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**Sierra Club Utility-Wildfire Taskforce**

**Comments to Members of the Board of Forestry re  
Utility Exemption Permit Draft Plead – January 19, 2021 Draft Document**

J. Keith Gillless, Chair  
Darcy Wheelles, Vice Chair  
Mike Jani  
Rich Wade  
Susan Husari  
Marc Los Huertos  
Katie Del Bar  
Christopher Chase  
c/o Matt Dias, Executive Director

Dear Member of the Board,

We appreciate the opportunity to comment on the Utility Exemption Permit Plead. Improving and clarifying regulations regarding the THP Utility Exemption Permit is a challenging task and we are eager for the opportunity to help inform your decisions regarding the very important revisions under consideration, and to address important aspects of the process that are not being addressed within the document but need your consideration as well.

Those revisions needing additional work include:

1. Revising the definition of who will make the decision, especially regarding qualifications, to declare any tree a Danger tree. This is needed to assure that relevant criteria are adhered to, especially knowledge of tree species and each species' response to wildfire. **Delete "or their Supervised Designee," a far too-broad loophole.** Add qualifications to *Certified Arborist* including knowledge of California native tree species and the response of those trees to fire. (This requirement can be instituted, and then be enforced after a certain amount of time, so that current Arborists may obtain

additional training in those areas. (Generally, Arborist fulfill Continuing Education Units to maintain Certification, so these could be the focus of that process.)

2. As the lead enforcement agency over Timber Harvests and THP Exemptions, formulating long-ignored processes referenced in PUC 4295.5(a), regarding the required “notice and an opportunity to be heard” for landowners -- mandating specific guidelines including a qualified, unbiased, third party administrative hearing, as described below.
3. Also, as referenced in PUC 4295.5(b), providing the processes for landowners seeking “liability for damages” without the need to file a lawsuit, as in #2.
4. The concept of “Right-of-Way” (ROW) inherently provides rights to the landowner as well as the utility; this is the same as for an “easement.” This Permit is a basic definition of the use of a right-of-way by utilities. Any utility only has a limited, specific use for that defined area of land. Even PUC 4293 and PUC 4295.5 do not grant carte blanche tree removals, yet the Plead language grants tree removals far outside a ROW with no CAL FIRE inspection of marked trees prior to harvest. Without inspection of marked trees prior to and after tree removal, any tree may be removed. Utility oversight of its contractors is, from our experience, irregular at best. It is CAL FIRE’s responsibility to inspect tree work to assure its adherence to regulations. It does little good to only inspect after the work is done and all evidence is degraded or removed.

Those unaddressed aspects, that may need additional BOF action outside the Permit Plead, include the following:

1. The ability of CAL FIRE to track and inspect work sites without warning.
2. The recognition and enforcement of landowner rights related to ROW exemptions.
3. The ability of CAL FIRE to receive, track and respond to complaints.
4. Improving the capability for CAL FIRE to investigate and determine noncompliance, and then to file Notices of Violation (NOV’s).
5. Streamlining and expediting the process for CAL FIRE to stop illegal work until remedies have been undertaken and completed, rather than allowing unacceptable work to continue.

### ***Involvement Before and Since CZU Wildfire***

*We are involved in this process because of the crucial importance of the Department of Forestry’s regulatory and enforcement role over utility tree removals. The massive tree-clearcutting undertaken by PG&E in the Santa Cruz Mountains after the CZU Lightning Complex Fire is a disturbing example of egregious disregard for legal procedures and requirements as defined under the Utility Exemption Permit process. PG&E refused, and continues to refuse, to file for an Exemption Permit for the post-fire, post-emergency work within and far outside its ROW, perhaps to avoid having to adhere to harvest regulations. PG&E not only clear-cut the ROW; it also cut thousands of trees far into private property, many (if not most) of which were viable and valuable. **CAL FIRE has justly presented five Notices of Violation (attached) to PG&E and its LTO’s, warning of civil and/or criminal action; the enforcement process is on-going, but the damage has been done, exacerbating the fire’s devastation. The work should have been stopped in October with the first NOV, until PG&E and the LTO’s complied, but they didn’t stop and the most recent NOV was presented February 8, 2021.***

Our involvement, however, started long before the fire. We had been seeking data on all complaints filed against PG&E under its Exemption Permits over the previous two years (2018 and 2019). *The difficulty in gathering that data made us realize that CAL FIRE was apparently dependent on complaints for its enforcement for noncompliance of Utility Exemption Permit regulations. **It appeared that CAL FIRE was generally unable to randomly inspect PG&E or its contractors at work because they did not know specifically where they might be working on any given day.*** (The same issue is a problem for the other enforcement agencies, specifically the Department of Fish and Wildlife and the Regional Water Quality Control Boards; their comments at previous workshops demonstrates that the large size of the area for individual Exemption Permits degrades their ability to oversee the work as it's happening) This weakness in the original process is still lacking with the current Plead – and probably needs to be addressed at the administrative level.

*Without certain knowledge of when and where contractors would be marking or removing trees, the rare landowner complaints provide the only sure way to know if work being done was against WLPF restrictions, or if healthy trees were being cut down, or slash left behind, or if contractors failed to carry the required fire safety equipment. Other enforcement agencies such as DFW and RWQCB are less effective because they cannot readily determine where work is being done, with many Permitted miles of Right of Way to check up on. Finally, since so few property owners are aware that they might complain to CAL FIRE regarding PG&E's work, there have been few citations, so illegal work perseveres.*

*By participating in this process, we were hoping to help assure that CAL FIRE had the data capability upgrades to track the work being done, the personnel to inspect work sites without warning, and the ability to respond to complaints. We sought to enable CAL FIRE to quickly serve negligent utilities -- and their contractors -- with Notices of Violation when necessary; and, then, to require fines be paid under Civil Penalty Order, or, in extreme cases to file criminal indictments. Ideally we hoped that illegal work would be stopped. **None of this is addressed in the Plead but the Board should take steps to be sure that it is addressed through budgeting and providing direction to the staff to increase inspection oversight. This is especially important if the Permit provides utilities with readily manipulated processes.***

*The importance of Exemption Permit oversight was reinforced after CAL FIRE cited PG&E for failure to obtain Utility Exemption Permits for its massive post-fire, post-emergency clear-cutting in the CZU Lightning Complex Wildfire zone in Santa Cruz County. This included five Notices of Violation (NOV's) (attached); after weeks of warning, the first NOV was sent in October, 2020, with the most recent sent to PG&E and its LTO's on February 8, 2021. PG&E and its contractors were still at work cutting down trees while refusing to file for Exemption Permits and failing to comply with THP regulations. They have caused severe WLPZ damage, bulldozed 17 roads, and continue to fail to provide either hearing or damages to property owners while clearing still-living trees far onto private property -- far from its ROW, and leaving behind piles of logs and slash – further burdening those dealing with major losses from the fire.*

*The Coastal Commission and the Regional Water Quality Control Board also presented NOV's to PG&E, and the City of Santa Cruz wrote a letter of complaint. In addition, the Santa Cruz County Board of Supervisors has acted against these "egregious" actions as well. We are aware that this is happening wherever PG&E has responded to wildfire – not just recently, but even still after a decade and more -- such as with the Rim Fire in Tuolumne County. **The need***

***for an effective, enforceable Utility Exemption Permit has become even more crucial than when this Plead process started.***

***We first reached out to Matt Dias in June, 2019, bringing concrete ideas for improving the process, especially upgrading data tracking systems, instituting time and location reporting by PG&E and its contractors, and increasing enforcement inspection staff.*** During those early discussions, we were invited to participate in the revision process, which we readily joined. We were surprised that so many of the changes appeared to empower PG&E and the other utilities to work as they please with less CAL FIRE oversight.

### **Initial Comments**

**We applaud the clear definition of Timber Operations’ “Commercial Purposes,”** expressly defining utilities ROW tree work as “Commercial,” and thus requiring utilities to obtain Exemption Permits to do ROW work, and to adhere to THP regulations when working with trees in Timberland – including post-wildfire.

**The effort to clarify the definition of Danger Trees** was inadequate in the earlier Plead Drafts. It has been improved to include language to reinforce that trimming a Danger tree can be the preferred action. *However, we strongly oppose the addition of “or their Supervised Designee” on page 2, which fatally undermines the intended requirement that only experts (RPF’s or Certified Arborists) be allowed to determine whether a tree is enough of an imminent danger to be marked for removal.*

**We concur that Wildfire Mitigation Plans be excluded** from Danger Tree guideline resources.

**We agree that the (5)(C) “public safety” language from Timber Operations in WLPZ be removed.** Allowing “removal of Danger trees,” is more relevant, but it makes enforcing the correct determination of Danger Trees extremely important. The ongoing case in point, as mentioned above, is that PG&E and its LTO’s are being held liable for civil and criminal Violations, as Noticed by CAL FIRE in the five NOV’s for hundreds of violations under current Permit requirements, in the CZU fire zone. (The Coastal Commission and Regional Water Quality Control Board also filed NOV’s.) The violations are a litany of egregious actions that threaten disastrous environmental consequences to waterways, water supply, land, wildlife and people in the Santa Cruz Mountains and the City of Santa Cruz. Despite PG&E’s claims that trees are being inspected by arborists and identified as Danger trees needing removal, we have both photos and testimony to the contrary. PG&E cut trees far beyond the ROW, deep onto private property – before landowners were allowed access to their properties and since then, without notification or approval. You may remember that removing all trees from within and along the ROW, including healthy, mature trees, was the focus of the 2018 Enhanced Vegetation Management barrage in Santa Cruz County. Private property owners questioned and protested, and the County demanded that threats stop, public meetings be held, and healthy, mature trees be exempted (only redwoods were). Thousands of trees were extracted and thousands more marked for removal. The result was erosion, soil degradation, slope instability, loss of viewshed, decreased property values, wind shear situations, and even the creation of wind tunnels with the potential to exacerbate the spread of wildfire. Had residents on private roads known of the requirements of Utility Exemption Permits, CAL FIRE would have been swamped with complaints.

### **Convenience vs Safety**

Your decisions must in no way undermine on-going CAL FIRE oversight control to prevent unnecessary, arbitrary removal of millions of trees for the convenience of a utility, whether in post-fire areas, or by the various versions of PG&E's unproven "Enhanced Vegetation Management (EVM)." Rather it is necessary to empower and fund increased oversight.

### **Right of Way/Landowner Rights**

**We are also concerned with the loss of any meaning for a "Right of Way," if the Permit allows utilities to remove trees without the knowledge or permission of private property owners and without recourse to their own expert evaluation of the trees.** We see the results of this deficiency even now, but not just in burn areas. In dozens of other regions from the Coast to the Sierras, very few property owners know about Exemption Permits or the protective requirements that utilities should operate under. Due to this lack of knowledge landowners are unable to resist when pressured by contractors to allow the removal of trees that are important to them and their property. *This is untenable; landowner rights could and should be addressed via the Exemption Permit process.*

### **Arborists' Qualifications**

Along with a clearly defined definition of Danger Tree that will help protect trees from being removed simply because of their species or height or natural lean, it is crucial that the qualifications for Arborists specifically include training in, or experience with, California native species. Arborists' qualifications should also include training or experience in the impacts of fire on the viability of native species, to prevent the arbitrary removal of trees that may well be viable and will help prevent erosion and will help restore the fire-damaged forests over time.

### **Summing up**

It is imperative that the Plead include meaningful restrictions to carte-blanche tree-removals far within private property – without the property owners' right to be heard and to damages – and that there be provision for improved oversight by BOF/CalFIRE by requiring notification from PG&E and its contractors delineating where they will be working and what they are planning to do (so that unexpected inspections may be made) -- and if you fail to also support oversight by local, regional and State agencies such as DFW and RWQCB, *then you are failing your mission.* BOF regulations already have far too many exemptions from THP regulations, already allowing the removal of far too many trees without oversight, thus allowing further degradation of watersheds, wilderness areas, scenic viewsheds and water supplies, while exacerbating climate change.

### **Specifics for Landowner Right to be Heard and Compensation for Damages:**

**The addition of (g) at the very end of the Plead indicates that CAL FIRE does acknowledge its obligation to provide for the required opportunity to be heard by those who would object to removal of their trees.** This must be clarified and a process delineated to provide for both being heard, and being provided with compensation for damages by utility tree removals, as required.

We urge that the language on page 43(g) of the Plead, which is currently vague and ambiguous, be improved and clarified. The current language states that, *"A copy of the landowner notification required by PRC §4295.5 and, if not included in that notice, documentation of the corresponding opportunity to be heard shall be provided to the Director, upon request."* This fails to provide any procedure for the landowner to follow.

We propose improved and clarified language as follows:

- 1) BOF must define the form, content, and method of delivery of the PRC §4295.5 required Notice. That is, Advance Notice shall be in a certified letter to each property owner. The content of the letter is to establish a mutually agreeable date and time for an inspection within 30 days of receipt, to assure the landowners' participation.
- 2) Following the inspection, the property owner shall have 30 days to review the proposed utility vegetation management to Consent, further Negotiate, or Refuse (Krieger v. PG&E, 1981 – private property rights).
- 3) In the event an Agreement is not reached, the property owner has the right to an Appeal before a public agency.
- 4) One justification for an Appeal shall be whether subject tree(s) constitutes "Hazard" and "Danger" trees.
- 5) Property owner has a right to demand and receive improvement of affected utility equipment that does not meet industry-wide modern safety standards.
- 6) The concept of a Right-of-Way (ROW) is lost when a utility uses tree-strike distance as a standard for unlimited cutting and entering onto private lands to serve their own purposes, such as the convenience of protect outdated equipment rather than upgrading it to modern safety standards. This constitutes a "Second Taking" – as when a utility has gone beyond the original scope of its easement without having reached an Agreement with a property owner for further expansion.

**We hope you will recognize the importance of our recommendations for improving the language and intent of the Plead.**

**Thank you for the opportunity to share our experiences, research and conclusions.**

Respectfully yours,

Nancy Macy, Chair  
Valley Women's Club's Environmental Committee for the San Lorenzo Valley  
Chair, Sierra Club Utilities Wildfire Taskforce

Attachments: CAL FIRE NOV's

**Note: The Valley Women's Club's Environmental Committee for the SLV**

[www.valleywomensclub.org](http://www.valleywomensclub.org) represents a broad spectrum of residents of the San Lorenzo Valley, Santa Cruz County and the Central Coast. Active for 43 years, the Valley Women's Club of San Lorenzo Valley, Inc. (VWC) is a nationally and State-honored 501-c-3 organization involved in a wide range of community issues and concerns. We network and team with many organizations, nonprofits and involved individuals, while regularly and effectively working with local, state and federal government representatives and agencies. We are founding members of the **Sierra Club Utility-Wildfire Taskforce**, joining many other knowledgeable

property owners throughout California's forested regions who are being damaged financially, environmentally and emotionally by PG&E. PG&E's failure to address crucial infrastructure improvements continues to cause ever more severe wildfires; its feeble Wildfire Mitigation Plans (especially in contrast to Southern California Edison's) fail to address the emergency nature of the situation, leaving it dependent on PSPS for decades to come; and, especially, its myopic, ill-conceived primary focus on Enhanced Vegetation Management. We understand that EVM is now being integrated into PG&E's Regular Vegetation Management Plan, exacerbating the problems. We have thoroughly researched these issues, and have important insights into utility wildfire prevention and how a vegetation focus impacts environmental issues from Climate Change to erosion and slope instability, and from damage to wildlife habitat and scenic vistas to increasing ignition and spread of wildfire.