



# ASSOCIATED CALIFORNIA LOGGERS

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October 4, 2013

Dr. Keith Gilles, Chairman, and Members  
California Board of Forestry and Fire Protection  
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**RE: Road Rules, 2013 – SUPPORT “ALTERNATIVE 2” PARTIAL ADOPTION OF PROPOSAL, ADOPT ONLY BOARD TECHNICAL RULE ADDENDUM NUMBER 5.”**

Dear Chairman Gilles and Members:

**Associated California Loggers (ACL) respectfully wishes to express its Position(as listed above) to the Road Rules 2013 Proposal: We urge that the Board of Forestry approve “Alternative 2”: Adopt Only Board Technical Rule Addendum Number 5.”**

**Our reasons, and additional comments, follow below:**

ACL represents the largely family-owned, multi-generational loggers and log truckers of California.

Loggers and log truckers are the infrastructure for timber harvesting in California, and can provide the workforce for coming developments in the battle against global warming, in the development of woody biomass alternative fuel, and in forest fire prevention, firefighting and clean-up.

But we are losing an increasing number of the hard-working and skilled people who perform these tasks. The timber harvesting season is short, existing regulatory requirements are costly, and loggers must look to make a living and pay for government regulation in a short window of time to continue in the trade. As workers quit or retire, a new generation is leery of stepping up to replace them.

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The timber industry provides good middle-class jobs in rural communities where the unemployment rates are well above those of the rest of California, and where, in recent years, **the once-robust timber economy has been transformed, on the North Coast, in the Sierra, and in practically every pocket of rural timberland California by a “replacement” economy of illegal drug production that is criminal, lethally dangerous to timber workers, hikers, campers, and government employees alike; that presents an increased risk of wildfire thanks to illegal campfires, chemical explosions and other risks; and that has no regard for environmental safeguards as water quality, species, and habitat are destroyed.**

The background above must now often be taken into consideration when the State of California moves forward on any regulatory action which contemplates an impact on the rural timber economy in exchange for expanded environmental protections beyond the very stringent regulations already in place. **In short, every regulation must be considered in terms of its impact on creating a “vacuum in the economy” that is filled with recession and that leaves the landscape open criminal activity where once an environmentally sound industry thrived...particularly where the net impact of such regulations can lead to further environmental degradation by criminals who do not follow the regulations.**

So it is with “Road Rules 2013.”

Associated California Loggers has monitored the multi-year effort to prepare these rules. We have attended many – though not all – of the workshops on the Road Rules, but we have read the various iterations of the Road Rules with care as they would impact Licensed Timber Operators, the timber economy, and the landowners who hire our members to do the work of timber harvest, biomass collection, and wildfire prevention and clean-up.

On the one hand, we have remained very deferential to the advocates on both sides of the discussion as to the scientific and engineering rationales for making changes to the Road Rules. We leave biology to the biologists. We understand the role of RPFs in the process, even as many of our members have their own knowledge of the Forest Practice Rules and work closely to implement what the RPFs direct them to do.

On the other hand, Associated California Loggers has a strong history of involvement in the policies that have so impacted our particular segment of the industry. Simply put: we believe that the Board of Forestry should make sure that any major changes to regulations reflect real science, and a provable need to expand what is already the most complex volume of forest practice rules in the nation, if not the world. **Moreover, in that Associated California Loggers represents, among other entities, the builders of logging roads, we have found that these professionals have years of experience at doing exactly that which the Road Rules package contemplates and that, in general, these builders do not see the need for a major changes to the road-building techniques which have served the timber community well for many years, unless it can be demonstrated that such changes are necessary and cost-effective.**

***ASSOCIATED CALIFORNIA LOGGERS SPECIFIC COMMENTS:***

**I. ASSOCIATED CALIFORNIA LOGGERS IS CONCERNED THAT ITS EXISTING PROTECTIONS IN REGULATION FOR LICENSED TIMBER OPERATORS FROM RESPONSIBILITY FOR ROAD PROJECTS NOT BE TAKEN AWAY.**

The heading and language of Existing Section 923.7(943.7, 963.7) is proposed for deletion without substitution. These read as follows: *'Licensed Timber Operators Responsibility for Roads and Landings (All Districts). The licensed timber operator who is responsible for the implementation or execution of the plan shall not be responsible for the construction and maintenance of roads and landings, unless the licensed timber operator is employed for that purpose.'*

*We have been told by BOF staff that this language was deleted on determination of the Forest Practice Committee that "far more comprehensive" Existing Sections 1035.1 - 1035.3 cover the language above, and, as last revised in 2000, effectively render existing 923.7 redundant.*

*However, in our reading of Sections 1035.1 through 1035.3, we do NOT see language indicating that "the licensed timber operator who is responsible for the implementation or execution of the plans shall not be responsible for the construction or maintenance of roads and landings, unless the licensed timber operator is employed for that purpose." Nor do we see any equivalent language to offer the same degree of protection from responsibility to the licensed timber operator.*

*There are two possible solutions to this problem:*

- 1. Add the language of Existing 927.3 into 1035.1, 1035.2 and 1035.3 OR*
- 2. Do not adopt the proposed amendments at all, thus restoring Existing 927.3 in law.*

**II. ASSOCIATED CALIFORNIA LOGGERS SUPPORTS THOSE SECTIONS OF THE “ROAD RULES” PACKAGE THAT STREAMLINE AND REORGANIZE EXISTING ROAD RULES.** It is our understanding that the “Road Rules” package began its life as an attempt to streamline and re-organize existing Forest Practice Rules so that professionals such as the Licensed Timber Operators who implement these rules could more easily find the road rules in consolidated sections of the rule book. This was a salutary rationale for taking this action. Former Governor Schwarzenegger and current Governor Brown have both staked out the need to streamline government regulation as a goal in their administrations, under which these rules have been fashioned. **Associated California Loggers can support the re-organization and consolidation provisions of the Road Rules package.**

**III. ASSOCIATED CALIFORNIA LOGGERS IS CONCERNED ABOUT THE EXPANSION OF PRESCRIPTIVE FOREST PRACTICE RULES.**

It became clear with each month of review and discussion of the Road Rules package that, for better or worse, various stakeholders saw the charge of streamlining the Road Rules as an opportunity to “add more pages to the rulebook.”

**We note the following language at page two, of the August 23, 2013 Initial Statement of Reasons:**

*‘This regulation is intended to satisfy two long-term objectives of benefit to the regulated public, regulatory agencies, the general public, and the natural resources of the state. **The first of these objectives is to ensure that all road-related Forest Practice Rules are adequate to prevent adverse impacts to the beneficial uses of water. The second objective is to organize all road-related Forest Practice Rules into a logical, consistent order and locate them in one portion of the Forest Practice Rulebook for ease of reference and understanding of all.**’ (Emphasis ours.)*

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It would seem that somewhere along the road, the idea of re-organizing and streamlining the existing Road Rules became a "second" objective in the service of a first objective of increasing the volume and complexity of the very rules that are intended to be streamlined. This is counterproductive.

At a meeting of the Board of Forestry Forest Practice Committee to consider the portion of the road rules that would add additional road-rocking requirements to timber operations, back in late March of 2011, Associated California Loggers submitted a letter, dated March 28, 2011, with the following position:

**(BEGIN ASSOCIATED CALIFORNIA LOGGER COMMENTS OF MARCH 28, 2011)** "At a time when our Governor and the leadership of both parties of the Legislature are proposing vitally needed regulatory reform, and at a time when the **Sacramento Bee recently published a March 27, 2011 opinion piece entitled "Too Many Rules and Regs: State's Economic Health Depends on Regulatory Reform,"** come now these regulatory proposals which would add costs, shorten already prohibitively short harvesting seasons, and needlessly restrict operations that are already subject to the most extensive water quality regulations in the nation.

We are at a loss to determine the rationale for adding additional restrictions on the short harvesting season (a) before recently passed regulations, including saturated soils regulations passed in 2010 and Anadromous Salmonid Protection(ASP) Regulations passed not two years ago have been properly monitored and (b) when THP and water permits have similar protections.**(END ASSOCIATED CALIFORNIA LOGGER COMMENTS OF MARCH 28, 2011.)**

Over two years later, more time has passed to see where the ASP regulations stand, but everything else is pretty much in the same place in terms of laws already in place and active.

**IV. ASSOCIATED CALIFORNIA LOGGERS IS CONCERNED ABOUT THE LACK OF DETERMINATIVE ECONOMIC IMPACT ANALYSIS OF THE PROPOSED EXPANSION OF PRESCRIPTIVE FOREST PRACTICE RULES.**

We note the following language at page five of the August 23, 2013 Initial Statement of Reasons:

“Cost impacts on representative private persons or businesses:” The Board, during the noticing period, will continue to evaluate the cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. *The cost of timber harvest planning and operational mitigations may be significantly impacted by the proposed regulation.* (Emphasis ours.)

We note the following language at pages five-six of the August 23, 2013 Initial Statement of Reasons:

**“EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT IMPACT ON ANY BUSINESS:**

...The following economic impact analysis is intended to satisfy the requirements of the Administrative Procedures Act, Government Code Section 11346.3(b)

**I. Will the proposed regulation create or eliminate jobs within the State of California?**

The proposed regulation includes a number of amendments to existing regulations that are not expected to significantly affect jobs in California. The regulation includes a new Technical Rule Addendum intended to assist the regulated public and regulatory agencies with comprehension and compliance of new rule requirements.

**Associated California Loggers Comment:** While the amendments are “not expected” to significantly affect jobs in California, they nonetheless contain potentially costly prescriptive requirements which could – as an adjunct to costs added and harvesting days lost on any given timber operation – affect jobs in terms of how many workers can be hired to perform these operations. Note: the comment above offers us a “first glimpse” at the solution to this ambiguity: the new “Technical Rule Addendum.”

...

**V. Will the proposed regulation provide benefits to the health and welfare of California residents, worker safety, and the state's environment?**

*The regulation as proposed does not provide benefits to the health and welfare of California residents, or improve worker safety. (Emphasis ours.)* It is possible that the regulation would be of some unknown benefit to the state's environment. However, it is not clear to what extent the regulation would alter the existing implementation and enforcement of regulations related to logging road networks and watercourse crossings. *If adopted, monitoring of the differences between implementation of the pre-existing and revised regulations could expose a discernible difference in environmental protection. (Emphasis ours.)*

**Associated California Loggers Comment:** Even as other parts of the "Initial Statement of Reasons" indicate likely costs to the timber industry and its workers as a result of these amendments, here we learn that these amendments do not provide health and welfare benefits to California residents, nor necessarily benefit to the state's environment without monitoring, and as we know, monitoring invokes its own costs. Again, there is the possible "save" of the "Technical Rule Addendum" as a means of establishing a framework for monitoring.

...

**V. What is the estimated expense of proposed regulation upon those most affected?**

*Commercial timberland owners and managers are the most likely to be affected by the regulation. However, it is unclear to what extent the proposed regulation would alter the existing costs for timber harvesting permitting and regulations. (Emphasis ours.)* Those who choose to conduct commercial harvests of their timberlands are currently obligated to comply with the permitting and rule requirements of the State Forest Practice Act and Rules. This regulatory construct is fully compliant with the California Environmental Quality Act.

**Associated California Loggers Comment:** Here we have the recognition by board staff that BOTH “timber harvest planning” and “operational mitigations” may be “significantly impacted” by the regulation. This would indicate additional significant cost on TWO aspects of timber harvest: the planning of the harvest itself and mitigations required to meet the terms of the regulation. Given that at least one of those mitigations (additional road rocking requirements, see below) is identifiable as a driver of cost AND as taking away valuable days of harvest given California’s required super-short harvest season, **we oppose those sections of the regulations, if prescriptive.**

#### **V. ASSOCIATED CALIFORNIA LOGGERS IS CONCERNED ABOUT THE FINANCIAL IMPACTS OF INCREASED ROAD ROCKING REQUIREMENTS**

It is difficult to pinpoint, within the proposed amendments, in how many sections and on how many occasions, “road rocking” will be seen as a necessary means of complying with these amended rules, particularly in relation to the centerpiece of the entire package: the need to maintain “hydrological disconnection” between logging roads and watercourses. But additional road rocking is clearly contemplated as part of the program for “improved watercourse protection” sought in this package.

We understand from our members that road rocking can add thousands of dollars to a contract (a key variable is: travel distance to and from the source of the rocks). And the work of applying the rocks to the road takes time. Additional road rocking requirements will have specific and negative impact on the ability of Licensed Timber Operators working for landowners to “get the job done” in the short time afforded them in a season, thus drawing away from their ability to earn income, their ability to contribute to the recovery of the devastated rural economy of California, and their ability to provide such benefits as fuels reduction to our state forests.

Moreover: we believe that these road rocking requirements are needlessly over-expansive of existing road rocking requirements which, we believe, have proven effective enough in preventing sediment from migrating from logging roads to watercourses. **As was noted by an official of the Board of Forestry staff when asked by Associated California Loggers at the March 2011 Forest Practice Committee review of the road rocking requirements, if passed, these requirements will lead to fewer days of timber harvest, as opposed to a greater number of days on a timber harvest project, or even as opposed to the same number of days on a timber harvest project.**

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**VI. PROPOSED SOLUTION TO ALL CONCERNS EXPRESSED ABOVE:  
ADOPT ROAD RULES 2013 “ALTERNATIVE 2” PARTIAL ADOPTION OF  
PROPOSAL, ADOPT ONLY BOARD TECHNICAL RULE ADDENDUM  
NUMBER 5.”**

The above choice is presented in the August 23, 2013 Initial Statement of Reasons, at page 9:

**“Alternative 2: Partial Adoption of Proposal – Adopt Only Board Technical Rule Addendum Number 5.** This alternative would result in the Board’s singular adoption of the newly drafted Technical Rule Addendum Number 5 – “Guidance on Hydrologic Disconnection, Road Drainage, Minimization of Diversion Potential, and High Risk Crossings.”

All of the proposed amended and repealed rule sections contained in the noticed rule text would not be adopted and the existing rules related to roads and watercourse crossings would remain in their present condition and location.

Under this alternative, the Board’s intentions with regard to the concept of hydrolic disconnection **would be in the form of guidelines rather than strictly enforceable rule requirements....(emphasis ours.)**

(Continued)...(G)iven the complexities associated with the rule proposal in terms of dual revision and reorganization, adoption of a guidance document could be viewed as an initial footing from which to expand the Board’s efforts. **As such, this alternative remains viable for the Board’s consideration following the October 7, 2013(sic) public hearing on the noticed rule proposal. “ (Emphasis ours.)**

**VII. ASSOCIATED CALIFORNIA LOGGERS BELIEVES THIS ACTION SHOULD BE TAKEN BECAUSE:**

1. **“Guidelines”** on the steps necessary to maintain “hydrological disconnection” will provide more flexibility to landowners, RPFs and LTOS in how to implement the key part of the proposed changes to the “Road Rules.”
2. **“Guidelines”** can be used as the basis for classes to be offered to licensed timber operators and others in anticipation of “hydrological disconnection” efforts and other coming prescriptive dictates of a regulations should they pass in the future. Associated California Loggers already provides “ProLogger” logger certification courses on water quality practices, we would add these guidelines to the curriculum.
3. **“Guidelines”** would allow, as staff suggests, an “initial footing from which to guide the Board’s efforts” on the development of further regulations, regulations which we would prefer to be performance-based rather than prescriptive.
4. **“Guidelines”** would allow landowners the latitude to determine how much additional work should be done – and if any is actually necessary – to afford the protections contemplated both by the Addendum and the proposed regulations.

These are tough years for our licensed timber operators in general. We are “secondary victims” of the slowdown in the housing market and the increase in fuel costs, and we are facing low prices for lumber and logs, along with numerous costs on our membership from increased government regulation.

One way in which our members can try to overcome these hurdles is to have as long a timber harvesting season as possible in which to earn a living. One way to maintain such a season – which is still the shortest of the American states to our knowledge – as long as possible, is to allow the “Road Rules” recommendations to sound first in “guidelines” that will give all of us the time and proper direction to implement needed changes in a later year, without sacrificing days of work to the confusion and unnecessarily burdensome prescriptive requirements of such a large volume of regulations.

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**We urge the Board of Forestry Forest Practice Committee to adopt Alternative 2:  
“Partial Adoption of Proposal – Adopt Only Board Technical Rule Addendum  
Number 5.”**

Sincerely,

A handwritten signature in black ink, appearing to read 'Eric Carleson', with a long horizontal flourish extending to the right.

ERIC CARLESON  
Executive Director  
Associated California Loggers