverson@cityoforinda.org>, Latika Malkani <lmalkani@cityoforinda.org>, Janet Riley <jriley@cityoforinda.org>

Subject: correction to MOFD comments

Dear Orinda City Council Members,

I would like to correct a statement I made in my recent comments about the proposed MOFD Ordinance.

I had stated :

" This section of the Ordinance also suggests that homeowners may submit an individualized fire protection plan. This may be something useful, but all detail is deferred to the State Fire Code. Still, this could be a step in the right direction and is a welcome development. "

Unfortunately, the Individualized fire plan is intended by the State Fire Code for use by large developments and building projects that will have CC+R's. The submitted plan must identify conformance with all fire ordinances, especially the most restrictive, and include legally binding statements of financial responsibility for vegetation management into the future. It is not at all intended for use by individual homeowners and is not a vehicle for adapting requirements to local conditions. I sadly withdraw my optimistic welcome... and apologize that the short time frame did not allow me to make more timely research.

Sandy Pearson

Subject: FW: Comments on MOFD Ordinance 2308
Attachments: Comments for City 9-2-23.docx

From: Sandy Pearson
Date: September 4, 2023 at 9:51:47 AM PDT
To: Inga Miller <imiller@cityoforinda.org>, Darlene Gee <dgee@cityoforinda.org>, Brandyn Iverson <biverson@cityoforinda.org>, Latika Malkani <lmalkani@cityoforinda.org>, Janet Riley <jriley@cityoforinda.org>
Subject: Comments on MOFD Ordinance 2308

Dear Orinda Council Members,

attached please find my further comments on the ordinance being discussed Tuesday. Thank you for your consideration,

Sandy Pearson
629 Miner Rd

Sept 2, 2023

Dear Orinda Council Members,

I would like to offer my comments on the Proposed Ordinance 2308 being considered at Tuesday night's Council Meeting. My background is in natural history, and native plants and animals are my interest, so I can offer a different perspective on the proposals at hand.

My main observation: this document offers some improvements over the previous ordinances, but is still most remarkable for what is missing. MOFD continues to deny the effects of their requirements, instead of collaborating to find better ways to accomplish their worthy goals.

Here are my comments, which I hope will explain my statement. They are organized by topic.

VEGETATION MANAGEMENT - BUSHES

One of the improvements in this proposed Ordinance is a paragraph explaining that properly spaced shrubs can indeed be left in the fuelbreak area. I believe this standard was used before, but it was not described anywhere that residents were likely to find it. The Ordinance now describes the horizontal spacing that is considered fire-safe.

What is still missing here is the vertical spacing which is required when bushes are growing under trees. An air gap is required, something like 2 ½ times the shrub height, so that they don't carry fire to trees growing above. Where is this information to be found?

Bushes are crucially important for all our ground nesting birds, including California quail. They should be preserved wherever it is safe. Many people are planting drought-tolerant native plants, which provide food for native wildlife. Since these are mostly unirrigated, and unirrigated brush is declared to be Hazardous, it is not clear whether gardeners would be obliged to remove the very bushes they have planted.

GROUND COVER

There is also still no direction about green groundcovers, including things like native ferns and Yerba Buena. Since they are low growing and green all year, these plants seem to be vastly better than dry annual grasses, and might even be useful in catching drifting embers that would otherwise lodge against houses. Some properties in our neighborhood have had their clearing approved and have left both ferns and monkey flower. It is not at all clear if land must be cleared to bare dirt, or 3 inches, or if certain low green plants can remain. These standards need to be available so that the same rules can be applied to everyone.

Leaving some low green vegetation is also the only way to provide shelter for brush rabbits and quail. These animals are such sought after snacks, it is hard for them to safely cross large

denuded areas. Baby quail are especially vulnerable. Extensive swaths of bare land eliminates them from the area.

TREES

This Ordinance preserves mature trees, as did the last version, but more explicitly here. The bottom branches up to 6 feet must still be removed. What is not explained is that young trees can remain, and that the bottom branches should be removed up to 1/3 the height of the small tree. Eventually the tree will be big enough that the clearance will also grow to 6 feet. This is good news, but where is this information?

DEAD TREES and LOGS

Large dead trees and down woody debris are some of the most valuable wildlife habitat in the landscape, and its removal is a severe blow to animals. Because we are talking about old, long dead trees, they do not have the twigs and other fine fuels that spread fire quickly. They are hard to light and tend to smolder for a long time after the fire front has passed, so they are one of the least hazardous fuels out there.

Large dead trees, called snags, are pretty rare – especially those over 18 inches which are most useful to hawks, owls, and all the cavity nesting birds that seek out the hollows where branches have fallen off with age. Considering the cost vs. benefit and overall scarcity, snags deserve special consideration. They are not mentioned in this or any other ordinance.

Another very important wildlife resource is the granary trees use by colonies of acorn woodpeckers. You may have noticed old trees or telephone poles stuffed full of acorns. This is the winter food supply for a group of up to 20 native acorn woodpeckers, who spend months stocking their larder. These woodpeckers nest in a group in large hollow trees and have a fascinating social structure, with aunts and uncles helping to raise the chicks produced by the dominant pair. They could thrive in our oak woodland if we would take reasonable steps to assure their food stores and shelter.

Down woody debris and logs on the ground are another extremely valuable feature in the landscape, a haven for lizards, salamanders, field mice, beetles, and many other creatures. They conserve moisture in the soil, prevent the soil from drying, and provide a substrate for interesting mushrooms, which support their own animal kingdom. They will burn, but without twigs and fine fuels, they do not burn rapidly. They eventually become mulch and enrich the soil. We need to consider their great value to the environment against their modest contribution to fire risk. They are not so different from the piles of wood chips remaining all around after clearing operations.

GRASS

The dry annual grasses that cover our hillsides are invasives; they have replaced the native perennial bunch grasses that once covered California. The natives grow year after year, some living for decades. They put long roots deep into the soil, holding steep hillsides in place. And they allow rainfall to infiltrate into the soil preventing excess run-off that leads to flooding.

There is a wonderful exhibit at the Oakland Museum showing a California Oat grass bunch removed intact from the soil, with a thick tangle of roots dangling 6 feet below it.

There are a few areas that still have native perennial bunch grass around – they thrive when mowed to 3 inches, as required. The mowing or weedeating also helps them spread into areas dominated by the invasive annuals. Fire fighters recognize that they carry fire much less rapidly than the annual grasses, since they stay a bit moist all thru the year. We need to be sure we conserve the perennials where they occur, and avoid damaging them, which would surely lead to their replacement by the far more flammable annuals.

The regulations call for grasses to be cut to 3 inches; in practice, most areas that are weedeaten are cut closer to zero. Some contractors are proud to offer treatments which involve triple cutting the grass stems, and result intentionally in hillsides that look like they have been raked. This is not only unnecessary, according to past and present Ordinance requirements, but exposing the soil to the baking sun makes it hard and less able to absorb water the following winter. This makes it harder for small herbaceous plants to get started the next spring and gradually renders the area less able to support life.

Weedeating has consequences; it is not harmless, though it may be necessary. A field that is weedeaten no longer supports field mice which are the principal food for hawks, owls, foxes, coyotes, and bobcats, all our largest and most interesting animals. It cannot be true that the vast amount of weedeating going on now has no environmental consequences. We need to acknowledge our impacts, and plan how to minimize or mitigate them.

Here are some more general comments and questions related to the Ordinance:

1. The Moraga Orinda Fire District is creating the Tunnel Shaded Fuel Break using the somewhat more nature-friendly standards adopted by CalFire, the State Board of Forestry and Fire Protection. They are applied on EBMUD and the East Bay Regional Park District lands. Why can't we apply them to our private property as well?
2. Repeated disturbance of native vegetation can lead to its replacement by more flammable annual grasses and other invasive weeds, making the fire hazard WORSE. All plants are not created equal when it comes to fire. We can be more selective and just as effective.
3. Fuelbreaks are not the most effective way of reducing fire risk. Creating safe evacuation routes, developing community alert systems, and the hardening of homes and other structures to resist fire are all important strategies to save lives and property. Fuelbreaks are simply far less controversial than telling homeowners their wood fence or deck skirting is a problem.

The Fire District has gotten a bulk shipment of gutter guard – I look forward to getting some for my own home, and seeing more emphasis on protecting structures directly.

4. At least 4 of my immediate neighbors have spent over \$10,000 this year on vegetation clearing. It's true that much of it was overdue and needed to be done. But annual expenses will

continue. The grass will grow back, possibly thicker where the brush was removed. And the brush will keep trying to come back for many years, for better or worse. This continuing expense is like a tax suddenly imposed on people with larger yards, most of which are quite steep and difficult to treat. The benefits are spread to the neighborhood in reduced fire risk, but the cost is borne by the individual.

5. The proposed Ordinance expands on the availability of Modifications to the requirements, and is a welcome addition. However, they are not the complete answer to addressing environmental concerns. Modifications may not lessen the fire safety requirements, and must provide the Same Practical Effect as the original requirements. It is hard to imagine what trade-offs would be acceptable, other than perhaps relocating a fuelbreak.

This section of the Ordinance also suggests that homeowners may submit an individualized fire protection plan. This may be something useful, but all detail is deferred to the State Fire Code. Still, this could be a step in the right direction and is a welcome development.

6. One of the biggest problems with the vegetation management program is the difficulty of finding out what is really required. In the neighborhoods, you can see wildly different treatments which have all been approved. Owners who are pressured to respond within 30 days don't have time for a research project. They may order something more severe than they would like because they just don't know. Many decisions are being left to the contractors, who also lack information.

The Fire District's Pre-Citation notice warns owners against the "taking of endangered, rare or threatened plant or animals species" or causing "significant erosion and sedimentation of surface waters". But there is zero guidance on what that means or how to accomplish it. What ARE the rare and threatened species? How do we avoid taking them? How much erosion is significant? How are we supposed to find out? And still meet the 30-day deadline?

There is clearly a lot of guidance missing, but the Ordinance is probably not the best place to put it. And if the Best Practices evolve, the Ordinance would have to be amended. Perhaps there is a way to tie the Ordinance to a document outlining the specific requirements, hopefully produced by a collaboration of fire officials, biologists, and other citizens. Marin County has produced an excellent example in their Ecologically Sound Practices for Reducing Wildfire Risk.

7. The final paragraphs of the proposed Ordinance is particularly troubling to me. It says:

"These requirements will be beneficial to the environment by preventing the emergence and spread of wildfires, which can cause immense environmental harm. Further, the Ordinance contains provisions requiring it to be interpreted and implemented in a manner that avoids environmental impacts, and directs property owners to seek modifications of the applicable requirements if compliance would cause any such impacts. Due to these requirements, there is no possibility that it will cause significant environmental effects."

Our Fire District is focused on protecting our community and environment from wildfire. Of course we all support that. But their continuing denial that there is ANY impact on the natural world from the large scale disturbance of vegetation makes it impossible to find ways to mitigate it.

And the insistence that ordinary homeowners can make appropriate decisions on complex environmental issues in the complete absence of any information is ridiculous.

For the district to try to shed all responsibility for the decisions that get made this way is an affront to common sense. It's as if I left a 6 year old child alone in the kitchen with orders to have dinner on the table by the time I come home or else suffer the consequences. Oh, and you have to buy the groceries yourself!

Requiring provisions to be interpreted and implemented correctly is senseless. It seems like an embarrassingly transparent ruse to avoid responsibility and duck the requirements of California's environmental regulations.

I'm sorry to be so blunt, and I understand this is the best advice of the District's Counsel, but our community is increasingly losing its native plants and wildlife and facing a dramatic increase in erosion, run-off, and landslide and we are not even beginning to deal with our problems due directly to this charade.

It's time to start working together to protect our environment, both the built and the natural.

Thank you, City Council, for providing a forum where citizens can finally share their concerns. I hope some helpful discussions and partnerships can emerge from this process.

Sincerely,

Sandy Pearson

Subject: FW: MOFD Ordinance - Tuesday agenda
Attachments: City council Sept 2 2023.docx

From: Sandy Pearson <sandypears101@gmail.com>
Date: September 3, 2023 at 1:25:00 PM PDT
To: Inga Miller <imiller@cityoforinda.org>, Darlene Gee <dgee@cityoforinda.org>, Brandyn Iverson <biverson@cityoforinda.org>, Latika Malkani <lmalkani@cityoforinda.org>, Janet Riley <jriley@cityoforinda.org>
Subject: MOFD Ordinance - Tuesday agenda

Dear City Council Members,

please see attached letter for my brief comments - thank you.

Sandy Pearson

Sept 2, 2023

Dear Orinda City Council Members,

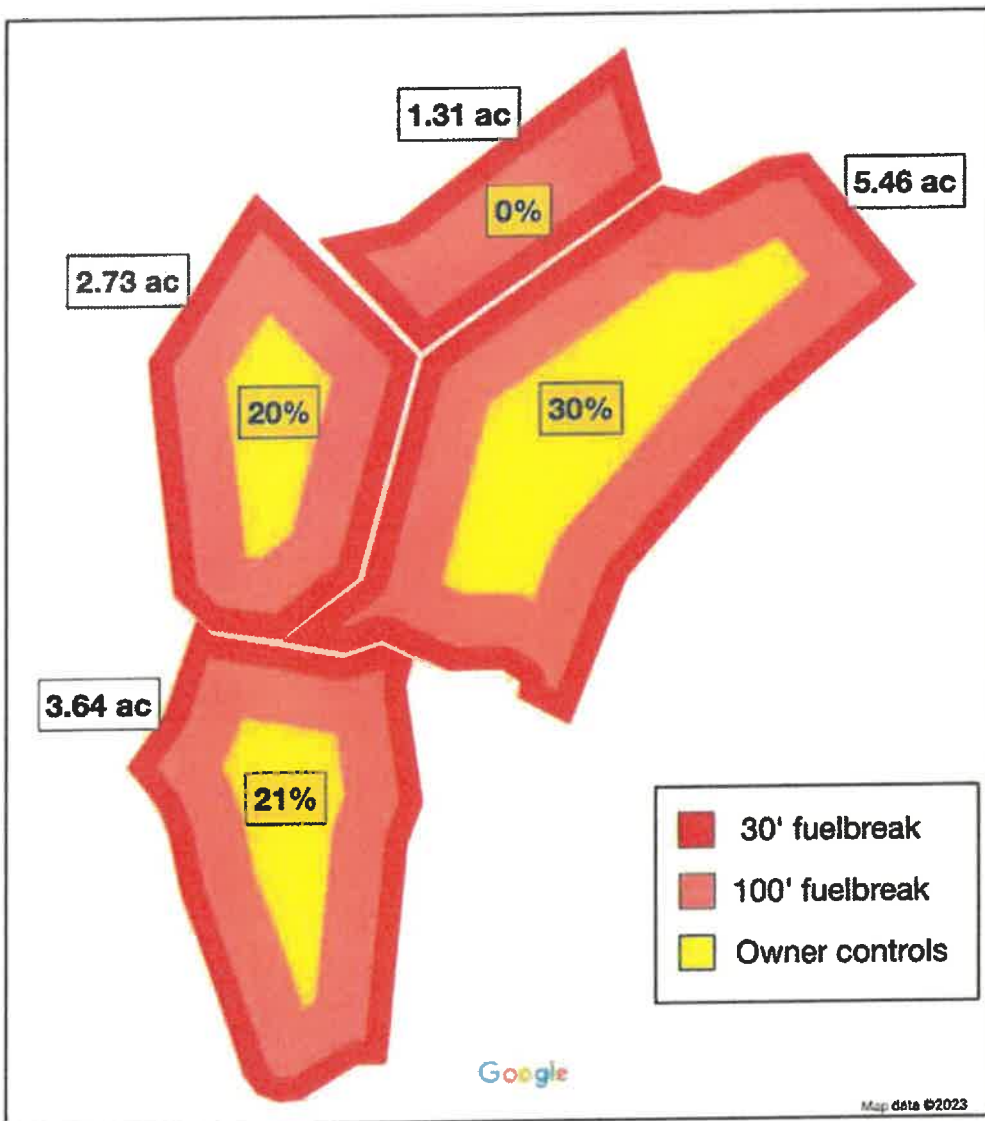
My family has several vacant parcels on Miner Road in Orinda. We have been caring for this property for over 60 years now. It is not overgrown; much of it is open and park-like. We love the beautiful landscape and the wildlife, which are much enjoyed by our neighbors.

Last February, MOFD increased the width of the fuelbreak required around the PERIMETER of our lots, from 30 feet to 100 feet, more than triple. According to tape recordings from this meeting, the change was made to simplify regulations, and make the rules for parcels in the 1 – 5 acre range the same as for 10 acres plus.

This change, which was not in response to new fire science, has a devastating effect on parcels like ours. The map below shows how much of the remaining property is now under our own control – less than 30% of a parcel as big as 4 or 5 acres. MOFD has appointed itself the new managers, although we have to pay the bills for their decisions. These bills amount to many thousands of dollars annually, and far exceed what we pay in property taxes.

PLEASE SEE NEXT PAGE

VACANT LOTS



Yes, we could ask MOFD for permission to treat our lots as a single parcel and make one 100' fuelbreak around the whole. But this doesn't help our neighbors who are struggling with the same problem – 100 feet is just too wide a fuelbreak. And actually, it is 200 feet because the next door owner has to do the same amount. There are over 500 parcels in Moraga-Orinda that are affected by this change, and over 1000 acres of additional clearing will be required.

In fairness, I should point out that this map is not entirely accurate because it applies only to VACANT parcels. If there was a house in the middle of the property, it would ALSO require a 100 foot fuelbreak around it, so that the ENTIRE parcel would be subject to MOFD regulation. Yes, a parcel as large as 5 acres or more would be subject to management entirely outside the owner's control.

My family objects strenuously to this regulation, not only for the impact on native plants and animals, but also due to the taking of our property rights and the expense it imposes on us every year going forward. We were never consulted nor advised of this change, and learned of it only upon receiving a 30-Day Pre-Citation in the mail last May.

I hope that the City Council can exert some influence on MOFD to reconsider this ordinance. We can't fuelbreak all of Orinda. There are other more effective ways to protect our lives and homes, like safe evacuation routes, community alarm systems, and home hardening. We don't have to eliminate nature to be fire safe.

Sincerely,

Sandy Pearson

629 Miner Rd

Subject:

FW: Revised MOFD Fire Ordinance

From: Stephen Silla

Date: September 3, 2023 at 1:31:58 PM PDT

To: Inga Miller <imiller@cityoforinda.org>, Darlene Gee <dgee@cityoforinda.org>, Latika Malkani <lmalkani@cityoforinda.org>, Brandyn Iverson <biverson@cityoforinda.org>, Janet Riley <jriley@cityoforinda.org>

Subject: Revised MOFD Fire Ordinance

Dear Council Members

I have lived off of Miner Road for 24 years and have always been diligent about maintaining the proper fuel breaks. I believe the MOFD recently adopted 100' perimeter property line fuel break to be excessive and unrealistic. For instance, if my 2.5 acre parcel were square, clearing 100' on all property boundaries would leave 0.4 acres undisturbed, including the residence building footprint. Unrealistic. In addition, for neighboring properties to each clear 100' fuel breaks on their common property lines would result in a 200' fuel break. Excessive. The particular property location, configuration and topography needs to be taken into consideration before the new revised proposed Code is adopted. One size does not fit all. Finally, the extreme increase in the amount of clearing being proposed will have a devastating impact on the natural habitat for the flora and wildlife that all who live in this area enjoy. We should be able to find a balance between fire protection and environmental preservation.

Your consideration and attention to this matter is respectfully requested.

Stephen M Silla
14 Gardiner Court
Orinda, Ca 94563

925 519-6166

From: Michael Bowen
Sent: Tuesday, September 5, 2023 3:16 PM
To: Sheri Smith
Cc: Inga Miller; Brandyn Iverson; Darlene Gee; Latika Malkani; Janet Riley; Tomas MacKinnon; Lisa Hales; Bruce McGurk; Toris Jaeger; cinda.mackinnon@comcast.net; Leesa Evans; Tom Morehouse; Maria Brandl; Reginald Barrett; Bob Stoops; Brian Waters; David Hop; Suzanne Uhland; andrew.chambers@wildlife.ca.gov; Kathryn Hart
Subject: Friends of Orinda Creeks Letter re. Proposed MOFD Ordinance
Attachments: FOC-OCC_MOFD Ordinance_Final.pdf

Sheri,

For circulation to the City Council and for the record.

Thank you!
Michael Bowen

Friends of Orinda Creeks
PO Box 883
Orinda, CA 94563

Honorable Mayor Miller and City Councilors:

September 5, 2023

Friends of Orinda Creeks seeks your assistance regarding a proposed ordinance by the Moraga Orinda Fire District, and future community resilience planning in Orinda. We are concerned that a proposed ordinance threatens Orinda's watersheds, places an undue legal burden on homeowners, lacks meaningful public input and does little to improve long-term fire safety in Lamorinda. We believe Orinda would be well served by a thoughtful, community-involved planning process that achieves greater community resilience planning, and enhanced fire risk reduction in Orinda.

Background

The Moraga Orinda Fire District (MOFD) adopted a fuelbreak ordinance in February 2022. The ordinance detailed how owners of larger parcels or undeveloped lots should manage vegetation on their property to reduce our collective risk of fire. In general, the ordinance required homeowners to cut grass and weeds to 3 inches or less, remove low limbs on trees, and adhere to a 30' fuelbreak. This ordinance was controversial at the time, and it coincided with an aggressive but now abandoned (as ineffective) tree removal campaign by PG&E.

One year later, in February 2023, MOFD passed a new ordinance dramatically increasing the requirements; Homeowners would now be required to cut a 100-foot fuelbreak strip around the entire perimeter of their property. This updated ordinance was approved with no public outreach, no environmental impact analysis, and no assessment of efficacy. It imposes extensive additional vegetation clearing on over 1,000 acres of residential land on more than 500 parcels. By comparison, MOFD's recently grant funded Tunnel Shaded Fuel Break of 1,384 acres required a full Environmental Analysis of 135 pages.

Environmental Analysis of Proposed Ordinance

Environmental analysis of the proposed ordinance is essentially non-existent. In contrast, the analyses for the ongoing Tunnel Shaded Fuel Break, as well as similar projects conducted by EBMUD and EBRPD, include many reasonable strategies for minimizing the impact on native plants and animals. CEQA does not apply to private activities on private property, but the ordinance concerns MOFD-prescribed activities on private property. Because MOFD conducted little environmental review, MOFD attempts to delegate environmental compliance -and the associated legal risk of CEQA or permit violations--to the homeowner, exposing the homeowner to permitting problems, fines or litigation. This inappropriate delegation of environmental compliance has already



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resulted in enforcement issues in which property owners have denuded creeks of their vegetation, filled channels and prompted enforcement action by state regulators. A cryptic appeals process for MOFD-mandated actions is outlined in the proposed ordinance, thereby placing further burden of environmental analysis on the homeowner.

MOFD's Lack of A Respectful and Inclusive Public Process

We are alarmed by the haste of MOFD's rulemaking process, the lack of adequate or meaningful public input, and the total absence or inappropriate delegation of environmental review. We are concerned that this trajectory will lead to continued environmental degradation in our community.

The new Ordinance was introduced Thursday, August 31, 2023, a holiday weekend. The public had six days to read and comment before the First Reading at a Special Meeting of the MOFD board, September 6. Absent modifications by the board members, the ordinance will get its Second Reading, and Adoption as soon as September 20.

Fresh in our minds is PG&E tree removal, a \$2.1 billion program that PG&E has now abandoned as ineffective for fire risk reduction. We also recall the Fire Marshall's order to denude San Pablo Creek downtown, including removal of a state-funded environmental mitigation site. We are also mindful of MOFD leadership's attacks on elected officials and public land managers who are attempting in good faith to balance public access, natural resource protection and fuel management challenges that have largely been ignored statewide for a century.

Shortcomings of MOFD Ordinances

The present regulations in Moraga-Orinda require the elimination of all "unirrigated brush", even when growing far from any structure. This directive is particularly and unnecessarily harsh on riparian zones such as creeks where moisture content is high and fire risk is low. It is also conducive to erosion and landslides which can cause property damage or contribute high sediment loads into our watersheds and drinking water supply. This directive also conflicts with guidance from many sources to plant drought tolerant natives that reduce water consumption and support local wildlife.

Inappropriate treatment of native vegetation has the potential to make wildfire risk worse by encouraging more flammable, weedy invasives to spread. Moreover, the power to determine what constitutes "hazardous vegetation" rests solely with the Fire Chief, who delegates monitoring to untrained agents or contractors. For example, since it is not clear if green, low-growing plants are considered hazardous or not, in practice, they are nearly always removed by contractors. They are often preferable to the more flammable dry annual grasses or aggressive invasives such as French Broom that replace them.



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Our creek corridors were heavily impacted by the now abandoned PG&E Tree Removal Program, as well as the existing ordinance. The indiscriminate removal of riparian canopy reduces soil moisture content, increases water temperatures, destabilizes creek channels, reduces baseflow and otherwise adversely impact the environment while doing nothing to reduce fire risk

Removing vegetation on steep slopes causes severe soil erosion, debris flows or landslides that threaten our infrastructure and pollute our creeks with high turbidity levels. Unfortunately, landowners rushing to comply with a MOFD 30-Day Pre-Citation Notice have clear-cut riparian areas along creeks and in former landslide areas. This may not be MOFD's intention, but it is the result of their decrees, and MOFD offers no guidance on land management. There is a glaring lack of communication from MOFD on most all these issues. Giving homeowners and contractors community-based best management practices and protocol would enable better decisions at little expense.

Next Steps

We believe that a more transparent rulemaking process and community led planning process will enable the community to achieve more effective and intelligent community resilience planning, fire risk abatement and enhancement of our natural areas.

We believe there is a precedent for a constructive and respectful path forward for the community in the form of a community plan. Coping with higher fire risk is common throughout California, and many new solutions are emerging. In Marin County, citizens and fire professionals worked together to produce a report entitled *Ecologically Sound Practices for Vegetation Management*. Such an approach may benefit our community as well. We urge the City Council and MOFD to help establish a forum to bring our community together on this important topic rather than fanning the flames of discord on a challenging and divisive issue.

Conclusion

Orinda is loved for its natural setting and community spirit. It's time for the community to work together with MOFD to craft a plan that protects life, property and our beautiful environment while fostering broader public support. It is possible to have moderate, sensitive vegetation management along with truly effective fire hazard reduction. Any support you can offer in facilitating this dialogue will be most appreciated.

Sincerely,



Michael Bowen
President



www.orindacreeks.org

From: David Biggs
Sent: Tuesday, September 5, 2023 4:00 PM
To: Sheri Smith
Subject: FW: Proposed Fuel Abatement Ordinance Concerns
Attachments: IMG_0428.HEIC; IMG_0422.HEIC; IMG_0423.HEIC

From: Janet Riley <jriley@cityoforinda.org>
Sent: Tuesday, September 5, 2023 3:53 PM
To: David Biggs <DBiggs@cityoforinda.org>; Sheri Smith <ssmith@cityoforinda.org>
Subject: Fw: Proposed Fuel Abatement Ordinance Concerns

From: Julia Hunting
Sent: Tuesday, September 5, 2023 3:34 PM
To: Inga Miller <IMiller@cityoforinda.org>; Darlene Gee <Dgee@cityoforinda.org>; Latika Malkani <lmalkani@cityoforinda.org>; Brandyn Iverson <biverson@cityoforinda.org>; Janet Riley <jriley@cityoforinda.org>
Subject: Proposed Fuel Abatement Ordinance Concerns

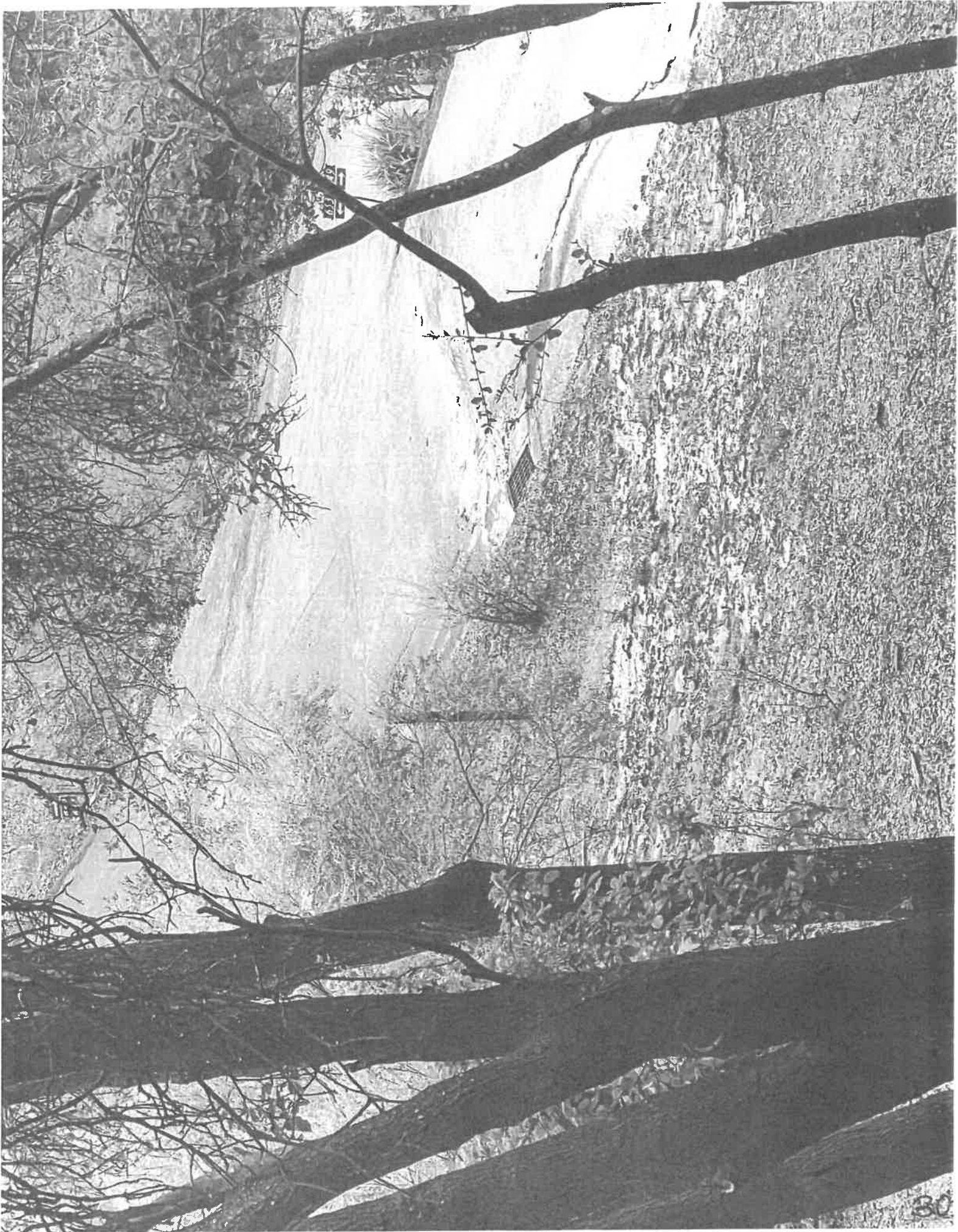
Dear Members of the City Council,

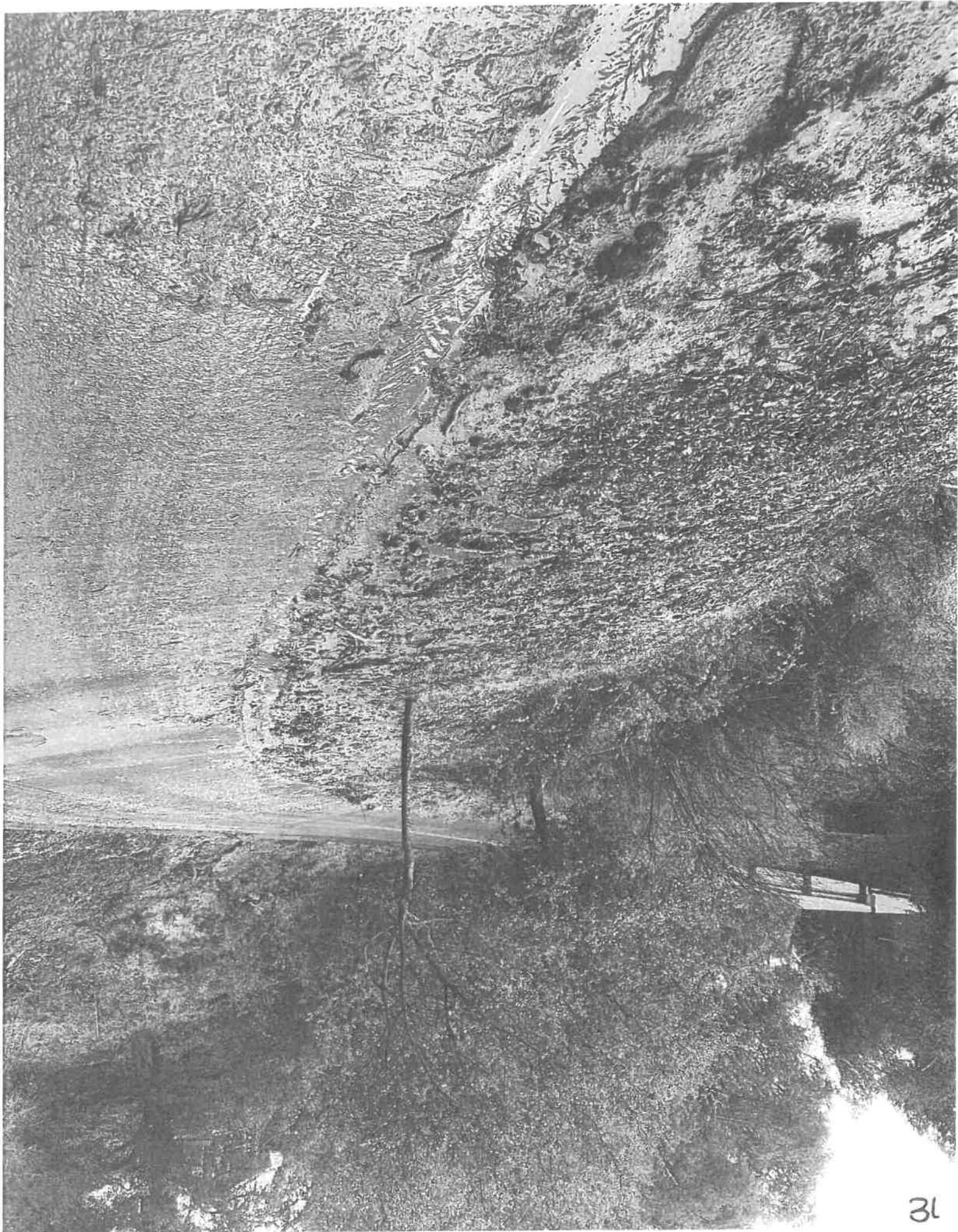
I am concerned about the fire fuel abatement ordinance that MOFD recently passed. It provides very little guidance on what vegetation can remain on our properties, what should be done to protect animal species, what variances are provided to lots subject to mudslides and landslides, or with steep (2:1 and steeper) grades, and an unreasonably short time period in which property owners must comply after receiving a Notice of Violation from MOFD.

I have been diligently clearing dead vegetation from the gulley on my property, but because it is located in a steep (1:1) ravine, I have not entirely removed all vegetation, as it would destabilize the surface soil. Mud runs off the property above mine regularly and flows into my gulley during the rainy season (see attached pictures). Luckily, the gulley is far enough from my home and any other structures so as to receive the runoff without causing any property damage. There are several homes below my property, and I am concerned that if I cleared my gulley entirely, it would be an ineffective barrier at containing the mudflows from the property above; any mud that flowed from the property above would flow into my gulley and mobilize the loose surface soil, and all of this material would flow into the properties below mine. I do not want to cause any property damage to my downhill neighbors, and I'm afraid that following the MOFD ordinance as written could lead to this result, especially if we have another rainy season like last year's.

Thank you very much for your consideration of this important matter, and I would be happy to engage in further discussions with the Council and MOFD so that we can together draft a more reasonable ordinance.

Sincerely,
Julia Hunting
659 Miner Road





From: David Biggs
Sent: Tuesday, September 5, 2023 4:01 PM
To: Sheri Smith
Subject: FW: MOFD Code 23.04 Sec 4 (b)(1)(B)
Attachments: JDR_Fuel Abatement Letter_Bodfish_050214.pdf

From: Winnacker, David <dwinnacker@mofd.org>
Sent: Tuesday, September 5, 2023 11:27 AM
To: historydojo@gmail.com
Cc: David Biggs <DBiggs@cityoforinda.org>; Jonathan Holtzman <jholtzman@publiclawgroup.com>; Rubin Cruse <rcruse@publiclawgroup.com>; Isaacs, Jeff <jisaacs@mofd.org>; Linus Eukel <linus@jmlt.org>
Subject: Fwd: MOFD Code 23.04 Sec 4 (b)(1)(B)

Mr Rust,

I have reviewed our records following Fire Marshal Issacs' visit to your site in July and am unable to determine what information regarding fuel mitigation requirements you have requested and the fire district has not provided. At your convenience, any additional information you can provide would be appreciated and will allow staff to be more responsive to your concerns.

During the July visit, I believe a discussion of the modification process also occurred. I have reviewed our records/spoken to staff and we do not appear to have received a request for modifications. As needed, the relevant form is available here: <https://www.mofd.org/how-do-i/modification-extension-request-form>

In cases such as yours where an environmental review has occurred and habitat for special status species has been identified, MOFD defers to the Management Recommendations (contained on pages 5-10 of the attached Fuel Abatement Letter Bodfish 050214) for the nature of work that can be done to reduce woody debris, decadent trees/shrubs/limbs, duff, and Coyote Brush with consideration for Dusky Footed Woodrats and Alameda Whipsnake. The process to document the plan for mitigation at your site, consistent with these best management practices, begins with submission of a modification request. Please do not hesitate to contact the fire district if the form generates questions or concerns.

With regard to your reference to the North Orinda Shaded Fuel Break (NOSFB), I believe it is important to note the different purpose of a perimeter fuel break as opposed to interior fuel mitigation efforts. The NOSFB was intended to reduce the probability of the ground component fire transitioning from the watershed and parklands to the north into our community. Interior fuel mitigation is intended to both reduce the probability of wind driven fire (embers and ground component) spreading from the north onto your property (protecting your home and property), but also to reduce the probability of fire spreading from your property on to adjacent properties (protecting the homes and property of your neighbors). Due to the random nature of property lines in most parts of the fire district, this comes close to mimicking the natural state, which was characterized by a varied fuel mosaic and is not conducive to rapid fire spread. In instances where this approach does not achieve our shared fire safety goals, the modification process should be used to propose an alternative.

Lastly, we do not believe this ordinance is a tax in the legal sense. From the relevant precedent:
A tax is limited to charges payable to, or for the benefit of a local government. *Schmeer v. County of Los Angeles*, 213 Cal. App. 4th 1310 (2013).

In this case, the costs of compliance are not charges made payable to the District and are not the equivalent of charges made payable to the District.

I am available at your convenience should there be additional questions I can answer.

Thank you,

Dave Winnacker
Fire Chief
Moraga Orinda Fire District

Begin forwarded message:

From: History Dojo <historydojo@gmail.com>
Sent: Monday, September 4, 2023 11:18 AM
To: Inga Miller <IMiller@cityoforinda.org>; Darlene Gee <Dgee@cityoforinda.org>; Latika Malkani <lmalkani@cityoforinda.org>; Brandyn Iverson <biverson@cityoforinda.org>; Janet Riley <jriley@cityoforinda.org>; Sheri Smith <ssmith@cityoforinda.org>
Subject: MOFD Code 23.04 Sec 4 (b)(1)(B)

Dear Orinda City Council,

I am writing to add my name and voice to object to the recent imposition of MOFD Code Section 23.04 Sec. 4 (b) (1) (B), requiring the removal of hazardous vegetation on parcels greater than one acre through the creation of a 100' fuel break around the entire perimeter of the Parcel. I feel that this code is a burden upon the owners of parcels larger than one acre, is equivalent to a tax upon these parcels in the form of mandated maintenance, and does not effectively prevent the threat of wildfires.

I reside at 616 Miner Road in Orinda, a property situated on an easement of the Bodfish Land Trust, a property protected by the John Muir Land Trust. Under the terms of the trust it is my responsibility to maintain the land trust without any financial support from John Muir Land Trust. The requirement under Code 23.04 Sec. 4 (b)(1)(B) that I maintain a 100' fuel break around the perimeter of a seven acre land trust is a burden upon me financially, and which cannot be completed without endangering the protected species and habitat present on the Bodfish Land Trust. After meeting with MOFD and showing them these protected areas, it was determined that the fuel break would not be possible around the perimeter of the property, nor anywhere that protected species and habitat were discovered. Nevertheless, there still remains extensive acreage to be cleared, representing annual financial expenses imposed upon me by MOFD. As of this date I have already spent over \$1200 on fire abatement around the Bodfish Land Trust, and spent over fifteen hours of my own time cutting and clearing brush to conform with the MOFD fire codes. At the meeting with MOFD, I requested clear documentation of the annual requirements for this code, but unfortunately MOFD has not responded with this documentation. This leaves me without clear guidance on the ongoing costs and requirements for compliance with the code.

The passage of the new requirements by MOFD is equivalent to a new tax upon homeowners. The code has placed upon me and other property owners a new financial burden to be met every year, without clear understanding of what the requirements are. Indeed, this year the expense was very significant, and the application of the code was open to the determination of the MOFD. Next year the application of the code may change, and my expenses may be more or less. This new tax upon homeowners is confusing and burdensome.

When I met with the fire marshal, I suggested that we create a fuel break that would conform with the wildfire strategy already in place. The North Orinda Fire Break was created in anticipation that the wildfire threat was greatest from the north, pushing south because of the Diablo Winds that return every Fall. A fuel break along the northern boundary of my acreage would be in keeping with that same strategy. A fuel break along the western, southern and eastern boundary would not aid in the success of that strategy. It seems that the application of a 100' fuel break around every property is a "cookie cutter" approach to wildfire prevention, and not informed by the current strategy pursued by the City of Orinda and the MOFD.

Please reflect upon the new MOFD Code 23.04 Sec 4 (b) (1) (B) requirements. I encourage you to consider what this code represents to homeowners in terms of burden and expense. I would like to see a new code to replace this code enacted. I encourage you to revisit this issue and change the code.

Sincerely,

Tyler Rust



May 2, 2014

Mr. Linus Eukel
Muir Heritage Land Trust
604 Ferry Street
Martinez, CA 94553

Re: Fuel Abatement Recommendations for Special-Status Wildlife at the Bodfish Property

Dear Linus:

This letter provides recommendations to minimize impacts to special-status wildlife species resulting from fuel reduction and improve habitat features to benefit species biodiversity and recruitment. The Bodfish property comprises 5.883 acres of a 7-acre parcel located at 616 Miner Road in the hills of eastern Orinda, Contra Costa County, California. A private residence occupies a 0.477-acre portion of the parcel. Two informal trails currently exist within the property, one generally paralleling Miner Road and the other meanders southwest to northwest, joining the first trail towards the eastern property boundary.

Environmental Setting

The study area is located in the City of Orinda on a predominately north facing slope between approximately 650 and 750 feet in elevation. Topography comprises a bowl-shaped feature between two ridges that extends upward toward the top of the slope. A small ridgeline near the top of the slope consists is part of a larger ridge system extending from Miner Road to State Route 24. Miner Road runs alongside the border of the study area from the northwest corner in a generally south-south easterly fashion. The study area is positioned within low-density residential development to the west, south, and east. However, residences are situated within large open spaces linking the ridgetop to the southwest to the habitat within the study area and the riparian habitat downslope. A single soil type is mapped within the study area, Los Osos Clay Loam 15-30% slopes. The study area lies near the boundaries of the Central Coast and San Francisco Bay Area subregions of the California Floristic Province and within the San Pablo Creek Watershed Planning Watersheds (CCCCDD 2003).

Hydrologic Features

Two small drainage basins occur within the study area. The first is an ephemeral tributary that drains the slope immediately south and upstream of the study area. It flows to the northeast toward Sleepy Hollow, where it enters Lauterwasser Creek. Lauterwasser Creek is a tributary to San Pablo Creek, which flows through San Pablo Reservoir before entering San Francisco Bay. The second drainage basin within the study area consists of an upslope concaved feature that does not appear to convey surface waters, but eventually connects with the first drainage downslope of Miner Road. During periods of heavy precipitation, subsurface flows are most likely carried downslope. A jurisdictional delineation was not conducted as part of this assessment, further information regarding wetlands and other Waters of the U.S. are not discussed in this report.

Vegetation

Vegetation within the study area was generally divided into two categories, depending on elevation and slope/aspect (Figure 2). Near the upper elevations of the property, where conditions were drier and more exposed, the dominant vegetation consisted of northern coyote brush scrub community species that are adapted to drier, harsher conditions. Vegetation located further downslope and in more protected areas consisted primarily of more mesic species associated with Coast Live Oak Woodland. Ruderal and urban species occur in various areas throughout the property, primarily near the maintained trails and residence.

Ruderal

Ruderal vegetation is an assemblage of plants, often a mixture of both native and non-native weed species that thrive in waste areas, heavily grazed pastures, cultivated and fallow fields, roadsides, parking lots, footpaths, residences and similar disturbed sites in towns and cities and along rural roadways. Some urban weeds are ornamentals, escaped from cultivation. Ruderal communities are difficult to characterize and are often temporary assemblages. In areas of frequent human disturbance the majority of wild plants are often introduced weeds rather than natives. However, ruderal species may at times, be integrated into various other communities (Holland and Keil 1995).

Ruderal vegetation within the study area is generally located along the edge of Miner Road, along the edges of trails and the residential driveway, and in scattered areas throughout the non-native grassland, in particular the top of the slope above the property. Common ruderal species located within the study area include Italian thistle (*Carduus pycnocephalus**), wild radish (*Raphanus sativus**), bristly ox-tongue (*Picris echioides**), prickly lettuce (*Lactuca serriola**), Italian ryegrass (*Lolium multiflorum**), wild oats (*Avena fatua**), ripgut brome (*Bromus diandrus**), soft chess (*Bromus hordeaceus**), hare barley (*Hordeum murinum* ssp. *leporinum**), and Mediterranean barley (*Hordeum marinum* ssp. *gussoneanum**), in part.

Urban Mix

Urban Mix is characterized as areas where non-native plants have either escaped or been ornamentally planted, for uses such as windrows, in areas around urban or residential developments. In open areas surrounded by development it is not uncommon to find mixtures of non-native and native vegetation. Common examples of non-native plants found in urban mix include Monterey pine (*Pinus radiata**), Eucalyptus species (*Eucalyptus* spp. *), and acacias (*Acacia* spp. *), along with many shrubs, perennials, and ornamental vines.

Within the study area, species typical of Urban Mix vegetation are present along Miner Road and adjacent to the residence. Such species include Monterey pine (*Pinus radiata**), plum (*Prunus* sp. *), and English ivy (*Hedera helix**), in part.

Northern Coyote Brush Scrub

As described by Holland (1986), northern coyote brush scrub is a cover type of Northern Coastal Scrub based on the dominance of coyote brush. This community comprises low shrubs, usually 0.5-2 meters tall, typically dense but with scattered grassy openings. It occurs on windy, exposed sites with shallow, rocky soils and is patchily distributed from southern Oregon to Point Sur in Monterey County.

* Denotes species of non-native origin.

+ Denotes species of native origin, but not indigenous to the site.

Within the study area northern coyote brush scrub is represented by a single alliance, *Baccharis pilularis* Shrubland Alliance, described below.

***Baccharis pilularis* (Covote Brush Scrub) Shrubland Alliance**

This alliance is described with coyote brush being dominant or co-dominant in the shrub canopy with other native shrubs. The shrub canopy is less than 3 meters tall and of variable cover. The membership rules for this alliance require coyote brush be greater than 50% absolute cover in the shrub layer. Habitat for this alliance is river mouths, stream sides, terraces, stabilized dunes of coastal bars, spits along the coastline, coastal bluffs, open slopes, and ridges between 0 to 4,921 feet (0 to 1,500 meters) in elevation. Soils include a broad range of types from sandy to relatively clayey (Sawyer et al. 2009).

Northern coyote brush scrub primarily occurs in the south and east portions of the study area towards the top of the slope in patches on north and northeast facing slopes generally near ridge tops. Species within the study area associated with coyote brush (*Baccharis pilularis*), include poison oak (*Toxicodendron diversilobum*), black sage (*Salvia mellifera*), creeping wildrye (*Elymus triticoides* subsp. *triticoides*), burchevrii (*Anthriscus caucalis**), California brome (*Bromus carinatus* var. *carinatus*), silver hairgrass (*Aira caryophylla**), California fescue (*Festuca californica*), and soap plant (*Chlorogalum pomeridianum* var. *pomeridianum*), in part.

Coast Live Oak Woodland

Coast live oak woodland is typically dominated by one tree species, coast live oak, which is evergreen and reaches 33-83 feet (10-25 meters). The shrub layer is poorly developed, but may include toyon (*Heteromeles arbutifolia*), gooseberry (*Ribes* spp.), and blue elderberry (*Sambucus mexicana*). The herb component is continuous and dominated by ripgut brome* and several other introduced taxa. This community typically occurs on north-facing slopes and shaded ravines in the south and more exposed sites in the north. It also intergrades with coastal scrub and mixed chaparral communities on drier sites and with other oak and evergreen forests on moister sites. Coast live oak woodland is distributed throughout the outer south Coast Ranges and coastal slopes of the Transverse and Peninsular Ranges, usually below 4,000 feet (1,219 meters).

Within the study area coast live oak woodland is represented by a single alliance, *Quercus agrifolia* Woodland Alliance, described below.

***Quercus agrifolia* (Coast Live Oak Woodland) Woodland Alliance**

This alliance is described with coast live oak being dominant or co-dominant in the tree canopy and occurring with other native broadleaved trees. Trees are less than 30 meters tall, the canopy is open to continuous, the shrub layer is sparse to intermittent, and the herbaceous layer is sparse or grassy. The membership rules for this alliance require coast live oak be greater than 50% relative cover in the tree canopy. Habitat for this alliance is found on alluvial terraces, canyon bottoms, stream banks, slopes, and flats where soils are deep, sandy or loamy with high organic matter between 0 to 3,937 feet (0 to 1,200 meters) in elevation (Sawyer et al. 2009).

Within the study area coast live oak woodland is located within the majority of the study area, particularly the lower portion of the easement and surrounding the residence. In addition to coast live oak present in the overstory California bay (*Umbellularia californica*) trees are also present. In addition to supporting non-native annual grasses typical of the region the understory of this community comprises characteristic shrubby and herbaceous species such as creeping snowberry (*Symphoricarpos mollis*), poison oak (*Toxicodendron diversilobum*), Pacific sanicle (*Sanicula crassicaulis*), woodland star (*Lithophragma*

heterophyllum), yarrow (*Achillea millefolium*), California blackberry (*Rubus ursinus*), and hedge parsley (*Torilis arvensis*), in part.

Special Status Plant and Wildlife Species

Nomad Ecology conducted a biological assessment of habitat suitability for special-status species for the Bodfish Property in May 2011 (Nomad 2011). Based on this report, 15 special-status species were determined to have the potential to occur on the property including one federally listed species, Alameda whipsnake (*Masticophis lateralis euryxanthus*) (Table 1). Once species, San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*) was observed on the property among the coast live oak woodland and northern coyote brush scrub vegetation communities. The recommendations provided herein serve to reduce impacts to special-status species, improve species biodiversity, recruitment and habitat features, while reducing fuel loads and ignition sources.

Table 1. Potentially Occurring and Occurring Special-Status Plant and Wildlife Species

SPECIES NAME	COMMON NAME	STATUS*	POTENTIAL
FEDERAL/STATE LISTED, PROPOSED, CANDIDATE AND/OR FULLY PROTECTED SPECIES			
None			
CALIFORNIA NATIVE PLANT SOCIETY LISTED AND LOCALLY RARE SPECIES			
<i>Amsinckia lunaris</i>	Bent-flowered fiddleneck	1B.2	Possible
FEDERAL/STATE LISTED, PROPOSED, CANDIDATE AND/OR FULLY PROTECTED SPECIES			
<i>Elanus leucurus</i>	White-tailed kite	FP	Possible
<i>Masticophis lateralis euryxanthus</i>	Alameda whipsnake	FT, ST	Possible
SENSITIVE AND LOCALLY RARE WILDLIFE SPECIES			
<i>Accipiter cooperii</i>	Cooper’s hawk (nesting)	WL	Possible
<i>Accipiter striatus</i>	Sharp-shinned hawk (nesting)	WL	Possible
<i>Antrozous pallidus</i>	Pallid Bat	SSC, WBWG-M	Possible
<i>Baeolophus inornatus</i>	Oak titmouse (nesting)	ABC, BCC	Possible
<i>Falco columbarius</i>	Merlin (wintering)	WL	Possible
<i>Lasiurus blossevillii</i>	Western Red Bat	SSC, WBWG-H	Possible
<i>Lasiurus cinereus</i>	Hoary bat	WBWG-M	Possible
<i>Myotis yumanensis</i>	Yuma myotis bat	WBWG-LM	Possible
<i>Neotoma fuscipes annectens</i>	San Francisco dusky-footed woodrat	SSC	Observed Onsite
<i>Picoides nuttallii</i>	Nuttall’s woodpecker (nesting)	ABC, BCC	Possible
<i>Selasphorus sasin</i>	Allen’s hummingbird (nesting)	ABC, BCC	Possible
<i>Spizella passerina</i>	Chipping sparrow (nesting)	SA	Possible

*** Explanation of State and Federal Listing Codes**

- 1B California Native Plant Society Rare or Endangered in California and elsewhere
- ABC The American Bird Conservancy maintains a Green List of all the highest priority birds for conservation in the continental United States and Canada. Based off the species assessments prepared by Partners in Flight (PIF) and has been expanded to include shorebirds, waterbirds and waterfowl.
- BCC U.S. Fish and Wildlife Service Birds of Conservation Concern. List of migratory and nonmigratory bird species (beyond those already designated as federally threatened or endangered) that represent the Service’s highest conservation priorities.
- FP Fully Protected
- FT Federally listed as Threatened
- SA “Special Animals” is a general term that refers to all of the taxa the CNDDDB is interested in tracking, regardless of their legal or protection status. This list is also referred to as the list of “species at risk” or “special status species”. The Department of Fish and Game considers the taxa on this list to be those of greatest conservation need.
- SSC California Species of Special Concern
- ST State listed as Threatened

- WBWG The Western Bat Working Group. H – High Priority indicates species that are imperiled or are at high risk of imperilment based on available information on distribution, status, ecology and known threats; M – Medium Priority indicates a lack of information to assess the species' status; L – Low Priority indicates relatively stable populations based on available data. The WBWG also uses intermediary designations including MH – Medium-High and LM – Low-Medium priorities.
- WL California Department of Fish and Game Watch List

Fire Abatement Recommendations

Fuel reduction objectives discussed during the March 28, 2014 site visit include:

- Reduce potential ignition sources near public access points including Miner Road and the walking trail
- Reduce fuel loads including decadent trees/shrubs, small woody debris and excessive duff
- Create habitat mosaic with multiple age classes
- Possible creation of a 30-40 foot wide line break along the southeast project perimeter
- Possible removal of Monterey pine trees in the norther portion of property

Based on the potential for Alameda whipsnakes and San Francisco dusky-footed woodrats on the property, reduction of fuel loads and ignition sources should be conducted in manner that avoids “take” of listed species as defined by the U.S. Fish and Wildlife Service. Take is defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harass is defined by the Service as an intentional or negligent act or omission which creates the likelihood of injury to a listed species by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. Harm is defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by impairing behavioral patterns including breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Fuel reduction should be supervised by a qualified biologist and on-site personnel should be trained in the identification special-status species and avoidance and minimization measures prior to conducting work on the property.

Management Recommendations for Alameda Whipsnakes

The Alameda whipsnake (*Masticophis lateralis euryxanthus*) is a fast moving, slender, diurnal snake with a broad head, large eyes, and measures 2 ½ to 5 feet in length (Stebbins 2003). The Alameda whipsnake is a subspecies of the California whipsnake, *Masticophis lateralis*, which inhabits the foothills and mixed deciduous and pine forests of the Sierra Nevada and Coast Range mountains from Siskiyou County in northern California to the flatland desert in Cañon de Los Reyes in southern Baja California (Stebbins 2003). The Alameda whipsnake inhabits the inner Coast Ranges in western and central Contra Costa and Alameda counties (Jennings 1983, McGinnis 1992, Swaim 1994). Habitat fragmentation has restricted its range into five recognized subpopulations: Tilden-Briones population, Oakland-Las Trampas population, Hayward-Pleasanton Ridge population, Mount Diablo-Black Hills population, and Sunol-Cedar Mountain population. Suitable habitat for this species includes mixed chaparral, coastal scrub, and annual grassland and oak woodlands adjacent to scrub habitats. Grassland areas linked to scrub by rock outcrops or river corridors are also considered primary habitat constituent elements (USFWS 2002). This habitat provides cover for snakes during dispersal, shelter from predators, and a variety of microhabitats where whipsnakes can move to regulate their body temperature (Swaim 1994). Important features include small mammal burrows, rock outcrops, talus, and other forms of shelter that provide snakes with alternative habitats for temperature regulation, protection from predators, sites for egg-laying, and winter

hibernaculum. Whipsnakes will use grasslands, woodlands, riparian areas and the fringes of developed or disturbed land cover types to move to and from core habitat areas.

The entire property provides suitable habitat for Alameda whipsnake especially with interspersed sections of coyote brush scrub. The scrub habitat on site connects to a larger mosaic of scrub/grassland/oak woodland habitat, which provides opportunities for Alameda whipsnake. The following recommendations provide for take avoidance of Alameda whipsnake, minimize adverse effects to its habitat and aim to improve ecosystem health for the benefit of the species.

- Immediately prior to the initiation of any ground disturbing, brush thinning or vegetation removal activities, preconstruction surveys should be conducted by a qualified biologist. The biologist should be present onsite to monitor for Alameda whipsnakes during work activities and direct work of the vegetation removal crews and volunteers. If an Alameda whipsnake is observed onsite, the individual should not be captured or handled without authorization from the U.S. Fish and Wildlife Service and California Department of Fish and Wildlife, and should be monitored until it leaves the action area on its own. Fuel reduction activities should not occur within 50 feet of the individual until it has been determined that the snake has left the area.
- The habitat improvement recommendations outlined for the coyote brush shrubland alliance will improve habitat suitability and prey availability for the Alameda whipsnake.

Management Recommendations Near San Francisco Dusky-Footed Woodrat Dens

San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*) is one of eleven recognized subspecies found on the San Francisco Peninsula south to the southernmost edge of Santa Cruz County and inland to the East Bay hills (Hooper 1933, Matocq 2000), in the Willamette Valley of Western Oregon, and northern Baja California (Carraway and Verts 1991). It is a medium-sized native rodent with large ears and a long, scantily haired tail. They inhabit oak and riparian woodlands with a well-developed understory as well as chaparral scrub habitats, where their conical stick nests are often visible (Carraway and Verts 1991). These nests may be as much as 6 feet tall, and contain multiple chambers used for breeding, rearing young, sleeping and food storage. A strong preference is shown for building dens in habitats with a developed understory and overstory providing over 90% canopy cover, which serve as protection from biotic and abiotic factors (Gerber et al. 2003). Nests are usually occupied by single adults or females with young, and can be used by successive generations of woodrats. They exhibit high site fidelity and build stick nests that may last for 20 years or more. They are also highly arboreal and sometimes construct aerial nests, utilizing evergreen or live oaks and other trees and shrubs with thick leaves (Kelly 1990, Williams et al. 1992). Woodrat nests provide cover for many other animal species, including small mammals, reptiles, amphibians, and arthropods, thereby increasing local biodiversity (Cranford 1982; Vestal 1938). Woodrats are generalist herbivores, consuming a variety of nuts, fruits, fungi, foliage and some forbs. *N. fuscipes* live in loosely-cooperative societies, but maintain and will defend home ranges. Population densities of *N. fuscipes* can vary from 14/ha in winter to 20/ha in late summer (Cranford 1977). The average territory radius around a woodrat nest is 27 m (89 ft), with a general range of 25-30 m (82 to 98 ft) (Cranford 1977, Gerber et al. 2003). Home ranges for males average 0.58 ac, and females 0.48 ac. The diet of woodrats consists primarily of foliage of evergreen broadleaf plants, such as poison oak (*Toxicodendron diversilobum*), coffeeberry (*Rhamnus californica*), elderberry (*Sambucus* spp.), toyon (*Heteromeles* spp.), and gooseberry (*Ribes* spp.) (Atsatt and Ingram 1983). Reproduction occurs from February through September.

The effects of vegetation thinning on woodrat den occupancy are unknown. However, clear cutting that allows light to break the canopy layer, known as "daylighting," has resulted in den abandonment.

Woodrats are also sensitive to removal of habitat from their territory, in particular corridors between den sites and nearest trees. Several guidelines for vegetation clearing within close proximity of den sites should be followed to reduce likelihood of nest abandonment:

- Within a radius of 5 m (16 ft) (immediate area): No vegetation removal should occur within the immediate area other than selectively clearing of dead limbs on adjacent trees, thereby keeping the habitat structure intact. This perimeter should include the trunk of the nearest tree; if not, a corridor measuring at least 2 m (6.5 ft) wide should be extended further in that direction toward the closest tree.
- Radius of 5-15 m (16-50 ft) (core area): No clear cutting should occur within the core area. Vegetation thinning may occur, leaving 60% of existing woody understory and 60% of existing woody overstory cover. Retain as much canopy cover as possible.
- Radius of 15-30 m (50-98 ft) (territorial area): Clear cutting may occur within the territorial area. Corridors measuring at least 2 m (6.5 ft) wide of understory, overstory and canopy cover should remain, where possible, connecting territories to other dens and contiguous habitats outside of the fuels treatment area.

Management Recommendations for Reduction of Woody Debris

Woody debris provides cover, nesting habitat and forage for a variety of wildlife species including the Alameda whipsnake. Therefore woody debris should be removed selectively based on the fire hazard it presents. Efforts should be taken to retain small woody debris onsite for the habitat value it provides, but should not supercede the fire danger it poses. Large debris piles may be removed or partially removed as necessary.

- The preconstruction surveys and biological monitoring recommendations for the Alameda whipsnake and San Francisco dusky-footed woodrat should be implemented.
- Removal of woody debris should be directed by the fire abatement professional and on-site biologist. Removal should be conducted using hand tools and in small quantities to allow animals within the debris pile a chance to escape.
- All cleared vegetation should be collected and removed from the property the same day they are cut to prevent attracting animals to the debris piles.

Management Recommendations for Reduction of Decadent Trees, Shrubs and Limbs

Snags, dead or decadent trees, stumps and large limbs provide nesting, refuge, foraging and roosting habitat for wildlife species. However, removing limbs from trees that act as a fuel load should be conducted by, as needed, to reduce the fire risk to a manageable level.

- The preconstruction surveys and biological monitoring recommendations for the Alameda whipsnake and San Francisco dusky-footed woodrat should be implemented.
- All cleared vegetation should be collected and removed from the property the same day they are cut to prevent attracting animals to the debris piles. Alternatively, woody debris may be chipped and broadcast onsite, but should be spread evenly in a layer less than 6 inches in depth.

Management Recommendations for Reduction of Duff

Reduction of duff as a fuel load is warranted in areas where people have access to the property, particularly along the public access trail and Minor Road. A variety of wildlife species including Alameda whipsnakes, California red-legged frogs (*Rana draytonii*), alligator lizards (*Elgaria multicarinata*), sharp-tailed snakes (*Contia tenuis*), slender salamanders (*Batrachoseps attenuatus*), and California meadow vole (*Microtus californicus*) who favor the protective cover as well as the moist environments it provides. To minimize impacts to these species, the following measures are recommended:

- The preconstruction surveys and biological monitoring recommendations for the Alameda whipsnake and San Francisco dusky-footed woodrat should be implemented.
- Duff should be removed by hand or hand tools to minimize disturbance to soils, other desirable plant species, and increase the likelihood that common and/or special-status species will be detected. Removal of duff should occur in small quantities to allow the biologist and trained volunteers can adequately inspect the material for wildlife.
- All cleared vegetation should be collected and removed from the property the same day they are cut to prevent attracting animals to the debris piles.

Management Recommendations for Coyote Brush Reduction and Biodiversity Improvement

Coyote brush (*Baccharis pilularis*) is a California native evergreen shrub that is the dominant shrub/scrub species within the shrubland alliance. On the property it occurs in two distinct areas on the southern and southwestern portions of the property. Coyote brush provides cover for a variety of small mammal and reptile species as well as forage and nesting habitat for bird species including the Bewick's wren (*Thryomanes bewickii*), wrentit (*Chamaea fasciata*), and white-crowned sparrow (*Zonotrichia leucophrys*). Areas of coyote brush scrub on the property consist predominately of a single age-class comprising mature, decadent shrubs with minimal recruitment, which diminishes its habitat value and reduces species richness and diversity. The following recommendations will improve age-class diversity, promote regeneration, and improve on-site habitat suitability for a variety of wildlife species. However, based on the occurrence of San Francisco dusky-footed woodrats within these areas, the measures outlined for the woodrat should be implemented in areas within 30 m (98 ft) of woodrat nests.

- Fuel reduction activities can improve the health of this vegetation community by removing 25-50% of decadent shrubs, allowing for regenerative sprouting from the roots and root crowns. Thinning should occur on a 4-7 year cycle and should prioritize areas with single age-class dominant, decadent shrubs.
- Efforts should be taken to minimize the number of access trails and trampling of understory forbs and grasses.
- All cleared vegetation should be collected and removed from the property the same day they are cut to prevent attracting animals such as the Alameda whipsnake to the brush piles. Alternatively, woody debris may be chipped and broadcast onsite, but should be spread evenly in a layer less than 6 inches in depth.

Management Recommendations for Reduction of Native Cow Parsnip and Invasive Plant Species

Reduction of California native cow parsnip (*Heracleum lanatum*)

- Species can be reduced by 25-50%. Removal should be by hand or hand tools to minimize disturbance to soils and other desirable plant species. Species should be disposed of off-site to avoid contributing to the seedbank on the property.

Efforts to reduce fuel loads and potential ignition sources should balance efforts to reduce the spread of non-indigenous plant species particularly those identified as noxious weeds by the California Department of Food and Agriculture or the California Invasive Plant Council.

- Noxious and non-native weeds should be collected and disposed of it in a manner that will not promote the spread of the species. Areas subject to noxious weed removal or disturbance should be replanted with fast-growing native grasses or a native erosion control seed mixture characteristic of the floristic region and native local habitats to stabilize soils and prevent erosion.

Management Recommendations for Sudden Oak Death

Sudden Oak Death is a tree disease caused by the plant pathogen *Phytophthora ramorum*, known to occur in 12 California counties: Humboldt, Mendocino, Sonoma, Napa, Solano, Marin, Contra Costa, Alameda, San Mateo, Santa Clara, Santa Cruz and Monterey. There are two forms of this disease – nonlethal foliar and twig infections, and the lethal branch or stem infections (Davidson et al. 2002). A strong association has been determined between the presence of bay trees (*Umbellularia californica*) and *P. ramorum* infection on oak species (Swiecki and Bernhardt 2002, Kelly and Meentemeyer 2002). Other known non-oak hosts of *P. ramorum* in California include big leaf maple (*Acer macrophyllum*), California buckeye (*Aesculus californica*), coffeeberry (*Rhamnus californica*), Douglas fir (*Pseudotsuga menziesii*), evergreen huckleberry (*Vaccinium ovatum*), honeysuckle (*Lonicera hispidula*), madrone (*Arbutus menziesii*), manzanita (*Arctostaphylos manzanita*) and ornamental rhododendron (*Rhododendron sp.*) (Garbelotto et al. 2003).

Strategies for Sudden Oak Death Containment¹:

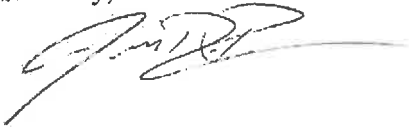
- Monitor growth of host and vector species for occurrence of *P. ramorum*.
 - For oak species, symptoms include bleeding from the bark separate from wounds or cracks. If the tree is dead, ensure that it is not just defoliated.
 - For foliar hosts inspect for branch die-back (dead tips) and dead spots on leaves that are irregular shape and large in relation to the size of the leaf, sometimes killing petiole and twig (varies by species).
- If sudden oak death is observed on the property or adjacent parcels, affected trees should be evaluated for structural integrity and health of both the sapwood and heartwood for signs of decay.
- If a tree is determined to be infected, the surrounding trees and shrubs should be assessed for the presence of the pathogen. Removal of the infected tree(s) or shrub(s) should be evaluated by a certified arborist and the County Agricultural Commissioner or Department of Forestry and Fire Protection should be contacted to determine if removal of infected trees/shrubs is recommended in the project area, since removal may inadvertently spread the pathogen.
- If removal of infected trees, shrubs and vegetative material is warranted, removal activities should occur during the dry season when the pathogen is not actively producing spores and

¹ Additional information is provided by the California Oak Mortality Task Force. <http://www.suddenoakdeath.org/>.

thereby less likely spread through disturbance and removal activities. Specific best management practices provided in Attachment A should be implemented to prevent pathogen spread when working in an infested area.

Please feel free to call me at (925) 719-1916 if you have any questions.

Sincerely,



Jerry D. Roe
Principal
Wildlife & Conservation Biologist
JDR Environmental Consulting

Attachments:

Attachment A – Sanitation Measures to Minimize Pathogen Spread

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ATTACHMENT A

Sudden Oak Death Sanitation Measures to Minimize Pathogen Spread

As a precaution against spreading the pathogen, clean and disinfect pruning tools after use on confirmed or suspected infested trees or in known infested areas. Sanitize pruning tools before pruning healthy trees or working in a pathogen-free area. Clean chippers and other vehicles of mud, dirt, leaves, and woody debris before leaving a *P. ramorum*-infested site and before entering a site with susceptible hosts.

1. Before working:

Inform crews about the arboricultural implications of *P. ramorum* and sanitation practices when they are working in infested areas.

- Provide crews with sanitation kits. (Sanitation kits should contain the following: Chlorine bleach [10/90 mixture bleach to water], or Clorox Clean-up®, scrub-brush, metal scraper, boot brush and plastic gloves).
- Sanitize shoes, pruning gear and other equipment before working in an area with susceptible species.

2. While working:

- When possible, work on *P. ramorum*-infected and susceptible species during the dry season (June through October), or ask customers to allow flexible scheduling so work may be done during dry spells. When working in wet conditions, keep equipment on paved or dry surfaces and avoid mud.
- Work in disease-free areas before proceeding to infested areas.
- Do not collect soil or plant material (wood, brush, leaves and litter) from host trees in the regulated area without first contacting your local agricultural commissioner. Within the regulated area, host material (e.g. wood, bark, brush, chips, leaves, or firewood) from tree removals or pruning of symptomatic or non-symptomatic plants should remain on site to minimize pathogen spread.

3. After working

- Use all reasonable methods to sanitize personal gear and crew equipment before leaving a *P. ramorum*-infested site. Scrape, brush and/or hose off accumulated soil and mud from clothing, gloves, boots and shoes. Remove mud and plant debris by blowing it out or power washing chipper trucks, chippers, buckets trucks, fertilization and soil aeration equipment, cranes, and other vehicles.
- Restrict the movement of soil and leaf litter under and around infected trees as spores may be found there. Contaminated soil, particularly mud, on vehicle tires, workers boots, shovels, stump grinders, trenchers, etc., may result in pathogen spread if moved to a new, uninfested site. Remove or wash off soil and mud from these items before use at another site. If complete on-site sanitation is not possible, complete the work at a local power wash facility or an isolation area in your equipment yard. Clean, orderly vehicles and equipment are good business, and prevent pathogen and insect spread.

- Tools used in tree removal/pruning may become contaminated and should be disinfected with Lysol® spray, a 70% or greater solution of alcohol, or a Clorox® solution (1 part Chlorox® to 9 parts water or Clorox Clean-up®). Remember that these products are corrosive to metal and fabric. Rinse your gear after sanitation.
- Report suspected cases of *P. ramorum* to the local county agricultural commissioner.

From: Lindy Novak <lindy@spottswode.com>
Sent: Tuesday, September 5, 2023 4:40 PM
To: Inga Miller; Darlene Gee; Latika Malkani; Brandyn Iverson; Janet Riley; Sheri Smith
Subject: MOFD Fuelbreak Ordinance

Dear City Council,

It sounds like MOFD has passed an ordinance requiring 100 feet of fire/vegetation clearance on the perimeters of properties in Orinda that are between 1 and 10 acres in size (up from 30 feet). I live in Orinda at 701 Miner Road, and our parcel is a bit smaller than an acre so it sounds like this ordinance will not apply to us personally. This being acknowledged, I wanted to weigh in with my concern about such drastic requirements. Of course I understand the fire department's wish to have dry, combustible vegetation removed from properties, but I do not wish to see large areas denuded of plant life that makes Orinda beautiful, protects land from erosion, provides shade, sequesters carbon, and offers refuge and food sources for wildlife. I hope that there can be a compromise solution which enables residents to clear vegetation that is a major fire threat while being able to leave native plants and shrubs that belong here and serve important functions.

Thank you very much for considering my perspective.

Sincerely,

Lindy Novak
701 Miner Road
Orinda, CA 94563
lindy@spottswode.com
Cell: 510/708-8114

Lindy Novak
Marketing Ambassador

SPOTTSWOODE
SPOTTSWOODE ESTATE VINEYARD & WINERY
1902 Madrona Avenue • St. Helena CA 94574
707/963-0134 • spottswode.com

 Please paws before printing. – Riley

Subject:

FW: MOFD

From: Neeru Oberoi ✓

Date: Sun, Sep 3, 2023 at 8:45 PM

Subject: MOFD

To: Sandy Pearson

Dear Orinda city council members,

I have lived in Orinda for almost 20 years and I love it here. Lately, I have been very disturbed about the new requirements that MOFD has imposed on us. The fuel break that has been recommended by MOFD, from 30 feet to 100 feet around the perimeter of the property is not acceptable to me. My parcel is around 2.75 acres or thereabouts. It is a pie shaped lot. I have created 100 feet of safe ground around my house. Last year it was at 30 feet but this year it was at 100 feet. The cost of doing this was roughly \$5000. If I were to have complied with the amount recommended my expense would have shot to 18,000k. Again, as a retired person that is a very big burden in view of the fact that I pay very high property taxes. And as everybody is aware, they're always rising. This year I paid in excess of 7500 for my fire insurance. Apologies for the litany of my expenses, it is to illustrate that the cost in rectifying our parcels for Orinda fire department ARE AS STEEP AS SOME OF DRIVEWAYS. (a little humor.)

Also, I'd like to point out that the Orinda fire department did not alert us at all during the year of this upcoming plan that they were considering. I got the notice out of the blue and was very shocked. I did not like the fact that I had not heard anything about that earlier, neither had most of my neighbors.

One of the things that I've most enjoyed about living in Orinda is the wildlife that we have around us. It's truly magical and if we were required to clear such huge footage around our property lines, just imagine the impact of that on the wildlife, not to mention, how protected species would be impacted. I thought it was callous that the fire department did not address that appropriately or consider it in terms of making their decision. Also, not a single study was cited for the decision they made. If I cleared even more vegetation, it would make the chances of having landslides more frequently with the rains. I already had one last year on the area that I cleared the year before. There is a lot to be said about all the trees/vegetation And how they help in holding holding a lot of hills in place, mine included.

I am grateful that the Orinda city Council has added this to the agenda at the meeting on Tuesday fifth at 7 PM. I hope you have a chance to hear from orindians most affected by this. I am hoping that the city Council and the Orinda fire department try to work together in mitigating issues that affect all of us. As a comparison, most of the areas that surround us like Lafayette Walnut Creek, Danville, San Ramon, have not imposed such draconian measures .

Fire safety is a top priority. And mitigation proposals have to take into account the fact that PG&E has taken a lot of steps in doing tree work, etc.. Also the awareness that all of us have by living in these areas ,is far more intense than before. As a result, everyone tries to be very careful and respectful of our surroundings.

I certainly hope there can be an amicable solution that we can find that works for the fire department, and all of us who live in this city. Thank you, Neeru Oberoi. Sent from my iPad

From: [Charles Porges](#)
To: [Info](#)
Subject: Ordinance 23-08
Date: Saturday, September 2, 2023 3:40:17 AM

I like it. It seems that it includes better requirements for spacing non irrigated brush.

What it seems to lack is requirements for dense (continuous canopy) neglected oak "forests" with many saplings that have not been thinned out on lots that are less than one acre. It is not obvious to me that even on larger lots trees need to be spaced at some minimum distance.

Although a crown fire in an oak forest is unlikely I believe it may occur in high wind conditions. Simply clearing low branches may not be enough. Should a crown fire occur it will endanger all adjacent properties.

I suggest that a tree spacing requirement be added. I have seen many such neglected "oak forest lots". It is just good forestry practice to remove saplings and thin out over dense "forests".

Charles Porges

Holbrook, Marcia

Subject: FW: MOFD Code 23.04 Sec 4 (b)(1)(B)

From: History Dojo <historydojo@gmail.com>

Sent: Monday, September 4, 2023 11:18 AM

To: Inga Miller <IMiller@cityoforinda.org>; Darlene Gee <Dgee@cityoforinda.org>; Latika Malkani <lmalkani@cityoforinda.org>; Brandyn Iverson <biverson@cityoforinda.org>; Janet Riley <jriley@cityoforinda.org>; Sheri Smith <ssmith@cityoforinda.org>

Subject: MOFD Code 23.04 Sec 4 (b)(1)(B)

Dear Orinda City Council,

I am writing to add my name and voice to object to the recent imposition of MOFD Code Section 23.04 Sec. 4 (b) (1) (B), requiring the removal of hazardous vegetation on parcels greater than one acre through the creation of a 100' fuel break around the entire perimeter of the Parcel. I feel that this code is a burden upon the owners of parcels larger than one acre, is equivalent to a tax upon these parcels in the form of mandated maintenance, and does not effectively prevent the threat of wildfires.

I reside at 616 Miner Road in Orinda, a property situated on an easement of the Bodfish Land Trust, a property protected by the John Muir Land Trust. Under the terms of the trust it is my responsibility to maintain the land trust without any financial support from John Muir Land Trust. The requirement under Code 23.04 Sec. 4 (b)(1)(B) that I maintain a 100' fuel break around the perimeter of a seven acre land trust is a burden upon me financially, and which cannot be completed without endangering the protected species and habitat present on the Bodfish Land Trust. After meeting with MOFD and showing them these protected areas, it was determined that the fuel break would not be possible around the perimeter of the property, nor anywhere that protected species and habitat were discovered. Nevertheless, there still remains extensive acreage to be cleared, representing annual financial expenses imposed upon me by MOFD. As of this date I have already spent over \$1200 on fire abatement around the Bodfish Land Trust, and spent over fifteen hours of my own time cutting and clearing brush to conform with the MOFD fire codes. At the meeting with MOFD, I requested clear documentation of the annual requirements for this code, but unfortunately MOFD has not responded with this documentation. This leaves me without clear guidance on the ongoing costs and requirements for compliance with the code.

The passage of the new requirements by MOFD is equivalent to a new tax upon homeowners. The code has placed upon me and other property owners a new financial burden to be met every year, without clear understanding of what the requirements are. Indeed, this year the expense was very significant, and the application of the code was open to the determination of the MOFD. Next year the application of the code may change, and my expenses may be more or less. This new tax upon homeowners is confusing and burdensome.

When I met with the fire marshal, I suggested that we create a fuel break that would conform with the wildfire strategy already in place. The North Orinda Fire Break was created in anticipation that the wildfire threat was greatest from the north, pushing south because of the Diablo Winds that return every Fall. A fuel break along the northern boundary of my

acreage would be in keeping with that same strategy. A fuel break along the western, southern and eastern boundary would not aid in the success of that strategy. It seems that the application of a 100' fuel break around every property is a "cookie cutter" approach to wildfire prevention, and not informed by the current strategy pursued by the City of Orinda and the MOFD.

Please reflect upon the new MOFD Code 23.04 Sec 4 (b) (1) (B) requirements. I encourage you to consider what this code represents to homeowners in terms of burden and expense. I would like to see a new code to replace this code enacted. I encourage you to revisit this issue and change the code.

Sincerely,

Tyler Rust

September 4, 2023

Honorable Mayor Miller and Councilors:

I am increasingly concerned about the fact that the City of Orinda has ceded so much of its authority to the Moraga Orinda Fire District. I am extremely concerned about the deteriorating tone of the civic conversation on the topics of fuel management, fire protection and natural resource protection and enhancement. I am appalled by the aggressive posture MOFD has taken towards the very community it is supposed to serve. We can do better.

The purpose of this letter is to urge you to do all within your power to help establish a public forum for advancing fuel management, fire prevention and natural resource conservation. Doing so will help Orinda advance and enhance each of these important priorities in a civil and constructive way. It will also help alleviate concerns that MOFD is pursuing fire protection to the exclusion of what makes Orinda scenically beautiful and socially appealing. There are many precedents statewide to turn to. Each shares an earnest effort to engage with the community and address multiple and often seemingly conflicting priorities collaboratively. With all due respect, the Fire Safe Councils, with their singular focus on fire safety, are not up to this task as presently comprised.

I would like to share some not-unique personal experiences and impressions in hopes that they can help illustrate my concern.

My family takes fire prevention seriously. We've removed an entire forest, installed attic screens and gutter guards, built rain catchments to keep soil and vegetation moisture content high during summer months. We've expended in excess of \$50,000 on fuel management and home hardening. I volunteer to pull French broom (ladder fuel on steroids) and practice rotational grazing on a nearby horse pasture to keep vegetation levels down. I've removed a 1/3-acre brush field and restored a native grass meadow in its place. I've happily utilized Orinda's well-organized chipper program. Our new reality of extended dry periods and higher fire risk requires such actions. I am a natural ally to MOFD, and I consider myself a good citizen: The Moraga Orinda Fire District disagrees.

In appreciation for my efforts, I have received two pre-citations and a fine. The first contact addressed a lonely rose branch extending towards the street, but remained silent on the backdrop of our home; 25 bark-beetle infested dying and dangerously flammable Douglas fir trees which I subsequently but proactively removed without MOFD asking, primarily because they posed a huge fire risk. The second citation I received was for the now horizontal and far less flammable temporarily staged logs from my new shaded fuel break and associated wood chips. And although I live on an active landslide, and am participating in litigation concerning a nearby active landslide that closed a private road, I am now to understand that the last few remaining shrubs holding the upper El Toyonal hillside in place must be removed, which will simply promote more French Broom, an even higher fire risk. I suppose that next we shall learn that our iconic oaks (or what is left of them after PG&E butchered them) must go, and that street trees are forbidden.

But at least I'm not alone in being punished for my sincere and costly efforts. The East Bay Municipal Utility District and East Bay Regional Park District, who have collectively invested untold career decades and millions of dollars into fuel reduction and land management on their uniquely beautiful lands that we all love to hike on and be surrounded by are branded "non-compliant" land managers by Chief

Winnacker and his acolytes, who seem to take pleasure in abusing partners. Chief Winnacker refuses to publicly acknowledge that the Park District's Fire District is a "real" fire agency, nor will he honor their titles in public. Even our elected leaders are publicly condemned for "not doing enough" though they've appropriated millions of dollars for fuel management statewide. It seems nothing is enough to satisfy MOFD leadership, which brings me to the topic of the newly proposed ordinance.

You may recall the last time MOFD tried to ram a new ordinance down the City Council's throat. Chief Winnacker lobbied forcefully for it in Council Chambers while his acolytes booed then-Councilmember Miller for having the temerity to question the language of the ordinance. It would seem some in the audience forgot the purpose of an elected City Council. The aggressive tone of MOFD's attacks combined with their lucrative fine system and expansive legislative efforts frighten me. Call me old-fashioned, but I prefer to be governed by an elected City Council.

In the coming days I'm sure you will hear a lot about CEQA, the environment, fire risk, and more. You may even wade into the MOFD proposed ordinance language, which reads even to the trained eye like unintelligible magical realism. But I am urging you to consider a different question. Do we want to live in a community that is scenically beautiful, socially respectful, and civically engaged, or not?

Our community has made incredible progress in the last few years, learning valuable lessons along the way, but a problem 100 years in the making won't be solved in a year or two. We are all in this together, and we are all sincerely attempting to make Orinda safer while protecting the beauty and nature that attracted so many of us here. Therefore, I urge the Council to help the community strive to reach consensus on a strategy embraced by the entire community. That is why I urge you to do all within your power to help establish a public forum for advancing fuel management, fire prevention and natural resource conservation as coequal goals. We can do this.

Thank you for your consideration of this letter.

Very sincerely,



Michael Bowen

Orinda



CALIFORNIA
NATIVE PLANT SOCIETY

East Bay Chapter, www.ebcnps.org
PO Box 5597, Elmwood Station, Berkeley, CA 94705

September 5, 2023

Mayor Miller and Members of Orinda City Council
City Of Orinda
22 Orinda Way
Orinda, CA 94563

Via email: cityclerk@cityoforinda.org

RE: Item H-1 - Moraga Orinda Fire District Proposed Ordinance 23-08 Regarding Fuel Break Requirements on Certain Parcels

Dear Mayor Miller, Vice Mayor Darlene Gee, and Council Members Brandyn Iverson, Latika Malkani, Janet Riley,

The East Bay Chapter of the California Native Plant Society follows and comments on vegetation management plans to support practices that also conserve the region's diverse and rich native flora.

This summer one of our members, Sandy Pearson, spoke to us about elements of the Moraga Orinda Fire District's newly-adopted ordinance, including the requirement to treat a 100' wide strip around the property line of larger parcels, as well as the level of vegetation removal specified in the ordinance. For instance, grasses are to be cut below 3" and all hazardous vegetation, non-irrigated brush, and combustible material must be removed within this 100' strip.

In 2019, District staff made time to meet and discuss vegetation management practices with CNPS and other environmental organizations when the Emergency Fuel Break project was being planned and implemented. Last year we commented on MOFD's plan for the current Tunnel East Bay Hills Fuel Break Project. The District included several CNPS recommendations in the Tunnel Project plan.

It may be fair to say that how we respond to changing fire seasons and increasing aridity due to our effects on the climate is complex for fire personnel and the public alike. We are all seeking ways to combine effective fuel management and conserve native plants and wildlife habitat in a dramatically-changing fire regime. However, even the California Fire Science Consortium, a research clearinghouse, provides little scientifically-based guidance on how to achieve this objective in oak woodland, shrub, and grassland, systems like ours.

Indeed, fire personnel are now being asked to decide on vegetation management in diverse, finely ecologically-tuned landscapes. Our response to a changing fire regime can and should be part of the public's discourse and understanding. It seems we're all in this together.

There are practices for properties in the Tunnel East Bay Hills Fuel Break Project plan (page 2-8) that include several native plant conservation measures, such as:

- Prioritize removal of remove invasive plants and noxious weeds
- Selectively mow /cut live native understory species (e.g., snowberry, fern, etc.) to 6 inches or more to allow for regrowth.
- Strategically retain native shrub species (e.g., elderberry, manzanita, toyon, coffeeberry) to reduce fuel load while retaining natural woodland structure;

As part of this discussion, can the native flora conservation measures being used in the Tunnel Project's overall wildfire prevention strategy also be incorporated for larger private properties?

Regarding grasslands, the vegetation treatment for grasslands by the East Bay Regional Park District as outlined in the environmental document for the Wildfire Hazard Reduction and Resource Management Plan (WHRRPM) states that mowing heights for grasslands should be no lower than 4" to prevent scalping of native perennial bunchgrasses and desirable forbs. We note that this grassland management practice has been used by EBRPD for what's coming on one-and-a-half decades. Can evaluation of this grassland practice be useful for larger properties in Orinda?

Another resource comes from the Marin Wildfire Prevention Authority (MWPA) that was formed to develop common standards from the experience and knowledge of member fire agencies across Marin County. The MWPA developed and published "Ecologically Sound Practices for Vegetation Management" a document that relies on ongoing evaluation of vegetation management practices to set and calibrate priorities. For instance, they follow a "house out" approach that prioritizes fire risk reduction strategies in and around communities ahead of fuel breaks in remote wildlands. Of note, the Moraga Orinda Fire Department has also been helping residential property owners to "harden" their homes against wildfires.

In dealing with the new fire regimes, we appreciate that Orinda City Council's interest in wildfire risk reduction practices that combine effective fuel management with the conservation of native plants and wildlife habitat.

Sincerely,



Lesley Hunt, President



Jim Hanson, Conservation Chair

Cc: Chief Winnacker, Moraga Orinda Fire Department

From: [Stephen Silla](#)
To: [Info](#)
Subject: Fuel Break Ordinance
Date: Tuesday, September 5, 2023 8:08:55 PM

Dear MOFD Board Members

I have lived off of Miner Road for 24 years and have always been diligent about maintaining the proper fuel breaks. I believe the MOFD recently adopted 100' perimeter property line fuel break to be excessive and unrealistic. For instance, if my 2.5 acre parcel were square, clearing 100' on all property boundaries would leave 0.4 acres undisturbed, including the residence building footprint. Unrealistic. In addition, for neighboring properties to each clear 100' fuel breaks on their common property lines would result in a 200' fuel break. Excessive. The particular property location, configuration and topography needs to be taken into consideration before the new revised proposed Code is adopted . One size does not fit all. Finally, the extreme increase in the amount of clearing being proposed will have a devastating impact on the natural habitat for the flora and wildlife that all who live in this area enjoy. We should be able to find a balance between fire protection and environmental preservation.

Your consideration and attention to this matter is respectfully requested.

Stephen M Silla
14 Gardiner Court
Orinda, Ca 94563

925 519-6166

From: [Julia Hunting](#)
To: [Info](#)
Subject: Concerns re Proposed Fuelbreak Ordinance
Date: Wednesday, September 6, 2023 10:07:43 AM
Attachments: [IMG_0428.HEIC](#)
[IMG_0422.HEIC](#)
[IMG_0421.HEIC](#)
[IMG_0423.HEIC](#)

Dear Members of the Fire District,

I am concerned about the fire fuel abatement ordinance that MOFD recently proposed to the Orinda City Council. It provides very little guidance on what vegetation can remain on our properties, what should be done to protect animal species, what variances are provided to lots subject to mudslides and landslides, or with steep (2:1 and steeper) grades, and an unreasonably short time period in which property owners must comply after receiving a Notice of Violation from MOFD.

I have been diligently clearing dead vegetation from the gulley on my property, but because it is located in a steep (1:1) ravine, I have not entirely removed all vegetation, as it would destabilize the surface soil. Mud runs off the property above mine regularly and flows into my gulley during the rainy season (see attached pictures). Luckily, the gulley is far enough from my home and any other structures so as to receive the runoff without causing any property damage. There are several homes below my property, and I am concerned that if I cleared my gulley entirely, it would be an ineffective barrier at containing the mudflows from the property above; any mud that flowed from the property above would flow into my gulley and mobilize the loose surface soil, and all of this material would flow into the properties below mine. I do not want to cause any property damage to my downhill neighbors, and I'm afraid that following the proposed ordinance as written could lead to this result, especially if we have another rainy season like last year's.

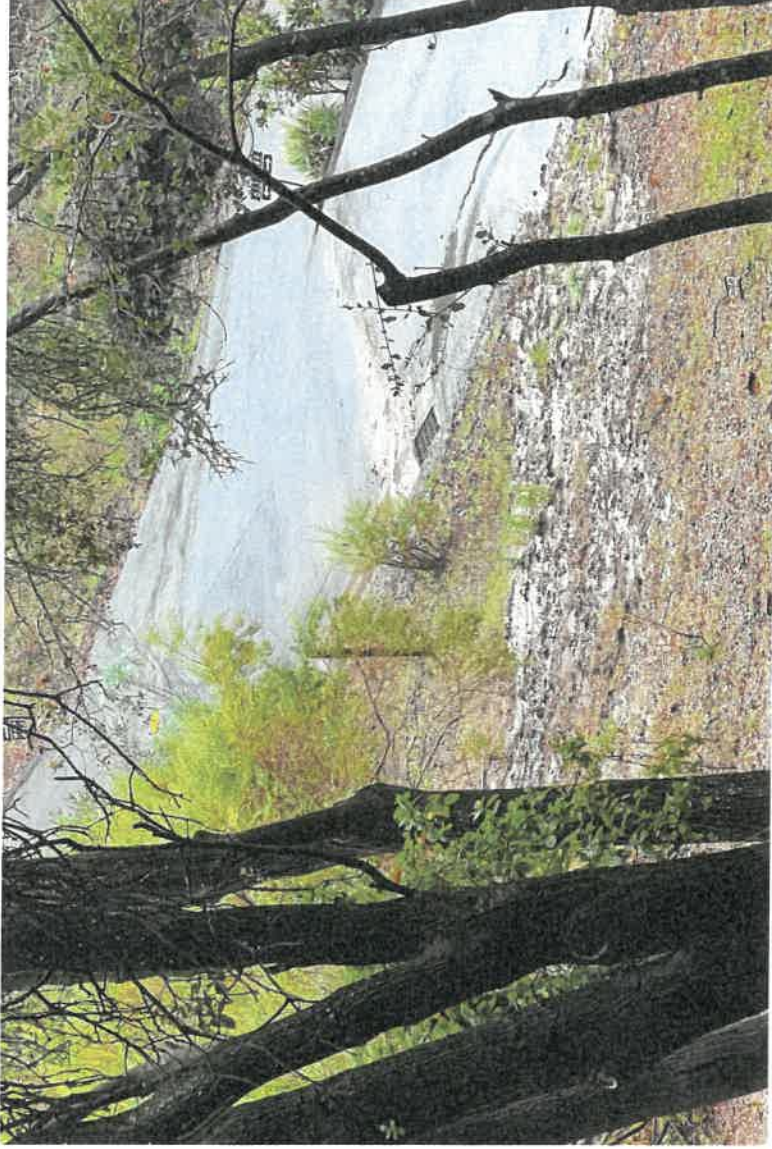
Thank you very much for your consideration of this important matter, and I would be happy to engage in further discussions with MOFD and the Orinda City Council so that we can together draft a reasonable, clear and fair ordinance.

Sincerely,
Julia Hunting
659 Miner Road









BARBARA MALLOCH LEITNER
PLANT ECOLOGIST
2 PARKWAY COURT
ORINDA, CA 94563
(925) 899-4317
bleitner@pacbell.net

September 6, 2023

Directors, Moraga-Orinda Fire District
1280 Moraga Way
Moraga, CA 94556
BY EMAIL

Re: Fuel Break Requirements

Directors:

I am concerned about the process and content associated with your proposed fuel break requirements. I urge you to slow the process to allow for greater public input and review, and for modification to ensure that the guidance is equitable, understandable, and consistent with the values and concerns of the Orinda and Moraga public.

My concerns are as follows.

1. Proposed guidance is difficult to understand. The proposed requirements refer to current and proposed guidance, such as a 30-foot and 100-foot clearance zone, without explaining to property owners how to tell which rule applies.
2. Requirements are so broad as to be difficult to interpret. Areas that have been cleared and deemed adequate for fuel break compliance vary widely, with some property cleared to bare dirt and others with herbaceous plants protected, such as ferns, shrubs, and other understory species. Homeowners need to have more explicit guidance about what is adequate fuel removal.
3. Listed species are not adequately protected. Homeowners cannot be expected to know whether rare, threatened or endangered species habitat is present on their land, and the proposed requirements neither provide information about them nor provide resources for determining whether proposed actions would constitute "take".
4. Natural resources are not adequately protected. Quite apart from listed species, the proposed requirements give no consideration or protection to the large number of species of special concern, unusual and significant plants, and overall biodiversity that would be impacted by fuel break management. For example, timing of fuel break management should consider nesting birds under the Migratory Bird Treaty Act, something homeowners could not be expected to know about. The drastic fuel reduction would also impact insects, reptiles, amphibians, small mammals, and plant biodiversity.

5. Responsibility for interpreting protection of natural resources is shifted to the property owner, without adequate information or guidance as to process. Homeowners cannot be expected to know or understand the impacts of their fuel management actions. Simply shifting the responsibility from MOFD to the homeowners does not absolve MOFD from a consideration of the effects of its program.
6. Requirements do not consider the effect of resulting vegetation, including fine fuels and invasive weeds. When vegetation is removed, other vegetation will take its place, whether it is regrowth of the species growing there before, or other species better suited to the resulting disturbed conditions. Disturbed conditions often facilitate the growth of weedy species, many of which are characterized by rapid growth. It is common to have disturbed sites colonized by undesirable non-native invasive species, which are themselves a problem. But they also can produce abundant fine fuels, creating a greater hazard than the vegetation that was removed.
7. “Modification” process is unfair to the public. The fuel break requirements allow for a “modification” process to interpret requirements on a site-by-site basis, but this process is so confusing that not all homeowners will know, understand, or be willing to go through with it, resulting in uneven and unfair interpretation and implementation of the guidance.
8. Conclusion of no significant impact on listed species is not supported. MOFD has unfairly shifted the responsibility for protection of listed species to the public.
9. Fuel break requirements do not adequately balance the importance of fuel management in the Zone 0 and Zone 1 compared with Zone 2. Recent reporting on buildings surviving the Hawaiian wildfires emphasized the importance of Zone 0, which is smaller, less impacting to the environment, and far more important in protecting homes.

I urge MOFD to step back, open up the proposed requirements to a more robust public review process, and to incorporate citizen concerns.

Yours truly,

Barbara M. Leitner



JESSICA L. BLOME
2748 Adeline Street, Suite A
Berkeley, CA 94703
Phone: (510) 900-9502
Email: jblome@greenfirelaw.com
www.greenfirelaw.com

August 2, 2023

By email only

Fire Chief Dave Winnacker
Dwinnacker@mofd.org
President John Jex
mmjjex@gmail.com
Moraga-Orinda Fire District
1280 Moraga Way
Moraga, CA 94556

**RE: Demand for Compliance with the California Environmental Quality Act
*Fuel Break Ordinance No. 23-04***

Dear President Jex and Fire Chief Winnacker:

I am writing on behalf of Orinda resident, Anita K. Pearson, who on June 7, 2023, was served with a “Pre-Citation Notification” demanding that she comply with Moraga-Orinda Fire District Ordinance No. 23-04 (“Fuel Break Ordinance” or “Ordinance”) by creating a 100-foot fuel break around the entire perimeter of her family’s 9.5 acre property located at 629 Miner Road in Orinda.

The Pre-Citation Notification listed the requirements of Fuel Break Ordinance, which directs that all owners, lessees, or persons controlling parcels greater than one acre must create and maintain a fuel break that complies with the following criteria:

- (A) Annual grasses cut to less than 3".
- (B) Removal of all Hazardous Vegetation.
- (C) Removal of non-irrigated brush.
- (D) Removal of all Combustible Material.
- (E) Removal of dead, diseased, or dying trees.
- (F) Maintain trees to remove Ladder Fuels so that foliage, twigs, or branches are greater than 6 feet above the ground.

(MOFD Notification, June 7, 2023.) The Notification then goes on to state that:

Fuel mitigation and defensible space work shall be conducted in a manner that the activities will not result in the taking of endangered, rare or threatened plant or

animal species or cause significant erosion and sedimentation of surface waters in accordance with California Environmental Quality Guidelines Section 15304.

(sic) (*Id.*) No further guidance or assistance is offered concerning how to prevent the taking of sensitive plants or animals, or even how residents will know how to identify whether such species or sensitive natural plant communities are present on one's property. Nor is any guidance offered concerning best practices for preventing erosion control and sedimentation, such as guidelines for riparian buffer zones, or how to determine if clearing a site could induce erosion or landslides. The Notification does, however, threaten to impose significant fines if compliance is not documented within 30 days.

Ms. Pearson and other residents are extremely concerned by the Notification and by the Ordinance's unreasonable demand that she and other residents undertake to destroy many acres of native plants and wildlife habitat adjoining their property lines.¹ The property in question includes multiple small parcels that Ms. Pearson has devoted many years to maintaining as a conservation area for native plants and wildlife. The directive to remove "all hazardous vegetation," which is not explained in the Notification, is defined by the Ordinance as "including but not limited to seasonal and recurrent grasses, weeds, stubble, brush, dry leaves, dry needles, dead, dying, or diseased trees, ... bark, mulch, non-irrigated brush, ... or any other vegetation identified by the Fire Code Official [or their designee]." (Ord. 23-04, § 3.) As confirmed by the discussion during the February 15, 2023, Board hearing, this list includes virtually all native vegetation and ground cover, excepting mature healthy trees, which would effectively result in denuding large swaths of wildlife habitat in areas that are largely undeveloped and remote from buildings. As such, the Ordinance will not only significantly impair Ms. Pearson's use and enjoyment of her property, but appears to have been enacted with no regard for the significant environmental impacts that will result from such draconian measures.²

Indeed, the Ordinance makes little effort to ensure habitat protection. While the Ordinance purports to restrict actions that would harm listed species or water quality, it delegates all compliance to individual landowners, with no training, who are subject to serious penalties if they fail to clear their land. The Ordinance does not identify exceptions or exemptions for environmentally sensitive species, or direct landowners to resources to assist compliance, instead dismissing any concerns about impacts to native habitat as a non-issue. The District appears to have made no effort to estimate the number of acres or quality of habitat that will be impacted, or to identify the sensitive species that are likely to occur in these areas. For example, no effort was made to minimize potentially significant adverse effects on California red-legged frogs, Alameda whipsnake, pallid manzanita, sensitive natural plant communities,³ or any other biological resources that are likely to be impacted by the Ordinance's requirements. This complete disregard for native species is particularly alarming given that the Ordinance is likely to affect more than 500 parcels and impact over a thousand acres of lands—yet the District appears to

¹ The Ordinance also imposes a significant financial burden on Ms. Pearson and other residents, who report that cost estimates in the range of \$15,000 to \$20,000 per property—just for the first year—are not uncommon.

² Because adjoining properties are each required to maintain 100-foot perimeter clearings, the Ordinance actually requires 200-foot clearings to be constructed along each property boundary.

³ Sensitive natural communities are required to be inventoried and mitigated for as part of CEQA. See CDFW, Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (March 20, 2018), available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>.

have failed to conduct any analysis of potentially significant environmental impacts of its vegetation clearance policy, in clear violation of the California Environmental Quality Act (CEQA).⁴ This neglect occurred in spite of UC Berkeley, East Bay Regional Parks District and East Bay Municipal Utilities District informing the District that even the reduced level of fuel break clearance required by the predecessor iteration of this policy, Ordinance No. 22-02, would result in unacceptable levels of environmental destruction in violation of the CEQA obligations of those entities.

To confirm that the District wholly ignored CEQA, on July 10, 2023, my office inquired with the District to determine whether it had at least claimed an exemption for the Ordinance. In response, the District's outside counsel acknowledged that the District never adopted a notice of exemption but claimed that the holding in *Robinson v. City & County of San Francisco* (2012) 208 Cal. App. 4th 950, allowed the District to proceed with implementing the Ordinance. According to District counsel, the *Robinson* court absolves an agency from filing a *written* notice of exemption. Though the court declared a writing unnecessary, the court found that—in every instance—the lead agency in that case had issued a CEQA exemption certificate before on-the-ground activity commenced. (*Id.* at 960.) In so holding, the *Robinson* court upheld CEQA's clear statutory requirement that public agencies at least “conduct a preliminary review to determine whether CEQA applies to a proposed project” as a “first tier” of project evaluation. (*Save Our Big Trees v. City of Santa Cruz* (2015) 241 Cal.App.4th 694, 704.) “[A categorical] exemption can be relied on only if a factual evaluation of the agency's proposed activity reveals that it applies.” (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 386.) “[T]he agency invoking the [categorical] exemption has the burden of demonstrating” that substantial evidence supports its factual finding that the project fell within the exemption. (*Id.*)

Indeed, every CEQA case analyzing this issue recognizes CEQA's mandate that a preliminary environmental review is required before an exemption determination can be made. (*See Davidon Homes v. City of San Jose* (1997) 54 Cal. App. 4th 106, 117.) In *Davidon*, the Court of Appeals observed:

There is no indication that any preliminary environmental review was conducted before the exemption decision was made. The agency produced no evidence to support its decision and we find no mention of CEQA in the various staff reports. A determination which has the effect of dispensing with further environmental review at the earliest possible stage requires something more. We conclude the agency's exemption determination must be supported by evidence in the record demonstrating that the agency considered possible environmental impacts in reaching its decision.

(*Id.*) Similarly, here, the staff reports, draft and final Ordinance and recordings of the discussion at both Board hearings have no mention of a CEQA exemption. It appears that the District failed to conduct any threshold analysis of whether the Ordinance qualified for a CEQA exemption and certainly never made any determination that a specific CEQA exemption applied before charging ahead with its harmful vegetation clearing policy. Paradoxically, District counsel's letter asserts

⁴ There is also no evidence that the District identified alternatives or analyzed the cost of compliance that the Ordinance imposes upon individual property owners, lessees, or managers.

that the Class 7 and 8 exemptions apply to the Ordinance, though no mention of a CEQA is made in the Ordinance itself, while the Pre-Citation Notice claims exemption under Class 4.

Furthermore, even if the District had procedurally complied with CEQA and declared the Ordinance exempt, the only potentially applicable CEQA exemptions are the Class 4, 7, and 8 Categorical Exemptions—but none of these apply to this specific Ordinance. (See CEQA Guidelines, §§ 15304(i), 15307, and 15308.)

With respect to Class 4 Categorical Exemptions, the Ordinance requires the creation of a 100-foot perimeter, which dramatically *exceeds* the level of fuel management allowed by a Class 4 Exemption, which covers:

Fuel management activities within 30 feet of structures to reduce the volume of flammable vegetation, provided that the activities will not result in the taking of endangered, rare, or threatened plant or animal species or significant erosion and sedimentation of surface waters. This exemption shall apply to fuel management activities within 100 feet of a structure if the public agency having fire protection responsibility for the area has determined that 100-feet of fuel clearance is required due to extra hazardous fire conditions.

(CEQA Guidelines, § 15304(i).) In contrast, the Ordinance requires vegetation to be cleared within 100-feet of the entire property boundary—not around a structure—which significantly increases the area of habitat loss by pushing individual homeowners to clear a much larger area, all around the edges of their property, and to clear away virtually all vegetation—even where no structures are present.⁵

The Ordinance also provides no means of ensuring that such clearings “will not result in the taking of endangered, rare, or threatened plant or animal species or significant erosion and sedimentation of surface waters.” (Ord. 23-04, § 4(c).) The recitation of this desired outcome does not magically achieve this purpose. “Mitigation measures are not mere expressions of hope.” (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2005) 130 Cal. App. 4th 149, 1508.) The District itself must “ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded.” (*Id.* (citation omitted).) The District has not taken any steps to uphold its own obligation to enforce the environmental protections. Instead, the District treats listed species, erosion, and sedimentation as special exception from liability that owners have the burden to claim, rather than circumstances that the District must in every instance affirmatively ascertain and avoid.

Moreover, unlike clearings around structures where human activity is already present, creating clearings along property lines will disrupt many areas that were previously secluded from human activity and thus more likely to be favored by wildlife.

⁵ To put this in perspective, an acre is 43,560 sq. ft. Under the Ordinance, a 5-acre parcel (217,800 sq. ft.) measuring 600 ft. x 363 ft. would be required to clear an area of 152,600 sq. ft., which 3.5 acres—or 70% of the entire property. In contrast, the Class 4 Exemption describes a 100-ft clearing around a building or structure, which, estimated as a circle of 100 ft. radius, amounts to 31,400 sq. ft. (or 14.4% of the property). (This difference also has a major impact on costs, as local estimates for weed-eating alone range from \$0.20 to \$1.50 per sq. ft., depending on the slope.)

The large size of the clearings may cause habitat fragmentation, eliminate food sources and cover, and create barriers to movement that impair species' reproduction. The activities required by the Ordinance are thus significantly different and potentially more impactful than the much smaller defensible space clearings included under the Class 4 Categorical Exemption.

As to the Class 7 and 8 Categorical Exemptions, these apply only to actions that maintain, restore, enhance, or protect natural resources and the environment. (See CEQA Guidelines, §§ 15307, 15308.) In *Save Our Big Trees v. City of Santa Cruz*, the court wholly rejected application of Class 7 and 8 Categorical Exemptions for ordinance amendments meant to allegedly enhance “heritage” protections for some trees while eliminating protections for others because it “removes rather than secures . . . protections.” (241 Cal.App.4th at 712 (quoting *Mountain Lion Found. v Fish & Game Comm'n* (1997) 16 Cal. 4th 105, 125.) That is, an ordinance that enhances protections for some natural resources while eliminating protections for others does not necessarily protect the environment. Here, too, the Ordinance compels the incontrovertible destruction of many acres of natural habitat to allegedly protect other natural resources from wildfire. The Ordinance does not afford any “assurance” that each requirement of the Ordinance will result in the “maintenance, restoration, or enhancement of a natural resource” (CEQA Guidelines, § 15307), and relies on individual homeowners, through the threat of penalties and fines, to decide which resources to save and which to destroy. Worse than the realignment of protection priorities at issue in *Save Our Big Trees*, the Ordinance directly orders District homeowners to destroy their environment.

In addition, the state Fire Safe Regulations require that “Fuel Breaks shall be constructed using the most ecologically and site appropriate treatment option, such as, but not limited to, prescribed burning, manual treatment, mechanical treatment, prescribed herbivory, and targeted ground application of herbicides.” (14 Cal. Code Regs. § 1276.03(f).) Ordinance 23-04 includes no consideration of ecologically and site appropriate treatment options and contains no provision requiring landowners to use these. Instead, the Ordinance imposes a one-size-fits-all treatment for all properties within the District, regardless of parcel size and location, or any ecological or site specific features or characteristics. Moreover, the public record contains no justification for the District's decision to expand the size of Fuels Breaks for parcels under 10 acres from 30 feet around the perimeter of each parcels, as required by the District's previous fire break ordinance (Ord. 22-02 (repealed)), to 100 feet under the current Ordinance.⁶ (See e.g., Agenda Packet and Regular Meeting Minutes, MOFD Bd. of Directors Meeting, Jan. 18, 2023.) There is also no evidence that the District considered ecological impacts or how many parcels or acres would be affected in making this decision.⁷ (*Id.*)

Please accept this letter as formal notice that Ms. Pearson and her daughter, Sandy Pearson, intend to file a lawsuit in Contra Costa County Superior Court to ensure compliance with CEQA. Ms. Pearson is confident she would prevail in litigation if the District refuses to

⁶ At the Hearing on Ord. 23-04, the Fire Chief stated only that this provision was being revised because the variation in requirements for inhabited versus uninhabited parcels and the “sliding scale” was too complicated and confusing for the public. (See Audio Recording, MOFD Bd. of Directors Meeting, Jan. 18, 2023.)

⁷ There is also no evidence that the District considered the increased financial burden this expansion would impose on the affected property owners, lessees, or managers.

immediately cease and desist further efforts to implement the Fire Break Ordinance, rescind the Fire Break Ordinance, and comply with CEQA before taking any action to approve a new Fire Break Ordinance. At a minimum, Ms. Pearson expects to the District to evaluate the potentially significant environmental impacts of clearing 100 feet of vegetation from the perimeter of every property subject to the Ordinance, which would first require that the District determine how many acres are likely to be impacted, and to identify the specific landscape features, sensitive natural plant communities and protected species that are likely to be present within these areas and in need of protection.

Thank you for your prompt attention to this issue. If you have any questions, you may contact me at the address listed herein.

Sincerely,

A handwritten signature in cursive script that reads "Jessica L. Blome".

Jessica L. Blome
Susann Bradford
Greenfire Law, PC

cc:

Director Greg Hasler, ghasler@mofd.org
Director Steven Danziger, stevedformofd@gmail.com
Director Mike Roemer, mroemer@mofd.org
Director Craig Jorgens, craig.jorgens@gmail.com

From: [Ann Walgenbach](#)
To: [Info](#)
Subject: Comment for the special MOFD board meeting 9/6
Date: Wednesday, September 6, 2023 3:55:35 PM

Dear Board,

I apologize for the delay in getting in my email so that it would be available for the meeting tonight. I would like to support the maintaining of the 100yd fuel break perimeter requirement. I realize that this is costly, time consuming, possibly unnatural or not as visibly appealing and involves hard work but I think that NOT making bigger efforts like this at fire prevention are way worse on every measure and I think that folks from Santa Rosa, Paradise and other areas who have experienced the ravages of huge fires might agree. We are in the throes of unusual times.

I attached here a podcast about the Canadian fires of this summer and I encourage folks to listen as it conveys the impact of overgrowth and the challenge of hotter and more severe fires from more fuel. As it says below about the podcast, it has forced an international re-evaluation of how the world handles fires.

I would also like to note that a neighbor here in Moraga is unable to get homeowners insurance and a State Farm Agent has advised us that they are no longer covering policies here when they had been up until recently.

And, this is a big pile of trimmings from our area where the lots are large and neighbors are working to clear fuel and make our neighborhood safer and MOFD has been extremely helpful in coming by for the chipping of these piles for free!





It is now the time for more extreme measures and I support the proactive activities by MOFD and Chief Winnacker to make Orinda and Moraga as FireSafe as possible.

Thank you!

Fighting Canada's Unending Fires

The Daily

The wildfires sweeping Canada have become the largest in its modern history. Across the country, 30 million acres of forest have burned — three times as much land as in the worst American fire in the past 50 years. The scale has forced an international response and a re-evaluation of how the world handles wildfires. Firefighters on the front lines discuss the challenges they face, and David Wallace-Wells, a climate columnist for The Times, explores how climate change has shifted thinking about wildfires. Guest: David Wallace-Wells, a climate columnist for The New York Times.

Listen on Apple Podcasts: <https://podcasts.apple.com/us/podcast/the-daily/id1200361736?i=1000623425908>

Ann Walgenbach

“Life is not a journey to the grave with the intention of arriving safely in a pretty and well

preserved body, but rather to skid in broadside, thoroughly used up, totally worn out, and loudly proclaiming, wow! what a ride!!!”

Anonymous

Sent from my iPhone



City of Orinda
22 Orinda Way • Orinda • California • 94563

September 20, 2023

Honorable President and Directors
Moraga-Orinda Fire Protection District
1280 Moraga Way
Moraga, CA 94556

RE: Proposed Ordinance 23-08

Dear Hon. President Jex and Directors Jorgens, Danzinger, Roemer, and Hasler,

Last night, at our September 19th City Council meeting, the Council received an update on the District’s proposed Ordinance 23-08, on which the Council commented in our letter of September 8, 2023, to the Board. A copy of the agenda item is attached so you can see what information was shared, as it summarized our understanding of the discussions and actions that the Board took at your meeting on September 8th.

We acknowledge the changes made to the Ordinance upon introduction, and that the Fire Chief indicated a number of steps the District will be taking to inform and educate our residents about the requirements of the Ordinance. We look forward to having the opportunity to continue to engage with the District in a collaborative manner in the development, evolution, and dissemination of this information as we all work towards a more fire-safe Orinda.

At our meeting last night, we did receive additional written and in-person public comments, including the attached letter from the East Bay Municipal Utility District, which we want to call to the attention of the Fire Board.

The Council wanted to convey to the Fire Board that the concerns and considerations outlined in our original comment letter remain, and as we all look towards not only making our community more fire-safe, we also need to do so with environmental considerations in mind and with the goal of doing so in ways that address climate adaptability.

Clearly, there is a need for ongoing engagement with not only the community, but with the City of Orinda, the Town of Moraga, and regional agencies like East Bay MUD and East Bay Regional Parks, and our Council would like to be co-convenor regarding these consultations and outreach with the Fire District and we look forward to working with the Fire Board to do so.

Sincerely yours,

Inga Miller
Mayor

Attachments:

- City Council Agenda Item – September 19, 2023
- East Bay MUD Letter – September 19, 2023

cc: City Council, City Manager, City Attorney

General Information	Administration	Planning	Parks & Recreation	Police	Public Works
(925) 253-4200 (ph) (925) 254-9158 (fax)	(925) 253-4220 (ph) (925) 254-2068 (fax)	(925) 253-4210 (ph) (925) 253-7719 (fax)	(925) 254-2445 (ph) (925) 253-7716 (fax)	(925) 254-6820 (ph) (925) 254-9158 (fax)	(925) 253-4231 (ph) (925) 253-7699 (fax)



City Council Staff Report

H.1

Agenda Item:

Date:

Department:

September 19, 2023

Administration

AGENDA TITLE: Moraga Orinda Fire District Ordinance 23-08

RECOMMENDATION:

Receive Report, Discuss, and Provide Direction, if any.

BACKGROUND: On September 5, 2023, the City Council reviewed MOFD proposed Ordinance 28-08, staff report, and attachments (Attachment A). The Council opted to provide a comment letter to the MOFD Board, which is attached as Attachment B. That letter was provided to the Fire Board for their Special Meeting on September 6th.

The Fire Board considered written and oral comments and introduced Ordinance 23-8 at that meeting including a number of minor modifications including clarifying trees less than fifteen (15) feet would require limbing up one-third of their height and allowing maintenance of clusters of non-irrigated brush with separation. In addition, the Fire Chief indicated they would continue to address the concerns raised including:

- Developing a list of best management practices with templates/model drawings on the North Orinda Shaded Fuel Break to share with the community;
- Making Fire District contractors/consultants like biologists/geologists available for a fee to assist residents;
- Will develop and provide a list of firms/consultants familiar with the requirements and area to assist residents;
- Will develop a Modification Guide with templates, including information of how multi-year efforts can be approved; and,
- They will host a community forum to better explain the requirements in Ordinance 23-08 (Since that time Chief Winnacker has shared that they will initially be providing a recorded on demand workshop soon and will host a community forum later in the year given scheduling concerns).

The MOFD Board will be considering the adoption of Ordinance 23-08 at their regular meeting of September 20, 2023. This item is being presented to update the City Council and to provide another opportunity for Council comments to be shared, if any, with the Fire Board prior to adoption.

NEXT STEPS: Should the Council have any additional comments to share with the Fire Board, those will be forwarded to them prior to their September 20th meeting.

FISCAL IMPACT: None as a result of this item.

ATTACHMENTS:

- A. Staff Report for City Council Meeting of September 5, 2023
- B. City of Orinda's Comments to MOFD Proposed Ordinance 23-08

Respectfully Submitted by:
David Biggs
City Manager

Prepared By: Sheri Smith, City Clerk

Approved by:

David Biggs
David Biggs, City Manager 9/12/2023



Subject: Request for Modification to MOFD Ordinance 23-08

Dear Mayor Miller and Orinda City Council members,

I am writing to address the proposed Moraga-Orinda Fire District (MOFD) Ordinance 23-08, which pertains to wildfire management and fuel break requirements, this potential regulation poses serious impediments for East Bay Municipal Utility District's (EBMUD) watershed management.

EBMUD is dedicated to the safety of Orinda's residents, especially regarding the ongoing risk of wildfire. We understand that robust fire hazard management is vital for safeguarding both the surrounding communities and our watershed lands. Our goal is to enhance fire safety measures through risk reduction efforts and stringent protections.

As you may recall, EBMUD had previously corresponded with MOFD regarding proposed Ordinance 22-02 on March 14, 2022, expressing our concerns and seeking certain modifications to ensure the effective management of our watershed lands. These lands are vital for safeguarding water quality and natural resources and fall within the jurisdiction of the California Department of Forestry and Fire Protection (CalFire).

MOFD's proposed ordinance could significantly hinder EBMUD's ability to manage our watershed lands effectively. EBMUD lands fall within the State Responsibility Area (SRA) under CalFire administration, necessitating rigorous measures to protect water quality and natural resources. To this end, we have developed and implemented a comprehensive set of management plans and environmental safeguards, including the East Bay Watershed Master Plan, Fire Management Plan, Ranger Resource Management Plan, and Low Effect Habitat Conservation Plan (HCP), among others.

EBMUD's fuel management activities within MOFD jurisdiction, must adhere to the guidelines outlined in our HCP. The HCP prescribes specific measures to mitigate the impact of EBMUD activities on habitats and sensitive species, such as the California red-legged frog, Alameda whipsnake, and pallid manzanita.

In alignment with our counterparts at the East Bay Regional Park District (EBRPD), we share common concerns about the potential impact of Ordinance 23-08 on our respective operations. EBRPD has diligently articulated their legal analysis and reasons for requesting an exemption from certain provisions of this ordinance, which we endorse and support.

As with EBRPD, if necessary, we plan to apply for a modification exemption from MOFD for Ordinance 23-08 to continue our vital work in protecting our lands. This exemption would enable us to fulfill our responsibilities while upholding the ecological balance of our watershed.

We appreciate the City of Orinda's dedication to making our community safer from wildfires and look forward to the opportunity to work together toward a mutually beneficial resolution. Please do not hesitate to reach out if you require any further information or if you would like to discuss this matter in more detail.



Moreover, EBMUD remains open to participating in any future forums or discussions concerning wildfire protection, and land management where MOFD, the City of Orinda, the Town of Moraga, and EBRPD may seek to engage the community on this critical issue. Together, we can ensure the continued safety and well-being of our community and protection of our vital resources.

Thank you for your continued commitment to matters of shared concern and your diligence in keeping EBMUD informed, we appreciate your thoughtful consideration of this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mike Tognolini', is written over a light blue circular stamp.

Mike Tognolini

Director of Water and Natural Resources

East Bay Municipal Utility District (EBMUD)



Subject: Request for Modification to MOFD Ordinance 23-08

Dear Mayor Miller and Orinda City Council members,

I am writing to address the proposed Moraga-Orinda Fire District (MOFD) Ordinance 23-08, which pertains to wildfire management and fuel break requirements, this potential regulation poses serious impediments for East Bay Municipal Utility District's (EBMUD) watershed management.

EBMUD is dedicated to the safety of Orinda's residents, especially regarding the ongoing risk of wildfire. We understand that robust fire hazard management is vital for safeguarding both the surrounding communities and our watershed lands. Our goal is to enhance fire safety measures through risk reduction efforts and stringent protections.

As you may recall, EBMUD had previously corresponded with MOFD regarding proposed Ordinance 22-02 on March 14, 2022, expressing our concerns and seeking certain modifications to ensure the effective management of our watershed lands. These lands are vital for safeguarding water quality and natural resources and fall within the jurisdiction of the California Department of Forestry and Fire Protection (CalFire).

MOFD's proposed ordinance could significantly hinder EBMUD's ability to manage our watershed lands effectively. EBMUD lands fall within the State Responsibility Area (SRA) under CalFire administration, necessitating rigorous measures to protect water quality and natural resources. To this end, we have developed and implemented a comprehensive set of management plans and environmental safeguards, including the East Bay Watershed Master Plan, Fire Management Plan, Ranger Resource Management Plan, and Low Effect Habitat Conservation Plan (HCP), among others.

EBMUD's fuel management activities within MOFD jurisdiction, must adhere to the guidelines outlined in our HCP. The HCP prescribes specific measures to mitigate the impact of EBMUD activities on habitats and sensitive species, such as the California red-legged frog, Alameda whipsnake, and pallid manzanita.

In alignment with our counterparts at the East Bay Regional Park District (EBRPD), we share common concerns about the potential impact of Ordinance 23-08 on our respective operations. EBRPD has diligently articulated their legal analysis and reasons for requesting an exemption from certain provisions of this ordinance, which we endorse and support.

As with EBRPD, if necessary, we plan to apply for a modification exemption from MOFD for Ordinance 23-08 to continue our vital work in protecting our lands. This exemption would enable us to fulfill our responsibilities while upholding the ecological balance of our watershed.

We appreciate the City of Orinda's dedication to making our community safer from wildfires and look forward to the opportunity to work together toward a mutually beneficial resolution. Please do not hesitate to reach out if you require any further information or if you would like to discuss this matter in more detail.



Moreover, EBMUD remains open to participating in any future forums or discussions concerning wildfire protection, and land management where MOFD, the City of Orinda, the Town of Moraga, and EBRPD may seek to engage the community on this critical issue. Together, we can ensure the continued safety and well-being of our community and protection of our vital resources.

Thank you for your continued commitment to matters of shared concern and your diligence in keeping EBMUD informed, we appreciate your thoughtful consideration of this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mike Tognolini', is written over a light blue circular stamp.

Mike Tognolini

Director of Water and Natural Resources

East Bay Municipal Utility District (EBMUD)

Sept 13, 2023

To Fire Chief Winnacker

Moraga Orinda Fire District Board Members:

President John Jex,

Board Members Jorgens, Roemer, Danziger, and Hasler

Dear Chief and Board members,

I am writing to emphasize my continuing opposition to Amended Fuel break Ordinance 23-08, to be considered for adoption at the regular MOFD meeting September 20.

Ordinance 23-08 inflicts the same damage on small acreage parcels that Ordinance 23-02 did: small, 2- or 3- acre parcels have to cut the same size perimeter fuelbreak as a parcel of 10 acres or larger. I repeat: a 2- acre parcel has the same requirements as a lot that's FIVE TIMES LARGER. And since an acre is only about 200 feet on a side, a 100 foot fuelbreak takes almost all your property, even if you have 4 acres.

The PREVIOUS Ordinance, 22-02, appropriately recognized that a parcel of just a couple acres doesn't have space for the 100-foot perimeter fuelbreak. Parcels over an acre and under 10 acres were required to have a 30' fuelbreak on the perimeter, representing a reasonable burden on the landowner and a modest percent of the total acreage.

The difference between a 30 foot fuelbreak and a 100-foot fuelbreak is enormous on a small acreage parcel. Between 70 and 80% of the parcel has to be cut to Fire District fuelbreak standards under the last two ordinances. This doesn't even count the fuelbreak more obviously needed around any house that may be built on the parcel.

The act of MORE THAN TRIPLING the width of perimeter fuelbreak required is a significant change imposing a financial burden on the property owner that will not end. It affects the desirability and value of the property. And it limits the property owner's ability to use the property as they might prefer. This is a taking of the owner's rights, and a tax imposed on larger parcels. Given the lack of notification or outreach from the Fire District, you could fairly describe the process as taxation without representation.

To add insult to injury, the Fire Chief has stated that this fuelbreak change, from 30 feet to 100 feet, was NOT DONE FOR FIRE SAFETY REASONS, but in an effort to simplify the regulations. Instead of three size categories:

1 acre and less, 1 – 10 acres, and over 10 acres, there are now only two:

1 acre and less, and over 1 acre.

The owners of small acreage parcels are NOT confused about the size of their parcel, nor about the impact this drastic change has on their property. We should not be damaged in this way solely to make the rules read easier. I believe the requirements of Ordinance 22-02 should be restored; they were good enough in 2022, they are good enough for 2023.

The change in fuelbreak width affects over 500 parcels in the Moraga-Orinda area, and results in an additional 1000 acres being converted to fuelbreak. This is a similar size to that being treated by the Tunnel East Bay Shaded Fuel Break project, for which a thorough environmental analysis was required. The standards applied to private owners are stricter than for the Shaded Fuel breaks. Why would environmental analysis NOT be required?

In addition, since adjoining parcels EACH have to clear 100 feet, the fuelbreak required at the property line ends up being 200' wide. This is a width more typical of the community-wide Shaded Fuel Breaks being implemented to protect whole cities. And, the Fuel Break Projects allow more leeway in protecting habitat islands and occasional native shrubs. Why are private landowners subjected to more stringent regulation than that required by CalFire and accepted by EBMUD and the EBRPD?

It is my opinion that the proposed Ordinance will have significant impacts on the environment, and that more study is needed to mitigate its effects. Following are some of the more specific questions and concerns I have about the proposal.

The most serious potential problem with the severe cutting required for fuelbreaks is erosion. Orinda has many larger lots in areas of steep hillsides that were hard to develop. Drastically reducing the vegetation on steep slopes is an invitation to soil loss and landslide. Clearly, that is not the Fire District's intent. But it will be an unintended consequence of clearing the vegetation. Simply including a paragraph of boilerplate legal language on the Pre-Citation does nothing to avoid it. Since the Fire District is making this requirement, it is responsible for the consequences. It would be helpful to have a geologist prepare a map of the District service area, showing where avoidance or mitigation might be necessary. Pressuring homeowners to make unwise decisions is not a good long-term strategy.

Riparian Areas are another source of confusion. Citizens may not be familiar with the term, and in any case, the width of the protected area may vary by location. It does not seem impossible that the District could create a map showing where extra attention on these issues should be focused. The District is fortunate to have someone on staff with GIS expertise who was able to generate parcel maps showing compliance/non compliance with inspections. It would not be impossible to map the creeks, or the steeper slopes, on a similar map.

It would be a big step forward if the Inspectors could be trained and armed with this information when they make their site visits. It's my understanding that there is a lot of turnover in this department. That's certainly unfortunate, because these employees are the face of the Fire District, and the best opportunity for getting helpful information to the public. In my view, it would be worth investing more in these employees, and trying to keep more of them on the job from year to year.

The Fire Chief stated at the Sept. 6 meeting that adjoining landowners could request to have their mutual fuelbreak reduced to just 100' instead of 200. This is a great idea, but it begs the question... so what IS the rule? Does this mean 200' isn't really necessary? When does this exception apply? We need

confidence that the regulations are being fairly and openly applied in the same way, to everyone. We need information about the alternatives collected in one place, and presented in a coherent, understandable way.

The changes in the proposed Ordinance specifically allowing some bushes to remain are certainly welcome. The width of the required fuelbreak is less troubling if the requirements are less severe. However, there are still issues remaining around acceptable groundcovers, as well as dead trees/snags, down logs, leaf litter, twigs, mulch, and other soil-enriching, habitat-providing natural materials.

The letter from the Orinda City Council to the Fire District asked for a more measured, more inclusive process. Instead, three significant Amendments to the proposed Ordinance were hastily added, one so recently as to not be available in writing at the meeting. The City Council is willing to invest its time and attention in bringing the public together around fire prevention efforts. The Fire District should jump at this opportunity to assess the public's understanding of the issues and build consensus and support for their programs.

I was looking forward to the proposed Public Meeting to discuss the Fire Science behind the Ordinance. I hope adoption of the Ordinance can be postponed, to allow this information to be heard.

District Counsel cited Urgency, contending that the Fire District is impaired by the temporary pause in enforcement of the fuelbreak ordinance. However, all other ordinances continue in force. Defensible Space and Roadway regulations continue to be enforced, and work on Evacuation Routes and the Gutter Guard program are proceeding. I doubt that a lull in enforcement activities is even detectable.

Amendment 1 notes that in a fire storm, "winds can move a wildfire across the landscape at tremendous speeds, including the ability to jump large perceived barriers such as Highway 24..." That is undoubtedly true, but it highlights the USELESSNESS of fuelbreaks in the red-flag conflagration we need to plan for. Efforts would be better spent improving Evacuation Routes and home hardening to save lives and property.

Amendment 3, regarding tree trimming, is a welcome addition, although I believe it was already a practice approved by the Fire District. Highlighting these kinds of practical regulations in some kind of Guidelines for Citizens as a companion to the Ordinance would make it far more accessible. No one should have to wade thru 18 pages of preamble and jargon to find one page of practical instruction.

There has been mention of the Ecologically Sound Practices developed through a collaboration of Fire agencies and conservationists in Marin County. It is a 20 page document produced through a volunteer effort, and largely based on recommendations found in the California Vegetation Treatment Plan. It was an inexpensive, community-based effort that resulted in a vegetation management plan that balances environmental concerns with efficient fire hazard reduction. I think it is something our area could use to broaden community participation and increase support for the Fire District's mission while fine-tuning the management prescriptions to suit local resources and characteristics.

At the last meeting, there was some skepticism from a boardmember that citizens need help navigating the Modification process. The problem is not the one-page form. The problem is the conflicting signals from the Fire District. You can apply for Modification, but it will only be approved if it produces the same result or better. That doesn't sound like there's much leeway. If I apply for an extension of time, am I then accepting the requirements as written? These dilemmas are confusing, even paralyzing. Add in

uncertainty over the effects on unspecified threatened and endangered species, sedimentation and erosion, and you can better understand citizens' lack of response.

I am going to stretch a metaphor here and say it's something like the decision on whether to file a police report. The form is not the problem – it's deciding whether any good is likely to come of it, or whether it will just subject me to unwelcome scrutiny, embarrassment, or censure. Evidently, the prospects don't look that good.

Finally, I want to stress my willingness to partner with the Fire District, and hopefully the cities of Orinda and Moraga, to organize the informational materials and make them more useful and accessible to citizens, and perhaps also their contractors. I hope they will also include more consideration of the value and fire resilience of some of our native plant communities.

Sincerely,

Sandy Pearson

629 Miner Rd Orinda

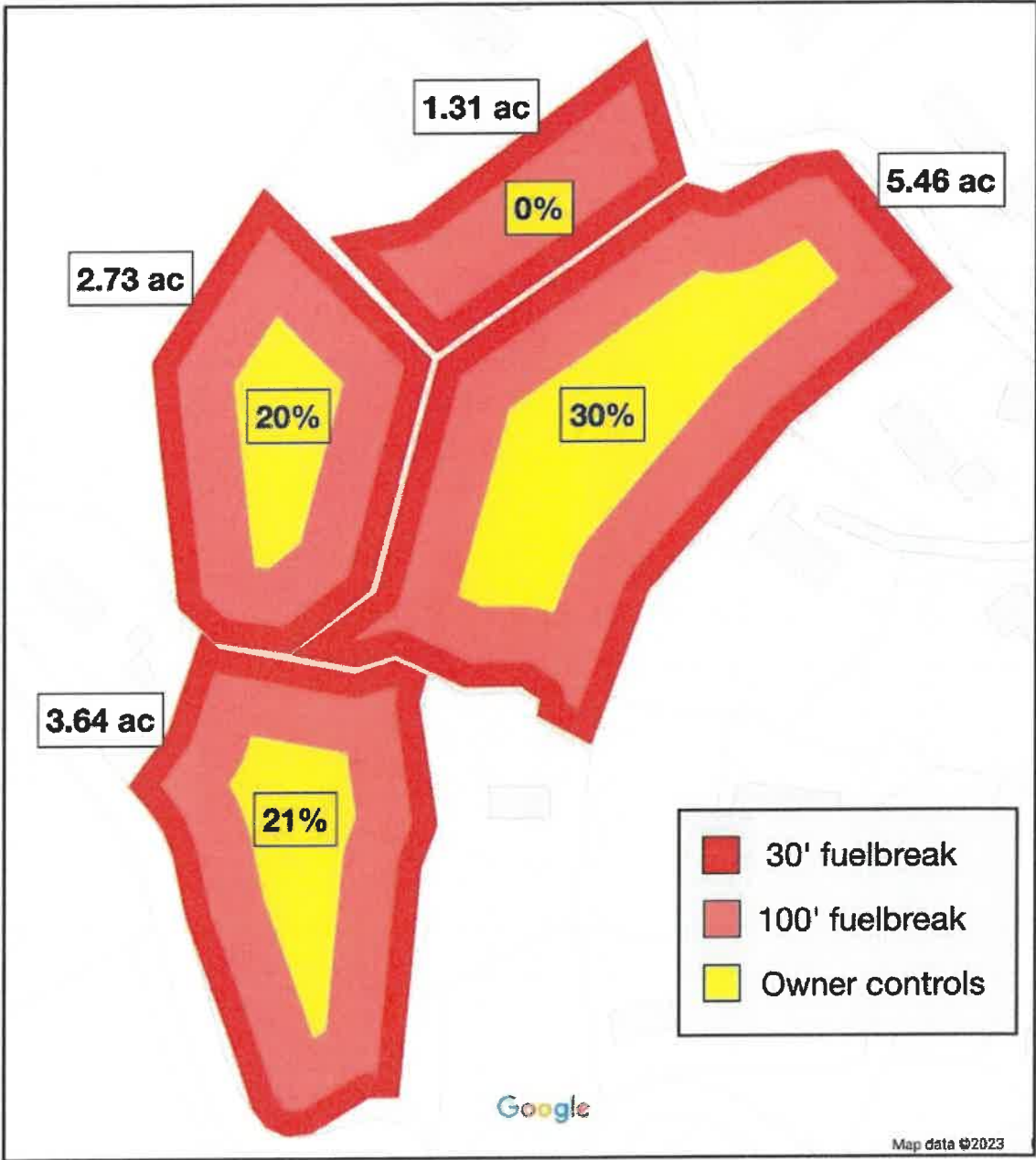
From: [Sandy Pearson](#)
To: [Holbrook, Marcia](#)
Subject: mofd comments
Date: Friday, September 15, 2023 3:39:08 PM

Hi Marcia,

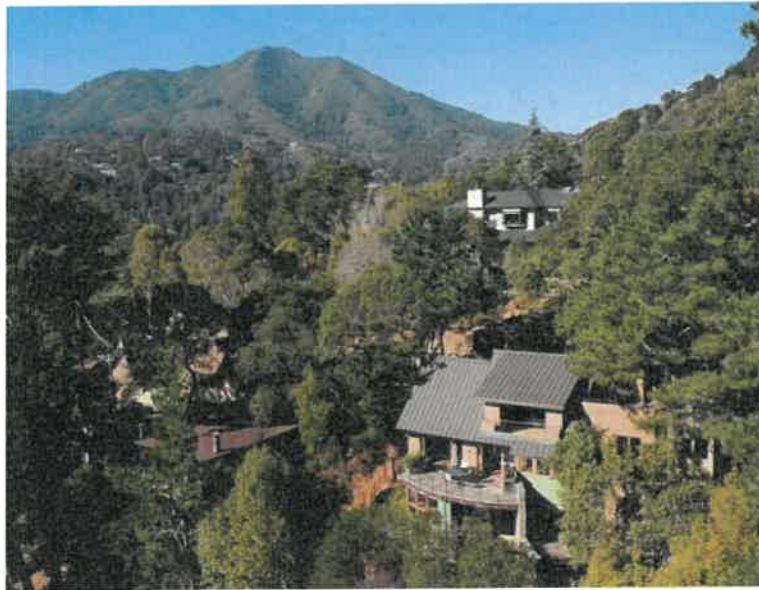
meant to go with my comments:

Thanks

VACANT LOTS



ECOLOGICALLY SOUND PRACTICES FOR VEGETATION MANAGEMENT



**Marin Wildfire Prevention Authority
ESP Partnership**

May 14, 2021 Final Draft

*The following individuals
contributed to the creation of
these Ecologically Sound
Practices for Vegetation
Management:*

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ECOLOGICALLY SOUND PRACTICES FOR REDUCING WILDFIRE RISK IN MARIN COUNTY

Intensifying climate change and extensive fuel build-up are contributing to the increasing threat of wildfire throughout Marin County and, to the extent possible, should be addressed through ecologically sound practices that minimize release of greenhouse gases and protect the biodiversity and resilience of Marin's landscapes . . .

--Joint Powers Agreement, Marin Wildfire Prevention Authority

The Ecologically Sound Practices Partnership (ESP Partnership) is a collaboration of fire agencies and the environmental community in Marin whose purpose is to assist the Marin Wildfire Prevention Authority (MWPA) in delivering its work in an environmentally sound manner.

The ESP Partnership's primary goals are to prepare a set of recommended best practices to guide work and to provide expertise during the development of projects, particularly those related to managing vegetation on wildlands, home landscapes, and other properties. In June 2020, interested parties began working on three areas of focus: vegetation management and habitat protection, carbon resource management, and defensible space for ecological benefit.

Like much of California, Marin is at high risk from increased wildfire, in large part driven by climate change. Our deepening global environmental crisis also includes biodiversity loss and increased drought, flooding, and pollution. The ESP Partnership's recommended practices are intended to produce positive results in meeting these multiple threats at the same time.

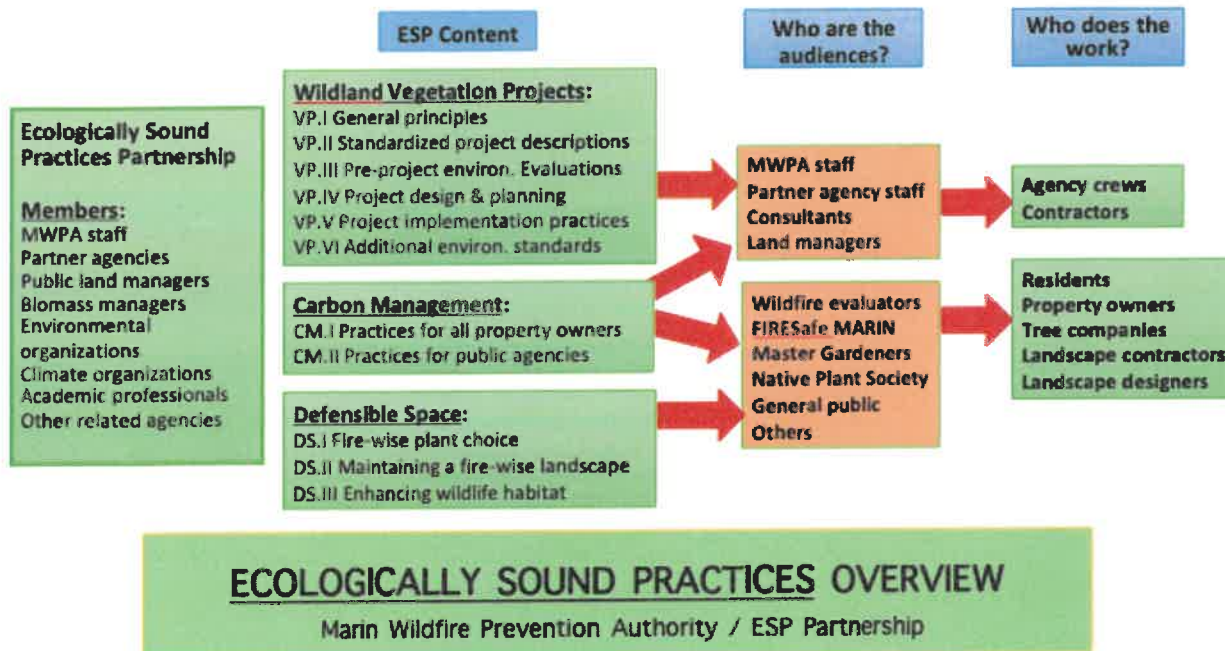
The following set of Ecologically Sound Practices have direct value to a number of audiences: MWPA and its partner agency staff and consultants, land managers, public education and landscape professionals, and the residents and property owners of Marin.

The first section, **Ecologically Sound Practices for Vegetation Treatment Projects in Wildlands**, recognizes that large fires can start in these lands, but also that these areas protect important natural resources and critical habitat. The recommendations strive to improve long term fire protection while taking into account the role that fire has always played on these lands.

The second section, **Ecologically Sound Practices for Carbon Management**, recognizes that actions taken to reduce wildfire risk can also reduce carbon emissions and improve carbon sequestration. Healthy vegetation and healthy soils can pull carbon out of the atmosphere and help counter climate change, and thus ultimately reduce fire danger.

The third section, **Ecologically Sound Practices for Defensible Space**, lists actions that will improve defensible space while also supporting biodiversity, fighting climate change, and reducing pollution.

We present these Ecologically Sound Practices in hopes that they become part of the operational fabric for the work funded through MWPA, so that our communities and our natural lands are both fire adaptive and ecologically sound.



Ecologically Sound Practices for Vegetation Treatment Projects in Wildlands **Marin Wildfire Prevention Authority**

Introduction

The MWPA will be funding vegetation treatment projects on open lands in the wildland urban interface. These projects, such as “fuel breaks” or “fuel reduction zones,” are typically aligned with the perimeter of communities and are intended to reduce wildfire intensity and provide firefighters an increased chance of stopping a wildfire. Projects to improve safety along escape routes also may involve extensive roadside treatments where these recommendations would be applicable. Treatment methods may include the use of hand and power tools, heavy equipment, prescribed burning, and livestock grazing, among others. The following recommendations are provided to support implementation of projects in a way that maintains ecological values to the greatest extent possible.

These guidelines are intended to assist MWPA and fire agency staff or their consultants in developing projects. Sections I and II are general principles or guidelines that provide a framework for managing fuel breaks and reporting project detail. The remaining sections are primarily actions that take place during environmental compliance or California Environmental Quality Act (CEQA) review, project implementation, and post project evaluations.

I. General best management principles

1. Projects should strive to protect the biodiversity and resilience of Marin’s landscape and ensure that ecological values are retained or restored. Ecological values may include protection of special status wildlife and plants, special status plant communities, important wildlife habitats, and native species cover and diversity.
2. Vegetation management projects should be considered permanent facilities that require long-term maintenance and monitoring of impacts on natural resources, invasions by exotic plant species, and outcomes as compared to desired conditions. In general, the MWPA should monitor for maintenance, and the lead agency or property owner should monitor for environmental impacts.
3. Project proponents and contractors should have or obtain expertise concerning environmental resources that may exist on or near vegetation management project sites and contractors should be trained regarding mitigation requirements of the environmental compliance documents associated with the project.
4. Projects will comply with all CEQA requirements; however, even projects that are categorically exempt should be subject to a consistent evaluation of on-site natural resources and potential impacts to these resources. In all instances, project proponents must provide substantial evidence that the project meets exemption criteria (see

section IV below).

5. In support of full transparency and public accountability the MWPA should maintain a web-based project database that provides project detail, current status, long term monitoring needs, and links to CEQA documentation (see section II. below for detail).
6. The burden of periodic maintenance requirements from past projects increases over time, even as new projects come on line. To ensure that the MWPA does not exceed its financial or operational capacity to maintain desired conditions in completed projects, annual work plans should include follow-up maintenance.
7. MWPA should also monitor and maintain the efficacy of all treatments, including broom removal, grazing, and prescribed burning.
8. The recently completed update of Marin's Community Wildfire Prevention Plan provides a framework from which MWPA-funded member agencies can develop plans and programs for treatment projects.

II. Project proponents should provide standardized project descriptions/data for a MWPA Project Tracking Database that includes the following:

1. physical address if applicable
2. project map with standard map conventions (preferably linked to GIS database managed by MarinMap or others)
3. habitat type/plant community
4. acreage
5. slope & aspect
6. past treatments or disturbances
7. methods/equipment
8. treatment protocol (spacing, species choices, etc.)
9. timing of work
10. extent of ground disturbance
11. amount of vegetation to be cut (including plant types, sizes and spacing)
12. methods for disposal of vegetation: chipping, masticating in place, lop and scatter, pile burning including technique, or removal (including destination and process for disposal)
13. access routes
14. smoke management plan/permit requirements
15. post-treatment maintenance frequency and intensity (especially for sites with existing invasive plant species or other issues that may require follow-up treatments)
16. links to: survey reports, CEQA compliance documents, notices of exemption, permits
17. project status (e.g. planning, implementation, completed, follow-up)
18. before and after project photographs

III. Pre-project environmental evaluations

Habitat assessments should be conducted by qualified professionals before and after site treatments. Minimum qualifications for biological professionals are set forth in Section 3.6.3 of the Final Program EIR for the California Vegetation Treatment Program, page 3.6-117.

Assessments should cover the following:

1. invasive plants
2. special status plants and wildlife
3. sensitive habitats/natural communities, such as oak woodlands, bay forests, coastal scrub, chaparral, perennial grasslands, bishop pine woodlands
4. watercourses, wetlands, riparian corridors and aquatic habitats
5. wildlife nursery sites or habitat (including bird nests and burrows)
6. Northern spotted owl habitat
7. slope stability/erosion

IV. Project design and planning best practices

1. Describe desired habitat conditions.
2. Identify potential impacts on natural resources in the project area.
3. Design projects to avoid or mitigate adverse impacts on special status species and sensitive natural communities.
4. Assure that native plant diversity and wildlife habitat are retained or improved.
5. Assure that the proportion of native plant species compared to non-native invasive plant species remains the same or preferably increases; take steps to prevent or mitigate reinvasion after project completion.
6. Give priority to fuel-breaks close to communities.
7. Consistent with maintaining the functionality of shaded fuel breaks, keep canopy trees, maintain native understory, keep large down wood and snags to the greatest extent feasible, and remove as much non-native vegetation as possible.
8. Give priority to removal of non-native trees, e.g. eucalyptus, acacia, Monterey pines.
9. Include erosion and sediment control measures that limit discharge and protect all downstream aquatic resources. Minimize soil disturbance and compaction.
10. Consistent with CALFIRE Vegetation Treatment Plan (VTP) goats, cattle, or other herbivores should not be used on steep slopes (over 50% grade) or on sites with special

status plant species or over 10% native herbaceous cover. Timing and duration of grazing should be designed to protect and promote native plants.

V. Best practices for implementation of vegetation management projects

1. Avoid wetlands, riparian habitats, stream conservation areas, and stream banks, and establish buffer areas in accordance with VTP guidelines or other applicable agency vegetation management plans.
2. Avoid work in bird nesting season; however, if not feasible, conduct timely surveys (within 1 week of work) and provide buffers around active nests, or wait until young have fledged.
3. Protect special status plants and wildlife with visibly marked buffers and/or avoidance, in accordance with VTP guidelines or other applicable agency vegetation management plans.
4. Take steps to assure that the proportion of native plant species compared to non-native invasive plant species remains the same, or preferably increases.
5. When removing invasive plants, use Integrated Pest Management treatments. Implement Early Detection Rapid Response methods on sites vulnerable to invasion by new species.
6. Protect Northern spotted owl habitat and wood rat nests.
7. Implement long-term monitoring by appropriate parties, as necessary.

VI. Comply with additional environmental standards of practice

In addition to the practices listed above, project proponents should implement the best management practices, mitigation measures and standard treatment requirements set forth in [Section 3.6.3 of the Program EIR for the CalFire Vegetation Treatment Plan \(entitled Impact Analysis and Mitigation Measures\)](#). Where applicable, however, the practices and mitigation measures set forth in vegetation treatment plans developed by California State Parks, the National Park Service or Marin agencies may instead be implemented.

Ecologically Sound Practices for Carbon Management Marin Wildfire Prevention Authority

A fundamental way to reduce the threat of wildfire is to reduce the greenhouse gases that are causing climate change to intensify. Lowering fuel loads can help prevent the release of large amounts of carbon dioxide from catastrophic wildfire. Reusing the carbon contained in vegetation cuttings for productive purposes, like mulch, energy, and wood products can further reduce greenhouse gas emissions. And maintaining and enhancing the health of Marin's diverse landscape can enable it to keep drawing down carbon out of the atmosphere. These carbon management practices apply to every scale of landscape, from large open space to single yard. They are addressed to individual property owners, supplementing Defensible Space practices, with a separate section addressing additional concerns of public agencies managing larger properties and projects.

I. Carbon Management Practices for all Property Owners

A. Maintain healthy vegetation for optimal carbon capture and sequestration

1. Follow pruning, mulching, watering, and other maintenance practices that sustain healthy vegetation while reducing wildfire risk.
 - i. See associated ESP for 'Wildland Vegetation Projects' and 'Defensible Space'
 - ii. See ['Maintain Your Fire-smart Garden' at UC Marin Master Gardeners](#)

B. Maintain an extensive tree canopy

1. Protect and promote the health of large trees (except for designated fire-hazardous trees). The trunks of large trees ignite less readily than smaller vegetation while sequestering large amounts of carbon for long periods of time.
2. Decrease 'laddering' of fire into canopy by removing lower branches, generally up to 6 - 10' or 1/3 of the tree's height, whichever is less.
3. Where needed to protect structures or other improvements, create 'shaded fuel breaks' by reducing fuel at ground level while maintaining a healthy canopy.
4. Space trees to reduce competition and provide growing conditions that allow each tree to reach full size without crowding other trees or structures, reducing future pruning and slowing the spread of fire. (Over time, a few large trees sequester more carbon, with less fire hazard, than an overcrowded stand of smaller trees.)
5. Locate and maintain trees where they can cool buildings, reduce heat islands, and help maintain moisture at ground level.
6. Prioritize planting and maintenance of larger 'high sequestration' trees.
 - i. See 'large trees' list at [CA Native Plant Society Marin Chapter](#)

- ii. [Also see San Rafael Street Trees \(4' planter size and larger\) list](#)
- iii. [The Firesafe Marin 'Fire Smart' tree list includes a few additional large species](#)
- iv. [Some top sequestration trees are at Drawdown Marin 'Carbon Capture' \(slides 9 & 10\):](#)
- v. [You can calculate the carbon sequestered by a given species at i-tree](#)
- vi. See ['Considerations for Choosing Plants' at UC Marin Master Gardeners](#)

C. Protect and enhance native plant communities

1. Reduce fuel loads to levels typical of Marin's fire-tolerant native plant communities subject to natural fire return intervals.
2. When reducing fuel loads, focus first on removing/reducing non-native invasive and highly flammable species, timing work to limit the spread of their seeds.
3. Remove dead or diseased vegetation (leaving a few dead trees for wildlife benefits).
4. Re-plant with fire-tolerant and fire-resilient native species adapted to site conditions.
 - i. See ['plant replacement lists' for 'fire-smart' native trees, grasses, groundcovers, and shrubs at Ca. Native Plant Society Marin Chapter](#)

D. Maintain healthy soil able to absorb and store carbon

1. Maintain groundcover and use mulch, jute geotextile material, erosion catchment wattles that biodegrade over time, and other practices to protect soil from erosion and runoff. Plant and maintain deep-rooted perennial native grasses.
2. Avoid chemical pesticides and fertilizers that are often derived from fossil fuels and can cause the release of nitrous oxide, a potent greenhouse gas; use natural means instead (e.g., attracting birds and other insect predators, applying compost).
3. Minimize disturbance and compaction of soil from equipment or grazing.
4. Encourage retention, spread, and continuity of mycelia and other constituents of the soil biome to support healthy roots and vegetation.
5. Use compost and composted mulch to help maintain soil cover, soil moisture, fertility, and carbon.
 - i. Purchase compost and mulch derived from Marin green cart yard & kitchen trimmings at local suppliers such as [Redwood Landfill](#) and [West Marin Compost](#)
 - ii. See more on [mulch at Firesafe Marin](#)
 - iii. See ['Putting Carbon Back in Your Soil' at UC Marin Master Gardeners](#)
 - iv. Track [biomass from truck or green cart to organic compost at Redwood Landfill](#)
 - v. [Marin Sanitary Service green cart information](#)

- vi. [Marin Carbon Farms convert compost to food & sequestration](#)

E. Choose ways to dispose of cuttings that reduce greenhouse gases or increase sequestration

1. Consider using a chipper, then spreading the material on site as mulch.
2. Ask your hauler if the cuttings can be directed to one or more of these products:
 - a) Compost & mulch – maintains soil moisture, fertility, sequestration
 - b) Biochar – sequesters carbon long-term, retains soil moisture
 - i. [Biochar basics at Carbo Culture](#)
 - c) Anaerobic digestion (wet or dry) for electricity, fertilizer
 - i. [Track landfill gas to electricity at Redwood Landfill](#)
 - ii. [Marin Sanitary Service commercial 'food to energy' conversion](#)
 - d) Gasification/pyrolysis for electricity, biochar, hydrogen (potential Marin pilot)
 - e) Combustion for electricity (potential Marin pilot)
 - f) Wood products—sequester carbon for product's life (potential Marin pilot)

II. Additional Carbon Management Practices for Public Agencies

A. Reduce fire threats to the Marin landscape

1. Manage vegetation to avoid the release of large amounts of carbon dioxide from catastrophic wildfire on Marin's landscapes, which currently sequester about 25% of Marin's greenhouse gas emissions every year.
 - i. [View Marin Community Wildfire Prevention Plan](#)
2. Continue to monitor countywide vegetation maps to identify 'carbon sinks' and develop practices that maintain, enhance, and track their health and extent.
 - i. View [One Tam Marin Vegetation Map project](#)
3. Follow local tree ordinances, urban forestry programs, and climate action plans.

B. Manage biomass for low greenhouse gas emissions and high sequestration

1. Minimize GHG release during vegetation management and disposal, including from sources such as saws, chippers, transportation, and processing where feasible.
2. Determine and use lowest-emission/highest sequestration methods of biomass disposal, including onsite practices such as:

- a) Chipping (or masticating) and broadcasting (e.g., create mulch for use onsite).
- b) Lopping and reuse of larger material (e.g., to border trails or cover old trails).
- c) Controlled burns – prescribed burns, pile burns, ‘conservation’ pile burns, ‘air curtain burners’ to reduce emissions, ‘flame-cap kilns’ to increase biochar.
 - i. [Onsite way to produce biochar & reduce emissions](#)
 - ii. [Community prescribed burns](#)
- d) Grazing – employ livestock and practices that increase the health of plants.
 - i. [‘Match.Graze’ onsite options](#)

3. Optimize carbon sequestration and minimize GHG emissions at all stages of management, with the goal of balancing the emissions from management activities with the carbon sequestered.

- i. [Marin Biomass Recovery Study](#)
- ii. [California Biomass Collaborative overview of biomass & GHG goals](#)
- iii. [Drawdown Marin GHG emission reduction & sequestration strategies](#)

C. Provide fire-wise and climate-smart public educational materials & presentations

- 1. Prioritize hardening structures & safe evacuation in disaster preparedness materials.
 - i. See more on home hardening: <https://www.firesafemarin.org/home-hardening>
- 2. Emphasize ecologically sound practices for vegetation management.
 - i. Also see [‘Earth-Friendly Gardening’ at UC Marin Master Gardens](#):
 - ii. See [‘The Climate-Friendly Gardener’](#)
- 3. Include ecologically sound disposal practices for vegetation removed.
- 4. Provide workforce training and public education on maintenance practices, including their carbon management and climate mitigation rationale.

Ecologically Sound Practices for Defensible Space Marin Wildfire Prevention Authority

Defensible Space is needed to reduce the intensity of wildfires as they approach homes or other structures, and reduce the likelihood that vegetation near buildings will ignite from embers. Defensible space creates a safer place for firefighters to operate and for residents to evacuate. Defensible space may also reduce the likelihood that a structural fire will spread to neighboring homes or wildlands.

Defensible space landscapes also can play an important role in combating climate change and maintaining a biodiverse and sustainable environment. Increased public outreach, expanded home and property inspections, and more frequent enforcement of wildfire ordinances offer the opportunity to transform under-managed properties into fire smart, water wise, biodiverse, and climate friendly landscapes throughout Marin. These Ecologically Sound Practices for Defensible Space provide guidance for making landscapes more sustainable and biodiverse by emphasizing maintenance practices and design modifications that reduce fire intensity, remove fire prone plants, and use native and other plants needed for bees, butterflies, birds, and other wildlife to thrive.

The intended audience for these practices is ultimately the individual residents or property owners who are responsible for designing and maintaining defensible space. In addition, these practices are intended to inform and assist the development of educational and training materials by organizations who deliver information to residents and landscape professionals, such as FIRESafe Marin, UCCE Master Gardeners, California Native Plant Society, and fire service home inspectors as well as potential certification programs for fire agency inspectors.

I. Plant choice

Focus on geographically appropriate California native plants and low-water-use plants that thrive in a Mediterranean climate and are easy to maintain.

1. Grow ‘the right plant in the right place’ for microclimate and garden conditions.
2. Choose plants that store water in leaves and stems, do not produce excessive dead, dry, or fine debris, maintain high moisture content with limited watering, require little maintenance, and contribute to the ecological health of the surrounding area.
3. See the [‘how to choose plants’](#) page of the UC Marin Master Gardeners website.
4. See the [‘fire smart landscaping’](#) page of the Marin chapter of the California Native Plant Society for a list of native plants to replace plants considered fire-hazardous by Marin fire authorities. These native plants can serve similar functions in the garden as those

fire-hazardous species.

5. Choose plants that attract pollinators, support songbirds, foster biological pest control, and reduce the need for pesticides.
6. When designing a garden for new plantings, generally space shrubs so they will be 3-5ft apart at maturity. Avoid or reduce situations where shrubs are under tree canopies. Space shrubs and trees for easy maintenance, with increased spacing on slopes. See [CA Public Resources Code 4291](#).
7. Do not introduce invasive plants and remove existing ones.
8. Prune and thin for plant health and vegetative fuel reduction.

II. Maintenance

A. Clean up – Start with the house and work out

Prior to fire season assess your yard and home landscape for flammable materials. See Marin Master Gardeners '[firesmart landscaping maintenance](#).'

1. Remove dead or dry leaves and pine needles from your roof and rain gutters, and within 5ft of structures. Repeat regularly during fire season.
2. Prune branches that overhang any roofs or deck.
3. Remove combustible material on or under decks, overhangs and fences.
4. Do not allow construction materials, recreational equipment, or other debris to accumulate next to structures.
5. Move wood piles at least 30 feet from any structure.
6. Keep propane tanks clear of debris and set 30 feet away from structures.

B. Mulch and Compost

Soil that retains moisture keeps plants greener and less flammable. The higher the soil's carbon content, the more water it can absorb. Add compost and composted mulch where needed to help retain soil moisture, fertility, and carbon and to encourage mycelia and other constituents of the soil biome that support healthy vegetation.

1. Use permeable, noncombustible (inorganic) mulch materials 0-5' around the perimeter of any structure and to create fuel breaks throughout the property. If

planting within the 0-5ft zone, succulent or high water content plants are suitable.

2. Use compost or composted mulch beyond 5 feet, to hold moisture and eliminate weeds, while leaving some bare soil for ground nesting bees.
3. Limit the depth of wood chips or other organic mulch to 3 inches.
4. Separate large composted wood chip areas with paths or non-flammable materials such as gravel, rocks, decomposed granite or stones to break up continuity of flammable materials on the landscape.
5. Where hardscape is required, use permeable materials to allow rainwater to percolate below ground, reducing run-off and erosion.
6. Secure mulch, compost, and biochar (which also helps retain soil moisture) from local suppliers like West Marin Compost and Redwood Landfill.

C. Water Management

Be water-wise. Design landscapes and irrigation systems to work together. Use drip or low-flow overhead spray irrigation where appropriate and adjust the schedule to irrigate deeply and less frequently to keep your plants appropriately hydrated throughout the year.

1. Group and irrigate plants according to their watering needs. Watering more than necessary can encourage quick and excessive plant growth, increasing the fuel load, or cause root rot that results in increased flammability.
2. Maintain irrigation systems to avoid leaks and ensure proper plant hydration.
3. Irrigate as normal on Red Flag Days. Overwatering depletes the water our fire departments need and does not help plants resist embers or heat from fire.

D. Erosion and Steep Slopes

Slow runoff by maintaining plant cover and using strategically located berms, swales and rain gardens, as well as water-permeable surfaces.

1. Leave in place or restore enough vegetation and roots to maintain a stable slope and prevent erosion. Preferably, use deep-rooted native plants.
2. When vegetation is removed from steep slopes, erosion control measures should be added to reduce runoff, improve infiltration, and recharge groundwater.
3. Include jute geotextile material and erosion catchment wattles that will biodegrade over time. See Marin Master Gardeners '[preventing erosion](#).'

E. Pruning, Thinning, and Mowing

Cut out dead, dried, and diseased wood to increase space between plant groupings and tree branches while being sensitive to nesting birds, wood rats or other wildlife habitats.

1. Monitor plant height and prune lower vegetation to reduce the risk of fire spreading into tree canopies.
2. Regularly prune woody, twiggy or overgrown shrubs to remove accumulated dry material and remove dead wood.
3. Cut back vines and groundcovers to remove build-up of dry stems and dead leaves.
4. Prune lower tree limbs away from understory vegetation that would allow fire to move from the ground to the upper portion of the tree. Remove climbing vines from trees.
5. Gently thin tree canopies to remove deadwood and twiggy growth and maintain separation between trees. Avoid topping trees.
6. Mow annual grasses and weeds to about 4-6 inches tall. Mow before 10 am and not on hot or windy days.
7. Prior to mowing, inspect for invertebrates or other wildlife.
8. Use hand pulling or string trimmers (vs. lawnmowers) for clearing weeds, grasses, or other fine vegetation.

F. Tree and Plant Care

Prune at the right time of the year; fall and winter are best to remove excess growth and dead wood. Avoid pruning in the spring or summer to discourage the spread of disease and prevent excess growth of certain species.

1. Remove tree branches within 6-10 feet of the ground or up to $\frac{1}{3}$ the height of the tree, whichever is less, to mimic the conditions in a healthy forest.
2. Leave the branch collar when making flush cuts to reduce injury to the tree.
3. The space between an understory shrub and the lowest branch of a tree should be 3 times the height of the understory shrub.
4. Remove the portion of a tree that extends within 10 feet of the outlet of a chimney or stovepipe. See [CA Public Resources Code 4291 \(a\)\(2\)](#).
5. Avoid planting trees under power lines to prevent having to remove them later. Pre-existing trees and shrubs under power lines should be pruned to prevent contact with

the lines. When planting near power lines, choose fire-resistant species, favoring natives where possible. See [PG&E's 'Right Tree, Right Place' guidelines](#).

6. Trees should only be removed if dead or advised to do so by inspectors because they pose a fire hazard.

G. Climate Change

Climate change is a major factor contributing to increased wildfires in Marin. See the Carbon Management Section of these Ecologically Sound Practices for more ways to reduce it.

1. As temperatures increase, keep plants hydrated during heat events, and frequently monitor. Thriving plants are more resistant to embers and radiant heat from wildfire.
2. Choose electric or battery powered gardening tools over gas powered.
3. A primary goal of all fuel treatments, including the maintenance of defensible space, is to encourage reduced fire intensity and healthy plants. Such treatments generally release less carbon, restore vital soil nutrients, and encourage healthy forests and new growth that maximizes long-term carbon sequestration.
4. Consider household energy efficiency improvements and other steps to reduce the greenhouse gas emissions that are driving climate change and intensifying wildfires. For comprehensive climate mitigation and adaptation actions, see [Resilient Neighborhoods](#).

H. Home Hardening

Hardening the home to resist ignition is important since buildings are often more vulnerable than surrounding vegetation. Strategies include installing ignition resistant roofing, retrofitting ember resistant screens over vents, enclosing eaves, closing in the open space under decks, separating wooden fences and gates from the house, and installing ignition resistant siding. See Firesafe Marin ['harden your home'](#).

III. Wildlife habitat

Coordinate with neighboring Firewise USA sites to create fire-resilient wildlife habitat corridors; provide drinking water and plants suitable for wildlife diets; limit the use of pesticides, herbicides, and chemical fertilizers; and reduce the likelihood of habitat destruction from high intensity wildfires. Our landscapes are shared with a host of other living creatures. Each decision we make also affects them.

A. Structural habitat

A well maintained defensible space can create or enhance structural habitat for wildlife use, often including an open understory canopy ideal for foraging bats, raptors, and owls.

1. Leave Dusky-footed wood rat nests intact. Dusky-footed wood rats are an important food source for raptors. Multiple generations use these 'pile of sticks' homes.
2. Install bat, owl, and bird nest boxes 10-15ft above ground and away from buildings. Boxes require annual cleaning.
3. Space plants for wildlife shelter; clear dead leaf litter under shrubs less than 5ft high.
4. Dead branches, limbs close to the ground, and logs serve as wildlife habitat. Material should be left in place beyond the 30ft zone around structures.

B. Food/ Forage

Encourage plants that serve as perennial food sources for pollinators, insects and small mammals. The most suitable food sources are native plants with which wildlife has co-evolved. See [Marin Master Gardeners plant lists](#).

1. Plant native nectar plants for pollinators and native trees and shrubs that produce berries for songbirds and mammals. Remove invasive vines that reduce nesting habitat for songbirds.
2. If one cannot plant natives, best practice is to plant non-invasive Mediterranean drought-tolerant plants that are not designated fire-hazardous.

C. Sources of Water

Provide summer water sources for butterflies, birds and mammals.

1. Encourage the use of non-chlorinated ponds and birdbaths.
2. Keep swimming pools and water troughs covered when not in use or build wildlife escape ramps.

D. Bare Ground

Bare ground is beneficial for ground nesting insects and sun basking for reptiles such as lizards and snakes.

1. Maintain ample areas of bare ground within the zone 0-5ft from the house and integrate strategically throughout the landscape.

E. Decomposers

Slow, spread, and sink rainwater to support nematodes, fungal network, and nutrient cycling.

1. Wet months in Mediterranean climates are the most valuable time for rainfall to slowly move through soil profile. This allows decomposers to cycle nutrients, and for

mycorrhizae and nematodes to build up soil.

2. Outside the 0-5ft zone, leave dead leaves on the ground in the winter to encourage decomposers.
3. Use composted mulch where feasible in the 5ft- 30ft zone, to a depth of about 3 inches, to keep roots moist in the summer months, as well as provide habitat for soil organisms and other wildlife.
4. Beyond the 30ft zone, leaf material and dead branches are encouraged to a maximum depth of 3" to reduce evapotranspiration and enhance habitat in the top soil horizon.

F. Bird Nesting Season

Marin County is part of a migratory bird flyway, and many birds nest here. Reduce impacts to bird nesting and foraging.

1. Inspect for the presence of nesting birds prior to performing vegetation work, and when possible, perform work outside of bird nesting season. See '[when exactly is the breeding season?](#)' at the Marin Audubon Society Breeding Bird Atlas.
2. When cutting grass in the spring and summer months (as required to reduce flammable fine fuels) inspect the area first for ground nesting birds, reptiles, and mammals.
3. Remove dead branches and prune trees adjacent to structures in the winter whenever possible. Winter work is less likely to disturb nests and reduces the maintenance required during fire season.

IV. General Resources:

1. [Ecologically Sound Practices Partnership \(ESP\)](#)
2. [University of California Marin Master Gardeners \(MMG\)](#)
3. [University of California Integrated Pest Management \(UCIPM\)](#)
4. [FIRESafe Marin \(FSM\)](#)
5. [California Native Plant Society & CalScape \(CNPS\)](#)
6. [Marin Municipal Water District \(MMWD\) Watershed Approach to Landscaping](#)
7. [Marin Audubon Society](#)
8. [University of California Climate Wise Gardening](#)
9. [University of California Tree Care and Management](#)
10. [PG&E planting considerations](#)
11. [CalPoly SelecTree](#)
12. [California Invasive Plant Council \(CalIPC\)](#)
13. [Ecological Artisans](#) Effective Erosion Control: Straw Wattle

V. Wildlife Resources:

1. [International Bat Conservation Biologist](#) – Bethany Shultz
2. [Xerces Society List of habitat guide for pollinators](#) –
3. [Bruns Lab- Point Reyes Vision Fire- study](#)- UC Berkeley lab that study mycological community. [Reference to be confirmed.]
4. SF Mycological group - grow mushrooms in your garden - Ken Lenshfield
5. [Marin Native Plant Society - Replacement plant list](#)
6. [Habitat Structure in Montane Forests](#) –US Forest Service
7. Point Reyes National Seashore Wildlife and Bird Biologist – Dave Press
8. Water Wise - Greg Ruben - micro sprinklers (drip saturates the drip zone). Landscaper in S. California
9. [Marin Municipal Water District – Watershed Approach to Landscaping](#)
10. [Marin Beekeepers](#) – Bonnie Morse

Sept 2, 2023

Dear Orinda City Council Members,

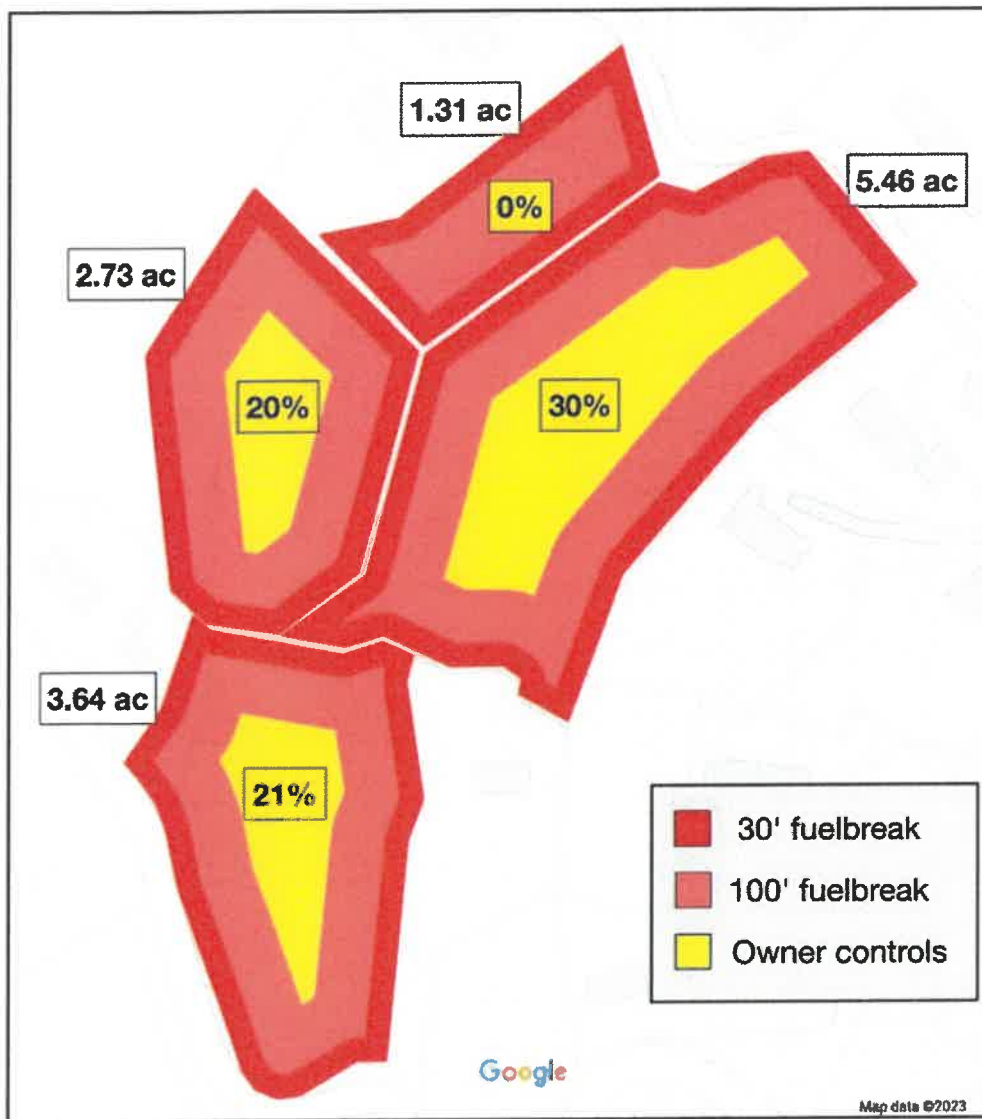
My family has several vacant parcels on Miner Road in Orinda. We have been caring for this property for over 60 years now. It is not overgrown; much of it is open and park-like. We love the beautiful landscape and the wildlife, which are much enjoyed by our neighbors.

Last February, MOFD increased the width of the fuelbreak required around the PERIMETER of our lots, from 30 feet to 100 feet, more than triple. According to tape recordings from this meeting, the change was made to simplify regulations, and make the rules for parcels in the 1 – 5 acre range the same as for 10 acres plus.

This change, which was not in response to new fire science, has a devastating effect on parcels like ours. The map below shows how much of the remaining property is now under our own control – less than 30% of a parcel as big as 4 or 5 acres. MOFD has appointed itself the new managers, although we have to pay the bills for their decisions. These bills amount to many thousands of dollars annually, and far exceed what we pay in property taxes.

PLEASE SEE NEXT PAGE

VACANT LOTS



Yes, we could ask MOFD for permission to treat our lots as a single parcel and make one 100' fuelbreak around the whole. But this doesn't help our neighbors who are struggling with the same problem – 100 feet is just too wide a fuelbreak. And actually, it is 200 feet because the next door owner has to do the same amount. There are over 500 parcels in Moraga-Orinda that are affected by this change, and over 1000 acres of additional clearing will be required.

In fairness, I should point out that this map is not entirely accurate because it applies only to VACANT parcels. If there was a house in the middle of the property, it would ALSO require a 100 foot fuelbreak around it, so that the ENTIRE parcel would be subject to MOFD regulation. Yes, a parcel as large as 5 acres or more would be subject to management entirely outside the owner's control.

My family objects strenuously to this regulation, not only for the impact on native plants and animals, but also due to the taking of our property rights and the expense it imposes on us every year going forward. We were never consulted nor advised of this change, and learned of it only upon receiving a 30-Day Pre-Citation in the mail last May.

I hope that the City Council can exert some influence on MOFD to reconsider this ordinance. We can't fuelbreak all of Orinda. There are other more effective ways to protect our lives and homes, like safe evacuation routes, community alarm systems, and home hardening. We don't have to eliminate nature to be fire safe.

Sincerely,

Sandy Pearson



Sept 2, 2023

Dear Orinda Council Members,

I would like to offer my comments on the Proposed Ordinance 2308 being considered at Tuesday night's Council Meeting. My background is in natural history, and native plants and animals are my interest, so I can offer a different perspective on the proposals at hand.

My main observation: this document offers some improvements over the previous ordinances, but is still most remarkable for what is missing. MOFD continues to deny the effects of their requirements, instead of collaborating to find better ways to accomplish their worthy goals.

Here are my comments, which I hope will explain my statement. They are organized by topic.

VEGETATION MANAGEMENT - BUSHES

One of the improvements in this proposed Ordinance is a paragraph explaining that properly spaced shrubs can indeed be left in the fuelbreak area. I believe this standard was used before, but it was not described anywhere that residents were likely to find it. The Ordinance now describes the horizontal spacing that is considered fire-safe.

What is still missing here is the vertical spacing which is required when bushes are growing under trees. An air gap is required, something like 2 ½ times the shrub height, so that they don't carry fire to trees growing above. Where is this information to be found?

Bushes are crucially important for all our ground nesting birds, including California quail. They should be preserved wherever it is safe. Many people are planting drought-tolerant native plants, which provide food for native wildlife. Since these are mostly unirrigated, and unirrigated brush is declared to be Hazardous, it is not clear whether gardeners would be obliged to remove the very bushes they have planted.

GROUND COVER

There is also still no direction about green groundcovers, including things like native ferns and Yerba Buena. Since they are low growing and green all year, these plants seem to be vastly better than dry annual grasses, and might even be useful in catching drifting embers that would otherwise lodge against houses. Some properties in our neighborhood have had their clearing approved and have left both ferns and monkey flower. It is not at all clear if land must be cleared to bare dirt, or 3 inches, or if certain low green plants can remain. These standards need to be available so that the same rules can be applied to everyone.

Leaving some low green vegetation is also the only way to provide shelter for brush rabbits and quail. These animals are such sought after snacks, it is hard for them to safely cross large

denuded areas. Baby quail are especially vulnerable. Extensive swaths of bare land eliminates them from the area.

TREES

This Ordinance preserves mature trees, as did the last version, but more explicitly here. The bottom branches up to 6 feet must still be removed. What is not explained is that young trees can remain, and that the bottom branches should be removed up to 1/3 the height of the small tree. Eventually the tree will be big enough that the clearance will also grow to 6 feet. This is good news, but where is this information?

DEAD TREES and LOGS

Large dead trees and down woody debris are some of the most valuable wildlife habitat in the landscape, and its removal is a severe blow to animals. Because we are talking about old, long dead trees, they do not have the twigs and other fine fuels that spread fire quickly. They are hard to light and tend to smolder for a long time after the fire front has passed, so they are one of the least hazardous fuels out there.

Large dead trees, called snags, are pretty rare – especially those over 18 inches which are most useful to hawks, owls, and all the cavity nesting birds that seek out the hollows where branches have fallen off with age. Considering the cost vs. benefit and overall scarcity, snags deserve special consideration. They are not mentioned in this or any other ordinance.

Another very important wildlife resource is the granary trees use by colonies of acorn woodpeckers. You may have noticed old trees or telephone poles stuffed full of acorns. This is the winter food supply for a group of up to 20 native acorn woodpeckers, who spend months stocking their larder. These woodpeckers nest in a group in large hollow trees and have a fascinating social structure, with aunts and uncles helping to raise the chicks produced by the dominant pair. They could thrive in our oak woodland if we would take reasonable steps to assure their food stores and shelter.

Down woody debris and logs on the ground are another extremely valuable feature in the landscape, a haven for lizards, salamanders, field mice, beetles, and many other creatures. They conserve moisture in the soil, prevent the soil from drying, and provide a substrate for interesting mushrooms, which support their own animal kingdom. They will burn, but without twigs and fine fuels, they do not burn rapidly. They eventually become mulch and enrich the soil. We need to consider their great value to the environment against their modest contribution to fire risk. They are not so different from the piles of wood chips remaining all around after clearing operations.

GRASS

The dry annual grasses that cover our hillsides are invasives; they have replaced the native perennial bunch grasses that once covered California. The natives grow year after year, some living for decades. They put long roots deep into the soil, holding steep hillsides in place. And they allow rainfall to infiltrate into the soil preventing excess run-off that leads to flooding.

There is a wonderful exhibit at the Oakland Museum showing a California Oat grass bunch removed intact from the soil, with a thick tangle of roots dangling 6 feet below it.

There are a few areas that still have native perennial bunch grass around – they thrive when mowed to 3 inches, as required. The mowing or weedeating also helps them spread into areas dominated by the invasive annuals. Fire fighters recognize that they carry fire much less rapidly than the annual grasses, since they stay a bit moist all thru the year. We need to be sure we conserve the perennials where they occur, and avoid damaging them, which would surely lead to their replacement by the far more flammable annuals.

The regulations call for grasses to be cut to 3 inches; in practice, most areas that are weedeaten are cut closer to zero. Some contractors are proud to offer treatments which involve triple cutting the grass stems, and result intentionally in hillsides that look like they have been raked. This is not only unnecessary, according to past and present Ordinance requirements, but exposing the soil to the baking sun makes it hard and less able to absorb water the following winter. This makes it harder for small herbaceous plants to get started the next spring and gradually renders the area less able to support life.

Weedeating has consequences; it is not harmless, though it may be necessary. A field that is weedeaten no longer supports field mice which are the principal food for hawks, owls, foxes, coyotes, and bobcats, all our largest and most interesting animals. It cannot be true that the vast amount of weedeating going on now has no environmental consequences. We need to acknowledge our impacts, and plan how to minimize or mitigate them.

Here are some more general comments and questions related to the Ordinance:

1. The Moraga Orinda Fire District is creating the Tunnel Shaded Fuel Break using the somewhat more nature-friendly standards adopted by CalFire, the State Board of Forestry and Fire Protection. They are applied on EBMUD and the East Bay Regional Park District lands. Why can't we apply them to our private property as well?
2. Repeated disturbance of native vegetation can lead to its replacement by more flammable annual grasses and other invasive weeds, making the fire hazard WORSE. All plants are not created equal when it comes to fire. We can be more selective and just as effective.
3. Fuelbreaks are not the most effective way of reducing fire risk. Creating safe evacuation routes, developing community alert systems, and the hardening of homes and other structures to resist fire are all important strategies to save lives and property. Fuelbreaks are simply far less controversial than telling homeowners their wood fence or deck skirting is a problem.

The Fire District has gotten a bulk shipment of gutter guard – I look forward to getting some for my own home, and seeing more emphasis on protecting structures directly.

4. At least 4 of my immediate neighbors have spent over \$10,000 this year on vegetation clearing. It's true that much of it was overdue and needed to be done. But annual expenses will

continue. The grass will grow back, possibly thicker where the brush was removed. And the brush will keep trying to come back for many years, for better or worse. This continuing expense is like a tax suddenly imposed on people with larger yards, most of which are quite steep and difficult to treat. The benefits are spread to the neighborhood in reduced fire risk, but the cost is borne by the individual.

5. The proposed Ordinance expands on the availability of Modifications to the requirements, and is a welcome addition. However, they are not the complete answer to addressing environmental concerns. Modifications may not lessen the fire safety requirements, and must provide the Same Practical Effect as the original requirements. It is hard to imagine what trade-offs would be acceptable, other than perhaps relocating a fuelbreak.

This section of the Ordinance also suggests that homeowners may submit an individualized fire protection plan. This may be something useful, but all detail is deferred to the State Fire Code. Still, this could be a step in the right direction and is a welcome development.

6. One of the biggest problems with the vegetation management program is the difficulty of finding out what is really required. In the neighborhoods, you can see wildly different treatments which have all been approved. Owners who are pressured to respond within 30 days don't have time for a research project. They may order something more severe than they would like because they just don't know. Many decisions are being left to the contractors, who also lack information.

The Fire District's Pre-Citation notice warns owners against the "taking of endangered, rare or threatened plant or animals species" or causing "significant erosion and sedimentation of surface waters". But there is zero guidance on what that means or how to accomplish it. What ARE the rare and threatened species? How do we avoid taking them? How much erosion is significant? How are we supposed to find out? And still meet the 30-day deadline?

There is clearly a lot of guidance missing, but the Ordinance is probably not the best place to put it. And if the Best Practices evolve, the Ordinance would have to be amended. Perhaps there is a way to tie the Ordinance to a document outlining the specific requirements, hopefully produced by a collaboration of fire officials, biologists, and other citizens. Marin County has produced an excellent example in their Ecologically Sound Practices for Reducing Wildfire Risk.

7. The final paragraphs of the proposed Ordinance is particularly troubling to me. It says:

"These requirements will be beneficial to the environment by preventing the emergence and spread of wildfires, which can cause immense environmental harm. Further, the Ordinance contains provisions requiring it to be interpreted and implemented in a manner that avoids environmental impacts, and directs property owners to seek modifications of the applicable requirements if compliance would cause any such impacts. Due to these requirements, there is no possibility that it will cause significant environmental effects."

Our Fire District is focused on protecting our community and environment from wildfire. Of course we all support that. But their continuing denial that there is ANY impact on the natural world from the large scale disturbance of vegetation makes it impossible to find ways to mitigate it.

And the insistence that ordinary homeowners can make appropriate decisions on complex environmental issues in the complete absence of any information is ridiculous.

For the district to try to shed all responsibility for the decisions that get made this way is an affront to common sense. It's as if I left a 6 year old child alone in the kitchen with orders to have dinner on the table by the time I come home or else suffer the consequences. Oh, and you have to buy the groceries yourself!

Requiring provisions to be interpreted and implemented correctly is senseless. It seems like an embarrassingly transparent ruse to avoid responsibility and duck the requirements of California's environmental regulations.

I'm sorry to be so blunt, and I understand this is the best advice of the District's Counsel, but our community is increasingly losing its native plants and wildlife and facing a dramatic increase in erosion, run-off, and landslide and we are not even beginning to deal with our problems due directly to this charade.

It's time to start working together to protect our environment, both the built and the natural.

Thank you, City Council, for providing a forum where citizens can finally share their concerns. I hope some helpful discussions and partnerships can emerge from this process.

Sincerely,

Sandy Pearson



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September 18, 2023

By email only

Moraga-Orinda Fire District
Fire Chief Dave Winnacker
President John Jex
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RE: Public Comments on Amended Fuel Break Ordinance No. 23-08, Agenda Item 9.1 for the September 20, 2023, regular meeting of the Moraga-Orinda Fire District Board of Directors

Dear MOFD Board of Directors and Fire Chief:

I am writing on behalf of Orinda residents, Sandy Pearson and Anita K. Pearson, to submit public comments regarding the proposed Amended Fuel Break Ordinance 23-08 (“Amended Ordinance”). These comments supplement the comments submitted by Sandy Pearson, including those relayed to MOFD by the City of Orinda on September 6, 2023. This letter also incorporates comments raised in our letter of August 2, 2023 (“Notice Letter”), which were directed at Fuel Break Ordinance, No. 23-04 but remain applicable to the Amended Ordinance. (**Exhibit A, Notice Letter**).

First, we would like to acknowledge the importance of preventive actions to reduce the risk of catastrophic wildfires in our communities. We appreciate your efforts to advance this objective and thank you for your willingness to make revisions to the Fuel Break Ordinance to address compliance with the California Environmental Quality Act (CEQA) and respond to community concerns. At the same time, however, we remain concerned that the Amended Ordinance, like its predecessor, not only fails to examine the potentially significant environmental impacts of the proposed fuel breaks, but denies the possibility that such impacts exist. (Ord. 23-08 § 9.) Ultimately, the Amended Ordinance fails to address the key issues raised in our previous letter.

The Amendments Fail to Address Environmental Concerns.

The Amended Ordinance substantially maintains the scope and applicability of the previous ordinance’s Fuel Break Requirements (*Id.*, § 4(c).) While the amended language

eliminates a loophole for perennial grasses and makes allowances for shrubs and small trees, the requirement that each landowner, lessee, or property manager must create and maintain 100-foot wide fuel breaks around the entire perimeter of their properties remains unchanged. (*Id.*, § 4(a) and (c).) Again, the potential environmental impacts of these actions were not evaluated and our previous comments addressing the potentially significant impacts on biological resources, slope stability, and water quality remain applicable. (*See Exhibit A*, at pp. 2-3, 4-5.)

The scope of applicability for the Amended Ordinance also appears similar to the suspended Ordinance 23-04, although this has been reformulated to reference the state list of “Communities at Risk,” which has included Orinda and Moraga since 2001. Under the Amended Ordinance, the “Affected Parcels” includes all parcels within or adjacent to Orinda and Moraga, or adjacent to any other Community at Risk bordering the District, and all parcels within the unincorporated areas of the District that have at least one “habitable structure” or are adjacent to a parcel with a habitable structure. While “habitable structure” is not defined, this appears to include nearly every parcel within the District.¹ As with the previous ordinance, there is no estimate of the number of parcels or acreage affected, and no map provided to indicate what areas, if any, are excluded.

Also like the suspended Ordinance 23-04, the Amended Ordinance provides no explanation for the decision to increase the size of mandatory fuel breaks for parcels under 10 acres from 30 feet, as required in 2022 (*See* repealed Ord. 22-02), to 100 feet in 2023. As noted in our previous letter, this change appears to be completely arbitrary. (*See Exhibit A*, at p. 5.) There is no evidence that the increase was necessary because 30 foot fuel breaks were found to be inadequate, or that conditions changed so dramatically in the past year as to warrant more than tripling their size. When asked about this in public meetings, the Fire Chief has stated only that the change was intended to simplify the requirement and reduce confusion by making it uniform for all parcels.² However, there is no evidence of widespread confusion. If anything, the expanded requirement has created confusion by suddenly increasing the size without explanation, and thereby increasing the burden on local residents and cost of compliance, as well as the impacts on the environment. Given that abutting parcels must both have fuel breaks in most cases, this is actually an increase from 60 feet to 200 feet. For comparison, the width of a football field is only 160 feet. The need for such immense clearings around every property line has not been established. In fact, the Fire Chief stated in a recent Guest Column for a national trade journal that many fuel breaks are ineffective when they are remote from roadways, lacking vehicular access for firefighters, or not strategically placed along ridgetops, and “yet we keep putting in shaded fuel breaks without any validation that they will work.” (**Exhibit B, Daily Dispatch Guest Column, “We Can Do It Better”** by MOFD Fire Chief Dave Winnacker (Aug. 7, 2023), <https://www.dailydispatch.com/Columns/GuestColumn.aspx>.)

The Amended Ordinance’s new language highlighting the availability of Modifications is unlikely to effectively protect sensitive natural resources or significantly reduce potential environmental impacts to more than a few parcels. (Ord. 23-08 § 5.) As discussed at the Orinda City Council Meeting on September 5, 2023, many residents and landowners are unaware whether

¹ As with the previous ordinance there is no estimate of the number of parcels or acreage affected, and no map to indicate what areas, if any are excluded.

² See e.g., Audio Recording of MOFD Board of Directors Special Meeting (Sept. 6, 2023).

sensitive biological resources even exist on their property and would see no need to request a modification.³ While the Ordinance boldly asserts that individual landowners, lessees, or managers of parcels with sensitive or protected resources “shall request a modification,” there is no information provided to assist these persons, or Fire District Officials, in determining which lands fall into this category. (*Id.*, § 4(d).) In addition, each person requesting modifications must provide documentation prepared by a certified biologist or geologist, which could cost thousands of dollars in each instance, which is both inefficient and likely to deter many residents from pursuing this option. There is also no guarantee that a modification request will be approved, even after going to the trouble and expense of hiring certified experts, as the Fire Chief or his designee may find modification inadequate. (*Id.*, § 5(a).) Thus, although the modification provisions purport to address environmental concerns, this approach delegates the burden of environmental compliance to the individuals served by the District. Ultimately, it would far more efficient and effective for the District to conduct a single survey of impacted resources at the District level, and to make this information available to members of the public to facilitate compliance, as well as enforcement and accountability.

Again, like the suspended Ordinance 23-04, there is no analysis of the potentially significant impacts of the Fuel Break Requirements. While the Amended Ordinance repeatedly notes that fire prevention will help prevent adverse impacts associated with catastrophic wildfires, it fails to acknowledge that the actions required by the ordinance will also have significant impact. As explained in our additional comments, the potential impacts to natural resources include the destruction of wildlife habitat and native plant communities, disruption of wildlife and protected species, increased soil erosion, increased risk of landslides, and impairment of water quality. (*See e.g.*, Notice Letter at 2-3, 4-5.) This could significantly impair the biodiversity, ecology, and hydrology of these areas. Fuel break construction may also spread invasive species,⁴ and pathogens such as sudden oak death,⁵ generate significant noise pollution, and impair the aesthetic enjoyment of the natural landscape. None of these potential impacts have been properly evaluated.⁶

The Orinda-Moraga area is home to an abundance of native wildlife and sensitive natural plant communities. As noted in the Orinda general plan:

Information from the Natural Diversity Data Base of the California Department of Fish and Game shows that several rare or endangered species have been located in or near the Orinda Planning Area. State and federal law protects rare, threatened and endangered animal species by preserving habitats.

³ A recording of the Sept. 5, 2023, Orinda City Council meeting is available here: <https://orindaca.iqm2.com/Citizens/Board/1000-City-Council#>.

⁴ *See e.g.*, California Invasive Plant Council, “IPCW Plant Report: *Cytisus scoparius*” (Scotch broom), <https://www.cal-ipc.org/resources/library/publications/ipcw/report39/> (last visited Sept. 14, 2023).

⁵ *See e.g.*, California Oak Mortality Task Force. Sudden Oak Death Guidelines for California Landscapers & Gardeners (July 2021), <https://www.suddenoakdeath.org/diagnosis-and-management/best-management-practices/>.

⁶ Public comments on the Amended Ordinance, including those submitted through the City of Orinda, further describe the potential for widespread clearing of vegetation to adversely impact rare and sensitive native plants and wildlife; *see e.g.*, Letters from California Native Plant Society East Bay Chapter, Friends of Orinda Creeks, John Muir Land Trust Custodian Tyler Rust, and Plant Ecologist Barbara Leitner. (Public Comments, MOFD Special Meeting (Sept. 6, 2023), <https://www.mofd.org/transparency/resources/board-agendas-minutes>.)

(Orinda General Plan, at 4-1.⁷) Endangered species known to occur within the Orinda-Moraga area include California red-legged frog,⁸ Alameda whipsnake,⁹ and pallid manzanita.¹⁰ Many other rare and sensitive species are also known to inhabit the area.

Notably, the Endangered Species Act (ESA) prohibits the unauthorized “take” of endangered species, which includes actions that kill, harass, or harm such species. (16 U.S.C. §§ 1538 (B), 1532 (19)). As defined by the Act’s implementing regulations, “harm” includes “significant habitat modification or degradation” that “kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.” (50 CFR § 17.3). Here, the removal of vegetation to create football-field-sized fuel breaks along property lines throughout the District would likely entail significant habitat modification that could easily disrupt the normal behavior of protected species through the elimination of food plants, food plants of prey species, denning and mating sites, and cover.¹¹

Potential impacts of massive fuel breaks on soil erosion and slope stability are also significant. The Contra Costa County General Plan notes that there are multiple landslide deposits within the Orinda-Moraga area, and finds that “the presence or absence of deep-rooted vegetation . . . can exert a controlling effect on the intensity of natural processes occurring on a particular hillside.” (Safety Element, at p. 10-22).¹² While the Amended Ordinance acknowledges that the area is hilly and subject to landslides, which can impact evacuation routes and firefighting response times, it does not evaluate the potential for large scale vegetation removal to exacerbate this issue. (Ord. 23-08 §§ 2(k)(iii)(A) and (B).) In contrast, public comments on the Ordinance raise concerns that compliance with the ordinance could trigger mudslides and threaten homes, and reported that some fuel breaks have removed grasses and vegetation all the way down to the soil, even on steep slopes and within riparian areas.¹³ This excessive clearing exposes bare soil, which increases soil erosion, and may also kill some plants, thereby decreasing the soil stability provided by healthy root systems.¹⁴ Such factors increase the risk that soils will begin to slide, especially on steep slopes, which could threaten homes or impact evacuation routes.¹⁵

Similarly, excessive clearing in riparian zones can destabilize streambanks and increase water pollution by eliminating the vegetative buffer and allowing sediments from runoff to flow

⁷ See City of Orinda General Plan, Conservation Element, <https://cityoforinda.app.box.com/s/zb07kq9r9eiafrwu6i9w>.

⁸ U.S. Fish and Wildlife Service, “California Red-Legged Frog,” <https://www.fws.gov/species/california-red-legged-frog-rana-draytonii> (last visited September 14, 2023).

⁹ U.S. Fish and Wildlife Service, “Alameda Whipsnake,” <https://www.fws.gov/species/alameda-whipsnake-masticophis-lateralis-euryxanthus> (last visited September 14, 2023).

¹⁰ California Dept. of Fish and Wildlife, “Pallid Manzanita,” <https://wildlife.ca.gov/Conservation/Plants/Endangered/Arctostaphylos-pallida> (last visited September 14, 2023).

¹¹ See e.g., Miguel Lurgi, *Habitat loss doesn’t just affect species, it impacts networks of ecological relationships*, The Conversation (May 30, 2019), <https://theconversation.com/habitat-loss-doesnt-just-affect-species-it-impacts-networks-of-ecological-relationships-117687>.

¹² See Contra Costa County General Plan, Safety Element, at pp. 10-24, 10-25.

¹³ See e.g., Comment Letters from Friends of Orinda Creeks and Julia Hunting. (Public Comments, MOFD Special Meeting (Sept. 6, 2023), <https://www.mofd.org/transparency/resources/board-agendas-minutes>.)

¹⁴ *Id.*, at p. 10-22.

¹⁵ See e.g., Comment Letters from Friends of Orinda Creeks and Julia Hunting. (Public Comments, MOFD Special Meeting (Sept. 6, 2023), <https://www.mofd.org/transparency/resources/board-agendas-minutes>.)

directly into creeks.¹⁶ Increased sediment loads could degrade aquatic habitat, harm fish by increasing siltation of stream beds required for spawning, and contribute to the clogging and sedimentation of human constructed waterworks.¹⁷ In sum, these potential impacts merit careful evaluation and point to the need for additional guidance to prevent serious resource damage and minimize the risk of landslides.

The Proposed CEQA Exemptions Are Inapplicable.

Notwithstanding the potentially significant impacts outlined above, and in other comment letters, the District asserts that the Amended Ordinance will have “no significant or potentially significant negative environmental impacts” and adds a new language claiming multiple exemptions from compliance with CEQA. (Ord. 23-08 § 9.) In particular, the new ordinance claims categorical exemptions under CEQA Guidelines section 15307 and 15308, the statutory exemption designed for emergencies, and the common sense exemption. (*Id.*)

First, as to the categorical exemptions, we addressed these in our Notice Letter concerning Ordinance 23-04, and incorporate the same comments here. (Exh. A, at pp. 4-5.) The Amended Fuel Break Ordinance does not qualify for the Class 7 or Class 8 exemptions because these apply only to actions that maintain, restore, enhance, or protect natural resources and the environment. (See CEQA Guidelines, §§ 15307, 15308.) Where the proposed action seeks to protect some natural resources by eliminating protections for others, courts have found these exemptions inapplicable. (See *Save Our Big Trees v. City of Santa Cruz* (2105) 241 Cal.App.4th 694, 712). Here, the requirement for residents to remove natural vegetation from large tracts of land throughout the District will disrupt natural resources and sensitive species with no mitigation measures to minimize harm or ensure their protection. Simply declaring that other parties will “interpret” the Ordinance in a manner that avoids all impacts does nothing to ensure that they will do so.

There is also no rational analysis to support the assertion that: “[n]o exception identified in CEQA Guideline Section 15300.2 applies to this Ordinance.” (Ord. 23-08 § 9(a); 14 C.C.R. § 15300.2.) In fact, the mandate requiring major habitat modifications to be undertaken by hundreds of different landowners with no guidance or mitigation measures in place to prevent potentially significant adverse impacts could have very significant cumulative effects on natural resources. Additional fuel clearing activities on lands within and surrounding the district could also have cumulative effects on wildlife and plant communities whose range overlaps with other projects (e.g., defensible space clearings) and other jurisdictions. The existence of protected species, slide areas, nature preserves, and critical watershed lands within and around the District may also justify application of the location exception. In addition, existing stress on natural resources due to climate change, the recent extended drought, and habitat fragmentation may constitute unusual circumstances. Failure to analyze these existing conditions does not render them inapplicable.

Second, as to the commonsense exemption, the mere recitation of the phrase, “it can be seen with certainty that there is no possibility that the activity in question may have a significant

¹⁶ See e.g., *California Riparian Habitat Restoration Handbook*, 2nd ed. (July 2009), <https://coveredactions.delta.council.ca.gov/services/download.ashx?u=a3689597-31c2-4140-adb0-9200fa71c0e0>.

¹⁷ See e.g., USDA Natural Resources Conservation Service, *Water Quality Degradation: Sediment* (March 2012), [https://efotg.sc.gov.usda.gov/references/public/AR/Water Quality Degradation Sediment.pdf](https://efotg.sc.gov.usda.gov/references/public/AR/Water%20Quality%20Degradation%20Sediment.pdf).

effect on the environment” does not make it so. (Ord. 23-08 § 9(c); 14 C.C.R. § 15601(b)(3).) As discussed in this letter, and in other comments, there are many reasons to support the finding that the Fuel Break Ordinance may have a significant effect on the environment. The possibility that the Amended Ordinance will benefit some natural resources by reducing the impacts of future wildfires does not imply that the potentially significant adverse impacts of clearing massive fuel breaks can be ignored or disregarded.

Third, as to the emergency exemption, this applies only to “[s]pecific actions necessary to prevent or mitigate an emergency.” (Pub. Resources Code § 21080(b)(4); 14 C.C.R. § 15269.) Here, there is no evidence to support the finding that requiring fire breaks of this magnitude, placed non-selectively around every inhabited parcel within the are *necessary* to prevent an emergency. Pursuant to CEQA,

“Emergency” means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. “Emergency” includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

(Pub. Resources Code § 21060.3.) While there is no question that specific actions to prevent the “immanent” risk of a wildfire emergency, and “demanding immediate action” would fall within this definition, this does not mean every action to prevent wildfires qualifies for this exemption. Notably, here, there is no established evidence that the proposed action would even be effective in preventing a fire emergency. (See Exh. B, at p. 3 (“Critically, there does not appear to be a body of evidence supporting the efficacy of fuel breaks, shaded or otherwise.”).)

Courts tasked with reviewing the applicability of this exemption agree that unless substantial evidence “support[s] each element of the definition of an emergency,” this exemption is inapplicable. (*CalBeach Advocates v. City of Solana Beach* (2002), 103 Cal.App.4th 529, 536; *Western Mun. Water Dist. v. Superior Court* (1986) 187 Cal.App.3d 1104, 1113.). In *CalBeach Advocates*, where an eroding bluff posed an immediate threat to homes located above the bluff, the court found that this standard was met but clarified that a preventative action need not be *unexpected*. (*CalBeach Advocates, supra*, 103 Cal.App.4th pp. 537-38.) However, in *Western Mun. Water Dist.*, where an agency claimed that dewatering wells were necessary to mitigate the risk of liquefaction during an earthquake emergency, the court found “no substantial evidence that liquefaction was an imminent threat or that it demand[ed] immediate action.” (*Western Mun. Water Dist., supra*, 187 Cal.App.3d, at pp. 1113.) Courts have also rejected the applicability of the emergency exemption where the proposed action exceeded what was necessary to respond to an emergency, or the alleged emergency reflected a political choice to delay taking appropriate action. (See *Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257 (finding City’s redevelopment plan to recover from earthquake exceeded scope of action “necessary to prevent or mitigate an emergency”); *Los Osos Valley Associates v. City of San Luis Obispo* (1994) 30 Cal.App.4th 1670 (finding City project to drill new wells did not warrant emergency exemption because City was aware of drought and failed to conserve water for years.).

In addition, application of the emergency exemption must be narrowly construed to remain consistent with CEQA's broad mandate for the protection of the environment. (*Western Mun. Water Dist., supra*, 187 Cal.App.3d, at pp. 1111-12.) Otherwise,

in the name of "emergency" it would create a hole in CEQA of fathomless depth and spectacular breadth. Indeed, it is difficult to imagine a large-scale public works project, such as an extensive deforestation project or a new freeway, which could not qualify for emergency exemption from an EIR on the grounds that it might ultimately mitigate the harms attendant on a major natural disaster.

(*Id.*) At the same time,

if a project arises for which the lead agency simply cannot complete the requisite paperwork within the time constraints of CEQA, then pursuing the project without complying with the EIR requirement is justifiable. For example, if a dam is ready to burst or a fire is raging out of control and human life is threatened as a result of delaying a project decision, application of the emergency exemption would be proper.

(*Id.* (citation omitted).) No dam is threatening to burst right now, metaphorically, or literally.

Indeed, the Amended Ordinance itself demonstrates that it is born of general statewide conditions, statutes, and directives, rather than the *specific emergency conditions* mandated by CEQA to justify invocation of an exemption from environmental review for an *imminent* emergency. (Ord. 23-08 § 2.) The Amended Ordinance discusses generalized fire behavior and conditions within the District, as well as five historic fires between 1923 and 2019, one of which, in 1988, destroyed five homes within the district. (*Id.*) However, there is no substantial evidence that fuel breaks of such extreme size and scope are *necessary* to prevent an *imminent* emergency. As discussed above, a similar ordinance that was in place just last year held that, for parcels under 10 acres, much smaller fuel breaks were adequate to achieve the same objective. (*See* Ord. 22-02.) The decision to enlarge the fuel breaks was not based on fire science or changed conditions that dramatically increased the risk of an imminent emergency, but reflected the Fire Chief's belief that a more uniform requirement would be less confusing for the general public. There is no substantial evidence to support the need for 100 foot fuel breaks instead of 30 foot fuel breaks. While action to reduce fuel loads should remain an ongoing priority, the actions here at issue should not be construed as an emergency as a means to circumvent CEQA's mandate to assess and mitigate potentially significant environmental impacts.

There can be no doubt that undergoing a CEQA process would allow the District to engage the local community to help develop reasonable standards that balance the need for fire prevention with local values and policies established to preserve natural resources. To the extent that delayed implementation of fuel breaks is a concern, the Fire District could set aside the current and Amended Ordinances and reinstate a more moderate requirement for the interim.

In conclusion, we do not object to reasonable fire prevention measures, including the use of appropriately sized and strategically placed fuel breaks to reduce fire danger. However, the Amended Ordinance imposes an extreme approach that is not supported by substantial evidence.

The requirement to create fuel breaks more than three times the size of those required just last year, in areas that are remote from structures and not strategically located, places an unreasonable burden on local residents, including the Pearsons. Because the current and Amended Ordinance, may cause significant and irreversible harm to natural resources, an environmental review is necessary to evaluate potential impacts, alternatives, and appropriate mitigation measures.

Thank you for the opportunity to comment on this important issue.

Sincerely,



Jessica L. Blome
Susann Bradford
Greenfire Law, PC

EXHIBIT A



**GREENFIRE
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August 2, 2023

By email only

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Moraga-Orinda Fire District
1280 Moraga Way
Moraga, CA 94556

**RE: Demand for Compliance with the California Environmental Quality Act
Fuel Break Ordinance No. 23-04**

Dear President Jex and Fire Chief Winnacker:

I am writing on behalf of Orinda resident, Anita K. Pearson, who on June 7, 2023, was served with a "Pre-Citation Notification" demanding that she comply with Moraga-Orinda Fire District Ordinance No. 23-04 ("Fuel Break Ordinance" or "Ordinance") by creating a 100-foot fuel break around the entire perimeter of her family's 9.5 acre property located at 629 Miner Road in Orinda.

The Pre-Citation Notification listed the requirements of Fuel Break Ordinance, which directs that all owners, lessees, or persons controlling parcels greater than one acre must create and maintain a fuel break that complies with the following criteria:

- (A) Annual grasses cut to less than 3".
- (B) Removal of all Hazardous Vegetation.
- (C) Removal of non-irrigated brush.
- (D) Removal of all Combustible Material.
- (E) Removal of dead, diseased, or dying trees.
- (F) Maintain trees to remove Ladder Fuels so that foliage, twigs, or branches are greater than 6 feet above the ground.

(MOFD Notification, June 7, 2023.) The Notification then goes on to state that:

Fuel mitigation and defensible space work shall be conducted in a manner that the activities will not result in the taking of endangered, rare or threatened plant or

animal species or cause significant erosion and sedimentation of surface waters in accordance with California Environmental Quality Guidelines Section 15304.

(sic) (*Id.*) No further guidance or assistance is offered concerning how to prevent the taking of sensitive plants or animals, or even how residents will know how to identify whether such species or sensitive natural plant communities are present on one's property. Nor is any guidance offered concerning best practices for preventing erosion control and sedimentation, such as guidelines for riparian buffer zones, or how to determine if clearing a site could induce erosion or landslides. The Notification does, however, threaten to impose significant fines if compliance is not documented within 30 days.

Ms. Pearson and other residents are extremely concerned by the Notification and by the Ordinance's unreasonable demand that she and other residents undertake to destroy many acres of native plants and wildlife habitat adjoining their property lines.¹ The property in question includes multiple small parcels that Ms. Pearson has devoted many years to maintaining as a conservation area for native plants and wildlife. The directive to remove "all hazardous vegetation," which is not explained in the Notification, is defined by the Ordinance as "including but not limited to seasonal and recurrent grasses, weeds, stubble, brush, dry leaves, dry needles, dead, dying, or diseased trees, ... bark, mulch, non-irrigated brush, ... or any other vegetation identified by the Fire Code Official [or their designee]." (Ord. 23-04, § 3.) As confirmed by the discussion during the February 15, 2023, Board hearing, this list includes virtually all native vegetation and ground cover, excepting mature healthy trees, which would effectively result in denuding large swaths of wildlife habitat in areas that are largely undeveloped and remote from buildings. As such, the Ordinance will not only significantly impair Ms. Pearson's use and enjoyment of her property, but appears to have been enacted with no regard for the significant environmental impacts that will result from such draconian measures.²

Indeed, the Ordinance makes little effort to ensure habitat protection. While the Ordinance purports to restrict actions that would harm listed species or water quality, it delegates all compliance to individual landowners, with no training, who are subject to serious penalties if they fail to clear their land. The Ordinance does not identify exceptions or exemptions for environmentally sensitive species, or direct landowners to resources to assist compliance, instead dismissing any concerns about impacts to native habitat as a non-issue. The District appears to have made no effort to estimate the number of acres or quality of habitat that will be impacted, or to identify the sensitive species that are likely to occur in these areas. For example, no effort was made to minimize potentially significant adverse effects on California red-legged frogs, Alameda whipsnake, pallid manzanita, sensitive natural plant communities,³ or any other biological resources that are likely to be impacted by the Ordinance's requirements. This complete disregard for native species is particularly alarming given that the Ordinance is likely to affect more than 500 parcels and impact over a thousand acres of lands—yet the District appears to

¹ The Ordinance also imposes a significant financial burden on Ms. Pearson and other residents, who report that cost estimates in the range of \$15,000 to \$20,000 per property—just for the first year—are not uncommon.

² Because adjoining properties are each required to maintain 100-foot perimeter clearings, the Ordinance actually requires 200-foot clearings to be constructed along each property boundary.

³ Sensitive natural communities are required to be inventoried and mitigated for as part of CEQA. See CDFW, Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (March 20, 2018), available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>.

have failed to conduct any analysis of potentially significant environmental impacts of its vegetation clearance policy, in clear violation of the California Environmental Quality Act (CEQA).⁴ This neglect occurred in spite of UC Berkeley, East Bay Regional Parks District and East Bay Municipal Utilities District informing the District that even the reduced level of fuel break clearance required by the predecessor iteration of this policy, Ordinance No. 22-02, would result in unacceptable levels of environmental destruction in violation of the CEQA obligations of those entities.

To confirm that the District wholly ignored CEQA, on July 10, 2023, my office inquired with the District to determine whether it had at least claimed an exemption for the Ordinance. In response, the District's outside counsel acknowledged that the District never adopted a notice of exemption but claimed that the holding in *Robinson v. City & County of San Francisco* (2012) 208 Cal. App. 4th 950, allowed the District to proceed with implementing the Ordinance. According to District counsel, the *Robinson* court absolves an agency from filing a *written* notice of exemption. Though the court declared a writing unnecessary, the court found that—in every instance—the lead agency in that case had issued a CEQA exemption certificate before on-the-ground activity commenced. (*Id.* at 960.) In so holding, the *Robinson* court upheld CEQA's clear statutory requirement that public agencies at least “conduct a preliminary review to determine whether CEQA applies to a proposed project” as a “first tier” of project evaluation. (*Save Our Big Trees v. City of Santa Cruz* (2015) 241 Cal.App.4th 694, 704.) “[A categorical] exemption can be relied on only if a factual evaluation of the agency's proposed activity reveals that it applies.” (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 386.) “[T]he agency invoking the [categorical] exemption has the burden of demonstrating” that substantial evidence supports its factual finding that the project fell within the exemption. (*Id.*)

Indeed, every CEQA case analyzing this issue recognizes CEQA's mandate that a preliminary environmental review is required before an exemption determination can be made. (*See Davidon Homes v. City of San Jose* (1997) 54 Cal. App. 4th 106, 117.) In *Davidon*, the Court of Appeals observed:

There is no indication that any preliminary environmental review was conducted before the exemption decision was made. The agency produced no evidence to support its decision and we find no mention of CEQA in the various staff reports. A determination which has the effect of dispensing with further environmental review at the earliest possible stage requires something more. We conclude the agency's exemption determination must be supported by evidence in the record demonstrating that the agency considered possible environmental impacts in reaching its decision.

(*Id.*) Similarly, here, the staff reports, draft and final Ordinance and recordings of the discussion at both Board hearings have no mention of a CEQA exemption. It appears that the District failed to conduct any threshold analysis of whether the Ordinance qualified for a CEQA exemption and certainly never made any determination that a specific CEQA exemption applied before charging ahead with its harmful vegetation clearing policy. Paradoxically, District counsel's letter asserts

⁴ There is also no evidence that the District identified alternatives or analyzed the cost of compliance that the Ordinance imposes upon individual property owners, lessees, or managers.

that the Class 7 and 8 exemptions apply to the Ordinance, though no mention of a CEQA is made in the Ordinance itself, while the Pre-Citation Notice claims exemption under Class 4.

Furthermore, even if the District had procedurally complied with CEQA and declared the Ordinance exempt, the only potentially applicable CEQA exemptions are the Class 4, 7, and 8 Categorical Exemptions—but none of these apply to this specific Ordinance. (See CEQA Guidelines, §§ 15304(i), 15307, and 15308.)

With respect to Class 4 Categorical Exemptions, the Ordinance requires the creation of a 100-foot perimeter, which dramatically *exceeds* the level of fuel management allowed by a Class 4 Exemption, which covers:

Fuel management activities within 30 feet of structures to reduce the volume of flammable vegetation, provided that the activities will not result in the taking of endangered, rare, or threatened plant or animal species or significant erosion and sedimentation of surface waters. This exemption shall apply to fuel management activities within 100 feet of a structure if the public agency having fire protection responsibility for the area has determined that 100-feet of fuel clearance is required due to extra hazardous fire conditions.

(CEQA Guidelines, § 15304(i).) In contrast, the Ordinance requires vegetation to be cleared within 100-feet of the entire property boundary—not around a structure—which significantly increases the area of habitat loss by pushing individual homeowners to clear a much larger area, all around the edges of their property, and to clear away virtually all vegetation—even where no structures are present.⁵

The Ordinance also provides no means of ensuring that such clearings “will not result in the taking of endangered, rare, or threatened plant or animal species or significant erosion and sedimentation of surface waters.” (Ord. 23-04, § 4(c).) The recitation of this desired outcome does not magically achieve this purpose. “Mitigation measures are not mere expressions of hope.” (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2005) 130 Cal. App. 4th 149, 1508.) The District itself must “ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded.” (*Id.* (citation omitted).) The District has not taken any steps to uphold its own obligation to enforce the environmental protections. Instead, the District treats listed species, erosion, and sedimentation as special exception from liability that owners have the burden to claim, rather than circumstances that the District must in every instance affirmatively ascertain and avoid.

Moreover, unlike clearings around structures where human activity is already present, creating clearings along property lines will disrupt many areas that were previously secluded from human activity and thus more likely to be favored by wildlife.

⁵ To put this in perspective, an acre is 43,560 sq. ft. Under the Ordinance, a 5-acre parcel (217,800 sq. ft.) measuring 600 ft. x 363 ft. would be required to clear an area of 152,600 sq. ft., which 3.5 acres—or 70% of the entire property. In contrast, the Class 4 Exemption describes a 100-ft clearing around a building or structure, which, estimated as a circle of 100 ft. radius, amounts to 31,400 sq. ft. (or 14.4% of the property). (This difference also has a major impact on costs, as local estimates for weed-eating alone range from \$0.20 to \$1.50 per sq. ft., depending on the slope.)

The large size of the clearings may cause habitat fragmentation, eliminate food sources and cover, and create barriers to movement that impair species' reproduction. The activities required by the Ordinance are thus significantly different and potentially more impactful than the much smaller defensible space clearings included under the Class 4 Categorical Exemption.

As to the Class 7 and 8 Categorical Exemptions, these apply only to actions that maintain, restore, enhance, or protect natural resources and the environment. (See CEQA Guidelines, §§ 15307, 15308.) In *Save Our Big Trees v. City of Santa Cruz*, the court wholly rejected application of Class 7 and 8 Categorical Exemptions for ordinance amendments meant to allegedly enhance "heritage" protections for some trees while eliminating protections for others because it "removes rather than secures . . . protections." (241 Cal.App.4th at 712 (quoting *Mountain Lion Found. v Fish & Game Comm'n* (1997) 16 Cal. 4th 105, 125.) That is, an ordinance that enhances protections for some natural resources while eliminating protections for others does not necessarily protect the environment. Here, too, the Ordinance compels the incontrovertible destruction of many acres of natural habitat to allegedly protect other natural resources from wildfire. The Ordinance does not afford any "assurance" that each requirement of the Ordinance will result in the "maintenance, restoration, or enhancement of a natural resource" (CEQA Guidelines, § 15307), and relies on individual homeowners, through the threat of penalties and fines, to decide which resources to save and which to destroy. Worse than the realignment of protection priorities at issue in *Save Our Big Trees*, the Ordinance directly orders District homeowners to destroy their environment.

In addition, the state Fire Safe Regulations require that "Fuel Breaks shall be constructed using the most ecologically and site appropriate treatment option, such as, but not limited to, prescribed burning, manual treatment, mechanical treatment, prescribed herbivory, and targeted ground application of herbicides." (14 Cal. Code Regs. § 1276.03(f).) Ordinance 23-04 includes no consideration of ecologically and site appropriate treatment options and contains no provision requiring landowners to use these. Instead, the Ordinance imposes a one-size-fits-all treatment for all properties within the District, regardless of parcel size and location, or any ecological or site specific features or characteristics. Moreover, the public record contains no justification for the District's decision to expand the size of Fuels Breaks for parcels under 10 acres from 30 feet around the perimeter of each parcels, as required by the District's previous fire break ordinance (Ord. 22-02 (repealed)), to 100 feet under the current Ordinance.⁶ (See e.g., Agenda Packet and Regular Meeting Minutes, MOFD Bd. of Directors Meeting, Jan. 18, 2023.) There is also no evidence that the District considered ecological impacts or how many parcels or acres would be affected in making this decision.⁷ (*Id.*)

Please accept this letter as formal notice that Ms. Pearson and her daughter, Sandy Pearson, intend to file a lawsuit in Contra Costa County Superior Court to ensure compliance with CEQA. Ms. Pearson is confident she would prevail in litigation if the District refuses to

⁶ At the Hearing on Ord. 23-04, the Fire Chief stated only that this provision was being revised because the variation in requirements for inhabited versus uninhabited parcels and the "sliding scale" was too complicated and confusing for the public. (See Audio Recording, MOFD Bd. of Directors Meeting, Jan. 18, 2023.)

⁷ There is also no evidence that the District considered the increased financial burden this expansion would impose on the affected property owners, lessees, or managers.

immediately cease and desist further efforts to implement the Fire Break Ordinance, rescind the Fire Break Ordinance, and comply with CEQA before taking any action to approve a new Fire Break Ordinance. At a minimum, Ms. Pearson expects to the District to evaluate the potentially significant environmental impacts of clearing 100 feet of vegetation from the perimeter of every property subject to the Ordinance, which would first require that the District determine how many acres are likely to be impacted, and to identify the specific landscape features, sensitive natural plant communities and protected species that are likely to be present within these areas and in need of protection.

Thank you for your prompt attention to this issue. If you have any questions, you may contact me at the address listed herein.

Sincerely,



Jessica L. Blome
Susann Bradford
Greenfire Law, PC

cc:

Director Greg Hasler, ghasler@mofd.org
Director Steven Danziger, stevedformofd@gmail.com
Director Mike Roemer, mroemer@mofd.org
Director Craig Jorgens, craig.jorgens@gmail.com

EXHIBIT B



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We Can Do It Better

Author: Dave Winnacker, Fire Chief, Moraga-Orinda Fire District

Published: 8/07/2023

Shaded Fuel Breaks Will Not Deliver a Fire Adapted Future in the WUI, but Strategic Placement of Treatments (SPLATs) Can Help

In the face of unprecedented wildfire loss and an increasingly uncertain insurance market, resources and attention have been directed to reducing the wildfire risk facing our WUI communities. Understanding that public attention and budgets are fickle, it is critical that these resources be used in the most effective manner to achieve measurable outcomes. In many WUI communities, including my own, fuel breaks, particularly shaded fuel breaks have become the primary risk reduction measure. Having been involved in the construction of several shaded fuel breaks in the WUI, I have come to believe we are inappropriately and unwittingly applying controversial techniques developed for landscape level management of natural resources in an inefficient and potentially ineffective manner.

For review, a fuel break is an area of modified fuels designed to reduce fire intensity and provide a location from which suppression efforts can be successful. Traditionally, fuel breaks included the clearance of trees and ground fuels and were constructed in a manner designed to allow for the passage of vehicles. Perhaps the greatest example of this type of fire control measure was the Ponderosa Way, an 800 mile fuel break constructed as part of the New Deal in 1933 and 1934. As an aside indicating how much has changed, this project was undertaken to prevent foothill brush fires from burning into valuable Sierra timber.

For a fuel break to work as designed, by providing a location from which suppression efforts can be successful, it must include access for firefighting resources and there must be an effective force of available firefighters to make use of the location. All of which includes a temporal component as the opportunity to hold the fire will be lost once fire is over the line.

Which raises the question of shaded fuel breaks, which are areas of modified fuels designed to reduce fire intensity, but critically, do not include access. In the absence of access, a shaded fuel break becomes a strip of modified fuels, over which fire will inevitably cross as firefighters are unable to rapidly access the critical points in time to make a difference. Early reference to shaded fuel breaks suggests widths of 400' or less are not effective without suppression efforts and "defensible fuel profile zones" of up to ¼ mile are more effective. When constructed with sufficient depth as roadside clearance, shaded fuel breaks can be very effective since access is assured and fuel modifications build upon the inherent fire control qualities of the existing road. However, many shaded fuel breaks are being built far from roadways and it is unclear how these projects will reduce the probability of wildfire loss in the communities they surround.

All fuel breaks must be located on the right topography to be effective, and ridge tops are often the most effective place for their construction. However, many communities are not located on or near ridgetops, leading to either fuel break placement far from WUI communities or sub-optimal mid-slope fuel breaks.

Fuel breaks are fixed linear features that have no value if the fire starts and or burns in a location

that does not cross the fuel break. As a Marine Corps infantry officer, I look no further than the Maginot Line's performance in 1940 for the definitive critique of a fixed fortification's value. Defensive measures of this nature simply lack the adaptability to address dynamic threats.

Critically, there does not appear to be a body of evidence supporting the efficacy of fuel breaks, shaded or otherwise.

In the absence of quantifiable reductions in the potential for wildfire loss, we cannot show our communities the value of the work we have completed and lack a mechanism to link our efforts to insurance access and affordability. Recent studies have shown the potential for up to 75% reduction to the average annual loss calculation used for community level insurance rate setting based on mitigations. However, these benefits can only be achieved through projects carried out in an effective manner.

This raises the question of what we should be doing instead of fuel breaks.

In his 2001 paper, Design of Regular Landscape Fuel Treatment Patterns for Modifying Fire Growth and Behavior, Dr Mark Finney outlined a concept to model and implement "treatment patterns reduce the spread rate or fireline intensity over much of the area burned, even outside the treatment units where the fire was forced to flank". These have since been implemented at test scale in the Tahoe Basin as Strategic Placement of Treatment (SPLATS).

SPLATS can be created through a variety of fuel treatments to include grazing, prescribed fire, and thinning of vegetation to create a varied fuel mosaic, mimicking the natural state in fire adapted and dependent landscapes such as the American West. This varied mosaic serves as a labyrinth through which fire must find its way, thus slowing its advance and buying time for a firefighting response to protect homes and communities. The additional time gained through a reduced rate of spread, also opens opportunities to manage a naturally occurring fire for beneficial outcomes. Further, by virtue of their distributed nature, SPLATS can be used to minimize disruptions in environmentally sensitive areas.

When combined with defensible space in the form of rigorous fuel reduction efforts within 100' of homes and thoughtful home hardening retrofits at actuarially significant levels of adoption, the combination of mitigations sets the stage for significant reductions in potential wildfire loss experience.

This is no secret weapon, the New Yorker featured them in a 2019 article, yet we keep putting in shaded fuel breaks without any validation that they will work.

As fire service professionals, we are charged with protecting our community from a number of perils, one of which is wildfire. Part of protecting a community is ensuring the limited resources available to mitigate risk, in the area of our expertise, are used in the most effective manner. Another part of protecting our communities is ensuring our work is focused on beneficial outcomes and not performative acts which may provide a false sense of security. It is time to follow the science through advocacy and implementation of risk reduction measures that will work.

From: [Kalpana Ravinarayanan](#)
To: [Info](#)
Cc: ssmith@cityoforinda.org; lmiller@cityoforinda.org
Subject: Re: Amended Fuel Break Ordinance 23-08
Date: Tuesday, September 19, 2023 12:11:54 AM

Dear President and Directors of Moraga-Orinda Fire Protection District and Mayor and representatives on the Orinda City Council,

We are new residents building our home in Orinda. We have lived in the bay area for over 23 years and have come to love the quiet, scenically beautiful town of Orinda nestled within the rolling hills of east bay. We specifically bought our property to live sustainably with nature around us.

We were forwarded the amended fuel break ordinance 23-08 and are very confused by its language. Some parts seem to suggest that we need to completely clear cut large areas of vegetation around the home and community (which I am sure are not the intent as that will significantly create native habitat loss, heat islands, erosion, water and air quality issues, aquifer loss and landslide/mudslide risks) - but it is hard to understand the proposed rules without multiple examples, models and clarifications of intent and how it balances fire safety with necessary local ecological balance. We do believe fire safety is an important consideration in the times we live in and we want to support the MOFD in its continued vigilance for the community - however, we would like opportunity and time to understand, clarify and perhaps suggest amendments to the proposed ordinance. In particular, we would like the ordinance to come with very clear models and examples of dos and don'ts, zone/micro-environment specific adjustments (again with examples and models), what alternatives were considered and rejected and would definitely like to understand how this compares with steps taken in other cities and towns and state-wide policies.

Please give us (the community) time and opportunity to participate and collaborate in this process with forums for public comment, collaboration with our city council, and other voices in the community and environmental research. In addition, please consider this a vote toward establishing a balance between long term environmental stewardship, conservation, health, community voice and fire safety taken as whole instead of in silos.

Thank you for your consideration.
Regards,
Kalpana Ravinarayanan
Wilder, Orinda

From: jonathan@sojourningsoul.net
To: [Holbrook, Marcia](#)
Subject: Correspondence for MOFD
Date: Tuesday, September 19, 2023 8:35:31 AM

To MOFD,

I wish to bring your attention to an occurrence at your Sept. 6th, 2023 special meeting where the Mayor of Orinda asked you to slow down the process of approving your new ordinance to allow some time for the City Council's political process to come up to speed with your own. You see, as I recall it, at a previous meeting the fire chief explained that the text in question was being taken out of the fire code (which requires approval by local governments) and being made an ordinance (which requires only MOFD's approval), in part, to avoid the approval process offered by local the governments. Or, put another way, by turning these codes into an ordinance MOFD thereby enjoys a minimum of public input and political discussion.

So, what happened? Not only did the MOFD board cut the City Council out of an opportunity to have full participation in the approval process, but you also utterly ignored the mayor's request to slow down the approval process on your end.

Doubtless, you have your reasons for expediting your timetable by minimizing public input, but, I ask you, is this what good stewardship looks like? Or good governance? Is this how a good neighbor behaves?

Perhaps not.

Indeed, it appears that you have misbehaved on this score from the very beginning in 2018 by taking a know-it-all posture rather than, over time, building strong public approval for your draconian rule changes. On the one hand, the fire chief was admirably generous with his time, meeting with any and all groups who requested that he deliver to them the top down assessment of the problems as well as the solutions which would be expediently visited upon them.

But, unfortunately, this know-it-all, go it alone attitude also led the district to avoid learning from the experience of sister agencies with decades of experience in vegetation management. (Five years ago, MOFD had no such experience whatsoever.) As a consequence of this, now under threat of a writ of mandate lawsuit, the district is paying consultants for a "crash course" in environmental law, spurred by the ladies of Greenfire Law who (in a letter to the district dated August 2, 2023*) caught MOFD with its pants down regarding standard CEQA policies and practices. Had the fire district shown humility and been more amenable to genuinely partnering with--and endeavoring to learn from--fellow stakeholders from the beginning, it could have, and should have, begun learning these lessons five years back.

Well, humility is out of style these days, one might observe (and I am certainly no paragon thereof, myself), but as the swell of public discontent continues to grow over your harsh tactics (as citizens may perceive them) you might consider trying to borrow some of that precious stuff if you can't find enough on hand to meet the occasion.

Best wishes.
~Jonathan Goodwin
Canyon, Calif.

* https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/2130157/Second_potential_case_2023-08-02_Greenfire_Law_Jessica_L_Blome_Susann_M_Bradford_CEQA_Notice_re_MOFD_Ord_23-04_Final.pdf

From: [Suzanne Jones](#)
To: [Info](#)
Subject: Comment re Ordinance 23-08
Date: Wednesday, September 20, 2023 9:05:11 AM

Dear MOFD Board of Directors:

Thank you for the opportunity to comment on proposed Ordinance 23-08 ("Ordinance") on your agenda tonight, and for the profound dedication of MOFD staff and leadership to providing for the safety of our community.

As an owner of a large parcel (>1 acre) who seeks both to comply with the Ordinance and protect habitat for native plants and wildlife, I request that the following additional amendments be incorporated into the Ordinance:

1. Modify Section 4 (a)(1)(A) to read: "**Annual** grasses cut to less than 3". **Native California grasses cut to less than 6" once dormant.**"

Native California perennial bunchgrasses constitute a significantly lower fire hazard than non-native annual grasses, as the former remain green well into summer and typically retain some moisture year-round. They also provide significant soil stabilizing and habitat values, and grow in isolated bunches rather than a continuous mat. Many of the large, locally native species will not tolerate cutting to 3". Additionally, native bunchgrasses should be cut only during dormancy, which generally occurs well after June 1. The proposed revision above will allow for the appropriate treatment of annual vs. native perennial grasses so that the latter can continue to exist in fuel break areas without creating a significant fire hazard. (As one example, I have California fescue plants growing on my property; once they are dormant I cut them to 4"-6", depending on size, with good results. Photo attached.)

2. Add a provision to Section 4(c)(1) allowing for collaboration between adjoining property owners to obtain a **modification for a shared 100' fuel break**.

My understanding from conversations with District staff is that neighboring landowners may jointly apply for a modification allowing for a shared 100' fuel break along their common property boundary, provided any structures within 100' of the boundary are surrounded by a 100' break on all sides. This modification will make compliance *significantly more feasible* for owners of large parcels, while greatly reducing unnecessary impacts to wildlife and habitat, and warrants explicit mention in the Ordinance.

3. Remove the qualifiers "**mature**" and "**scenic**" before "trees" in Section 4(d)(2) and 9(a) and clarify exemptions for saplings.

The Ordinance does not define the term "mature, scenic" as applied to trees in Sections 4(d)(2) and 9(a). These qualifiers could be interpreted to require removal of "immature" or "un-scenic" trees. A healthy tree should not be removed because someone considers it less-than-scenic, and unlimited removal of immature trees would impair the ongoing

regeneration of native trees in fuel break areas, which is vitally important for a variety of reasons, not least of which is fire safety, as native trees pose less of a hazard than annual grasses. As such, Section 4(d)(2) and 9(a) should state simply that “healthy trees” are not to be removed. Section 4(a)(1)(F)(2) should also be revised to state clearly that small saplings whose survival would be imperiled by any trimming may remain unaltered until mature enough to tolerate trimming up 1/3 from the ground.

4. Add to Section 9 a statement to the effect that **removal of riparian vegetation or damage to riparian habitat is unlawful** and shall not occur as a result of efforts to comply with the Ordinance.

The absence of such a statement sets the stage for homeowners to unwittingly commit violations of state protections for riparian areas in their attempt to comply with the Ordinance, as most property owners (and many contractors) are entirely unaware of these protections. Its omission would also seem to jeopardize the District’s claimed exemption from CEQA. The fact that the Ordinance neither requires nor allows fuel abatement impacts to riparian zones should be made explicit, and the term “riparian” should be incorporated into the Ordinance’s “definitions” section.

5. Add language to the Ordinance providing for the publication of **supplemental guidelines** to help landowners simultaneously comply with the Ordinance and applicable laws protecting natural resources.

Additional guidance is needed to educate property owners and their contractors as to what constitutes sensitive habitat, and to illustrate options available for avoiding that habitat while meeting the Same Practical Effect standard of the Ordinance. Inadvertent violations of CA Fish and Game Code § 1602 have already occurred in my community and others, as discussed with District staff on prior occasions, due to the mis-application by landowners and their contractors of the District’s fuel break requirements in riparian areas. In the absence of very clear visual and written guidance in plain language, future takings of protected species and/or unlawful water quality and habitat impacts in violation of CEQA appear inevitable. I and others in the community who share a commitment to both fire safety and natural resource protection would be eager to work with the District to develop such guidelines.

I ask that the District incorporate the revisions outlined above to help ensure that the Ordinance successfully enables landowners to achieve fuel mitigation goals while also complying with state laws protecting the environment.

Many thanks for your consideration.

Sincerely,

Suzanne Jones
1285 Bollinger Canyon Rd.

Moraga, CA 94556



From: [Judi Wellens](#)
To: [Info](#)
Subject: Re: Amended Fuel Break Ordinance 23-08
Date: Wednesday, September 20, 2023 9:20:56 AM

Attention MOFD Board of Directors:

I am a resident of Orinda. I'm writing today to ask that you table the ordinance to give Orinda and Moraga residents time to comment and seek clarification on this extremely important matter.

Thank you,

Judi Wellens

From: [Robert Finch](#)
To: [Info](#)
Subject: Amended Fuel Break Ordinance 23-08
Date: Wednesday, September 20, 2023 10:26:20 AM

MOFD Board— I am writing in connection with the proposed fire code Ordinance 23-08, which will be considered at the MOFD Board Meeting on September 20, 2023. Consistent with the Orinda City Council’s communication with you, I believe that this novel and controversial Ordinance requires more than two weeks between introduction and vote on approval. This is a very complex proposal that has not been sufficiently taken note of by the Orinda community; while it is very detailed, it is at the same time confusing and vague insofar as it raises many and varied questions as to interpretation and is a major departure from what the residents of Orinda are currently attempting to comply with.

Moreover, the residents of Orinda are not yet, in general, even aware of the new proposal. It will take some time to educate the residents, your constituents, as to the intent and effect of the proposal sufficient for them to be able to consider it, ask for clarification, etc. This educational effort will take some time and require town hall or similar meetings. It will also require significant general education materials produced by MOFD in the form of templates, specific guidelines, pictorial representations, etc.

In addition, while it is undeniable that fire protection/mitigation is crucial and must be top-of-mind, and while MOFD’s remit is exclusively focused on that issue, there are other issues that deeply affect Orinda and its residents and all of these must be considered.

For example, the economic impact on the value of Orindans’ homes and Orindans' ability to sell their homes, which is a function of many factors including aesthetics, raises legal issues as to whether the proposed Ordinance would constitute a ‘taking’. The MOFD Board should anticipate that the proposal could generate significant new litigation.

In light the above, I urge the MOFD Board to *slow the process down* and not approve the proposed Ordinance at this time. The Ordinance was introduced just before the long Labor Day weekend and the following two week period is clearly a rush to judgment, especially unfair when the proposal has such deeply significant consequences and would put Orindans to great expense. It took the Orinda City Council many years to finalize and approve its Downtown Precise Plan, which has far fewer direct impacts on its residents' principal investment, their homes.

I urge the MOFD Board to slow the the process down and not approve the proposal at your September 20 meeting. Thank you.

Bob Finch
Wilder HOA Director and Vice President

From: [Daniel Burrows](#)
To: [Info; ssmith@cityoforinda.org](mailto:ssmith@cityoforinda.org)
Cc: [Annissa Alusi](#)
Subject: Amended Fuel Break Ordinance 23-08
Date: Wednesday, September 20, 2023 1:03:28 PM

Hello,

I am writing about the Amended Fuel Break Ordinance 23-08. While details still remain hazy, I am deeply, deeply concerned about the potential impact to our town and a general lack of outreach/engagement with the community. I do not feel like there has been enough consultation for such a change and would urge the council to rethink the speed of this dramatic and unprecedented proposal on the livability of the city.

I get a notification if my garbage cans are picked up a day late. This type of sweeping change to our town and environment warrants multiple outreaches to all residents explaining the proposal and the rationale. I urge the council to reconsider the speed and lack of community engagement that has taken place so far.

Thank you,
Daniel Burrows
58 Tomcat Way, Orinda

--

Daniel Burrows
daniel.james.burrows@gmail.com
+1 425 275 1898

From: jonathan@sojourningsoul.net
To: [Holbrook, Marcia](#)
Subject: Comments
Date: Wednesday, September 20, 2023 1:09:00 PM

Good afternoon, Mrs. Holbrook. Please copy this missive to our "usual suspects." Thanks.
~JG

1. Your legal consultant's presentation at your last meeting was mere boilerplate which could be generalized to any fire agency in the State, essentially arguing that every fire agency is entirely exempt from CEQA compliance. Your argument is that your dictates are legitimate environmental planning simply because you are protecting resources and lives, but this argument has no standing in the world of environmental law because it is, evidently, completely unsupported by case law. In the world of environmental law this a massive red flag. Unlike Health & Safety Codes or Building Codes, there are few statutes defining appropriate behavior. Rather, much or most of what we call CEQA is understood through case law, and to overlook this diminishes your standing to near zero. Where are the precedents supporting your claims? What other fire agencies are operating under such premises? If there are none, then why would any judge listen to your wishful thinking?
2. According to Greenfire Law, you have overlooked UCB, EBRPD & EBMUD telling you that your policies would be environmentally destructive. Do you suppose a judge would accept your newly found unsupported arguments over the documented planning of sister agencies which have been practicing environmental stewardship since long before the night of your conception? Maybe not.
3. Your consultant spoke only of your purported exemption from CEQA, but if you read the Migratory Bird Treaty Act of 1918 you will find there no exceptions. Should someone in the district do something very stupid and be turned in by a neighbor, that somebody will go to jail, and from there on to prison. Should anyone say that they did so per the order of this fire district, your legal fees will fly away with themselves, in a manner of speaking. I point this out just to expand your picture of the territory you have entered. Welcome to environmental law.
4. I could go on, but I would rather introduce a solution which might smooth all of this over. Rather than throwing thousands or tens of thousands of dollars at environmental and legal consultants, find \$100k or so for a year or two and hire a competent environmental planner to join your management team and, rather than moving the buckets around the floor to catch new leaks every time it rains (as they did for over ten years in the old Station 44), actually repair your roof. After all, this fire district is trying to make advances unknown to other agencies, and to deploy a second metaphor, it may be more sensible to build a bridge to other agencies and to local governments which traverses the quagmire than it is to become hopelessly bogged down in it. You decide.

Sept 20, 2023

To Chief David Winnacker,

President Jex and members of the MOFD Board;

Dear Chief and Boardmembers,

At the City Council meeting last night, it was again made clear that the Council is sincerely interested in collaborating with all of you, to facilitate the flow of information between and among MOFD, the city's residents, and Orinda's staff and representatives. They feel strongly that landowners need better resources in order to make appropriate decisions with regard to their property, and our community's safety.

Speaking for myself, I have some questions I feel are significant and deserving of answers, discussion, or explanation. I save the hardest ones for last.

1. The public meeting scheduled for the Founder's Room yesterday was called off. I can find no information regarding the posted videos that were said to replace it.

QUESTION: Is there a plan to better inform residents about the Fire District's plans and procedures? Will MOFD be available to attend or help the City organize a community forum to publicize the fire requirements and listen to residents' concerns?

2. In an effort to provide you with some valuable feedback, I have begun research on the publications and information available to citizens. The brochures I was directed to by the Fire Chief were developed by Butte County Fire Safe Council in 2007. They include helpful advice such as: spark arresters are required on your tractors and harvesters; grinding and welding operations require a permit plus a 46-inch round point shovel...; don't drive your vehicle onto dry grass or brush; consult CDF if any wood products from your property are sold, traded, or bartered, including sawmill logs.

In several different paragraphs, they advise that "hazardous vegetation should be replaced with less flammable, irrigated landscape vegetation including lawn... and flowering plants." Bad advice for water conservation.

Where regulations are clear, they may be incorrect for our area, such as the statement that "Mature trees should be limbed up to 10 feet..."

These brochures are also printed in microscopic print, I have enlarged the copies I provide you.

QUESTION – What is MOFD's plan to develop printed brochures appropriate to our city? Who is responsible for improvements to the website, and what is their task? Wouldn't you like to have some input from well-meaning citizens to assist you?

3. Quite a few letter writers mentioned concerns about landslides and soil erosion on steep slopes. The lidar mapping and GIS technology available today make mapping much simpler, and good maps of topography may already exist. MOFD should NOT REQUIRE landowners to clear all the vegetation from the steep areas. MOFD need not be responsible for production of the map or making decisions about which properties are steep/not steep.

QUESTION: Will MOFD be proactive in identifying geologic hazard areas so as to avoid liability for “unintended consequences” of inappropriate clearing mandated by the District?

4. Wildlife and Plant Communities of Concern: As I have written before, admonishing residents to protect threatened species without telling them what those species are is a shabby dodge. Where is the brochure for Orinda Nature?

For those who object that this information belongs on the website, I can only say, try leaving that in someone’s mailbox.

QUESTION: Where are the brochures educating us about our unique and beautiful plants and animals and how to protect them when possible?

5. The Chief is collecting data on how many Requests for Modification have been made, and how many approved. While this information is welcome, there is a bigger question behind it. How many landowners SHOULD have made a request due to steep slope, landslide, riparian area, threatened species habitat etc. BUT DID NOT owing to lack of information? How many people deeply regretted the damage they were obliged to inflict on their own property but did not know they had any options?

The City of Orinda’s request to provide templates or models for the Modification process was met with skepticism if not derision by some board members. Is this an example of the kind of collaboration we should expect to see?

QUESTION: Are the 2x2 meetings with representatives of MOFD, Orinda, and Moraga capable of producing results?

6. It was stated at the last meeting that instructions for requesting a Modification appear on the Pre-Citation Notice. That does not seem to be true.

QUESTION: Why not advise the public of the existence of Modifications on the Pre-Citation Notice?

7. Ordinance 23-08 Section 4 (a) (1) (C) is one of the very few meaningful changes in this document. It allows landowners to retain some scattered “non-irrigated” brush. The Fire Chief mentioned at the last meeting September 6 that this change was instigated by the CEQA lawyers.

I am profoundly troubled that this one, lonely change with the potential to benefit wildlife and preserve native plants was NOT intentional, does NOT reflect any concern for nature nor an awareness of the drastic effects the fuelbreak Ordinance would have on our natural landscape. No, this change was made at the behest of lawyers, who evidently felt that demanding complete scalping of hillsides might somehow appear to have SIGNIFICANT ENVIRONMENTAL EFFECTS AFTER ALL, and could oblige the Fire District to actually do the environmental studies it is trying to avoid.

At the suggestion of the lawyers, then, some unirrigated brush could be saved. Since the Fire Chief would never allow a change to be made that was not in accord with modern Fire Science, the inescapable conclusion is that the previous rule prohibiting such “brush” entirely was NOT necessary,

and NOT required by Fire Science. And it seems this could never have been discovered, let alone implemented, except by threat of legal action.

This is what happens when you have no open channels of communication with the public, who can sometimes be helpful in pointing out things in your blind spot.

It also reminds me of the time the MOFD board approved increasing the PERIMETER fuelbreak from 30 feet to 100 feet in order to simplify regulations, and not for any reasons of fire safety.

QUESTION: Is MOFD planning to, or at all willing to, discuss fine-tuning their regulations to avoid unnecessary damage to Nature and the environment?

8. In a recent Op-Ed piece in the Daily Dispatch, (Daily News for America's Fire Service) Chief Winnacker questions the effectiveness of shaded fuel breaks in no uncertain terms. He points out that fuelbreaks no longer typically include vehicle access, without which "firefighters are unable to rapidly access the critical points in time to make a difference." And, "the opportunity to hold the fire will be lost once fire is over the line."

More quotes:

"Fuel breaks are fixed linear features that have no value if the fire starts and or burns in a location that does not cross the fuel break." "Critically, there does not appear to be a body of evidence supporting the efficacy of fuelbreaks, shaded or otherwise." "In the absence of quantifiable reductions in the potential for wildfire loss, we cannot show our communities the value of the work we have completed..."

I admire the Chief for following the science here, and for his concern that limited local resources be spent as effectively as possible. As he says in closing,

"Another part of protecting our communities is ensuring our work is focused on beneficial outcomes and not performative acts which may provide a false sense of security. It is time to follow the science through advocacy and implementation of risk reduction measures that will work."

I suggest that we follow the Chief's lead in examining other options for increasing our fire safety. Fuelbreaks may be effective in some areas, but probably not on inaccessible, randomly placed lot lines.

In addition, risk reduction measures that will work are those that are embraced by the public. The best way to ensure that outcome is to involve the public in their development.

QUESTION: Are perimeter fuelbreaks proven to be effective in controlling fire? Are other strategies more promising? What makes sense for our community?

FINALLY –

I think we can do better. I am willing to help. I am trying to help! I hope you will find the strength to accept the help that is being offered from so many sides.

Sincerely,

Sandy Pearson

Daily Dispatch – Daily News for America’s Fire Service

We Can Do It Better

Published: 8/07/2023

Author: [Dave Winnacker, Fire Chief, Moraga-Orinda Fire District](#)

Shaded Fuel Breaks Will Not Deliver a Fire Adapted Future in the WUI, but Strategic Placement of Treatments (SPLATs) Can Help

In the face of unprecedented wildfire loss and an increasingly uncertain insurance market, resources and attention have been directed to reducing the wildfire risk facing our WUI communities. Understanding that public attention and budgets are fickle, it is critical that these resources be used in the most effective manner to achieve measurable outcomes. In many WUI communities, including my own, fuel breaks, particularly shaded fuel breaks have become the primary risk reduction measure. Having been involved in the construction of several shaded fuel breaks in the WUI, I have come to believe we are inappropriately and unwittingly applying controversial techniques developed for landscape level management of natural resources in an inefficient and potentially ineffective manner.

For review, a fuel break is an area of modified fuels designed to reduce fire intensity and provide a location from which suppression efforts can be successful. Traditionally, fuel breaks included the clearance of trees and ground fuels and were constructed in a manner designed to allow for the passage of vehicles. Perhaps the greatest example of this type of fire control measure was the [Ponderosa Way](#), an 800 mile fuel break constructed as part of the New Deal in 1933 and 1934. As an aside indicating how much has changed, this project was undertaken to prevent foothill brush fires from burning into [valuable Sierra timber](#).

For a fuel break to work as designed, by providing a location from which suppression efforts can be successful, it must include access for firefighting resources and there must be an effective force of available firefighters to make use of the location. All of which includes a temporal component as the opportunity to hold the fire will be lost once fire is over the line.

Which raises the question of shaded fuel breaks, which are areas of modified fuels designed to reduce fire intensity, but critically, do not include access. In the absence of access, a shaded fuel break becomes a strip of modified fuels, over which fire will inevitably cross as firefighters are unable to rapidly access the critical points in time to make a difference. Early reference to shaded fuel breaks suggests widths of 400’ or less are not effective without suppression efforts and “defensible fuel profile zones” of up to [¼ mile are more effective](#). When constructed with sufficient depth as roadside clearance, shaded fuel breaks can be very effective since access is assured and fuel modifications build upon the inherent fire control qualities of the existing road. However, many shaded fuel breaks are being built far from roadways and it is unclear how these projects will reduce the probability of wildfire loss in the communities they surround.

All fuel breaks must be located on the right topography to be effective, and ridge tops are often the [most effective place](#) for their construction. However, many communities are not located on or near ridgetops, leading to either fuel break placement far from WUI communities or sub-optimal

mid-slope fuel breaks.

Fuel breaks are fixed linear features that have no value if the fire starts and or burns in a location that does not cross the fuel break. As a Marine Corps infantry officer, I look no further than the [Maginot Line's](#) performance in 1940 for the definitive critique of a fixed fortification's value. Defensive measures of this nature simply lack the adaptability to address dynamic threats.

Critically, there does not appear to be a body of evidence supporting the efficacy of fuel breaks, shaded or otherwise.

In the absence of quantifiable reductions in the potential for wildfire loss, we cannot show our communities the value of the work we have completed and lack a mechanism to link our efforts to insurance access and affordability. Recent studies have shown the potential for up to 75% reduction to the [average annual loss calculation](#) used for community level insurance rate setting based on mitigations. However, these benefits can only be achieved through projects carried out in an effective manner.

This raises the question of what we should be doing instead of fuel breaks.

In his 2001 paper, Design of Regular Landscape Fuel Treatment Patterns for Modifying Fire Growth and Behavior, Dr Mark Finney outlined a concept to model and implement "treatment patterns reduce the spread rate or fireline intensity over much of the area burned, even outside the treatment units where the fire was forced to flank". These have since been implemented at test scale in the Tahoe Basin as Strategic Placement of Treatment ([SPLATS](#)).

SPLATS can be created through a variety of fuel treatments to include grazing, prescribed fire, and thinning of vegetation to create a varied fuel mosaic, mimicking the natural state in fire adapted and dependent landscapes such as the American West. This varied mosaic serves as a labyrinth through which fire must find its way, [thus slowing its advance](#) and buying time for a firefighting response to protect homes and communities. The additional time gained through a reduced rate of spread, also opens opportunities to manage a naturally occurring fire for beneficial outcomes. Further, by virtue of their distributed nature, SPLATS can be used to minimize disruptions in environmentally sensitive areas.

When combined with defensible space in the form of rigorous [fuel reduction efforts within 100'](#) of homes and thoughtful [home hardening retrofits](#) at [actuarially significant](#) levels of adoption, the combination of mitigations sets the stage for significant reductions in potential wildfire loss experience.

This is no secret weapon, the [New Yorker](#) featured them in a 2019 article, yet we keep putting in shaded fuel breaks without any validation that they will work.

As fire service professionals, we are charged with protecting our community from a number of perils, one of which is wildfire. Part of protecting a community is ensuring the limited resources available to mitigate risk, in the area of our expertise, are used in the most effective manner. Another part of protecting our communities is ensuring our work is focused on beneficial

outcomes and not performative acts which may provide a false sense of security. It is time to follow the science through advocacy and implementation of risk reduction measures that will work.



**Here's how
to do it the
RIGHT WAY:**

- Mow before 10 a.m. If it's too hot for you, it's too hot to mow. **REMEMBER, DON'T MOW DURING THE HEAT OF THE DAY OR WHEN THE WIND IS BLOWING!**
- Beware—Lawn mowers are designed to mow lawns, not dry grass, weeds or rocks! A grass-hidden rock is enough to start a fire when struck by a metal blade. Remove rocks from the area before you begin mowing.
- In wildland areas, **spark arresters are required on all portable gasoline powered equipment. This includes tractors, harvesters, chainsaws, weed eaters and mowers.**
- Keep the exhaust system, spark arresters and mower in proper working order and free of carbon buildup. Use the recommended grade of fuel and don't top off.
- In wildland areas, grinding and welding operations require a permit plus 10 feet of clearance, a 46-inch round point shovel, and a backpack watertype fire extinguisher—all ready to use.
- Hot exhaust pipes and mufflers can start fires you won't even see—until it's too late! **Don't drive your vehicle onto dry grass or brush.**
- Keep a cell phone nearby and call 911 immediately in case of fire.

© 2007 FireSafeHelp

2007

Here's How to Get Started: Create a Fire Safe Landscape in Seven Steps

Step One
Evaluate the environment around your home. What will catch on fire? Be on the lookout for those "little things" that can burn in your home. This can include lounge cushions, papers or anything flammable outside your home. Also consider slope, prevailing winds, vegetation type and density, and exposure to direct sun.

Step Two
Determine what you need to do. Start with the closest Home Ignition Zone and work toward the Defensible Space Zone and through the Wildland Fuel Reduction Zone.

Step Three
Develop a plan for correcting any fire safe problems identified in steps one and two. Consider completing your work prior to June 1 of each year before fuel conditions become too dry. Make sure your power tools have approved spark arresters and, if working in the summer months, complete all work before 10 a.m. Coordinate with adjacent land owners if possible and incorporate existing formal landscape features.

Step Four
Consider codes and regulations related to defensible space, burning, work performed near waterways, and tree removal; if necessary, secure permits such as burn permits.

- The Department of Forestry & Fire Protection (CDF) should be consulted if any wood products from your property are sold, traded or bartered. Types of regulated wood products include sawmill logs, firewood or wood chips. For more information, contact your local CDF unit.
- The Department of Fish & Game should be notified and consulted if work occurs near a river, stream, lake, or tributaries. Go to: www.dfg.ca.gov/1600/1600.html
- Before cutting down trees, residents should check local association and special district regulations.

Step Five
Implement the plan. Get help and any needed equipment. Begin work in the Home Ignition Zone and work out from there. Remember: It's the little things—such as patio furniture and cushions, leaves, needles, bark, etc.—that can ignite and cause a fire to your home.

Step Six
Remove all slash and debris generated during the fuel modification process by chipping, burning or disposal at your local vegetative waste site. Contact your local fire department for permit requirements. Contact your local Fire Safe Council about chipping, burning and other programs. Find your

Is Your Home a Safe Place to Stay

You live in an area of natural beauty—but it's also a wildfire. In fact, it's not a matter of if the grasslands or will burn, it's a matter of when that will happen. Fortunately, you can take steps today to dramatically increase your odds of survival by making your property "fire safe."

A fire safe property is one where the home and the surrounding landscape is a better place to live. A fire safe landscape is a landscape that not only protects your home from fire, but also increases the value of your home.

The Fire Environment

Fire behavior is affected by a variety of factors—so you can do something about and others are beyond your control. Understanding these factors can help you make your home and the surrounding property fire safe.

Fuels: Any flammable materials that will burn. This includes everything from the home itself to plants, dried leaves, rain gutters, brush, wood shingles, patio furniture, and other materials. If it will burn, it's a fuel.

Ignition: The point at which a fire starts as a result of contact with embers, firebrands (hot, flying embers), flame, or superheated air.

Topography: Primarily slope or the steepness of the slope and proximity to canyons or ravines.

Weather: Primarily wind, but also air temperature and moisture content of the air.

eXtreme X-Factor: A multiplication factor used to estimate the defensible space around a home due to extreme factors such as slope, and/or constant or unusually strong wind. If your home is located on or near the top of a hill, it receives constant or unusually strong wind, the defensible space in Zones 2 and 3 by a minimum (X-Factor). For instance, in Zone 2, increase the defensible space from 100 feet to 150 feet.



Defensible Space Zone (100 feet or more distance) • Keep this area lean and green!

Your "defensible space" is the area that is a minimum of 100 feet from your home (as required under State Public Resources Code 4291 or other local ordinances). This is the area where you've modified the landscaping to allow your house to survive on its own—greatly improving the odds for firefighters who are defending your home.

If your home is on a slope or subject to high winds, extend the distance of this zone based upon the "X-Factor". For instance, this zone may increase, then, to 150 feet (1.5 X 100 feet).

- Create a Defensible Space Zone by keeping in mind the three R's of defensible space:
 - Remove—dead and dying grass, shrubs, and trees.
 - Reduce—the density of vegetation (fuel) and ladder fuels, those fuels extending from the ground to the tree canopies.
 - Replace—hazardous vegetation with less flammable, irrigated landscape vegetation including lawn, or other low growing groundcovers and flowering plants.



Wildland Fuel Reduction Zone (Beyond 100 feet distance)

Getting rid of the undergrowth and thinning out densely-crowded smaller trees in this outlying area will reduce fire intensity and slow the spread of a fire moving toward your home. Defensible space increases the odds of your home's survival.

Experts recommend a minimum of 10 feet of spacing between individual trees and shrubs, measured at the crown (widest part) of the tree or shrub. You may need to increase this distance based on your property's X-Factor.

Measure trees should also be limbed up 10 feet, or 1/3 of their live crown height, whichever is greater.

It's possible, depending upon the size of your property, that you will be limited by your property boundary and unable to complete the fire safe measures identified in Zones 2 and 3. If this happens, talk with your neighbors and ask for their cooperation. A safer home means a safer neighborhood for everyone.



Fire "climbs" neighboring trees—don't give it a ladder that reaches from low to high. Limb live trees up to 10 feet or 1/3 of live crown height, whichever is greater.



...ghter. Khalilali, 4, stroll on a trail at Roberts Regional Recreation Area in ... of the 87-acre location that's known for its lush setting in a grove of fragrant

...ses aid English learners in h

language skills, in addition to English language arts and all other academic classes. But at Hernandez's high school, Mountain Empire High School, in the mountains of rural San Diego County, English learners enroll in English as a second language classes through the local community college. They earn college credit while learning English. Researchers and advocates say that dual enrollment — taking college courses during high school — can increase rates of graduation, college enrollment and college success. Yet students who are still learning English in high school often face barriers to dual enrollment courses.

According to one study by Wheelhouse: The Center for Community College Leadership and Research at UC Davis, 10% of English learners had taken at least one community college class while in high school, compared with 18% of all students. English learners are less likely than many other groups to finish the required courses for entering UC and CSU — known as A-G requirements — and to attend college in the first year after graduating from high school. Only 16.8% of students not proficient in English were marked as “prepared” for college and career on the California School Dashboard in 2019, compared with 44.1% of all students.

A Different Kind of Memory C

Pleasanton your loved one isn't a ... are a person.

Take a tour - (925)

Here's How to Get Started: Create a Fire Safe Landscape in Seven Steps

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Step Two
Determine what you need to do. Start with the closest Home Ignition Zone and work toward the Defensible Space Zone and through the Wildland Fuel Reduction Zone.

Step Three
Develop a plan for connecting any fire safe problems identified in steps one and two. Consider completing your work prior to June 1 of each year before fuel conditions become too dry. Make sure your power tools have approved spark arresters and, if working in the summer months, complete all work before 10 a.m. Coordinate with adjacent land owners if possible and incorporate existing formal landscape features.

Step Four
Consider codes and regulations related to defensible space, burning, work performed near waterways, and tree removals. If necessary, secure permits such as burn permits. The Department of Forestry & Fire Protection (DFFP) should be consulted if any wood products from your property are sold, traded or burned. Types of regulated wood products include sawmill logs, firewood or wood chips. For more information, contact your local CDP unit. The Department of Fish & Game should be notified and consulted if work occurs near a river, stream, lake, or tributaries. Go to: www.dfg.ca.gov/71600/71600.html. Before cutting down trees, residents should check local association and special district regulations.

Step Five
Implement the plan. Get help and any needed equipment. Begin work in the Home Ignition Zone and work out from there. Remember: It's the little things—such as patio furniture and cushions, leaves, needles, bark, etc.—that can ignite and cause a fire to your home.

Step Six
Remove all trash and debris generated during the fuel modification process by chipping, burning or disposal at your local vegetative waste site. Contact your local fire department for permit requirements. Contact your local Fire Safe Council about their chipping, home consultation and other programs. Find your local Fire Safe Council at www.FireSafeCouncil.org.

Step Seven
Continue to monitor and evaluate the fire safe condition of your home and landscape. Maintain your home's resistance to fire and the defensible space in the surrounding property on a routine basis—annually or more frequently, if needed. For new construction, consider fire resistant materials such as concrete panels, stone, brick or other material that doesn't burn easily.

Origin and printing: www.FireSafeCouncil.org. To order call: 310.872.0818. Special thanks to the Alameda County Fire Safe Council.

Is Your Home a Safe #
You live in an area of natural wildfire. In fact, it's not a matter of *if* you'll burn; it's a matter of *when* you'll burn. Fortunately, you can take steps to increase your odds of survival by making your home a fire safe property. A fire safe home is one that has been designed to reduce the impact of fire. A fire safe landscape is one that not only protects your home but also increases the value of your home.

The Fire Environment
Fire behavior is affected by a variety of factors, many of which are beyond your control. Understanding these factors can help you make your home and the surrounding landscape more fire resistant.

Fuels: Any flammable materials that are present around your home, including anything from the home itself (roof gutters, bushes, wood shingles, etc.) can act as fuel. If it will burn, it's a fuel source. The point at which a fire starts is often determined by the fuel source, or supplemented by other factors.

Topography: Primarily slope and wind direction, which your home is situated. A steeper slope and proximity to canyon walls can increase the risk of fire.

Weather: Primarily wind, but also humidity, temperature, and moisture content of the air. Wind can carry embers and other fuels to your home. Humidity and temperature can affect the rate at which a fire spreads. Moisture content of the air can affect the rate at which a fire spreads.



During the summer and fall months, high temperatures and low humidity can increase the risk of fire. This X-Factor map shows the fire safe zone around a home. The X-Factor map is a map of defensible space.

From: jrikeda@aol.com
To: [Info](#)
Subject: Amend Fuel Break Ordinance
Date: Wednesday, September 20, 2023 1:57:28 PM

We all agree that fire is a major danger.

However the proposed ordinance, although well intended, appears to be a draconian overstep. This allows for the department to make up rules as they go along without public input.

I have recent experience with their randomness in building a fire safe house and yard. The MOFD staff did not even define what plants were safe for our yard and have allowed various sized non combustible zones in our neighborhood.

Strongly suggest a slow down in the process, hold public forums and educational sessions with better written definitions and policies contemplated that can placed in the public record and can be relied upon.

Thank you.

[Sent from the all new AOL app for iOS](#)

From: [Sheida Vakili](#)
To: [Info](#)
Cc: ssmith@cityoforinda.org
Subject: Amended Furl Break Ordinance 23-08
Date: Wednesday, September 20, 2023 2:54:54 PM

To whom it may concern

I believe, it was discussed at the Orinda city council meeting that the amended plan essentially removes the majority of landscaping, all grass and all mulch/bark in parcels under 1 acre and would allow only scenic trees with a mandatory 6' clearance, and a minimum of 3-4' between any single plants. It would be punishable as a misdemeanor offense if not implemented? In addition, homeowners will be require to saturate the ground in the summer which goes against current water regulations.

Besides the massive personal costs and decrease of value in property, there are environmental impacts for removing all slope plantings - like mud/landslides and erosion.

Is this all accurate? And why has the community not been given more time to voice there concerns?

Best

From: [Robert Finch](#)
To: [Info](#)
Cc: [Sheri Smith](#)
Subject: Fwd: Amended Fuel Break Ordinance 23-08
Date: Wednesday, September 20, 2023 3:09:36 PM

MOFD Board — I received the below responses from Chief Winnacker to the letter I sent to the MOFD Board this morning and he encouraged me to share my responses to him with the Board; thus I am forwarding this chain to you.

Bob Finch

Begin forwarded message:

From: Robert Finch <rpfinch@comcast.net>
Subject: Re: Amended Fuel Break Ordinance 23-08
Date: September 20, 2023 at 3:03:04 PM PDT
To: "Winnacker, David" <dwinacker@mofd.org>
Cc: "S. K. Gupta" <sk.gupta.us@gmail.com>, "Isaacs, Jeff" <jisaacs@mofd.org>, "Holbrook, Marcia" <mholbrook@mofd.org>

David — I will share my response to your reply with the Board. Your reply adds to my confusion, though, because I thought that currently there can be no combustible material like bark chip mulch within 2' of the home (perhaps 5' in Wilder?), whereas under the proposal that prohibition would extend over the entire Lot I believe. In any event there is no doubt that there is confusion afoot (and ignorance) in the community. I am unavailable by phone today but I thank you for your outreach. Bob

On Sep 20, 2023, at 2:40 PM, Winnacker, David
<dwinacker@mofd.org> wrote:

Bob,

I would encourage you to share your thoughts with the MOFD board. I would be happy to share more context via a phone call if that is helpful to your understanding of the issue.

As a minor point below, parcels one acre or less have been subject to identical requirements (less the brush item addressed below) for many years and the ordinance imposes no new requirements.

Thank you,

Dave Winnacker
Fire Chief
Moraga-Orinda Fire District
<[image002.jpg](#)>

From: Robert Finch <rpfinch@comcast.net>
Sent: Wednesday, September 20, 2023 1:51 PM
To: Winnacker, David <dwinacker@mofd.org>
Cc: S. K. Gupta <sk.gupta.us@gmail.com>; Isaacs, Jeff <jisaacs@mofd.org>; Holbrook, Marcia <mholbrook@mofd.org>
Subject: Re: Amended Fuel Break Ordinance 23-08

David — thanks so much for your reply. Your comments are enlightening and point up the need for slowing down the approval process. For example, there appear to be inconsistencies in the proposed Ordinance, including as far as ‘grasses’ are concerned: at one point it is stated that all grasses must be kept to a 3” or less height (as currently required) by June 1 but there are other references to ‘seasonal and recurrent’ (defined?) grasses requiring removal.

Also, while you say that the new amendment is less restrictive, there’s a provision, for example, that rather than the various 2’, 5’ and other zones that apply to residential parcels of any size that we all have been dealing with, the *entirety* of a one-acre-or-less parcel requires removal of *all* bark and mulch. As to trees, there is an exemption for scenic trees but I have not seen a definition of ‘scenic’.

My point was not to take issue with any particular provisions. My point was, and in light of your reply and the above, is, that there is a serious need to slow the process down in order that residents within the affected areas have an opportunity to seek clarification, provide comments, participate in forums as the Orinda City Council has noted to the MOFD Board, etc. Two weeks for these purposes is not enough. *My personal experience is that the vast majority of residents have not even heard about any of this.* My ‘ask’ and, I believe, that of the Orinda City Council, is simply to slow down the approval process.

Thank you again for your helpful reply, it is much appreciated.
Bob

On Sep 20, 2023, at 12:24 PM, Winnacker, David <dwinacker@mofd.org> wrote:

Bob,
Your email has been received and will be provided to the MOFD board as part of these evening’s board packet.

I wish to clarify several points you made below.

As addressed on page 3 of the staff report, the new ordinance carries forward the existing fuel break requirements included in MOFD Ordinance 23-03 with the following changes:

1. Now allows separated examples of non-irrigated brush within fuel breaks. The prior ordinance banned all instances of non-irrigated brush within fuel breaks.
2. Now only applies to parcels within a community at risk (Moraga, Orinda, Canyon), adjacent to a community at risk (Moraga, Orinda, Canyon, Oakland, Berkeley, Kensington), or those parcels that have, or are adjacent to a parcel that has a habitable structure. The prior ordinance applied to all parcels in the fire district.

All other changes to the ordinance are specific to documentation regarding CEQA exemptions.

As a result, the only practical change for the Wilder HOA is that some non-irrigated brush is now allowed within fuel break areas, a less restrictive standard.

Please let me know if this explanation addresses your concerns or if there are other perceived changes to the fuel break ordinance that are of concern to your HOA.

Thank you,

Dave Winnacker
Fire Chief
Moraga-Orinda Fire District
<image002.jpg>

From: Robert Finch <rpfinch@comcast.net>
Sent: Wednesday, September 20, 2023 10:26 AM
To: Info <Info@mofd.org>
Subject: Amended Fuel Break Ordinance 23-08

MOFD Board— I am writing in connection with the proposed fire code Ordinance 23-08, which will be considered at the MOFD Board Meeting on September 20, 2023. Consistent

with the Orinda City Council's communication with you, I believe that this novel and controversial Ordinance requires more than two weeks between introduction and vote on approval. This is a very complex proposal that has not been sufficiently taken note of by the Orinda community; while it is very detailed, it is at the same time confusing and vague insofar as it raises many and varied questions as to interpretation and is a major departure from what the residents of Orinda are currently attempting to comply with.

Moreover, the residents of Orinda are not yet, in general, even aware of the new proposal. It will take some time to educate the residents, your constituents, as to the intent and effect of the proposal sufficient for them to be able to consider it, ask for clarification, etc. This educational effort will take some time and require town hall or similar meetings. It will also require significant general education materials produced by MOFD in the form of templates, specific guidelines, pictorial representations, etc.

In addition, while it is undeniable that fire protection/mitigation is crucial and must be top-of-mind, and while MOFD's remit is exclusively focused on that issue, there are other issues that deeply affect Orinda and its residents and all of these must be considered.

For example, the economic impact on the value of Orindans' homes and Orindans' ability to sell their homes, which is a function of many factors including aesthetics, raises legal issues as to whether the proposed Ordinance would constitute a 'taking'. The MOFD Board should anticipate that the proposal could generate significant new litigation.

In light the above, I urge the MOFD Board to *slow the process down* and not approve the proposed Ordinance at this time. The Ordinance was introduced just before the long Labor Day weekend and the following two week period is clearly a rush to judgment, especially unfair when the proposal has such deeply significant consequences and would put Orindans to great expense. It took the Orinda City Council many years to finalize and approve its Downtown Precise Plan, which has far fewer direct impacts on its residents' principal investment, their homes.

I urge the MOFD Board to slow the the process down and

not approve the proposal at your September 20 meeting.
Thank you.

Bob Finch
Wilder HOA Director and Vice President

From: marc.evans6@yahoo.com
To: [Info](#)
Cc: [Winnacker, David](#)
Subject: Moraga Orinda Firewise Network Written Comments for Sep 20, 2023 MOFD Board Meeting
Date: Wednesday, September 20, 2023 4:56:39 PM

Please accept these written comments for the Sep 20 MOFD Board Meeting. These were provided last night to the Orinda City Council plus verbal comments were provided. Thank You - Marc Evans

----- Forwarded Message -----

From: marc.evans6@yahoo.com <marc.evans6@yahoo.com>
To: cityclerk@cityoforinda.org <cityclerk@cityoforinda.org>
Cc: David Biggs <dbiggs@cityoforinda.org>
Sent: Monday, September 18, 2023 at 04:01:44 PM PDT
Subject: Moraga Orinda Firewise Network Written Comments for Sep 19, 2023 City Council Meeting, Agenda Item H.1: Moraga Orinda Fire District Ordinance 23-08.

Please accept these written comments prior to the City of Orinda City Council Meeting on Sep 19, 2023.

Mayor Igna Miller, Vice Mayor Darlene Gee, Council Members Brady Iverson, Latika Malkani, and Janet Riley,

The requirements that Moraga Orinda Fire Protection District (MOFD) include in their ordinance 23.08 is intended to make our community Safer from Wildfire. Specifically, the requirement to create fuel breaks around larger parcels (greater than 1.0 acres) is not new. I became familiar with this MOFD requirement in Spring 2020, when my neighborhood in Northwest Orinda created a recognized National Fire Protection Association (NFPA) Firewise USA Neighborhood (aka Firewise Neighborhood). The majority of my neighbors, with larger parcels, comply with this fuel break requirement. In fact, some of us have performed the necessary defensible space / fuel reduction work on our entire properties that are greater than 1.0 acre, similar to what is required for all properties less than 1.0 acre.

In my role as chairperson of the Moraga Orinda Firewise Network, we understand that not all residents of Orinda are familiar with MOFD Exterior Hazard Abatement Requirements, nor the underlying Fire Science that these ordinances are based on. I will admit that until 2020, I was unfamiliar with how wildfire could spread, and the preventative measures we should take, to significantly reduce the risk of loss of lives and property in our community.

Additionally, we understand that some neighbors do not perform defensible space work that is required by the MOFD exterior hazard abatement ordinances. We recognize these residents as **Reluctant Neighbors**. There are several reasons that residents are reluctant; it can be expensive, the work needs to be done every year; they do not believe our community is at risk of wildfire; they do not want to change the beauty and seclusion of their private property; and their concerns related to wildlife protection including protecting creeks and

avoiding land movements during heavy rains. Additionally, some **Reluctant Neighbors** do not know what to do, who to hire, and just as importantly, what to plant instead when they remove highly flammable plants. None of these examples of why people are reluctant was collected scientifically; **Reluctant Neighbors** typically will not explain why they will not perform necessary defensible space work, but instead remain silent until their property is inspected by MOFD and found not in compliance with the exterior hazard abatement ordinances.

How Can we Help?

The Moraga Orinda Firewise Network (MOFN) recently changed our name from the Orinda Firewise Council (OFC). We started as a wildfire prevention advocacy group of 6 Firewise Neighborhoods in North Orinda in 2019; we now are a network of over 30 Firewise Neighborhoods, representing over 4,000 private properties in Moraga and Orinda. Our purpose is to perform wildfire prevention Outreach and Education across our Fire District to benefit our entire community.

MOFN has volunteers available to help residents throughout our community. Our volunteer skills include:

- Experience in creating defensible space on our own properties as well as within our neighborhoods. Several of our Firewise Leaders have helped plan and execute fuel reduction work on large properties as well as on groups of properties to reduce costs to individual property owners.
- Knowledgeable about availability of State and Local grants to perform defensible space work on private properties; ability to mentor Neighborhoods to apply for available grants.
- Trained MOFD Ambassador volunteers who perform Fire Adapted Community home assessments. Note: it is not a requirement to live in a Firewise Neighborhood to volunteer as a MOFD Ambassador.
- Familiarity with home hardening products and how to install them.
- Familiarity with Emergency Preparedness and Response (many of our Firewise Volunteers are also volunteers with the Lamorinda Community Emergency Response Team (CERT)).
- Sharing information across our Firewise Network through bi-monthly meetings, website, and (future) monthly newsletters. MOFN also performs outreach at community events such as the annual Orinda Fourth of July parade, upcoming Moraga Pear and Wine Festival, and MOFD Open Houses.
- Firewise Leaders who are available to meet with resident groups to explain the benefits of working together as a neighborhood to reduce wildfire risk. As was demonstrated by the August 8, 2023 Fire in Lahaina, Maui – the “government” cannot do it all – strong

engagement from the community, working together as neighbors, is required to make us Safer from Wildfire.

Recommendation:

Please do not support delay or suspension of MOFD ordinance 23.08.

MOFN Leaders are available to help educate and support all residents to make our Community Safer from Wildfire.

Marc Evans

Moraga Orinda Firewise Network Chairperson

Sept 21, 2023

Dear MOFD BoardMembers,

I'm afraid my obsession with finding homeowner -appropriate information has caused Chief Winnacker some distress; that is certainly not my intention. In fact, I had not thought to trouble him at all with my request, which I addressed to Marcia Holbrook, and am sincerely sorry to have distracted him from far more important priorities.

The Chief was kind enough to make some references to brochures. I gave my reviews of these materials to the Board, simply for their information. No action was required or expected. I simply thought to show the need for better handouts for the public.

The brochures are credited to Butte County Fire Safe Council, and orders go to a Northern California phone number. I was surprised that Diablo Fire Safe Council, who is presently distributing the brochures, hadn't edited the paragraphs relating to safe grinding and welding operations, as well as spark arresters on tractors and harvesters. Not that relevant to Orindans/Moragans!

I thought it was amusing, sorry it didn't come across that way.

Sincerely,

Sandy Pearson

- The Department of Fire & Water around the Inland Empire consulted if work occurs near a river, stream, lake, or tributaries. Go to: www.dfg.ca.gov/1600/1600.html
- Before cutting down trees, residents should check local association and special district regulations.

Step Five

Implement the plan. Get help and any needed equipment. Begin work in the Home Ignition Zone and work out from there. Remember: It's the little things—such as patio furniture and cushions, leaves, needles, bark, etc.—that can ignite and cause a fire to your home.

Step Six

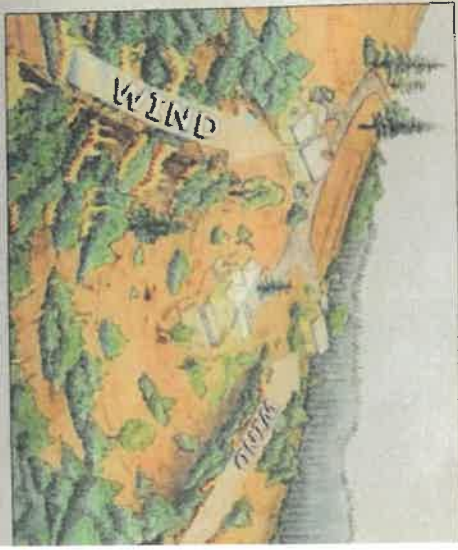
Remove all slash and debris generated during the fuel modification process by chipping, burning or disposal at your local vegetative waste site. Contact your local fire department for permit requirements. Contact your local Fire Safe Council about their chipping, home consultation and other programs. Find your local Fire Safe Council at www.fireSafeCouncil.org.

Step Seven

Continue to monitor and evaluate the fire safe condition of your home and landscape. Maintain your home's resistance to fire and the defensible space in the surrounding property on a routine basis—annually or more frequently, if needed. For new construction, consider fire resistant materials such as concrete panels, stone, brick or other material that doesn't burn easily.

*Design and printing: www.FireSafeHelp.com. To order, call: 530.872.0850
Special thanks to the Butte County Fire Safe Council!*

defensible space around a home due to extreme fire demand factors such as slope, and/or constant or unusually strong winds if your home is located on or near the top of a slope and/or receives constant or unusually strong winds you must increase the defensible space in Zones 2 and 3 by a multiplication of 1 (X-Factor). For instance, in Zone 2, increase the defensible space from 100 feet to 150 feet.



During the summer and fall months, a combination of low humidity, high temperatures and strong winds results in a "flag" weather warning. During such a condition, the fire danger is very high. The X-Factor explained above helps provide that margin of defensible space necessary to keep your property safe.

MOFD Regular Meeting 11/15/2023
Item 3.1 Sandia & Anita Person vs. MOFD

To: Moraga Orinda Fire District Board
Cc: Moraga Town Council
Cc: Orinda City Council

Dear Board Members,

I share the community's concerns, as raised by Sandy Pearson, about the MOFD's Fuel Break Ordinance 23-08. This ordinance negatively impacts our native vegetation, wildlife habitats, hillside stability, and community character due to its focus on extensive vegetation removal and enforcement. Such practices overlook vital, science-based fire ecosystem management techniques, like careful, distance-limited thinning of vegetation, rather than wholesale clearing of most residential lots. It also misses the importance of understanding the natural hydration dynamics of native species, instead of making biased judgments based on oversimplified plant lists. Furthermore, this removal-centric approach risks creating spaces for invasive, highly flammable weeds, replacing native plants, and increases the risk of hillside erosion and landslides due to exposed soil. Therefore, a comprehensive revision of the ordinance is crucial to align it with effective, science-based fire management practices.

I recently became involved with the MOFD's Fuel Break Ordinance, 23-08, due to stressful interactions this year, including receiving a citation and a \$100 fine. While I have resolved part of my citation related to the 23-03 Hazardous Vegetation issue, this experience has been eye-opening about the potential challenges of the 23-08 ordinance enforcement.

A major issue with Ordinances 23-03 and 23-08 is the ambiguous and subjective definition of 'Hazardous Vegetation' detailed in Appendix A. This lack of clarity opens the door to arbitrary and possibly inconsistent enforcement by inspectors, an issue I've personally faced with my Coyote Bush. Moreover, this problem extends beyond my situation, potentially impacting a range of native plants such as shrubs, trees, perennial grasses, and small flowering plants.

Under Ordinance 23-03, I was fined for maintaining a hedge of Coyote Bush. Convincing the Fire Inspectors that this bush was not a fire hazard required several interactions. Initially, they expressed concerns about deadwood accumulation and the bush's potential flammability due to its oils. In response, I gathered academic and professional horticultural references (Appendices B through I) to demonstrate the Coyote Bush's benefits for wildlife habitat, erosion control, and its suitability for drought-tolerant residential landscaping, without any fire risk warnings. Notably, the U.S. Department of Agriculture recognized the fire-resistant properties of *Baccharis Pilularis* leaves, and the East Bay Municipal Utility District recommended it for water-wise landscapes. Armed with this evidence, I successfully argued for the plant's safety and got the fine dismissed.

However, the process was challenging, as I constantly had to defend the bush against the inspectors' authority and their insistence on legal mandates. This situation created unnecessary stress and made the discussions more difficult for everyone involved.

My experience with Ordinance 23-03 has led to worries about the impending reinstatement of 23-08. Although 23-08 marks an improvement over 23-04, particularly by permitting non-irrigated bushes that aid in habitat protection and erosion control, this progress is at risk. If inspectors continue to classify native plants as hazardous and insist on their complete removal—ignoring factors like their proximity to buildings, spacing, or irrigation status—these advancements might be effectively negated.

Two of my neighbors, who agreed to Fuel Break inspections, were directed to remove all Coyote Brush from their properties, extending beyond the required 100-foot Defensible Space zone. This action led to the displacement of a quail family and left a large hillside exposed, making it vulnerable to the upcoming winter rains. This situation prompts an important question: Will the non-irrigated clause in Ordinance 23-08 adequately protect Coyote Bush and other native plants on hillsides, or will similar removals persist?

While I understand the complexities faced by MOFD, I find it concerning when public objections and comments receive what seem like formulaic responses. It often gives the impression that environmental concerns, particularly regarding hillside erosion, might not be fully considered. For example, the idea of replacing native plants with invasive grass, despite the mitigation strategy of annual mowing, raises questions. I recognize the immense challenges MOFD faces in juggling fire risk management, erosion control, and habitat protection, alongside their commendable and primary duty of fighting fires. To support these efforts, a more comprehensive legal framework, coupled with community input, could prove invaluable in helping residents protect their properties effectively while considering environmental implications.

Sincerely,
Mike Fedorov
Moraga

Appendix A. Comparing the 'Hazardous Vegetation' sections in ordinances 23-03 and 23-08, both grant the Fire Inspector discretionary power to determine what constitutes hazardous vegetation. Under these terms, if a plant is classified as hazardous, it is subject to removal, irrespective of its irrigation status or spacing.

23-03 Defensible Space, Zone 2 Requirements	23-08 Fuel Break Requirements
<p>(3) Zone 2.</p> <p>(A) Remove all Hazardous Vegetation and Combustible Material capable of being ignited and endangering the Structure as determined by the Fire Code Official.</p> <p>(B) Annual grasses must be removed or cut to less than 3 inches no later than 1 June of each year.</p> <p>(C) Maintain trees to remove Ladder Fuels so that foliage, twigs, or branches are greater than 6 feet above the ground.</p> <p>(D) Non-irrigated brush is not permitted.</p> <p>(E) New trees shall be planted and maintained so that the tree's drip line at</p>	<p>(a) <u>Fuel Break Standards.</u></p> <p>(1) For the purpose of this Ordinance, a Fuel Break requires the removal or modification of fuel, maintained on an annual basis by June 1 of each year, or on a recurring basis as determined by the Fire Code Official, in a manner that will prevent the transmission of fire.</p> <p>Specifically:</p> <p>(A) Grasses cut to less than 3".</p> <p>(B) Removal of all Hazardous Vegetation.</p> <p>(C) Non-irrigated brush removed such that the minimum space between shrubs is as follows:</p> <ol style="list-style-type: none"> a. On flat or mild slopes (less than 20%): Two times the height of the shrub b. On mild to moderate slopes (20-40%): Four times the height of the shrub c. On moderate to steep slopes (greater than 40%): Six times the height
<p>HAZARDOUS VEGETATION. Vegetation that is combustible and endangers the public safety by creating a Fire Hazard, including but not limited to bark, mulch, seasonal and recurrent grasses, weeds, stubble, non-irrigated brush, dry leaves, dry needles, dead, dying, and diseased trees, or any other vegetation identified by the Fire Code Official.</p>	<p><u>Hazardous Vegetation.</u> Vegetation that is combustible and endangers the public safety by creating a Fire Hazard, including but not limited to bark, mulch, seasonal and recurrent grasses, weeds, stubble, dry leaves, dry needles, or any other vegetation identified by the Fire Code Official. Hazardous Vegetation shall not include healthy, mature, scenic, trees.</p>

Appendix B. Summary of References in support of Coyote Bush

- The U.S. Department of Agriculture plant guide on *Baccharis Pilularis* says that its **"...leaves have fire resistant properties."** It then states that "Coyotebrush is an extremely important plant for pollinators, due to its abundant production of pollen and nectar and the bloom period, which occurs during the fall and winter. The plants maintain their green foliage year round providing excellent habitat for beneficial insects". The plant is successfully used for hillside erosion control. See **Appendix C.**
- **Monarch Butterfly Nectar Plant:** many Monarch preservation sources emphasize critical value of *Baccharis* in providing flowers and nectar during winter months, when other Monarch food sources are absent. See **Appendix D.**
- "The California wildlife habitat garden" book says about Coyote Bush: Fall-blooming shrub attracts over 400 insects, highly valuable bird habitat plant for cover, nesting, and foraging... See **Appendix E.**
- The **Town of Moraga Design Guide** includes a dwarf variant of the Coyote Bush in the 'Oak Palette.' Maybe the critical issue is not a plant's placement on a hazard list, but rather factors like its location, hydration, separation, and maintenance? See **Appendix F.**
- Classic read on Coyote Bush from Judy Lowry, *Gardening with a wild heart.* See **Appendix G.**
- Coyote Bush in native garden. Bornstein, C., Fross, D., O'Brien, B. (2005). *California Native Plants for the Garden.* United States: Cachuma Press. See **Appendix H.**
- Coyote Bush for landscape. East Bay Municipal Utility District (EBMUD) book on water-wise gardening. I used this book to transition to native planting during the 2012-2016 drought. See **Appendix I.**

Appendix C. U.S. Department of Agriculture on benefits of the Coyote Bush.

Note that the U.S. Department of Agriculture's brochure on the Coyote Bush features a mature specimen in the wild, surrounded by dead, dry invasive annual grass. **This image does not reflect the maintenance practices necessary for a fire-safe residential landscape.**

https://plants.sc.egov.usda.gov/DocumentLibrary/plantguide/pdf/pg_bapi.pdf



United States Department of Agriculture

Natural Resources Conservation Service

Plant Guide

COYOTEBRUSH

MF: Mature specimen in the wild, surrounded by invasive grass. This is not fire-safe residential landscape.

Baccharis pilularis DC.

Plant Symbol = BAPI

Common Names:

coyote brush, coyotebush, coyote bush, chaparral-broom, dwarf baccharis, dwarf chaparral false willow

Scientific Subspecies Names: *Baccharis pilularis* DC. ssp. *consanguinea* (DC.) C.B. Wolf, *Baccharis pilularis* DC. ssp. *pilularis* (DC.)

Description

General: Coyotebrush is a native, perennial, evergreen shrub in the Asteraceae family with either an erect, rounded or procumbent



Figure 1. Coyotebrush, *Baccharis pilularis* ssp. *consanguinea*, mature shrub. Lockeford Plant Materials Center, August 2016.

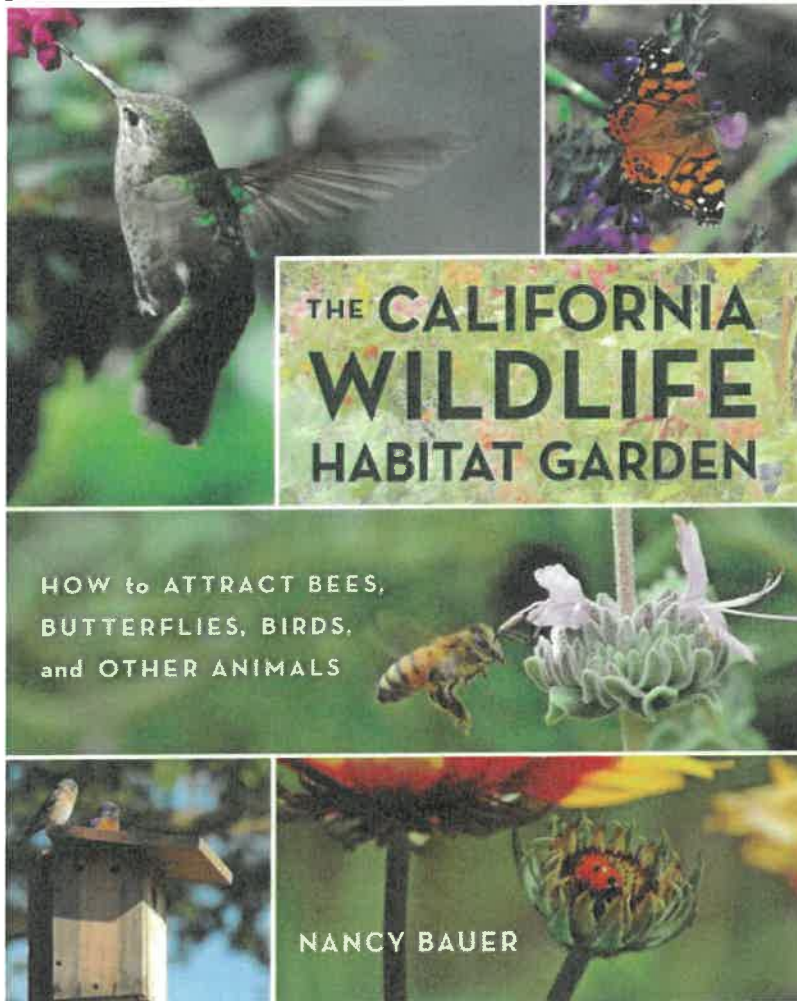
Uses

Erosion Control and Habitat Restoration: Coyotebrush has been successfully used for erosion control. For sloping areas, *B. pilularis* ssp. *pilularis*, is a good choice due to its low growing and spreading habit (Steinberg, 2002). In areas adjacent to established coyotebrush stands recruitment can be spontaneous from wind dispersed seeds. Coyotebrush habitat can act as a nurse crop for tree species and is useful for restoration of oak woodlands.

Wildlife habitat: Coyotebrush has low palatability and nutritional value for grazers and browsers, cattle will graze it if nothing else is available but will more likely trample the plants. It is great wildlife habitat providing cover for rabbits and other small mammals, who frequently graze out vegetation under the coyotebrush (Steinberg, 2002). Coyotebrush is an extremely important plant for pollinators, due to its abundant production of pollen and nectar and the bloom period, which occurs during the fall and winter. The plants maintain their green foliage year round providing excellent habitat for beneficial insects (Wilson, 2013). In addition to European honey bees, Steffan (1997) identified 54 insect species visiting male and female flowers in late September and early October, including several species of ants, bees and parasitic wasps

Ornamental: Coyotebrush is used as an ornamental plant in the Southwestern states due to several attributes. It is drought tolerant and maintains bright green foliage throughout the year, is unpalatable for deer, and the leaves have fire resistant properties. *B. pilularis* ssp. *consanguinea*, the upright coyotebrush, is a reliable choice for hedgerows as it is easy to establish from transplants and to manage by pruning. For erosion control on slopes and where low growing vegetation is required, cultivars of *B. pilularis* ssp. *pilularis*, the prostrate form are preferred. In the horticultural trade, these are all males and so will not form an expanding population (Wilson, 2013).

Appendix E. Quote about Coyote Bush from: Bauer, Nancy. *The California wildlife habitat garden: How to attract bees, butterflies, birds, and other animals.* Univ of California Press, 2012.



THE CALIFORNIA WILDLIFE HABITAT GARDEN / 185

sun or part shade, drought tolerant. 'Mound San Bruno' has a rounded compact shape (4 feet), *R. 'Eve Case'* (5 feet).

Coyote bush (*Baccharis pilularis*). Fall-blooming shrub attracts over 400 insects, highly valuable bird habitat plant for cover, nesting, and foraging. Grow in sun, drought tolerant. For hedgerows, use *B. pilularis consanguinea* (to 8 feet). For groundcover, use dwarf coyote bush, such as *B. pilularis* 'Pigeon Point' or *B. pilularis* 'Twin Peaks', which grow 3-4 feet tall. The female plant is the most useful; the flowers attract insects and the seeds feed many bird species.

Note: See hedgerow combination of California lilac, coffeeberry, and coyote bush on pages 36-37.

Hollyleaf cherry (*Prunus ilicifolia*). Shiny, sharp-edged foliage resembles holly,

Habitat for Beneficial Insects

Insects, the foundation of the food web, must be present if the beneficial insects—and birds, amphibians, and other insect predators—are to survive. Because aphids show up early in the year and because they reproduce so abundantly, aphid predators need early-blooming native trees and shrubs—ceanothus, hollyleaf cherry and other *Prunus* species, coffeeberry, elderberry, willow, manzanita—for shelter and food sources. Fall-blooming coyote bush is a magnet for insects and the predators that feed on them. Beneficial insects may supplement their diet with pollen, using many of the same plants that bees favor. Tiny pollinating flies and parasitic wasps are attracted to tiny flower clusters, such as thyme and mint flowers, or the commonly planted sweet alyssum. Native buckwheat species (*Eriogonum*) draw hoverflies, minute pirate bugs, lacewings, and many others. The umbels of carrot family members (Apiaceae) are especially appealing to beneficial insects and tiny polli-

MF: The modern Defensible Space approach will further enhance protection by locating these plants farther away from the house and spacing them more.



Appendix F. Town of Moraga Design Guidelines

<https://www.moraga.ca.us/DocumentCenter/View/5789/Moraga-Design-Guidelines-PDF>

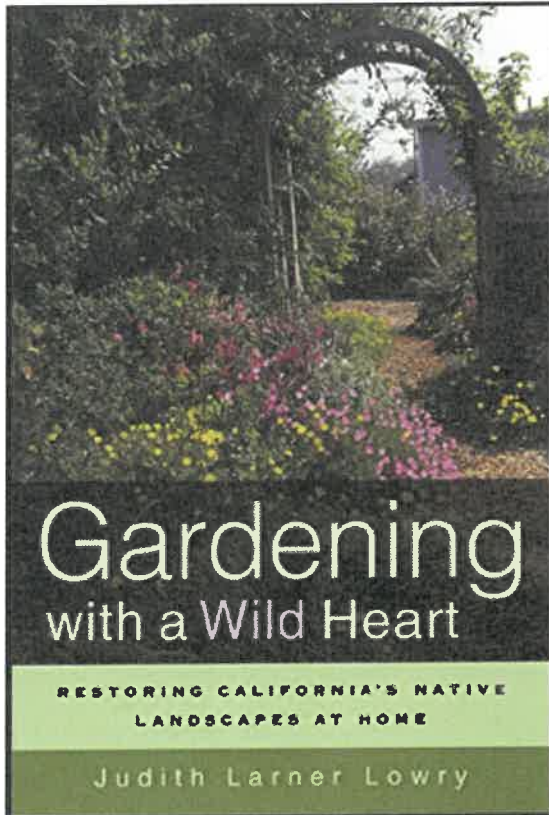
Oak Palette

The oak palette is the predominant plant grouping which occurs naturally in the Moraga area. Plants from this group are appropriate on hillside locations, sunny open areas, and along the tops of stream banks. Excessive water during the normally dry summer periods may cause root fungus in oaks, so they should not be planted adjacent to lawns or other areas that will be watered regularly during summer months.

OAK PALETTE						
Scientific Name	Common Name	Deer Resistant	Native Plant	Low Water		Maintenance
Tree						
Aesculus californica	California Buckeye	*	*	*		L*
Quercus occidentalis	Western redbud	*	*	*		L*
Quercus agrifolia	Coast Live Oak	*	*	*		L*
Quercus flex	Holly Oak	*	*	*		L*
Quercus suber	Cork Oak	*	*	*		L*
Shrubs						
Arbutus unedo 'Compacta'	Strawberry Tree	*		*		L AP
Arctostaphylos spp.	Manzanita	*	*	*		L
Arctostaphylos	Vine Hill Manzanita	*	*	*		L
Berberis spp.		*	*	*		L
Carpenteria californica	Bush Anemone		*	*		L
Ceanothus spp.	Wild Lilac	*	*	*		L
Cistus sp.	Rockrose	*	*	*		L
Correa sp.	Australian Fuchsia	*	*	*		L
Cotoneaster 'Low Fast'	Bearberry Cotoneaster	*	*	*		L
Dendromecon harfordii	Island Bush Poppy		*	*		L
Eriogonum species	Wild Buckwheat	*	*	*		L
Fragaria spp.	Ornamental Strawberry	*	*	*		L
Fremontodendron cvs	Flannel Bush	*	*	*		L
Garrya elliptica	Coast Silktassel	*	*	*		L
Heteromeles arbutifolia	California Holly	*	*	*		L
Myrica californica 'Compacta'	Pacific Wax Myrtle	*	*	*		L
Prunus ilicifolia	Hollyleaf Cherry		*	*		L
Prunus lyonii	Catalina Cherry		*	*		L
Rhamnus californica 'Eve Care'	Coffeberry	*	*	*		L
Rhamnus crocea	Redberry	*	*	*		L
Rhus integrifolia	Lemonade Berry	*	*	*		L
Rhus ovata	Sugar Bush	*	*	*		L
Ribes indecorum	White Flowering Currant	*	*	*		L
Ribes malvaceum	Chaparral Currant	*	*	*		L
Ribes spp.	Currant, Gooseberry	*	*	*		L
Sarcococca ruscifolia		*	*	*		L
Salvia clevelandii	California Blue Sage	*	*	*		L
Low Shrubs						
Arctostaphylos edmundsii & cvs	Little Sur Manzanita	*	*	*		L
Arctostaphylos hookeri & cvs	Monterey Manzanita	*	*	*		L
Baccharis pilularis cvs	Dwarf Coyote Brush	*	*	*		L
Ceanothus griseus horizontalis	Carmel Creeper	*	*	*		L
Ceanothus		*	*	*		L

Low Shrubs	
Arctostaphylos edmundsii & cvs	Little Sur Manzanita
Arctostaphylos hookeri & cvs	Monterey Manzanita
Baccharis pilularis cvs	Dwarf Coyote Brush
Ceanothus griseus horizontalis	Carmel Creeper
Ceanothus	

Appendix G. From: Lowry, Judith Larner. *Gardening with a Wild Heart: Restoring California's Native Landscapes at Home*. Univ of California Press, 2007.



Coyote Bush

I began my own garden, juggling its creation with trips into the nearby wildlands for seed and idea collecting. Without quite knowing what I was doing, I began to try to work myself into my new home through gardening on my one-acre homesite with these plants. I never drew up a plan but depended on visions gained through explorations of the surrounding wildlands. I haven't been tied to these visions but have kept open to surprises; indeed, I have come to see surprises as the highest kind of gardening experience. Gardening with our local flora has allowed me to study and live with plants in such a way that I have discovered qualities of which I was previously unaware.

Take coyote bush ("coyote brush" to some).

On my flat, once heavily grazed, piece of land, the only species repre-

senting the northern coastal scrub plant community was coyote bush, *Baccharis pilularis consanguinea*, an undervalued species often removed when a garden is made. When we began the removal of weedy grasses, brambles, and French broom, we left islands of coyote bush, good places for mysterious rustlings in the early morning. I began to think about and appreciate coyote bush, and slowly I found others who had thoughts about this plant. As I talked to people about coyote bush, information began to emerge. What had begun as a solitary conversation expanded to include many talkers, and eventually a loose association formed, dedicated to protecting and restoring habitat in our town. At first jokingly and then as a matter of course, we called ourselves Friends of the Coyote Bush.

SAGE LA PENA *I asked Sage La Pena, an indigenous Californian of the Wintu tribe, how she learned about native plants, and how she began growing them. Sage is the manager of the native plant nursery at Ya-Ka-Ama Indian University in Forestville, California.*

"It started when I was born," said Sage. "I don't know why I know how or when to collect seeds. I just absorbed it growing up."

She told of trips down the Russian River with relatives, where conversation about the plants they were passing was the background of the trip.

"I didn't think I really knew anything until I applied for a job as a naturalist; then I realized how much I had absorbed."

"So," I said, "you learned about native plants from your family."

"That was one way," she said, "But there's a second way. Like my brother wakes up with a new song, I wake up knowing something about plants that I didn't know before. I dream it."

We learned that coyote bush, with its late bloom, is an indispensable source of nectar in the autumn, when hundreds of insects take advantage of its nectar, including *Paradejeania rutilioides*, the Tachina fly, whose larvae

are parasitic on numerous insect pests harmful to important agricultural crops. An electrician working on my house opened some buried electrical boxes to find soft deer mouse nests made of the fluffy pappus of coyote bush seeds. A local hiker, caught in a tight spot on a steep cliff, grabbed onto coyote bush, sturdily rooted into the cliff, and pulled himself to safety.

The soil under coyote bush is rich, good for growing vegetables or for sheltering native herbaceous plants like checkerbloom or brodiaea, native bunchgrasses like the blue fescue and coastal hairgrass. Its flowers when gone to seed cover the bush like white snow, gleaming in the winter sun.

Some birds, like wrentits and white-crowned sparrows, live their whole lives in coyote bush, finding there all they need for perching, nesting, breeding, eating, and resting. Creatures like the rare mountain beaver find homes and food where coyote bush is. Coyote bush is enough for them.

We pondered the mysteries of its many forms, from the graceful shrub-sized mounds, like clouds on a hillside, to the low-growing, ground-hugging form, to those individuals that unaccountably shoot up to tree size. As we learned more, one of us said, "It's hard to remember that once I thought coyote bush was just . . . coyote bush."

Some call it "tick bush" and hold it in low regard, considering it a mere interloper where there could be grasses and colorful wildflowers, but here on the coast, bunchgrasses and perennial wildflowers thrive in its gracious company. When the exotic grasses are dry and dormant in late summer, look near the skirts of *Baccharis pilularis* to find soft tufts of native grasses, still partly green, interspersed with late-blooming wildflowers like the tarweeds, both madias and hemizonias.

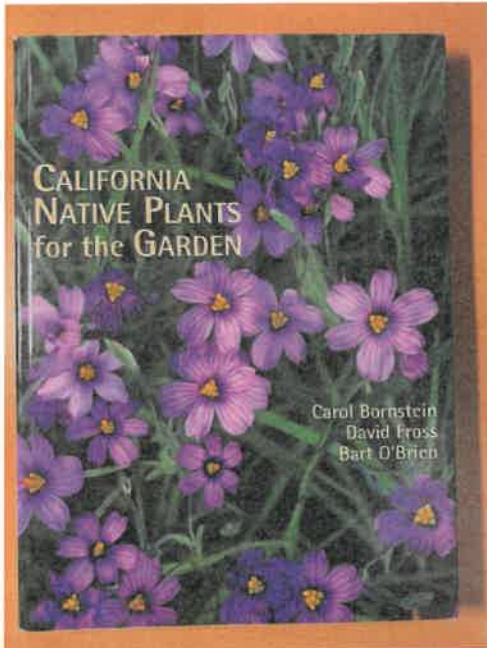
In the garden, its rich green foliage and neat mounding habit make a satisfying background plant for other, showier species. One gardener discovered that cutting coyote bush seedlings to the ground when they are small will cause them to sprout back shapely and round. In other situations, where competition causes it to grow in a distorted fashion, it can be pruned to enhance its sculptural qualities. After fires, we watch the new green shoots sprout from the crowns, under a burned hoopskirt of blackened branches. Galls form on its leaves; some of us think it is helpful to remove them, but we don't know for sure. It is to coyote bush that I turn when dis-

couraged or in need of a reminder of all that is available to learn in my own back yard.

Visions

I began to see the dim outlines of a vision of my home, nestled into the intricate earth, surrounded by those trees, shrubs, grasses, and wildflowers that at one time graced this land, and surrounded also by those birds, insects, rodents, and mammals that have slept in, eaten off, hidden in, bred in, and otherwise hung out in these plants for the past ten thousand years. Home was becoming more particularly defined, more specific, more tied to the details of smell, color, and form, as we searched out the clues and looked at the pieces. The white-crowned sparrow, famous for its different dialects, has a clear, sweet whistle, called the Palomarin, or clear dialect, heard only in the area reaching from my town to a lake three miles away. Along our coast, the California poppy occurs in a lemon yellow rather than crayon orange variety.

Appendix H. Bornstein, C., Fross, D., O'Brien, B. (2005). *California Native Plants for the Garden*. United States: Cachuma Press.



Atriplex—Baccharis

A more aggressive pruning every 5 to 7 years will remove old wood, rejuvenate the plant, and ensure continued fire resistance. Quail bush can be sheared into a formal hedge if desired. This requires more frequent pruning and results in fewer flowers. Monthly summer irrigation benefits coastal plantings and is essential to plants in hotter inland areas. Pests and diseases are insignificant.

Baccharis pilularis
COYOTE BRUSH
Sunflower Family (Asteraceae)

Plant Type: Evergreen shrub.

Geographic Zones: All except high mountains and deserts.

Light: Sun.

Soil: Adaptable.

Water: Drought tolerant to occasional.

Natural Habitat and Range: Dunes and bluffs, dry slopes, and open woods in chaparral and coastal scrub communities below 2500 feet; northwestern Baja California to the Oregon coast.

Coyote brush can evoke a curious range of responses from gardeners. Many recognize its merits in the landscape and praise coyote brush (also known as

coyote bush) for its hardiness and reliability. Some, like Judith Lowry, author of *Gardening with a Wild Heart*, find in this humble shrub a deeper connection to the California landscape; these admirers even belong to a playful and loose affiliation called Friends of the Coyote Bush. Still others regard this “coyote” as a weed and cannot imagine using it in their gardens.

Like many wide-ranging species, coyote brush's growth habit varies considerably. On windswept headlands it is commonly a prostrate shrub with a dense, congested habit, while in open fields it typically has a more spreading, erect form and can reach 8 feet in height. Its thick, resinous, green or olive green leaves measure up to ¾ inch long and have coarsely serrated teeth. Fall-blooming male or female flowers are borne on separate plants and cover the stems with an abundance of cream-colored rayless flowers. The male flowers are quickly shed, but debris from the female plants' fluffy fruits can be a nuisance. Most horticultural selections are male for this reason.

Even though it is well known as a tough and drought-tolerant species, coyote brush's garden performance will improve greatly with moderate summer watering and occasional pruning. Prune coyote brush into a tight hedge, leave it in a natural condition as an informal screen, or even shear it as topiary. Coppicing will freshen both upright and groundcover forms.

Pruning is best accomplished in late winter before the flush of spring growth begins.

Coyote brush adds significant value in the habitat garden. It is frequently used in restoration projects because it spreads rapidly and quickly provides food and cover for a variety of birds, mammals, and insects. Some birds, like wrentits and white-crowned sparrows, may spend their entire lives among stands of coyote brush.

Coyote brush is prone to attacks by mites, leafhoppers, lace bugs, white fly, and occasionally flathead borers. Each requires treatment and can compromise the aesthetics of the planting. Coppicing will effectively break the cycle of heavy infestations, but in some cases removing infected plants is required. Vigorous, healthy plants suffer fewer infestations, and regular maintenance can help keep insects to a manageable level.

Cultivars: Two male selections of coyote brush are commonly grown in the nursery trade and are sometimes incorrectly labeled. 'Twin Peaks #2' is a spreading cultivar to 3 feet tall and 8 feet wide. Its bright green leaves are held tightly along the stems. It grows as a dense, mounding form that eventually becomes a sizeable shrub with age. 'Pigeon Point' is a smaller shrub with larger, bright green leaves. It has a lax, undulating habit and grows to 2 feet tall and 8 feet wide. Both selections can be sheared or even mowed as a lawn alternative. Some local agencies include them on lists for use in fire-prone regions because they demonstrate fire resistance as long as they are watered and pruned consistently to remove bulk and maintain a low form.

MF: The modern Defensible Space approach will further enhance protection by locating these plants farther away from the house and spacing them more.

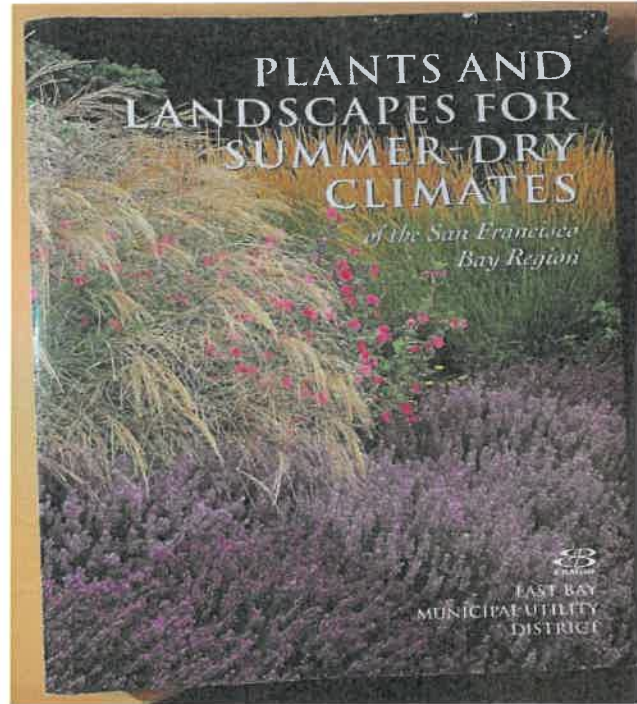


Twin Peaks #2 coyote brush (both sides of path) and Pigeon Point coyote brush (bright green, low-spreading plant in lower right foreground), private garden, La Honda. STEPHEN INGRAM

Appendix I. The EBMUD book. Harlow, N. (2004). Plants and Landscapes for Summer-dry Climates of the San Francisco Bay Region. United States: East Bay Municipal Utility District.



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Baccharis pilularis (coyote brush)



ZONES 5-11, 14-24. EVERGREEN SHRUBS. SIZE VARIES.



Adaptable shrub or groundcover for dry-summer climates. Small, shiny green leaves kept fresh and green with periodic cutting back in late winter. Upright forms are 3-5' x 4-5'; groundcover forms are 1-2' x 6'. Full sun, little or no water near coast; may benefit from monthly summer watering in hot interior gardens. Tolerant of drought, salt spray, alkaline soils. Native to coastal California and Oregon. Attractive to butterflies; good habitat plant. 'Pigeon Point' is a fast-spreading groundcover to 1' x 10-15'. 'Twin Peaks' has smaller, dark green leaves and grows more slowly.