

CALIFORNIA COASTAL COMMISSION

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**VIA ELECTRONIC MAIL**

November 20, 2020

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Re: Violation¹ File No. V-3-20-0089 – Tree Removal in the Santa Cruz Mountains

Dear Messrs. Smith, Ritter, and Perry:

As you may know, the California Coastal Act² was enacted by the State Legislature in 1976 to provide long-term protection of California's 1,250-mile coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation of coastal resources and development within the State's Coastal Zone. The California Coastal Commission ("Commission") is the state agency created by and charged with administering the Coastal Act. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other coastal resource protection goals, protect against loss of life and property from coastal hazards; provide maximum public access to the sea; protect natural landforms; protect scenic landscapes and public views; and seek to protect and restore sensitive habitats, including those within the Coastal Zone in the Santa Cruz mountains.

¹ Please note that the description herein of the violation at issue is not necessarily a complete list of all development that is in violation of the Coastal Act and/or Santa Cruz County's LCP. Accordingly, you should not treat the Commission's silence regarding (or failure to address) other development herein as indicative of Commission acceptance of, or acquiescence in, any such development. Please further note that the word "violation" as used throughout this letter refers to alleged violations of the Coastal Act and/or the County's LCP as determined by Commission staff.

² The California Coastal Act of 1976 is codified in Sections 30000 to 30900 of the California Public Resources Code ("PRC"). References to sections of the Coastal Act are technically to the PRC.

We have received reports from CAL FIRE and Santa Cruz County of recent and ongoing tree removal and related activities being performed by Pacific Gas and Electric Company ("PG&E"), and/or contractors acting on PG&E's behalf, over a large area in the Santa Cruz mountains, including in areas within the Coastal Zone. These activities include the removal of a very significant number of trees (including, but not limited to, Ponderosa pine, Redwood, Cypress and Douglas fir trees), land clearance, grading, road development, placement of cut logs and slash, and other activities, all spread over approximately 17 linear miles, including approximately 6 linear miles within the Coastal Zone. Moreover, many of these activities appear to be taking place within what the Coastal Act refers to as Environmentally Sensitive Habitat Areas ("ESHA"), which are subject to even greater protection under the Santa Cruz County Local Coastal Program ("LCP") and the Coastal Act. The above-described activities constitute "development" as defined in the Coastal Act and the LCP (see below), and such development requires authorization via a coastal development permit ("CDP") prior to such activities being undertaken. Neither PG&E nor its contractors have a CDP authorizing these activities from the Commission or Santa Cruz County.

Pursuant to Section 13.20.050 of the County's LCP and Section 30600 of the Coastal Act, any person wishing to undertake development activities in the Coastal Zone must first obtain a CDP. Development is broadly defined by Section 13.20.040 of the County's LCP and 30106 of the Coastal Act as follows:

"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)."

The removal of native trees, grading, land clearance, and the placement of piles or "decks" of cut logs and slash each constitutes development as defined by the Coastal Act and the County's LCP³. Since no CDP was obtained authorizing the subject

³ We understand that there may be a dispute between PG&E and CAL FIRE as to whether these activities fall under the Forest Practices Act, but we understand that you've taken the position that this is not a timber operation and does not fall within that law, which, if true, would make it clear that the vegetation removal aspect of these activities are not subject to the exclusion from the above definition of development for "timber operations which are in accordance with a timber harvesting plan," and thus

development, the aforementioned development is unpermitted and constitutes a violation of the Coastal Act and the County's LCP.

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. In fact, in a violation letter to you dated November 18, 2020, CAL FIRE estimates that there are "...over 17 miles of seasonal roads, utilized by your crews in their Timber Operations that have either not been maintained during those operations or have not been prepared for winter rains or a combination of the two."

Our concerns here are magnified by the fact that all of these impacts have and are continuing to occur absent any CDP authorization, which would typically include terms and conditions designed to avoid (and, where avoidance is not possible, to reduce and mitigate) these types of adverse coastal resource impacts. CDP processes also allow for public participation so that those most keenly affected and/or interested in such issues have the opportunity to weigh in and have their opinions/concerns heard. As a result of PG&E not participating in that process, to date, no such conditions have been drafted to ensure resource protection and there has been no such opportunity for public input.

Although we are aware that the above-described activities are ostensibly being undertaken for fire safety and response purposes, such objectives by themselves do not relieve PG&E from CDP requirements in the Coastal Zone⁴. We are also aware of Executive Order N-81-20 ("EO"), which allows for the potential suspension of some State statutes, rules, regulations and other requirements when the California Natural Resources Agency determines that the EO is applicable and that such suspension is warranted. However, in this case, it does not appear that such a determination was requested let alone granted in relation to these activities. In sum, the development undertaken and ongoing by or at the behest of PG&E lacks the requisite Coastal Act CDP authorization, and is in violation of both the Coastal Act and the County's LCP.

The Santa Cruz County LCP regulates the removal of trees in the Coastal Zone. Section 16.34.040 of the LCP requires a permit for tree removal in the Coastal Zone and Section 16.34.105 states the following:

remain subject to Coastal Act permitting requirements. In any event, there is no Timber Harvesting Plan now, so that exclusion from the definition of development cannot apply here.

⁴ We also note that it appears that this work may have also required other approvals and permits and that these also may not have been obtained. We have not attempted to research these other potential issues, and this letter focusses solely on the Coastal Act issues of which we have become aware.

(A) It shall be unlawful for any person to do, cause, permit, aid, abet or furnish equipment or labor to remove, cut down, trim more than one-third of the foliage of, poison, or otherwise kill or destroy any significant tree as defined in SCCC 16.34.030⁵ within the Coastal Zone unless: (1) a development permit has been obtained and is in effect which authorizes such activity; or (2) the activity is exempt from the requirement for such a permit by reason of the provisions of SCCC 16.34.090; or (3) there was an emergency caused by the hazardous or dangerous condition of the tree which required the action to be taken immediately for the safety of life or property.

Additionally, Section 16.32.130 states the following:

(A) It shall be unlawful for any person at any time to do, cause, permit, aid, abet, suffer or furnish equipment or labor for any development activity within an area of biotic concern as defined in SCCC 16.32.040 unless: (1) a development permit has been obtained and is in effect which authorizes such development activity; or (2) the development activity has been reviewed for biotic concerns concurrently with the discretionary review of an approved permit required by SCCC Title 13 or 14, and a permit is in effect which authorizes the development activity within such area; or (3) the activity is exempt from the requirement for a development permit by the provisions of SCCC 16.32.105 and from the requirements for a coastal permit by the provisions of Chapter 13.20 SCCC.

And although Section 16.34.080⁶ of the Significant Tree Ordinance does provide for limited emergency tree removal, that emergency provision is not applicable in this case, or at this scale, and it does not obviate the need for PG&E to comply with LCP requirements and protections including CDP requirements (Chapter 13.20), grading requirements (Chapter 16.20), erosion control (Chapter 16.22), riparian/wetland protection (Chapter 16.30) and sensitive habitat protection (16.32).

⁵ LCP Section 16.34.030 defines a significant tree as any tree within the urban service lines or rural services line that is equal to or greater than 20 inches dbh (approximately five feet in circumference); any sprout clump of five or more stems each of which is greater than 12 inches dbh (approximately three feet in circumference); or any group consisting of five or more trees on one parcel, each of which is greater than 12 inches dbh (approximately three feet in circumference); outside the urban services line or rural services line, where visible from a scenic road, any beach, or within a designated scenic resource area, any tree which is equal to or greater than 40 inches dbh. (approximately 10 feet in circumference); any sprout clump of five or more stems, each of which is greater than 20 inches dbh. (approximately five feet in circumference); or, any group consisting of 10 or more trees on one parcel, each greater than 20 inches dbh. (approximately five feet in circumference), and any tree located within sensitive habitat as defined in Chapter 16.32.

⁶ 16.34.080 Emergencies.

In the case of emergency caused by the hazardous or dangerous condition of a tree and requiring immediate action for the safety of life or property, such necessary action may be taken to remove the tree or otherwise reduce or eliminate the hazard without complying with the other provisions of this article, except that the person responsible for cutting or removal of the tree shall report such action to the Planning Director within 10 working days thereafter. [Ord. 3443 § 1, 1983; Ord. 3341 § 1, 1982].

With regard to the LCP's CDP requirements, the LCP does provide for emergency CDPs (ECDPs) when it is clear that an emergency situation exists,⁷ provided such emergency development is only temporarily authorized and is the minimum necessary to abate the emergency with the least amount of coastal resource degradation. Such ECDPs include their own terms and conditions designed to help avoid such degradation and to allow for a proper accounting of allowable emergency activities. Although we are aware that PG&E apparently notified County staff after the fact, on Monday, November 2, 2020, that they had begun and were continuing to undertake the above-described activities pursuant to the provisions of the LCP's significant tree ordinance, again, that PG&E action does not obviate the need to obtain an ECDP (or to comply with other LCP provisions). Further, all ECDPs require a follow-up regular CDP designed to allow for the normal CDP process to be undertaken, including importantly in emergency cases, the full assessment of the activities in light of LCP requirements (including the LCP provisions listed above) that is often not possible at the time of the emergency itself. Follow-up regular CDPs also can help identify coastal resource impacts, appropriate mitigations, and other agency approvals and mitigation measures.

Resolution

In order to begin resolution of this matter, PG&E must do all of the following:

1. Immediately cease from undertaking any further unpermitted development.
2. Immediately apply to Santa Cruz County for an ECDP to authorize immediate implementation of "best management practices" measures designed to help reduce the impacts likely to result from the subject unpermitted development, particularly as it relates to protection of residences, roads, water supplies, and coastal streams and habitats at risk from sedimentation and soil movement as a result of rain events. Some best management practices that should be implemented include immediate implementation of short-term actions such as placement of straw, straw wattles and water bars on and adjacent to unpaved roadways. Also, PG&E must work with all relevant agencies (including Santa Cruz County, CAL FIRE, the Board of Forestry (BOF), California Department of Fish and Wildlife (CDFW), Central Coast Regional Water Quality Control Board (RWQCB), the Coastal Commission, etc.) to determine other necessary actions, such as road watering and the removal and/or stabilization of slash in watercourses as well as any other necessary measures for their inclusion in the ECDP.
3. Immediately obtain any and all required permits/authorizations from all relevant agencies (including Santa Cruz County, CAL FIRE, BOF, CDFW, RWQCB, the

⁷ Where LCP Section 13.20.040 defines an emergency as "a sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services."

Commission, etc.) to authorize the unpermitted development described herein, insofar as it is consistent with applicable laws.

4. Develop plans for restoration, revegetation, mitigation, and any other measures that are necessary to address the unpermitted activities and to restore damaged resources impacted by the unpermitted activities, to be authorized via either a CDP or enforcement mechanism. We are happy to discuss options going forward, in conjunction with the County and any other relevant agencies with jurisdiction over this matter.

Please contact me as soon as possible and no later than **Tuesday, November 24, 2020** to discuss how PG&E intends to resolve this matter. Given the potential – in what appears to be the very short term given we are now in the rainy season – for even more adverse coastal resource impacts emanating from these PG&E activities, including potential impacts to significant public infrastructure, we appreciate your very prompt reply. Time is of the essence, and every day that goes by without appropriate actions being undertaken both further increases potential problems and also PGE's potential liabilities. In fact, and while we are hopeful that we can resolve this matter quickly and informally, please be advised that Chapter 9 of the Coastal Act has a number of potential remedies to address violations of the Coastal Act, including issuance of Cease and Desist Orders, issuance of Restoration Orders, and the ability to initiate litigation to impose civil liability in an amount not less than \$500 and not more than \$30,000 for each instance of unpermitted development, pursuant to Coastal Act Sections 30809, 30810, 30811, and 30805 and 30820(a), respectively. Additionally, Section 30820(b) provides that additional civil liability may be imposed for illegal development that was undertaken knowingly and intentionally, in an amount not less than \$1,000 and not more than \$15,000 for each day in which the violation persists. And Section 30822 additionally provides for exemplary damages in cases of knowing and intentional violations of the Coastal Act.

We fully intend to work collaboratively with PG&E, CAL FIRE, the County, and other agencies and stakeholders to resolve this violation. We also note that we are proud of our collaborations of this type in the past, particularly with CAL FIRE and BOF where we have found much common ground in relation to forest health and fire prevention activities through CDPs in the Coastal Zone. While unfortunate that this case falls upon us collectively after major activities have already occurred without a CDP, we are hopeful that past lessons learned from normal pre-CDP collaboration can be applied here as well.

Again, we are supportive of responsible actions taken in compliance with all applicable laws necessary to avoid danger and encourage long term planning consistent with legal requirements and are happy to work with you and other relevant agencies with jurisdiction to achieve this. If you have questions about this letter or wish to discuss these matters further, please contact me by email at pat.veesart@coastal.ca.gov or by telephone at (805) 835-8732. Due to concerns about the Coronavirus, Commission offices are physically closed (but virtually open during normal business hours), and all

correspondence should be conveyed by email unless otherwise required by the Coastal Act or regulation.

Sincerely,

Patrick Veesar

Patrick Veesar
Enforcement Supervisor
California Coastal Commission

cc: Richard Sampson, CAL FIRE
Matt Dias, California Board of Forestry
Wesley Stokes, California Department of Fish and Wildlife
Thea Tryon, Central Coast Regional Water Quality Control Board
Matt Johnston, Santa Cruz County
Bruce McPherson, Santa Cruz County 5th District Supervisor
Mark Stone, Assemblymember, 29th District