



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Habitat Conservation Planning Branch
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



March 25, 2021

Mr. Matt Dias, Executive Officer
California Board of Forestry and Fire Protection
PO Box 944246
Sacramento, CA 94244-2460

FOREST PRACTICE RULE PLEAD FOR UTILITY RIGHT-OF-WAY PROJECTS

Dear Mr. Dias:

California Department of Fish and Wildlife (CDFW) has reviewed the Board of Forestry and Fire Protection's (Board) rule plead proposing changes to the California Forest Practice Rules (Rules) relating to utility right-of-way vegetation management operations (Cal. Code Regs., tit. 14 § 1104.1). The following comments regarding this rule proposal reflect CDFW's verbal comments at prior Joint Committee meetings.

CDFW acknowledges the need for a quick and efficient process to allow utilities to manage vegetation that poses a risk of impacting electrical infrastructure. However, CDFW is concerned the proposed rule does not account for the increased scale and adverse impacts of these activities and the need for Agency oversight. Based on the observed increase in the number of projects using the exemption, the increase in acreage of the projects submitted under the exemption, and the increase in the intensity of activities executed under the exemption, CDFW is requesting changes to the proposed rule plead language.

Background

From 2015 to 2017, the number of utility right-of-way exemption projects submitted, and the total area covered by those projects, increased dramatically:

- 2015: 36 projects, 718 total acres
- 2016: 229 projects (500% increase), 11,381 total acres (1548% increase)
- 2017: 317 projects (38% increase), 476,167 total acres (3925% increase)

Projects since 2017 have remained consistent in size and number. This increase in project volume and size results in submitted plans that often cover entire electrical circuits, encompassing up to thousands of acres across a high number of land parcels and owners. The notifications for these projects lack the depth of disclosure and analysis generally required for projects of this scale needed to determine where activities with a high level of potential impacts are taking place. The current and proposed Rules are insufficient to account for the scope and magnitude of these larger operations.

In addition to the large amount of land covered by these projects, in-field observations from CDFW staff indicate the intensity of these operations have also significantly increased. In the

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past, utility vegetation management activities were dominated by tree trimming and removal of entire dead or dying trees. Trimming encouraged retention of trees with high wildlife value, avoided take of nesting birds, reduced ground disturbance, and helped maintain the habitat structure within and on the edges of the maintenance corridors. In recent years, utility-related vegetation management has increased the designation and removal of Danger Trees, including large old-growth trees growing outside the 200-foot right-of-way with the potential to fall into the utility maintenance corridor. Observed tree removals have occurred on downslopes where the possibility of falling into the maintenance corridor is negligible. Impacts on natural resources associated with tree removal operations have increased as well. These include negative impacts on vegetation health following mechanical mastication of undergrowth, increased sediment-laden runoff and soil washdown due to heavy machinery used on steep slopes without sufficient erosion controls, and the creation of additional hazards caused by the build-up of slash and logs left behind following timber operations.

As a trustee agency, CDFW needs to perform oversight on projects with a high level of potential impacts, but the timing associated with these notifications makes it difficult to do so. The current language of the rule states that CAL FIRE must provide CDFW with copies of the notification prior to the tentative date of commencement of Timber Operations. The rule plead amends this to providing CDFW with copies upon CAL FIRE's acceptance of the notice of conversion. Both timeframes leave little time, often less than five business days, to review these projects and provide input and guidance to project proponents regarding CDFW concerns, including the California Endangered Species Act (CESA) and Lake and Streambed Alteration permitting requirements. Given the trend of increasing number, size, and scope of these projects, and the lack of detail provided within the exemption notifications, CDFW requests at least five days to review the projects for potential impacts to streams and CESA-listed species prior to CAL FIRE's acceptance of the notification.

Currently, there are no requirements for project proponents to include information on activities that may result in significant impacts. Common activities associated with these projects include: tree removals or heavy equipment usage within the Watercourse and Lake Protection Zone (WLPZ); removal of whole stands of trees, resulting in potential habitat loss; and removal of large trees outside of the 200' right-of-way.

Recommendations

Given the many concerns listed above, CDFW recommends the following changes be made to the rule package:

- Inclusion of a size cap on proposed projects to provide specificity as to the area of potential impact. This could be one standardized size cap, a tiered approach based on the intensity of the project, or a requirement to limit the notification to areas where operations will happen rather than entire circuits.
- Stricter training and qualification requirements for contractors (not Registered Professional Foresters) that are responsible for timber marking to ensure that only trees which meet the definition of Danger Tree are being removed. This could include requirements that tree-marking contractors have a forestry degree or previous forestry experience, a requirement for extensive training on how to

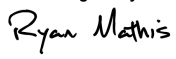
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determine whether a tree is at risk of falling towards infrastructure on a species-by-species basis, and a requirement for a Registered Professional Forester to review all work in the field to ensure quality control.

- Stricter training and qualification requirements for tree crews performing tree removals to ensure that the Forest Practice Rules, Fish and Game Code, and other resource protection rules are being observed.
- More pre- or post-project reporting requirements, including monitoring, when substantial tree removals are occurring in areas that may have significant biological resource impacts (e.g., near watercourses, wildlife trees during nesting season, rare and endangered species habitats).
- A requirement for CAL FIRE to provide CDFW and other sister agencies with copies of the notification upon receipt, rather than approval, to maximize time for project review.
- Make notification data requirements consistent with California Public Utilities Commission Wildfire Safety Division data standards.
- Require post-project data reporting to support inspection and monitoring, including the location of tree removals; number, size, and species composition of trees; roads used; and skid trails created for access.

CDFW thanks the Board for the opportunity to provide comments and we look forward to working with the Board on this topic. If you have questions about this letter or would like further information, please contact Ms. Isabel Baer, Timberland Conservation and Native Plant Program Manager, at (916) 203-3193 or isabel.baer@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Jeff Drongesen, Branch Chief
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cc: J. Keith Gillless, Ph.D., Chair
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