



Cal OES
GOVERNOR'S OFFICE
OF EMERGENCY SERVICES

TREE MORTALITY TASK FORCE

REGULATIONS WORKING GROUP

DRAFT

Guidelines for High Hazard Zone Tree Removal

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Guidelines for High Hazard Zone Tree Removal Pursuant to 10-30-15 Emergency Proclamation

*“California is facing the worst epidemic of tree mortality in its modern history,”
“A crisis of this magnitude demands action on all fronts.”*

Governor Jerry Brown

A. Introduction

1. The following are guidelines to assist in the implementation of Governor Brown’s October 30, 2015 Emergency Proclamation (EP) for dead/dying tree removal in High Hazard Zones (HHZs),
https://www.gov.ca.gov/docs/10.30.15_Tree_Mortality_State_of_Emergency.pdf
2. CAL FIRE’s authority to issue emergency guidelines that establish relevant criteria for removal of dead/dying trees from High Hazard Zones is provided by EP Directive 2:

State agencies, utilities, and local governments to the extent required by their existing responsibilities to protect the public health and safety, shall undertake efforts to remove dead or dying trees in these high hazard zones that threaten power lines, roads and other evacuation corridors, critical community infrastructure, and other existing structures. Incidental vegetation such as shrubs that restrict access for safe and efficient removal of the dead and dying trees also may be removed. The Department of Forestry and Fire Protection shall issue emergency guidelines setting forth the relevant criteria, and the California Conservation Corps shall assist government entities in implementing this directive to the extent feasible.

3. These guidelines shall apply to the removal of dead or dying trees in High Hazard Zones as identified under Directive 1 of the EP. CAL FIRE has identified High Hazard Zones (hereafter “HHZs”) for wildfire and falling trees in maps available online at <http://egis.fire.ca.gov/TreeMortalityViewer/>. The definition of dying trees is set forth in Section B.5.

B. Regulation of Tree Removal Under the Forest Practice Act

1. The State’s Forest Practice Act and implementing regulations apply to all commercial timber operations (i.e. the cutting/removal of timber or other solid wood forest products from timberland for commercial purposes). (Public Resources Code section 4527). Even though the EP provides CEQA relief for projects undertaken or approved by State/Local agencies, in addition to any permit required under the Forest Practice Act, landowners may still need to obtain other permits for tree removal activities in HHZs; these permits may include a: *Report of Waste Discharge* (CA Water Code section 13260(a)), *Lake and Streambed Alteration Agreement* (Fish and Game Code section 1600 et seq.), and possibly an *Incidental Take Permit* (Fish and Game Code section 2081).
2. The Forest Practice Act and implementing regulations only apply to the cutting or removal of timber or other solid wood forest products for “commercial purposes,” including for sale, barter, exchange, or trade, or during the course of converting timberland to another use. Accordingly, the following applies for dead and dying trees in a HHZ:

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- a. A property owner may cut and/or remove the trees, and if the property owner does not receive any compensation for the trees, this is not subject to the Forest Practice Act.
 - b. If state agencies, utilities or local governments cut and/or remove the trees (whether from public or private property) and no compensation is provided for the trees, this is not subject to the Forest Practice Act.
 - c. If another party (not the property owner) cuts and/or removes the trees, and does not receive any compensation for the trees, it is not subject to the Forest Practice Act, even if the trees may later be processed and offered for sale, barter, exchange or trade by a third party.
 - d. If another party (not the property owner) cuts and/or removes the trees, and the property owner does not receive any compensation, that other party is responsible for determining whether the activity is for commercial purposes and for complying with any applicable requirements of the Forest Practice Act.
 - e. "Compensation" would include money, goods, services, or other consideration. The cutting and/or removal of dead or dying trees from a landowner's property shall not be considered a form of compensation.
3. a. In instances where cutting and/or removal of dead or dying trees in HHZs does constitute timber operations subject to the Forest Practice Act, exemptions from the Timber Harvesting Plan (THP) requirement may apply. These are set forth in 14 Cal. Code of Regs. 1038. These exemptions require filing a Notice of Exemption with the Regional CAL FIRE office (see Exhibit A for Regional Office addresses). 14 Cal. Code of Regs. 1038.2 sets forth the information required in the Notice. All timber operations are subject to the operational rules implementing the Forest Practice Act, including those requirements specific to the exemption, and must be conducted by Licensed Timber Operators. Some exemptions must be prepared by a Registered Professional Forester. Some of the relevant exemptions include:
 - i. 14 Cal.Code of Regs. 1038(b) – Exemption for dead, dying or diseased trees in amounts less than 10 percent of the volume per acre.
 - ii. 14 Cal.Code of Regs. 1038(c) – Exemption to reduce flammability and maintain a fuel break around structures. Requirements are different for cutting within 150 feet of a structure and within 300 feet of a structure.
 - iii. 14 Cal.Code of Regs. 1038(d) -- Exemption for dead trees in amount more than 10 percent of the volume per acre when the trees are

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unmerchantable as sawlog-size timber and are harvested from substantially damaged timberlands.

- iv. 14 Cal.Code of Regs. 1038(k) – Exemption for dead or dying trees in response to drought related stress. This is currently an emergency regulation, but a Board of Forestry and Fire Protection rulemaking proceeding is underway to make it permanent.
- a. Additional exemptions from the Timber Harvesting Plan requirement for right-of-ways and utilities are found in 14 Cal.Code of Regs. 1104.1. A Public Agency, Public and Private Utility Right of Way Exemption Notice is required. See form at: http://calfire.ca.gov/resource_mgt/resource_mgt_forestpractice_harvestingforms
 - i. Right-of-Ways: 14 Cal.Code Regs. 1104.1(b) is an exemption for maintenance of right-of-ways by a public agency on public property.
 - ii. Utilities: 14 Cal.Code Regs. 1104.1(c) is an exemption for clearing trees by a utility for maintenance and repair of the utility equipment and right-of-way, subject to specific right-of-way width limits.
- b. For more information regarding permitting options for commercial timber operations that are focused on the removal of dead or dying trees, refer to the document “Fuel Hazard Reduction Permit Options,” available at: http://www.fire.ca.gov/resource_mgt/resource_mgt_fuelhazardreduction
4. Landowners engaged in non-commercial removal of dead/dying trees in HHZs should consult with representatives from the Department of Fish and Wildlife to ensure no threatened or endangered species may be impacted, and to determine the need for a Lake or Streambed Alteration Agreement. .
5. Non-commercial cutting and/or removal of dead or dying trees pursuant to the Emergency Proclamation does not require a water quality permit.
6. The Board of Forestry and Fire Protection has provided a definition of dying trees as described under Title 14, California Code of Regulations, Section 895.1:

Dying Trees means trees which exhibit one or more of the following: fifty percent or more of the foliage-bearing crown is dead or fading in color from a normal green to yellow, sorrel, or brown, excluding normal autumn coloration changes; successful bark beetle attacks with indications of dead cambium and brood development distributed around the circumference of the bole; seventy-five percent or more of the circumference of the lower bole is girdled by wildlife; or trees designated by an Registered Professional Forester (RPF) as likely to die within one year.

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7. To determine if a tree should be felled, it should be examined at the base for stability; for current insect attack, frozen needles, and degree of greenery remaining, if any. All are indicators of a dead, dying and hazardous tree. If greater than fifty percent or more greenery remains, absent other imminent mortality or structural hazard issues, the tree could be considered a lower priority for future routine review. Removal of incidental vegetation shall be allowed when it is necessary for the safe and efficient removal of dead or dying trees. CAL FIRE foresters may be consulted to determine the necessity for removal of incidental vegetation.

C. Tree Removal Guidelines for Non-Commercial Timber Cutting and/or Removal

1. Tree removal shall be consistent with state agency, utility, or local government responsibilities to protect public health and safety.
2. If State or Public funds are used to assist tree removal activities in HHZs, project information should be provided to the CAL FIRE - Cal MAPPER database, USFS - Forest Service Activity Tracking System (FACTS), or similar geospatial database made available to all stakeholders.
3. Tractor or heavy equipment operations should not be conducted on slopes greater than 50%.
4. Tractor roads should not be constructed on slopes greater than 40%.
5. Tractor or heavy equipment operations should not be conducted on known slides or unstable areas.
6. New road construction or reconstruction should not be beyond 600 feet.
7. Heavy equipment operations should not be conducted within the standard width of a watercourse or lake protection zone, except for maintenance of roads and drainage facilities or structures.

Watercourse and Lake Protection Zone (WLPZ) means a strip of land, along both sides of a watercourse or around the circumference of a lake or spring, where additional practices should be undertaken for protection of the quality and beneficial uses of water, fish and riparian wildlife habitat, other forest resources, and for controlling erosion. The following table may be used to identify the standard width of a WLPZ:

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Procedures for Determining Watercourse and Lake Protection Zone Widths				
<u>Water Class</u>	<u>Class I</u>	<u>Class II</u>	<u>Class III</u>	<u>Class IV</u>
Characteristics or Key Indicator Beneficial Use	1) Domestic supplies, including springs, on site and/or within 100 feet downstream of the operations area and/or 2) Fish always or seasonally present onsite, includes habitat to sustain fish migration and spawning.	1) Fish always or seasonally present offsite within 1000 feet downstream and/or 2) Aquatic habitat for nonfish aquatic species. 3) Excludes Class III waters that are tributary to Class I waters.	No aquatic life present, watercourse showing evidence of being capable of sediment transport to Class I and II waters under normal high water flow conditions after completion of tree operations.	Man-made watercourses, usually downstream, established domestic, agricultural, hydroelectric supply or other beneficial use.
Protection Width	150 feet	100 feet	50 feet	50 feet

8. Dead or dying tree removal within the standard width of a watercourse or lake protection zone should be designed to avoid impacts to riparian and aquatic function, and shall comply with any required Lake and Streambed Alteration Agreement. Dead or dying trees within a WLPZ should be marked by, or under the supervision of, a Registered Professional Forester or certified arborist prior to tree removal operations.

Removal of incidental vegetation within WLPZs should be limited to when necessary for the safe and efficient removal of dead or dying trees. CAL FIRE foresters may be consulted to determine the necessity for removal of incidental vegetation.

9. Known sites of rare, threatened or endangered plants or animals should not be disturbed, threatened, or damaged.
10. All operations must avoid damaging or otherwise disturbing significant archaeological or historical sites. Information on some of these sites may be available from the Information Centers of the California Historical Resources Information System within the Department of Parks and Recreation.
11. Slash treatment should be designed to reduce fire and pest hazards in HHZs, to protect such area from potential insect and disease attack, and to prepare HHZs for natural or artificial reforestation while retaining wildlife habitat. "Slash" means branches or limbs less than four inches in diameter, and bark and split products debris left on the ground as a result of tree removal operations. Treatment of slash created by tree removal within HHZs should be conducted according to the following:
 - a. All slash created by tree removal within HHZs should at a minimum be severed and spread so that no part of it remains more than 30 inches above the ground.

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b. Slash that is piled for burning prior to September 1 should be treated not later than April 1 of the following year, or within 30 days following climatic access after April 1 of the following year. Slash that is piled for burning on or after September 1 shall be treated not later than April 1 of the second following year, or within 30 days following climatic access after April 1 of the second following year.

c. All woody debris created by tree removal activities greater than one inch but less than eight inches in diameter within 100 feet of permanently located structures maintained for human habitation should be removed or piled and burned.

d. Alternatives to treating slash may be appropriate where equal fire protection will be provided. Alternative treatments should consider the estimated amount and distribution of slash to be created by the operation, type of remaining vegetation, topography, climate, and degree of public exposure fire history.

D. CEQA Suspension in the Emergency Proclamation (EP)

1. The EP suspends the requirements of the California Environmental Quality Act, Public Resources Code, Division 13 (commencing with 21000) and regulations adopted pursuant to that Division (CEQA), for purposes of carrying out Directives 1, 2, and 5 through 8 of the EP.
2. For purposes of this guidance, Directive 2 of the EP includes all “actions” necessary to carry out dead or dying tree removal projects that seek to remove dead or dying trees within a HHZ as designated by CAL FIRE, or as may be designated by CAL FIRE in the future pursuant to the EP, that threaten structures, power lines, roads, other evacuation corridors, and/or critical community infrastructure, and therefore pose a risk to public health and safety.
3. Pursuant to Directive 15 of the EP, CEQA is suspended for:
 - a. actions taken by state agencies, including issuance of permits or approvals, to carry out Directives 1, 2, and 5-8 of the EP; and
 - b. actions taken by local government, including issuance of permits or approvals, to carry out Directives 1,2 and 5-8 of the EP, where the state agency with primary responsibility for implementing the directive concurs that local action is required. (See streamlining provisions for this concurrence in # 8 and 9 below).
4. The actions referred to in 3. a. and b. may occur on state, local or private property.
5. Requirements to obtain state and/or local permits or approvals required pursuant to laws, regulations, and/or ordinances other than CEQA are not suspended by the EP, but CEQA requirements relative to those permits or approvals may be suspended.

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6. Local governments acting as lead agencies are encouraged to take advantage of the EP, as well as other existing applicable CEQA exemptions. For instance, to the extent an action is eligible for an independent exemption under CEQA, the entity should include that in its notice of exemption. Such exemptions may include: Public Resources Code section 21080(b)(4) (emergency); and CEQA Guidelines, Title 14, Cal. Code of Regulations, sections 15269 (emergency); 15303 (construction/conversion of small structures and utilities to serve them); 15304 (minor alterations to land); 15307 (actions by regulatory entities for resource protection); 15308 (actions by regulatory entities for protection of the environment).
7.
 - a. For purposes of Directive 2 of the EP, removal of dead or dying trees from HHZs includes treatment, processing and/or transportation of trees that have fallen or were cut, as well as slash generated from those trees, and incidental vegetation (as defined in Directive 2) (collectively “trees”). Treatment or processing includes but is not limited to, lopping, piling and/or burning.
 - b. Actions to carry out Directive 2 also include use of state or local government property, and/or permits or approvals to use private property, as a storage and/or processing site for trees removed from HHZs, where it is intended that at least 50% of trees brought to the location will be from HHZs.
8. For the purposes of Directive 2 of the EP, CAL FIRE concurs that tree cutting, removal, transport, treatment, and/or processing undertaken, permitted, or approved by local government is required, provided that the action is consistent with the Tree Mortality Guidelines. Local government may rely on this blanket concurrence to utilize the CEQA suspension in the EP if it determines that the action is consistent with the Tree Mortality Guidelines, and the local government is not required to contact CAL FIRE for its concurrence.
9. For the purposes of Directive 2 of the EP, CAL FIRE concurs that the establishment and maintenance of storage and/or processing sites undertaken, permitted or approved by local government is required, provided that the local fire official approves use of the site. Local government may rely on this blanket concurrence to utilize the CEQA suspension in the EP if the local fire official approves use of the site, and the local government is not required to contact CAL FIRE for its concurrence.
10. With respect to suspension of CEQA for local government action to carry out Directives 5 through 8, if local government action is required for the activity and the local government determines the activity and the location are appropriate, CAL FIRE concurs that local action is required, and the local government is not required to contact CAL FIRE for its concurrence.

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11. With respect to suspension of CEQA for actions not expressly identified in these Guidelines, local government shall either determine as lead agency whether CEQA applies or alternatively may, where there are questions, contact CAL FIRE to seek concurrence that local action is required.
12. Local government shall maintain a written record of actions to carry out the directives of the EP that utilize the CEQA suspension in the EP. The State intends to establish a website where local government shall report those actions.

E. Burning Wood Waste From HHZs

1. Local governments may undertake or approve burning wood waste from HHZs pursuant to the authorities below, where applicable, or pursuant to any other existing legal authority.
2. Burning wood waste from HHZs is consistent with these Guidelines if the local government finds that no feasible alternative can be implemented before the next fire season following the decision, and the burning will comply with any applicable requirements of the local fire authority, local air district and State Air Resources Board. The CA Professional Firefighters website has an online directory of local fire authorities: <http://www.cpf.org/go/cpf/serving-our-profession/fire-department-directory/>
3. Burning by Local Entity to Abate Fire Hazard:
 - a. Health and Safety Code (HSC) section 41801(e), by incorporating section 13055¹, authorizes a fire protection district, city, county or county fire department to burn waste wood to abate a fire hazard. Similarly, HSC section 41801(a) authorizes burning by a public officer for "prevention of a fire hazard which cannot be abated by any other means."
 - b. Authorization may be sought under these sections for burning wood waste from HHZs conducted by a government entity, but not for burning conducted by a private party.
 - c. To use these authorities to burn wood waste from HHZs, a "public officer" must find that the burning is necessary. For purposes of these Guidelines, a public officer shall find that the burning is necessary only if no feasible alternative can be implemented before the next fire season following the decision.
4. Authorization of Sites Where City or County May Burn Wood Waste: Pursuant to HSC section 41804.5, air district boards may authorize burning wood waste by a city or county at sites above 1,500 feet elevation.

¹ Health & Safety Code (HSC) 13055 provides: "Any public agency authorized to engage in fire protection activities, including but not limited to a fire protection district, city, city and county, or county fire department, the Department of Forestry, and the United States Forest Service, may use fire to abate a fire hazard." (Amended by Stats. 1981, Ch. 714.)

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- a. This authorization may be sought for burning wood waste from HHZs conducted by a city or county (or its authorized agents), but not for burning conducted by a private entity.
 - b. The burning must be authorized by permits issued by the air district and the fire protection agency with jurisdiction.
 - c. The authorization must be approved by the State Air Resources Board. Approvals are granted for a minimum of one year.
 - d. The burning is only allowed on days when agricultural burning is not prohibited by the State Air Resources Board pursuant to Section 41855. (See: <http://www.arb.ca.gov/smp/met/met.htm>)
 - e. The sites currently approved by the State Air Resources Board for burning by a city or county are listed online at: <http://www.arb.ca.gov/smp/dnww/eo/siteeocurrent.htm>
5. Burning Wood Waste on Property Where it Was Grown: Pursuant to HSC sections 41802 – 41804, a local air district board may approve permits for burning wood waste on the property where it was grown to reduce fire hazard.
- a. This approval may be sought for burning wood waste from HHZs by government and private entities.
 - b. The burning must comply with criteria developed by the air district and approved by the State Air Resources Board (HSC section 41804(b)), and is only allowed on days when agricultural burning is not prohibited by the state board pursuant to HSC section 41855 (HSC section 41804(d)). (See: <http://www.arb.ca.gov/smp/met/met.htm>)
 - c. Approvals are governed by any applicable rules and regulations adopted by the district board. (HSC section 41804(e)).
6. For the purposes of Directive 15 of the EP, if the local government determines that burning wood waste from a HHZ is consistent with these Guidelines, then the responsible agency is deemed to concur that local action is required.

F. Log Storage Site Guidelines

1. For purposes of these Guidelines, “log storage sites” includes approved locations where trees, logs, slash and/or incidental vegetation (as described in Directive 2 of the EP) are collected, stored, treated and/or processed. Treating or processing includes, but is not limited to, lopping, piling and/or burning.
2. Local governments are encouraged to identify appropriate locations for log storage sites and expeditiously approve their use for material removed from HHZs during the Tree Mortality Emergency.

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3. U.S. Forest Service and/or Bureau of Land Management property may be available for counties to use as log storage sites, using a categorical exclusion that expedites review under the National Environmental Policy Act (NEPA).
4. A water quality permit is not required to establish a log deck to store dead or dying trees provided the project does not involve 1) earth-disturbing activities such as grading or excavation of land exceeding one acre in area, 2) manufacture involving the trees, or 3) sale of the trees. If the project involves grading or excavation of an area greater than one acre or the manufacture or sale of trees, then the project proponent should contact the [State Water Resources Control Board](#) (“State Water Board”) to determine whether a permit is necessary.
5. An on-site water supply may be required for fire/dust suppression at log decks, storage, and processing facilities.
 - a. Parties should attempt to utilize an existing, authorized source of water. Examples include establishing an agreement to use water from a nearby reservoir or tank, or purchasing a supply from a municipal or private source and having it trucked in.
 - b. Parties interested in understanding existing water rights (water sources) near their project can view the State Water Board online water rights database and GIS at:
http://www.waterboards.ca.gov/waterrights/water_issues/programs/ewrims/
 - c. Parties with questions should review the State Water Board, Division of Water Rights frequently asked questions page:
http://www.waterboards.ca.gov/waterrights/board_info/faqs.shtml
 - d. If an existing, authorized source is not available and parties need to discuss an authorization, they should discuss the issue with the appropriate water right permitting contact listed on the following webpage: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/docs/palcontacts.pdf
6. During the Tree Mortality Emergency, an emergency waiver from applicable regulatory standards or permit terms and conditions is available from CalRecycle to the operator of an existing permitted solid waste facility or locally-approved temporary transfer or processing site, to utilize the site to accept, store and process trees removed from HHZs. See: Emergency Transfer Processing Operations and Emergency Waivers for Solid Waste Facilities, available at: (provide link).

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7. The State Fire Marshal issued Information Bulletin 16-003, dated January 22, 2016 (Exhibit B; available at: http://osfm.fire.ca.gov/informationbulletin/pdf/2016/IB_16-003_-_Guidelines_for_Log_Storage.pdf) to aid local fire authorities and expedite the evaluation and approval of log storage sites. During the duration of the Tree Mortality Emergency, the local fire authority (also referred to as Authority Having Jurisdiction or AHJ) may approve log storage sites pursuant to the authority in Bulletin 16-003.
8. As noted in Bulletin 16-003, the Fire Code allows the local fire authority to approve increases to limits on size of log storage cold decks in the Code, when additional fire protection is provided. (CA Fire Code, 24 Cal.Code of Regs. 2806.2) It also allows increases to pile size. (Id., at 2807.2)
9. Pursuant to Bulletin 16-003, for log storage sites for material from HHZs, the local fire authority may authorize additional modifications to the Fire Code and any applicable regulations, when the ability to comply with the Code is not practical. This includes, but is not limited to, modifications to NFPA 1142, Water Supply for Suburban and Rural Fire Fighting, which was incorporated into the Fire Code.
10. In determining appropriate requirements to mitigate fire danger at proposed log storage sites during the Tree Mortality Emergency, the local fire official shall use rational and sound fire prevention judgment. Bulletin 16-003 lists the factors that the local fire official shall consider in exercising this judgment. (Bulletin, p.2, General Guidelines for Approving Log Storage Sites During the State of Emergency)
11. CAL FIRE/Office of the State Fire Marshal review or approval is not required for modifications that are approved by the local fire official pursuant to Bulletin 16-003 (unless the activity is located on state property).
12. Bulletin 16-003 shall apply to approval of log storage sites where it is intended that at least 50% of the material brought to the site is from HHZs.
13. It remains the local government's responsibility to determine whether fencing and/or other security measures are required for a log storage site, based on the location.
14. Where not already addressed by ordinance, local governments may consider adopting an ordinance, as an urgency measure, to govern approval of log storage areas for material from HHZs during the Tree Mortality Emergency.