

State of California

Natural Resources Agency

Memorandum

To: REGION CHIEFS
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ASSISTANT DEPUTY DIRECTORS
UNIT AND PROGRAM CHIEFS
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From: MATTHEW REISCHMAN 
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Subject: **TIMBER HARVESTING DOCUMENTS, TIMBER OPERATIONS ON
TIMBERLAND, LICENSED TIMBER OPERATORS, AND GRANT-FUNDED
PROJECTS.**

Introduction

In response to current forest conditions, the Governor and Legislature have substantially increased grant funding opportunities focused on fuels reduction, fire prevention, and forest health. Through this funding, CAL FIRE sponsors the Forest Health, Urban and Community Forestry, California Forest Improvement Program and Wildfire Prevention grants. The objective of this memorandum is to identify the circumstances in which a Timber Harvesting Plan (THP) or other timber harvest document, and a Licensed Timber Operator (LTO) are appropriate for use in a CAL FIRE grant-funded project.

Environmental Compliance is Required for CAL FIRE Grant Projects.

All work conducted, funded, and/or permitted by CAL FIRE must comply with environmental laws and regulations. The most expansive environmental law within California is the California Environmental Quality Act (CEQA), which requires state and local government agencies to inform decision makers and the public about potential environmental impacts of proposed projects, and to reduce those environmental impacts to the extent feasible. As defined in CEQA, Public Resources Code (PRC) § 21065, "project" means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:

- (a) An activity directly undertaken by any public agency.
- (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
- (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

In short, CEQA compliance is required for all projects for which a public agency has a discretionary action (e.g. provides funding) unless the project activity is exempted by statute.

If an agency determines that a proposed activity is a project under CEQA, and the proposed activity is not within the scope of an existing Programmatic Environmental Impact Report (PEIR), such as the California Vegetation Treatment Program EIR (CalVTP), Chaparral Management, and California Forest Improvement EIRs, among others, it must then follow the CEQA process to:

- (1) **Determine whether the project falls under a statutory or categorical exemption from CEQA;**
- (2) **If the project is not exempt, prepare an Initial Study to determine whether the project might result in significant environmental effects; and**
- (3) **Prepare a negative declaration, mitigated negative declaration, or Environmental Impact Report (EIR), depending on the initial study.**

Each CEQA project has unique requirements for analysis, documentation, public notification, and filing. CAL FIRE may have additional environmental compliance requirements for grant projects. These not only ensure compliance with CEQA but also with other environmental laws and regulations including, but not limited to, the State and Federal Endangered Species Acts and the Porter-Cologne Water Quality Control Act. Details regarding CAL FIRE specific environmental compliance and clearance are presented in grant guidelines created by the Department. Additional information on the types of CEQA documents CAL FIRE uses for non-timber projects may be found on the CAL FIRE website at: <https://www.fire.ca.gov/what-we-do/natural-resource-management/environmental-protection-program>.

Regulation of Timber Harvesting under a Certified Regulatory Program.

Timber Harvesting Plans (THPs) are often referred to as, “functionally equivalent” to an Environmental Impact Report (EIR) because the regulation of timber harvesting by CAL FIRE and the California Board of Forestry and Fire Protection (Board) has been approved as a “Certified Regulatory Program” by the Secretary of the California Natural Resources Agency. This certification exempts the regulation of timber harvest from a portion of CEQA, including the preparation of an EIR. Requirements for a Certified Regulatory Program are set forth in CEQA, PRC § 21080.5, and apply to agencies who adopt or approve standards, rules, regulations, or plans, or involve the issuance of a lease, permit, license, certificate, or other entitlement of use. For timber harvesting regulation, this requirement is met through the Forest Practice Act and Rules.

Harvesting Documents Developed Pursuant to the Forest Practice Act and Rules and their Application to Fuel Reduction Projects.

CAL FIRE is responsible for enforcement of the Forest Practice Act and Rules for conduct of “Timber Operations” on “Timberland” as defined in PRC §§ 4526 and 4527, respectively.

“Timberland” means land, other than land owned by the federal government and land designated by the board as experimental forest land, which is available for, and capable of, growing a crop of trees of a commercial species. Commercial species are defined by the Board of Forestry and Fire Protection and codified in the Forest Practice Rules Section 895.1.

“Timber Operations” means the cutting or removal, or both, of timber or other solid wood forest products, including Christmas trees, from timberlands for commercial purposes together with all the incidental work, including, but not limited to, construction and maintenance of roads, fuel breaks, firebreaks, stream crossings, landings, skid trails, and beds for the falling of trees, fire hazard abatement, and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities, but excluding preparatory work such as treemarking, surveying, or roadflagging.

Commercial purposes include:

- 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 including, but not limited to, residential or commercial developments, production of other agricultural crops, recreational developments, ski developments, water development projects, and transportation projects.

The Forest Practice Act and Rules provide multiple options for permitting the conduct of Timber Operations on Timberland. In most cases the harvest document must be prepared and submitted by a Registered Professional Forester (RPF). A Licensed Timber Operator (LTO) is always required for the conduct of Timber Operations under any harvest document. All Timber Operations conducted on Timberland must comply with all operational provisions of the Forest Practice Act and Rules applicable to a Timber Harvesting Plan. Harvest document types include Timber Harvesting Plans (THPs), Nonindustrial Timber Management Plans (NTMPs), Modified Timber Harvest Plans (MTHPs), Working Forest Management Plans (WFMPs), Program Timber Harvesting Plans (PTHPs – tiered to Program Timberland Environmental Impact Reports (PTEIRs)), Notices of Exemption from the requirement to prepare a THP, and Notices of Emergency for rapid harvest of timber in response to an emergency condition such as a fire, drought, or insect outbreak.

Timber harvest documents are intended to disclose to the Department, and the public, where Timber Operations are proposed to occur, and disclose measures and any mitigations necessary to minimize the potential for environmental impacts from a proposed project. If a project does not propose Timber Operations on Timberland, i.e. buying, selling or trading forest products, or converting Timberland to another use, then it does not fall under the authority of the Certified Regulatory Program for regulation of timber harvesting. In such instances, the use of a timber harvest document is not appropriate.

CAL FIRE’s Forest Practice Program has observed an increasing practice by project proponents of grant-funded fuel reduction projects to utilize timber harvest documents to meet the requirements of CEQA where no Timber Operations on Timberland will occur. The primary harvest document that has been used by these project proponents has been a Notice of Exemption (from the requirement to prepare a THP). The Legislature has created a variety of Notice of Exemption types to provide an efficient means for landowners to conduct Timber Operations on Timberland in compliance with the Forest Practice Act. These Notices of Exemption types are codified in the Forest Practice Rules by the Board as part of the Certified Regulatory Program for the regulation of timber harvesting. For each set of Forest Practice Rules associated with a particular harvest document type, the Board analyzed the impacts as the regulation was being developed.

For this reason, there are a number of Notices of Exemption (from the requirement to prepare a THP) that are expressly intended to support reduction of hazardous fuel conditions through the conduct of Timber Operations. The 0'-150' and 150'-300' Structure Defense Exemptions are intended to support creation of defensible space in proximity to habitable structures. The Forest Fire Prevention Exemption is intended to create landscape-level conditions to promote forest resiliency to wildfire.

The Modified THP for Fuel Hazard Reduction was developed for a similar purpose. The focus of the Emergency Notice for Fuel Hazard Reduction is the reduction of fuel hazard in proximity to critical infrastructure such as ingress and egress routes, communications installations, and water supplies. The common threads through all these harvest document options are vegetative fuels treatment and Timber Operations on Timberland.

The work "incidental" to Timber Operations, as described above, may appear similar to work incidental to other non-timber vegetation treatment project types. However, "incidental" work is only Timber Operations when commercial purposes are occurring. Non-timber vegetation treatment objectives are different, because the cutting and removal of trees for commercial purposes is not being conducted. In these instances, use of a harvest document for CEQA compliance is not appropriate because the Forest Practice Act and Rules do not apply.

License Requirements for Timber Operations and Tree Service Activities.

The Forest Practice Act and Rules require a timber operator license (Licensed Timber Operator (LTO)) when Timber Operations are conducted on Timberland. Unlike other state licenses issued by the California Department of Consumer Affairs Contractors State License Board (CSLB), where there are few parameters in terms of the use of the license, operating under a timber operator license requires the activity to be conducted on Timberland and it requires a harvest document. If an LTO is not conducting Timber Operations on Timberland, then they are not operating under their LTO license. Grant-funded projects and vegetation management that do not propose Timber Operations on Timberland should be utilizing the services of contractors with licenses issued by the CSLB. If Timber Operations are however being conducted, the project will require an LTO and a harvest document issued by CAL FIRE.

While other agencies or institutions may impose a requirement for an LTO, the LTO license issued by CAL FIRE is only valid for Timber Operations on Timberland. Given that the definition of Timberland does not include federal ownership, the LTO license requirement would not apply to federal ownership and therefore is not applicable to federal projects. The commercial general liability and Loggers Third Party Property Damage insurance required for an LTO license may not apply to the activities being conducted under a federal project, or any other vegetation management or grant project that does not include conduct of Timber Operations on Timberland.

Questions regarding the contents of this memo should be directed to Assistant Deputy Director of Forest Practice, Eric Huff at 916-217-8647 and eric.huff@fire.ca.gov, or Staff Chief of Forest Practice, John Ramaley at 916-203-9755 or john.ramaley@fire.ca.gov.