



May 4, 2020

Honorable Chris Lopez
Chair, Monterey County Board of Supervisors
168 West Alisal Street , 1st Floor
Salinas, California 93901
Via email attachment to COB@co.monterey.ca.us

Dear Chair Lopez and members of the Board:

In its letter of November 18, 2019, attached (Letter), the Fire Safe Council For Monterey County (FSCMC) urgently requested that the Board ask Governor Newsom to declare a wildfire state of emergency for Monterey County and suspend state and local laws that interfere with the ability of public and private landowners to prepare for wildfires by reducing accumulations of wildfire fuels to safe levels, with other related requests.

The Board scheduled the Letter for hearing on March 24, 2020. However, FSCMC was asked to agree to withdrawal from the agenda due to the COVID-19 emergency, to which FSCMC agreed.

Our understanding is the Board now has time for hearing non-COVID-19 issues.

Nothing precludes concurrent emergencies.

While the wildfire fuel accumulation problem is critical by itself, media reports quote fire authorities as saying that COVID-19 will increase the threat of wildfires, for example by interfering with the ability of public agencies and private individuals to reduce wildfire fuels, interfering with wildfire suppression due to the threat from close contact between fire fighters during suppression operations, and by increasing danger of infection of wildfire victims in evacuation centers.¹

To be clear, FSCMC is asking that the measures requested in its November 18 letter remain in place until wildfire fuels in Monterey County have been reduced to safe levels, independent of the status of COVID-19. And given that vegetation grows back after thinning, the measures should be implemented as needed to ensure landowners and residents can maintain vegetation at safe levels.

¹ <https://www.latimes.com/california/story/2020-04-03/coronavirus-delays-wildfire-preparations-evacuation-centers-redesigned>;
<https://www.propublica.org/article/climate-change-wont-stop-for-the-coronavirus-pandemic>;
<https://time.com/5821163/coronavirus-wildfires/>;
<https://www.npr.org/2020/04/02/826262157/how-the-coronavirus-could-hurt-our-ability-to-fight-wildfires> (Audio interview.)
<https://www.nytimes.com/2020/03/20/climate/coronavirus-firefighters-wildfires.html>

Just as we have been shown to be unprepared for a readily foreseeable pandemic like COVID-19,² we are unprepared in Monterey County for wildfire under conditions like those that recently caused catastrophic death and destruction in counties to the north and south.

What we are asking for would not require a significant amount of public money to be spent. Nor would it require government to invest time solving the wildfire problem.

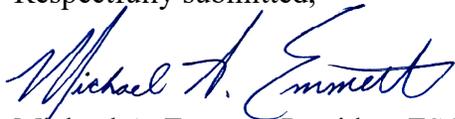
What we are asking for is that government swiftly remove regulatory hindrances that act to discourage or block public and private landowners from preparing for wildfires by reducing accumulations of wildfire fuels to safe levels, to generally not less than the density described in the California Board of Forestry's General Guidelines For Creating Defensible Space,³ not limited to the minimum mandated distance of 100 feet required by Public Resources Code § 4291.⁴

The way for that to happen quickly is the declaration of wildfire emergency by the Governor and suspension of laws and related actions we request.

The requests in the Letter are especially important to lives and property within areas in the County mapped by CAL FIRE as being Moderate, High, and Very High Fire Hazard Severity Zones.⁵

The FSCMC respectfully requests that the Board agendaize the Letter at the earliest opportunity and act on the requests in the Letter without further delay.

Respectfully submitted,



Michael A. Emmett, President FSCMC

Cc: Governor Gavin Newsom
Congressman Jimmy Panetta
Senator Bill Monning
Senator Anna Caballero
Assemblymember Robert Rivas
Assemblymember Mark Stone
CAL FIRE Director Thom Porter
CAL FIRE Unit Chief David Fulcher

² See Appendix F: Pandemic Influenza Event, www.tinyurl.com/MoCoMassFatalityPlan2

³ www.tinyurl.com/DefensibleSpaceGuidelines

⁴ www.tinyurl.com/PRC-4291

⁵ Fire Hazard Severity Zone Map https://osfm.fire.ca.gov/media/6726/fhszs_map27.pdf



November 18, 2019

Honorable John M. Phillips
Chair, Monterey County Board of Supervisors
168 West Alisal St., 1st Floor
Salinas, CA 93901

Public Comment for the November 19, 2019 Board of Supervisors hearing.

The Fire Safe Council For Monterey County Requests that the Board ask Governor Newsom to Declare a State of Wildfire Emergency for Monterey County, suspend state and local laws, and activate the Disaster Service Worker Program, and that the Governor and the Board provide direction to State and County employees respectively to not help enforce federal laws that can act to hinder or block reducing wildfire fuels to safe levels.

Dear Chair Phillips and Members of the Board:

The Fire Safe Council For Monterey County (FSCMC) respectfully requests the Board to ask Governor Newsom to declare a wildfire state of emergency for Monterey County, and to suspend in the county all state and local laws that have potential to prevent, hinder, or delay wildfire fuel reduction work to reduce wildfire fuels to safe levels, not substantially below the densities described in the California Board of Forestry's General Guidelines For Creating Defensible Space (Guidelines), not limited to the 100-foot minimum defensible space distance that is required by Public Resources Code section 4291.

The FSCMC also requests that the Board ask Governor Newsom to direct state employees to not take actions to enforce federal laws that have potential to prevent, hinder, or delay that same wildfire fuel reduction work in Monterey County, and that the Board direct the same to County staff; leaving enforcement to the federal government.

The FSCMC further requests that the Board ask Governor Newsom to direct that the Disaster Service Worker Program is to be used to provide Workers' Compensation Insurance and protection from liability to individuals who volunteer to do work to reduce wildfire fuel loads in Monterey County on public or private land, to help mitigate the emergency.

The concept is to provide a clear *safe harbor* to allow people in Monterey County to prepare for wildfires by reducing wildfire fuels to safe more natural levels, by suspending laws that add costs, delays, requirements, threats of fines and jail time, and opportunity

for litigation, and facilitate people in volunteering to do that work by providing volunteers Workers' Compensation Insurance and protection from liability through the Disaster Service Worker Program.

The FSCMC believes Governor Newsom will be open to taking the actions requested in this letter. His January 8, 2019 Executive Order on the wildfire problem indicates he understands the nature of problem and the urgent need to address it.¹

[T]he people of the State of California expect that their government will take all possible actions to protect life, property, and forests from deadly megafires, and will do so with an urgency that matches the scope of the threat.

The FSCMC understands these requests are extraordinary.

We believe they are entirely justified given the extraordinary unnatural wildfire fuel conditions present in Monterey County due to unintended consequences from the beneficial policy to suppress wildfires that has been in place for over 100 years; given the extreme threat to lives, property, and resources the fuels present during a wildfire; and given the counterproductive nature of applying laws intended to protect species and habitat to wildfire fuel reduction work that is intended to reduce harm from wildfires, which can kill some of those very species and burn that very habitat the laws were intended to protect.

It is important to understand that the safe harbor we ask for does not allow clear cutting or other thinning that reduces vegetation density below the densities described in the Guidelines. In areas where density is already below the levels described in the Guidelines the safe harbor would not enable further reduction in density.

The Resource Management Agency (RMA) acknowledges in its staff report for the Board's May 7, 2019 hearing on laws and defensible space, that local, state, and federal laws interfere with the ability to prepare for wildfires by reducing wildfire fuels to safe levels, saying,²

Both County staff and the public are often challenged by the many federal, state, and local regulations governing fire fuel management on private property. Some of these regulations are not consistent and in certain cases conflict.

Governor Newsom has also acknowledged that statutes and regulations interfere with the ability to perform wildfire fuel reduction work to help prepare for wildfires. He suspended those laws in his March 22, 2019 Proclamation of a State of Emergency and

¹ www.tinyurl.com/1-8-2019-ExOrder

² www.tinyurl.com/5-7-2019-Report

direction to implement the 35 wildfire fuel reduction projects in CAL FIRE's 45-day report, saying,³

WHEREAS the Department of Forestry and Fire Protection must immediately, without delay, implement these projects, which are necessary to protect the lives and property of Californians; and ...

WHEREAS under the provision of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay the mitigation of the effects of the emergency in California....

IT IS HEREBY ORDERED THAT:...

State statutes, rules, regulations, and requirements are hereby suspended to the extent they apply to the priority fuels reduction projects...

After the Southern California Fire Siege of 2003 killed 24 people and destroyed 3,631 homes, a state Blue Ribbon Commission was formed, which prepared a report on causes for the destruction and how such devastation could be avoided in the future.⁴ That report prophetically states,

In recent decades, the threat of fire to forests and adjacent communities has been exacerbated by inadequate forest and wildland fuel management. Forest management and other agencies, as well as private landowners, face numerous restrictions that impede their ability to manage their responsible areas in an effective and timely manner, such as overly bureaucratic regulations, the threat of litigation, and excessive environmental review...

Conflicting federal, state and local environmental and land management laws, regulations and policies must be resolved, or efforts to prevent future conflagrations will be doomed to failure.

As indicated by RMA's statement in its staff report, and by Governor Newsom's need to suspend laws in his Proclamation of a State of Emergency to enable timely completion of the 35 projects, and as experienced by the FSCMC, those laws have not been amended and continue to prevent, hinder, or delay public land managers and private residents and landowners from reducing unnatural hazardous accumulations of wildfire fuels to safe

³ www.tinyurl.com/3-22-19-Proclamation

⁴ www.tinyurl.com/2003FireSiegePaper; www.tinyurl.com/2004BlueRibbonRpt

more natural levels by adding costs, delays, by threatening fines and even jail time, and by adding opportunity for litigation to stop the work.⁵

We see the results in the news as wildfire fuels continue to accumulate faster than we are reducing them. New records are now regularly being set for wildfires causing death, destruction, and harm to resources.

Climate change contributes to the problem, but is not the root cause. Climate does not burn, fuel burns. The only viable solution is to reduce fuels to safe more natural levels.

Much of Monterey County is desperately in need of wildfire fuel reduction work on a landscape scale.

The national Wildland Fire Leadership Council (WFLC) has rated Monterey County at the highest priority of need for wildfire fuel reduction work in the United States. Its map showing that is included as [Attachment 1](#) to this letter.

The WFLC was founded in 2002 and is an intergovernmental committee of federal, state, tribal, county, and municipal government officials convened by the Secretaries of the departments of Interior, Agriculture, Defense, and Homeland Security.⁶

The map that shows the County's high priority of need for wildfire fuel reduction work is part of a science-based analysis of every county in the United States undertaken by the WFLC's National Science and Analysis Team during the Obama Administration.⁷

CAL FIRE's Fire Threat map shows most of Monterey County rated at High, Very High, or Extreme threat of wildfire. That map is included as [Attachment 2](#).

The Board included in its October 30, 2019 Proclamation of the Existence of a Local Emergency, a statement on the continued and growing threat of extreme weather and wildfires in the county.⁸

Monterey County has been fortunate that its wildfires have not yet occurred under weather conditions like those during the recent fires in northern and southern California, some of which had unprecedented sustained winds of 80 to 100 miles per hour.

However, Monterey County's luck could change on any summer day, at which time it will be too late to prepare.

⁵ E.g., www.tinyurl.com/FGC-12008-1; www.tinyurl.com/PRC-30820; www.tinyurl.com/16-USC-1540;

⁶ www.forestsandrangelands.gov/leadership/

⁷ www.forestsandrangelands.gov/strategy/nsat.shtml

⁸ www.tinyurl.com/10-30-2019-Proclamation

There is not time to amend the many local, state, and federal laws that get in the way of preparing for wildfires so they instead clearly allow and facilitate reducing wildfire fuels to safe more natural levels.

Major wildfires are now typically occurring in Monterey County at about nine-year intervals. Most recent was the Soberanes Fire, over three years ago.

For almost 25-years, bipartisan state and federal reports have been issuing increasingly alarming warnings on the critical need to address the wildfire fuel accumulation problem and the need to amend laws that interfere with doing that work. [Attachment 3](#) has quotes from and links to some of those reports.

Most of the laws that act to hinder and block wildfire fuel reduction work were enacted in the 1970s, before the wildfire fuel accumulation problem was recognized, and fail to include exemptions to enable beneficial wildfire fuel reduction work without regulatory hindrance.

Now, twenty-four years after the first report on the wildfire fuel accumulation problem, there is not time to wait longer for laws to be amended.

Monterey County took eleven years to update its inland General Plan. It started updating its Local Coastal Program in 2004, and that likely has many more years to completion.

Pertinent state and federal laws have not been amended in the twenty-four years since the first federal report on the wildfire fuel accumulation problem, and there is no indication the state legislature or Congress intend to amend laws to clearly allow and facilitate wildfire fuel reduction work.

Fortunately, California law empowers Governor Newsom to declare a state of emergency for Monterey County and suspend state and local laws that hinder or delay mitigating the emergency, as he did for his 35 projects.⁹

And fortunately, neither the state nor the County are required to help enforce federal laws that can act to prevent, hinder, or delay the ability of people to prepare for wildfires. For example, the state and county do not help enforce federal marijuana laws, and sanctuary cities do not help enforce federal immigration laws.

All that is needed to fix the regulatory problem while waiting for laws to be amended is for Monterey County to ask the Governor to act, and for him to respond affirmatively.

Continuing the status quo is not a viable option. It is clear government is not able to solve the problem without help from Monterey County's residents and landowners.

⁹ www.tinyurl.com/GovCode8625; www.tinyurl.com/GovCode8571

Monterey County encompasses 2.4 million acres, of which less than 2 percent is in cities, and about 1.6 million acres is under County jurisdiction and rated at High, Very High, or Extreme threat from wildfires on CAL FIRE's Wildfire Threat Map, which is included as [Attachment 2](#).

Governor Newsom is the first California Governor to meaningfully acknowledge the scale of the wildfire fuel accumulation problem and the urgent need to address it.

Governor Newsom's 35 wildfire fuel reduction projects, three of which are in Monterey County, are very much appreciated by the FSCMC.

However, when completed those projects will be only a small fraction of the work needed to prepare Monterey County for a wildfire under the kind of weather conditions that have contributed to the recent death and destruction in counties to the north and south.

The County's recent funding of a Fire Fuel Mitigation Program is also greatly appreciated by the FSCMC, as are the outstanding efforts of the Forest Health Coordinator.

However, those efforts will also result in only a small fraction of the work that needs to be done.

The FSCMC has been working since before 2001 helping communities obtain grant funds to reduce hazardous accumulations of wildfire fuels, and has obtained about \$2.5 million in grants for that purpose.

However, those efforts too have resulted in only a small fraction of the work that needs to be done.

And of course vegetation begins growing back as soon as it is thinned, requiring ongoing maintenance, and the above projects do not include a maintenance component.

We are not getting ahead of the wildfire fuel accumulation problem. It is growing worse. Wildfire fuel is accumulating faster than we are reducing it.

The only practical way the work will take place at the scale needed is to clearly allow and facilitate Monterey County's approximately 110,000 rural residents to help do the work.

The only way to do that swiftly is to ask Governor Newsom to declare a wildfire state of emergency and suspend laws that get in the way.

With regulatory hindrances removed, and Disaster Service Worker protections provided, volunteers could also help solve the problem, neighbors helping neighbors, or volunteers from a larger pool of people, for example, through the California Volunteers program.¹⁰

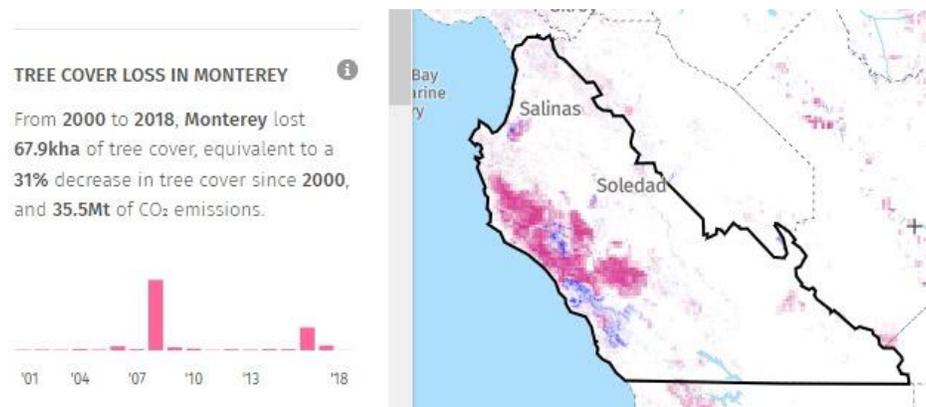
¹⁰ www.tinyurl.com/CA-VolunteersOpEd

Any impact on the environment from wildfire fuel reduction work is nothing compared to the impacts that would result from not doing the work and leaving fuel in place for wildfires.

According to Global Forest Watch (GFW), which monitors the Earth for losses of tree cover, Monterey County lost over 30 percent of its tree cover between 2000 and 2018.¹¹

GFW shows those losses being almost entirely in 2008 and 2016, which is consistent with the dates of the Basin Complex Fire and the Soberanes Fire respectively.

Below is a screenshot of GFW's website, graphically showing tree cover losses in Monterey County and a bar graph showing losses per year.



GFW counts only live trees as tree cover, relying on satellite photographs in the infrared spectrum to detect live tissue, so when trees are killed but left standing they show in the data as loss of tree cover, even though the trees are still there, dead and dry, to provide fuel in the next wildfire.¹²

[Attachment 4](#) includes photographs of a small fraction of the trees killed by the Soberanes Fire, but left standing to help fuel the next wildfire and likely kill surviving trees nearby unless the fuel is sufficiently reduced first.

Counter intuitively, a fire burning through an area does not solve the problem. The Soberanes Fire burn area is ready to burn again, three years after the fire. Underbrush is regrowing at a furious rate due to more sunlight reaching the ground, leaf mulch burned off the ground, and ashes acting as fertilizer.

GFW also shows 31.1Mt (million metric tonnes) of CO₂ emissions released by loss of biomass in Monterey County between 2001 and 2018.

¹¹ <https://tinyurl.com/TreeLoss> (Wait for page to load, ignore failure notice.)

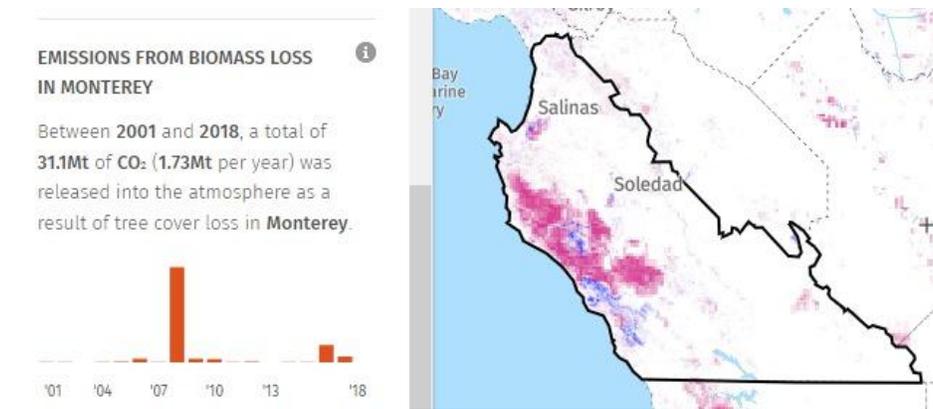
¹² <https://tinyurl.com/GFW-DataExplained>

Those emissions are also primarily in 2008 and 2016, also consistent with the Basin Complex Fire and Soberanes Fire. CO₂ is a greenhouse gas and the emissions contribute to global warming.

According to the EPA's greenhouse gas equivalencies calculator, 31.1Mt of CO₂ is equivalent to 3,499,493,642 gallons of gasoline consumed, or 6,602,972 passenger vehicles driven for one year.¹³

That represents over 44 percent of all passenger cars registered in California in 2017 according to the website statistica.com.¹⁴

Below is a screenshot of GFW's CO₂ emissions data for Monterey County for 2001 through 2018, including a bar graph showing emissions per year.



If it were as simple to calculate the numbers of threatened and endangered species killed by the Basin and Soberanes Fires, or the number of tons of silt released into creeks and rivers by hydrophobic soils caused by the Basin and Soberanes fires, those numbers would likely be equally as staggering as the GFW numbers.

Monterey County is primed to lose vast additional portions of its woodlands, forests, and brushlands in the next major wildfire, if fuel loads are not swiftly reduced.

County, state, and federal laws that focus on protecting what are by comparison insignificant amounts of trees and habitat, individuals of protected species, or pounds of silt released into creeks and rivers, can be counterproductive and threaten the very resources they are intended to protect to the extent they prevent, hinder, or delay wildfire fuel reduction work by adding costs, requirements, threats of fines, or support for litigation.

¹³ <https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator>

¹⁴ <https://www.statista.com/statistics/196010/total-number-of-registered-automobiles-in-the-us-by-state/>

And of course wildfires driven by hazardous accumulations of wildfire fuels also threaten, and take, lives and property.

The Guidelines do a good job of describing different safe wildfire fuel densities for different conditions, such as steepness of slope and vegetation type.¹⁵

The Guidelines are incorporated by reference into the California Code of Regulations, and underwent CEQA review.

It is critical for the Board to understand that the wildfire fuel accumulation problem needs to be addressed on a landscape scale, and that the 100-foot of defensible space required by PRC 4291 is a minimum requirement based on general conditions state-wide, not a maximum distance, and is not sufficient to address the problem, or to protect lives and property in steep terrain with heavy vegetation.¹⁶

The Guidelines acknowledge that and state,

While individual property owners are not required to clear beyond 100 feet, groups of property owners are encouraged to extend clearances beyond the 100 foot requirement in order to create community-wide defensible spaces.

Rural residents and landowners should be viewed as a valuable resource that can help the state and County address the problem, however they need to be allowed to do the work unhindered by counterproductive laws.

The decades of reports in [Attachment 3](#) recognize that a problem of this magnitude can only be solved by a long term collaborative effort that involves all levels of government, plus individual residents and landowners.

For example, the 2000 Congressional Conference Report on Appropriations for the Department of Interior and Related Agencies states,¹⁷

The Secretaries should also work with the Governors on a long-term strategy to deal with the wildland fire and hazardous fuels situation, as well as needs for habitat restoration and rehabilitation in the Nation....

The managers are very concerned that the agencies need to work closely with the affected States, including Governors, county officials, and other

¹⁵ <https://bof.fire.ca.gov/media/8935/defensible-space-guidelines.docx>; www.tinyurl.com/CCR-Guidelines

¹⁶ See Guidelines definition of Defensible Space, on page 3; and www.tinyurl.com/BookCiteOnIns

¹⁷ Pages 193 and 194, www.govinfo.gov/content/pkg/CRPT-106hrpt914/pdf/CRPT-106hrpt914.pdf

citizens. Successful implementation of this program will require close collaboration among citizens and governments at all levels.

Almost 20 years after that conference report, Monterey County can lead the way by asking Governor Newsom to proclaim a Wildfire State of Emergency for Monterey County, and to suspend laws to allow and facilitate the work, and that he direct that the Disaster Service Workers Program be used to facilitate volunteers helping solve the problem, and direct that state employees not act to help enforce federal laws that may discourage wildfire fuel reduction work, and that the Board direct the same to County employees.

The Board should know that most of the directors of the FSCMC live in Monterey County's rural areas, and that we chose those places to live because we appreciate and value our surroundings, including the trees, the brush, the grasses, and the wildlife. For us, these places are home.

Some of us have experienced unnaturally high-heat-intensity wildfires, and have witnessed and live with the aftermath.

The FSCMC wants to help others avoid that kind of destruction, avoid loss of life, avoid loss of homes and businesses, avoid loss of many thousands or millions of trees, avoid loss of wildlife, avoid erosion of creeks and rivers. That is why we volunteer to do what we do and why we are making these requests.

The FSCMC respectfully asks the Board to act swiftly on the requests in this letter, so that, assuming Governor Newsom grants the Board's requests, wildfire fuel reduction work can begin soon at the scale needed and as much work as possible can take place before the next major wildfire in Monterey County.

And yes, there will be a next major wildfire in Monterey County.

Respectfully submitted,

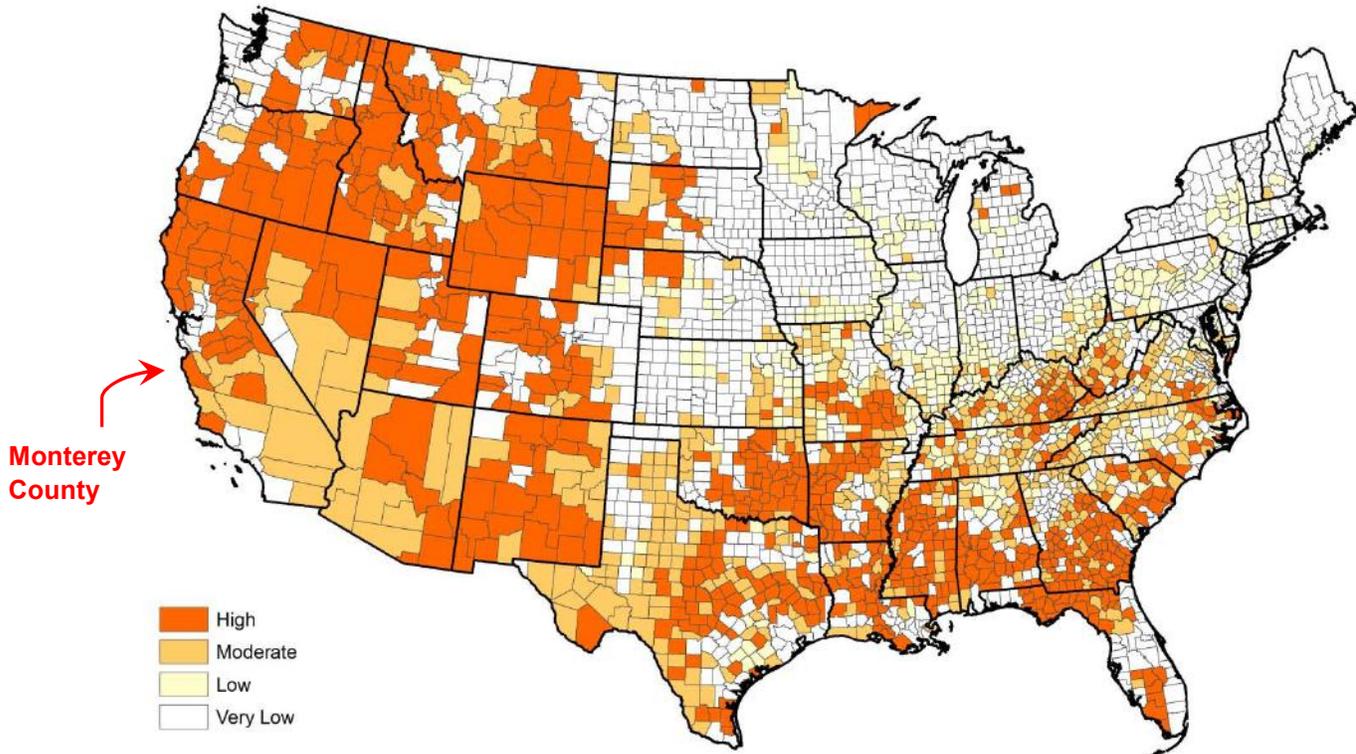


Michael A. Emmett
President, Fire Safe Council For Monterey County

cc: Governor Gavin Newsom
Congressman Jimmy Panetta
Senator Bill Monning
Assemblymember Robert Rivas

All documents attached and linked to in this letter may be downloaded from Google Drive using this link www.tinyurl.com/FSCMC-Letter-Docs

Cohesive Wildland Fire Management Strategy
National Priority: Vegetation and Fuels



Vegetation and Fuels

National prioritization of areas for broad-scale fuels management (as distinct from hazard reduction in proximity to structures) suggests a primary emphasis in the West and Southeast. These included counties with the highest level of wildfire, fire-adapted native vegetation, and communities concentrated within a broader wildland landscape. Each location would utilize the mix of options most suitable for local conditions, as described in Options 1-4.

Attachment 2

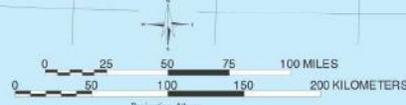
FIRE THREAT



CDF-FRAP has developed a rating of wildland fire threat based on the combination of potential fire behavior (Fuel Rank) and expected fire frequency (Fire Rotation) to create a 4-class index for risk assessment. Areas that do not support wildland fuels (e.g., open water, agricultural lands, etc.) are omitted from the calculation. Most large urbanized areas receive a moderate fire threat classification to account for fires carried by ornamental vegetation and flammable structures. For a detailed description of these data and methods please visit http://frap.cdf.ca.gov/projects/fire_threat/



Monterey County



The State of California and the Department of Forestry and Fire Protection make no representations or warranties regarding the accuracy of data or maps. Neither the State nor the Department shall be liable under any circumstances for any direct, special, incidental, or consequential damages with respect to any claim by any user or third party on account of or arising from the use of data or maps.

Obtain FRAP maps, data, metadata and publications on the internet at <http://frap.cdf.ca.gov>
 For more information, contact CDF-FRAP, PO Box 944246, Sacramento, CA 94244-2460, (916) 327-3939

Arnold Schwarzenegger, Governor,
 State of California
 Mika Chrisman, Secretary for Resources,
 The Resources Agency
 Dale T. Geldert, Director,
 Department of Forestry and Fire Protection

MAP ID: FTHREAT_MAP
 DATA SOURCES
 FRAP Fire Threat v05_1
 USGS 1:100,000-scale DLGs

Quotes from and links to twenty-four years of bipartisan state and federal reports on the wildfire fuel accumulation problem as an unintended consequence of fire suppression policy put in place after the Big Burn of 1910, increasingly alarming warnings on the need to address the problem by reducing wildfire fuels, and the need to amend local, state, and federal laws to allow and facilitate wildfire fuel reduction work.

A **1995** joint US Department of Agriculture and Department of Interior report, *Federal Wildland Fire Management Policy and Program Review Report*, states,

Catastrophic wildfire now threatens millions of wildland acres, particularly where vegetation patterns have been altered by past land-use practices and a century of fire suppression. Serious and potentially permanent ecological deterioration is possible where fuel loads exceed historical conditions. Enormous public and private values are at high risk, and our nation's capability to respond to this threat is becoming overextended.

That report is here, www.tinyurl.com/1995Report, and here, www.forestsandrangelands.gov/documents/strategy/foundational/1995_fed_wildland_fire_policy_program_report.pdf

A **1999** United States General Accounting Office report, *Western National Forests A Cohesive Strategy is Needed to Address Catastrophic Wildfire Threats*, states,

The most extensive and serious problem is the overaccumulation of vegetation, which has caused an increasing number of large, intense, uncontrollable, and catastrophically destructive wildfires.

That report is here, www.gao.gov/archive/1999/rc99065.pdf [New Link](#)

A **2000** report to President Clinton from his secretaries of Agriculture and Interior, *Managing the Impact of Wildfires on Communities and the Environment* (also known as the National Fire Plan), which states,

The intensity of this year's fires is the result of [multiple factors including] the long-term effects of more than a century of aggressively suppressing all wildfires, which has led to an unnatural buildup of brush and small trees in our forests and rangelands.

Also stating,

This Administration has sought to increase efforts to reduce risks associated with the buildup of fuels in forests and rangelands through a variety of approaches, including controlled burns, the physical removal of

undergrowth and other unnatural concentrations of fuel, and the prevention and eradication of invasive plants. Implicit in the Administrations policy is the understanding that reversing the effects of a century of aggressive fire suppression will be an evolutionary process, and not one that can be completed in a few short years.

That report is here, www.tinyurl.com/NationalFirePlan, and here, www.forestsandrangelands.gov/documents/resources/reports/2001/8-20-en.pdf.

The **2000** Congressional Conference Report, *Making Appropriations for the Department of the Interior and Related Agencies for the Fiscal Year Ending September 30, 2001, and for Other Purposes*, states at pages 193 2nd par. from bottom through 194 top par,

The Secretaries should also work with the Governors on a long-term strategy to deal with the wildland fire and hazardous fuels situation, as well as needs for habitat restoration and rehabilitation in the Nation. The managers expect that a collaborative structure, with the States and local governments as full partners, will be the most efficient and effective way of implementing a long-term program.

The managers are very concerned that the agencies need to work closely with the affected States, including Governors, county officials, and other citizens. Successful implementation of this program will require close collaboration among citizens and governments at all levels. The managers direct the Secretaries to engage Governors in a collaborative structure to cooperatively develop a coordinated, National ten-year comprehensive strategy with the States as full partners in the planning, decision-making, and implementation of the plan. Key decisions should be made at local levels.

That report is here, www.tinyurl.com/2000ConferenceReport, or www.govinfo.gov/content/pkg/CRPT-106hrpt914/pdf/CRPT-106hrpt914.pdf

A **2001** report, *Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment, 10-Year Comprehensive Strategy*, states,

[The 10-Year Comprehensive Strategy] outlines a comprehensive approach to the management of wildland fire, hazardous fuels, and ecosystem restoration and rehabilitation on Federal and adjacent State, tribal, and private forest and range lands....

~~That report is here, www.tinyurl.com/2001Strategy and here www.doi.gov/sites/doi.gov/files/migrated/pmb/owf/upload/10-year-strategy-final.pdf~~ [New Link](#)

A **2002** report, *A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy Implementation Plan*, states,

The endorsers of this Implementation Plan recognize that a problem a century in the making will not be solved overnight. With progress in achieving objectives in the collaborative manner envisioned, the risks to our communities and environment posed by wildland fire will be significantly diminished over time.

That report is here, www.tinyurl.com/2002Report, and here, www.forestsandrangelands.gov/resources/plan/documents/11-23-en.pdf

2003 federal legislation, the *Healthy Forests Restoration Act of 2003* (16 U.S. Code § 6501 – Purposes)

The purposes of this chapter are—

(1) to reduce wildfire risk to communities, municipal water supplies, and other at-risk Federal land through a collaborative process of planning, prioritizing, and implementing hazardous fuel reduction projects; ...

(3) to enhance efforts to protect watersheds and address threats to forest and rangeland health, including catastrophic wildfire, across the landscape

That HFRA section is here, www.law.cornell.edu/uscode/text/16/6501.

A **2004** report, *Blue Ribbon Fire Commission Report* (a state report written after the Southern California Fire Siege of 2003, [which killed 24 people](#) and destroyed 3,631 homes), states,

In recent decades, the threat of fire to forests and adjacent communities has been exacerbated by inadequate forest and wildland fuel management. Forest management and other agencies, as well as private landowners, face numerous restrictions that impede their ability to manage their responsible areas in an effective and timely manner, such as overly bureaucratic regulations, the threat of litigation, and excessive environmental review. ...

Conflicting federal, state and local environmental and land management laws, regulations and policies must be resolved, or efforts to prevent future conflagrations will be doomed to failure.

That report is here, www.tinyurl.com/2004-BlueRibbonRpt2

A **2006** report, *Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Strategy Implementation Plan (2006)*

The primary goals of the 10-Year Comprehensive Strategy are:

1. Improve Prevention and Suppression
2. Reduce Hazardous Fuels
3. Restore Fire Adapted Ecosystems
4. Promote Community Assistance

That report is here, www.tinyurl.com/2006Strategy, and here, www.forestsandrangelands.gov/documents/resources/plan/10-yearstrategyfinal_dec2006.pdf.

A **2008** report, *The Emergency Tahoe Basin Fire Commission Report to the Governors of California and Nevada*

Of the three factors that affect wildland fire behavior (fuel, weather and topography) fuel is the only factor that we can manage....

[Stream Environment Zones / riparian areas (SEZs)] in the Lake Tahoe Basin pose both extreme fire risks and extraordinary environmental challenges. In times of fire, such as both the November 2002 Pioneer Fire and the Angora Fire, the fires quickly changed from surface fires to crown fires because untreated SEZs allowed fire to quickly move through overstocked and insect diseased forested areas. Commentators have referred to the SEZs in these areas as operating like "candle wicks" during times of fire, advancing the severity of crown fires....

Removal of fuels from and restoration of SEZs is necessary in order to reduce fire hazards...

Among many property owners and fire agencies, there was a perception that the system of environmental rules and regulations designed to protect Lake Tahoe made it especially difficult in the Basin to remove flammable vegetation and groundcover for fire defense purposes....

The permit requirements that govern fuel reduction activities are especially complex, and have inhibited the implementation of necessary measures to enhance forest health and protect against wildfire occurrence.... These include the National Environmental Policy Act, California Environmental Quality Act, Clean Water Act, Clean Air Act, Endangered Species Act, and the Forest Practices Act. In addition to federal and state laws, the Tahoe Regional Planning Agency (TRPA) has a comprehensive Code of Ordinances that affects all agencies, organizations, and individuals in the Basin.

That report is here, ~~www.tinyurl.com/2008TahoeReport~~, and here, ~~www.trpa.org/wp-content/uploads/FireCommissionReport.pdf~~ [New Link](#)

A **2009** paper, *A Call To Action*, which states,

Business as usual is not working! ...

To the U.S. citizen 'The nation's fire service is about to lose its ability to put out unwanted wildfires and help you protect yourself and your properties.'

That call to action is here, www.tinyurl.com/2009CallToAction, and here, https://www.forestsandrangelands.gov/documents/strategy/foundational/call_to_action2010.pdf

A **2012** report, *The National Cohesive Wildland Fire Management Strategy: Phase III Western Regional Science-Based Risk Analysis Report*, states,

The Cohesive Strategy takes an 'all lands' view of wildland fire management. Fire knows no political or social boundaries -- not ownership boundaries, not state boundaries. ...

Examine legislative related barriers that are impeding implementation of collaboratively developed landscape health related projects and pursue reform of the existing process to increase our effectiveness in active forest and rangeland management. (e.g., Endangered Species Act, Equal Access to Justice Act, National Environmental Policy Act (NEPA)).

That report is here, ~~www.tinyurl.com/WesternRegionReport~~, and here, [New Link](#)
~~www.westgov.org/images/editor/RiskAnalysis-WesternRegion-10.pdf~~

A **2014** report, *The National Strategy: The Final Phase of the Development of the National Cohesive Wildland Fire Management Strategy*, which states,

By establishing national priorities and ensuring alignment of programs, policies, regulations, and actions to national direction, meaningful reductions in risk are possible through concerted, collaborative implementation.

That report is here, www.tinyurl.com/2014NationalStrategy, and here, www.forestsandrangelands.gov/documents/strategy/strategy/CSPhaseIIINationalStrategyApr2014.pdf

A **2019** report, *Community Wildfire Prevention & Mitigation Report* (CAL FIRE's 45-Day Report to Governor Newsom), states,

SUMMARY TABLE OF RECOMMENDATIONS...

Suspend regulatory requirements as needed to complete fuels reduction projects in 2019...

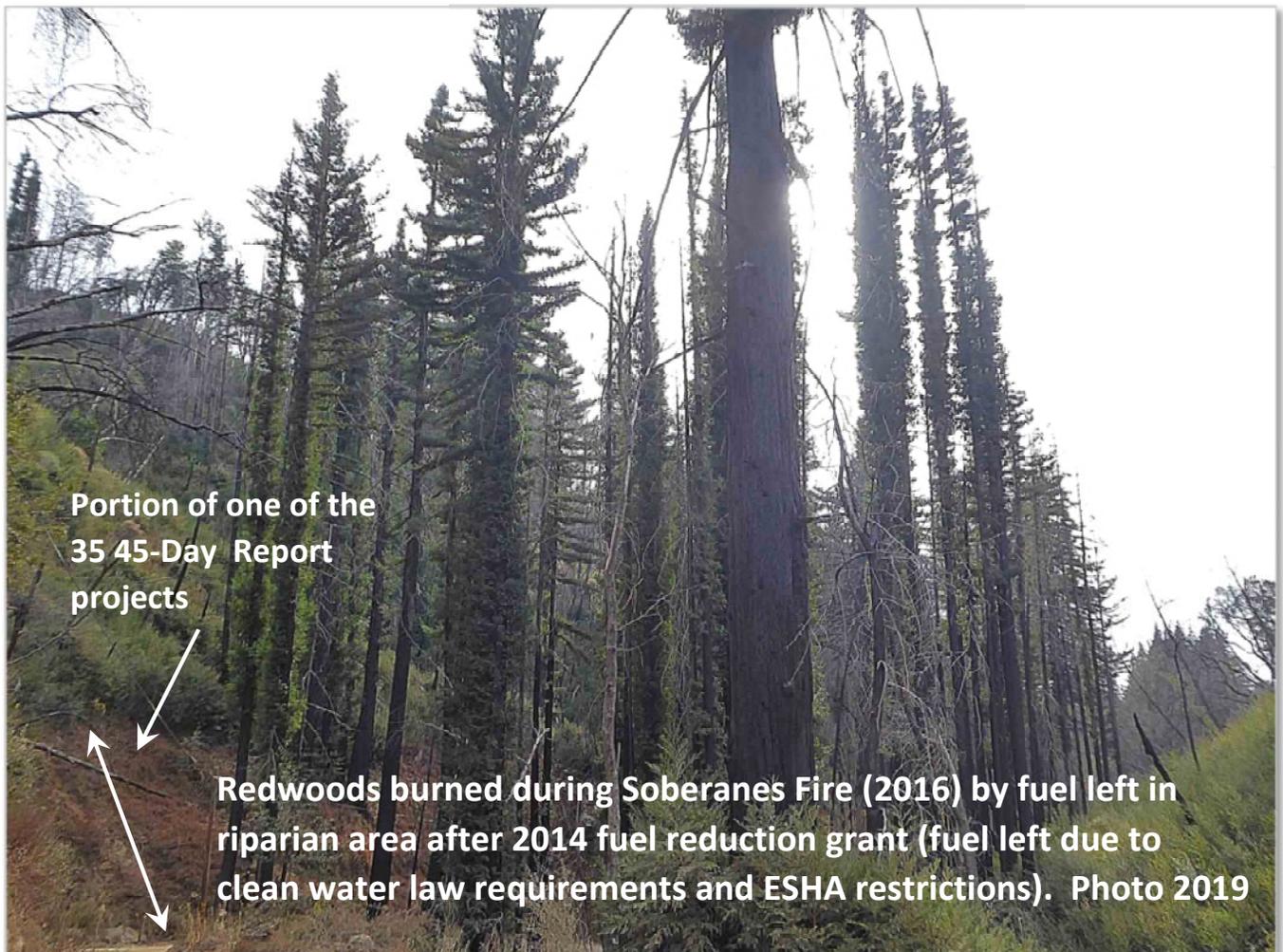
Create incentives for fuels reduction on private lands...

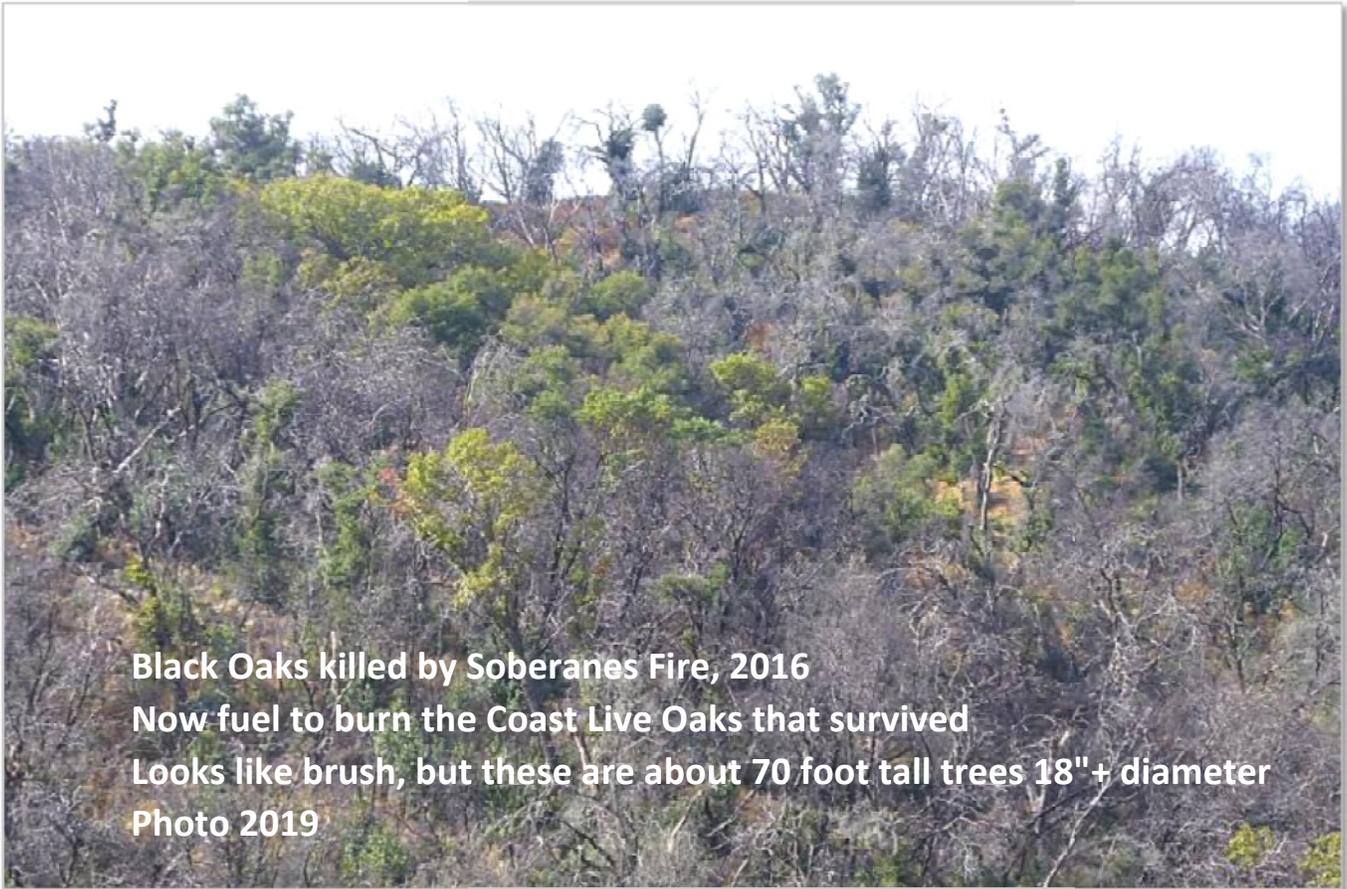
Update codes governing defensible space and forest and rangeland protection...

Request the Board of Forestry and Fire Protection review the Forest Practice Act and Rules and make recommendations on changes needed to restore forest health...

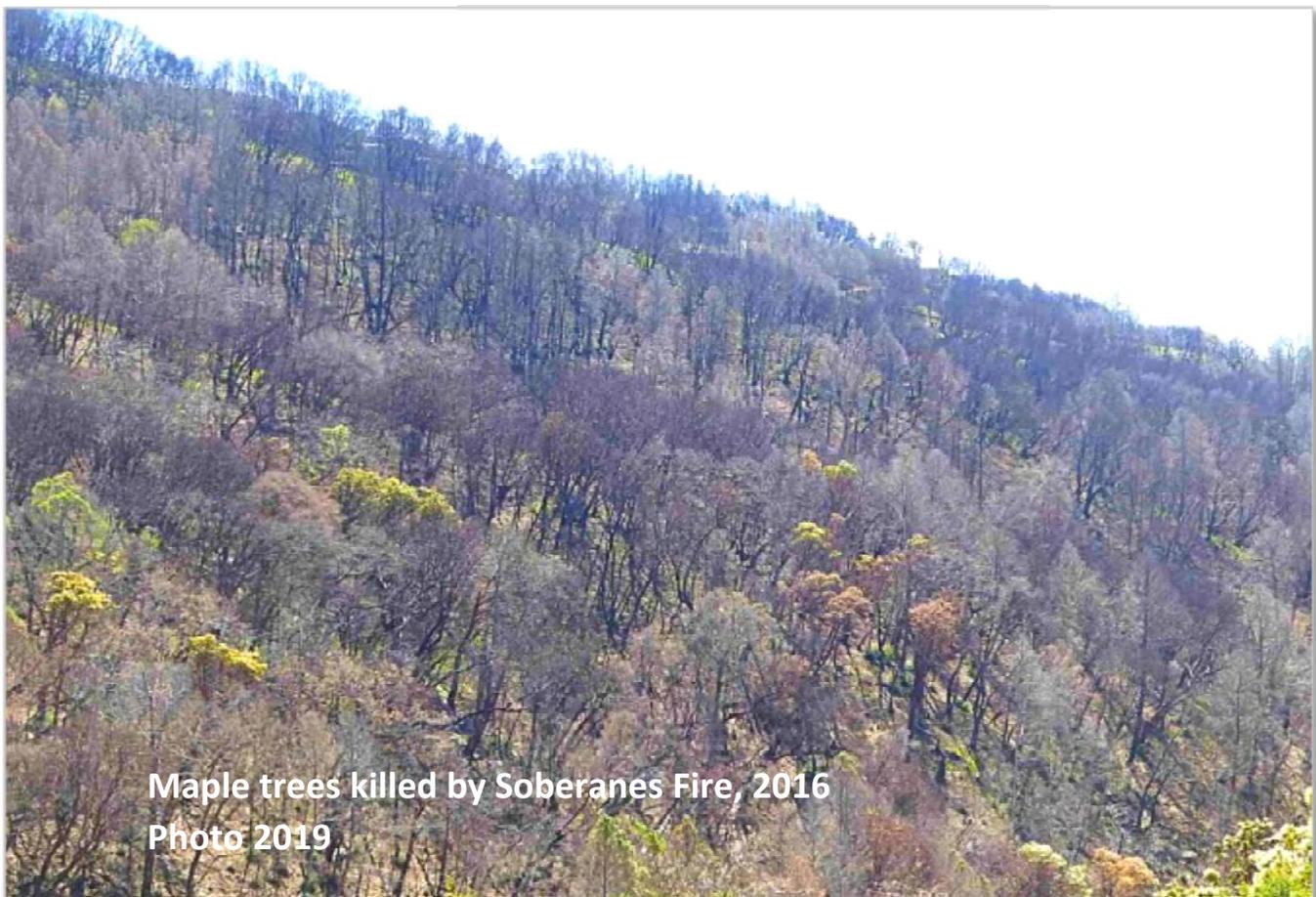
Numerous laws and regulations govern fuels reduction projects, and implementation often requires coordination with, and approval from, various state and local agencies. Typical environmental compliance, permitting requirements, licensing requirements, and state contracting laws and regulations, should be streamlined where possible to facilitate project implementation.

That report is here, www.fire.ca.gov/media/5584/45-day-report-final.pdf [New Link](#)





Black Oaks killed by Soberanes Fire, 2016
Now fuel to burn the Coast Live Oaks that survived
Looks like brush, but these are about 70 foot tall trees 18"+ diameter
Photo 2019



Maple trees killed by Soberanes Fire, 2016
Photo 2019

Local, state, and federal laws that act to discourage, prevent, hinder, or delay wildfire fuel reduction work to reduce hazardous accumulations of wildfire fuels to safe levels

It is not possible to accurately summarize all the details of the local, state, and federal laws that act to discourage, prevent, hinder or delay wildfire fuel reduction work. General summaries are attempted below, and links to the actual laws are provided for further details.

County Laws

The County's web page on Tree Removal Permits incorporates the following County inland and coastal tree removal policies. By looking at that page and following the hyperlinks on it, you can learn what a person who wants to remove trees for wildfire fuel reduction work would learn.

~~The page is here, www.tinyurl.com/TreeRemovalPage. Here is a link to Google's cache of the page on November 8, 2019, www.tinyurl.com/TreeRemovalCache~~ [New Link](#) (go down to Tree Removal Permit)

The page states in part,

Fuel Management

While Monterey County encourages proper management of fire loads around homes, trimming trees and vegetation to reduce fire fuel loads may require a permit depending on the area and type of vegetation being impacted. Some minor trimming of vegetation is allowed without a County permit [Basic Fuel Management](#). Removing or trimming vegetation along a river or creek requires permits from the County and possibly State or Federal agencies...

In certain cases a biological assessment will be required to assure no protected species (plant or animal) is impacted. Biological reports/assessments may only be prepared by professionals on the County's approved list [Approved Biologist Consultant List](#)...

The Basic Fuel Management document referenced on the page does not allow removing trees to obtain the tree spacing described in the Board of Forestry's General Guidelines For Creating Defensible Space and warns that a permit may be required for work beyond the 100 foot distance described, but does not inform when a permit will be required, saying,

Note: Any further vegetation management activities, including those required by insurance companies, may require prior approval from the Planning Services Department when activities involve the following:

- o Exposing soil to erosion
- o Impact sensitive habitat

- o Accelerating sediment runoff into water courses
- o Tree removal

Permit requirements for these additional vegetation management activities are available at the Monterey County Planning Department office located at 1441 Schilling Place, 2nd Floor - South, Salinas, CA 93901. If you wish to speak to a Planner regarding these permit requirements, you may call (831) 755-5025.

It is apparently not possible to know from online information if a permit will be required or not. For example, it is not knowable where sensitive habitat is located. Learning when a permit will be required requires contacting the Planning Department.

If a discretionary permit is required, CEQA is triggered, which pulls in the other state and federal laws discussed below, and which is known to add costs, cause delays, and provide opportunity for litigation. The County's Basic Fuel Management document is included as [Attachment 6](#).

2010 General Plan (non-coastal)

Conservation and Open Space, policy OS-5.25¹⁸

OS-5.25 states in part,

Occupied nests of statutorily protected migratory birds and raptors shall not be disturbed during the breeding season (generally February 1 to September 15)....

This policy shall apply for tree removal that addresses fire safety planning, since removal can be scheduled to reduce impacts to migratory birds and raptors.

This General Plan policy expressly applies to wildfire fuel reduction work, and covers 7 ½ months of the year, possibly more given use of "generally."

The policy has not been implemented as an ordinance. Nevertheless, RMA has included the concept in its Tree Removal Permit Process document, broadening it to include all nesting birds not only protected migratory birds, and apparently applying the policy county-wide rather than limiting it to the area covered by the inland General Plan. The Tree Removal Permit Process document is included as [Attachment 7](#).

The policy effectively requires hiring an expert when vegetation removal work is proposed when migratory birds or raptors may be nesting in the area, to determine if vegetation in the area is suitable as nesting sites for migratory birds or raptors, to determine setbacks or other avoidance measures for any nesting migratory birds or raptors that could nest in the area, and to establish project specific methods to avoid disturbing nesting migratory birds or raptors.

¹⁸ www.co.monterey.ca.us/home/showdocument?id=45804

The policy gives two options to proceed with vegetation removal: perform the work during the estimated 4 ½ months that is outside the nesting season (apparently requiring hiring an expert to know exactly when that time period is), or, hire an expert to locate all nesting protected migratory birds within the project area and mitigate by providing buffer distances determined by an expert.

The effect is to preclude wildfire fuel reduction work for more than half the year unless one or more experts are hired to perform the work required and mitigation measures are followed that the expert(s) describe.

OS-5.25 appears intended to help enforce the federal Migratory Bird Treaty Act (MBTA), which lists about 1,026 birds for protection.

However, OS-5.25 is far more restrictive than the MBTA. The MBTA does not require hiring experts, does not apply to birds not on its list, and critically, does not prohibit unintentional harm to migratory birds.

The Office of the Solicitor for the Department of Interior has issued a memorandum that "The Migratory Bird Treaty Act Does Not Prohibit Incidental Take," which states in part (underline added),¹⁹

Interpreting the MBTA to apply to incidental or accidental actions hangs the sword of Damocles over a host of otherwise lawful and productive actions, threatening up to six months in jail and a \$15,000 penalty for each and every bird injured or killed....

However, this was withdrawn. See these new links for more: [Link 1](#), [Link 2](#).

Indeed, the mere threat of prosecution inhibits otherwise lawful conduct. For the reasons explained below, this Memorandum finds that, consistent with the text, history, and purpose of the MBT A, the statute's prohibitions on pursuing, hunting, taking, capturing, killing, or attempting to do the same apply only to affirmative actions that have as their purpose the taking or killing of migratory birds, their nests, or their eggs.

As applied by RMA, policy OS-5.25 acts to discourage, hinder, and block the productive action of reducing accumulations of wildfire fuels to safe more natural levels, which should be clearly allowed and facilitated. Nesting birds, including protected nesting birds, can burn along with everything else during wildfires.

Inland Ordinances

Ordinance 21.64.260 - Preservation of oak and other protected trees²⁰

Generally, inland of the coastal zone boundary in named planning areas that make up much of the County, ordinance 21.64.260 requires a permit for removal of any Oak,

¹⁹ <https://www.doi.gov/sites/doi.gov/files/uploads/m-37050.pdf> However, see also, [Link 1](#) and [Link 2](#).

²⁰ www.tinyurl.com/ProtectedTreeOrdinance

Madrone, Redwood, Santa Lucia Fir; Black Cottonwood, Fremont Cottonwood, Box Elder, Willow, California Laurel, or Sycamore tree, over 6" in diameter at 2' above ground, and requires a permit for removal of oak trees that size in any other inland area of the County if the area is designated Resource Conservation, Residential, Commercial, or Industrial. The Director of Planning may approve removal of three trees or less per lot within a one year period.

If more than three trees on a lot would be removed within a one year period a Forest Management Plan must be prepared for the property by a Registered Professional Forester listed on the County's list of approved foresters, and a use permit must be approved by the Planning Commission.

Approval of the permit requires findings based upon substantial evidence that various factors are met (see 21.64.260.D for details). The ordinance generally prohibits removal of Oak trees over 24" in diameter (Landmark Trees).

The ordinance does not include an exemption for defensible space or wildfire fuel reduction projects and is counterproductive to the extent it discourages, hinders, or blocks wildfire fuel reduction work, thereby increasing the threat of wildfires, including to protected trees. The County apparently interprets the ordinance to also cover removal of dead trees.

Ordinance 21.06.440 - Environmentally sensitive habitat.²¹

"Environmentally sensitive habitat" means an area known or believed, based on substantial evidence, to contain rare or endangered species.

Ordinance 21.66.020 - Standards for environmentally sensitive habitats...²²

D. General Development Standards.

1. Development, including vegetation removal, ...be [*sic*] prohibited in environmentally sensitive habitats. exception [*sic*], resource dependent uses, including nature education and research, hunting, fishing and aquiculture, may be allowed within environmentally sensitive habitats if it has been determined through the biological survey that impacts of such uses will not harm the habitat's long-term maintenance.

Prohibiting wildfire fuel reduction work in areas where rare or endangered species are known or believed to exist can be counterproductive, as some of those same species are subject to being burned along with everything else in event of wildfire, and lack of wildfire fuel reduction work in the area increases that threat. Leaving these areas untreated also increases the threat of wildfires to lives, property, and other resources.

²¹ www.tinyurl.com/MCC-21-06-440

²² www.tinyurl.com/MCC-21-66-020

Monterey County's Local Coastal Program

Monterey County's Local Coastal Program applies inside the County's portion of the California coastal zone, and consists of its four Coastal Land Use Plans; North County Land Use Plan, Big Sur Coast Land Use Plan, Carmel Area Land Use Plan, Del Monte Forest Area Land Use Plan; and the County's four Coastal Implementation Plans, Parts 2 through 5 for North County through Del Monte Forest respectively, which provide ordinances to implement the Land Use Plans; plus Coastal Implementation Plan Part 1, codified as Title 20, which applies in all four of the coastal planning areas.²³

The Local Coastal Program is a local, state, and federal program, which applies to private residents and landowners and local, state, and federal government agencies.

Each of Monterey County's Coastal Land Use Plans and their Coastal Implementation Plans contain a definition of "Environmentally Sensitive Habitat" that is substantially the same as the definition in the California Coastal Act for an environmentally sensitive area (ESHA), found at Public Resources Code section (PRC) section 30107.5, which is,

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

That very broad definition can be used to declare essentially anything ESHA. For example, if gophers are especially valuable because of their special nature or role in an ecosystem, and if they or the dirt where they live can be easily disturbed by human activity, then dirt meets the definition of ESHA.

The Coastal Act's restriction on what can happen in environmentally sensitive areas is one of the most restrictive land use statutes in the United States. Found at PRC section 30240(a) those restrictions read,²⁴

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

Courts have held that local government and even the Coastal Commission do not have the power to allow development in ESHA unless they sufficiently demonstrate that not allowing the development would result in an unconstitutional taking of land.²⁵

²³ Documents may be downloaded from this page www.tinyurl.com/CoastalPlanDocs, [New Link](#)

²⁴ www.tinyurl.com/PRC-30240

²⁵ E.g., *McAllister v. California Coastal Com.*, 169 Cal. App. 4th 912 (Cal. Ct. App. 2008) (www.tinyurl.com/McAllister-v-CC), in which the court states, "As we explain below, strict application of the policy restricting development in habitat areas to resource-dependent uses would have required the Commission to deny the permit. Nevertheless, the Commission granted it. The Commission now claims that it did so to avoid a taking. However, the Commission did not

During a coastal development permit appeal hearing in 2008, the Coastal Commission used the broad definition for ESHA to declare the "central maritime chaparral" "plant community" to be ESHA, even though no single definition of the plant community exists. In the hearing report the Coastal Commission states,²⁶

In this case, the Commission finds that the chaparral vegetation on the property is central maritime chaparral, and that this maritime chaparral is ESHA.

The Commission acknowledged in the staff report that no definition for the central maritime chaparral plant community has been agreed upon by experts, saying in the hearing report (underline added),²⁷

Coastal Commission staff also discussed the characterization and definition of maritime chaparral with Dr. Dean Taylor, Research Associate at the Jepson Herbarium, University of California, Berkeley. Dr. Taylor stated that in the United States, nomenclature of plant communities has by professional practice been an informal process, and that, by contrast, in Europe, phytosociology has a formal identification process for vegetation communities, and a formal code governing nomenclatural matters. He stated that the syntaxonomy of maritime chaparral has not been formally studied, hence arguments as to the identity of a particular stand of chaparral as either falling within or without such a category is subject to the vacillation of personal opinion.

Unlike designations of threatened and endangered species, which go through a rigorous statutory listing process accompanied by peer review and opportunity for public comment, declarations of ESHA have no such process and no requirements.

As a result, those who perform wildfire fuel reduction work in Monterey County's coastal zone are left in a Catch 22. They may be in violation of ESHA policies if they perform wildfire fuel reduction work in ESHA, subjecting them to fines and jail time, but they cannot be sure where ESHA is.

The Coastal Act provides at PRC 30820 for Civil Penalties up to \$30,000 for violations of the Coastal Act.

make the findings necessary to justify that action or even consider whether denying a permit would constitute a taking. Thus, in granting the permit, the Commission failed to proceed in the manner required by law and abused its discretion."

²⁶ <https://documents.coastal.ca.gov/reports/2008/1/Th16a-1-2008.pdf>, page 17.

²⁷ <https://documents.coastal.ca.gov/reports/2008/1/Th16a-1-2008.pdf>, page 21.

Monterey County provides in its coastal ordinances for fines and jail time for violation of its coastal ordinances, saying at 20.90.060,²⁸

FINES AND IMPRISONMENT.

A. Every violation of any provision of this Title or the remaining portions of the Monterey County Coastal Implementation Plan determined to be an infraction is punishable by a fine not to exceed the amount allowed by state law.

B. Unless a different punishment is prescribed by any law of this state, including any provisions of this Title, every violation of this Title or the remaining portions of the Monterey County Coastal Implementation Plan determined to be a misdemeanor is punishable by imprisonment in the county jail for not more than one year, or by fine not exceeding the amount allowed by state law, or by both fine and imprisonment.

Each of the County's Coastal Implementation Plans, adopted and certified in the 1980s, include language that was intended to allow removal of certain vegetation without the need for a permit, in an attempt to enable maintaining the County's brushlands, woodlands, and forests in wildfire resilient condition without regulatory hindrance.²⁹ However, by 2010 the County had interpreted that language to be "meaningless" due to conflicts with ESHA policies.

State Laws

California Coastal Act

We refer you to the discussion above on how Monterey County's Local Coastal Program, which is based on the California Coastal Act, acts to discourage, hinder, and block wildfire fuel reduction work, increasing the threat of wildfires to lives, property, and resources.

California Environmental Quality Act

The California Environmental Quality Act applies only to public agencies, not to private individuals.

However, if a government agency is involved in a private activity, either by participating directly with government employees, or by providing funds used to help pay for the activity, or by requiring a discretionary permit for the activity (that is, a permit that requires a decision on whether to approve, deny, or condition the permit), then CEQA is triggered, due to the government involvement.

²⁸ www.tinyurl.com/MCC-20-90-060

²⁹ E.g., www.co.monterey.ca.us/home/showdocument?id=37875, ordinance 20.145.060.A.1.

Once CEQA is triggered, it pulls in a multitude of other laws to be considered as part of the CEQA analysis. CEQA is famous for adding costs, delays, and opportunity for litigation for any project it applies to.

The CEQA Guidelines contain an exemption for work to create defensible space, at 15304(i), Minor Alterations To Land.³⁰ However, the exemption is out of date in that it has not been updated to accommodate the 100 feet of defensible space that is required by law without special approval due to extra hazardous conditions, and contains requirements and exceptions that, when it applies, makes it harder to create defensible space, not easier. For example, 15304 states,

Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes. Examples include, but are not limited to:...

(i) Fuel management activities within 30 feet of structures to reduce the volume of flammable vegetation, provided that the activities will not result in the taking of endangered, rare, or threatened plant or animal species or significant erosion and sedimentation of surface waters. This exemption shall apply to fuel management activities within 100 feet of a structure if the public agency having fire protection responsibility for the area has determined that 100 feet of fuel clearance is required due to extra hazardous fire conditions.

The discussion note to the section states in part,

The 1998 revision to the section specified that this exemption applies to fuel management activities which will not impact threatened or endangered species or result in significant erosion or sedimentation.

To use the exemption apparently requires hiring experts to learn if the work would, "result in the taking of endangered, rare, or threatened plant or animal species or significant erosion and sedimentation of surface waters."

The exemption fails to acknowledge that the California Endangered Species Act (CESA) at Fish and Game Code (F&GC) section 2080, together with the California Native Plant Protection Act (NPPA), F&GC section 1913, allow a take of California endangered and threatened species that is incidental to clearing of property for management and fire control purposes.³¹

CEQA Guidelines 15304(i) also fails to acknowledge that in areas with steep slopes and heavy vegetation a much greater distance of defensible space is needed to be effective protecting lives and property from wildfires. For example, the California Fair Plan, the

³⁰ <http://resources.ca.gov/ccqa/guidelines/art19.html> [New link](#) (see (i) on the page)

³¹ 81 Ops.Cal.Atty.Gen. 222 , <https://oag.ca.gov/system/files/opinions/pdfs/98-105.pdf>

wildfire insurance plan of last resort, can require 400 feet of defensible space, or twice that distance.³²

CEQA also offers a basis to sue to block wildfire fuel reduction work. An example is a CEQA lawsuit that was used to block the County of San Diego from using \$7 million in grant funds from the United States Forest Service to perform wildfire fuel reduction work, after the Southern California Fire Siege of 2003 killed 24 people and destroyed 3,631 homes (one of the fires started on Forest Service land), and more fires in 2007 that took more lives and destroyed more homes.³³

Until such time as CEQA is amended to clearly exempt wildfire fuel reduction work, the best way to avoid its problems is for Governor Newsom to suspend its application to wildfire fuel reduction work in Monterey County, and the County to interpret its laws to not require permits for wildfire fuel reduction work, thus avoiding triggering CEQA.

To the extent CEQA discourages, hinders, delays, or blocks wildfire fuel reduction work it increases the threat of wildfires to lives, property, and resources, including the very resources it was intended to protect.

California Endangered Species Act³⁴

The California Endangered Species Act makes it illegal for any person to "take" a California listed threatened or endangered species, with the term "take" including removing, harming, or killing.

As discussed above, the California Endangered Species Act (CESA) combined with the California Native Plant Protection Act (CNPP) have been found by the California Attorney General's Office to allow destruction of California listed threatened and endangered species for management and fire control purposes.³⁵

However, it appears not all regulators acknowledge that.

The CESA empowers the Department of Fish & Wildlife to authorize incidental take of California listed threatened or endangered species if various conditions are met, one being payment of a fee.³⁶ However, it appears none of those authorizations of a take would be feasible for residents or landowners to utilize for performance of wildfire fuel

³² www.tinyurl.com/BookCiteOnIns

³³ <http://nsjfire.org/wp-content/uploads/2014/04/Faces-20031.pdf>; <https://goo.gl/z4UJBT>;
<http://goo.gl/zZVfQU>

³⁴ https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=FGC&division=3.&title=&part=&chapter=1.5.&article=3.

³⁵ <https://oag.ca.gov/system/files/opinions/pdfs/98-105.pdf>

³⁶ www.wildlife.ca.gov/Conservation/CESA/Permitting/Incidental-Take-Permits#50033467-applications

reduction work. The payment of the fee alone makes that impractical, which is apparently a minimum in 2019 of \$6,392.

If the exceptions in Attorney General Opinion 98-105 do not apply or are not recognized, and an incidental take permit is not obtained, and a California listed threatened or endangered species is accidentally harmed or killed during performance of wildfire fuel reduction work, the person responsible can be fined up to \$5,000 or imprisoned in county jail for up to 6 months, or both fined and imprisoned.³⁷

To the extent the CESA discourages, hinders, or blocks wildfire fuel reduction work intended to reduce wildfire fuels to safe more natural levels, it acts to increase the threat of wildfires to some of the very species the law was intended to protect, and to lives and property, which is counterproductive.

Porter Cologne Water Quality Control Act

Rather than try to summarize the Porter Cologne Water Quality Control Act and other laws that impact wildfire fuel reduction work in and near riparian areas, we refer you to a brochure prepared by the California Association of Resource Conservation Districts that goes into the numerous state and federal agencies and permits and approvals needed to do work in or near creeks and rivers.³⁸

In an attempt to communicate the counterproductive impact clean water laws can have in the context of wildfires and the need to prepare for them with wildfire fuel reduction work, we relate a story on a grant the FSCMC received from Pacific Gas & Electric Company in 2014.

The grant was made after Governor Brown declared a state of drought emergency and ordered state agencies to take actions to mitigate against conditions that could result from the drought, and as a result the California Public Utilities Commission ordered public utilities like PG&E to make grants to reduce wildfire fuels.³⁹

Due to the grant being made to mitigate an emergency, a condition of the grant was that the work had to be completed by October 31, 2014. The grant was awarded October 3, 2014.

Due to the compressed time frame the FSCMC had to find a contractor and complete the work (less than one month), there was no time to engage in the process of contacting the many agencies and obtaining the many permissions to do work near a creek that ran alongside portions of the road the grant was awarded to improve as a fuelbreak and make safer as an evacuation route in event of wildfire.

³⁷ www.tinyurl.com/FGC-12008

³⁸ <http://ucanr.edu/sites/csnee/files/57548.pdf> [New link](#)

³⁹ www.ca.gov/archive/gov39/2014/01/17/news18368/index.html;
<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M096/K415/96415169.pdf>

As a result, the contractor was told to not touch any of the many hundreds of dead Tanoak trees that had been killed by Sudden Oak Death that were laying in and near the creek.

In 2016 the Soberanes Fire burned through that same area. In [Attachment 4](#) to this letter, you can see how the dead Tanoaks left in and near the creek burned Redwood trees in the area.

Avoiding doing wildfire fuel reduction work in riparian areas is one solution to the regulatory problem. However it increases the threat and damage from wildfires.

Other areas have reported on the consequences of wildfire fuel reduction work along creeks and rivers being foregone due to regulatory hindrances on work in riparian areas. An example is the quote in [Attachment 3](#) to this letter, from the Emergency Tahoe Basin Fire Commission Report to the Governors of California and Nevada, which bears repeating here,

[Stream Environment Zones / riparian areas (SEZs)] in the Lake Tahoe Basin pose both extreme fire risks and extraordinary environmental challenges. In times of fire, such as both the November 2002 Pioneer Fire and the Angora Fire, the fires quickly changed from surface fires to crown fires because untreated SEZs allowed fire to quickly move through overstocked and insect diseased forested areas. Commentators have referred to the SEZs in these areas as operating like "candle wicks" during times of fire, advancing the severity of crown fires....

Removal of fuels from and restoration of SEZs is necessary in order to reduce fire hazards...

In the context of wildfire fuel reduction work, the concern of clean water laws is apparently that silt may get into a creek when ground is disturbed in the area while working to reduce fuels.

However, after ground is heated by unnatural high heat intensity wildfire, it can become hydrophobic, which can result in many tons of silt and debris flowing into creeks and rivers during following winters.

The Draft Soberanes Fire BAER report estimated between 18 tons per acre and 88 tons per acre of erosion over approximately 57% of the burn area, due to hydrophobic soils, depending upon whether the following winter was a 2-year rain event or a 10-year rain event.⁴⁰ However, the winter following the fire had unusually high rainfall (90 inches in the Rocky Creek watershed), with likely much higher siltation than the highest predicted.

⁴⁰ www.co.monterey.ca.us/home/showdocument?id=14136

Protected species affected by the fire and post fire erosion are reflected in the following table from the Soberanes Fire BAER Report.

Table 1. A summary of determinations for Threatened and Endangered species and the related emergency condition.

| Species | Emergency Condition |
|---|--|
| California condor | None |
| Marbled murrelet | None |
| California red-legged frog | Direct mortality from the fire, Impaired habitat use due to sedimentation, debris flows. |
| California red-legged frog critical habitat | Impaired habitat due to high water flows, sedimentation and debris flows. |
| Steelhead trout, SCCC DPS | Direct mortality from debris flows or landslides. Impaired habitat use due to sedimentation, debris flows. |
| Steelhead trout, SCCC DPS critical habitat | Impaired habitat due to sedimentation and debris flows. |
| Smith's blue butterfly | None |

Not all threatened and endangered species affected by the fire are included in the table. For example, the endangered Dusky Footed Wood Rat is not shown, many of which were killed by the fire and affected by its aftermath.

Erosion and siltation potential of creeks and rivers from a wildfire dwarfs erosion and siltation potential from wildfire fuel reduction work. However, water quality laws apparently do not take that reality into consideration, which to the extent that discourages or hinders wildfire fuel reduction work, ultimately contributes to the wildfire problem.

Z'berg-Nejedly Forest Practice Act

Monterey County has little commercial forest timber lands, but hundreds of thousands of acres of Oak woodlands, mixed evergreen forests, and brushlands.

After the Soberanes Fire there are many thousands if not millions of trees that were killed but not consumed by the fire. If those dead trees are not reduced in numbers before the next wildfire in the area, they will act as kindling to kill the remaining trees that survived the fire. You can see that graphically in some of the photographs in [Attachment 4](#).

The most likely way to achieve reduction of dead trees at the scale needed is to find a way to commercialize the work, to provide an incentive and pay the cost of removing the trees, while putting them to beneficial use.

Utilization as bio-fuel requires the presence of a biofuel power plant within a distance that makes transportation financially feasible, typically a maximum of about 50 miles, and no plants are close enough, so that is not a viable option.

Densified Biomass (compressed wood pellets or pressed logs) may be a viable option for commercializing removal of dead trees in the burn area and elsewhere in Monterey County.

However, requirements of the Z'berg-Nejedly Forest Practice Act for production of fuelwood, should they apply, would add costs, delays, and limitations to any effort to utilize the many dead trees as Densified Biomass. Suspension of the Forest Practice Act in Monterey County for that purpose would remove those barriers and increase the chance of biomass utilization, which would also reduce the threat to surviving trees in event of wildfire by reducing wildfire fuel density.

Air Quality Regulations

Please see the discussion below on the Clean Air Act

Federal Laws

Clean Air Act

Absent a means to commercialize wildfire fuel reduction work, cutting, piling, and burning is the lowest cost most practical way for residents and landowners in remote rural areas to reduce wildfire fuels to safe levels. Where possible to do it safely, broadcast prescribed fire can be the lowest cost per acre means to perform wildfire fuel reduction work.

Air quality standards do not take into account the impacts of wildfires on air quality, but do take into account smoke from prescribed fires (burn piles are one form of prescribed fire, broadcast fires are another form of prescribed fire).

That unequal consideration of smoke emissions from wildfires verses smoke emissions from prescribed fires sets up an unrealistic platform for regulation of smoke from prescribed fires, which does not consider the beneficial reductions in smoke from wildfires that may be gained by use of prescribed fire.

The result is air quality law calculations have a built-in bias against use of prescribed fire.

Air quality laws should be amended to include consideration of smoke emissions from wildfires that may be reduced by use of prescribed fire, when calculating conditions under which prescribed fires may be started (both pile burning and prescribed fires).

While waiting for those changes to law, Governor Newsom can help by suspending California's enforcement of the Clean Air Act to the extent it is biased against use of prescribed fire.

Clean Water Act

See the discussion above on the Porter Cologne Water Quality Control Act.

Endangered Species Act

See the discussion above on the California Endangered Species Act.

Migratory Bird Treaty Act

See the discussion above on Monterey County's 2010 General Plan policy OS-5.25.



Basic Defensible Space & Vegetation Management Guidelines For Property Owners

Scope: These guidelines provide property owners with information regarding basic vegetation management practices to create defensible space around structures in all unincorporated areas of Monterey County. Use of these practices will help property owners bring the property into a **basic** level of compliance with:

- LE-100 Defensible Space Inspection Program
- California Public Resources Code Section 4291
- Local fire dept. wildland fire safety requirements
- Planning Services Dept. zoning, easement & environmental requirements

Within 30 feet immediately surrounding the building (or to property line, whichever is closer):

- ❖ Cut flammable vegetation around buildings a minimum 30 feet or to the property line, whichever is closer, except for landscaping, as follows:
 - Cut dry and dead grass to a maximum height of 4 inches.
 - Maintain the roof and gutters of the structure free of leaves, needles or other dead vegetative growth.
 - Maintain any tree adjacent to or overhanging a building free of dead wood.
 - Trim tree limbs that extend within 10 feet of the outlet of a chimney or stove pipe.
 - Trim dead portions of tree limbs within 10 feet from the ground.
 - Remove all limbs within 6 feet of the ground.
 - Remove all dead fallen material unless it is embedded in the soil.
 - Remove all cut material from the area.
- ❖ Remove all cut material from the area or chip and spread on site.
- ❖ Provide and maintain at all times a screen over the outlet of every chimney or stovepipe that is attached to a fireplace, stove or other device that burns any solid or liquid fuel. The screen shall be constructed of nonflammable material and openings of not more than one-half inch in size.
- ❖ Post house numbers per Fire Department requirements.

Between 30 and 100 feet around the building (or to the property line, whichever is closer)

- The fuel reduction zone in the remaining 70 feet (or to the property line) will depend on the steepness of your property and the type of vegetation. For additional information, refer to the Cal Fire brochure [“Why 100 Feet? Protect Your Home...and Property”](#)
- Cut plants and grass beneath tree canopies to prevent fire from spreading to the trees. These plants should be “topped off” leaving the root structure intact to minimize erosion.
- Do not use herbicide or other chemical methods to remove vegetation.

Note: Any further vegetation management activities, including those required by insurance companies, may require prior approval from the Planning Services Department when activities involve the following:

- Exposing soil to erosion
- Impact sensitive habitat
- Accelerating sediment runoff into water courses
- Tree removal

Permit requirements for these additional vegetation management activities are available at the Monterey County Planning Department office located at 1441 Schilling Place, 2nd Floor - South, Salinas, CA 93901. If you wish to speak to a Planner regarding these permit requirements, you may call (831) 755-5025.

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Tree Removal Permit Process Procedures

General Reminder:

- Review the 2010 Monterey County Zoning Ordinance for tree removal policies.
- No over-the counter review for tree removal, unless they are hazardous.
- During the bird nesting season (February 22 through August 1) tree consultants shall identify any nests within 300 feet of the proposed tree removal(s) in the tree assessment. If a nest is found, a County-qualified biologist must conduct a nest survey prior to the approval of the tree removal permit. The biologist's recommendations will be added as condition of approval (See condition list on the back of the Tree Removal Application form).
- If the tree removal report/evaluation indicates any sudden oak death, the proposed removal must be referred to the Ag. Commissioner's Office (Brad Oliver: 759-7332). Do not go any further until written direction is received from the Ag/ Commissioner's Office.
- Proposed tree removal located within the coastal and non-coastal sections of the Del Monte Forest require a report/letter by Pebble Beach Company (Eric Love: 625-8421).

Administrative Tree Removal Permit: Hazardous

Submittal Requirements:

- A completed Tree Removal Permit Application.
- An ISA Tree Hazard Evaluation Form.
- A site plan showing existing structures and location of tree(s) proposed for removal.
- Photos showing full context of tree(s) including details of hazard(s) and how it poses a hazard in relation to the target.
- No fee

Reminder:

- ISA Tree Hazard Evaluation forms must be prepared by a County-certified tree consultant trained to prepare tree hazard evaluations (see consultant list).

Review and Approval Process:

- 1) At the counter, review the application, ISA Tree Hazard Evaluation Form, photos and site plan. If staff requires more information or review, initialize the project and bring the project in for further review.
- 2) Check Accela for prior tree removal permits with conditions not cleared and for consistency with any approved projects.
- 3) Identify conditions for replacement. If the tree consultant recommends no replacement planting, then consider other mitigation alternatives, such as a fee program to the DMF Foundation or the Oak Woodland Foundation.
- 4) If staff agrees with the results made by the tree consultant, initialize the application and approve the Tree Removal Permit. If staff does not agree with the results, the project will be denied and/or must go through the appropriate process and will require a Tree Assessment Report by a County-certified tree consultant.

- If staff agrees that the tree(s) is/are a hazard, there is no limit to the number of trees that can be removed. While reviewing the submitted information, determine if the removal is absolutely required to abate the hazard. If the tree can be saved by trimming or removing certain branches/limbs that could abate the hazardous situation, then that should be staff's determination.
- 5) Tree Removal Permits for a hazardous tree(s) do not require noticing or appeal period timing.

ISA Tree Hazard Evaluation Form review:

- a. Review all completed areas of the form to get the general status of tree(s) in question and the site conditions. If staff has any questions, make sure to contact the tree consultant involved.
- b. The most important part of the form is the Hazard Rating total. On the second page of the ISA form, under "Hazard Rating," verify the three rating components: failure potential, size of part, and target. The components are rated from 0 to 4. Combine the ratings from each component to get the Hazard Rating total. Using the submitted photos and site plan, review to make sure that the assessment makes sense with the data provided and that staff agrees or disagrees with consultant's information. Staff may be required to conduct a site visit to make a better determination.

How to read the Hazard Rating total

| | |
|---------------|----------------------------|
| 0 through 6: | Most likely non-hazardous. |
| 7 or 8: | Possibly hazardous |
| 9 through 12: | Hazardous |

Depending on the circumstances, anything less than a rating of 9 is not hazardous.

Reminder:

- For a tree to be a hazard, the tree must be endangering the safety of persons (property owner(s), neighbors, general public ...), structures (single family dwelling) or public-use areas (roads, side-walks,...). The condition status of a tree can range from healthy to already down, yet if there is no specific hazard target, then there is no hazard.
- Liability: Approval or denial of a permit does not place any liability on the County of Monterey, as stated on the Tree Removal Permit application.

Administrative Tree Removal Permit / Coastal Waiver (3 or less)

Submittal Requirements:

- A completed Tree Removal Permit Application.
- A Tree Assessment Report from a County-certified tree consultant (see consultant list).
- A site plan showing existing structures and location of tree(s) to be removed.
- Photos of tree(s) to be removed.
- Fee: \$270.64

Review Procedures:

- 1) Once a project planner is assigned, review all submitted information that is received with the completed application to make sure that everything required for submittal is

accounted for. If the application package is missing information, send an incomplete letter to the owner/applicant requesting the missing information.

- 2) After staff has reviewed the submitted materials and has conducted a site visit, the Planner shall complete all information on the back of the submitted application titled, "For Department Use only". On the back of the application, there are three tables that need to be completed during review:
 - a. Department Use / General Information: Fill in all fields with the appropriate information.
 - b. Prior Tree Removal information: Complete all fields indicating any history of tree removal on subject parcel(s). Staff should:
 - i. Make sure that tree removal(s) will not impact projects with prior conditions that have not been cleared. No new tree removals will be approved until prior conditions are cleared.
 - ii. Check for tree removals that were done within a one-year period (21.64.260.D.2). If a tree removal for one tree is proposed, but three trees were removed less than a year prior, the cumulative number would equal four tree removals, in which a Use Permit would be required for the proposed tree to be removed.
 - c. Findings: First indicate whether the project is Coastal (Title 20) or Inland (Title 21) by checking the box next to the indicated zoning area, then complete the findings information located under the indicated zoning area.
 - i. Inland: The tree removal findings are summarized into questions on the Tree Removal Permit form. See Chapter 21.64.260 of the Monterey County Zoning Ordinance, Title 21, for protected tree removal. Tree Removal(s) that do not meet the findings required for removal of three or less trees may be denied and/or require a Use Permit. (Ex: Even if only one tree is requested for removal, if the findings can not be made, it should be denied and/or processed as a Use Permit.
 - ii. Coastal: The tree removal findings are summarized into questions on the Tree Removal Permit form. See the Monterey County Coastal Implementation Plan (Part 2-5), that pertains to the project's land use planning area, under "Forest Resources Development Standards". (20.144.050-North County; 20.145.060-Big Sur; 20.146.060-Carmel; & 20.147.050-Del Monte Forest)

Reminder: In the Coastal Zone

- If a tree is deemed hazardous, no fees will be assessed and there is no limit to the amount of tree removal.
- If a tree is deemed diseased, three or less trees can be removed. More than three trees will require a Coastal Development Permit.
- Within a developed setting, if a tree is dead and do not cause or create any impacts, three or less trees may be removed. If a dead tree is not on a developed site, it provides habitat value and should not be removed without a Coastal Development Permit.
- Everything else, except what is listed, requires a Coastal Development Permit.

Administrative Tree Removal Permit: Sudden Oak Death

Submittal Requirements:

- A completed Tree Removal Permit Application
- A letter from the Ag. Commissioner's Office (Brad Oliver: 759-7332).
- A site plan approved by Ag. Commissioner's Office
- No fee

Review & Approval Process:

- 1) At the counter, review the completed application, site plan and letter from Ag. Commissioner's Office. Follow instruction recommended by the Ag. Commissioner's Office.
- 2) Identify conditions for replacement.
- 3) If removal is recommended by the Ag. Commissioner's Officer, there is no limit to the amount of removal. There is also no appeal period to the approval.

Administrative Tree Removal Permit: Fire Hazard Management

Submittal Requirements:

- A completed Tree Removal Permit Application.
- A letter from Fire Marshall.
- A site plan approved by Fire Marshall.
- No fee

Review and Approval Process:

- 1) At the counter, review the completed application, site plan and letter from Fire Marshall. Follow recommendations by Fire Marshall.
- 2) Identify conditions for replacement.
- 3) There is no limit to the amount of removal. There is also no appeal period to the approval.