



THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

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UC Legal

3/16/2022

Office of the President  
1111 Franklin Street  
Oakland, CA 94607

[universityofcalifornia.edu](http://universityofcalifornia.edu)

Via Email Only ([info@mofd.org](mailto:info@mofd.org))

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Moraga-Orinda Fire Protection District  
Board of Directors  
1280 Moraga Way  
Moraga, CA 94556

Re: Proposed Adoption of Ordinance No. 22-02

Dear President Donner and Members of the Board:

The University of California, Berkeley (“University”) appreciates the opportunity to comment on proposed Ordinance No. 22-02 (the “Ordinance”). The University did not learn of this Ordinance until last week, when a representative from the East Bay Regional Park District (“Park District”) informed us that the Moraga-Orinda Fire Protection District (“MOFD”) scheduled a second reading of the Ordinance for its meeting on March 16, 2022. Similar to the Park District, the University is surprised that no representative from MOFD reached out to the campus to seek our input either prior or subsequent to the first reading.

The University shares the MOFD’s goals of reducing the risk and spread of uncontrolled wildfires that would have a devastating impact on the University and the communities that are adjacent to the campus, and remains committed to working collaboratively with the MOFD towards this joint mission. Toward this end, the University complies with all applicable provisions of Title 24 and Title 19 concerning fire and building safety, and works closely with the Office of the State Fire Marshal in mitigating fire hazards on University property. The Berkeley campus, in particular, has also developed a Wildland Vegetative Fuel Management Plan (“Plan”) and its associated programmatic Environmental Impact Report (“EIR”) that covers the Hill Campus, including lands that are located within MOFD’s boundary. As part of this Plan, the campus conducted a hazard and risk assessment based on most recent fire science, and has prioritized work accordingly.

Although the University does not disagree with the purpose of this Ordinance, the University maintains that the Ordinance's application to undeveloped lands exceeds MOFD's jurisdiction, and joins in the Park District's and East Bay Municipal Utility District's comment letters, which are incorporated herein by reference. We respectfully request that the Board not adopt this Ordinance, or at least pause its development and consider revisions that would comply with state law and avoid subjecting property owners within MOFD boundaries to multiple fire-reduction plans with inconsistent practices and requirements.

Meanwhile, even if MOFD had the legal authority to impose this Ordinance on undeveloped land, it is important to note that MOFD would not have jurisdiction as to those University-owned parcels within MOFD's boundary. The Office of the State Fire Marshal ("OSFM") has delegated its authority to Designated Campus Fire Marshals to enforce OSFM's fire and building safety regulations in Title 24 and Title 19 at all campuses and properties administered or occupied by the University. (Cal. Health & Saf. Code §§ 13108, 13146(a)(5).) This delegation is effectuated via a Memorandum of Understanding between the OSFM and the Regents of the University of California, the most current being dated May 20, 2015. As such, the University has its own authority to perform hazardous vegetation and fuel management necessary to create defensible space on its undeveloped land as well as within wildland urban interface fire areas. (See, e.g., Title 24, California Building Code, Part 2, Chapter 7A; Title 24, California Fire Code, Part 9, Chapter 49; 19 Cal. Code Regs. § 3.07)

Finally, we wish to note that MOFD's proposed ordinance would also conflict with the University's responsibility to protect critical habitat for the threatened species, Alameda Whipsnake, as addressed in the above-referenced EIR. University property located within MOFD's boundaries is encompassed in critical habitat. Pursuant to Government Code section 51184, land that includes critical habitat for a threatened species is not subject to Government Code section 51182, which requires property owners to maintain fire breaks and conduct other fire mitigation based upon various criteria. Accordingly, compliance with MOFD's proposed Ordinance would directly interfere with state law and the University's requirement to keep this land in its natural state to protect the Alameda Whipsnake habitat.

To conclude, we concur with other public agencies that have noted that MOFD does not have authority to adopt this Ordinance as applied to undeveloped land, and the MOFD also cannot enforce such provisions on University-owned property. We respectfully ask that the Board reject this Ordinance and modify it to exclude undeveloped parcels and its application to the University.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Quiter". The signature is written in a cursive style with a large initial 'S' and a distinct 'Q'.

Sarah Quiter  
Principal Counsel – EH&S  
UC Legal, Office of the General Counsel  
University of California, Office of the President