

California Department of Forestry and Fire Protection

Report to the Board of Forestry and Fire Protection on Recently Adopted Rules and Potential Changes to Existing Forest Practice Rules



THE VALLEY FIRE

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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.
- Suggested non-substantive corrections.
- Rule-related issues from CAL FIRE's past reports.

Recently Implemented Rules During 2015

There were five (5) rule packages that were implemented in 2015, as well as Technical Rule Addendum (TRA) #5 in support of the new Road Rules, adopted by the Board that took effect on January 1, 2015. Additionally the Office of Administrative LAW (OAL) has approved certain non-substantive changes (minor edits) that have been included in the 2015 Forest Practice Rules.

Road Rule, 2013

14 CCR §§ 895.1, 914.7 [934.7, 954.7], 914.8 [934.8, 954.8], 915.1 915.1 [935.1, 955.1], 916.3 [936.3, 956.3], 916.4 [936.4, 956.4], 916.9 [936.9, 956.9], 918.3 [938.3, 958.3], 923 [943, 963], 923.1 [943.1, 963.1], 923.2 [943.2, 963.2], 923.3 [943.3, 963.3], 923.4 [943.4, 963.4], 923.5 [943.5, 963.5], 923.6 [943.6, 963.6], 923.7 [943.7, 963.7], 923.8 [943.8, 963.8], 923.9 [943.9, 963.9], 923.9.1 [943.9.1, 963.9.1], 1034, 1051.1, 1090.5, 1090.7, 1092.09, 1093.2, 1104.1

The Board adopted this extensive regulation for the revisions of Title 14 California Code of Regulations (CCR) Subchapters 4, 5 and 6, Article 12 [Article Northern] for Logging Roads, Landings, and Logging Road Watercourse Crossings.

Rule implementation comments include:

- There has been some concern regarding the interpretation and implementation of 14 CCR § 923.4 (l) that states “Construction or reconstruction of logging roads or landings shall not take place during the winter period unless the approved plan incorporates a complete winter period operating plan pursuant to 14 CCR § 914.7 [934.7, 954.7] that specifically addresses such logging road or landing construction or reconstruction.” Although this regulation specifies a complete winter period operating plan, which is addressed under 14 CCR §§ 914.7(b) [934.7(b), 954.7(b)], the new Road Rules also provided language under 14 CCR §§ 914.7(c) [934.7(c), 954.7(c)] for an in-lieu of a winter operating plan that allows construction of logging roads, and landings. Since 14 CCR §§ 923.4 [933.4, 953.4] (l) only references the entire Section, and not subsections, The Department has interpreted this rule to include the use of the in-lieu option.
- Similarly, it is not clear how these rules apply to operations under an emergency notice in regard to in-lieu operations, exceptions or the ability to operate under a winter period operating plan.
- There is a concern that construction and/or reconstruction of roads or landings within a Watercourse and Lake Protection Zone (WLPZ) is no longer an in-lieu practice by removing such references from 14 CCR § 916.3 [936.3, 956.3] (c). Although 14 CCR § 923.1 [943.1, 963.1] restricts construction and reconstruction within a WLPZ, an exception may be proposed as per 14 CCR § 923 [943, 963] (c) and the standards of in-lieu practices describe under 14 CCR § 916.1 [936.1, 956.1] do not apply.

- The Appurtenant Road definition indicates appurtenant roads are only roads that are used for log hauling and do not include other roads where incidental timber operations are conducted such as used to access drafting locations and rock pits. As a result, this presents an enforcement discrepancy for roads that will not be used for log hauling.

Board of Forestry Technical Rule Addendum No. 5

Technical Rule Addendum No. 5 is located in the 2015 California Forest Practice Rules Book following 14 CCR §§ 923.9.1 [943.9.1, 963.9.1].

Rule implementation comments include:

- There has been positive reaction for the inclusion of Technical Rule Addendum No. 5 in regard to providing reference for achieving hydrologic disconnection through the planning and design of forest road drainage to minimize diversion potential and identify high risk watercourse crossings.

Modified Timber Harvesting Plan Amendments, 2013

14 CCR § 1051

This rule package expanded the use of the Modified THP by increasing the allowable acreage and the extent of operations for harvesting timber under this harvesting option.

- There have been no Modified Timber Harvesting Plans (THPs) submitted in 2015 that utilized the increased allowable size of a Modified THP from 100 to 160 acres.

Emergency Notice – Native American Notification Amendments, 2014

14 CCR §§ 895.1, 929.1, [949.1, 969.1], 1052

This rule package requires notification of Native Americans prior to the submission of an emergency notice for the salvage of timber; providing seven (7) days notification prior to the submittal of the notice to identify potential significant archaeological site within the operational area.

- There have been no signification problems with the implementation of this regulation. In regard to the requirement of 14 CCR §§ 929.1, [949.1, 969.1] (c) (3) to include an example of the notification letter; the Review Team was assured that proper notification was followed.

Slash Treatment Amendments, 2014

14 CCR §§ 917.2, [937.2, 957.2]

This rule package provided an additional year to burn piled slash created on or after September 1 of any given year.

- There is no indication from the Unit Foresters at this time that the revised rule created an increase fire risk or an issue in regards to enforcement.

Forest Fire Prevention Pilot Project Exemption, 2014

14 CCR §§ 1038(e), 1038.2(f), 1038(j)
 Assembly Bill 744

The Forest Fire Prevention Pilot Project Exemption became statute through Assembly Bill (AB) 744. There have been 9 Pilot Project exemption notices accepted through December 6, 2015, consisting of 1,470 acres.

Emergency Regulations Adopted and Implemented During 2015

Drought Mortality Amendments, 2015

14 CCR §§ 1038, 1052.1

This emergency rulemaking was developed, adopted, and implemented in 2015 in response to the severe tree mortality in California, especially in the Southern Forest District, due the severe drought conditions and beetle infestation. The emergency regulations authorized a new exemption for timber harvesting activity to remove dead and dying trees under 14 CCR § 1038(k), and included drought as a new condition that constitutes an emergency under 14 CCR § 1052.1(b) pursuant to 14 CCR § 895.1.

- The emergency regulation was enacted on July 13, 2015, and will expire on January 12, 2016. As of December 6, 2015, there have been 166 exemption notices accepted consisting of 42,618 acres.
- The Department shall continue to monitor and has reported to the Board on the statewide use of the exemption allowed under 14 CCR § 1038(k), including the number of harvest area acres, the areas of application and the degree of compliance.

Protection of Habitable Structure Exemption, 2015

14 CCR §§ 895.1, 1038, 1038.2

This emergency rulemaking action implemented Assembly Bill (AB) 1867 and exempts persons from the necessity of a timber harvesting plan pursuant of PRC § 4581 when they are engaged in the cutting or removal of trees that are between 150 and 300 feet of an approved and legally permitted habitable structure in compliance with Public Resources Code (PRC) sections 4290 and 4291.

- The emergency regulation was enacted on June 22, 2015 and will expire on December 21, 2015. There have been 9 Protection of Habitable Structure exemption notices accepted through December 6, 2015 to treat 27 acres.
- The Board adopted similar permanent rule language as the Protection of Habitable Structure Exemption, 2015, which was approved by OAL on November

3, 2015, and will be effective on January 1, 2016, with an expiration date of January 1, 2019.

- The Department shall evaluate the effects of the exemption allowed under 14 CCR 1038(c)(6) including frequency and state-wide distribution of use, acres treated, compliance, professional judgment regarding post-treatment stand conditions observed relative to moderating fire behavior and actual performance in the event of a wildfire. The Department shall report annually to the Board its findings based on this evaluation.

Water Drafting Emergency Regulations, 2015

14 CCR §§ 916.2 [936.2, 956.2]

This emergency rulemaking action created subdivision 14 CCR §§ 916.2(d) [936.2(d), 956.2(d)] amending Protection of the Beneficial Uses of Water and Riparian Functions for water drafting activities. These emergency regulations were the readoption of the emergency rulemaking action taken during 2014, for the severe drought condition throughout the State.

- The emergency regulation became effective on September 4, 2015, and will expire on March 2, 2016.
- There are no known significant problems associated with plan submittal and/or implementation of the emergency regulation.

Statutory Changes For 2015

In addition to the rules adopted by the Board, nine (9) bills have been revised or added sections to portions of the Z'berg-Nejedly Forest Practice Act, which were:

Assembly Bill (AB) 1867

Public Resources Code (PRC) § 4584,

This bill amended PRC § 4584 subsection (i), by adding paragraph (6). This statute extends the Fire Safe Exemption for an area between 150 and 300 feet. The bill included language directing the board to adopt regulations to implement this paragraph no later than January 1, 2016. This paragraph shall become inoperative three years after the effective date of regulations adopted by the board pursuant to subparagraph (D) but no later than January 1, 2019.

Assembly Bill (AB) 2031

Public Resources Code (PRC) § 4629.5

This statute revised AB 1492 PRC § 4629.5, which became law on January 1, 2015, superseding the revised PRC § 4629.5 included in Senate Bill (SB) 861 that took effect on June 20, 2014.

Assembly Bill (AB) 2082

Public Resources Code (PRC) § 4561.2

This statute created PRC § 4561.2, which allows the Board to adopt alternative stocking standards to meet the purposes of the Resource Conservation Standards.

Assembly Bill (AB) 2112

Public Resources Code (PRC) § 4590

This statute amended PRC § 4590 to clearly state that the effective period of a timber harvesting plan may be extended if the notice of extension is provided to the department not sooner than 140 days, but at least 10 days, prior to the expiration date of the plan.

Assembly Bill (AB) 2142

Public Resources Code (PRC) § 4584.1

This statute created PRC § 4584.1 that added the four coastal counties of Del Norte, Humboldt, Mendocino, and Sonoma to be included for a Forest Fire Prevention Pilot Project Exemption. This was an urgency statute that was effective upon the Governor's signature and this provision was included in the FFP Pilot Project rule package that the Board adopted.

Assembly Bill (AB) 2239

Public Resources Code (PRC) §§ 4593.10, 4597.9

This statute amended PRC §§ 4593.10 and 4597.9 regarding the noticing requirements of a change of ownership for a Nonindustrial Timber Management Plan (NTMP), and a Working Forest Management Plan (WFMP).

Senate Bill (SB) 861

Public Resources Code (PRC) §§ 4629.5, 4629.6, 4629.7, 4629.8

This statute was a trailer bill that that took effect immediately on June 20, 2014 relating to the budget and revised AB 1492 statute under PRC Sections 4629.5, 4629.6, 4629.7, and 4629.8 regarding fee collections and funds.

Senate Bill (SB) 862

Public Resources Code (PRC) §§ 4629.5,

This statute created Article 7.8 for the Program Timberland Environmental Impact Report (PTEIR) for carbon sequestration and fuel reduction program. The statute authorizes the Board to promulgate regulations as necessary to facilitate this program, which the Board may adopt as emergency regulations.

Senate Bill (SB) 1345

Public Resources Code (PRC) § 4597.22

This statute amended PRC § 4597.22 to clearly state that Article 7.7 for the WFMP does not apply to the Southern Subdistrict of the Coast Forest Practice District.

Suggested Non-Substantive Corrections

1. 14 CCR § 895.1 Definitions

Cutover Land

AB 1414 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.”

2. 14 CCR §§ 912.5, 932.5, 952.5 Procedure for Estimating Surface Soil Erosion Hazard Rating

These rule sections contain an incomplete name for the Board and out-dated address information.

3. 14 CCR § 914.1(d) [934.1(d), 954.1(d)] - Felling Practices

This rule section mentions conformance with 14 CCR § 914.4 [934.4, 954.4] with regards to nest sites, whereas it should mention 14 CCR § 919.2 [939.2, 959.2].

4. 14 CCR § 916.5(e) [936.5(e), 956.5(e)] - Procedure for Determining Watercourse and Lake Protection Zone (WLPZ) Widths and Protective Measures

This rule section describes protection measures that apply to classified watercourses. Protection measure “D” still mentions “watersheds with threatened or impaired values,” whereas it should mention watersheds with listed anadromous salmonids.

5. 14 CCR § 916.9(v)(7)(A) [936.9(v)(7)(A), 956.9(v)(7)(A)] - Site-specific measures or nonstandard operational provisions

This rule section mentions the California Administrative Code, which is now called the California Code of Regulations.

6. 14 CCR § 921.1 - Preliminary Field Work and Timber Harvesting Plans

This rule section refers to the outdated California Administrative Code twice.

7. 14 CCR § 926.21 Exemptions From Timber Harvesting Plan Requirements [Santa Cruz County]

This section applies to an obsolete 14 CCR § 1038(c), which was deleted by the Board and replaced with the “Fire Safe Exemption” effective 7/1/2000.

8. 14 CCR § 953.9 - Successive Cutting

This rule section cites an outdated rule—14 CAC § 1076—relative to a report of satisfactory stocking. The correct reference should be 14 CCR § 1075.

9. 14 CCR § 1020 - Board Authority Delegated

This definition currently lacks the complete name of the Board. It does not have the “and Fire Protection” part.

10. 14 CCR § 1024.5 - Insurance Maintenance

This rule section refers to a specific section of the Public Resources Code, but fails to state the code name. It merely states “subsection (c) of section 4572.”

11. 14 CCR §§ 1037.3(a) - Agency and Public Review, 1037.5(a) - Review Teams to be Established, 1090.17(a) - Agency and Public Review for the NTMP, 1092.16 - PTHP Review Inspection-Filing Return, 1092.18 - Agency and Public Review for the PTHP, 1092.27 - Report Minor Deviations

All of these rule sections mention the Department of Conservation, Division of Mines and Geology, which is now known as the California Geological Survey.

12. 14 CCR § 1051.1(c) - Contents of Modified THP

This rule section needs an additional word in order to make the sentence grammatically correct. “[A]nd that the preparations” needs to be changed to “and that in the preparation.”

13. 14 CCR § 1051.5(e)(3) - Contents of Modified THP for Fuel Hazard Reduction

This rule section contains out-dated address information.

14. 14 CCR § 1052.3(b) - Emergency Notice For Insect Damaged Timberlands

This rule section allows for a 60-day extension of an existing emergency notice. The rule section was made invalid by changes operative 1-1-98, Register 97, Number 48, to Section 1052.

15. 14 CCR § 1054.3 - Filing of Request for Hearing

This rule section contains an incomplete name for the Board and out-dated address information.

16.14 CCR §1055(a) - County Appeals Procedures

This rule section contains out-dated address information.

17.14 CCR § 1055.2 - County Appeal Hearing Procedures-Scheduling

This rule section contains a reference to the outdated CAC and to a rule section that has been re-numbered. 14 CCR § 1055.8 was renumbered to 1055.3 operative on 10-27-90.

18.14 CCR § 1056(a) - Head of Agency Appeals Procedure

This definition currently lacks the complete name of the Board. It does not have the “and Fire Protection” part.

19.14 CCR § 1056.1 - Hearing on Head of Agency Appeal

This definition currently lacks the complete name of the Board. It does not have the “and Fire Protection” part.

20.14 CCR § 1080 - Substantially Damaged Timberlands

This rule section was re-numbered to 14 CCR § 895.1 in 2000, so it is no longer needed.

21.14 CCR § 1090.10(d) - Registered Professional Forester Responsibility

This rule section is missing several words. CAL FIRE currently uses the following bracketed words to provide the correct context: “The RPF preparing the Notice shall, in writing, inform the plan submitter(s) of their responsibility pursuant to Section [1090.9] of [this] Article [6.5] for compliance with the requirements of the Act and, where applicable, Board rules regarding site preparation, stocking, and maintenance of roads, landings, and erosion control facilities.”

22.14 CCR § 1100(e), (f), and (m) - Definitions

These definitions related to timberland conversions all mention sections of the Government Code that do not exist. The Board should amend each of these definitions to mention the correct code sections.

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

23. 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.

24. 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.

25. 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)].

26. 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.

a. 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.

b. 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.

c. 14 CCR § 926.9(b) - Hours of Work [First reported in 2012.]

The Board adopted regulations that became effective in 2012 to allow timber operations on the nationally observed Columbus Day holiday state-wide in counties that heretofore had prohibited it. CAL FIRE notes that 14 CCR § 926.9(b) still restricts timber operations to certain hours within Santa Cruz County on nationally designated legal holidays, such as Columbus Day. This rule section should be amended to be consistent with others county rules that allow timber operations on Columbus Day.

d. 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.

e. 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.

f. 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 4th sentence should be changed to use the proper verb, “affect,” in place of “effect.”

g. 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.

h. 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.

i. 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.

j. 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

27. 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.

28. 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.

29. 14 CCR §§ 917.9, 937.9, 957.9 - Prevention Practices

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 the Office of Administrative Law to correct this mistake.

30. 14 CCR § 923.5(g) [943.5(g),963.5(g)] – Missing Word [First Reported in 2012]

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.”

31. 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.

32. 14 CCR § 1051.4(a)(2) – Incorrect Rule Reference

This rule contains an incorrect rule reference. The rule reference 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. The Board should correct this rule reference.

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

33.14 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).



STATE BOARD OF EQUALIZATION

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BETTY T. YEE
State Controller

CYNTHIA BRIDGES
Executive Director

December 4, 2015

Board of Forestry and Fire Protection
Attn: Matt Dias
Acting Executive Officer
P.O. Box 94244-2460
Sacramento, CA 94244-2460

Re: BOF Regulations and Priority Review

Dear Mr. Dias,

To enable the State Board of Equalization (BOE) to efficiently and fairly administer the Timber Yield Tax Law, the BOE requests that the following changes be made to the Forest Practice Rules:

1. When **multiple** Timber Owners are listed under Item #1 of all planning options (THP's, NTO, NTMP, Emergency Notice and Exemptions) that a map be included that designates the location of each Timber Owner's ownership and the plan acreage of each Timber Owner.
2. When an NTO is filed for a Non-Industrial Timber Management Plan, that the number of acres be included with the legal description (part D).

The number of acres is necessary to determine whether a Timber Owner is eligible for a low volume per acre deduction in our Harvest Value Schedules. The development of these schedules is required by statute. Not having the ownership boundaries and associated plan acreages makes meeting the BOE's statutory obligations unduly difficult. Currently this information is not required if there are multiple Timber Owners (just the total number of acres of the planning option is required). Additionally, the acreage of a NTO is currently not required as well.

The BOE feels that this information is likely already known by the person(s) preparing the planning option and that it would not be an undue hardship to include it in the document.

Thank you for allowing us to participate in the process and let us know what additional information you may need.

Sincerely,

Art Tenneson
Senior Forest Property Appraiser, RPF #2240
Timber Tax Section



Since 1907

December 3, 2015

California Board of Forestry and Fire Protection
Attn. Matt Dias
Acting Executive Officer
P.O. Box 944246
Sacramento, CA 94244-2460

RE: Board Request for Comments on Regulatory Issues.

Dear Mr. Dias and Board Members,

Thank you for the opportunity to comment on current regulatory issues and the interpretation of regulatory standards.

The Redding Review Team for the past couple of years has implemented a policy to accept correspondence until noon on Friday for reviews that will happen the following week. I believe this does not adhere to the timelines that are required by the Forest Practice Rules. Specifically, 14 CCR 1037.4 describes the minimum timeframe for the Director's Determination:

The Director shall have 30 days from the date the initial inspection is completed (ten of these days shall be after the final interagency review), or in the event the Director determines that such inspection need not be made, 15 days from the date of filing of an accepted plan in accordance with 14 CCR § 1037, or such longer period as may be mutually agreed upon by the Director and the person submitting the plan, to review the plan and take public comment. After the initial review and public comment period has ended, the Director shall have up to fifteen working days, or a longer period mutually agreed upon by the Director and the person submitting the plan, to review the public input, to consider recommendations and mitigation measures of other agencies, to respond in writing to the issues raised and to determine if the plan is in conformance with the applicable rules adopted by the Board. The Director shall insure that an interdisciplinary review team has had an opportunity to review each plan. The Director shall review and consider the recommendations made on each plan by the interdisciplinary review team before determining if the plan conforms to the rules of the Board. The Director shall consider all written comments regarding the plan.

The first sentence states that if an initial inspection (also known as the pre-harvest inspection) is not necessary, there will be 15 days from the date of filing for the Director to take public comment and review the plan.

Recently, we submitted an amendment where a pre-harvest inspection was deemed to be unnecessary and where 4 questions were directed to the RPF. The amendment was filed on August 13, 2015 and Second Review was scheduled for August 27, 2015 (15 days after filing as required by rule). The First Review report and questions were posted on the FTP site on August 14, 2015 and postmarked August 17, 2015. The RPF received the mailed copy on Tuesday, August 18, 2015. The First Review Report states that all responses relative to that report must be received at the Redding office no later than the Friday before Second Review (that Friday was August 21, 2015) and refers to PRC 4582.7 as their authority.

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(530)335-2882*

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PRC 4582.7(a) states:

Review of plan; public comments; time; hearing; determination by board and director.

(a) The director shall have 30 days from the date that the initial inspection is completed (10 of these days shall follow the date of the final interagency review) or, if the director determines that the inspection need not be made, 15 days from the date of filing, as specified in Section 4604, or a longer period mutually agreed upon by the director and the person submitting the timber harvesting plan, to review the plan and take public comments. After the final review and public comment period has ended, the director shall have up to 15 working days, or a longer period mutually agreed upon by the director and the person submitting the plan, to review the public input, to consider recommendations and mitigation measures of other agencies, to respond in writing to the issues raised, and to determine if the plan is in conformance with the rules and regulations of the board and with this chapter.

This rule does not give the Review Team the authority to restrict acceptance of RPF correspondence due to in-house policy.

In the example provided above, in regard to the 15 day review and comment period, the RPF was given 7 days at most, if he happened to check the FTP site, or as little as 3 days if he relied on the mail, to respond to First Review questions. The RPF hand delivered his responses on August 26, 2015. Second Review was actually held on August 26, 2015, which was one day early. Because the Review Team determined the RPF submitted his responses too late, they are now allowed to review the RPF responses at their leisure. In this case, the Review Team finalized review and approved the amendment on October 8, 2015, over 4 weeks later.

Another example of the Redding Review team determining their own timelines is when Second Review is held after a PHI. We currently have a plan that is in review. The PHI was held on 11/19/2015. Second review is supposed to be held 20 days after the PHI, which would be December 9, 2015. However, as this letter is being written, FGS just received via email, that Second Review was held today, December 3, 2015. This is seven days early. FGS responded to the Review Team, stating that it should be held next week. Their response was that since Second Review is only held on Thursdays and December 9, 2015 is Wednesday, the review is moved up a week. Now combine this with their "Friday before" policy. The RPF needed to have the PHI responses submitted before noon on November 27, 2015. The RPF received the electronic PHI recommendations from the inspector on November 23, 2015. The mailed copy of the recommendations were mailed on November 25, 2015 and were received on Monday, November 30, 2015 (three days after the date the responses would have had to be in). At best, the RPF had 4 days to submit his responses to the PHI recommendations out of a required 20 day period. Now, since the RPF has missed Second Review, even though it should not be held until next week, the Review Team can now review the responses to the PHI at their leisure with no regard to any timeframes.

It is inappropriate for the Review Team to arbitrarily restrict when they will accept RPF correspondence during a review period. In the examples above, the only required correspondence is from the RPF. Would the Review Team deny or refuse to accept a letter from the public after the Friday before? Of course not. Then why are they allowed to refuse correspondence from the RPF during the timeframe of the Review Period? It is also inappropriate to adjust or constrict timelines that are clearly defined by the rules. By illogically reducing the timeframes, the Review Team is guaranteeing that Review will actually take longer and is burdening landowners.

Thank you for opportunity to comment and for your efforts in clarifying the interpretation of review timelines.

Sincerely,



Dean Lofthus
RPF #2514
Area Forester
Fruit Growers Supply Company



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

Matt Dias, Acting Executive Officer
California Board of Forestry and Fire Protection
December 7, 2015
Page 2

Enclosure

cc: Duane Shintaku, Deputy Director
California Department of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

Dennis Hall, Assistant Deputy Director
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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 ~~Wildlife~~[Game](#), 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):

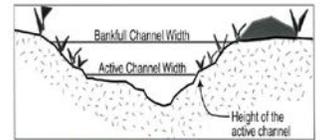
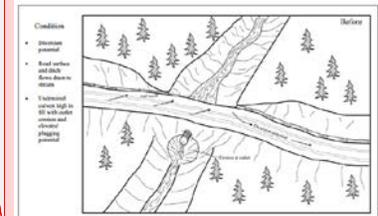


Figure 6-3. Active channel width versus bankfull channel width.

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.

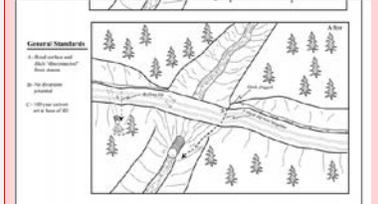


Figure 8-13. Typical upgraded stream crossing.

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

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&G 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.

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.

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.

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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.

Jason Poburko, RPF

P.O. Box 244
Weaverville, CA
96093

Telephone: (530) 623-3105
E-mail: jpoburko@gmail.com

December 7, 2015

State Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

Attention: **Dr. Gilles, Chairperson**
Re: Request for comments on interpretation and regulatory standards contained in the FPRs.

My name is Jason Poburko and I am offering this public comment, as a Registered Professional Forester (RPF).

This title and its qualification were established by the CA legislature via the Professional Foresters Law and chaptered in California law in the Public Resource Code Sections 750-783, Administration, Chapter 2.5

This qualification is similar to other state laws governing right to title and practice, such as the Professional Engineers Law. However, this qualification is unique, in that it is only held by approximately 1,200 persons in the State of California.

An RPF is a person knowledgeable in a wide range of studies such as biology, ecology, entomology, geology, hydrology, dendrology, silviculture, engineering, business administration, forest economics, and other natural resource subjects. RPFs use their well-rounded education and experience to maintain the sustainability of forest resources like timber, forage, wildlife, water, and outdoor recreation to meet the needs of the people while protecting the biological integrity and quality of the forest environment.

My working career spans over 15 years of practice within the jurisdiction of this Board. I am also a member and past president of the California Licensed Foresters Association (CLFA) which represents many of the RPFs that work within the jurisdiction of the Board.

Though these are my personal comments, I am sure that they may be echoed by many other foresters, industry representatives and private forest landowners.

Since the ASP rules went into effect, sufficient time has passed to allow for an evaluation of their on-the-ground implementation and evaluate components of the rules that may be unnecessarily burdensome or those that provide little or no benefit to the review team in the evaluation of compliance with the rules goals or the evaluation of significant impacts to fisheries resources as a result of the project.

14 CCR 916.4, 936.4, 956.4 **Watercourse and Lake Protection [All Districts](a)(2)** is a prime examples, that results in extraneous data collection, at the landowners expense, that has no function pertaining to the compliance of any other rule.

916.4, 936.4, 956.4 Watercourse and Lake Protection [All Districts]

(a) The RPF or supervised designee shall conduct a field examination and map all lakes and Class I, II, III, and IV watercourses.

(1) As part of this field examination, the RPF or supervised designee shall evaluate areas near, and areas with the potential to directly impact, watercourses and lakes for sensitive conditions including, but not limited to, existing and proposed roads, skidtrails and landings, unstable and erodible watercourse banks, unstable upslope areas, debris jam potential, inadequate flow capacity, migrating channels, overflow channels, flood prone areas, and riparian zones wherein the values set forth in 14 CCR § 916.4 [936.4, 956.4], subsection (b) are impaired. The RPF shall consider these conditions, and those measures needed to maintain, and restore to the extent feasible, the functions set forth in 14 CCR §§ 916.4(b) [936.4(b), 956.4(b)], when proposing WLPZ widths and protection measures. The plan shall identify such conditions, including where they may interact with proposed timber operations, that individually or cumulatively significantly and adversely affect the beneficial uses of water, and shall describe measures to protect and restore to the extent feasible, the beneficial uses of water. In proposing, reviewing, and approving such measures, preference shall be given to measures that are on-site, or to offsite measures where sites are located to maximize the benefits to the impacted portion of a watercourse or lake.

(2) As part of this field examination, the RPF or supervised designee shall map the location of spawning and rearing habitat for anadromous salmonids, and the condition of the habitat shall be evaluated using habitat typing that at a minimum identifies the pool, flatwater, and riffle percentages. The opportunity for habitat restoration shall be described within the plan for each Class I watercourse, and for each Class II watercourse that can be feasibly restored to a Class I.

The exercise of measuring the pool, flatwater, and riffle percentages, should be reconsidered by the Board and may be determined to be extraneous to the goal of anadromous protection and subsequently removed from the FPRs.

The information is simply collected at the landowners' expense for no other use or appurtenance to any other rule compliance. Given the limitations of operations within the Class I and Class II(L) watercourse protection zones, under the ASP rules, operations are unlikely to affect these percentages, which are a function of the geo-fluvial processes at play in a given flow regime that is beyond the control of the single landowner.

The following strike out text has been provided to guide the potential revision sought.

916.4, 936.4, 956.4 Watercourse and Lake Protection [All Districts]

(a) The RPF or supervised designee shall conduct a field examination and map all lakes and Class I, II, III, and IV watercourses, within the THP Area.

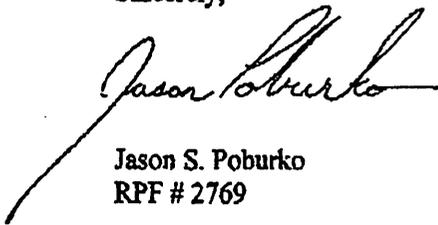
(1) As part of this field examination, the RPF or supervised designee shall

evaluate areas near, and areas with the potential to directly impact, watercourses and lakes for sensitive conditions including, but not limited to, existing and proposed roads, skidtrails and landings, unstable and erodible watercourse banks, unstable upslope areas, debris jam potential, inadequate flow capacity, migrating channels, overflow channels, flood prone areas, and riparian zones wherein the values set forth in 14 CCR § 916.4 [936.4, 956.4], subsection (b) are impaired. The RPF shall consider these conditions, and those measures needed to maintain, and restore to the extent feasible, the functions set forth in 14 CCR §§ 916.4(b) [936.4(b), 956.4(b)], when proposing WLPZ widths and protection measures. The plan shall identify such conditions, including where they may interact with proposed timber operations, that individually or cumulatively significantly and adversely affect the beneficial uses of water, and shall describe measures to protect and restore to the extent feasible, the beneficial uses of water. In proposing, reviewing, and approving such measures, preference shall be given to measures that are on-site, or to offsite measures where sites are located to maximize the benefits to the impacted portion of a watercourse or lake.

(2) ~~As part of this field examination, the RPF or supervised designee shall map the location of spawning and rearing habitat for anadromous salmonids, and the condition of the habitat shall be evaluated using habitat typing that at a minimum identifies the pool, flatwater, and riffle percentages.~~ As part of this field examination, the RPF or supervised designee shall identify the opportunity for feasible habitat restoration which shall be described within the plan for each Class I watercourse, and for each Class II watercourse that can be feasibly restored to a Class I.

Again it is my utmost hope that these comments are offered as constructive. I look forward to opportunity to work with the FPC on matters pertinent to this and other potential rule revisions to provide a compliant and efficient process for landowners, Foresters and agency representatives.

Sincerely,



Jason S. Poburko
RPF # 2769



November 5, 2015

Board of Forestry and Fire Protection
Attn: Matt Dias
Acting Executive Officer
P.O. Box 944246
Sacramento, CA 94244-2460

Re: BOF Regulations and Priority Review

Dear Mr. Dias,

Thank you for circulating the recent announcement requesting public comment on interpretation of regulatory standards among other topics.

During the course of THP review in Mendocino County, an interpretation issue of a rule in regards to the variable retention silvicultural method has come up periodically. 14 CCR 913.4(d)(3)(H) describes stocking standards when the plan relies on natural seedfall:

(H) For areas where the plan relies on natural seedfall to obtain regeneration, dispersed retention trees shall meet the standards of 14 CCR § 913.1 [933.1, 953.1](c)(1). Where retention is aggregated, retained aggregates shall meet the standards of Commercial Thinning required under 14 CCR § 913.3 [933.3, 953.3](a) including (a)(1)(A) or (a)(1)(B).

The first sentence is clear the stocking standards of 14 CCR 913.1(c)(1) must be met if natural seedfall is being relied upon when dispersed retention is applied. The second sentence has been interpreted as a “stand alone” requirement whether natural or artificial regeneration is being implemented. It is logical aggregate retention areas should contain an adequate stocking of conifers if natural regeneration is being relied upon. However, periodic reviews of THPs have resulted in a requirement for aggregate retention areas to meet the standards of commercial thinning when artificial regeneration is be implemented. This letter requests the correct interpretation of this rule.

If the statement “For areas where the plan relies on natural seedfall to obtain regeneration,” applies to both sentences, a potential solution is to format the regulation in this way (new language underlined):

(H) For areas where the plan relies on natural seedfall to obtain regeneration, the following stocking standards shall apply:

- 1) dispersed retention trees shall meet the standards of 14 CCR § 913.1 [933.1, 953.1](c)(1).*
- 2) where retention is aggregated, retained aggregates shall meet the standards of Commercial Thinning required under 14 CCR § 913.3 [933.3, 953.3](a) including (a)(1)(A) or (a)(1)(B).*

Thank you for your efforts in clarifying the interpretation of this regulation.

Sincerely,

John Andersen
Director, Forest Policy
Mendocino/Humboldt Redwood Companies