

BOARD OF FORESTRY AND FIRE PROTECTION

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653-8007



Date: August 1, 2014

To: George Gentry
Executive Officer

From: Kevin Conway, Staff Forester

Subject: Proposed rulemaking for the Forest Fire Prevention Pilot Project Exemption, 2014

Mr. Gentry,

At your direction, I have reviewed the proposed rulemaking package for the “Forest Fire Prevention Pilot Project Exemption, 2014” (Pilot Project). There are three issues I would like to bring to your attention. First, there is a currently a bill being evaluated by the California Legislature that would expand the geographic scope of this Pilot Project. Second, there is a canopy standard discrepancy in the enabling statute for this Pilot Project. Lastly, the proposed rulemaking failed to include modification of 14 CCR § 1038(e) to require a 5 day waiting period prior to commencing operations under this Pilot Project.

AB 2142

AB 2142, currently being debated in the California Legislature, proposes to add the Counties of Del Norte, Humboldt, Mendocino, and Sonoma to the geographic areas where the Pilot Project is allowed. A brief discussion of AB 2142 was included in the Notice of Proposed Rulemaking for the Pilot Project under the guidance of the Office of Administrative Law (OAL) legal staff. This public notification of the potential consequences of AB 2142 becoming law will allow the Board of Forestry and Fire Protection to include this change as “substantially related” content through a 15-day notice. The last day for the Legislature to pass bills is August 31. The Governor then has until September 30 to sign a bill into law. This would leave a very tight timeline for including the expanded area in the current rulemaking package.

If this bill passes and you chose to authorize a 15-day notice at your October 1 meeting, the hearing would then be scheduled for your November 5 meeting. This would just miss the cutoff date of November 1 for final rulemaking packages to be submitted to the OAL for inclusion in the 2015 Forest Practice Rules. There is precedence where OAL has been willing to accept rulemaking packages a few days after November 1, but this is a discouraged exception to their normal processes. The best case scenario would be for AB 2142 to have the Governor’s signature by September 1, and be included in a 15-day notice submitted to OAL on September 2. A hearing could then be scheduled for the October 1 Board meeting, leaving ample time to submit the final rulemaking package to OAL by the November 1 deadline.

Canopy Standards

Public Resource Code (PRC) § 4584(j)(11) is the statute that gives the Board the authority to promulgate regulations for the Forest Fire Prevention Pilot Project Exemption. There are two different canopy retention standards provided in this statute.

PRC § 4584(j)(11)(B) states: *A fuel reduction effort shall not violate the canopy closure regulations adopted by the Board on June 10, 2004, and as those regulations may be amended.* This is a reference to the canopy standards found in 14 CCR 1052.4(d)(3)(A), the Emergency Notice for Fuel Hazard Reduction. These are the canopy retention standards for the Forest Fire Prevention Exemption [14 CCR § 1038(i)]. These standards are for the minimum post treatment canopy closure of dominant and codominant trees, and are as follows:

- 40% for east side pine
- 50% for coastal redwood and Douglas-fir adjacent to communities and structures.
- 60% for coastal redwood and Douglas-fir outside of communities and structures.
- 50% for mixed conifer and all other forest types.

PRC § 4584(j)(11)(C)(ii) states: *Where present prior to operations, the overstory canopy closure for trees greater than 12 inches in diameter at breast height shall not be reduced below 50 percent.* This represents a slightly different standard than that provided above. Specifically, it would allow the canopy of trees greater than 12 inches in diameter at breast height (DBH) to be counted towards the required retention standards regardless of their canopy position in the stand (i.e. an intermediate or suppressed tree greater than 12 inches DBH could be counted). It would also set a single canopy retention standard for all forest types throughout the Pilot Project Area. The prescribed minimum dominant and codominant canopy retention of 40% for east side pine listed above may violate this standard.

The Pilot Project rulemaking proposal as currently written adopts the minimum post treatment canopy closure of dominant and codominant trees to be 40% for east side pine and 50% for mixed conifer and all other forest types. It does not include the standards for coast redwood and Douglas-fir adjacent to or outside of communities and structures. The western portion of Trinity County is in the coast forest district and contains areas of coast redwood and Douglas-fir forest.

Recommendation: Staff recommends that the Board adopts canopy standards consistent with the current Forest Fire Prevention Exemption. The legislative intent letter from the authors of AB 744 to the Executive Officer of the Board of Forestry and Fire Protection (included as an attachment) stated fairly clearly that the purpose of the Pilot Project was to test the theory that slightly increasing the maximum stump diameter of trees allowed to be harvested consistent with the Forest Fire Prevention Exemption would increase the economic utility of this exemption and cause more acres of timberland to be treated. It makes no mention of changing the existing canopy standards as part of this experiment.

14 CCR § 1038(e)

14 CCR § 1038(e) requires a five working day waiting period before operations may commence on specific exemptions. This time is necessary for the Director to determine that the Notice of Exemption is complete and accurate. The existing Forest Fire Prevention Exemption is included on the list of exemptions requiring a five day waiting period. The Pilot Project as currently proposed will be included as its own subsection, 14 CCR § 1038(j), and is not currently subject to the requirements of 14 CCR § 1038(e).

Recommendation: Staff recommends that Pilot Project rule plead be amended to include the addition of the Pilot Project to those exemptions subject to the requirements of 14 CCR § 1038(e).



Assembly California Legislature

October 3, 2013

George 'YG' Gentry
Executive Officer
California Board of Forestry
1416 9th Street, Room 1506-14
Sacramento, CA 95814

RE: Authors' Intent of AB 744 (Forest Fire Prevention Exemption Pilot Project)

Dear Mr. Gentry,

As the joint authors of AB 744, the Forest Fire Prevention Exemption Pilot Project, we write to provide some additional context and guidance to the Board of Forestry (Board) as you begin the necessary rulemaking- assuming Governor Brown signs AB 744 into law.

The primary goal AB 744 is to accomplish fuel reduction projects and increase the health and resilience of unnaturally and inappropriately dense forest stands. AB 744 was not intended to broadly exempt commercial timber operations from the standard regulatory process; rather it is intended to test the hypothesis that allowing the timber operator to harvest some trees slightly larger than allowed under the existing exemption would change the economics of the operation enough to facilitate fuel reduction treatments across larger portions of the landscape.

We note that while AB 744 provides statutory authority for such an exemption, the Legislature looks to the Board to develop, in consultation with the appropriate trustee agencies, the additional regulatory guidance that will allow the fuel reduction exemption to be implemented with minimum risk to public trust resources, while accomplishing the goal of reducing the severity of catastrophic wildfire.

In particular, please be aware that AB 744 did not include the same highly prescriptive language regarding post-harvest slash treatment that is required under §1038(i). Rather than legislating such level of detail, we defer to the Board to develop standards that ensure that post-harvest slash treatment is thorough enough to accomplish the desired reduction in fire severity, while addressing the habitat needs of key wildlife in the region, all while being practical about the cost of treatment.

It is our hope that this pilot project facilitates activities that reduce excess fuels and help restore the resilience of our forests. We look to the expertise of the Board, Department and review team agencies to craft the remaining details of the exemption in a way that will accomplish such results with the minimum potential for misuse.

Thank you for your work on behalf of the state's forests. If you have any questions, please don't hesitate to contact our offices.

Sincerely,



BRIAN DAHLE
Assemblymember, 1st District



RICHARD S. GORDON
Assemblymember, 24th District