



COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

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MEMORANDUM

DATE: JANUARY 24, 2023

TO: HONORABLE BOARD OF SUPERVISORS

FROM: PLANNING & BUILDING SERVICES

SUBJECT: DIRECTION REGARDING HAZARDOUS VEGETATION REMOVAL IN THE COASTAL ZONE

On October 18, 2022, the Mendocino County Board of Supervisors discussed dead/hazardous vegetation removal within the Coastal Zone. At that meeting the Board provided clarification that dead/hazardous vegetation removal is not considered "Development" and directed Planning and Building Services to deprioritize all related code enforcement. During the meeting it was discussed that additional clarification may be necessary at a future date on this subject.

Today's item seeks clarification from the Board on the direction received on October 18, 2022. This memorandum will provide information on current permit requirements for vegetation removal in the coastal zone and lists a number of questions or clarifications requested of the Board based upon the prior direction received. Attachment A to this memorandum provides pertinent code sections from the Coastal Zoning Code as they relate to Major Vegetation Removal in the Coastal Zone.

Current Permit Requirements for Major Vegetation Removal in the Coastal Zone:

MCC section 20.532.010 requires that any person wishing to undertake any development shall obtain a Coastal Development Permit. The definition of development in MCC section 20.308.035(D) includes the removal or harvesting of major vegetation, with some limited exceptions. Major Vegetation Removal is defined in MCC section 20.308.080(C), which includes various thresholds and certain exemptions.

Presently, any individual wishing to undertake vegetation removal of trees greater than 12 inches in diameter at breast height, regardless if they are dead/hazardous or living, are requested to complete a questionnaire to determine if the proposed vegetation removal constitutes "development" and therefore requires a Coastal Development Permit. Planning staff then reviews this questionnaire and sends the requestor their determination.

If the determination is that a Coastal Development Permit is required and the trees are hazardous in that they may constitute an "emergency" as defined in MCC section 20.308.040(C), an emergency Coastal Development Permit may be applied for pursuant to MCC section 20.536.060. The Director of Planning and Building Services may grant an emergency permit if the following criteria are met:

- (1) An emergency exists and requires action more quickly than permitted by the procedures for administrative permits or for ordinary permits, and the development can and will be completed within thirty (30) days unless otherwise specified by the terms of the permit;
- (2) Public comment on the proposed emergency action has been reviewed if time allows; and
- (3) The work proposed would be consistent with the requirements of the coastal program.

If an emergency Coastal Development Permit is granted the permittee must submit a Coastal Development Permit application for the development within 60 days of the issuance of the emergency Coastal Development Permit.

All other Major Vegetation Removal would require a Coastal Development Permit.

It is important to note that Planning and Building Services does not have jurisdictional authority in areas of deferred certification or retained jurisdiction of the California Coastal Commission. Areas of deferred certification are areas within the Mendocino Cypress Woodlands (aka Pygmy forest) and tidelands, submerged lands, waterways, and areas within the mean high tide. Due to lack of authority in these areas, Planning and Building Services would refer all requests for vegetation removal within these areas to the California Coastal Commission.

The following data regarding vegetation removal complaints in the Coastal Zone (2020-2022) was compiled by Code Enforcement for reference:

YEAR	TOTAL NO. COMPLAINTS RECEIVED BY CODE ENFORCEMENT
2020	542
2021	916
2022 (*TO 11-01-2022)	781

COMPLAINTS REGARDING HAZARDOUS VEGETATION ONLY	COMPLAINTS REGARDING HAZARDOUS VEGETATION AND OTHER POTENTIAL VIOLATIONS
8	21

Questions/Clarifications requested of the Board:

1. What verification that proposed tree removal is for Dead or Hazardous Vegetation is needed?
 - a. Should an arborist report be required?
 - b. Should it be a self-certification?
2. Are dying trees included in being considered Dead or Hazardous Vegetation?
3. Are all dead trees determined to be hazardous or only those that have the potential to impact the human environment (aka "fall zone"), such as ability to fall on a home, garage, or pump house?
 - a. Are roadways, both public and/or private, considered human environment that would allow for determination as being "hazardous"?
 - b. Is the "fall zone" a standard buffer requirement from the tree such as 50 or 100 feet or dependent upon the tree height as verified through an arborist report or self-certification?
4. Does the Board desire for Planning Staff to review proposed Dead or Hazardous Vegetation removal and determine that the removal is for truly dead or hazardous vegetation?
 - a. If no, answers to questions 5 and 6 do not need addressing.

If PBS were to be contacted by a property owner seeking authorization to remove dead or hazardous vegetation, based upon the identified method pursuant to question 1, PBS would state that authorization for the removal will not be provided and the property owner may remove the trees at their own risk.

PBS will also acknowledge that property owners may be subject to regulations of other local, state or federal agencies with jurisdiction over such activities (CDFW, USFWS, CalFire, Coastal Commission, etc.).

These statements from PBS may be provided in the form of a letter or email to the property owner for record keeping purposes or via a telephone call.

5. Should individuals be allowed to remove Dead or Hazardous Vegetation from within Environmentally Sensitive Habitat Areas, such as wetlands, riparian corridors, and/or sensitive plant communities?

- a. Should a report from a qualified biologist be required to demonstrate such removal is not impacting Environmentally Sensitive Habitat Areas or to provide recommendations?
 - b. What if access to a dead tree is required to occur through an Environmentally Sensitive Habitat Area?
 - c. Can heavy equipment be used? Does it need to be limited to hand tools?
 - d. Should a Point Arena Mountain Beaver Survey be required for areas within the potential habitat area? PBS cannot authorize removal in Point Arena Mountain Beaver habitats without clearance from USFWS due to species susceptibility to noise and ground disturbance.
6. Trees provide important habitat for birds and other sensitive species (Sonoma tree vole), should nesting bird surveys or Sonoma tree vole surveys be required?
 7. Is Code Enforcement to cease investigation into cases currently in progress involving major vegetation removal (if determined to be dead or hazardous), or de-prioritize new cases moving forward following new Board direction?
 8. If Code Enforcement receives a complaint involving multiple components (for example, major vegetation removal AND grading), does the Division ONLY investigate those components NOT involving major vegetation removal?

PBS Recommendations

1. Pursue an Urgency Ordinance to establish Dead/Hazardous Vegetation removal standards, if County Counsel determines such an ordinance would meet the required urgency ordinance findings.
2. Require an arborist report regarding if the vegetation proposed for removal is in fact dead or hazardous, including the "fall zone". PBS will not provide a letter of authorization but will rather provide a letter that a qualified professional has determined the trees to be dead and/or hazardous.
3. Require a waiver from the property owner acknowledging that the dead and/or hazardous trees may be subject to future permit requirements and/or enforcement action by any pertinent County, State or Federal Agency with jurisdiction.
4. Require appropriate surveys be completed for vegetation removal within Environmentally Sensitive Habitat Areas, or at minimum owner provide clearance for any federally listed or state listed threatened or endangered species.
5. For active Code Enforcement cases involving major vegetation removal, have Code Enforcement request an arborist report if the responsible party says that they were dead or hazardous. If affirmed that the trees were dead or hazardous, de-prioritize the case. If not affirmed, continue with case as usual.
6. Deprioritize all new cases for major vegetation removal where the responsible party has demonstrated the removal to be for dead or hazardous trees through an arborist report.
7. Investigate all components of cases that involve multiple components. Utilize methodology in Recommendation 6 for major vegetation removal and not pursue further action on that component if determined to be for dead or hazardous trees.

PERTINENT COASTAL ZONING CODE SECTIONS:

MCC section 20.532.010 states, in part, that:

Any person, partnership, corporation, state or local agency or special district proposing to undertake any development as defined in Section 20.308.035(D) shall obtain a coastal development permit...

“Development” is defined in MCC section 20.308.035(D) as (emphasis added):

*“Development” means on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; **and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z’berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).***

As used in this section, “structure” includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

As used in this section, removal or harvesting of major vegetation is further defined in Section 20.308.080.

“Major Vegetation Removal” is defined in MCC section 20.308.080(C) as:

“Major Vegetation, Removal or Harvesting” shall be defined to include one (1) or more of the following:

- (1) The removal of more than fifteen (15) trees or ten (10) percent of the total number of trees on the parcel, whichever is less, with a diameter of twelve (12) inches or a circumference of thirty-eight (38) inches or more measured at four and one-half (4 ½) feet vertically above the ground; or*
- (2) The removal of trees within a total contiguous ground area of six thousand (6,000) square feet, or within a noncontiguous area or areas not exceeding a total of six thousand (6,000) square feet measured as the area located directly beneath the tree canopy; or*
- (3) The Planning and Building Services Director may determine that a proposal to remove vegetation constitutes major vegetation removal if the Planning and Building Services Director finds that it may result in a significant impact. In making a finding that the proposed major vegetation removal may result in a significant impact, the Planning and Building Services Director shall review the proposal and determine if any of the following conditions exist or are proposed:*
 - (a) The vegetation removal involves the use of heavy equipment, or*
 - (b) The vegetation removal is proposed on a steep slope (fifteen percent (15%) or greater)*

and the removal of vegetation may result in soil erosion or landslide, or

- (c) The vegetation removal is located within or adjacent to an environmentally sensitive habitat, or*
 - (d) The vegetation removal may result in significant exposure of adjacent trees to wind damage, or*
 - (e) The vegetation removal may result in significant degradation of the viewshed, or*
 - (f) The removal of one (1) or more trees which measure twenty-four (24) inches or more in diameter at breast height and which are visually or historically significant, exemplary of their species, or ecologically significant.*
- (4) Exempt from this definition would be one (1) or more of the following:*
- (a) Removal of trees and other vegetation that have been reviewed and approved in conjunction with an associated development permit, or*
 - (b) Removal or harvesting of vegetation for agricultural purposes in areas presently used for agriculture, or*
 - (c) Kelp harvesting, or*
 - (d) Timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).*

“Emergency” is defined in MCC section 20.308.040(C) as:

“Emergency” means a sudden unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services.

Procedure for Emergency Coastal Development Permits is provided in MCC section 20.536.060 as follows:

Sec. 20.536.060 Permits for Approval of Emergency Work.

(A) Purpose. *This section describes procedures for processing applications for permits to perform work to resolve problems resulting from a situation falling within the definition of “emergency” in Section 20.308.040(B). In cases of a verified emergency, temporary emergency authorization to proceed with remedial measures may be given by the Director or his or her designee until such time as a coastal development permit application is filed.*

(B) Immediate Action Required. *When immediate action by a person or public agency performing a public service is required to protect life and public property from imminent danger, or to restore, repair, or maintain public works, utilities, or services destroyed, damaged, or interrupted by natural disaster, serious accident, or in other cases of emergency, the requirements of obtaining any permit under this Chapter may be waived upon notification of the Director of the type and location of the work within seven (7) days of the disaster or discovery of the danger, whichever occurs first. Nothing in this section authorizes permanent erection of structures valued at more than twenty-five thousand dollars (\$25,000).*

(C) Method of Application. *Applications in cases of emergencies shall be made to the Director or his/her designee by letter if time allows, and by telephone or in person if time does not allow.*

(D) Necessary Information. *The information to be reported during the emergency, if it is possible to do so, or to be reported fully in any case after the emergency, shall include the following:*

- (1) The nature of the emergency;*
- (2) The cause of the emergency, insofar as this can be established;*
- (3) The location of the emergency;*
- (4) The remedial protective, or preventive work required to deal with the emergency; and*
- (5) The circumstances during the emergency that appeared to justify the course(s) of action taken, including the probable consequences of failing to take action.*

(E) Verification of Emergency. *The Director shall verify the facts, including the existence and nature of the emergency, insofar as time allows.*

(F) Criteria for Granting Permit. *The Director shall provide public notice of the proposed emergency action with the extent and type of notice determined on the basis of the nature of the emergency itself. The Director may grant an emergency permit upon reasonable terms and conditions which shall include, at a minimum, an expiration date and the necessity for a regular permit application later, if the Director finds that:*

- (1) An emergency exists and requires action more quickly than permitted by the procedures for administrative permits or for ordinary permits, and the development can and will be completed within thirty (30) days unless otherwise specified by the terms of the permit;*
- (2) Public comment on the proposed emergency action has been reviewed if time allows; and*
- (3) The work proposed would be consistent with the requirements of the coastal program.*

(G) Reporting.

- (1) The Director shall report in writing to the Board of Supervisors at each meeting the emergency permits applied for or issued since the last report, with a description of the nature of the emergency and the work involved. Copies of this report shall be available at the meeting and shall have been mailed at the time that application summaries and staff recommendations are normally distributed to all persons who have requested such notification in writing.*
- (2) All emergency permits issued after the mailing for the meeting shall be briefly described by the Director at the meeting and the written report required by Subparagraph (1) shall be distributed prior to the next succeeding meeting.*
- (3) The report of the Director shall be informational only; the decision to issue an emergency permit is solely at the discretion of the Director.*
- (4) Notice of emergency permits shall be provided by phone or letter to the California Coastal Commission as soon as possible, but in any event within three (3) days, following issuance of the emergency permit.*

(H) Compliance. *An emergency permit shall be valid for not more than sixty (60) days from the date of issuance. Prior to expiration of the emergency permit, the permittee must submit a coastal development permit application for the development or else remove the development undertaken pursuant to the emergency permit in its entirety and the site restored to its previous condition. Failure to comply with the provisions of this section or failure to properly notice and report by the applicant any emergency actions may result in enforcement action pursuant to Chapter 20.552.*