

Certification Pursuant to Public Resources Code Section 4799.05 Regarding Certain Prescribed Fire, Thinning, and Fuel Reduction Projects

Public Resources Code Section 4799.05, subdivision (d), provides an exemption from the California Environmental Quality Act for prescribed fire, thinning, or fuel reduction projects undertaken on federal lands that reduce the risk of high-severity wildfire if those projects have been reviewed under the federal National Environmental Policy Act of 1969. This section remains operative only if the Secretary of the Natural Resources Agency certifies that the National Environmental Policy Act of 1969 and other federal laws that affect the management of federal forest lands in California have not been “substantially amended” on or after August 31, 2018. As explained more fully below, I certify that for the purposes of Section 4799.05, NEPA and related laws have not been substantially amended.

The statutes comprising NEPA have not been substantially amended since the prior certification. On July 16, 2020, the White House Council on Environmental Quality (CEQ) adopted changes to the regulations that implement NEPA, which amendments went into effect on September 14, 2020. Those changes amended standards for assessing the severity of impacts and removed the consideration of cumulative effects, including from greenhouse gas emissions associated with projects, among other things. Several states, including California, filed litigation challenging those changes. On November 19, 2020, the U.S. Forest Service finalized changes to its own regulations that implement NEPA.

As explained below, those changes are not “substantial” with respect to the prescribed fire, thinning, or fuel reduction projects that might rely on the CEQA exemption in Section 4799.05.

First, while some of the changes to the CEQ regulations purport to give federal agencies’ discretion to avoid analysis of certain topics, or in some cases avoid NEPA review entirely, the regulations cannot remove obligations imposed by statute or the cases that interpret the statute. Thus, for example, the removal of references to cumulative or global impacts from the CEQ regulations will not

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relieve agencies of the requirement to analyze those impacts as described in case law. (See, e.g., *Kleppe v. Sierra Club* (1976) 427 U.S. 390, 410 (“when several proposals for ... actions that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together”); *Ctr. For Biological Diversity v. Nat’l Highway Traffic Safety Admin.* (9th Cir. 2008) 538 F.3d 1172 (NEPA requires analysis of climate change).)

Second, to the extent those changes impermissibly broadened agency discretion, President Biden issued several executive orders that direct agencies to use their discretion to address environmental protection, public health and the impacts of climate change. (See, e.g., EO 13990 (January 20, 2021), Sec. 1 (directing “all executive departments and agencies ... to immediately commence work to confront the climate crisis”); EO 14008 (January 27, 2021), Sec. 201 (establishing the policy of the Biden Administration “to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Governmentwide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure. Successfully meeting these challenges will require the Federal Government to pursue such a coordinated approach from planning to implementation, coupled with substantive engagement by stakeholders, including State, local, and Tribal governments”).) With respect to the Forest Service amendments, the U.S. Forest Service has indicated in communications with the Office of the Secretary that it is not implementing its amended regulations pending review by the new Biden Administration.

Third, while some of the changes to the CEQ regulations amended policy statements regarding public participation and protection of the environment, for example, they do not affect policies set forth in the statute itself. As noted above, recent Executive Orders reinforce executive branch recognition of NEPA’s directive to protect the environment and public engagement.

Fourth, some of the changes in the CEQ and USFS regulations simply do not apply to prescribed fire, thinning, or fuel reduction projects. As an example, the USFS’ updated categorical exclusions for special use activities do not include forest health projects.

Finally, several of the changes in the CEQ regulations related to increasing efficiency and avoiding duplication are similar procedural standards described in the CEQA Guidelines. This similarity is relevant here because the purpose of the certification requirement in Section 4799.05 is to ensure that projects relying on its CEQA exemption are consistent with California's environmental standards. Thus, changes in the CEQ regulations that align with CEQA standards, and are consistent with the requirements in the NEPA statute itself, are not "substantial" for purposes of this certification because the environmental review applying those changes would be as rigorous as would be required under CEQA.

In plain terms, the regulatory changes described above appear unlikely at this time to result in substantial changes in NEPA practice for forest management projects in California. Therefore, I certify that neither the National Environmental Policy Act nor any other federal laws affecting the management of federal forest lands in California have been substantially amended.¹ This certification may be updated or revoked as the status of the authorities described above changes. Until such time, the exemption in Public Resources Code Section 4799.05 should remain in effect.



Wade Crowfoot, Secretary
Natural Resources Agency

Date: April 12, 2021

¹ This certification is made solely for the purposes of Public Resources Code Section 4799.05, for the reasons described herein. This certification is not intended to offer any opinion as to any litigation challenging CEQ's regulations.