

### **Forest Practice Committee (FPC)**

*The mission of the FPC is to evaluate and promote an effective regulatory system to assure the continuous growing and harvesting of commercial forests and to protect soil, air, fish and wildland, and water resources.*

**DRAFT DATED: January 24, 2016**

### **COMPLETED OR SUBSTANTIALLY COMPLETED IN 2015/2016:**

The Forest Practice Committee and the Management Committee became a joint committee in May of 2016. This action was necessary due to limitation of staff available to provide sufficient support each Board standing committee. Priorities from each committee list were addressed by the joint Forest Practice/Management committee, though progress on each issue brought forth was measureable lessened given the commit time available for each subject matter. It is anticipated that the Management and Forest Practice Committees will be assume separate standing committee roles during the mid to latter half of 2017.

#### **1. Permanent Rule Making for Drought Mortality Amendments (14CCR 1038(k))**

**Status:** Emergency Regulations were set to expire on April 12, 2016. The Forest Practice Committee developed a draft regulatory proposal that we forwarded to the Full Board for consideration and subsequent to a public comment period, were adopted by the Full Board. The regulations will become effective on January 1, 2017.

#### **2. Oak Woodland Management**

**Objective/Status:** After abandoning a draft policy in regards to Oak Woodland Management (in 2014) after concerns were brought forth by the Department the Forest Practice A special silvicultural prescription (new rule) addressing the matter is currently under review in committee and anticipated to be presented to the full Board in 2016.

#### **2. 14 CCR § 1038 - Fire Hazard Reduction for Habitable Structures**

**Status:** This rulemaking effort made permanent, previously adopted emergency regulations that provided an exemption, from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC §§ 4585 and 4587) of the Forest Practices Act. This exemption applies to a person engaging in the cutting or removal of trees between 150 ft and 300 ft of an Approved and Legally Permitted Habitable Structure contingent upon certain conditions for the purposes of reducing flammable materials and maintaining a fuel break.

#### **3. Emergency Drought Mortality Amendments, 2015**

~~**Status:** 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.~~

#### ~~4.—Emergency Water Drafting Regulation, 2015~~

~~**Status:** 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 result of a readoption of the emergency rulemaking action taken during 2014, for the severe drought condition throughout the State.~~

#### ~~5.—Rule Alignment, 2015~~

~~**Status:** This rulemaking improved the implementation of the Forest Practice Rules for the regulated public and the Department through modifications to the existing Forest Practice Rules. It makes consistent inconsistencies, corrects errors, and populates omissions. In addition, the proposed action makes specific statute, specifically PRC § 4590, regarding the effective period of a plan, and updates the rules to be consistent with statute, specifically PRC § 4584. The proposed action also includes the addition of drought as one of the conditions that constitute an emergency.~~

### **PRIORITY 1:**

#### ~~6.—Permanent Rule Making for Drought Mortality Amendments (14CCR 1038(k))~~

~~**Objective:** To provide private landowners and state managers an expedited permitting vehicle to support the expedited removal and potential commercialization of dead trees in light of the unprecedented drought mortality across the forested regions of the state.~~

~~**Status:** Emergency Regulations are set to expire on April 12, 2016. The Forest Practice Committee is dedicated to developing permanent regulatory standards to address drought mortality in early 2016.~~

#### ~~7.—Oak Woodland Management~~

~~**Objective/Status:** During 2014 the FPC allotted portions of several committee meetings to the development of a Draft Oak Woodland Policy for Full Board consideration. Specifically the intent of the Policy and any necessary related actions is to facilitate the management and conservation of white and black oak woodlands currently being lost to conifer encroachment in the absence of a regular low intensity fire regime. During Board deliberation on the matter Cal Fire presented concerns in relation to language contained within the Draft Policy in relation to Maximum Sustained Production and mandatory stocking with Group A species. The issue was remanded back to FPC for further~~

~~consideration and a potential regulatory solution. The matter was periodically discussed throughout 2015, with presentations given and a field tour being conducted to aid in further refining the best course of action. A special silvicultural prescription (new rule) addressing the matter is currently under review in committee and anticipated to be presented to the full Board in 2016.~~

**3. Oak Woodland Management Exemption (14 CCR 1038) and Reporting on Exemption and Emergency Notices.**

**Objective /Status:** ~~AB 1958 was chaptered by the administration in 2016 amending PRC 4584. These amendments authorize the Board to develop an exemption under 14 CCR 1038 for California black and Oregon white oak woodland management. The Forest Practice Committee has begun work on developing a draft regulatory proposal for the Full Board to review and potential move through the rulemaking process during the first half of 2017. Additionally, AB 1958 requires the Board and CAL FIRE to work cooperatively on evaluating and report to the legislature by December 31, 2017 on the use and effectiveness of the available exemptions and emergency notices that are currently available under Board rules and regulations.~~

**4. Forest Fire Prevention Pilot Project Exemption (14 CCR 1038) and Reporting on Exemption and Emergency Notices.**

**5. Objective /Status:** ~~AB 2029 was chaptered by the administration in 2016 amending PRC 4584. These amendments authorize the Board to revise an existing exemption under 14 CCR 1038 for Forest Fire Prevention Pilot Projects. The Forest Practice Committee has begun work on developing a draft regulatory proposal for the Full Board to review and potential move through the rulemaking process during the first half of 2017. Additionally, AB 2029 requires the Board and CAL FIRE to work cooperatively on evaluating and report to the legislature by December 31, 2017 on the use and effectiveness of the available exemptions and emergency notices that are currently available under Board rules and regulations~~

**8.6. Regulatory amendments for permanent T/I rules: Cumulative Effects (14 CCR § 916.9 (d)).**

**Objective/Status:** ~~Review of current status of the Forest Practice cumulative impacts assessment process including potential updates (revisions) to Technical Rule Addendum No. 2. Additionally, the FPC will be tracking and requesting updates from the Resources Agency on the progress of AB1492 Working Groups on the issue of Cumulative Effects. The following are targets of the AB 1492 Working Groups that the FPC will be tracking:~~

- Working Group Charters Completed (June 2015)
- Working Group Draft Work Plans Completed (~~September 2015~~ Updated Periodically)
- Background paper on approaches to ecological performance measures completed (~~Mid 2016~~ First Quarter 2017)
- Public Scoping Workshop on Ecological Performance Measures (First Quarter 2017~~Mid 2016~~)
- Public Workshop on First Draft of Ecological Performance Measures (Early-Late 2017)

- Public Workshop on Second Draft of Ecological Performance Measures and Proposed Implementation Plan and Adaptive Management Approach (~~Fall 2017~~Mid-2018)
- Completed Ecological Performance Measures, Implementation Plan, and Adaptive Management Approach (Early 2018)
- Complete planning ~~watershed~~ Watershed pilot Pilot project Project (end of 2017 or (preferably) earlier)

**9. Non-substantive revisions to the FPRs:**

~~**Objective:** Both CDFW and the Department provided comment on a myriad of non-substantive revisions within the FPRs. These revisions consist of minor errors and/or omissions within existing regulation. In 2016 the Forest Practice Committee will seek to accomplish a package of minor revision to further clarity and consistency amongst Board regulations.~~

**10.7. 14 CCR § 1035.1, 1035.2, 1035.3, 1035.4. LTO's have reported that they have been cited by state regulatory agencies with responsibility and liability for violations, errors, or other wrongful actions taken to comply with a Timber Harvest Plan or other timber management document, where the LTO was following the direction of a Registered Professional Forester (RPF) in taking the action.**

**Objective:** This issue was introduced to the FPC in June of 2014. The issue was remanded to the Professional Foresters Examining Committee (PFEC) for further investigation, with the direction to the PFEC to report back to the FPC with potential findings or options for solutions to the issue. The FPC received a report back, along with recommendation from the PFEC in late 2015. The FPC continues to review the recommendations from PFEC and expect to make a recommendation to the Full Board in early 2016 on how to proceed in this matter.

**PRIORITY 2:**

**1. 14 CCR § 1054.8 – Order of the Board**

**Objective/Status:** The Department has requested that the Board consider amending this rule section for purposes of obtaining consistency with PRC § 4582.7(d) and 14 CCR § 1037.6. Additionally, the Department has requested that the Board take into consideration the lack of consistency between PRC § 4582.7(d) and 14 CCR § 1037.6 with current CEQA Guidelines and case law as they pertain to re-circulation of a Plan with substantial new information. No progress to date.

**11.2. Consistency of NSO rules with USFWS guidance and Definition of Activity Center**

**Objective/Status:** FPC recommended publication of a 45 Day Notice of Rulemaking for the “Activity Center Definition” rule proposal in 2013. The Board subsequently authorized the publication of the 45 Day Notice, but has postponed publication of the Notice in anticipation of the Fish and Game Commission’s pending adoption of findings in regards to a petition filed requesting state listing of NSO. The Commission may adopt finding on this matter in April/May of 2016.

The FPC will continue review of the NSO rule consistency issues in 2016 once the Commission has adopted a finding in regard to candidacy for state listing.

**12.3. Stocking levels – Existing Stocking Standards may be too high to achieve landowner goals within some forest types.**

**Objective/Status:** The request has been made to investigate the current stocking standards as they relate to various regeneration methods and fuel hazard reduction within certain forest types. Recent legislative mandates (AB 2082, 2014 and AB 417, 2015) were chaptered by the Administration which provides the Board the authority to review required minimum stocking standards pursuant to PRC 4561. No progress to date.

**13.4. Watercourse and Lake Protection Rule Review , including:**

- a. 14 CCR § 916.9(s) [936.9(s), 956.9(s)] [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... *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. Defer to the county in these situations? Restriction of timber operations in the WLPZ affects timber operations conducted in compliance with defensible space regulations. There appears to be a conflict between this subdivision and PRC § 4291 and 14 CCR § 1299.*
- b. Should mechanical feller-bunchers be classified as "heavy equipment" in WLPZs?
- c. Mapping of Class III Watercourse crossings. Language in 14 CCR § §1034(x)(7) and 916.4 [936.4,956.4] need to be considered and potentially reconciled for purposes of consistency.
- d. Review the necessity and utility of assessing and mapping standards of 14 CCR § 916.4 for spawning and rearing habitat for anadromous salmonids.

**Objective/Status:** No progress to date.

**14.5. Review the regulatory history, implementation, and future of 14 CCR § 916.11; Monitoring for Adaptive Management in Watersheds with Coho Salmon**

**Objective/Status:** The rule requires the Board develop a monitoring and adaptive management program for timber harvesting operations in watersheds with coho salmon. Multiple purposes for this program are stated within the Rule. The Board has since established a new science-based multi-stakeholder and multi-disciplinary Effectiveness Monitoring Committee (EMC) for the purpose of reviewing the efficiency and effectiveness of the Board's Forest Practice Rules relative to forestry and environmental protection including the protection of watershed resources critical to listed species such as coho salmon. The FPC will review the history and requirements of 14CCR 916.11 to ensure the mission and activities of the EMC adequately address the purposes stated for this Rule and if any additional specific Board action is necessary.

**15.6. 14 CCR § 913.4(d) - Variable Retention silviculture**

**Objective/Status:** Several questions have been raised regarding implementation of this Special Prescription: (1) should the Variable Retention regulation specify a minimum re-entry period for designated retention areas?; (2) Should the current regulation require a minimum stand age necessary for harvest to occur in order to demonstrate maximum sustained production (MSP) as is required for even-age silvicultures under 14CCR 913.11(c)?; and (3) is the minimum stocking requirements of 913.4 (d)(3)(H) relative to aggregate versus dispersed retention clear enough for consistent application and enforcement? No progress to date.

**PRIORITY 3:**

**16.7. 14 CCR § 913.2 (b) – Transition silviculture**

**Objective/Status:** It has been reported that the Department does not allow use of the Transition silviculture method in timber stands which were most previously harvested utilizing the Selection method. This 'policy' is not consistent with 14CCR § 913.2(b) or (b)(2). THP was returned on this issue without being evaluated through PHI to support the determination. No progress to date.

**17.8. CCR § 1034, Contents of Plan**

- a. (r) How the requirements of 14 CCR 1032.7(f) are to be met. The reference to 1032.7(f) is obsolete, since it refers to the past requirement that the RPF distribute and publish a copy of the NOI.
- b. (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 Board should consider revising 1034 to make Class III watercourse crossing a required mapped feature within a Plan.
- c. Board should consider amending 14 CCR § 1034 when it adopts or amends any rule that adds elements considered a required portion of a harvesting plan. This

ensures a central location where the RPF could be assured of finding what is considered essential information in a harvesting document. Board may want to consider a rule package that consolidates all required plan contents under 14 CCR §§ 1034, 1051, 1090.5, and 1092.09.

**Objective/Status:** No progress to date.

**18.9. 14 CCR § 1032.7(d) and 14 CCR § 1092.04(d) [in part]. 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.**

- a. (4) 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.
- b. (5) Requires stating the regeneration methods and intermediate treatments to be used. This paragraph may not capture all possible treatments that may occur, e.g., special prescriptions and other types of associated timber harvesting, such as road right-of-way or timberland conversion.
- c. Item was initially addressed by Management Committee in 2010 in form of rule proposal to amend NTMP NTO requirements. Item was remanded back to Management Committee following publication of 45-day Notice of Rulemaking in December 2010 and initial hearing in February 2011. No further action was subsequently taken.

**Objective/Status:** No progress to date.

**19.10. Regulatory amendments to 14 CCR § 1032.10 - Notice of Timber Operations.**

- a. 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 ....
- b. Consider requiring the inclusion the number of acres proposed for harvest along with the required legal description on a submitted NOP. (BOE request)
- c. Consider requiring the mapped location of each ownership, if multiple ownerships are being harvested, under the same NOP. This applies to all Plans and exemptions as well. (BOE request)
- d. The Department has requested the following items be potentially addressed in regards to Notice of Timber Operations. No progress to date.
  - i. Overland flow or channel flow?

- ii. *Publication may need to be given in a newspaper of general circulation. CAL FIRE assumes this requires notification as defined in Government Code §§ 6000-6027.*
- iii. *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].*
- iv. *Require more current notification in which the post-marked date is no more than one year prior to submittal of the plan.*
- v. *Does a plan have to be returned where the RPF requests an exemption from one of the noticing requirements and CAL FIRE does not accept the request. The rule requires at least ten days passing after notification before submission of the plan.*
- vi. *The 4<sup>th</sup> sentence should be changed to use the proper verb, “affect,” in place of “effect.”*

**Objective/Status:** No progress to date.

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