

Strategic Vegetation Management and Reducing Fire Hazards

Background

California is suffering a fire crisis. Roughly 50 percent of the fires over 100,000 acres in size have occurred in the past 10 years. San Diego County has recently suffered two major episodes of massive and catastrophic wildfires. Preventive measures to reduce such massive fires need to be implemented and applied to the land. The County of San Diego (County) is seeking a means to provide vegetation treatments to reduce the risk of wildfires in forest as well as chaparral and coastal sage scrub shrub habitats because of their flammability.

Current Process

Under existing law, vegetation management and tree removal activities are permitted within 100 feet of structures (Public Resources Code (PRC) 4291) and removal of additional vegetation may be required in writing by a local fire agency as the result of a memorandum of understanding between the U.S. Fish and Wildlife Service, California Department of Fish and Game and the fire agencies in San Diego county. Removal of vegetation within 30 feet of roads is also allowed under the memorandum of understanding. Removal of dead, dying and diseased trees is allowed under the Forest Practice Act if the wood is used for some commercial purpose. However, each of these limited activities, if carried out by a public agency, is subject to the California Environmental Quality Act (CEQA) and if the activities do not fall under an existing exemption to that Act, extensive environmental review is required to be performed prior to undertaking the activities. Removal of vegetation beyond that referenced above requires extensive CEQA review.

The County of San Diego's Multiple Species Conservation Program (MSCP) contains a vegetation management component as part of the habitat management necessary to maintain vegetation within the preserve lands. Within the preserve, the local plan allows the County to:

- Selectively clear vegetation by hand as defensible space to the extent required by written order of the fire authorities or the express purpose of reducing an identified fire hazard.
- Treat vegetation in surrounding lands to assist in protecting rare and endangered species and unique or sensitive vegetation.

MSCP lands only encompass approximately 11 percent of the unincorporated area of the county of San Diego. To the extent that these activities were covered in the Environmental Impact Report (EIR) for the adoption of the MSCP, no further CEQA review is necessary to carry out these activities; however, more comprehensive actions to remove vegetation would require further CEQA review.

Has the County developed plans for the vegetative management program?

The County has prepared a vegetation management report that outlined vegetation management issues in San Diego County. This report was received by the Board of Supervisors on March 25, 2009. The County is in the process of creating a vegetation management plan which will implement some of the activities identified in the vegetation management report, and has begun preparation of an environmental document that will evaluate those activities. Any implementing activities are planned to include environmental surveys and avoidance of any site that supports sensitive biological or archaeological resources. It is anticipated that the environmental impact analysis process for this plan will take a minimum of two years to complete with a cost of approximately half a million dollars. This is for an Environmental Impact Report (EIR) that utilizes the extensive modeled and mapped information available.

Success of Program

What has the County of San Diego done so far?

Following the 2003 fires and the Governor's declaration of disaster area and declaration of an emergency, a dead, dying and diseased tree removal program was established to receive grants from the United States Natural Resource Conservation Service and United States Forest Service. Because the County concluded there was an "imminent threat" of wildfire based on the Governor's declaration and the drought and bark beetle infestation in the County, it proceeded with a tree removal program following the 2003 wildfires in the San Diego region relying on an exemption from CEQA. During this time, 480,000 dead, dying and diseased trees were removed from the forested areas of San Diego County. In the wake of the 2007 fires the success of the program was further evidenced. The County has applied for additional funds to expand the dead, dying and diseased tree removal program. While the County has not yet conducted any treatment programs for the shrub vegetation, it is planned that additional treatment of vegetation would be critical for management of vegetation in San Diego County as well as other counties in Southern California.

What are some successes of the tree removal program in San Diego?

According to CAL FIRE representatives and fire fighters who were on the ground during the fires, removal of dead, dying and diseased trees was critical in preventing total forest loss on Palomar Mountain during the 2007 Poomacha fire in the San Diego region (also see Policy Considerations, Potential for Fiscal Savings section on Page 6). After experiencing this success, additional tree thinning is proposed and shrub vegetation is also proposed to assist in the public health and safety issue, as well as the health of natural resources.

Recent Legal Challenge

The County of San Diego was challenged by the California Chaparral Institute to stop the removal of dead, dying and diseased trees and vegetation. The Chaparral Institute claimed the County violated state environmental laws (CEQA) by finding that tree removal and related vegetation removal programs were exempt from CEQA as emergency projects. The judge ruled in favor of the plaintiff and opined that there was not enough evidence supporting the presence of a clear and imminent danger of wildfire which requires immediate action. Under CEQA, the interpretation by the judge was that an emergency exemption applies to threats that may occur within a matter of days or hours, as occurred in a local case where a sea wall was near collapse and exposed houses to danger. The judge felt that the process of removing trees in anticipation of a fire that has not yet ignited was not an emergency. The judge's direction prevents proactive treatments, and instead forces reactive treatment of vegetation and/or fire fighting activities to protect the public.

Considerations of Existing Law

How is the County currently limited under existing law?

CEQA requires that prior to taking any action that may result in a significant effect on the environment, the environmental effects of that action must be evaluated. The activities that the County will be undertaking to remove dangerous fuel loads in the backcountry area of the county may, unless these activities can be found to be exempt, require either a Mitigated Negative declaration or an EIR in order to comply with CEQA.

What's the problem with current CEQA?

Full scale environmental review can last two years. This is a result of the length of time that it takes to prepare the document itself and the public and staff review periods. There are a number of mandatory activities associated with the CEQA process that take time. The major steps are: contracting with a consultant to prepare the EIR, preparing the of Notice of Intent to

prepare an EIR, conducting a scoping meeting, receiving comments on scoping, evaluating how the comments should be incorporated into the document, preparing the EIR, putting the EIR out for public review and comment, receiving comments from the public, responding to the comments and modifying the document based on comment, and presenting the EIR to the decision maker on the project. If new issues or new information arise during the review or hearing process, the EIR could be required to be recirculated for public review, adding further time to the process.

What permits are obstacles in the current CEQA process?

The current CEQA process leaves programs necessary for protecting the health and safety of the community vulnerable to delay because of the time that it takes to process and certify an EIR.

Why can't the CEQA process, such as a Negative Declaration or and EIR master plan be used to streamline the process for vegetation management?

Negative Declarations including Mitigated Negative Declarations are vulnerable to challenge by raising an argument that even with mitigation, there may be significant impacts to the environment. If this issue is raised by opponents to the project, it triggers the requirement to prepare an EIR.

The County has begun processing a master EIR for the vegetation management plan. It is anticipated this project will take at least two years, if it is not challenged. With the master EIR and associated plan, the goal is that the individual implementing projects would conform with the approved plan and proceed. However, if there is litigation over this approach, there is a risk that as part of the settlement, each implementing activity conforming with the plan would have to be processed through its own CEQA review, further limiting the flexibility with which vegetation treatments may take place.

Explain how litigation can hold up the process of managing vegetation to reduce fuel loads.

If litigation is successful, vegetation treatment activities would be required to cease. If an exemption or Negative Declaration is prepared for the project and is successfully challenged, an EIR would need to be prepared. Generally, when litigation is filed, the activity must be stopped while the EIR is prepared. If litigation occurs after the EIR has been prepared and certified, there may be a need for a new EIR, a recirculated EIR or a negotiated reduction in the scale of the project. The current process effectively stymies the ability to quickly and effectively create plans and implement coordinated vegetation treatment programs that are important for health, safety and management of conserved lands.

Why has the County not done a full scale EIR for this program as required by CEQA?

Previously, the County has carried out various different projects for removal of dead, dying and diseased trees under emergency exemptions. Until very lately, this approach has not been challenged, and the County believes this emergency exemption complies with CEQA. However, there has now been a successful challenge to this approach, and the County must prepare environmental documents for such activities unless a specific statutory exemption allows the activity. CAL FIRE also has an environmental document from 1986 that applies to CAL FIRE vegetation removal projects. CAL FIRE has been working for 10 years on a new environmental document and it is not completed. Furthermore, due to a number of reasons including budgetary issues, CAL FIRE indicated that it does not currently have adequate resources to continue to work on finalizing the document.

Existing Law Provisions for Retrofitting for Earthquake Hazards/Similar types of Emergency Exemptions

The proactive approach proposed by SB 1293 would be similar to the emergency exemption for work to retrofit bridges for earthquake hazards. Pursuant to Public Resources Section 21080.16, where work is needed to retrofit a bridge that would be in danger of collapse if an earthquake occurs, such work is exempt from CEQA even though the bridge may not be in danger of imminent collapse. In that statute certain standards concerning the construction activities are mandated. SB 1293 is similar in its approach in that it recognizes that under certain high fire hazard conditions, work to remove the fire danger should occur without the need to conduct lengthy CEQA review, as long as certain standards are adhered to.

AB 2859 (Gaines, 2008) provided new flexibility for timber clearing. Why doesn't this work for what SB 1293 is trying to accomplish?

AB 2859 (Gaines, 2008) provided a means whereby that individual property owners may cut trees of a certain size or smaller without a timber harvest plan. It is geared toward insuring that timber companies prepare timber harvest plans but that individual property owners would not have to if they do not sell the wood commercially. It broadens the flexibility of the Forest Practices Act for specific tree types on private land but it only addresses a small part of the issue. It does not fully address the dead tree issue, the chaparral and coastal sage scrub flammable vegetation issue, nor does it address the comprehensive strategy that the County would like to implement to resolve this issue.

Ensuring Environmental Protections

Why is vegetation management and fuel reduction good for the environment?

Fuel reduction is necessary in order to prevent whole sale wildfires through forests and shrublands. A good example of the negative impact of wildfire is the effect that the 2003 Cedar fire had on the forest in the area of Julian, including William Heise County Park and Cuyamaca Rancho State Park. Because the trees were too dense and there was so much standing dead material that was not treated through vegetation management, when the fire burned through the parks, it destroyed tens of thousands of acres of forest. In most areas, these forests are not recovering and have been converted by the fire to chaparral rather than forest. A wide variety of species have been negatively affected, ranging from the trees themselves to the forest birds that no longer inhabit those areas. The purpose for vegetation treatment in forested areas is to bring the forest back to a more natural and sustainable condition so that wildfires will not have such a great effect in eliminating trees and replacing them with chaparral. In shrubland chaparral and coastal sage scrub habitats, vegetation treatments are intended to break up large areas of highly flammable habitat into more manageable patches of habitat with a mix of older age vegetation and younger vegetation. This allows for a greater diversity of species to exist in the area at one time.

Within the County preserve lands, there are areas that support rare and endangered species and there are types of vegetation that should be protected from fire. However, a means to protect an area from fire is to perform some sort of vegetation treatment to thin or burn the surrounding vegetation in order to slow or stop the fires that burn into the resources.

Briefly explain the science based facts regarding why this approach is the right approach.

In forested areas, there is general consensus among scientists and fire practitioners that solely relying on fire suppression as a management strategy to prevent fires has resulted in increased undergrowth vegetation and tree densities, number of trees per acre, that are unnaturally too high to be sustained with the normal rainfall and natural fire frequency. As trees become too dense, they become more vulnerable to drought since there are more trees competing for the same water that is less available during drought conditions. As some trees die off, they become

extremely flammable sources for carrying fires into the upper portion of the trees. Under natural conditions, with lower numbers of trees, fires may burn through a forest and keep low to the ground on the surface and not have a significant impact on the adult trees. However, when trees are too dense (in particular when there are a number of them dying from drought and in competition for water, or under attack from insects that target drought stressed trees) a fire may jump from a low level ground fire with little effect to a crown fire that consumes the upper portions of the trees, and can completely destroy the forest. This has happened in Cuyamaca Rancho State Park and in the Julian area in 2003 and the Pines Fire in 2002.

For other types of vegetation, the situation is more complicated. Some areas of shrub vegetation have also been affected by drought to the point where there is a high percentage of standing biomass that is dead, very flammable and with reduced biological productivity. The majority of fires that ignite and carry fire in the Southern California region typically begin in areas with old, partially dead vegetation. There is concern that the repeated treatments and clearing will provide an avenue for invasion of flammable weeds. That is also a concern of the County of San Diego and agency partners. There will be no actual clearing under this program and there will be great consideration in the planning of treatment areas so that vegetation is not permanently affected in a negative manner by the treatments. In order to reduce the probability that those areas will burn during catastrophic events, vegetation treatments are necessary to break them up into more manageable units when fires do begin.

Other areas of vegetation may be sensitive to fire and need to be protected from burning. An example is where old chaparral and sensitive Tecate cypress forest grow together. Some sort of vegetation treatment would be necessary to slow fires from intruding into those areas. Furthermore, recent information on carbon sequestration and global warming indicates that smaller fires under controlled burning programs and vegetation treatments release less carbon into the atmosphere than large uncontrolled wildfires.

Describe why/how SB 1293 will not result in extensive clearing?

The activities described in SB 1293 are vegetation treatments. These activities would be carried out by controlled burning or selective treatment of vegetation to thin its density, reduce the upper part of the shrubs and in effect thin the biomass, or reduce the density of the dead biomass. In order to comply with the proposed law, treatments would not be allowed to result in alteration of the vegetation to change it to a different form or succession level through type conversion. Extensive clearing is not necessary unless it is within the defensible space for individual houses and structures. Furthermore, it would not be permitted under what SB 1293 proposes.

How can bill language be structured to ensure that it will not allow commercial timber activities to “clear cut”?

The definition of fire emergency could be expanded to specify specific conditions that would need to be met before thinning could take place. Standards for thinning in the California Forest Practice Rules could be applied. Language could also be added saying that commercial clear cut activities are not allowed under what SB 1293 proposes (and commercial clear cut activities could be defined). The bill could also further clarify that the tree removal activity is only allowed for dead, dying or diseased trees, and would not be available for commercial timber operations.

What is the difference between vegetation management in MSCP and what SB 1293 proposes to change?

Vegetation management in the MSCP is limited to lands that have been preserved for open space. SB 1293 would apply to more than MSCP preserve land. It would apply to the entire unincorporated area. In addition, under the MSCP planning process, vegetation management is required for preserved lands to insure health and safety of the community as well as the health and protection of the resources that have been set aside in the preserves assembled under the

MSCP program. An exemption for this process may make implementation of management concepts for the MSCP preserve lands more readily achievable. Currently, if the County wanted to conduct vegetation management activities in the MSCP lands, those activities would be subject to CEQA. The CEQA document for the initial MSCP plan approval included vegetation management as being covered through the habitat management process.

What types of habitat are the main objectives of SB 1293?

SB 1293 would allow treatment to all flammable habitats. This includes the following, removal of dead, dying and diseased trees as well as controlled burns in grassland to manage weedy species and encourage natives. Controlled burns and vegetation treatments would be appropriate in chaparral and coastal sage and various scrub habitats to treat areas with high percentages of standing dead material and to break up large blocks of vegetation that is of older age into units with various ages. In some instances, it may be appropriate to maintain older vegetation in some areas for its habitat value. Forested areas may need treatments to reintroduce burning in the forest understory to assist in opening up the understory which would help in preventing elimination of the forest with intense crown fires.

Policy Considerations

How this will aid in public safety?

Creation of plans, documents and policies for vegetation treatments is critical for public safety. The current process with the high risk for legal challenges and endless document preparation and recirculation limits the incentive for agencies to create a proactive program for public safety associated with fire control and vegetation management. An exemption process for vegetation treatments would facilitate the creation and implementation of such plans and practical vegetation treatments that would reduce fuel loads, assist in the reduction in the rate of spread of wildfires and provide a means for managing wildlife habitats for the species that inhabit them. This will streamline the time necessary to apply vegetation treatments to land in order to reduce threats to public safety. It will also reduce the likelihood of lawsuits to stop any type of vegetation treatments.

Potential for fiscal savings.

The Schwarzenegger Administration estimates eligible reimbursable costs to state and local governments for the 2007 southern California fires are to be \$317 million, of which the federal government is responsible for \$238 million and the state and local governments are responsible for \$79 million.

The County of San Diego fuels reduction program removed approximately 96,000 dead trees from the Palomar area. As a result, a limited number of trees fell over evacuation routes and suppression actions were able to turn the fire from entering the mountain community. It is estimated that the structural replacement value of this area would have been \$270 million, had more fire damage occurred in the 2007 wildfires.

Cost of preparing an EIR.

The County estimates the preparation of a major policy level EIR ranges up to and can even exceed a half of a million dollars. The document preparation and review process involves many specialists working over an extended period of time. Responses to public comments may also be extensive if there are many substantive issues raised. With environmental programs, there can be various scientific view points and sometimes conflicting perspectives, which can result in added time and costs to preparing an EIR. If a legal challenge is pursued, the costs can increase significantly. The CEQA review process for relatively small components of a vegetation management program can by themselves blossom into full scale environmental impact reports which cost significantly more than what would be anticipated initially.

What can happen if SB 1293 does not pass—what are the potential ramifications?

If SB 1293 does not become law, potential ramifications are that any project which proposes to proactively apply vegetation management treatments to vegetation for the health and safety of the community will be required to conduct lengthy and expensive environmental review for those projects. In many cases, important vegetation management programs will not be proposed because of the difficulty to gain their approval in an era of lawsuits and challenges. Public agencies do not have the time for long drawn out legal battles over management of vegetation when fire danger is high each season. If plans are not proposed because of the difficulty for gaining their approval, fuel loads will continue to increase and the potential likelihood for wildfire will continue to increase. As the environmental review process and litigation challenges extend into multiple years, the likelihood of a major fire occurring during a vegetation management plan processing period will continue to increase. In the interim, the danger to the communities from wildfire will be unabated.

In 2009 the County received \$7 million in grant funding from the United States Forest Service (USFS) for the purpose of removing dead, dying and diseased trees and conducting limited vegetation treatment along evacuation corridors and around structures. The County relied on an emergency exemption under the California Environmental Quality Act to accept the \$7 million grant award as actions necessary to prevent or mitigate an the present fire emergency in San Diego County due to drought and infestation by the bark beetle. This exemption was challenged by a local environmental group. The court recently ruled that an environmental analysis (either the preparation of an Environmental Impact Report or other actions necessary to comply with CEQA) was required to be conducted. The preparation of the environmental document, responses to public comments and preparation of environmental findings is lengthy and may take longer than the amount of time provided to expend the \$7 million grant award. The County is already into the second year of the three year grant award program. The County can request the federal government provide a timeline extension to expend the grant funds; however, the USFS has indicated that if a grant extension is approved, it could not extend beyond a five year deadline to expend the funding. There is an increased risk that the County will lose the \$7 million in grant funding and will not be able to execute the program to address the fuel load if it is not able to resolve these environmental concerns in a timely manner.