



915 L Street., Suite 1210
Sacramento, CA 95814
(916) 326-5800
CMUA.org

April 20, 2021

Clerk of the Board
Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

E-mail: publiccomments@bof.ca.gov

Re: California Municipal Utilities Association's Comments on Board of Forestry and Fire Protection's Draft Utility and Public Agency Right-of-Way Exemption Rule Plead

Clerk of the Board,

The California Municipal Utilities Association (CMUA) appreciates the opportunity to submit these comments on the Board of Forestry and Fire Protection's (CalFire or Board) *Draft Utility and Public Agency Right-of-Way Exemption Rule Plead*, dated March 2, 2021 (Draft Rule).

CMUA is a statewide organization of local public agencies in California that provide electricity and water service to California consumers. CMUA membership includes non-profit, publicly-owned electric utilities (POUs) that operate electric distribution and transmission systems in California and throughout the western region of the United States. In total, CMUA members provide approximately 25 percent of the electric load in California. California's POUs are committed to, and have a strong track record of, providing safe, reliable, affordable, and sustainable electric service.

In June of 2020, the Board's Management Committee began to revise regulations that provide an exemption from portions of the Z'berg-Nejedly Forest Practice Act of 1973. Since that date, CalFire has held various workshops and meetings during which the proposed rule changes have been discussed and further modified. CMUA provided verbal comments at many of these meetings and submitted written

comments to the Board on March 31, 2021. In those comments, CMUA suggested changes to proposed language in the Draft Rule. CMUA also asserted that while current statute does not recognize maintenance of existing rights-of-way as commercial timber activity, if CalFire chooses to expand the definition, it should establish a de minimis exclusion for maintenance. CMUA appreciates the opportunity to describe, in greater detail, a potential de minimis exclusion, as requested at the April 6, 2021, Management Committee meeting.

Maintaining an Existing Utility Right-of-Way Is Not a Commercial Timber Activity

The Z'berg-Nejedly Forest Practice Act of 1973 defines Commercial Purposes as follows:

*“Commercial purposes” includes (A) the cutting or removal of trees that are processed into logs, lumber, or other wood products and offered for sale, barter, exchange, or trade, or (B) the cutting or removal of trees or other forest products during the **conversion** of timberlands to land uses other than the growing of timber that are subject to Section 4621, including, but not limited to, residential or commercial developments, production of other agricultural crops, recreational developments, ski developments, water development projects, and transportation projects.¹*

To qualify as a Commercial Purpose, either felled trees must be processed and offered for sale by the utility, or existing timberland must be converted to uses other than the growing of timber. Utility maintenance involves neither of these. Utility right-of-way maintenance work is performed on land that has already been converted and is therefore no longer timberland. Additionally, this maintenance work is not conducted to acquire and process felled trees for sale. As such, CMUA asserts that utility maintenance activity is not a commercial timber activity under the Forest Practice Act.² However, if CalFire chooses to pursue expanding the definition as provided in the Draft Rule, it should recognize a de minimis level of tree removal that would not be classified as commercial timber activity.

¹ Public Resources Code § 4527(a)(2). **Emphasis added.**

² Ibid; In comments to the Board dated March 31, 2021, CMUA offered recommended changes to language in the Draft Rule Plead related to the definition of Commercial Purposes.

A De Minimis Exclusion Would Recognize Planned System Maintenance

California's POU's follow inspection and maintenance schedules that allow them to keep their infrastructure working as designed and minimize safety risks by keeping local vegetation pruned, or removed, as needed. System inspection and maintenance is a carefully planned process in which a utility maps out its infrastructure system and schedules its inspection and maintenance work based on the vegetation, terrain, environmental conditions, vegetation growth rates, and weather. Planned inspection and maintenance schedules can follow a single-year or multi-year cycle and can involve work on private land as well as land owned or managed by the POU or various public agencies.³ By carefully planning this inspection and maintenance process, California's POU's work with a greater understanding of what will be needed in a specific location, thereby minimizing the need for unexpected or unplanned maintenance. During this scheduled inspection and maintenance work, utility crews prune and remove vegetation to address normal growth expected before the next inspection and maintenance cycle. Utility crews also identify and fell hazard or Danger trees that are dead or dying and as a result pose an unacceptable risk to the safe and reliable operation of utility infrastructure.⁴ This work allows California's POU's to meet and exceed local, state, and federal regulatory requirements designed to maintain the State's electric infrastructure to the highest possible safety standards. CMUA members also work under regulations and standards designed to maintain the reliability of critical electricity infrastructure.

CMUA encourages CalFire to develop language that excludes planned system maintenance from any definition of commercial timber activity. As part of such an exclusion, California's POU's can coordinate with CalFire by providing planning information in advance of the maintenance cycles, including location data and expected timelines. CMUA and California's POU's can also work collaboratively with CalFire staff to help develop appropriate language to effectuate such an exclusion.

³ In comments to the Board dated March 31, 2021, CMUA described the various processes that California's POU's follow when working on private land.

⁴ In comments to the Board dated March 31, 2021, CMUA offered recommended changes to language in the Draft Rule Plead related to the identification and removal of Danger or Hazard trees.

California's POUs follow planned inspection and maintenance schedules to satisfy local, state, and federal laws governing safety and reliability and to maintain safe, reliable, and affordable electricity service for their communities. These activities are not designed to acquire commercially desirable timber products and cannot be reasonably interpreted as commercial timber operations. History tells us that California cannot afford to impose rules that may increase the risk of future wildfires or reduce system reliability. CalFire can help reduce these risks by excluding planned inspection and maintenance actions from any definition of commercial timber activity.

Conclusion

CMUA appreciates the opportunity to comment on the Draft Rule and is eager to continue to work collaboratively with CalFire to develop and implement both the proposal offered herein and the suggestions offered in our March 31, 2021, comments.

Respectfully submitted,

/s/

FRANK HARRIS
Manager of Energy Regulatory Policy
California Municipal Utilities Association
915 L Street, Suite 1210
Sacramento, CA 95814
(916) 890-6869
fharris@cmua.org

CC: Matt Días, Executive Officer, Board of Forestry