

BOARD OF FORESTRY AND FIRE PROTECTION

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Staff Update Report:
Utility and Public Agency Right-Of-Way Exemption Amendments
November 3, 2020

The Forest Practice Act (Act) authorizes the Board of Forestry and Fire Protection (Board) to provide an exemption from all, or portions, of the Act for the cutting or removal of trees for the purpose of constructing or maintaining a right-of-way for utility lines (PRC § 4584(a)) and prohibits a public agency from being required to submit a timber harvesting plan or file an application for conversion with the board where the purpose of its timber operations is to construct or maintain a right-of-way (PRC § 4628(a)). While the Board's current regulations identify that such activities are exempt from conversion permits and timber harvest plans per 14 CCR §§ 1104.1(b) and (c), other regulations (or lack thereof) related to these exemptions lack clarity and maintain the potential for significant issues related to that lack of clarity.

In June of 2020, the Board's Joint Committee began development of a potential regulatory solution to address these issues through the revision of the conversion exemption regulations within § 1104.1 *et al.* The revisions to the regulations are intended to create standardized regulatory methods for disclosure of these specific, exempt, timber operations, while providing reasonable operational conditions that are consistent with other analogous operations within the rules and which will allow the necessary work of constructing and maintaining utility and public agency right-of-ways to occur in a manner which mitigates environmental impact. In October, Board staff conducted a regulatory workshop to discuss these amendments, which received attendance and participation from a wide variety of stakeholders from public agencies, utilities, the forest products industry, professional foresters, landowners, and other stakeholders.

Following those October workshop discussions, Board staff has revised the potential regulatory amendments to include and address the feedback received during the workshop in order to best achieve to the intent of the potential action. The workshop did not, however, discuss all outstanding issues related to the potential action, and the revisions, as well as those outstanding issues, are both summarized and discussed below in broad categories:

Maintenance of Existing Less than 3-acre Conversion Regulations

Many workshop participants requested that the existing neighborhood notification requirements of § 1104.1(a)(3) be maintained as it has proved to be a cost-effective and functional method of public disclosure for these potential projects and has allowed agencies to review potential issues in a timely manner. These requirements have been maintained as § 1104.1(g)(12) (line 14 p19 through line 8 p20) and the requirement of a Confidential Archaeological Letter has been eliminated (lines 9-12 p 20).

Discussions within the workshop identified that previous regulations for slash treatment on less than 3-acre conversion exemptions required treatment of all slash (as identified) and woody debris in order to accommodate the bona fide intent to use the timberland for an alternative use. Under the previously proposed regulations, that material may only require treatment to 18 inches if no structure is present. Workshop attendees indicated that the existing requirements for treatment were

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satisfactory and resulted in conditions of reduced fire hazard following notice of conversion exemption timber operations. These requirements have been retained, though simplified through the elimination of pine brood material requirements, within §1104.1(g)(4) (lines 13-18 p 14). Previously proposed slash treatment standards for this exemption have been eliminated (lines 7-18 p 16).

Site Preparation within Less than 3-acre Conversions

Existing requirements for less than 3-acre conversion exemptions within §1104.1(a)(6) require a Timberland owner provide certain documentation related to the extent of vegetation removal and site preparation required for conversion. Given that a less than 3-acre conversion exemption can only be accepted with a bona fide intent to convert land to a non-timber growing use, requirements related to preparations for natural or artificial regeneration of trees may be inconsistent with this intent. This language has been eliminated from § 1104.1(c)(4) (line 21 p 10).

ROW Exemption Slash Treatment Requirements

Proposed amendments within § 1114(f)(3)(A) require that fuel treatment surrounding certain structures occur within 45 days from the start of Timber Operations. Many commenters within the workshop identified this as a potential issue for long or large ROW exemptions which conduct operations in a rolling or staggered fashion across the exemption area. While the intent of the provision is to achieve timely treatment of fuels in high-hazard areas, the 45 day requirement may be overly burdensome due to these operational considerations and the provision has been amended to require treatment within 45 days following the date of the fuel creation (lines 16-17 p 32).

Agency Notification on ROW Exemptions

Several agencies expressed concern over the proposed provision of § 1114(d) which required CAL FIRE to provide certain agencies with a copy of the submitted notice of ROW exemption prior to the tentative date of commencement of timber operations. Agencies are concerned that this provides a vague requirement for distribution related to timing and does not provide for adequate awareness of ROW exemption activities. The proposed rule text has been modified to require CAL FIRE to distribute copies of submitted notices of ROW exemptions to those specific agencies upon receipt of that notice (lines 17-19 p 31). This requirement has also been made applicable to the receipt of the work completion report as required by proposed § 1114(f)(12) (lines 11-13 p 35).

Danger Tree Inspection Schedules

The proposed amendments provide that one of the criteria for a Danger Tree is “one or more structural defects that make the tree susceptible to a risk of failure prior to the next regularly scheduled inspection”, however the proposed amendments do not include any requirements for disclosure or other means of knowing or enforcing such an inspection schedule. In order to address this enforcement issue, assessment requirements related to inspection schedules have been eliminated from the proposal (line 10 p 2).

Mapping of <3-acre and ROW Exemptions

The proposed amendments required mapping to a scale of “1:10,000 or larger”, which is technically an uncommon scale. The scale requirements have been revised to “at least 1:12,000” which provides a much more common and standardized mapping scale (line 1 p 30, and line 1 p 12).

CAL FIRE has requested that additional file formats and projections and datums be added to the list of geospatial information that an applicant may consider submitting along with a notice of conversion exemption timber operations (lines 7-8 p 30, and lines 6-7 p 12).

OUTSTANDING ISSUES

Clarity Related to “Public Safety” Operations Within WLPZ

The issue has been raised by numerous stakeholders that the provision of § 1114(f)(5)(C), which allow timber operations which are conducted for public safety for public agency and utility ROW exemptions within a WLPZ, may lack clarity regarding exactly what those operations may entail. During the workshop, neither public agency nor utility representatives provided additional clarification or examples of what type of operation may be necessary for public safety and the potential issue remains unaddressed. It should be noted that this provision is identical to those of § 916.9 [936.9, 956.9](s), which provide the same allowance for timber operations in watersheds with anadromous salmonids.

Clarity Related to a Public Agency or Utility ROW in an area with an Habitat Conservation Plan (HCP)

CAL FIRE had previously identified a potential issue where lawful timber operations conducted under a public agency or utility ROW exemption within timberlands covered under an HCP may result in violations of that HCP. The true scope and scale of the problem has not been identified by CAL FIRE or any other party at this time and the potential issue remains unaddressed.