



September 7, 2021

The Honorable Brian Dahle
Member, California State Senate
State Capitol, Room 2054
Sacramento, CA 95814

**RE: Senate Bill 396 – OPPOSE
As Amended September 3, 2021**

Dear Senator Dahle:

On behalf of the Rural County Representatives of California (RCRC), I am writing to reluctantly convey our opposition to your Senate Bill 396 concerning vegetation management performed by electrical utilities. RCRC is an association of thirty-seven rural California counties, and the RCRC Board of Directors is comprised of elected supervisors from each member county.

RCRC member counties have suffered the lion's share of destruction caused by catastrophic wildfires and experienced most of the state's public safety power shutoff (PSPS) events. We understand the pressing need for utilities to quickly increase the pace and scale of their vegetation management operations to avoid wildfires and PSPS events. With these experiences in mind, we share your overarching objectives: 1) Facilitate utility removal of cut/felled trees at no expense to the property owner; and, 2) Clarify that utilities can access and remove material that may fall onto a power line and which is located outside of the boundaries of their easement. Unfortunately, we are concerned that the September 3rd amendments will substantially increase wildfire risk for many property owners in high wildfire risk areas.

Increased Wildfire Risk from Slash Left On Site. The September 3rd amendments allow utilities to leave slash and woody debris up to a depth of 18" above the ground on the landowner's property, except within 150' of an approved and legally permitted structure that complies with the California Building Standards Code. RCRC has steadfastly supported SB 396's requirement for utilities to remove cut/felled trees upon timely request by the landowner; however, we fear that this new provision will substantially increase the fuel load and wildfire risk for property owners in high-risk areas.

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We understand the need for utilities to enter onto private land to create and maintain required clearances around power lines and to remove problem trees that may come into contact with those lines and ignite a fire. The Pacific Gas and Electric Company's (PG&E) recent post-fire vegetation management work related to the 2020 wildfires resulted in over 100,000 felled trees being left on landowners' properties. Unlike post-fire work done in previous years, the utility did not offer to remove felled trees and instead shifted those costs for transportation and disposal to the landowner. While we appreciate PG&E's concern for the landowner's rights to the felled timber, we note that it is often extremely expensive, if not impossible, for the landowner to remove that material. Where merchantable timber exists, the value of those materials may help offset some of those costs. Unfortunately, many of those trees were cut into unmerchantable lengths last year, thereby preventing landowners from offsetting some of the tree removal costs. For those reasons, we greatly appreciate SB 396's requirement for utilities to remove wood upon request by the landowner.

Unfortunately, the September 3rd amendments move the bill in the wrong direction. Utilities will be cutting/felling large quantities of trees. We acknowledge the need for those removal actions; however, simply leaving the slash and debris on site to dry out and become fuel for the next fire is unacceptable. Far from asking utilities to "vacuum the forest floor," RCRC is concerned that SB 396 allows utilities to leave in place drying combustible woody material, branches, and leaves up to knee depth in areas already at very high fire risk. While we recognize that the 18-inch slash allowance is in place for timber harvest plans, 14 CCR Section 1038 (c)(6)(C) requires timber harvesters to chip, lop, pile and burn, remove or otherwise treat slash to achieve a maximum of 18-inch post-harvest depth with 45 days of treating the area. We remain concerned that given PG&E's recent practice of "wack and stack" and without a similar specification in SB 396, piles of slash will be left untreated on landowner property and create an intended wildfire hazard.

Furthermore, while we appreciate that SB 396 prohibits slash and woody debris from being left within 150' of a structure, this only applies to a "legally permitted structure that complies with the California Building Standards Code [BSC]." This qualifier is very problematic, as it is unclear how crews will be able to determine whether a given structure is permitted, much less whether that structure complies with the BSC. It should be noted that the BSC that applies to a project is generally that which was in effect at the date of construction; however, the bill lacks specificity about which version of the BSC's would apply. Regardless, defensible space requirements do not ONLY apply to "legally permitted structures that comply with the building standards code" – they apply to all buildings and structures in mountainous areas, forest-covered lands, etc. (PRC 4291). As a result, SB 396 could lead to utilities leaving significant fuel loads within the defensible space perimeter of homes and structures. At the very minimum, this should be modified to create a buffer around "any structure that is required to maintain defensible space under any applicable state laws or local ordinances."

Standards for Determining Problem Trees. RCRC previously had comfort that trees would be selected for removal either by an arborist or through use of an arborist developed identification tool. Such a requirement would have established some standards and consistency for determination of which trees should be removed. Unfortunately, removal of that section by the September 3rd amendments means the decision on what trees to remove could be arbitrary and determined by someone without the requisite knowledge. While we understand that CAL FIRE has some oversight of utility tree removal decisions, a requirement to have an arborist or an appropriate tool determine those decisions would both ensure timelier removal of the proper trees as well as alleviate burden from the oversubscribed local CAL FIRE units.

Fails to ensure that notices to landowners satisfy due process requirements. Under existing law, electrical utilities must first provide a landowner with a notice and opportunity to be heard before it may enter on the land to maintain vegetation clearances around utility lines. SB 396 formerly required utilities to provide letters to landowners, but the July 12th amendments allow utilities to provide a “letter, door hanger, or other means of notification” to satisfy the notice requirements. RCRC is concerned about the types of communications that may be utilized and whether they will satisfy traditional due process requirements. At a minimum, the notice provided must be reasonably calculated to apprise the landowner of the action and of the right to exercise an opportunity to be heard.

A note about the Legislature’s intent in repealing provisions of existing law concerning utility liability for damage to trees outside of an easement. SB 396 repeals a provision of existing law stating that the utility line clearance obligations do not exempt utilities from liability for damages to vegetation not covered by an easement. RCRC understands that vegetation outside of the easement may pose risks to utility power lines and could cause a wildfire. It is essential that the utilities have the flexibility to address those hazard trees and abate any nuisances they cause. Utilities should remain liable for any damages resulting from their activities to the landowner’s property and for any trees that are determined to not pose a risk to utility assets. At the same time, utilities should not be liable for trespass or for conversion (or treble damages) for the removal of hazard trees located outside the easement, provided that the utility first provides the required notice. We have been told the Legislature’s intent is to reduce confusion and barriers to effective utility vegetation management and not to substantively change the law relating to liability for collateral damage or negligence resulting from vegetation management operations undertaken in compliance with existing law. It is important to highlight this intent to guard against others imparting new meaning to the detriment of injured landowners.

For these reasons, it is with deep regret that we must oppose SB 396. If you should have any questions, please do not hesitate to contact me at jkennedy@rcrcnet.org or (916) 447-4806.

The Honorable Brian Dahle
Senate Bill 396
September 7, 2021
Page 4

Sincerely,

A handwritten signature in blue ink that reads "John Kennedy". The signature is written in a cursive style with a large, looping "J" and "K".

JOHN KENNEDY
Legislative Advocate

cc: The Honorable Chad Mayes, Member of the State Assembly
Members of the California Assembly
Michael Jared, Consultant, Assembly Natural Resources Committee
Kellie Smith, Consultant, Assembly Utilities & Energy Committee
Jennifer Galehouse, Consultant, Assembly Appropriations Committee
Gregory Melkonian, Consultant, Assembly Republican Caucus
Kirstin Kolpitzke, Consultant, Assembly Republican Caucus