



RURAL COUNTY REPRESENTATIVES
OF CALIFORNIA

March 5, 2024

Edith Hannigan
California Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

RE: Utility and Public Agency Right of Way Exemption Amendments

Dear Ms. Hannigan:

On behalf of the Rural County Representatives of California (RCRC), we appreciate the opportunity to provide these comments on (and raise serious concerns about the consequences of) the Utility and Public Agency Right of Way Exemption Amendments currently being discussed by the Management Committee. RCRC is an association of forty rural California counties and the RCRC Board of Directors is comprised of elected supervisors from each of those member counties.

RCRC believes utility vegetation management is a crucial tool to reduce wildfire risk and improve energy reliability. Our communities have long suffered from wildfires and the resulting power outages intended to reduce the risk of utility-caused wildfires. As such, we are interested in efforts to facilitate utility vegetation management for the safe, continuous delivery of power while establishing durable expectations for utilities and impacted landowners. Unfortunately, as currently drafted these proposed amendments will exacerbate many of the widespread public safety issues related to utility vegetation management practices our counties have struggled with over the last several years.¹

RCRC appreciates the Board's attempt to clarify the definitions of "timberlands" and "timber operations" and to establish an easier-to-navigate process for utility vegetation management work. As an initial matter, we agree with the Board Staff Report that utility vegetation management operations are subject to the Forest Practice Rules and that the Board exercises concurrent jurisdiction over such matters with the California Public Utilities

¹ Our counties have been struggling with public safety impacts caused by poorly conducted utility vegetation management operations since 2020. The specific nature and circumstances of the problems have changed over the last four years, but the overarching concern has been the hesitancy and/or unwillingness of a regulated utility to remove trees and branches cut during utility vegetation management operations. Felled logs left in place can create a host of safety risks for property owners, firefighting personnel, and communities. As felled trees dry out, they increase the fuel load, thereby exacerbating the risk and severity of wildfires. Other risks include trees rolling down slopes into roads, thereby impeding emergency access and egress as well as normal traffic flow.

Commission (CPUC). We have very strong objections to aspects of the Board's proposal that will increase fire risk and shift risks, costs, and mitigation obligations onto property owners for actions undertaken by utilities to deliver power to their customers.

Proposed Regulations Create Mistaken Impression that Utilities Can Leave Felled Wood In Place Regardless of Underlying Laws or Safety Impacts

RCRC objects that the draft amendments give the impression that utilities will be free to leave felled wood in place both inside and outside of the utility right-of-way, regardless of the safety hazards or fuel risks created. Additionally, the draft amendments appear to leave utilities with the mistaken impression that they may leave felled wood within public rights-of-way, which would constitute a public nuisance per se. Even outside public rights-of-way, landowners have often been impacted by utility vegetation management practices that create significant public and private nuisances because of the manner in which contractors have created safety, access, and egress problems by leaving woody debris in place.

Trigger for How Felled Wood Must Be Managed Is Too Narrow and Compromises Landowner Efforts to Maintain Defensible Space

As initially proposed in January, the draft Utility and Public Agency Right of Way Exemption Amendments would have established different management standards for materials left within 150' of an "approved legally permitted habitable structure." We appreciate that the March revisions change that trigger to an "approved legally permitted structure;" however, we object that this trigger is still too limited and ignores the scope of defensible space obligations contemplated by the Legislature. Public Resources Code Section 4291, which sets forth minimum defensible space obligations, requires landowners to maintain defensible space around all structures, not just those that are approved or legally permitted. Not all structures require permits, e.g. sheds, detached garages, animal enclosures, etc. Property owners still have to maintain defensible space around those structures regardless of whether they had to seek (or obtained) a permit. Similarly, there are cases where dwellings and other structures were built without obtaining the necessary building permits. From a practical standpoint, utilities will not readily know which structures are legally permitted and it would be too onerous to obtain such information.

To address these concerns, we strongly urge the Board to: 1) Modify the "trigger" proposed in 14 CCR 1114 (f)(3) from "approved legally permitted structure" to "structure"; and, 2) Ensure that utilities must remove any felled wood that may pose a risk to safety, access, or egress.

De Minimis Exemption Creates Safety Risks and Inappropriately Impairs Landowner Ability to Maintain Defensible Space Obligations

We appreciate that the Board is interested in finding ways to simplify the process for conducting routine vegetation management work within utility rights-of-way and revisions to the March draft that establish safeguards on where and what types of activities can occur. At the same time, we strongly object to relieving utilities from having to manage felled wood within those rights of way, especially when those rights of way may run through the landowner's defensible space perimeters. Utility vegetation management within the right-of-

way is not limited to clearing brush and saplings, but often results in the removal of large trees.

The landowners who would be impacted by this de minimis exemption are often older adults, many of whom live on fixed/low incomes such that they are physically and financially incapable of managing the felled wood and residue left on their properties. Over the last several years, some landowners (and local governments) spent considerable resources to comply with PRC 4291 defensible space requirements. In some cases, property owners who passed defensible space inspections failed subsequent inspections because of trees cut down and left in place by PG&E vegetation management crews.

For these and other reasons, we also have very serious concerns about suggestions made in the January Management Committee meeting that the existing utility rights-of-way should be enlarged.

To address these concerns, we strongly urge the Board to impose the same management standards established in proposed 14 CCR 1114 (f)(3) on vegetation management conducted under any de minimis exemption.

Post-Harvest Depth Changes

The revised draft for the March Management Committee meeting removes a requirement that slash from utility vegetation management activities must be treated to a post-harvest depth of 18 inches above ground. We suggest careful evaluation of whether this change will increase or decrease fuel loads and risks in what are already considered to be high fire risk areas of the state. Without the changes to the scope of “structures” outlined above, we fear this elimination will allow utilities to leave significant quantities of fuel in place within a landowner’s defensible space perimeter, including directly adjacent to structures.

Changes to Definition of “Danger Tree”

RCRC appreciates the need to remove danger trees to ensure they do not fall on powerlines. We are still evaluating proposed modifications to the definition of “danger tree” and would appreciate the Board providing more clarity about what its intended objective is. Simply speaking, a “danger tree” exists merely because of the inherent risks it poses – its existence does not depend upon identification by a registered professional forester, designee, or arborist.

Existing Landowner Notification Requirements

To avoid any uncertainty in the future, RCRC notes that utilities are still bound by the requirement in Public Resources Code Section 4295.5 to provide the landowner notice and an opportunity to be heard before entering onto that persons land and pruning trees to maintain line clearances.

Board Should Convene a Utility Vegetation Management Practice Working Group

Finally, RCRC appreciates and supports PG&E’s suggestion that the Board put together a Utility Vegetation Management Practice working group. We strongly suggested that the California Public Utilities Commission (CPUC) do something similar given the scope

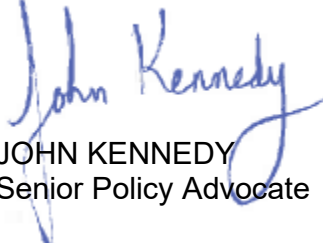
of proposed changes to utility vegetation management practices and accountability contemplated in this proceeding and in the CPUC's revisions to General Order 131-D. We believe this working group should include the Board of Forestry, CPUC, CAL FIRE, California Office of Energy Infrastructure Safety, utilities, local governments, and fire protection agencies. This working group should be charged with discussing, evaluating, and establishing best management practices and expectations for utility vegetation management operations. Those suggestions could (and should) then be integrated into the Forest Practice Rules and the CPUC's General Orders 95 and 131.

Conclusion

In closing, we agree that greater certainty and clearer expectations are needed for utility vegetation management – especially in high fire risk areas of the state. We appreciate the Board's interest in facilitating utility vegetation management, but strongly object to any changes that impose public safety or wildfire risks, frustrate local wildfire risk reduction programs, or interfere with property owners' efforts to maintain defensible space. While changes to the Forest Practice Rules may be appropriate, the Board should avoid changes that create regrettable consequences by shifting risks, costs, and mitigation obligations to local governments and property owners.

If you should have any questions, please do not hesitate to contact me at jkennedy@rcrcnet.org.

Sincerely,



JOHN KENNEDY
Senior Policy Advocate

cc: Chris Chase, Management Committee Chair
Liz Forsburg-Pardi, Management Committee Member
Dawn Blake, Management Committee Member