



STATE OF CONNECTICUT
COUNCIL ON ENVIRONMENTAL QUALITY

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March 25, 2022

To: deep.hazardtrees@ct.gov

Re: Response to DEEP's request for comment on its development of a policy for hazard tree mitigation.

The Council on Environmental Quality (Council) commends the Department of Energy and Environmental Protection (DEEP) for [seeking](#) input related to its development of a policy for the maintenance of trees on DEEP-managed properties. The Council also acknowledges DEEP's effort through its 2018 Hazard Tree Inventory process to "augment the agency's ability to minimize risk to the public associated with the increase in damaged, diseased, and dead trees in high-use areas". That process relied on parks' personnel to implement a decision-making rubric to identify hazard trees. Its shortcomings appear to have resulted in DEEP's current announcement of its intent to develop an improved policy that will guide tree removals in the future.

It is the Council's [assessment](#) that non-emergency state actions that affect the state's forests and parklands are "actions which may significantly affect the environment", as described in the Connecticut Environmental Policy Act (CEPA) ([CGS Sec. 22a-1c](#)) and its regulations, and must comply with CEPA's provisions. CEPA allows for state agencies to establish thresholds for environmental reviews. If DEEP creates an agency-specific Environmental Classification Document (ECD), the new policy may serve as the basis in its ECD for evaluating whether a tree removal action requires a review under CEPA.

The development of a hazard tree removal protocol will need to consider the points that are discussed below.

1. Public safety is the overriding concern that must take precedence over economic and ecological considerations, and removal of trees is not the only way to protect the public.

For living trees, a determination about which are in need of attention and what methods are appropriate to reduce public risk requires the expertise of someone trained to make such assessments. Members of the public and some legislators have urged the employ of arborists with training in hazard tree identification. While existing park personnel can identify trees that are suspect of being a hazard, the final determination regarding whether they pose a substantial risk and what method should be employed to eliminate the risk should be the responsibility of an expert with the appropriate training.

When evaluating a potentially hazardous tree, consideration should be given to trimming or cabling as an alternative to removal of a tree at locations where a tree has high social value or serves a unique ecological role. While awaiting a determination by a qualified expert, rerouting traffic or closing off public access or redesigning use areas can prevent injury to persons and property.

2. The nature and intensity of public use should be determinative of tree management, not the category of state land ownership in which it is held.

Currently, tree management protocols are different for parks and for forests. This distinction is based, partially on the presumption that parks and campgrounds receive high visitation while forests do not. The reality is that there are forest sections that receive significant traffic due to their proximity to high population areas or to their unique attributes that attract visitors. Evidence of this was seen at Massacoe State Forest where area residents [opposed](#) the cutting of a section that was a popular hiking and visitation area. Forest sections like that require the same guidelines as are applied to parks and campgrounds. Intensity of use must be considered in determining how to manage the state's wooded lands, rather than whether they are categorized as forest or park, or have dense or sparse tree cover.

3. Hazard trees that must be removed in an emergency action need to be differentiated from removals that are part of routine maintenance.

Multiple state statutes exempt emergency actions from some of the permitting and regulatory requirements that might apply to the same actions in non-emergency circumstances. "Emergencies" can be recognized by their imminence and urgency. As referenced previously, the Council has issued a [paper](#) explaining why the state's tree removal actions must be subject to the planning process that is laid out in the CEPA law.

However, CEPA exempts "emergency measures undertaken in response to an immediate threat to public health or safety". Consequently, emergency tree removals need to be narrowly defined to distinguish them from the routine maintenance that the public expects to protect its safety and to preserve the scenic and ecological values of the state's wooded lands. This distinction is important because the tree removal action that led to the [protests](#) at Housatonic Meadows State Park was justified by DEEP as an "emergency action", despite it being years in planning and execution and involving 18,000 trees statewide.

The removal of stands of infested, diseased or fire-damaged trees may, or may not, be an "emergency". Two factors can be used to define whether the removal is a consequence of a CEPA-exempt emergency: a) does the area require cordoning off of public access until the work is done, and b) the duration of the operation. These definitional distinctions will be useful in designing a coherent tree removal policy, as described below.

a) Restriction of public access:

The clearest and most utilitarian distinction between an emergency removal of a "hazard" and a maintenance activity is whether the area near the tree(s) required restricting public access to reduce risk until the tree(s) could be trimmed or removed. In cases where large stands have been destroyed as a consequence of a natural disaster, risks to persons and property have been reduced by closures or partial closures, as [happened](#) in 2018 after storm damage to state parks, while hazard trees were being removed. In cases where sequestration is not required, the designation of an "emergency" is questionable.

b) Duration:

The duration of the operation is an additional differentiator between emergency and non-emergency operations. Tree removals that transpire over multiple months or years are most correctly described as "maintenance", since there will always be diseased and damaged trees in need of assessment and, possibly, removal.

Tree removals that involve inspections and trimming or felling over multiple months or years and do not also deny or restrict public access to the subject area prior to the removal are maintenance. They are not emergencies, regardless of their scale.

4. Guidelines already exist in CEPA and in other state planning documents, laws and regulations for what should be taken into account in developing a protocol for removing hazard trees.

For its forestry actions, DEEP requires that there be plans that consider a number of environmental factors. The state's non-emergency maintenance of trees at the state's parks, campgrounds and forests with high visitation could be governed by those same considerations. Forestry plans must include provisions to prevent erosion, to identify and protect endangered species, to remove invasive species and prevent their reemergence, and to protect wetlands, watercourses and riparian corridors. Those factors are not sufficient to address all the

considerations that should be taken into account when planning tree maintenance in areas of high visitation.

Other aspects that should be considered in developing criteria for removing trees are listed in the [Regulations](#) of Connecticut State Agencies (RCSA) governing actions that are subject to CEPA: “an agency shall: (1) Consider the direct, indirect, and cumulative effects of an action ... and assess the setting, duration, irreversibility, controllability, geographic scope, and magnitude of those effects as the potential or actual consequences of an action.” The regulations add “... an agency shall consider direct and indirect effects of an action, including but not limited to... (5) Effect on natural communities and upon critical plant and animal species and their habitat; interference with the movement of any resident or migratory fish or wildlife species... (7) Substantial aesthetic or visual effects... (16) Effect on existing land resources and landscapes... (19) Effect on greenhouse gas emissions as a direct or indirect result of the action; (20) Effect of a changing climate on the action, including any resiliency measures incorporated into the action; and (21) Any other substantial effect on natural, cultural, recreational, or scenic resources.”

Public notice and public input are additional and essential components that have proven to be crucial for hazard tree removals. In Connecticut, forestry plans [typically](#) include provision of notice of anticipated actions via informational signage and by contact with local elected officials. More can be done in this regard. If non-emergency hazard tree removals were vetted through the CEPA process, they would benefit from improved public notice and public input. In the CEPA process an agency decides, based on its ECD, whether the action warrants a “Scoping Notice”. If yes, it posts a “notice of public scoping” to the state’s Environmental Monitor which is sent to every municipality in the state and is subscribed to by many non-governmental organizations and by multiple state agencies, including Divisions inside DEEP that may be unaware of plans about which they might have an interest. CEPA allows for a public hearing when 25 people or an organization representing at least 25 people request it. A thirty-day period is allowed for the agency to receive input from experts and potentially effected citizens. The agency reviews the comments received and must respond to the input received. The agency may then proceed with the action or modify it as appropriate.

The Council believes that the combination of public notice actions listed above, especially the use of notice through the Environmental Monitor, as prescribed in CEPA is the optimal approach to keeping the public informed of non-emergency tree removal actions.

Thank you for considering these comments.

Sincerely

A handwritten signature in cursive script, appearing to read "Peter Hearn", written in dark ink.

Peter Hearn,
Executive Director