

## **ORDINANCE NO. 4478**

### **AN URGENCY ORDINANCE OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS ESTABLISHING REQUIREMENTS AND PROCEDURES FOR THE REMOVAL OF FIRE DEBRIS AND HAZARD TREES FROM PRIVATE PROPERTY FOLLOWING THE AUGUST COMPLEX AND OAK FIRES**

WHEREAS, on August 17, 2020, the August Complex Fire broke out, which initially consisted of 37 different fires burning in the Mendocino National Forest, which eventually merged and burned over 1 million acres between Mendocino, Humboldt, Trinity, Tehama, Glenn, Lake and Colusa Counties; and

WHEREAS, on August 18, 2020, Governor Gavin Newsom proclaimed that a state of emergency existed in California due to fires burning statewide; and

WHEREAS, on September 7, 2020, the Oak Fire broke out west of Highway 101 near Big John Road and Skyview Road near Willits, which burned over 1000 acres; and

WHEREAS, between the August Complex Fire and the Oak Fire, dozens of homes and accessory structures were burned in Mendocino County; and

WHEREAS, on September 10, 2020, by delegation, a local emergency as of September 7, 2020, was declared for Mendocino County, which was ratified by the Board of Supervisors at its meeting on September 11, 2020; and

WHEREAS, on September 10, 2020, the health officer of the County of Mendocino declared a local health emergency as of September 7, 2020, pursuant to Health and Safety Code section 101080, which was ratified by the Board of Supervisors at its meeting on September 11, 2020; and

WHEREAS, on September 25, 2020, through Executive Order N-81-20, Governor Gavin Newsom proclaimed that a state of emergency existed in several California counties, including Mendocino County, due to the wildfires then burning in those counties, specifically including the Oak Fire; and

WHEREAS, on October 16, 2020, President Donald J. Trump issued a major disaster declaration resulting from wildfires beginning on September 4, 2020, which included Mendocino County; and

WHEREAS, on November 12, 2020, Mendocino County was added to the areas listed in the major disaster declaration issued by President Donald J. Trump on August 22, 2020, related to wildfires beginning on August 14, 2020; and

WHEREAS, the debris resulting from the August Complex and Oak Fires contains hazardous material in the ash of the burned structures and poses a substantial present and potential hazard to human health and safety and to the environment unless it is addressed and managed; and

WHEREAS, the approaching rain and snow season threatens to spread the hazardous

material in the ash of the burned structures and could thereby pollute and contaminate the drinking water supply of the affected areas of Mendocino County; and

WHEREAS, the scale of the damage requires a coordinated approach to ensure adequate and timely cleanup for protection of the environment and public health; and

WHEREAS, a limited window of time exists to access the additional manpower and resources currently present in the area, such as the U.S. Army Corps of Engineers, as a result of the recent fire disasters; and

WHEREAS, a swift response and short cleanup deadlines are necessary to protect the environment and public health, especially in light of the approaching rainy season, and to increase Mendocino County's ability to utilize support from the U.S. Army Corps of Engineers and other support resources in the area, without which the abatement of the fire debris may become extremely difficult, if not impossible, to accomplish in a manner that adequately protects the environment and the public health from the immediate threat posed by the fire debris; and

WHEREAS, this ordinance helps to ensure that properties affected by the August Complex and Oak Fires are made safe and ready for reconstruction or repair; and

WHEREAS, this ordinance provides for the orderly administration of the public cleanup program in coordination with the private cleanup program; and

WHEREAS, expeditious enforcement and abatement provisions are needed to ensure that all affected properties will be remediated in a timely manner; and

WHEREAS, Government Code section 25845 gives the Board authority to establish a procedure for the abatement of nuisances; and

WHEREAS, the County of Mendocino desires to adopt these regulations on an urgency basis pursuant to Government Code section 25123, which allows ordinances to become effective immediately if the ordinance is for the immediate preservation of the public peace, health or safety, which shall contain a declaration of the facts constituting the urgency, and be passed by a four-fifths vote of the Board of Supervisors; and

WHEREAS, Government Code section 25131 expressly authorizes the Board of Supervisors to adopt such an urgency ordinance immediately upon its introduction.

NOW, THEREFORE, THE MENDOCINO COUNTY BOARD OF SUPERVISORS ORDAINS AS FOLLOWS:

**Section 1.** The above recitals are incorporated herein by this reference.

**Section 2. Urgency Findings.** The Board of Supervisors, in consultation with the Local Health Officer, hereby finds that the adoption of this ordinance is for the immediate preservation of the public peace, health and safety.

- A. The August Complex and Oak Fires destroyed dozens of residences and accessory buildings in the Willits and Round Valley and surrounding areas of

Mendocino County.

- B. There exists the potential for widespread toxic exposures and threats to public health and the environment in the aftermath of a major wildfire disaster, and debris and ash from residential and commercial structure fires contain hazardous materials and the harmful health effects of hazardous materials produced by a wildfire are well-documented.
- C. The combustion of building materials such as siding, roofing tiles, and insulation results in dangerous ash that may contain asbestos, heavy metals and other hazardous materials. Household hazardous waste such as paint, gasoline, cleaning products, pesticides, compressed gas cylinders, and chemicals may have been stored in homes, garages, or sheds that may have burned in the fire, also producing hazardous materials.
- D. Exposure to hazardous materials may lead to acute and chronic health effects and may cause long-term public health and environmental impacts. Uncontrolled hazardous materials and debris pose significant threats to public health through inhalation of dust particles and contamination of drinking water supplies. Improper handling can expose residents and workers to toxic materials, and improper transport and disposal of fire debris can spread hazardous substances throughout the community.
- E. Standards and removal procedures are needed immediately to protect the environment and public health, and to facilitate coordinated and effective mitigation of the risks to the environment and public health from the health hazards generated in the August Complex and Oak Fires disasters. Without a clear and immediate set of standards and removal procedures, residents affected by the August Complex and Oak Fires may return to their properties and attempt to clean up the remaining debris and ash in a manner that may cause damage to the environment and to the public health.
- F. The August Complex and Oak Fires have created hazardous waste conditions in the county in the form of contaminated debris from household hazardous waste/materials and structural debris resulting from the destruction of dozens of structures. This hazardous waste debris poses a substantial present or potential hazard to human health and the environment until the property is certified clean. The accumulated exposure to hazardous waste debris over an extended period poses a severe hazard to human health.
- G. The DTSC has issued reports regarding the assessment of burn debris from wildfires in the past. The studies of burned residential homes and structures from large scale wildland fires indicated that the resulting ash and debris can contain asbestos and toxic concentrated amounts of heavy metals such as antimony, arsenic, cadmium, copper, lead, and zinc. Additionally, the ash and debris may contain higher concentrations of lead if the home was built prior to 1978 when lead was banned from household paint in the United States. The reports indicated that the residual ash of burned residential homes and structures has high

concentrations of heavy metals that can be toxic and can have significant impact to individual properties, local communities, and watersheds if the ash and debris is not removed safely and promptly. The purpose of the structural debris removal program is to remove debris that poses a risk to health and/or the environment.

- H. Hazard trees pose a significant danger to the health, safety and welfare of the public by fueling and propelling wildfires, thereby increasing the potential for a severe fire and endangering lives, property and the environment. Increasingly dry summers and severe wind events further exacerbate the fire danger and have the potential to result in catastrophic fire losses to life, property and the environment.
- I. Dead trees that fall on the forest floor over time further complicate the fire environment by adding a large amount of down and dead fuel that will add to surface fire intensity and make control efforts difficult.
- J. Dead and dying trees pose a life hazard to firefighters, first responders and the general public if exposed to fire or high windstorm events. Standing trees that are dead or dying and are adjacent to roads have an increased risk of falling onto the roads during a wildfire disaster or high windstorm event as compared to healthy trees. This endangers primary and secondary evacuation routes in the areas of the August Complex and Oak Fires, which could lead to increased loss of life during a future fire.
- K. Of paramount importance to the Board and the residents of the County is the protection of lives and property from the threat of fire, including proper maintenance of evacuation routes and the safety of fire and law enforcement personnel during wildfires.
- L. Dead and dying trees suffer an increased risk of pest infestation, such as bark beetles. When dead or dying trees are infested with pests, this also exposes the healthy trees in close proximity. The healthy trees are then endangered by the pests, which potentially creates more fuel for future fires, which increases the future fire risks in the fire area.
- M. The fire damaged trees from the August Complex and Oak Fires justifies County action to reduce the risk posed by fire damaged standing trees.
- N. Trees will be assessed for:
  - 1. Fire damage;
  - 2. Diameter of six (6) inches or greater measured 4.5 (four and one-half) feet above ground level; and
  - 3. Immediate threat to life, public health and safety, as a result of threatening public rights-of-way, and meet one (1) or more of the following criteria:
    - a. Have a split trunk;

- b. Have a broken canopy; or
  - c. Is leaning at an angle greater than thirty (30) degrees.
- O. For those trees which met the defined criteria, the arborists employed the ISA's Tree Risk Assessment methods to assess a tree's risk ratings, which was based on the health of the tree and the tree's relation to public rights-of-way.
- P. The County recommends removal of all hazard trees which meet the defined criteria and are rooted along the County's right-of-way.
- Q. One purpose of this ordinance is to establish a hazard tree abatement program that protects the lives and property of the public living in and traveling through the County, and the environment.
- R. The Board finds that hazard trees pose a danger to the health, safety and welfare of the general public in the vicinity of any real property located throughout the territory of the County affected by the August Complex or Oak Fires for the reasons set forth above. Therefore, all hazard trees located on real property within the unincorporated area of the County affected by the August Complex or Oak Fires are deemed a public nuisance and pose a hazard to the safety of the landowners, residents in the vicinity, users of roads and to the public generally.
- S. It is imperative that the County implement immediate and aggressive measures to identify and fell the trees that are dead and dying as a result of the August Complex and Oak Fires to immediately eliminate or reduce the risks to life, public health and safety, infrastructure, forest health and the community at large
- T. In the absence of timely and appropriate actions by the affected private property owners, tailored enforcement procedures are needed ensure the ability of Mendocino County to remediate the fire debris and ash on those privately owned properties.
- U. The rapidly approaching rainy season makes the need for immediate standards and procedures even more urgent for the purpose of providing a swift and coordinated response to minimize the rainwater runoff to our waterways containing hazardous substances picked up from the fire debris and ash.
- V. The standards and removal procedures established and required by this ordinance are needed to take effect immediately in order to mitigate the harm that could be caused to the public health and safety and to the environment from improper disturbance, removal and/or disposal of debris containing hazardous materials, and to facilitate the orderly response to the August Complex and Oak Fires disasters.

### **Section 3. Debris Removal.**

#### **Section 3.1. Definitions**

- A. Alternative Program. The term "Alternative Program" shall mean the requirements for inspections, clean up and disposal established by the County for property owners that opt out of or are ineligible for a State Program.
- B. Board. The term "Board" means the Board of Supervisors of Mendocino County.
- C. Director. The term Director shall mean the Mendocino County Director of the Division of Environmental Health and her/his designee.
- D. Division of Environmental Health. The term "Division of Environmental Health" means the Division of Environmental Health of the Mendocino County Health and Human Services Agency.
- E. Phase I. "Phase I" shall mean the hazardous waste cleanup performed by the United States Environmental Protection Agency (EPA) and/or Department of Toxic Substances Control (DTSC) on certain properties impacted by the August Complex and Oak Fires.
- F. Phase II. The term "Phase II" shall mean the ash and debris cleanup work performed pursuant to the State Program and/or the alternative program.
- G. Private Action. The term "private action" shall mean the removal of fire debris from private property damaged by the August Complex and Oak Fires by persons not eligible for or opting out of the State Program and participating in the alternative program.
- H. Qualifying Structure. The term "qualifying structure" shall mean a structure of one hundred twenty (120) square feet and over.
- I. Removal of Fire Debris. The term "removal of fire debris" or similar iteration such as "removing fire debris" as used in this ordinance includes all cleanup of fire debris, including removal, transport and disposal of fire debris, but does not include the removal of personal property from residential sites unless such removal of personal property involves cleanup and the removal of ash from the property.
- J. Right of Entry Permit. The term "Right of Entry Permit" means the Debris Removal Right-of-Entry (ROE) Permit (For Providing Debris Removal on Private Property), approved by the California Office of Emergency Services for use in the cleanup after the August Complex and Oak Fires.
- K. Temporary Log Storage Yards (aka: "Log Decks"). A temporary log storage yard, or log deck, is a site where piles of logs and other piles of vegetation removed from the August Complex and Oak Fires affected area are temporarily stored and processed before transfer to trucks or rail. The logs and vegetation must be

associated with the August Complex and Oak Fires recovery effort, i.e., logs and vegetation that are burn-damaged or otherwise removed due to safety issues associated with the August Complex and Oak Fires.

Logs and wood waste originating from routine utility line maintenance shall not be stored at temporary log storage yards. This definition does not apply to logs and/or vegetation harvested or cleared as part of a timber harvest plan or exemption under the forest practice rule that are stored and/or processed on the property on which they were harvested or cleared. This definition only applies to logs and vegetation transported to another property. A temporary log storage yard shall not exist beyond the effective period. No structural fire debris or hazardous materials may be brought onto or stored in the yard including any that may have been deposited on logs or vegetation. Temporary log storage yards allow for the processing of logs and vegetation (e.g., chipping, milling, etc.) but not the burning of logs and vegetation, and may include associated equipment repair, construction trailers, employee parking and portable bathroom facilities set up for use by the personnel assigned to the yard, but not residences.

### **Section 3.2. Effective Period**

This Section 3 relating to debris removal shall take effect immediately upon adoption and shall remain in effect until the removal of fire debris has been completed on all properties damaged by the August Complex and Oak Fires. Regardless of when the removal of fire debris has been completed, section 3.8 relating to temporary log storage yards, as well as any sections within this ordinance that relate to it, shall remain in effect until December 31, 2022, unless otherwise specified herein, subject to extension or modification by the Board.

### **Section 3.3. Prohibition on Removal of Fire Debris from Private Property.**

No fire debris from structures shall be removed from private property except pursuant to the requirements below:

	No structure on burned property	Non-qualifying structures (Structures less than one hundred twenty (120) square feet only on burned property)	Qualifying structures (Structures one hundred twenty (120) square feet and over on burned property)
Prior to completion of Phase I cleanup	Owner may remove debris	Debris removal prohibited	Debris removal prohibited
Prior to completion of Phase II cleanup	Owner may remove debris	Owner may remove debris with certificate from the Division of Environmental Health	State Program or Alternative Program contractors only may remove debris
Following Phase II cleanup	Owner may remove debris	Owner may remove debris with certificate from the Division of Environmental Health	Owner may remove remaining debris not removed during Phase II with certificate from the Division of Environmental Health

For the purposes of this ordinance, the requirement to enter into the State Program or the alternative program shall apply only to properties that contained a qualifying structure under the State Program. The requirement shall not apply to properties that only contained non-qualifying structures, including but not limited to sheds, canopies, carports, well houses, greenhouses, chicken coops or fencing. Whether fire debris derived from a qualifying or non-qualifying structure shall be determined by the Director, or his or her designee, in consultation with State Representative.

#### **Section 3.4. Removal of Fire Debris Through the State Program.**

Effect of the Right of Entry Permit: The right of entry permit shall function as the sole permit and authorization for participation in the State Program.

Notwithstanding any contrary provision in County Code, no County approvals or permits for fire debris removal are required for properties participating in the State Program, other than the right of entry agreement.

#### **Section 3.5. Removal of Fire Debris Through the Alternative Program.**

The County shall administratively adopt and administer the alternative program in the unincorporated areas of the County under the supervision of the Chief Executive Officer or his or her designee. The County shall utilize the state and federal standards and cleanup goals of the State Program as the standards for the alternative program. Under the supervision of the Chief Executive Officer or his or her designee, the County may administratively update these standards as necessary to address ongoing changes in the administration of the State Program and the need to efficiently remove hazardous fire debris from the community.

For those persons who are not eligible for the State Program, or who opt out of the State Program, private action to remove fire debris from fire-damaged properties is prohibited unless



and until a hazardous materials inspection has been performed and authorization from the Division of Environmental Health has been provided pursuant to the alternative program.

The alternative program shall require an application and work plan that identifies the appropriate licensed contractors who will perform the work and the submission of plans that demonstrate that the standards established in the alternative program will be met. Work shall not begin until the County approves the application and work plan. The County may rely upon the subject matter expertise of multiple departments in deciding whether to approve the application and work plan.

Upon completion of the work described in the approved plans, the alternative program shall require an application for certification of successful completion of the work required by the alternative program. The alternative program will require that: (1) the debris removal and clean-up work on the property meets or exceeds the standards set by the State of California for debris removal; (2) remove and dispose of hazardous trees and (3) the owner completely remove and dispose of the foundation or submit a letter from a licensed civil or structural engineer certifying that the foundation is acceptable for rebuild. The letter shall certify structural reasons for the decision and include the process and procedure used to reach the conclusion.

Notwithstanding any contrary provision in County Code, no county demolition permit shall be required for private debris removal work for which the Director has issued an approval allowing such work to proceed.

### **Section 3.6. Hold on Building Permits.**

Any issued County of Mendocino building permit to repair or reconstruct a fire damaged structure or private infrastructure shall be held in abeyance and not acted upon until fire debris cleanup is completed on the affected property and completion is confirmed to the County Building Official, either through the State Program or through the alternative program. Notwithstanding the foregoing, this section shall not apply to permits relating to power, sewer or other utilities for temporary dwellings as provided for in this chapter.

### **Section 3.7. Deadlines; Public Nuisance.**

The Board may set a deadline for filing an acceptable application for the alternative program by resolution.

Properties that have fire ash and debris from the August Complex and Oak Fires and that have neither an approved ROE Permit for the State Program nor an approved application for the alternative program by the deadline set by the Board are declared a nuisance and health hazard and such properties may be abated pursuant to this ordinance.

The Board may set deadlines for the completion of work in the alternative program by resolution. Properties that have fire ash and debris from the August Complex and Oak Fires after that deadline may be declared a nuisance and health hazard and may be abated pursuant to this ordinance. In addition, properties that fail to follow the procedures of the alternative program or adhere to any approved work plan may be declared a nuisance and health hazard and may be abated pursuant to this ordinance.

The Board's intent is to facilitate orderly remediation of a large scale disaster. Nothing in these deadlines shall limit the authority of the County to abate hazards more quickly where required by exigent circumstances. Nothing in this ordinance or in these deadlines shall limit the authority of the Health Officer to require preventive measures as defined in California Health and Safety Code Section 101040.

### **Section 3.8. Temporary Log Storage Yards.**

- A. **Allowed Zones.** Forest Processing and Production – General, as defined in Division I of the County Zoning Code, is allowed by right in Industrial zoning districts (I-1 and I-2) and Timberland Production Zoning District (TP) and is allowed with a minor use permit in the Forestland Zoning District (FL). The provisions of this Section 3.8 do not apply to these zones.
- B. **Zones Requiring an Administrative Permit.** Temporary log storage yards are allowed subject to approval of a temporary administrative permit and compliance with the standards set forth below in the Rangeland Zoning District.
- C. **Standards.** All temporary log storage yards shall meet the following standards:
  - 1. Application for Temporary Administrative Permit. The property owner or the property owner's authorized agent shall obtain a temporary administrative permit for the effective period. Written consent of the property owner is required in all cases.
  - 2. Site Plan Required. A detailed site plan meeting general architectural or engineering standards, legible and drawn to scale that shows all the proposed activities that will occur on-site, as well as the approximate location of each activity, shall be provided with the application for a temporary administrative permit. Partial site plans for a portion of a property may be submitted as long as a vicinity map for the entire property showing frontage streets, other uses and a cross reference of the area of the partial site plan is provided. All site plans shall show and label contours at maximum vertical intervals of five (5) feet; areas of proposed grading and fill; the width of access roads to and around parking, log piles and other piles, and buildings; and turnaround areas for fire and emergency services. Any change in the type of activity that will occur on-site or the location of any activity requires the owner or operator to apply for a new temporary administrative permit.
  - 3. Siting Criteria. To the extent practicable, temporary log storage yards shall be located on flat areas of the site that are already disturbed and in such a manner to decrease impacts to uses on surrounding properties.
  - 4. Approved Access. Temporary log storage yards shall have access onto a public road. If the public road is a county road, the approach shall be made with an encroachment permit approved by the Department of Transportation. If the public road is a state highway, the approach shall be made with an approved encroachment permit issued by the California

Department of Transportation (CalTrans) District Office. If the public road is accessed by a private road, there shall be an approved encroachment permit as required in the prior two sentences where the private road connects to the public road, and there shall be an approved road maintenance agreement that allows for the proposed use along the private road.

5. On-Site Roads, Driveways and Aisles. Temporary log storage yards shall have on-site roads, driveways and aisles. On-site roads, driveways and aisles shall have a 6-inch Class 2 aggregate base, a minimum width of twenty-five (25) feet, and shall be capable of supporting a forty thousand (40,000) lb. load that will allow for ingress and egress of fire apparatus to within one hundred fifty (150) feet of all piles and structures, and shall have a vertical clearance of no less than fifteen (15) feet.
6. Property Line Setbacks and Defensible Space. All log piles and other piles shall be setback a minimum of one hundred fifty (150) feet from all outside property lines and any permanent structures. There shall be an area of defensible space that is a minimum of one hundred fifty (150) feet wide around the perimeter of the temporary log storage area that shall not be graded but shall be kept clear of grass and vegetation to support fire protection by clearing, disking, grubbing, and/or scraping. CAL-FIRE shall have discretion to address unique circumstances.
7. Biological Resources. Temporary log storage yards shall not be located on lands containing wetlands, and/or endangered and protected plants and animal species. A biological report shall be furnished to the Department of Planning and Building Services demonstrating that the site does not contain wetlands and/or endangered or protected plants and animal species. A temporary log storage yard shall not expand without providing a site plan and a biological report to cover the expanded area.
8. Fire Department/CalFire Standards. Temporary log storage yards and the associated activities performed with them pose the risk of fire if fire suppression measures are not taken. The activities include working with and storing flammable materials in areas that have little to no water on-site and that are subject to fire. The County is setting the fire standards it believes are appropriate, but there are also state standards set out in California Fire Code Chapter 28 with respect to all log storage yards and incidental wood products stored there. Fire officials shall enforce the most stringent standards. Per California Public Resource Code, Section 4428, each site shall have a sealed box of tools that shall be located, within the operating area, at a point accessible in the event of fire. This fire toolbox shall contain: one (1) backpack pump-type fire extinguisher filled with water, two (2) axes, two (2) McLeod fire tools, and a sufficient number of shovels so that each employee at the operation can be equipped to fight fire. In addition, one (1) or more serviceable chainsaws of three and one-half (3½) or more horsepower with a cutting bar twenty (20) inches in length or longer shall be immediately available within the operating area.

When a fire starts, a telephone call must be made to 911 immediately to inform that there is a fire. The facility operator shall develop a plan for monitoring, controlling, and extinguishing fires. The plan shall be submitted with the application for the temporary administrative permit for review and approval by fire officials.

Smoking may only occur in designated locations shown on the site plan.

Log piles shall not exceed twenty (20) feet in height, three hundred (300) feet in width, and five hundred (500) feet in length. Log piles shall be stabilized by a means approved by the fire chief, as that term is defined in Mendocino County Code section 18.04.060.

Other piles made of incidental log related materials shall not exceed twenty (20) feet in height, one hundred fifty (150) feet in width, and two hundred fifty (250) feet in length.

All piles shall be separated from all other piles by one hundred (100) feet and shall include on-site roads, driveways, and aisles as discussed above.

All piles shall be monitored by a means approved by the fire chief to measure temperatures. Internal pile temperatures shall be monitored and recorded weekly. A plan by the permittee for restricting and mitigating excessive temperatures shall be submitted with the application for the temporary administrative permit for review and approval by fire officials.

Regular inspections of the temporary log storage yard by trained fire personnel shall be allowed and facilitated by the facility operator.

Cutting activities shall comply with California Fire Code Chapter 35.

9. County Environmental Health Division Standards. Depending on the activities performed on-site, the temporary log storage yard may be determined to be a solid waste facility. The facility operator must provide access to the facility and provide for review of the activities occurring at the facility to the Local Enforcement Agency, the County Division of Environmental Health, to determine if there exists a requirement to register for a permit status as a solid waste facility in accordance with Title 14 of the California Code of Regulations.

For sanitation purposes there shall be a minimum of one (1) portable toilet and one (1) handwash station at the facility for employee use. The portable toilet shall be routinely serviced by a licensed service provider.

For water that is provided for human consumption, either from an on-site well or transported to the facility and held in a storage tank, the facility operator must meet the following requirements: if there are twenty-five (25) or more people/day consuming the water, the facility operator shall contact

the County Division of Environmental Health for public water system permitting requirements and must operate in accordance with those requirements; if there are fewer than twenty-five (25) people/day consuming the water, the facility shall have the water tested for and be in compliance with minimum bacteriological standards as required by the County Division of Environmental Health. If bottled water is provided, there are no requirements for testing.

The storage of any hazardous material at or above state-defined thresholds shall require the approval of a Hazardous Material Business Plan by the County Division of Environmental Health.

10. County Planning and Building Services Standards - Stormwater. Perimeter stormwater control—When the temporary log storage yard is prepared for operations or the soil is disturbed, improvements shall be designed and implemented such that water accumulating within the project will be carried away from the project without injury to any adjacent improvements, residential sites, or adjoining areas. The design shall be prepared by a Qualified Stormwater Developer who holds the certification required by the California Water Quality Control Board's Construction General Permit 2009-009-DWQ. All natural drainage that enters the project area must leave the project area at its original horizontal and vertical alignment and with the same pre-improvement quantity. Implementation of erosion control within the project area and sediment control basins at drainage outlets shall conform with California Stormwater Quality Association (CASQA) design criteria. Sites that meet EPA's criteria for a Rainfall Erosivity Waiver (<https://www.epa.gov/sites/production/files/2015-10/documents/fact3-1.pdf>) or are fully stabilized with erosion control measures are not required to install sediment control basins.

Water quality and erosion control—When submitting an application for a temporary log storage yard, any surface disturbance over one (1) acre in size shall require a Storm Water Pollution Prevention Plan (SWPPP) by a certified Qualified SWPPP Developer and the submittal of a Notice of Intent to obtain coverage under the General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit Order 2009-0009-DWQ as amended). If the area of disturbance is one (1) acre or less, then along with an application for a temporary log storage yard, an Erosion and Sediment Control Plan (ESCP) shall be developed by the facility operator, submitted for approval, and adhered to for erosion and sediment control. The ESCP shall contain a description detailing which Best Management Practices (BMP) will be used, how they will be used, and where they will be used in conformance with the California Stormwater Quality Association (CASQA) BMP Municipal Handbook. The ESCP shall contain a description of temporary and permanent measures and include ingress/egress control measures and street sweeping. Plans shall be prepared by a Qualified Stormwater Developer who holds the certification required by the California Water Quality Control Board's Construction General Permit 2009-009-DWQ. Upon completion of the project, all

temporary sediment control measures shall be removed from the site. All permanent sediment control measures must be maintained by the parcel owner.

11. Additional Requirements.

- a. Air Quality and Dust Control. All best practice measures to reduce impacts to air quality shall be incorporated by the project applicant, subject property owners, or third-party contractors during activities on the project site. A plan shall be provided to the satisfaction of the Director of Planning and Building Services to address:
  - i. Mobile and stationary toxic air contaminants; and
  - ii. Fugitive dust and ash. Best practice measures shall comply with the rules of the Mendocino County Air Quality Management District and shall include, but not be limited to, the following:
    - (A) Reduce the amount of the disturbed area where possible. Stabilize disturbed area soils during use and at project completion.
    - (B) Apply water or a stabilizing agent in sufficient quantities to prevent the generation of visible dust plumes.
    - (C) Limit vehicle speeds to fifteen (15) miles per hour on any unpaved surfaces at the project site.
    - (D) Clean visible track-out onto adjacent paved roadways daily. Track-out shall not extend more than twenty-five (25) feet in cumulative length from the active project site.
    - (E) Post a sign in a prominent location visible to the public with the telephone numbers of the contractor and Air District for any questions or concerns about dust from the project.
- b. Storage or Processing of Debris Prohibited. The storage or processing of debris from the County Debris Removal Program at any temporary log storage yard, including the storage of trucks or equipment loaded with debris, is expressly prohibited.
- c. Noise. Quiet hours shall be maintained from 7:00 p.m. to 7:00 a.m. seven (7) days a week. During quiet hours, generators and heavy equipment shall not be operated and noise levels shall conform to County Code. Outside of quiet hours, noise sources associated with

temporary log storage yards shall be exempt from the requirements of County Code.

- d. Outdoor Lighting. All outdoor lighting shall be located, adequately shielded, and directed such that no direct light falls outside the property line, or into the public right-of-way.
  - e. Electricity and Electrical Equipment. If new electricity connections are brought to the site, a building permit is required. Electrical wiring and equipment shall comply with the California Electrical Code.
  - f. Reclamation Required. The application for a temporary administrative permit for a temporary log storage yard shall be accompanied by a detailed plan for the restoration or reclamation of the subject property to the satisfaction of the Director of Planning and Building Services. There shall be no grading of the site without the prior approval of the Director of Planning and Building Services, but if grading is allowed, topsoil shall be conserved to be used for reclamation. At minimum, a plan for restoration or reclamation shall include:
    - i. Clearance of the site of all vehicles, equipment and materials utilized as part of the temporary log storage yard; and
    - ii. Stabilization of the site, implementation of erosion control measures, and successful revegetation to the satisfaction of the Director of Planning and Building Services in order to render the site suitable for the use for which it was zoned.
  - g. The temporary administrative permit may be subject to additional requirements from the appropriate Fire Agency, County Department of Transportation, County Air Quality Management District, the California Department of Transportation, the County Public Health Department, and the State Regional Water Quality Control Board.
12. Performance Guarantee. In approving a temporary administrative permit for a temporary log storage yard, the Director of Planning and Building Services shall require a performance guarantee in the amount of two thousand dollars (\$2,000.00) per acre of land disturbed in order to guarantee the proper completion of any approved work and to ensure that site reclamation is completed to the satisfaction of the Director of Planning and Building Services. Lands shall be restored or reclaimed to the satisfaction of the Director of Planning and Building Services prior to release of the performance guarantee.
13. Notice. At least ten (10) days prior to issuance of a temporary administrative permit, pursuant to this section, the County Department of

Planning and Building Services shall provide a mailed notice to property owners within one thousand two hundred (1,200) feet of the property line of the subject parcel(s). The notice shall include all applicable standards and limitations placed upon the temporary log storage yard, the County administrative permit number, as well as the name, phone number and email of a designated contact for concerns regarding the yard's operation. The temporary administrative permit shall be issued without a formal hearing, unless one is requested by either the applicant or other affected persons. If a hearing is requested, it shall be scheduled for the next available Planning Commission meeting and the Planning Commission shall hear the request. The Planning Commission may impose conditions and requirements in addition to the standards set forth above, or may deny the administrative permit, to mitigate impacts to uses on surrounding properties. Unless otherwise appealed, the decision of the Planning Commission shall be final.

14. Violations, Enforcement, and Penalties. A temporary log storage yard that is operating in violation of this section poses a health and safety hazard and is found to be a public nuisance. The Director of Planning and Building Services may initiate enforcement using any process set forth in the County Code. Nothing in this provision is intended to prevent alternative enforcement mechanisms.

#### **Section 4. Hazard Tree Removal Program; Purpose.**

Any tree that was fire damaged in the August Complex and Oak Fires and that is in immediate danger of falling onto an eligible road or parcel is a hazardous tree that must be removed to eliminate the immediate threat to the public at large. This Section 4 establishes a hazardous tree removal program that is mandatory and sets forth the manner in which hazardous trees will be identified and removed.

It is the intent of the Board of Supervisors that this Section 4 shall apply to the abatement of hazard trees threatening eligible roads or parcels in the unincorporated areas of the August Complex and Oak Fire areas.

##### **Section 4.1. Effective Period.**

The Hazard Tree Removal Program shall take effect immediately upon adoption of this ordinance and shall remain in effect until the removal of hazard trees has been completed.

##### **Section 4.2. Definitions.**

- A. "Arborist." The term "Arborist" shall be defined as an ISA Certified Arborist with a Tree Risk Assessment Qualification (TRAQ).
- B. "Arborist's/Forester's Certification." The term "Arborist's/Forester's Certification" shall be defined as a written certification verifying that all hazard trees have been removed from a parcel participating in the Private Tree Program. The certification shall be made and executed by an Arborist and/or Forester as defined in this



section. The Arborist or Forester shall provide evidence of the required qualifications of this section.

- C. "Board." The term "Board" shall be defined as the Board of Supervisors.
- D. "County." The term "County" shall be defined as the County of Mendocino.
- E. "Enforcement Officer." The term "Enforcement Officer" shall be defined as the Chief Executive Officer of the County or his/her designee(s). Such designee(s) may be a County employee(s) or third-party provider(s).
- F. "Eligible Road(s) or Parcel(s)." The term "eligible road(s) or parcel(s)" shall be defined as a road, right-of-way or parcel falling into one of the following categories:
  - 1. A public road or right-of-way;
  - 2. An improved public property; or
  - 3. A private road or right-of-way when the private road:
    - a. Connects two public roads;
    - b. Is primarily used as a right-of-way to a public property; or
    - c. Is used for waste collection services.
- G. "Forester." The term "Forester" shall be defined as a Registered Professional Forester, qualified pursuant to California Public Resources Code Section 752, "Professional forester."
- H. "Government Hazard Tree Removal Program." The term "Government Hazard Tree Removal Program" shall be defined as the hazard tree removal program operated by the California Office of Emergency Services (CalOES) for the August Complex and Oak Fires areas in conjunction with other state and federal agencies.
- I. "Government Hazard Tree Removal Program ROE." The term "Government Hazard Tree Removal Program ROE" shall be defined as the permit for providing hazard tree removal on private property approved by CalOES for use in the cleanup after the August Complex and Oak Fires.
- J. "Hazard Tree." The term "hazard tree" shall be defined as a wildfire-damaged tree that in the opinion of an Arborist and/or Forester:
  - 1. has been so severely damaged by the August Complex or Oak Fire that its structural integrity is compromised; and
  - 2. poses an imminent danger of falling onto an eligible road or parcel.

A map reflecting eligible roads or parcels in the unincorporated Mendocino County

portion of the August Complex and Oak Fires shall be prepared by the Department of Planning and Building Services.

#### **Section 4.3. Government Hazard Tree Removal Program.**

The Government Hazard Tree Removal Program will remove all hazard trees at no out-of-pocket cost to the owner. If an owner does not participate in the Government Hazard Tree Removal Program, and there are hazard trees on their property, the owners are required to identify and remove such trees at their own cost.

To participate in the Government Hazard Tree Removal Program, owners must complete and submit a Government Hazard Tree Removal Program ROE. The Government Hazard Tree Removal Program ROE shall function as the sole permit and authorization for participation in the Government Hazard Tree Removal Program. Notwithstanding any contrary provision in the County Code, no County approvals or permits for hazard tree removal are required for properties participating in the Government Hazard Tree Removal Program, other than the Government Hazard Tree Removal Program ROE.

If owners whose property contains hazard trees do not participate in the Government Hazard Tree Removal Program (at no out-of-pocket cost to owner) or the Private Tree Program (all costs paid by owner), the County will enforce this ordinance and charge the owners with any administrative and abatement costs related to such enforcement.

In implementing this program, property owners who have submitted an application for a development permit shall be given priority in the Government Hazard Tree Removal Program.

#### **Section 4.4. Private Hazard Tree Removal Program.**

As an alternative to the Government Hazard Tree Removal Program, the Private Tree Program provides the owner with the option of identifying and removing hazard tree(s) on their property at their own cost. To participate in the Private Tree Program, owners shall submit either of (1) an inspection access form or (2) an Arborist's/Forester's Certification for their property. Following the owner's identification and removal of hazard trees and submittal of an inspection access form, the Private Tree Program shall require the Enforcement Officer to make a visual confirmation of the removal of hazard trees on the subject property. This visual inspection of compliance with the Private Tree Program shall be sufficient for meeting the requirements of this Section. Whether the hazard tree removal is adequate shall be in the sole discretion of the Enforcement Officer. In the alternative, a submittal of an Arborist's/Forester's Certification shall be sufficient for meeting the requirements of this section.

Notwithstanding anything herein to the contrary, in the Private Tree Program, owners may choose to temporarily retain and promptly utilize felled hazard trees which were standing on their property. This temporary retention and utilization by the owner shall be permitted only to the extent felled hazard trees and incidental foliage, slash, tree branches or limbs and chipped or mulched vegetation do not constitute a fire hazard as prohibited by applicable law, including, but not limited to, California Public Resources Code Section 4291 et seq., Title 19 of the California Code of Regulations. Such requirements include but are not limited to the following:

- A. In storing such hazard trees prior to utilization, an owner shall be required to:

1. Maintain a setback of no less than one hundred (100) feet from any inhabited building or structure;
  2. Maintain a setback of no less than thirty (30) feet from any uninhabited building or structure; and
  3. Maintain a setback around the parcel's property lines of no less than thirty (30) feet wide.
- B. If an owner utilizes felled hazard trees for wood chips, the owner shall be required to spread the wood chips to a depth of no greater than three (3) inches while maintaining a setback of no less than five (5) feet from any building or structure.

If any temporary retention and utilization of hazard trees constitutes a fire hazard, it is a public nuisance and may be abated using any available legal remedy. If the owner chooses to temporarily retain and utilize felled hazard trees, the owner is required to utilize such hazard trees prior to the Enforcing Officer's visit to the property to confirm compliance with the Private Tree Program.

For the purposes of this Section 4, any temporary retention and utilization of felled hazard trees by the property owner is not a Temporary Log Storage Yard (AKA: Log Deck) as described above. Owners may not receive felled trees from other properties.

The County shall utilize the state and federal standards and cleanup goals of the Government Hazard Tree Removal Program as the standards for the Private Tree Program, including, but not limited to, the criteria for determining whether a tree is a hazard tree. Under the supervision of the Enforcement Officer, the County may administratively update these standards as necessary to address ongoing changes in the administration of the Government Hazard Tree Removal Program and the need to efficiently remove hazard trees from the community.

#### **Section 4.5. County Development Permits.**

No application for a planning or building permit in the areas of the August Complex and Oak Fires for a parcel containing hazard trees shall be considered complete until the applicant has entered into the Government Hazard Tree Removal Program or the Private Tree Program. This section shall not apply to permits relating to power, sewer or other utilities for temporary dwellings and the installation of temporary dwellings. This section shall not apply to permits for wells or septic systems with the Division of Environmental Health.

#### **Section 4.6. Deadlines; Public Nuisance.**

Maintaining a hazard tree is prohibited and a public nuisance subject to this ordinance. A violation of any provision of this Section 4 shall be deemed to be a public nuisance and subject to any enforcement process available at law.

Properties that contain hazard trees and that do not have (1) an approved Government Hazard Tree Removal Program ROE, (2) an approved inspection access form for the Private Tree Program or (3) an approved Arborist's/Forester's Certification by the deadline set by the Board,

are declared a public nuisance and health hazard and such properties may be abated pursuant to this ordinance.

The Board may set a deadline for the completion of hazard tree removal by resolution. Properties that have hazard trees from the August Complex and Oak Fires after that deadline are declared a public nuisance and health hazard and such properties may be abated pursuant to this ordinance.

The Board's intent is to facilitate orderly remediation of a large scale disaster. Nothing in these deadlines shall limit the authority of the County to abate hazards more quickly where required by exigent circumstances.

#### **Section 5. Enforcement and Abatement.**

- A. The Board's intent is to facilitate orderly remediation of a large scale disaster. Therefore, Mendocino County intends to enforce this ordinance for the purpose of protecting the environment and public health. As such, the enforcement provisions contained in this ordinance are not exclusive, but are cumulative to all other remedies provided by law, including, but not limited to the abatement process established by Government Code section 25845. Further, nothing in the deadlines contained in this ordinance shall limit the authority of Mendocino County to abate hazards more quickly where the circumstances so warrant, or enforce the provisions of this ordinance through any other applicable code enforcement mechanism.
- B. The following Mendocino County employees have the authority to enforce this ordinance: the Director of the Division of Environmental Health, the Director of the Mendocino County Department of Planning and Building Services, the designee of either, any code enforcement officer of the Division of Code Enforcement of the Mendocino County Department of Planning and Building Services, or any other employee subsequently designated by resolution of the Board.

An employee with the authority to enforce this ordinance may rely on his or her personal knowledge of the facts giving rise to the public nuisance, or on information provided to such employee by any other government entities or employees, or other information (including but not limited to aerial and satellite images) bearing reasonable indicia of reliability.

- C. The responsibility for the costs of enforcement by Mendocino County will be charged to the affected property owner.
- D. If an affected property is declared a public nuisance by this ordinance, the provisions of Mendocino County Code Chapter 8.75 shall apply, except as otherwise modified by or provided in this ordinance.
- E. Notwithstanding the provisions of Mendocino County Code Chapter 8.75, if an affected property becomes a public nuisance pursuant to this ordinance, the following provisions shall apply:

1. The affected property owner or occupant shall have five (5) days to appeal a Notice and Order to Abate from the date that such notice was served.
  2. A Notice and Order to Abate may be served by posting and mailing as specified in Mendocino County Code section 8.75.090(A)(3), without first attempting service by personal service or certified mail as detailed in Mendocino County Code section 8.75.090(A)(1) and (2).
  3. The reasonable time to abate any of the public nuisances articulated in this ordinance shall be five (5) days from the date of service.
- F. The County Counsel is authorized to initiate judicial enforcement as to a violation of any provision of this ordinance without further Board approval. The County may, in its discretion, abate a violation of this ordinance by the prosecution of a civil action, including an action for injunctive relief. The remedy of injunctive relief may take the form of a court order, enforceable through civil contempt proceedings, prohibiting the maintenance of a violation of this ordinance, or requiring compliance with other terms.
- G. The remedies identified are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided in this ordinance shall be cumulative and not exclusive.
- H. Summary Abatement. Notwithstanding any other provision of this ordinance, when a violation of this ordinance has created an emergency condition which seriously endangers the public health or safety, the County may abate the public nuisance declared by this ordinance by removing fire debris, hazard trees, and doing any other work necessary to remove the public health hazard caused by the fire debris and/or hazard trees.

**Section 6.** **CEQA.** The Board hereby finds that this ordinance is exempt from the California Environmental Quality Act (Public Resources Code section 21000 et seq.; "CEQA") pursuant to (a) Public Resources Code section 21080(b)(3) regarding projects to maintain, repair, restore, or replace property or facilities damaged or destroyed as a result of a declared disaster; (b) Public Resources Code section 21080(b)(4) regarding actions to mitigate or prevent an emergency; (c) CEQA Guidelines (Title 14 Cal. Code Regs. section 15000 et seq.) section 15269, as it is a project to maintain, restore or replace property damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor of California pursuant to the California Emergency Services Act; (d) CEQA Guidelines section 15307, as it is a project to assure the maintenance and restoration of natural resources; and (e) CEQA Guidelines section 15308, as it is a project to assure the maintenance and restoration of the environment. This finding is based on and supported by the evidence in the record, including the agenda summary accompanying this ordinance.

**Section 7.** **Effective Date and Term.** This ordinance is an urgency ordinance adopted pursuant to Government Code Section 25123 and shall become effective immediately upon its adoption if adopted by at least four-fifths of the Board of Supervisors. This ordinance shall remain in effect until the cleanup of fire debris and hazard trees has been completed on all properties damaged by the August Complex and Oak Fires, subject to extension or modification

by the Board.

**Section 8.**    **Severability.**    If any section, subsection, sentence, clause phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**PASSED AND ADOPTED** by the Board of Supervisors of the County of Mendocino, State of California, on this 8<sup>th</sup> day of December, by the following roll call vote:

AYES:	Supervisors Brown, McCowen, Haschak, Gjerde, and Williams
NOES:	None
ABSENT:	None

**WHEREUPON**, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST:        CARMEL J. ANGELO  
                    Clerk of the Board

\_\_\_\_\_  
JOHN HASCHAK, Chair  
Mendocino County Board of Supervisors

\_\_\_\_\_  
Deputy

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

*APPROVED AS TO FORM:*  
CHRISTIAN M. CURTIS  
County Counsel

BY:    CARMEL J. ANGELO  
         Clerk of the Board

\_\_\_\_\_  
Deputy