



**County of Santa Cruz Board of Supervisors
Agenda Item Submittal**

From: Bruce McPherson, Fifth District Supervisor, Ryan Coonerty, Third District Supervisor
(831) 454-2200

Subject: Resolution to support the County of Santa Cruz Filing a Formal Complaint Against PG&E with the CPUC

Meeting Date: December 8, 2020

Recommended Action(s):

- 1) Direct the County Administrative Officer and County Counsel to file a formal complaint on behalf of the County of Santa Cruz with the California Public Utilities Commission against Pacific Gas & Electric (PG&E) related to multiple Notices of Violations issued by the California Department of Forestry and Fire Protection and a letter from the California Coastal Commission related to unpermitted tree removal and other environmental damage caused by PG&E and its contractors within Santa Cruz County after the CZU Lightning Complex Fire; and
- 2) Direct the Chair to write letters to the Santa Cruz County District Attorney's Office, California Department of Forestry and Fire Protection, California Coastal Commission and other relevant enforcement agencies encouraging the thorough investigation and, if appropriate, pursuit of criminal charges and/or civil penalties related to the findings contained in the various Notices of Violations filed against PG&E.

Executive Summary:

Since October 30, 2020, the California Department of Forestry and Fire Protection (CAL FIRE) has issued to PG&E and its contractors four separate Notices of Violation (NOV) containing more than 300 individual violations of the California Public Resources Code related to unpermitted tree removal and other actions conducted by the utility and its contractors after the CZU Lightning Complex Fire. These violations include unpermitted timber harvesting, sensitive habitat and watershed disruption, and the violation of private property rights of residents. In addition, the California Coastal Commission issued a letter to PG&E on November 20 requiring the utility to immediately cease all unpermitted activity, seek appropriate authorities and permits, and develop restoration and mitigation strategies.

Hazard mitigation and vegetation management are essential activities after a catastrophic fire but must be done in accordance with local and state codes. Residents, the County, CAL FIRE and other State agencies have contacted PG&E on multiple occasions requesting PG&E work in conformance with the law; however, violations persist. Each individual violation articulated in CAL FIRE's four NOVs represent a

criminal misdemeanor and carry the potential for civil penalties up to \$10,000.

As the Supervisors of the Districts harmed by these egregious and reckless actions, which could exacerbate the threat of debris flows, we request the Board to direct the County Administrative Officer and County Counsel to (1) file a formal complaint with the California Public Utilities Commission on behalf of the Board of Supervisors, and (2) to direct the Chair of the Board to write a letter to encourage the District Attorney and other enforcement agencies to investigate and, if appropriate, pursue criminal charges and/or civil penalties as a result of these violations of state and county laws.

Background:

Beginning August 16, 2020 and concluding September 22, 2020, the CZU Lightning Complex Fire ravaged the Third and Fifth Districts of Santa Cruz County, destroying more than 900 homes in the San Lorenzo Valley, Bonny Doon and North Coast areas. In addition to the immense loss of privately owned homes and other structures, the fire caused damage to roadways, water systems, and public infrastructure, in addition to utility infrastructure owned and operated by PG&E.

PG&E and its contractors began conducting tree-removal operations after the fire ostensibly to restore power and prevent further damage to the utility's infrastructure by clearing underneath and around power lines. On October 7, 2020, CAL FIRE Division Chief Richard Sampson, a Forest Practice Inspector based at CAL FIRE's station in Felton, started discussions with PG&E about complying with timber harvest permit requirements after noting the extensive operations being conducted by PG&E and its contractors, and on October 20 communicated to PG&E in writing the need to seek appropriate permits. On October 27, Chief Sampson was notified by the utility that "*they would not be complying with my order to obtain permits for this work.*"

Therefore, on October 30, 2020, Chief Sampson issued the first NOV to PG&E re-notifying the utility that "*timber operations require both a permit and a license and the failure to use a licensed Timber Operator are violations of the Public Resources Code and can be cited as misdemeanors.*" He noted that cutting, yarding and decking of numerous trees in the burn area by several different PG&E contractors were conducted in timberland areas, and land clearing had occurred under and around powerlines, sometimes up to 100 feet away from the lines.

Additionally, Chief Sampson noted violations related to unsafe maintenance of roads during timber operations, which he found "*places the downslope watercourse at risk from massive sedimentation, either from direct deposit of sediment into the watercourse during operation or during rainfall events.*" Chief Sampson also observed unremoved slash and debris associated with these operations.

On November 11, 2020, Chief Sampson issued a second NOV to PG&E documenting further environmental harm caused by the unpermitted operations, including what he estimated as 17 miles of seasonal private roads impacted. "*Given that these roads are in Coho and Steelhead watersheds, several water districts and companies pull surface water downstream from your operations, the rainfall history of this portion of the Santa*

Cruz Mountains and the amount of loose sediment we've observed perched adjacent and above or within watercourses and the WLPZ (Watercourse and Lake Protection Zone), the potential for significant environmental damage is present," he wrote.

In some of the more significant findings, Chief Sampson documented environmental damage to a tributary of Scott Creek, a significant and critical habitat for Coho and Steelhead (*logs deposited in the channel and an excavator working directly in the channel*); Hyman Creek (*soil and debris in the channel, and no evidence of erosion control work*); and San Vicente Creek, which serves as a fishery and water supply source for the community of Davenport (*crossing by a large, tracked vehicle, thus negating mitigation work that had been conducted in 2004 and for 15 years of environmental recovery thereafter.*)

On November 18, 2020, Chief Sampson issued a third NOV to PG&E, reminding the utility of its ongoing violations of timber harvest rules and environmental protections. Additionally, Chief Sampson notified PG&E of violations under the Public Resources Code section that requires utilities to provide notice to landowners of proposed work and provide them an opportunity to be heard. Affected property owners included the City of Santa Cruz Water Department, which, without prior notice, suffered a 3-acre conversion of lands in the Laguna Creek Watershed that provides a portion of the City's water supply.

"All 10 parties have complained about the amount of utility line clearing that occurred on their ownerships, and the conditions your crews left their properties in. In addition, all made statements that they had not been contacted or allowed to be heard prior to trees being cut," Chief Sampson wrote to PG&E. "The second most common complaint I have been receiving from landowners is the amount of material and slash left on their properties following your crews. Large piles and decks of large logs in addition to large slash piles are frequently seen in these burned over neighborhoods where the utility work has been initiated."

On November 20, 2020, the California Coastal Commission staff issued a letter to PG&E related to violations within the Coastal Zone, where the Commission and the County of Santa Cruz have permitting and enforcement authority under the California Coastal Act and Local Coastal Program, respectively. Authored by Patrick Veasart, a Coastal Commission Enforcement Supervisor, the letter notes that the agency received reports from CAL FIRE and Santa Cruz County regarding operations by PG&E and its contractors, including *"removal of a very significant number of trees ... land clearance, grading, road development, placement of cut logs and slash, and other activities, all spread over approximately 17 linear miles, including approximately six linear miles within the Coastal Zone."* The letter goes on to note that many of the activities appear to have taken place in Environmentally Sensitive Habitat Areas (ESHA) subject to protection under the County's Local Coastal Program.

Additionally, and perhaps even more importantly, the Coastal Commission letter notes, *"Further, the above-described activities are taking place in or near areas recently burned in the CZU Lightning Fire, and we are very concerned about potential serious adverse impacts associated with these unpermitted activities, including erosion of materials into the various watersheds and associated impacts, especially with the rainy*

season upon us, and the loss of and/or degradation to significant coastal resources, including ESHA. In addition, it appears clear to us that a potentially devastating effect of PG&E's activities is that they appear primed to exacerbate the already extreme potential for severe erosion due to the fires, including landslides, that could significantly adversely impact residences, roads, water supplies, and coastal streams and habitats."

Finally, on November 30, 2020, Chief Sampson issued a fourth NOV to PG&E and its contractors, documenting the utility's lack of action to comply with Forest Practice Rules and address environmental threats caused by the vegetation removal activities. Chief Sampson notes that, as of November 30, 33 days had passed since CAL FIRE notified PG&E and its contractors about the timber harvest violations.

Additionally, Sampson notes, "The current issue and focus of this NOV is that your crews and contractors have yet to complete erosion control activities to prepare the ground that your operations have disturbed prior to winter storms we normally experience in the Santa Cruz Mountains. While some progress has been made, there are still many miles of non-winterized seasonal roads on steep ground above and adjacent to sensitive watercourses that need to be treated."

Specifically, at a PG&E work site in Boulder Creek above Hilton Drive, Chief Sampson noted that water had ponded at a low point in a seasonal road without any erosion control work. He wrote that the impacted section of the road is likely to become *"over saturated and collapse, sending road fill and debris flowing into the Class 3 watercourse below. Given the current concern for debris flows within the burn zone this should be considered a significant public hazard, as there are several homes in the Hilton Drive residential area approximately 1,200' downstream."*

Analysis:

Both the totality of the violations outlined in the CAL FIRE and Coastal Commission communications to PG&E and the severity of the environmental damage inflicted upon parts of Santa Cruz County merit a formal complaint by the County to the California Public Utilities Commission (CPUC). In addition, we recommend that the Board direct the Chair to write a letter on behalf of the Board to the District Attorney, CAL FIRE and other regulating agencies to investigate and, if appropriate, pursue criminal charges and/or civil penalties against PG&E for these avoidable, reckless, and potentially illegal actions. We believe the Board has a responsibility to uphold and defend our environmental regulations, as well as the private property rights of our residents, especially in light of the severe threat of debris flow that has been exacerbated by the actions of PG&E and its contractors.

It should be noted that we acknowledge authorities granted to PG&E by the CPUC to conduct vegetation management, both of an emergency and routine nature, around power lines and poles. In recommending the above actions, we are not suggesting PG&E should neglect proper vegetation management that would improve the safety and well-being of our residents and our public infrastructure. On the contrary, we support responsible wildfire prevention activities by PG&E, including the hardening of the utility's infrastructure in the areas of highest fire risk, for which we have advocated in numerous communications with PG&E. To date, PG&E has prioritized massive, unilateral tree

removal and power shut-off events over infrastructure improvements.

While we can only speculate as to PG&E's motives for conducting extensive timber harvest operations with little to no environmental controls in our Districts after the CZU Lightning Complex Fire, the simple truth is that what has happened cannot be wholly undone by whatever mitigation PG&E may agree to as a result of mounting pressure from regulatory agencies. In our view, the fact that these violations occurred in the first place merits thorough investigations by the CPUC, the District Attorney, and other enforcement agencies.

Lastly, the full impact of the unpermitted actions taken by PG&E and its contractors may yet be unknown. During the past two months, the County, in coordination with state and federal partners, has been documenting the high likelihood of debris flows in the burn scar contained within Districts 3 and 5, and has communicated the critical importance of heeding evacuation orders. The intense blazes left behind a hydrophobic layer of soil that, when doused with intense rainfall, is likely to cause landslides similar to what was experienced after a fire in Santa Barbara County in 2018, leading to 23 deaths. The destabilizing actions taken by PG&E and its contractors have intensified the threat of debris flow, as outlined in the Coastal Commission letter dated November 20, 2020, caused the irreparable loss of trees removed without the benefit of regulatory review, and complicated the County's efforts to reduce the danger posed by debris flow.

In letters sent after CAL FIRE began issuing its NOVs, PG&E has noted that it disagrees with CAL FIRE's determination regarding timber harvesting. In those communications, the utility also does not acknowledge the specific environmental damage documented by CAL FIRE or provide a comprehensive mitigation plan.

Strategic Plan Element(s):

1C: (Comprehensive Health and Safety: Local Justice)
 4B: (Sustainable Environment: Natural Resources)
 6C: (Operational Excellence: County Infrastructure)

Submitted by:

Bruce McPherson, Fifth District Supervisor, Ryan Coonerty, Third District Supervisor

Attachments:

- a Resolution Concerning Violations Of Law By PG&E
- b Coastal Commission Letter to PG&E
- c CAL FIRE Notice of Violation to PG&E #1
- d CAL FIRE Notice of Violation to PG&E #2
- e CAL FIRE Notice of Violation to PG&E #3
- f CAL FIRE Notice of Violation to PG&E #4

cc:

County Administrative Office
County Counsel

**BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA**

RESOLUTION NO. _____

On the motion of Supervisor
Duly seconded by Supervisor
The following resolution is adopted:

**RESOLUTION CONCERNING VIOLATIONS OF LAW BY PACIFIC GAS AND ELECTRIC
COMPANY WITHIN THE CZU LIGHTNING COMPLEX FIRE AREA**

WHEREAS, the CZU Lightning Complex Fire that commenced on August 16, 2020, and was contained on September 22, 2020, destroyed more than 900 homes in Santa Cruz County Districts 3 and 5 and caused damage to public and private utility infrastructure; and

WHEREAS, Pacific Gas & Electric Company (PG&E) and its contractors have conducted tree removal operations and committed environmental violations in the fire-impacted areas that have been determined by the California Department of Forestry and Fire Protection (CAL FIRE) and the California Coastal Commission to be in violation of state and local laws, including the Public Resources Code, the California Coastal Act, and the County of Santa Cruz's Local Coastal Program; and

WHEREAS, CAL FIRE has issued four separate Notices of Violation to PG&E and its contractors documenting the unpermitted actions related to the extensive tree-removal work and the numerous violations of environmental regulations, and notified PG&E that each of the violations, totaling more than 300 as of November 30, 2020, represent a misdemeanor and carry the potential for civil penalties up to \$10,000; and

WHEREAS, CAL FIRE notified PG&E of its failure to properly notify and engage private property owners regarding proposed tree-removal work, including a lack of communication with the City of Santa Cruz related to a three-acre conversion of its Laguna Creek watershed; and

WHEREAS, the Coastal Commission issued a Notice of Violation to PG&E related to unpermitted tree-removal operations that, in addition to requiring the immediate cessation of those activities and the development of mitigation and restoration, found that PG&E's actions had caused environmental damage that exacerbated the potential for debris flows; and

WHEREAS, the County of Santa Cruz and its state and federal partners have mapped risk hazards throughout the CZU Lightning Complex Fire area and stressed the importance of heeding evacuation orders, efforts now complicated by erosion and other environmental hazards created by the unpermitted work conducted by PG&E and its contractors;

NOW THEREFORE, IT IS HEREBY RESOLVED AND ORDERED by the Board of Supervisors as follows:

- 1) The County Administrative Officer and County Counsel are hereby directed to work together to file a formal complaint on behalf of the County of Santa Cruz with the California Public Utilities Commission against PG&E for the violations documented in the NOV's by CAL FIRE and the Coastal Commission; and
- 2) The Chair of the Board is directed to write letters to the Santa Cruz County District Attorney, CAL FIRE, the Coastal Commission and other enforcement agencies requesting a thorough investigation and, if appropriate, pursuit of criminal charges and/or civil penalties against PG&E related to the violations identified by CAL FIRE and the Coastal Commission.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz, State of California, this ____ day of _____ 2020, by the following vote:

AYES: SUPERVISORS
 NOES: SUPERVISORS
 ABSENT: SUPERVISORS

 Greg Caput, Chairperson
 Board of Supervisors

ATTEST: _____
 Clerk of said Board

Approved as to form:

12/2/2020 (AMS# 9878)
 Office of the County Counsel

DISTRIBUTION: County Administrative Office
 County Counsel