

# California Department of Forestry and Fire Protection

## **Report to the Board of Forestry and Fire Protection's Policy Committee On Recently Adopted Rules and Potential Changes to Existing Forest Practice Rules**



Photo: Unknown

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## **Introduction**

The California Department of Forestry and Fire Protection (CAL FIRE) presents this report to the Board of Forestry and Fire Protection (Board) in response to the procedures outlined in the memo entitled, *Board Procedure for the Review of Forest Practice Rule Modifications* (October 4, 2006). The memo states that CAL FIRE will make a presentation to the Board at the regularly scheduled November meeting regarding the following:

- Areas where questions exist on interpretation of the regulatory standards, including potential solutions.
- Issues encountered with achieving compliance with the regulatory standard of the Forest Practice Rules (rules), including potential solutions.
- Suggested regulatory modifications that would either 1) clarify existing rule language to better achieve the intended resource protection or 2) reduce the regulatory burden on the public and maintain the same level of protection.

In an effort to provide the Board with the above-requested information, CAL FIRE has queried plan review and field staff regarding implementation of recently adopted rules and any other area of the rules that has presented difficulty in implementation or interpretation.

For the most part, specific line-by-line revisions to a given rule are not contained in this report. Furthermore, CAL FIRE continues to work with the Board through various committees, subcommittees, and task groups to develop alternatives to the existing regulations. CAL FIRE hopes that the Board will consider current and previous work done in these committees. CAL FIRE can provide specific recommended changes to the Board as the rule review process moves forward.

This report presents information related to the following:

- Recently implemented rules, including legislation.
- Additional comment on recently implemented rules.
- Suggested non-substantive corrections.
- Rule-related issues from CAL FIRE's past reports.

## **Recently Implemented Rules**

### **Hours of Work, Hours of Operation, and Log Hauling Exception, 2010**

14 California Code of Regulations (CCR) §§ 925.7, 925.10, 926.9, 926.10, 927.5, 928.5, 928.6, 945.4 and 965.4

The Board adopted this regulation to allow timber operations on the nationally observed Columbus Day holiday state-wide. This holiday is not well observed, and the additional operational day afforded by the rule is meant to assist in completing timber operations prior to the winter period.

CAL FIRE notes that one additional change needs to be made to the Forest Practice Rules in 14 CCR § 926.9(b). That subsection still restricts timber operations to certain hours within Santa Cruz County on nationally designated legal holidays, such as Columbus Day.

Otherwise, CAL FIRE has no additional comment on this rule package.

### **Special Conditions Requiring Disapproval of Plans, 2010**

14 CCR § 898.2

The Board adopted this regulation to add another condition under which CAL FIRE may disapprove a plan. This rule requires the Director to disapprove a plan that proposes timber operations resulting in significant adverse slope stability impacts that could affect public safety. The Director's determination to disapprove a plan must be supported by review from the California Geological Survey.

The rule does not appear to have been invoked since it became effective.

### **Modified Timber Harvesting Plan for Fuel Hazard Reduction, 2011**

14 CCR §§ 895, 1051.3, 1051.4, 1051.5, 1051.6 and 1051.7

The Board adopted this regulation to establish a new type of modified timber harvesting plan for fuel hazard reduction. The purpose of the plan is to encourage timberland owners to manage vegetation and fuel loads in a manner that will create fire resilient conditions in order to reduce the threat and potential deleterious effects of unmanaged fire.

CAL FIRE notes that the rule reference in 14 CCR § 1051.4(a)(2) relative to clearcutting being defined in 14 CCR § 913.2(a) [933.2(a), 953.2(a)] appears in error, since that rule section pertains to the selection silvicultural prescription.

CAL FIRE notes that no modified timber harvesting plans for fuel hazard reduction have been submitted since the rule became effective.

## **Aspen, Meadow and Wet Area Restoration, 2011**

14 CCR §§ 913.4, 933.4, 953.4, 939.15 and 959.15

The Board adopted this regulation to create a new special silvicultural prescription that establishes standards for the harvest of commercial conifer trees in aspen stands, meadows and wet areas for the purpose of restoring wildlife habitat, ecological processes and range values.

This special prescription has been proposed on two timber harvesting plans (THPs) within the Northern Forest District since the rule became effective. The plans are 2-12-001-SHA, which proposes 1360 acres of aspen, meadow and wet area restoration, and 2-12-002-TEH, which proposes two acres of aspen and wet area restoration. THP 2-12-001-SHA has been approved but timber operations have not commenced. THP 2-12-002-TEH is still under review. No field inspection appears to have occurred as of the date of this writing.

CAL FIRE Review Team and Unit staff note:

- Unit staff has a general concern with proposed operations within watercourse and lake protection zones, prescribed levels of post-harvest stocking, and designation of the silvicultural boundary locations.
- The Department of Fish and Game staff has been advocating use of the special prescription, but some landowners appear reticent to apply it due to its perceived constraints. Some landowners have implemented aspen restoration as a part of other standard silvicultural prescriptions rather than implement the new rule.

### **Assembly Bill 1414**

Public Resources Code (PRC) §§ 4514, 4514.5, 4522, 4522.5, 4526, 4526.5, 4527, 4527.5, 4528.5, 4532, 4533, 4534, 4536, 4537, 4538, 4539, 4540, 4551.5, 4553, 4561, 4561.2, 4561.3, 4562.7, 4583.2, 4583.5, 4584 and 4603

This bill amended numerous sections of the Forest Practice Act, all of which were non-substantive. This included the elimination of the definition of “cutover land” contained in PRC § 4522.5. Cutover land is defined in 14 CCR § 895.1 as “Cutover Land see PRC 4522.5.” CAL FIRE has included the following bracketed comment after this definition: “This definition has been repealed from the Public Resources Code by Stats. 2011. c. 584 (AB 1414), § 4.” The Board should delete this definition from the Forest Practice Rules.

## **Assembly Bill 1492**

PRC §§ 4590, 4629.1, 4629.2, 4629.3, 4629.4, 4629.5, 4629.6, 4629.7, 4629.8, 4629.9 and 4629.10

This bill amended one section, created an additional section and deleted a subdivision of the Forest Practice Act. The most immediate effect on timber operations in California is the amendment to PRC § 4590, which went into effect on September 11, 2012. The amendment changes the effective period of timber harvesting plans, depending on when the plan was approved. The effective period of plans approved after July 1, 2012 is now five years with one possible two-year extension. CAL FIRE has posted guidance on this topic on its website ([http://www.fire.ca.gov/resource\\_mgt/downloads/AB1492\\_PlanExtensionInfo\\_091812.pdf](http://www.fire.ca.gov/resource_mgt/downloads/AB1492_PlanExtensionInfo_091812.pdf)).

### 14 CCR §§ 1039.1 and 1041

The changes to the effective period of the plan in the Forest Practice Act should be reflected in associated Forest Practice Rule sections. Both 14 CCR §§ 1039.1 and 1041 mention a three-year effective period for plans. The Board should amend these rule sections to reflect the associated changes in the PRC.

## **Additional Comment on Recently Implemented Rules**

### **Anadromous Salmonid Protection Rules, 2009**

14 CCR §§ 895, 895.1, 898, 914.8 [934.8, 954.8], 916 [936, 956], 916.2 [936.2, 956.2], 916.5 [936.5, 956.5], 916.9 [936.9, 956.9], 916.11 [936.11, 956.11], 916.12 [936.12, 956.12], 923.3 [943.3, 963.3], 923.9 [943.9, 963.9], 916.9.1 [936.9.1] and 923.9.1 [943.9.1]

The Board adopted this regulation to comprehensively revise the Protection or Restoration in Watersheds with Threatened or Impaired Values Rules, which had been in place since mid-2000. The new rules provide protection for state and federally listed anadromous salmonids. The rule package contains significant changes in office and field procedures for preparation of timber harvesting documents. CAL FIRE has previously provided comment on the rules in its 2010 report to the Board. CAL FIRE has noted previously concerns over interpretation of Class II watercourse typing and is working with Review Team agencies and stakeholders to develop language to clarify typing of Class II-L watercourses. This language has been provided to the Board in CAL FIRE's comment letter addressing proposed amendments to 14 CCR § 916.9(g) [936.9(g), 956.9(g)]. Otherwise, CAL FIRE has not received any comment from Unit or region staff regarding implementation of the ASP rules.

## **Suggested Non-Substantive Corrections**

### **1. Prevention Practices**

14 CCR §§ 917.9, 937.9, 957.9

Barclays California Code of Regulations contains a section (14 CCR § 917.10 [937.10, 957.10] Prevention Practices) that was deleted as part of a 1991 rule-making effort. CAL FIRE has addressed this up until now by providing the following note in the Forest Practice Rule book:

NOTE: Barclays official record for sections 917.9 – 917.11, 937.9 – 937.11, and 957.9 – 957.11 were incorrectly changed in 1991, Register 92 Number 13, and should read as follows. This correct language has always been printed by CAL FIRE. The Board, CAL FIRE, Barclays and OAL are working to correct this.

This deleted rule section needs to be removed from Barclays, and 14 CCR § 917.11 [937.11, 957.11] Locating and Reporting needs to be re-numbered to reflect the correct section number of 14 CCR § 917.10 [937.10, 957.10]. The Board should direct staff to work with Barclays and the Office of Administrative Law to correct this mistake.

### **2. 14 CCR § 923.5(g) [943.5(g),963.5(g)] – Missing Word**

The rules state:

On slopes greater than 35%, the organic layer of the soil shall substantially removed prior to fill placement.

It would appear that there is a word missing here, which is “be.”

## **Rule-Related Issues from CAL FIRE’s Past Reports**

CAL FIRE presented the following rule-related issues to the Committee in 2007, 2008, 2009, 2010 and 2011. These issues have been provided to the Committee to summarize CAL FIRE’s on-going concerns.

### **Substantive Rule Issues**

#### **1. 14 CCR § 895.1 - Crop of Trees, Available for, and Capable of [First reported in 2008.]**

The PRC § 4526 defines timberland as land “...which is available for, and capable of, growing a crop of trees of any commercial species used to

produce lumber and other forest products...” The Board has defined a crop of trees, as any number of trees [emphasis added] that can be harvested commercially. The current rules do not define what kind of land is available for, and capable of, growing a crop of trees. As currently defined, in combination with the Board’s definition of crop of trees, timberland is any land that can support even a single specimen from the list of commercial species. Therefore, timber operations include the removal for commercial purposes of any solid wood forest product from any land where a commercial species is capable of growing, regardless of whether that species exists on-site at the time, or whether any commercial species is proposed for harvest. This broad application of the statute and regulations has led to increasing instances of CAL FIRE oversight of operations that would not otherwise be considered forest management for timber production, such as hazard tree removal and fuel hazard reduction projects. Regulating these operations reduces CAL FIRE’s ability to provide active inspections on those operations that have a higher likelihood of causing significant environmental damage. Other requirements, such as obtaining the services of an RPF and a licensed timber operator may reduce a landowner’s ability to complete these projects in a cost-effective manner. The Board should consider amendments to 14 CCR § 895.1 that revise the definition of a crop of trees, define what “available for and capable of” mean in the context of the definition of timber operations, or both. The Board’s Policy Committee had been discussing this matter as it relates to timberland conversions.

Another option would be for the Board to develop its own legislative proposal to address this issue.

2. **14 CCR §§ 895.1 and 919.9(c)(1) [939.9(c)(1)] – Activity Center Definition and Northern Spotted Owl** [First reported in 2011.]

The definition of “activity center” in 14 CCR § 895.1 and the rule language pertaining to take avoidance in 14 CCR § 919.9(c)(1) [939.9(c)(1)] reference the U. S. Fish and Wildlife Service’s (USFWS’s) Protocol For Surveying Proposed Management Activities That May Impact Northern Spotted Owls revised March 17, 1992 (1992 Survey Protocols). The 1992 Survey Protocols have been superseded by the 2011 survey protocols. CAL FIRE recommends the use of these survey protocols and adherence to the transition guidance, since they are designed to account for the barred owl’s presence on the landscape. In addition, the current definition of “activity center” includes the term, “unoccupied status,” which USFWS does not recognize as a valid status for an activity center in the 2011 survey protocols. Due to the use of the new survey protocols and the lack of recognition of “unoccupied status,” CAL FIRE recommends re-examination of the northern spotted owl rules as they relate to survey methodology and protocols. At a minimum, the Board should consider revising the existing rules by changing the language to require use of the most current, USFWS-approved survey

protocols or USFWS approved modification to the current survey protocols. CAL FIRE notes that the Board has begun discussions of this issue.

3. **14 CCR § 913.11(a) [933.11(a), 953.11(a)] – Option A Standards for Maximum Sustained Production of High Quality Timber Products (MSP) Demonstration** [First Reported in 2008.]

This subsection provides for the demonstration of MSP as explained in the THP for an ownership, within an assessment area set by the timber or timberland owner. The demonstration of MSP involves producing landowner-specified timber products while accounting for certain constraints, balancing growth and harvest over time, maintaining adequate site occupancy, and making provisions for adequate regeneration. This type of MSP demonstration has, for the most part, supplanted the Sustained Timber Production Assessment contained in a sustained yield plan (SYP) for large industrial ownerships. However, given the large areas covered under such MSP demonstrations and their potential complexity in terms of application, the rule provides very little in the way of explanation as to the contents, filing guidelines, review timelines, effective period, relation to an individual THP, inventory standards, monitoring, and reporting of such demonstrations. Whereas the rules pertaining to the SYP contain specific sections that address the SYP's relation to THPs, SYP Contents, Sustained Timber Production Assessment, Compliance and Effectiveness Evaluation, SYP Effective Period, Review of Sustained Yield Plan, and Timber Harvest Plans Submitted Within a SYP Management Unit, no such rule sections exist for the MSP demonstration per 14 CCR § 913.11(a) [933.11(a), 953.11(a)]. Recognizing the scope and complexity of the SYP, the Board formulated thorough rules that were commensurate with the potential area of application and the complexity of content. The same was not done for the MSP demonstration per 14 CCR § 913.11(a) [933.11(a), 953.11(a)]. It is clear that the original intent of the Board to allow for MSP Option A demonstrations on an individual THP has been supplanted with a much broader application. Given its broad use and application, the Board should consider forming a technical working group to begin to consider changes to this existing MSP rule to provide more concrete standards for the MSP demonstration per 14 CCR § 913.11(a) [933.11(a), 953.11(a)].

4. **14 CCR § 916.4(c)(1) [936.4(c)(1), 956.4(c)(1)] and 14 CCR § 1034(x)(7) – Location of Class III Watercourse Crossings** [First reported in 2008.]

The rules state in part:

**14 CCR § 916.4(c)(1) [936.4(c)(1), 956.4(c)(1)]** The location of the areas of heavy equipment use in any ELZ shall be clearly described in the plan, or flagged or marked on the ground before the preharvest inspection.

**14 CCR § 1034(x)(7)** [On a plan map, show the location of all watercourse crossings of classified watercourses except temporary crossings of Class III watercourses without flowing water during timber operations at that crossing.]

14 CCR § 916.4(c)(1) [936.4(c)(1), 956.4(c)(1)] requires the RPF to either clearly describe the location of heavy equipment operations in the Class III equipment limitation zone (ELZ) or to flag or otherwise identify such areas on the ground prior to the pre-harvest inspection. 14 CCR § 1034(x)(7) requires the RPF to map the location of all classified watercourse crossings except temporary dry Class III crossings. While acknowledging that mapping is not the only way of clearly describing a location of heavy equipment operations, these two subsections are in conflict. One requires the clear description of heavy equipment operations in the Class III ELZ, which would include all watercourse crossings, and could be done by mapping such locations. The other rule requires the mapping of watercourse crossings, but not all of them. This rule conflict has caused confusion with both RPFs and plan reviewers. Given the conflict in the two rule requirements, CAL FIRE has taken the position that when an RPF chooses to describe the location of heavy equipment operations in the Class III ELZ by mapping, he or she must map all such locations, including all classified watercourse crossings, whether they will be flowing water during timber operations or not. To ensure consistency between these two rules, CAL FIRE recommends the Board amend the rules to delete the allowance in 14 CCR § 1034(x)(7) that Class III crossings that are dry at the time of use not be mapped.

5. **14 CCR § 916.8 [936.8, 956.8] – Sensitive Watersheds** [First reported in 2008.]

This rule section allows the Board to determine whether nominated planning watersheds are sensitive to further timber operations, and, if so, then identify the specific resources that are sensitive and specific mitigation measures that will provide the necessary protection. This rule has been in effect since 1994, and CAL FIRE is not aware of a nominated watershed ever having been classified as sensitive by the Board. The current rules contain ample provisions to ensure that specific mitigation measures are incorporated into plans to protect any identified sensitive resources. Furthermore, the Regional Water Quality Control Boards have separate authority under the Porter-Cologne Water Quality Act through their waste discharge requirements and waiver process to address specific water quality resources that are threatened. Due to the lack of use of this rule section and to adequate provisions contained in current laws and regulations, CAL FIRE recommends the Board evaluate the need for this rule section.

6. **14 CCR § 916.9(s) [936.9(s), 956.9(s)] – Watercourse and Lake Protection Zone (WLPZ) Operations Under an Exemption** [First reported in 2008.]

The rules state in part:

No timber operations are allowed in a WLPZ, or within any ELZ or EEZ designated for watercourse or lake protection, under exemption notices except for...

This subsection should be considered in the context of 14 CCR § 1104.1(a)(2)(F), which allows conversion activities in the WLPZ where specifically approved by local permit. There are parcels where the construction area is within the WLPZ, and the county does the CEQA review and issues permits for the house site. It seems appropriate for CAL FIRE to be able to defer to the county in these situations. In addition, the Board should also consider how the restriction of timber operations in the WLPZ affects timber operations conducted in compliance with defensible space regulations. There currently appears to be a conflict between 14 CCR § 916.9(s) [936.9(s), 956.9(s)] and PRC § 4291 and 14 CCR § 1299. The Board should amend this subsection to resolve these conflicts.

7. **14 CCR § 1032 - Timber Harvesting Plan Filing Locations** [First reported in 2011.]

With the recent decline in the number of timber harvesting plans submitted, the greater number of plans located in Northern California, and continued improvements in the electronic storage and retrieval of timber harvesting plans, CAL FIRE believes it may be unnecessary to maintain three separate plan filing locations. In 2008 CAL FIRE recommended changes to the rules that decreased filing locations from four to three by removing Riverside as a plan filing location. The Board adopted this change, and every plan filed in the Southern Forest District is now sent to CAL FIRE's Fresno office. One Forest Practice Manager currently oversees operations in the Fresno and Redding Review Team Offices, whereas two Forest Practice Managers formerly managed those offices. In an effort to make plan review more efficient, CAL FIRE has discussed further consolidation of review team functions at fewer locations. This could involve one or two locations handling current review team functions. Any such administrative change on the part of CAL FIRE would be facilitated by a change in 14 CCR § 1032 in terms of plan filing locations. It also is possible that in the near future it will be more cost effective and efficient to conduct second review of plans in only the regional offices. Presently, the second review team meetings for Coast Forest District plans are conducted in Fortuna, Howard Forest, and Santa Rosa. CAL FIRE will keep the Board informed of any decisions it makes relative to consolidation of review team functions.

8. **14 CCR § 1032.7(d) – Describing the Area of Operations** [First reported in 2008.]

The rules state in part:

A Notice of Intent [NOI] shall include the following information: **(4)** The acres proposed to be harvested. **(5)** The regeneration methods and intermediate treatments to be used.

The NOI provides important information about the proposed timber operations and the area in which this will occur. In order to make the NOI more applicable to the logging area and inclusive of all operations proposed as a part of the plan, CAL FIRE recommends the Board consider amending the following paragraphs:

- 14 CCR § 1032.7(d)(4) requires stating the acres proposed to be harvested. This provides a description of the area where silvicultural prescriptions will be applied, but may not encompass all potential impacts, such as road or landing construction. In order to better represent the area where all potential impacts will occur, the Board should amend this paragraph to include all acres where timber operations will occur, not just the area where timber will be harvested. In doing so, the Board should consider the current definition of logging area and the lack of a definition of plan area. This change is very important to meet the CEQA obligation of full disclosure of the project setting.
- 14 CCR § 1032.7(d)(5) requires stating the regeneration methods and intermediate treatments to be used. However, by requiring only those silvicultural methods, this paragraph may not capture all possible treatments that may occur under a plan, such as special prescriptions and other types of associated timber harvesting, such as road right-of-way or timberland conversion.

9. **14 CCR § 1032.10 – Domestic Water Notification** [First reported in 2008.]

The rules state in part:

The THP submitter shall provide notice by letter to all other landowners within 1,000 feet downstream of the THP boundary whose ownership adjoins or includes a Class I, II, or IV watercourse(s) which receives surface drainage from the proposed timber operations. The notice shall request that the THP submitter be advised of surface domestic water use from the watercourse, within the THP or within 1,000 feet downstream of the THP boundary. When required to notice by letter, publication shall also be given one time by the THP submitter in a newspaper of general

circulation in the area affected by the proposed project. Such letter and publication shall notify the party of the proposed timber operation and describe its legal location and identify the name, if any, of the watercourse it may effect. The letter and publication shall request a response by the property owner within ten days of the post-marked date on the letter or the date of publication as appropriate. The RPF may propose, with justification and explanation, an exemption to such notification requirements, and the Director may agree. Copies of either notice, proof of service and publication, and any responses shall be attached to the THP when submitted. If domestic use is noted, the plan shall contain mitigations necessary to protect domestic water use. The plan shall not be submitted until ten days after the above notification(s) have been done.

This rule section has presented problems in interpretation, which should be clarified. The following are areas where CAL FIRE has had questions regarding this section during plan review:

- The code section requires notifying downstream landowners whose property receives surface drainage from the proposed timber operations. There has been some debate among CAL FIRE plan review staff as to what constitutes surface drainage. Is it overland flow or does it only occur in the channel of a watercourse or obvious flow from a spring seep?
- Publication may need to be given in a newspaper of general circulation in the area affected by the proposed project. CAL FIRE assumes this requires notification in a newspaper of general circulation as defined in Government Code §§ 6000-6027.
- A tie should be made with the requirement to provide protection to domestic water supplies, as required per 14 CCR § 916.10 [936.10, 956.10].
- CAL FIRE often receives harvesting documents where notification of downstream landowners was done more than a year prior to plan submittal. It seems reasonable and practical to require more current notification in which the post-marked date is no more than one year prior to submittal of the plan.
- CAL FIRE staff has questioned whether a harvesting plan has to be returned in cases where the RPF requests an exemption from one of the noticing requirements and CAL FIRE does not accept the request. This question arises because the rule requires at least ten days to pass after notification before submission of the plan.
- The 4<sup>th</sup> sentence should be changed to use the proper verb, “affect,” in place of “effect.”

## 10.14 CCR § 1034 - Contents of Plan [First reported in 2008.]

Changes to the contents of plan section can be made to better facilitate this rule section's functionality. These are:

- **14 CCR § 1034(r)** [The plan shall contain the following information:] How the requirements of 14 CCR § 1032.7(f) are to be met.

The reference to 14 CCR § 1032.7(f) is obsolete, since it refers to the past requirement that the RPF distribute and publish a copy of the NOI.

- **14 CCR § 1034(x)(7)** [On a plan map, show the location of all watercourse crossings of classified watercourses except temporary crossings of Class III watercourses without flowing water during timber operations at that crossing.

The mapping of watercourse crossings required by this paragraph needs to be reconciled with the requirement to clearly describe the location of heavy equipment operations in the Class III ELZ per 14 CCR § 916.4(c)(1) [936.4(c)(1), 956.4(c)(1)]. This has been previously discussed.

- **14 CR § 1034(x)(9)** [On a plan map, show the location of all watercourses with Class I, II, III, or IV waters.

To ensure all waters are provided with adequate protection, this paragraph should be amended to add "and lakes."

- **14 CCR § 1034(ii)** On a map complying with subsection 1034(x), the locations and classifications of roads, watercourse crossings, and landings to be abandoned shall be shown.

This subsection should be deleted and the mapping requirement should be incorporated as part of 14 CCR § 1034(x), which applies strictly to mapping.

Finally, the contents of plan section provides the closest thing in the rules to a list of what has to be contained in a plan in order for CAL FIRE to file it upon completion of first review. Thus, the contents of plan section is very important to the RPF preparing a plan and CAL FIRE plan review staff. There are numerous other items that a plan must include scattered throughout the rules, but the contents of plan section is the place where the highest concentration of such required information is located. The Board should consider amending 14 CCR § 1034 at the same time it adopts or amends any rule that adds anything that could be considered a required portion of a harvesting plan. This may lead to redundant rules,

but it would ensure a central location where the plan preparing RPF could be assured of finding what is considered essential information in a harvesting document. Possible alternatives are to provide cross references to the various plan content requirements scattered throughout the rules in this rule section or to create an index providing such cross reference information. Also, the Board may want to consider a rule package that consolidates all required plan contents under 14 CCR §§ 1034, 1051, 1090.5, and 1092.09.

**11. Technical Rule Addendum No. 4, Minimum Distances Required by Law, Fire Safe THP Vegetation Treatment** [First reported in 2008.]

This diagram of required defensible space, which is provided in the exemption section of the rules, does not show the 30-to-100 foot zone around structures wherein fuels treatment are required per PRC § 4291(b) and 14 CCR § 1299(a)(2). The Board should amend this technical rule addendum to be consistent with existing defensible space requirements under the Forest Practice Act.

**12. 14 CCR § 1054.8 - Order of the Board** [First reported in 2008.]

The rules state in part:

Following the public hearing, the Board shall determine whether, upon the record before it, the plan is in conformance with the rules and regulations of the Board and the provisions of the Act. If the Board determines that the plan is in conformance with the rules and regulations of the Board and the provisions of the Act, it shall make its order approving the plan. If the Board determines that the plan is not in conformance with the regulations of the Board and the provisions of the Act, it shall make its order disapproving the plan. Approval of the plan by the Board constitutes authorization that timber operations may commence and be conducted in accordance with the plan as approved and in accordance with the rules and regulations of the Board and the provisions of the Act. Timber operations shall not take place where the Board disapproves the plan. Disapproval of a plan shall be without prejudice to the applicant submitting a plan at any later time complying with the rules and regulations of the Board and the provisions of the Act. Where the Board approves the plan, notice thereof shall be filed with the Secretary of Resources, and within 10 working days such notice shall be transmitted to the agencies and persons referred to in 14 CCR 1037.3, and for posting at the places referred to in Section 1037.1. The order of approval shall include written response to significant environmental points raised during the evaluation process.

The process and timelines described in this rule section are not consistent with the process and timelines outlined in PRC § 4582.7(d) and 14 CCR §

1037.6 regarding disapproval of the plan by the Board and the provision for bringing the plan into conformance. In addition, neither this section nor PRC § 4582.7(d) are consistent with the CEQA guidelines and current case law regarding re-circulation of plans with significant new information. The Board should consider amending this rule section to make it consistent with statute and code regarding the current plan review process and timelines.

**13. 14 CCR § 1092.04(d) – Information Under a Notice of Intent to Harvest Timber** [First reported in 2008.]

The rules state in part:

**14 CCR § 1092.04(d)** A Notice of Intent shall include the following information:

- (4) The acres proposed to be harvested.
- (5) The regeneration methods and intermediate treatments to be used.

The NOI provides important information about the proposed timber operations and the area in which they will occur. In order to make the NOI more applicable to the logging area and to be inclusive of all operations proposed as a part of the plan, CAL FIRE recommends the following changes:

- 14 CCR § 1092.04(d)(4) requires stating the acres proposed to be harvested. This provides a description of the area where silvicultural prescriptions will be applied, but may not encompass all potential impacts, such as road or landing construction. In order to better represent the area where all potential impacts will occur, the Board should amend this paragraph to include all acres where timber operations will occur, not just the area where timber will be harvested. In doing so, the Board should consider the current definition of logging area and the lack of a definition of plan area. This change is very important to meet the CEQA obligation of full disclosure of the project setting.
- 14 CCR § 1092.04(d)(5) requires stating the regeneration methods and intermediate treatments to be used. However, by requiring only those silvicultural methods, this paragraph may not capture all possible treatments that may occur under a plan, such as special prescriptions and other types of associated timber harvesting, such as road right-of-way or fuelbreak.

## Non-Substantive Rule Issues

### 1. **14 CCR § 895.1 - Erosion Hazard Rating** [First reported in 2008.]

The rules state in part:

**14 CCR § 895.1** (For the Coast and Southern Forest District:) means the rating derived from the procedure specified in 14 CCR 912.5 (952.5) designed to evaluate the susceptibility of the soil within a given location to erosion. **Erosion Potential:** (For the Southern Forest District:) See 14 CCR 952.5 (Ref. Sec. 4562 PRC). **Estimated Erosion Potential** (For the Northern Forest District:) means the product of the soil and slope values derived from the table in 14 CCR 932.5 or as such product may be modified in accordance "with the instructions contained in that section" (Ref. Sec. 4562, PRC). **Substantial Deviation means...**[in part]...**(4)** Change in location, nature or increase in length of proposed logging roads incorporating one or more of the following criteria: **(B)** Any road located in an extreme Erosion Hazard Rating area in the Coast Forest District, extreme Estimated Erosion Potential area in the Northern Forest District, or a high Erosion Potential area in the Southern Forest District.

**14 CCR § 1092.26(d)** Change in location, nature or increase in length of proposed logging roads incorporating one or more of the following criteria: **(2)** Any road located in an extreme Erosion Hazard Rating area in the Coast Forest District, extreme Estimated Erosion Potential area in the Northern Forest District, or a high Erosion Potential area in the Southern Forest District.

The term, erosion hazard rating (EHR), is used in rule sections requiring an RPF to estimate the EHR per the procedure contained in Board Technical Rule Addendum #1, and in various other places in the rules (Technical Rule Addendum No. 2, 14 CCR §§ 914.2(f) [934.2(f), 954.2(f)], 914.2(j) [934.2(j), 954.2(j)], 914.6(c) [934.6(c), 954.6(c)], 914.7(b) [934.7(b), 954.7(b)], 921.5(a), 926.8(h), 1034(x)(8), 1035(d)(2)(C), 1035(f), 1037.10(a)(8), 1051(a)(4), 1090.5(w)(8), 1090.7(n)(8), 1090.14(b)(4)(B), 1092.09(l)(9), and 1092.11(d)(2)(C)). Erosion potential and estimated erosion potential are terms that were not deleted when a portion of the rules pertaining to estimating erosion potential was changed in 1982. These terms were referenced in the body of the rules that were repealed at that time, but were not removed from 14 CCR § 895.1. The Board should delete them from 14 CCR § 895.1 and make appropriate changes to subparagraph (B) in the definition of substantial deviation in 14 CCR § 895.1 and paragraph (2) in 14 CCR § 1092.26(d) to make the use of the term, erosion hazard rating, consistent throughout the rules and in each of the three forest districts.

2. **14 CCR § 895.1 - Fire Protection Zone** [First reported in 2008.]

The rules state in part:

(For the Coast and the Southern Forest District:) means that portion of the logging area within 100 feet (30.48 m) as measured along the surface of the ground, from the edge of the traveled surface of all public roads and railroads; and within 200 feet (60.96 m) as measured along the surface of the ground, from permanently located structures currently maintained for human habitation. **Fire Protection Zone** (For the Northern Forest District:) means that portion of the logging area within 100 ft. (30.48 m), as measured along the surface of the ground, from the edge of the traveled surface of all public roads and railroads, and 50 ft. (15.24 m) as measured along the surface of the ground from the traveled surface of all private roads, and within 100 ft. (30.48 m), as measured along the surface of the ground, from permanently located structures currently maintained for human habitation (Ref. Sec. [4562], PRC).

The definition “fire protection zone” was deleted from the hazard reduction rules in 1991. At that time, CAL FIRE alerted the Board that it should eliminate the definition:

It is recommended that the definitions, “fire protection zone” and “lopping[.]” found in 14 CCR 912, 932, and 952 be repealed because either they are not used in the hazard reduction rules or they have been changed by the proposed rules.

To which the Board replied:

The Board agrees that the definitions[,] “fire protection zone” and “lopping[.]” have not been used or have been changed by the proposed rules. Accordingly, the definitions for these terms will be repealed or changed in accordance with those set forth in the proposed regulations for the sake of consistency.

The Board has never repealed the definition of fire protection zone. It should do so in order to resolve this matter.

3. **14 CCR § 914.1(d) [934.1(d), 954.1(d)] – Incorrect Rule Reference** [First reported in 2008.]

The rules state in part:

Felling practices shall conform to requirements of 914.4, 934.4, 954.4 to protect bird nesting sites.

Under 14 CCR § 914.1(d) [934.1(d), 954.1(d)], the rule language references 14 CCR § 914.4 [934.4, 954.4], which does not exist. The correct reference appears to be 14 CCR § 919.2 [939.2, 959.2]. The Board should change this rule section to reference the correct rule.

4. **14 CCR § 926.3(d) – Incorrect Rule Reference** [First reported in 2008.]

The rules state in part:

The plan submitter shall have the Notice of Intent published in a newspaper of general circulation in the area, concurrently with the submission of the plan to the Director. Proof of publication of notice shall be provided to the Director prior to his/her determination made pursuant to 14 CCR 1037.6.

The reference to 14 CCR § 1037.6 appears to be incorrect, since § 1037.6 describes what to do when a plan does not conform to the rules. The subsection should likely refer to 14 CCR § 1037.4. The Board should amend this subsection to refer to 14 CCR § 1037.4.

5. **14 CCR § 1100 – Incorrect Code References** [First reported in 2008.]

The rules state in part:

**(e)** "Compatible Use" compatible use as defined in Gov. C. 51100 (h) and 51111, as made specific by county or city ordinance adopted pursuant thereto (Ref.: Sec. 51100 (h) and 51111, Gov. C.).

**(f)** "Contiguous" two or more parcels of land that are adjoining or neighboring or are sufficiently near to each other, as determined by the County Board of Supervisors or City Council, that they are manageable as a single forest unit (Ref.: Section 51100 (b), Government Code.)

**(m)** "Timberland" timberland as defined in PRC 4526, for land outside a TPZ. Timberland as defined in Gov. C. 51100(f), for land within a timberland production zone (Ref.: Sec. 4526, PRC; Sec. 51100(f), Gov. C.).

There are several incorrect code sections quoted herein:

Under "Compatible Use," the reference to Government Code (GC) § 51100(h) should likely be to GC § 51104(h).

Under "Contiguous," the reference to GC § 51100(b) should likely be to GC § 51104(b).

Under "Timberland," the reference to GC § 51100(f) should likely be to GC § 51104(f).