



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Ecosystem Conservation Division
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EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



December 7, 2015

Mr. Matt Dias
Acting Executive Officer
California Board of Forestry and Fire Protection
1416 9th Street
P.O. Box 94244-2460
Sacramento, CA 94244-2460

Dear Mr. Dias:

Subject: RECOMMENDED CORRECTIONS TO OBSOLETE TEXT IN THE CALIFORNIA FOREST PRACTICE RULES AND REFORMS TO § 1104.1, CONVERSION EXEMPTIONS, TO ADDRESS THEIR EFFECTS ON FOREST ENVIRONMENTS

The California Department of Fish and Wildlife (CDFW) staff has reviewed the California Forest Practice Rules (FPRs) in response to the Board of Forestry and Fire Protection's (Board) announcement, *Hearing Announcement and Agenda: Board 2015 Regulation and Priorities Review* (October 16, 2015). Please find enclosed the pertinent FPRs with CDFW's proposed corrections to obsolete text indicated.

In addition, CDFW has substantive concerns over how the wide-spread employment of FPR § 1104.1, "Conversion Exemptions", relates to adverse direct and cumulative impacts on forest environments. Less-than-three-acre conversion exemptions are used extensively for a range of non-timber uses, such as, marijuana cultivation. In some areas, these activities are causing impacts that include forest species habitat fragmentation, acutely impaired stream habitat through unpermitted water diversions and watercourse crossings, and take of listed species. CDFW requests the Board devote special effort in 2016 toward a thorough review of this issue and possible rule reform.

CDFW appreciates the opportunity to provide comments and recommendations to the Board as part of a process to maintain the clarity, efficiency and effectiveness of the FPRs. Should you have any questions and/or would like to discuss our input, please contact Environmental Program Manager William Condon with CDFW's Timberland Conservation Program in the Habitat Conservation Planning Branch, at (916) 651-3110 or by email at William.Condon@wildlife.ca.gov.

Sincerely,

Sandra Morey, Deputy Director
Ecosystem Conservation Division

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California Board of Forestry and Fire Protection
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Figures

Figure 4: Depiction of channel width at bankfull stage compared to active channel width (modified from California Department of Fish and Game's (CDFG) Salmonid Stream Habitat Restoration Manual, [Taylor and Love, 2003](#)[Flosi et al., 2010](#)).

Figure 6. Diagram illustrating diversion potential at a watercourse crossing (from ~~DFG-2006~~[Flosi et al., 2010](#)).

Figure 7. Illustration of a critical dip installed at a watercourse crossing to remove diversion potential (from ~~DFG-2006~~[Flosi et al., 2010](#)). The critical dip should be constructed at the point where the potential for erosion and the loss of fill is minimized.

895 Abbreviations Applicable Throughout Chapter

DFG California Department of Fish and Game
~~DFW~~ California Department of Fish and Wildlife (formerly DFG)
USFWS United States Fish and Wildlife Service

895.1 Definitions

Active Nest means a bird nest site at which breeding efforts have recently occurred as determined by the Department of Fish and [WildlifeGame](#), as specified below:

Commercial Species (For the Coast Forest District:) means those species found in group A and those in group B that are found on lands where the species in Group A are now growing naturally or have grown naturally in the recorded past.

Group B

- tanoak (*Notholithocarpus densiflorus*)
- red alder (*Alnus rubra*)
- white alder (*Alnus rhombifolia*)
- California black oak (*Quercus kelloggii*)
- Monterey pine (*Pinus radiata*)
- ~~giant chinquapin~~~~golden chinkapin~~ (*Castanopsis chrysophylla*)
- ~~pepperwood~~ California bay laurel (*Umbellularia californica*)
- Oregon white oak (*Quercus garryana*)
- Pacific madrone (*Arbutus menziesii*)

Commercial Species (For the Northern Forest District:) means those species found in group A and those in group B that are found on lands where the species in group A are now growing naturally or have grown naturally in the recorded past.

Group B

Comment [CDFW1]: These figures reference a DFG publication from before the name change to DFW in 2013. Consider changing from "DFG" to "DFW".

Comment [CDFW2]: The figure in the 2010 version of the document is the same (see below):

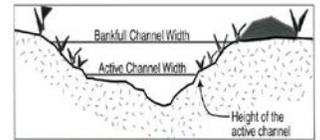
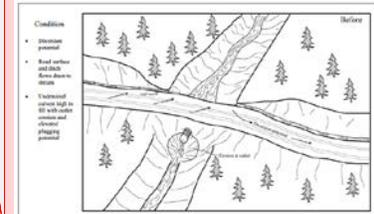


Figure 6-3. Active channel width versus bankfull channel width.

Comment [CDFW3]: This is also from the Salmonid Stream Habitat Restoration Manual, and the 2010 version has the same figure (see below). References to this document should be consistent.



Comment [CDFW4]: The 2010 version of the document has the same figure.

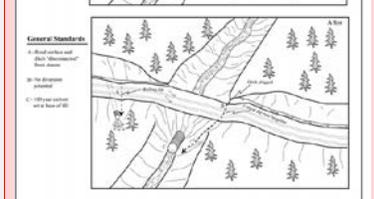


Figure 8-13. Typical upgraded stream crossing.

Comment [CDFW5]: Consider changing "California Department of Fish and Game", and Department of Fish and Game" to "DFW" from this section on.

Comment [CDFW6]: Please add

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- | | |
|--|--|
| -knobcone pine (<i>Pinus attenuata</i>) | -Sierra redwood (<i>Sequoiadendron giganteum</i>) |
| -gray pine (<i>Pinus sabiniana</i>) | - giant golden chinkapin chinquapin (<i>Castanopsis chrysophylla</i>) |
| -California black oak (<i>Quercus kelloggii</i>) | -foxtail pine (<i>Pinus bifuriana balfouriana</i>) |
| -Oregon white oak (<i>Quercus garryana</i>) | -white alder (<i>Alnus rhombifolia</i>) |
| -tanoak (<i>Notholithocarpus densiflorus</i>) | -Monterey pine (<i>Pinus radiata</i>) |
| -mountain hemlock (<i>Tsuga mertensiana</i>) | -Pacific madrone (<i>Arbutus menziesii</i>) |
| -Brewer spruce (<i>Picea breweriana</i>) | -California bay laurel (<i>Umbellularia californica</i>) |
| -Englemann spruce (<i>Picea englemanni englemannii</i>) | -western juniper (<i>Juniperus occidentalis</i>) |

Critical Period means the time of year when the special timber operations practices set forth in these regulations are required to minimize nesting disturbance to a ~~species of special concern~~ sensitive or listed species.

Nest Site means the geographic area surrounding habitat that includes the nest tree(s), perch tree(s), screening tree(s), and replacement tree(s) of a sensitive or listed ~~bird species~~ species of special concern.

Nest Tree means the tree, snag, or other structure that contains the nest of a ~~species of special concern~~ sensitive or listed bird species.

Perch Tree means a tree or snag identified and designated by the RPF or supervised designee in consultation with the Department of Fish and ~~Wildlife Game~~ as utilized periodically by a ~~species of special concern~~ sensitive or listed species for nesting, territorial defense, or as an approach to its nest or feeding area.

Replacement Tree means a tree or snag within the nest site of a ~~species of special concern~~ sensitive or listed species identified and designated by the RPF or supervised designee in consultation with the Department of Fish and ~~Wildlife Game~~ as being suitable as a replacement for a nest or perch tree should the existing tree become unusable.

Screening Trees means those trees or snags identified and designated by the RPF or supervised designee in consultation with the Department of Fish and ~~Wildlife Game~~ as necessary to protect nest trees of sensitive or listed species ~~species of special concern~~ from the impacts of human activities and natural elements.

Spotted Owl Expert means a person with at least a Bachelor of Science degree in Wildlife Biology, Biology, Forestry, Zoology or related field and a minimum of five field seasons of verifiable northern spotted owl survey and biological evaluation work. The SOE shall possess sufficient experience, knowledge and education in order to analyze data from field conditions and present written information which substantiates why harm and harassment of the northern spotted owl associated with timber operations will be avoided. The individual shall be able to verify such experience, knowledge and education upon the Director's request. The Director shall refer all SOE qualifications received to the U.S. Fish and Wildlife Service and California Department of Fish and ~~Wildlife Game~~ for evaluation of qualifications.

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Watersheds with Coho Salmon means any planning watershed(s) where coho salmon (*Oncorhynchus kisutch*) have been documented by the Department of Fish and ~~Wildlife Game~~ to be present during or after 1990.

898.2 Special Conditions Requiring Disapproval of Plans

(e) Implementation of the plan would irreparably damage plant species listed as rare or endangered by the Department of Fish and ~~Wildlife Game~~ and when the timber owner fails to comply with F&GC 1913.

913.4, 933.4, 953.4 Special Prescriptions

(e) **Aspen, meadow and wet area restoration.** All trees within aspen stands (defined as a location with the presence of living aspen (*Populus tremuloides*), meadows and wet areas may be harvested or otherwise treated in order to restore, retain, or enhance these areas for ecological or range values. A primary goal of aspen restoration projects is the successful regeneration of aspen and recruitment into larger size classes. Projects using this prescription shall be designed to balance the protection and regeneration of aspen stands, meadows, and wet area habitats in California's forest ecosystems with the other goals of forest management as specified in 14 CCR § 897 and meet the following requirements:

(6) For projects of twenty (20) acres or less in size, the RPF has the option to not include the requirements of 14 CCR §§ 913.4, 933.4, and 953.4, subsections (e)(4) and (5) if the RPF consults with ~~DFW DFG~~ prior to plan submittal and, if wet areas are proposed, the RPF shall also consult with the appropriate RWQCB in those locations where the applicable basin plan identifies wet areas as a beneficial use. The results of the consultation(s) shall be included in the plan,

915.3, 935.3, 955.3 Protection of Natural Resources [All Districts]

(a) Site preparation activities shall comply with the watercourse and lake protection requirements in 14 CCR Article 6 and 917.3 [937.3, 957.3].

(b) Site preparation activities shall comply with the wildlife and habitat protection provisions of 14 CCR Article 9.

(c) Site preparation shall ~~be~~ performed in a manner which does not deleteriously affect species which are threatened, endangered, or designated by the Board as ~~_-sensitive species_~~ ~~species of special concern~~. The Director may allow exceptions to this standard in the plan, after consultation with the Department of Fish and ~~Wildlife Game pursuant to the California Endangered Species Act (F&G Code 2050-2098)~~.

Comment [CDFW7]: Some of these sections have been repealed.

916.2, 936.2, 956.2 Protection of the Beneficial Uses of Water and Riparian Functions [All Districts]

(a) The measures used to protect each watercourse and lake in a logging area shall be determined by the presence and condition of the following values:

(1) The existing and restorable quality and beneficial uses of water as specified by the applicable water quality control plan and as further identified and refined during preparation and review of the plan.

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(2) The existing and restorable uses of water for fisheries as identified by the [DFWDFG](#) or as further identified and refined during preparation and review of the plan.

916.8, 936.8, 956.8 Sensitive Watersheds [All Districts]

(c) **Screening Process:** Before consideration by the Board, nominations shall be screened for compliance with the informational requirements by a nominations review committee, which may consist of the appropriate District Technical Advisory Committee or other Board Committee, as determined by the Board. The nominations review committee shall consult with CDF, the appropriate Regional Water Quality Control Board, the Department of Fish and ~~Wildlife~~[Game](#), the Division of Mines and Geology, and other(s) as deemed necessary to determine whether the nomination is supported by substantial evidence. The nominations review committee shall then forward a recommendation for approval or denial of the nomination to the Board within 120 days of the date of receipt by the committee, or such longer time provided by the Board. The nominations review committee shall describe its specific reason(s) for recommending approval or denial of the nomination. In the event that the committee forwards a recommendation for approval, it shall describe the substantial evidence which supports nomination, including specific reasons why the current forest practice rules are inadequate to protect the specific resources at risk and shall provide the following information:

916.9, 936.9, 956.9 Protection and Restoration of the Beneficial Functions of the Riparian Zone in Watersheds with Listed Anadromous Salmonids. [All Districts]

(e) Channel zone requirements

(1) There shall be no timber operations within the channel zone with the following exceptions:

(A) Actions directed to improve salmonid habitat with review and concurrence by [DFWDFG](#).

(s) **Exemption notices** - 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:

- (1) Hauling on existing roads.
- (2) Road maintenance.
- (3) Operations conducted for public safety.
- (4) Construction or reconstruction of approved watercourse crossings.
- (5) Temporary crossings of dry Class III watercourses that do not require notification under Fish and Game Code §1600 et seq.

(6) Harvesting recommended in writing by [DFWDFG](#) to address specifically identified forest conditions.

(t) **Emergency notices** - No timber operations are allowed in a WLPZ, or within any ELZ or EEZ designated for watercourse or lake protection, under emergency notices except for:

- (1) Hauling on existing roads.
- (2) Road maintenance.
- (3) Operations conducted for public safety.

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(4) Construction or reconstruction of approved watercourse crossings.

(5) Temporary crossings of dry Class III watercourses that do not require notification under Fish and Game Code §1600 et seq.

(6) Harvesting recommended in writing by [DFW/DFG](#) to address specifically identified forest conditions.

(v) Site-specific measures or nonstandard operational provisions

(2) Measures or provisions proposed pursuant to 14 CCR § 916.9 [936.9, 956.9], subsections (v) shall only be approved when the plan incorporates an evaluation of the beneficial functions of the riparian zone as set forth in subsection (3) below. In the event of measures limited in applicability to specific sites, the submitter may instead of an evaluation, obtain written concurrence from [DFW/DFG](#) prior to plan submittal. RPFs may request a preconsultation for the site specific plan and the Director may agree and request staff from responsible agencies.

(5) Guidance is provided below for site specific plans for flood prone areas:

(I) The site-specific plan for Class I riparian management must: (1) have Review Team agencies pre-consultation and receive concurrence from the Review Team agencies, including [DFW/DFG](#), and (2) include a monitoring component.

(8) The Director shall not accept for inclusion in a plan any site-specific measures or non-standard operational provisions as described in this section where the Department of Fish and [Wildlife Game](#) or where two or more agencies listed in PRC § 4582.6 and 14 CCR § 1037.3 have submitted written comments which lead to the Director's conclusion that the proposed measures or provisions will not meet the goal of this section and the agencies participated in the review of the plan, including an on-the-ground inspection.

(w) Except when expressly required by 14 CCR § 916.9 [936.9, 956.9], subsections (w)(1)-(5) below, the provisions of 14 CCR § 916.9 [936.9, 956.9] shall not apply to a plan that is subject to:

(1) a valid incidental take permit issued by [DFW/DFG](#) pursuant to Section 2081(b) of the Fish and Game Code that addresses anadromous salmonid protection; or

(2) a federal incidental take statement or incidental take permit that addresses anadromous salmonid protection, for which a consistency determination has been made pursuant to Section 2080.1 of the Fish and Game Code; or

(3) a valid natural community conservation plan that addresses anadromous salmonid protection approved by [DFW/DFG](#) under section 2835 of the Fish and Game Code; or

(4) a valid Habitat Conservation Plan that addresses anadromous salmonid protection, approved under Section 10 of the federal Endangered Species Act of 1973; or

(5) project revisions, guidelines, or take avoidance measures pursuant to a memorandum of understanding or a planning agreement entered into between the plan submitter and [DFW/DFG](#) in preparation of obtaining a natural community conservation plan that addresses anadromous salmonid protection.

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916.11, 936.11, 956.11 Effectiveness and Implementation Monitoring [All Districts]

(a) Where timber operations will be conducted within a WLPZ, the Director may require a post-harvest evaluation of the effectiveness of the mitigations and practices designed to protect the watercourse(s) or lake(s) as a condition of plan approval. The Director shall require such an evaluation if the necessity for the evaluation is supported by substantial evidence in the record. This evidence may include, but is not limited to, potential land failures, accelerated rate of road construction or harvesting within a watershed, concentration or intensity of harvesting activity near watercourses, and potential for accelerated windthrow. The design and implementation of the evaluation shall be done in consultation with the Director, the RWQCB or ~~DFWDFG~~, and THP submitter, and the sufficiency of the information requested by the Director shall be judged in light of reasonableness and practicality. The evaluation may utilize procedures including, but not limited to,

916.11.1 and 936.11.1 Monitoring for Adaptive Management in Watersheds with Coho Salmon

(b) (6) The plan shall incorporate monitoring requirements in conformance with the requirements of a valid incidental take permit for coho salmon within the planning watershed that has been authorized pursuant to the following:

- (A) a valid incidental take permit issued by ~~DFW DFG~~ pursuant to Section 2081(b) of the Fish and Game Code; or
- (B) a federal incidental take statement or incidental take permit, for which a consistency determination has been made pursuant to Section 2080.1 of the Fish and Game Code; or
- (C) Section 2835 of the Fish and Game Code under a valid natural community conservation plan approved by ~~DFWDFG~~.

919.2, 939.2, 959.2 General Protection of Nest Sites [All Districts]

The following general standards for protection of Sensitive species shall apply:

- (a) A pre-harvest inspection will normally be required when it is known or suspected that the minimum buffer zone surrounding an active nest of a Sensitive species is in or extends onto an area proposed for timber operations. When the Department is already familiar with the site, the Director, after consultation with the Department of Fish and ~~WildlifeGame~~, may waive this requirement.
- (b) During timber operations, nest tree(s), designated perch trees(s), screening tree(s), and replacement trees(s), shall be left standing and unharmed except as otherwise provided in these following rules.
- (c) Timber operations shall be planned and operated to commence as far as possible from occupied nest trees unless explained and justified by the RPF in the THP.
- (d) When an occupied nest site of a listed bird species is discovered during timber operations, the timber operator shall protect the nest tree, screening trees, perch trees, and replacement trees and shall apply the provisions of subsections (b) and (c) above and shall immediately notify the Department of Fish and ~~WildlifeGame~~ and the Department of Forestry and Fire Protection. An amendment that shall be considered a minor amendment to the timber harvesting plan shall be filed reflecting such additional

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protection as is agreed between the operator and the Director after consultation with the Department of Fish and [WildlifeGame](#).

919.3, 939.3, 959.3 Specific Requirements for Protection of Nest Sites [All Districts]

The following requirements shall apply to nest sites containing active nests and not to nest sites containing only abandoned nests.

(a) Buffer zones shall be established around all nest trees containing active nests. The buffer zones shall be designed to best protect the nest site and nesting birds from the effects of timber operations. In consultation with the Department of Fish and [WildlifeGame](#), and as approved by the Director, an RPF or supervised designee shall flag the location of the boundaries of the buffer zone, and the configuration of the buffer zone. Consultation with the Department of Fish and [WildlifeGame](#) shall be required pursuant to 14 CCR 898. Consideration shall be given to the specific habitat requirements of the bird species involved when configuration and boundaries of the buffer zone are established.

(b) The size of the buffer zone for each species shall be as follows:

(1) For the Bald Eagle and Peregrine Falcon, the buffer zone shall be a minimum of ten acres in size. The Director may increase the buffer zone beyond 40 acres in size so that timber operations will not result in a "take" of either species. The Director shall develop the buffer zone in consultation with the Department of Fish and [WildlifeGame](#) and the RPF.

(2) For the Golden Eagle, the buffer zone shall be a minimum of eight acres in size.

(3) For the Great Blue Heron and Great Egret, the buffer zone shall consist of the area within a 300-foot radius of a tree or trees containing a group of five or more active nests in close proximity as determined by the Department of Fish and [WildlifeGame](#).

(d) Critical periods are established for each species and requirements shall apply during these critical periods as follows:

(1) For the Bald Eagle, the critical period is January 15 until either August 15 or four weeks after fledgling, as determined by the Director. During this critical period, no timber operations are permitted within the buffer zone. Exceptions may be approved by the Director, after consultation with the Department of Fish and [WildlifeGame](#) to allow hauling on existing roads that normally receive use within the buffer zone during the critical period.

(2) For the Golden Eagle, the critical period is January 15 until April 15 for active nests, and extended from April 15 until either September 1 or until the birds have fledged for occupied nests. During this critical period, hauling on existing roads that normally receive use during the critical period is permitted. Other operations are not permitted within the buffer zones.

(3) For the Great Blue Heron and Great Egret, the critical period is February 15 until July 1 for coastal counties south of and including Marin County. For all other areas, the period is from March 15 through July 15. During this critical period, timber operations within the buffer zone shall be staged with a gradual approach to the nest.

(4) For the Northern Goshawk, the critical period is from March 15 until August 15. During this critical period, no timber operations are permitted; however, new road construction is permitted if the

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Director determines that there is no feasible alternative. Exceptions may be approved by the Director after consultation with the Department of Fish and [WildlifeGame](#) to allow hauling on existing roads that normally receive use within the buffer zone during the critical period.

(5) For the Osprey, the critical period is March 1 to April 15 for active nests in coastal counties including Mendocino County and those south of it. This period is extended from April 15 until August 1 for occupied nests. For all other areas, the critical period is March 15 until May 1 for active nests, and is extended from May 1 to August 15 for occupied nests. During the critical period, at nest sites where Osprey have shown historical tolerance to disturbance, timber operations are permitted using a gradual approach to the nest, except that no cutting is permitted. Where Osprey are determined by the Director to be intolerant to timber operations, no timber operations are permitted within the buffer zone unless the Director determines that there are no feasible alternatives.

(6) For the Peregrine Falcon, the critical period is February 1 until April 1 for active nests, and is extended until July 15 for occupied nests. During the critical period, no timber operations are permitted within the buffer zone. However, when the Director, after consultation with the Department of Fish and [WildlifeGame](#) determines that Peregrines have shown a tolerance to hauling activity in the past, hauling on existing roads that normally receive use during the critical period within the buffer zone is permitted.

919.5, 939.5, 959.5 Alternatives [All Districts]

The RPF may propose alternatives to the requirements of this chapter, and the Director may approve such alternatives provided all of the following conditions are met:

- (a) The RPF develops the alternative in consultation with the Department of Fish and [WildlifeGame](#).
- (b) The Director consults with the Department of Fish and [WildlifeGame](#) and makes findings that the alternative conforms to (c), below, prior to approving the alternative.

919.9, 939.9 Northern Spotted Owl [Coast, Northern]

(b) The RPF shall include the following information:

(1) On a planimetric or topographic map of a minimum scale of 1:24,000, provide the following:

(D) All known owl observations, identified by location and visual or nonvisual confirmation within 1.3 miles of the boundary. This information shall be derived from the landowners and RPF's personal knowledge, and from the Department of Fish and [WildlifeGame](#)'s spotted owl data base.

(c) Where certification is made by the RPF and adequate records are kept showing that owl surveys were conducted sufficient to demonstrate the absence of owls from an area, the THP will be reviewed on a high priority basis. The THP shall contain verification that:

(1) The surveys have been conducted throughout the area within .7 miles of the boundary in accordance with the USFWS approved protocol ("Protocol For Surveying Proposed Management Activities That May Impact Northern Spotted Owls"; USFWS; [February 2, 2011, Revised January 9, 2012](#)~~March 17, 1992~~).

Comment [CDFW8]: It may be simpler to state "in accordance with the most recent USFWS approved protocol."

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(2) The surveys were conducted during the current or immediately preceding survey period as prescribed by the previously cited USFWS approved protocol.

(3) The surveys reveal no nest sites, activity centers or owl observations in the area surveyed; and

(4) The surveys reveal no activity center or repeated observations indicating the presence of mates and/or young within 1.3 miles of the boundary based on a review of the landowner's and RPF's personal knowledge and the Department of Fish and [WildlifeGame](#)'s spotted owl data base.

(d) If the plan submitter proposes to proceed under an "incidental taking" permit or any other permit covering the northern spotted owl issued by the U.S. Fish and Wildlife Service or the Department of Fish and [WildlifeGame](#), the submitter shall supply a copy of the permit upon the Department's request.

919.11 Marbled Murrelet Protective Measures [Coast]

Where there is evidence of an active murrelet site in or adjacent to the THP area, as defined in

~~"Methods for Surveying Marbled Murrelets in Forests: A Revised Protocol for Land Management and Research" Diane Evans Mack et al., January 2003; "Addendum to Surveying Marbled Murrelets at Inland Forested Sites: A Guide for California Coastal Forests" C.J. Ralph, April 1991~~ or where there is evidence of a potential impact to a murrelet, the Director shall consult with ~~DFWDFG and the USFWS~~ as to whether the proposed THP will result in a "take" or "jeopardy" (pursuant to the California Endangered Species Act) ~~or federal Endangered Species Act~~, of the murrelet before the Director may approve or disapprove a THP. ~~Biological Assessments submitted with the THP that are prepared according to the Department of Fish and Game Guidelines for Consultation (F&GC Sec. 2090) shall be provided to the DFG during consultation.~~ If ~~DFWDFG or USFWS~~ determines jeopardy or a take will occur as a result of operations

proposed in the THP, the Director shall disapprove the THP unless the THP is accompanied by authorization by a wildlife agency acting within its authority under state or federal endangered species acts.

919.12, 939.12, 959.12 Sensitive Species Classification [All Districts]

The Board has the responsibility under the FPA to provide protection to all species occurring in the state's forestlands. The procedure to identify those species that warrant special protection during timber operations is described as follows:

(b) The Board will consult with the U.S. Fish and Wildlife Service, the California Fish and Game Commission, the California Department of Fish and [WildlifeGame](#), and others as appropriate. After consultation the Board shall classify a species as sensitive after a public hearing if it finds:

(1) The California population requires timberland as habitat for foraging, breeding, or shelter, and

(2) The California population is in decline or there is a threat from timber operations, and

(3) Continued timber operations under the current rules of the Board will result in a loss of the California population viability.

Comment [CDFW9]: As with NSO protocol, it may be simpler to refer to the most recent protocols rather than calling out the specific date and title.

Comment [CDFW10]: Repealed.

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(c) The Board shall consult with the U.S. Fish and Wildlife Service, the California Department of Fish and [WildlifeGame](#), and others as appropriate. After consultation and a public hearing, the Board will declassify a species as sensitive if it no longer meets the criteria for classification.

959.15 Protection of Wildlife Habitat [Southern]

(a) Where present at time of timber harvest, 400 sq. ft. basal area of oak per 40 acres should be retained and protected, giving preference to deciduous oaks. Oaks should be retained on areas designated by [DFWDFG](#) as deer migration corridors, holding areas, or key ranges when consistent with good forestry practices.

921.1 Preliminary Field Work and Timber Harvesting Plans [Coast, Special Treatment Area]

(a) The following preliminary field work shall be required in the Coastal Commission Special Treatment Areas and shall be completed prior to submission of the plan to the Director:

(1) When a boundary of a Coastal Commission Special Treatment Area is within or contiguous to a plan area, the boundary shall be clearly identified on the ground by the RPF preparing the plan or supervised designee, with paint, flagging, or other suitable means.

(2) All tractor roads and skid trails that require substantial soil displacement shall be clearly marked on the ground with flagging or other appropriate marking.

(3) The boundary of all slides and areas with visible evidence of slope instability which extend to the watercourse and lake protection zone shall be flagged or otherwise adequately marked on the ground.

(4) The following wildlife consideration shall be followed:

(A) Live trees, as designated on the ground by the Departments of Fish and [WildlifeGame](#) or Forestry or the RPF or supervised designee with visible evidence of current use as nesting sites by hawks, owls, or waterfowl shall not be marked for cutting.

961.1 Preliminary Field Work and Timber Harvesting Plans [Southern, Special Treatment Area]

(a) The following preliminary field work shall be required in the Coastal Commission Special Treatment Areas and shall be completed prior to submission of the plan to the Director.

(1) When a boundary of a Coastal Commission Special Treatment Area is within or contiguous to a plan area, the boundary shall be clearly identified on the ground by the RPF preparing the plan or supervised designee, with paint, flagging, or other suitable means.

(2) All timber proposed for harvest shall be clearly marked with paint at points approximately 4 ½ feet (1.37 m) above the ground and at ground level.

(3) The following wildlife considerations shall be followed:

(A) Live trees, as designated on the ground by the Departments of Fish and [WildlifeGame](#) or Forestry and Fire Protection or the RPF or supervised designee, with visible evidence of current use as nesting sites by hawks, owls, or waterfowl shall not be marked for cutting.

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(B) Live trees as designated on the ground by the Departments of Fish and [WildlifeGame](#) or Forestry and Fire Protection or the RPF or supervised designee, with visible evidence of nesting by eagles, osprey, or any endangered species, as identified by the Department of Fish and [WildlifeGame](#), shall not be marked for cutting.

(C) Live trees constituting a rookery for herons and/or egrets shall not be marked for cutting unless authorization in writing from the Department of Fish and [WildlifeGame](#) is granted to the timber owner.

921.6 Hazard Reduction [Coast, Special Treatment Area]

(c) Snags: All snags within the Watercourse and Lake Protection Zone and within 100 feet (30.48 m) of meadow edges shall be left standing with the following exceptions:

(1) When felling is required for fire or safety reasons, as specified by the rules or CAL OSHA regulations, or when necessary in sanitation-salvage operations.

(2) When a snag of commercial value is marked for felling by an RPF or supervised designee after an initial preharvest inspection and consultation with [DFWDFG](#) and the timber owner.

923, 943, 963 Intent for Logging Roads, Landings, and Logging Road Watercourse Crossings. [All Districts]

(f) The provisions of Article 12 [Article 11 for Northern District] that apply in watersheds with listed anadromous salmonids and in planning watersheds immediately upstream of, and contiguous to, any watershed with listed anadromous salmonids shall not apply to a plan that is subject to:

(4) A valid Habitat Conservation Plan (HCP) that addresses anadromous salmonid protection, approved under Section 10 of the federal Endangered Species Act of 1973 [and one of the following from CDFW for species listed under the California Endangered Species Act: an incidental take permit, consistency determination, natural community conservation plan \(NCCP\), memorandum of understanding, or planning agreement that is a precursor to an NCCP](#); or

927.12 Hazard Reduction [Marin County]

(b) Snags: All snags within the Watercourse and Lake Protection Zone and within 100 ft. of meadow edges shall be left standing with the following exceptions:

(1) When felling is required for fire or safety reasons (CAL OSHA regulations, 8 CCR 6259) or when necessary in sanitation-salvage operations.

(2) When a snag of commercial value is marked for felling by the RPF after an initial preharvest inspection and consultation with the Department of Fish and [WildlifeGame](#) and the timber owner.

1036.1 Murrelet Protection before Notice of Completion

For any THP which has been found to be in conformance with THP filing and review procedures and approved by the Director, but as to which no Notice of Completion (PRC Sec. 4586) has been filed, when

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there is evidence that the THP area contains an active murrelet site or possesses a potential impact to a murrelet, the THP submitter shall immediately request a conference with ~~DFW and USFWS~~~~DFG or U.S. Fish and Wildlife Service (in the event of Federal listing)~~ to determine appropriate measures for protection of the species. Any additional mitigations for species protection which are developed through consultation with ~~DFW~~~~DFG~~ or the ~~USFWS~~~~U.S.F.W.S~~ after initial submittal of the THP shall be submitted to the Director in the form of an amendment to the THP pursuant to 14 CCR 1036.

1037.3 Agency and Public Review

(a) Upon receipt of the filed plan in accordance with 14 CCR 1037, the Director shall place it, or a true copy thereof, in a file available for public inspection, and shall transmit a copy to the Department of Fish and ~~Wildlife~~~~Game~~, the appropriate California Regional Water Quality Control Board, the Department of Conservation, Division of Mines and Geology [*California Geological Survey*], the Department of Parks and Recreation, the county planning agency and, if the areas are within their jurisdiction, to the California Tahoe Regional Planning Agency and the California Coastal Commission.

1037.5 Review Teams to be Established

Interdisciplinary review teams shall be established by the Director to review plans and assist the Director in the evaluation of proposed timber operations and their impacts on the environment.

(a) Review Team Composition: Each review team, when possible, shall consist of a representative from each of the following agencies: the appropriate California Regional Water Quality Control Board, Department of Fish and ~~Wildlife~~~~Game~~, Department of Conservation, Division of Mines and Geology [*California Geological Survey*], a representative of county government when the county government so requests, California Coastal Commission (for plans in the coastal zone), California Tahoe Regional Planning Agency (for plans in the Tahoe Basin) and the Department of Forestry and Fire Protection. The Director shall request a representative from the Department of Parks and Recreation in the case of plans that may affect values in publicly owned parks. The Director may request other federal, state or county agencies, or Native Americans as defined in 14 CCR § 895.1, when appropriate, to assist as advisors in the review process. The Department's representative shall be the review team Chairperson and shall be an RPF.

1051 Modified THP

(a) On an ownership of 160 acres, or a quarter (¼) section or less of timberland, a modified timber harvest plan may be filed by a plan submitter, providing that the following conditions and mitigations are met:

 (10) No listed species will be directly or indirectly adversely impacted by proposed timber operations. For timber operations which potentially could adversely affect a State-listed species or the habitat of the species, the consultation process with ~~DFW~~~~DFG~~ pursuant to F&GC shall be completed prior to plan approval.

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1051.4. Modified THP for Fuel Hazard Reduction Conditions and Mitigations.

(a) A Modified THP for Fuel Hazard Reduction (hereafter also referred to as “MTHP-FHR”) may be filed by a plan submitter for a project area not to exceed 2,500 acres, providing that the following conditions and mitigations are met:

(10) No listed species will be directly or indirectly adversely impacted by proposed timber operations. Except as modified herein, all other habitat protection and retention requirements identified in Articles 6 and 9 of the Forest Practice Rules shall apply. Where the Director has determined that timber operations as proposed are likely to adversely affect a state listed species or its habitat, the consultation process with [DFWDFG](#) pursuant to California Fish & Game Code § 2081 shall be completed before the MTHPFHR may be approved.

(11) As part of the pre-harvest project design, the RPF shall evaluate and incorporate habitat requirements for fish, wildlife, and plant species in accordance with the “Joint Policy on Hardwoods” between the California Board of Forestry and Fire Protection and the California Fish and Game Commission” (rev. April 1999), herein incorporated by reference, and 14 CCR §§ 916.9, 936.9, and 956.9 and §§ 919, 939, and 959. Such evaluations shall include use of the California Natural Diversity Database maintained by [DFWDFG](#) (available at <http://www.dfg.ca.gov/biogeodata/cnddb/>) and local review agency knowledge of the planning watershed. Consultation with [DFWDFG](#) personnel is recommended. In general, fuels management strategies should recognize that habitat heterogeneity and fire resiliency are not mutually exclusive. Habitats and habitat elements may include key winter range or migration routes, late successional stands, hardwood or aspen groves, riparian or wetland areas, snags, large down woody material, or den trees.

1052.4 Emergency Notice for Fuel Hazard Reduction

(e) As part of the preharvest project design, the RPF shall evaluate and incorporate habitat requirements for fish, wildlife and plant species in accordance with 14 CCR §§ 898.2, 916.9 [936.9,956.9] and 919. Such evaluations shall include use of the California Natural Diversity Database (as referenced by the California Department of Fish and [WildlifeGame](#), <http://www.dfg.ca.gov/whdab/html/cnddb.html>) and local knowledge of the planning watershed. Consultation with California Department of Fish and [WildlifeGame](#) personnel is recommended. Examples of habitat requirements to be incorporated into the project include retention of large woody debris and snags congruent with emergency condition goals, and vegetative screening for wildlife cover and visual aesthetics.

1052.5. Emergency Notice for Outbreaks of Sudden Oak Death Disease.

(b) Timber operations conducted in accordance with 14 CCR § 1052.5 (a) above shall comply with all rules and regulations of the Board. A person conducting timber operations under an Emergency Notice for Outbreaks of Sudden Oak Death Disease shall comply with all operational provisions of the Forest Practice Act applicable to a plan as defined in 14 CCR § 895.1 with the following exceptions or additional requirements:

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(1) The RPF shall provide written proof of notification regarding the proposed submission of an Emergency Notice for SOD eradication to the NMFS, [DFWDFG](#), U.S. Fish and Wildlife Service (USFWS), and the applicable regional water quality control board. Written notification shall be received by NMFS, [DFWDFG](#), USFWS, and the applicable regional water quality control board at least 10 working days prior to submission of the Emergency Notice.

(2) Tree and vegetation removal or treatment within WLPZ areas shall be permitted and limited to symptomatic hardwood trees and shrubs that are infested with SOD or host hardwood trees that will continue to contribute to the spread of SOD. Conifer trees shall not be removed in WLPZs.

(3) WLPZ harvesting restriction for Class I and II watercourse pursuant to 14 CCR § 916.3 [936.3, 956.3], subsection (f) do not apply.

(4) Timing and methods of operations shall avoid impacts to state and federally listed species. Below are required practices to avoid or minimize adverse effects to state and federally listed species to comply with the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The practices are designed to reduce adverse impacts to listed species, but do not guarantee that activities will not result in "take."

(A) The RPF preparing the Emergency Notice shall evaluate and incorporate habitat requirements for fish, wildlife, and plant species using the California Natural Diversity Database maintained by the [DFWDFG](#), local knowledge of the planning watershed, and consultation with the Department regarding other plans in the Emergency Notice area.

1056 Head of Agency Appeals Procedure

The State Water Resources Control Board (SWRCB) or the Director of the Department of Fish and ~~Wildlife Game~~ [DFWDFG](#) pursuant to PRC 4582.9 may appeal the Director's approval of a THP, or Substantial Deviation (14 CCR 1036 and 1039) by doing the following:

(a) No later than ten days from the date of THP approval, the SWRCB and [DFWDFG](#) shall file with the Executive Officer of the Board of Forestry [*and Fire Protection*] and mail to the plan submitter and Director of CDF a statement containing:

- (1) The name of the submitter of the THP;
- (2) The number of the THP assigned by CDF;
- (3) The location of the proposed timber operations as described in the Notice of Intent;
- (4) A concise summary of all facts upon which the appeal is based;
- (5) A copy of or reference to all documents within the official THP record which support the

appellant's position;

(6) The name and phone number of the SWRCB designee or [DFWDFG](#) staff member who will be the primary contact for purposes of the appeal;

(7) A copy of the authorization by the SWRCB or [DFWDFG](#) or its authorized designee for the appeal and containing the specific finding that the environment or the public health, safety, or general welfare is threatened by the approval of the THP or Substantial Deviation and what form that threat takes;

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(8) Certification that the SWRCB or Regional Water Quality Control Board or [DFWDFG](#) participated in a multidisciplinary review of the plan including an on-site inspection prior to plan approval;

(9) A statement that the timber operations are not to proceed until the appeal has been acted on by the Board as stated in PRC Section 4582.9.

(10) A copy of regulations pertaining to head-of-agency appeals.

(11) A statement to contact the Board for other information about the hearing process.

(b) The SWRCB or [DFWDFG](#) shall promptly telephone the Director and plan submitter to inform them of the filing of the appeal.

(c) If timber operations have commenced, the Department will notify the timber operator to stop all operations.

1056.1 Hearing on Head of Agency Appeal

The Chairman of the Board of Forestry *[and Fire Protection]* shall, without being required to consult other members of the Board, within five (5) working days of receiving the appeal grant a hearing on an appeal by SWRCB or [DFWDFG](#) pursuant to PRC Section 4582.9 if the Chairman finds that the appeal raises substantial issues with respect to the environment or to public safety. If the Chairman finds that the appeal raises no substantial issues with respect to the environment or to public safety, he or she shall refuse to grant a hearing on an appeal. The Chairman will inform the appealing agency, the plan submitter, and the Department of his or her decision. In making this determination, the Chairman shall consider the following:

(a) Whether the appeal raises environmental issues which can be addressed by the Board within the limits of the Public Resources Code and the rules of the Board and other applicable laws; and

(b) Whether the appeal raises public safety issues which involve threats to the lives, health, or property of state residents.

1056.2 Head of Agency Appeal Hearing Procedures-Scheduling

The Board shall schedule and hold a public hearing on an appeal by SWRCB or [DFWDFG](#) no later than 30 days from the filing of the written statement of appeal, or at such later time as may be mutually agreed upon by the Board, the appellant(s), and the plan submitter. The hearing may be scheduled as part of a regular meeting of the Board or may be conducted by a committee of the Board as provided in PRC 4582.9 (d). Sufficient time must be provided for the notice of hearing in accordance with 14 CCR 1056.3.

1056.3 Head of Agency Appeal Procedures-Notice

(a) At least 15 days prior to the hearing, the Board shall give public notice as follows:

(1) Mailing the notice to the SWRCB designee or [DFWDFG](#), and the plan submitter and sending the notice to the Director for distribution as provided in subsection (2)-(5) below;

(b) The notice of hearing shall include the following:

(1) The name of the person submitting the plan;

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(2) Identification of the plan, including the CDF administration number of the plan, a brief description of the location of the timber operations referred to in the plan by reference to any commonly known landmarks in the area, and a brief description of the proposed timber operations:

(3) A statement that the SWRCB or ~~DFW~~DFG has appealed the Director's decision to approve the plan. A statement that the Board has granted a public hearing pursuant to PRC 4582.9. The notice shall also include a statement inviting the person submitting the plan and the public to make statements at the hearing regarding the basis of the appeal on the plan; and

1090.5 Contents of NTMP

The plan shall serve three functions: **1)** to provide information the Director needs to determine whether the proposed NTMP conforms to the rules of the Board; **2)** to provide information and direction for timber management so it complies with the rules of the Board and the management objectives of the landowner; and **3)** to disclose the potential effects of timber management to the public. For the plan to serve these functions, it shall, as a minimum, contain the following information:

(d) A description of the plan area within which timber operations are to be conducted. The description shall include the following:

(n) Information on the presence and protection of any known key habitat or individuals of any threatened or endangered plant or animal species that are listed ~~pursuant to the California Endangered Species Act or federal Endangered Species Act, in DFG inventories prepared pursuant to the F&GC~~ or any ~~sensitive species~~~~species of special concern~~ as designated by the Board in these rules.

1090.17 Agency and Public Review for the NTMP

(a) Upon receipt of the filed plan in accordance with 14 CCR 1090.16, the Director shall place it, or a true copy thereof, in a file available for public inspection, and shall transmit a copy to the Department of Fish and ~~Wildlife~~Game, the Department of Conservation, Division of Mines and Geology [*California Geological Survey*], and to the appropriate California Regional Water Quality Control Board, the Department of Parks and Recreation, the county planning agency and, if the areas are within their jurisdiction, to the California Tahoe Regional Planning Agency and the California Coastal Commission and all other agencies having jurisdiction by law over natural resources affected by the plan.

1091.4.5 Sustained Timber Production Assessment

(c) Each sustained timber production assessment shall include:

(1) A summary table of Wildlife Habitat Relationships compositions and stand structure types (WHR), or comparable stand structure types within forest vegetation types with their respective acreage. For an ownership's specific stand structure types, the RPF shall provide a written description of the stand structure and characteristics which define each type, and comparisons of those types to WHR typing. The WHR system, which is herein incorporated by reference, and its uses ~~is~~are described in "A Guide to the California Wildlife Habitat Relationships System", California Department of Fish and Game, March 1988.

Comment [CDFW11]: This references a DFG publication from before the name change to DFW in 2013. Changing Department of Fish and Wildlife here is at your discretion.

Comment [CDFW12]: Pieces of this document have been updated, but the document in its entirety has not. We suggest the addition of the web address where these documents can be found: https://www.dfg.ca.gov/biogeodata/cwhr/wildlife_habitats.asp

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1092.16 PTHP Review Inspection-Filing Return

Within ten (10) days of the receipt of a PTHP, the Director shall determine if the PTHP is accurate, complete and in proper order, and if so, the PTHP shall be filed. During this same period, the Director shall determine if a preharvest inspection is necessary. If a preharvest inspection is needed, the Department will notify the submitter, the Department of Fish and [WildlifeGame](#), the Department of Conservation, Division of Mines and Geology [*California Geological Survey*], the appropriate California Regional Water Quality Control Board, and the LTO who will operate under the plan, if known, to determine if they want to attend and to schedule a mutually agreeable time and date of the inspection. When the Director finds a PTHP inaccurate, incomplete, or otherwise not in proper order, the PTHP shall be returned to the submitter with written specifications of the deficiencies.

1092.18 Agency and Public Review for the PTHP

(a) Upon filing a PTHP in accordance with 14 CCR § 1092.16 the Director shall place it, or a true copy thereof, in a file available for public inspection, and shall transmit a copy to the Department of Fish and [WildlifeGame](#), the appropriate California Regional Water Quality Control Board, the Department of Conservation, Division of Mines and Geology [*California Geological Survey*], the Department of Parks and Recreation, the county planning agency and, if the areas are within their jurisdiction, to the California Tahoe Regional Planning Agency and the California Coastal Commission.

1092.27 Report Minor Deviations

(a) Minor deviations as described in 14 CCR 895.1 shall be submitted in writing to the Director before undertaking the deviation. Actions described in 14 CCR 1092.26 which are normally presumed to be substantial deviations may, in a given instance, be minor deviations. Actions listed as substantial deviations in 14 CCR 1092.26 or discussed in the PTEIR that are considered to be minor by the submitter may be undertaken only if requested in writing to and approved by the Director.

(b) The Director shall have five working days to determine if the proposed deviation is substantial or minor. Upon the date of receipt, the Director shall send copies of the proposed deviation to the Department of Fish and [WildlifeGame](#), the California Regional Water Quality Control Board, the Department of Conservation, Division of Mines and Geology [*California Geological Survey*], and any County which has special rules adopted under Section 4516.5 of the Public Resources Code.

1104.3 Timberland Conversion Permit Fees

The applicant shall pay an application fee in the amount of \$600 [NOTE: The fee is \$700 if the land is zoned TPZ, see 1105.1. Also, there are [DFWDFG](#) fees.] for the cost of processing an application for the conversion of timberland to a non-timber growing use. Where the land proposed to be converted lies within a TPZ, the applicant shall also follow the requirements of 14 CCR § 1105.1. The fee(s) shall be submitted with the application to the Environmental Coordinator at the appropriate CAL FIRE Review Team Office listed under 14 CCR § 1032. Where actual state cost exceeds the application fee, the

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additional charge equal to the excess cost will be computed using State Administrative Manual Sections 8752.1 and 8740 (dated March 1990). The Department will keep the applicant informed of any additional charges and will advise the applicant of any estimated future costs. All additional charges shall be paid by the applicant to the Department of Forestry and Fire Protection Accounting Office before the issuance of the Timberland Conversion Permit. Costs of recording the documents pursuant to this article shall be paid by the applicant.

1105.1 Application Fees

In addition to the requirements of Section 1104.3, the applicant shall pay a fee in the amount of \$100 for the cost of processing an application for conversion where the land proposed to be converted lies within a TPZ. *[NOTE: The total of CAL FIRE fees is \$700. There may be additional fees from [DFWDFG](#).]* Fees for the recording of documents pursuant to this article shall be borne by the applicant.