

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

“Oak Woodland Management Exemption, 2017”

Title 14 of the California Code of Regulations (14 CCR),

Division 1.5, Chapter 4:

Subchapter 1, Article 1

Subchapter 7, Article 2

Amend: §§ 1038, 1038(e)

Adopt: § 1038(l)

INTRODUCTION INCLUDING PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS (pursuant to GC § 11346.2(b)(1))...NECESSITY (pursuant to GC § 11346.2(b)(1) and 11349(a))....BENEFITS (pursuant to GC § 11346.2(b)(1))

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973, PRC § 4511, et seq. (FPA) the State Board of Forestry and Fire Protection (Board) is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands.

PRC § 4551 requires the Board to adopt forest practice rules and regulations to, among other things, “...assure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish and wildlife, and water resources.” Additionally, through PRC § 740 the Board shall determine, establish, and maintain an adequate forest policy. Additionally, general policies for guidance of the Department of Forestry and Fire Protection (Department) shall be determined by the Board.

Pursuant to authority given to the Board in the FPA, the Board is proposing the following action to create the “Oak Woodland Management Exemption, 2017.” The proposed action is in response to the passage of Assembly Bill (AB) 1958 (Wood), which chaptered and subsequently amended specifically PRC § 4584(k). It was the intent of the legislature, under AB 1958, to give the Board discretion on whether to exempt landowners from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC §§ 4585 and 4587) of the FPA when engaged in timber operations that manages timberlands specifically for the growth, proliferation and perpetuation of California black oak (*Quercus kelloggii*) and Oregon white oak (*Quercus garryana*) and their associated grasslands when specific conditions are met. Additionally, this exemption will help to clarify that the removal of conifers (Group A Commercial Species) from a stand of California black and/or Oregon white oaks (Group B Commercial Species) is not a land conversion, as defined pursuant to 14 CCR § 1100 et al.

The authority to take the proposed action was offered by Assembly Bill (AB) 1958 (Wood 2016), and developed in response to the increasingly apparent research showing that conifers are encroaching on deciduous oak woodland habitats on the north and northwest regions of California, specifically California black and Oregon white oak woodlands, and reducing the distribution and viability of these hardwood stands. California black and Oregon white oak woodlands support high levels of biodiversity, provide mast and habitat for wildlife species, and are highly valued by Native Americans as cultural sites and ranchers for their inherent propensity for working landscapes, respectively (Valachovic et al., 2015).

California black oak (*Quercus kelloggii*) occurs within the states of Oregon and California (Fryer 2007). It is a highly drought tolerant species of oak, and occurs in pure stands and scattered groves. California black oak prolifically sprouts after trees are cut or burned (McDonald 1990). Acorns, as a means of reproduction, require bare mineral soil or light duff conditions with adequate solar radiation (Fryer 2007). Historically, California black oak stands adapted to frequent understory fires to help remove competing vegetation. Initially shade-tolerant early in life, as they mature they become increasingly shade-intolerant, whereas mature trees require full sun conditions (Fryer 2007).

Oregon white oak (*Quercus garryana*) distribution ranges through the states of California, Oregon and Washington, ending its occurrence in British Columbia, Canada (Stein 2004). The tree can tolerate heavy clay soils and drought. Oregon white oak is commonly found on exposed south facing slopes, inland valleys, and along flood plains (Stein 1990- Silvics of NA). Oregon white oak can also grow in conditions that are favorable to conifer species, where the somewhat slow-growing oak it is easily outcompeted by conifers that grow faster and taller, often crowding out this species in the absence of periodic fire (Stein 2004). Like the California black oak, Oregon white oak is classified as moderately-intolerant to completely shade-intolerant, historically relying on frequent understory fires to kill competing conifer competition, establish favorable soil conditions for reproduction, and maintain open-story conditions (Stein 2004).

Loss of these species to conifer encroachment has been widespread and dramatic throughout their ranges in California and Oregon (UCANR 2017). It has been the consensus of the California research community that conifer encroachment has been directly linked to anthropogenic fire suppression and exclusion, and land conversion to other uses throughout the state (Cocking et al., 2015). The past century immediate suppression of fires has altered normal fire regimes, allowing shade-intolerant and fire dependent species such as California black and Oregon white oaks to decline in health, while shade tolerant conifer species such as Douglas-fir (*Pseudotsuga menziesii*) have thrived (Cocking et al., 2015). These deciduous oak species are fire adapted, depending on frequent, low to moderate intensity fires to prevent establishment of invading fire-sensitive vegetation and supply conditions suitable for regeneration (Fryer 2007, Cocking et al. 2015). Once the conifers (primarily Douglas-fir) have been

established in the understory of the oaks, within 20-40 years the conifers easily gain canopy dominance, eliminating sunlight, leading to oak decline and death. Moreover, studies have shown as conifer encroachment peaks, it sharply declines the flammability of oak woodlands and associated grasslands, further perpetuating the reduction in fire return intervals which hampers oak vitality (Cocking et al., 2015).

Because of these conditions and the economic and ecological importance of these woodlands, stakeholders, such as the Buckeye Conservancy, the Northcoast Regional Land Trust, UC Cooperative Extension researchers, and members of the public requested that the Board to consider a regulatory pathway for landowners to manage for California black oak and Oregon white oak species. In response to this very clear concern, and relying on the experience of the Board members themselves, the Board proposed the "White and Black Oak Woodland Management Special Prescription." This special prescription allows for the development of a silvicultural prescription that "...shall be designed to reduce water, light, and nutrient competition from Group A species in order to promote the sustained viability of Oregon white oak and California black oak stands" (14 CCR § 913.4(f)) and must be used proposed and approved within a Plan (14 CCR § 895.1). This rulemaking effort was approved and went into effect on January 1, 2017.

Much of the distribution of California black and Oregon white oak woodlands in California are located on private land, and therefore fall under the auspices of the California Forest Practice Rules (FPRs). Although this special prescription attempted to resolve the problem of conifer encroachment on California black and Oregon white oak woodlands, many private landowners and public stakeholders felt that it was prohibitively expensive as the special prescription required Plan submission and stocking requirements. Furthermore, the special prescription is generally directed at later stages of conifer encroachment, allowing landowners to harvest larger diameters of the encroaching conifers. A need was demonstrated that a low-cost alternative to incentivize the management of California black and Oregon white oak woodlands from encroaching smaller diameter conifers was severely needed. These groups and members of the public felt compelled to call upon their state Assemblyman Dr. Jim Wood, who represents the 2nd Assembly District that comprises Del Norte, Humboldt, Mendocino, Trinity and part of Sonoma County. They called upon Assemblyman Wood to introduce legislation allowing landowners to operate under an exemption from the FPA, when managing for California black oak and Oregon white oak species.

The culmination of Assemblyman Wood's efforts, fueled by overwhelming amounts of research showing a rapid decline in oak woodland distribution in the north and northwest regions of California, led Assemblyman Wood after proposing Assembly Bill (AB) 1958 to remark that, "I am pleased that this measure has received such great support. Oak woodlands provide natural fuel breaks and essential habitat for wildlife and livestock, however current laws are preventing landowners from protecting oaks that are threatened by encroaching conifers." His efforts led to the ultimate passage of AB 1958 by the legislature, which was approved by Governor Edmund G. Brown, Jr. and filed with the Secretary of State on September 24th, 2016. This assembly bill, among other

things, led to the revision of PRC § 4584, adding subsection (k) that allows an exemption from the FPA when managing for California black and/or Oregon white oak woodlands and specific conditions are met.

The **purpose** of the proposed action is to make permanent amendments to 14 CCR §§ 1038 and 1038(e), and to add subsection (l), creating the oak woodland management exemption. This will make the FPA regulations congruent with the mandate of an oak woodland management exemption (14 CCR § 1038) mandated by the legislature.

The **effect** of the proposed action is to allow for timber operations that manage specifically for California black oak (*Quercus kelloggii*) and Oregon white oak (*Quercus garryana*) 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 FPA when specific requirements are met.

The **benefit** of the proposed action is to address the concerns regarding the reduction and vitality of the California black and Oregon white oak woodlands with the Northern and Coast Forest Districts (14 CCR §§ 906-909.1) of the State of California. A voluminous amount of research has found that in the past few decades, the distribution and health of these woodlands has been declining rapidly. Research points out conifer encroachment, fire suppression and land conversion via anthropogenic causes have been the main culprits. This proposed action will allow landowners to manage their lands specifically for white and black oak woodlands, by giving them a reprieve from the rules and regulations of the FPA during a normal course of commercial timber operations.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL (pursuant to GOV § 11346.2(b)(1)) AND THE RATIONALE FOR THE AGENCY'S DETERMINATION THAT EACH ADOPTION, AMENDMENT OR REPEAL IS REASONABLY NECESSARY TO CARRY OUT THE PURPOSE(S) OF THE STATUTE(S) OR OTHER PROVISIONS OF LAW THAT THE ACTION IS IMPLEMENTING, INTERPRETING OR MAKING SPECIFIC AND TO ADDRESS THE PROBLEM FOR WHICH IT IS PROPOSED (pursuant to GOV §§ 11346.2(b)(1) and 11349(a) and 1 CCR § 10(b)). *Note: For each adoption, amendment, or repeal provide the problem, purpose and necessity.*

The Board is proposing action to amend 14 CCR §§ 1038 and 1038(e) and adopt 1038(l).

The **problem** is that landowners do not have a cost-effective avenue or incentive to manage lands specifically for California black and Oregon white oak woodlands. The Board attempted to assist the regulated public by creating a special prescription known as the "White and Black Oak Management Special Prescription" amending 14 CCR §§ 913.4 and 933.4 of the FPRs that went into effect January 01, 2017. Although this attempted to solve the problem of low-cost oak woodland management, it was still deemed too expensive and cumbersome as it requires Plan submission and completion report requirements.

The **purpose** of the proposed action is to create an exemption to the FPA when managing for California black and Oregon white oak woodlands. This will incentivize and promote timber operations that specifically manage for care of these woodlands, as it is relatively low cost and is exempt from the FPA, notwithstanding certain requirements. This will serve to maintain, improve and possibly increase the distribution and vitality of these oak woodlands, from the threats they face such as disturbance of historic fire regime, land conversion and conifer encroachment.

The **effect** of the proposed action is the following:

- Create an exemption from the FPA when engaged in the cutting or removal of trees to restore and conserve California black and Oregon white oak woodlands;
- Incentivize landowners to specifically manage for the health and vitality of California black and Oregon white oak woodlands.

Amend 14 CCR § 1038. Exemption.

14 CCR § 1038, subsection (i), was amended solely to resolve punctuation issues. This subsection was amended to read, “(i) no tree that existed before 1800 A.D.” The period added to make the sentence punctually correct, and is entirely non-substantive.

Amend 14 CCR § 1038(e). Exemption.

14 CCR § 1038, subsection (e), was amended to include this new proposed exemption (subsection (l)) into this subsection that requires at least 5 working days from the receipt of Notice of Exemption by the Director before commencement of timber operations. The Director reserves the right to waive this delay, upon consultation with other state agencies.

Adopt 14 CCR § 1038(l). Exemption.

14 CCR § 1038, subsection (l), was adopted to allow an exemption from the FPA for the restoration and conservation of California black and Oregon white oak woodlands when specific constraints are met and the Notice of Exemption is prepared and submitted to the Director by an RPF, verifying that conditions of the exemption are met and/or exceeded.

ECONOMIC IMPACT ANALYSIS (pursuant to GOV § 11346.3(b)(1)(A)-(D) and provided pursuant to 11346.3(a)(3))

The **effect** of the proposed action is the following:

- Create an exemption from the FPA when engaged in the cutting or removal of trees to restore and conserve California black and Oregon white oak woodlands
- Incentivize landowners to specifically manage for the health and vitality of California black and Oregon white oak woodlands

Creation or Elimination of Jobs within the State of California

This proposed action gives the regulated public an exemption from the FPA when engaged in timber operations that are seeking to restore and enhance California black and Oregon white oak woodlands when specific conditions are met. The proposed

action does not require any additional obligations required from the regulated public than was previously in place in regards to timberland management. Although this exemption may increase the amount of forest management opportunities within oak woodlands, it is expected to be very negligible and will not profoundly impact the job market. No creation or elimination of jobs will occur.

Creation of New or Elimination of Businesses within the State of California

This proposed action gives the regulated public an exemption from the FPA when engaged in timber operations that are seeking to restore and enhance California black and Oregon white oak woodlands when specific conditions are met. Since this exemption is confined to the North and Coast Forest Districts, excluding the Southern Sub-District of the Coast District, and that the exemption area cannot exceed 300 acres, it is not expected to be used enough to cause a significant need for consulting RPFs to prepare the exemptions. Consulting RPFs will be beneficially impacted by an increase in business, but it is not expected to be enough to require additional employees or an expansion of operations. No creation of new or elimination of existing businesses will take place.

Expansion of Businesses Currently Doing Business within the State of California

The adoption of this new exemption merely gives landowners in the north and north-coast regions of California an inexpensive exemption option to manage their lands for the restoration and conservation and California black and Oregon white oak woodlands. It is foreseen that it will beneficially impact forestry consulting businesses, but is expected to be somewhat negligible. This action will not cause expansion of businesses within the State of California.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed action will have a neutral effect on health, welfare, and worker safety, but will benefit the State's environment. This proposed action allows landowners to operate under an exemption from the FPA when managing specifically for California black or Oregon white oak woodlands in the North and Coast Forest Districts (excluding the Southern Sub-District of the Coast District) (14 CCR § 906-909.1). This will incentivize landowners to manage these woodlands that provide many benefits including vegetative mast for wildlife, supporting high levels of wildlife biodiversity, and restoring oak woodland landscapes valued by ranchers and Native Americans alike.

Business Reporting Requirement (Pursuant to GC § 11346.5(a)(11) and GC § 11346.3(d))

The proposed regulation does not require a business reporting requirement.

In summary, the proposed action:

- (A) will not create jobs within California;
- (A) will not eliminate jobs within California;
- (B) will not create new businesses,
- (B) will not eliminate existing businesses within California

(C) will not affect the expansion or contraction of businesses currently doing business within California.

(D) will yield nonmonetary benefits. For additional information on the benefits of the proposed regulation, please see anticipated benefits found under the Introduction Including Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address.

The types of businesses that will be impacted includes consulting forester and logging businesses.

Businesses and individuals will not be adversely impacted.

The number of businesses impacted, including small business, is unknown. Small businesses means independently owned and operated, not dominant in their field of operations and having annual gross receipts less than \$1,000,000. No businesses are expected to be created or eliminated.

The geographic extent includes the North and Coast Forest Districts (excluding the Southern Sub-District of the Coast District) (14 CCR §§ 906-909.1).

The proposed action will not adversely affect the ability of California business to compete with other States, and will not decrease investment in the State.

The proposed action does not afford the incentive for innovation in products, materials or processes.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT RELIED UPON (pursuant to GOV SECTION 11346.2(b)(3))

The Board relied on the following list of technical, theoretical, and/or empirical studies, reports or similar documents to develop the proposed action:

1. Valachovic, Yana; et al. 2015. Oregon white oak and California black oak woodland loss to conifer encroachment. University of California Agriculture & Natural Resources (UCANR). PowerPoint Presentation to the State of California Board of Forestry and Fire Protection on October 28th, 2015, Sacramento, CA.
2. Fryer, Janet L. 2007. *Quercus kelloggii*. In: Fire Effects Information System, [Online]. U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station, Fire Sciences Laboratory (Producer). Available: <http://www.fs.fed.us/database/feis/> [2017, June 28].
3. McDonald, P. M. (1990). *Quercus kelloggii* Newb., California black oak. https://www.fs.fed.us/psw/publications/mcdonald/psw_1990_mcdonald001.pdf [2017, July 04].

3. Stein, William I. 2004. *Quercus garryana* Dougl. ex Hook. In: Silvics of North America, Volume 2: Hardwoods, *Quercus: Quercus garryana*. United States Department of Agriculture, Forest Service. Agriculture Handbook 654. Available: https://www.na.fs.fed.us/spfo/pubs/silvics_manual/volume_2/quercus/garryana.htm [2017, June 28].

4. University of California Agriculture and Natural Resources. 2017. Conifer Encroachment. University of California: Oak Woodland Management. Available: http://ucanr.edu/sites/oak_range/Conifer_Encroachment/ [2017, June 28].

5. Cocking, M. I., Varner, J. M., & Engber, E. A. 2015. Conifer encroachment in California oak woodlands. https://www.fs.fed.us/psw/publications/documents/psw_gtr251/psw_gtr251_505.pdf [2017, July 04].

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION CONSIDERED BY THE BOARD, IF ANY, INCLUDING THE FOLLOWING AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES (pursuant to GOV § 11346.2(b)(4)(A) and (B)):

- **ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACTS ON SMALL BUSINESS AND/OR**
- **ALTERNATIVES THAT ARE LESS BURDENSOME AND EQUALLY EFFECTIVE IN ACHIEVING THE PURPOSES OF THE REGULATION IN A MANNER THAT ENSURES FULL COMPLIANCE WITH THE AUTHORIZING STATUTE OR OTHER LAW BEING IMPLEMENTED OR MADE SPECIFIC BY THE PROPOSED REGULATION**

Pursuant to **GOV § 11346.5(a)(13)**, the Board must determine that no reasonable alternative it considers, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Alternative 1: No Action Alternative

The Board considered taking no action, but the no action alternative was rejected because it would not address the problem. California black and Oregon white oaks are facing serious threats from fire suppression, land conversion and conifer encroachment. Taking no action would continue to put these valuable wildlands in peril.

Alternative 2: Policy and Education (in lieu of regulation) Alternative

Policy and education were considered in lieu of the proposed action, and although policy and education are being pursued, the regulated public still felt that it was too expensive and too rigorous to operate under the "White and Black Oak Management Special Prescription," that went into effect under the FPA January 01, 2017.

Moreover, pursuant to Government Code § 11342.600, every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure. Therefore, to avoid underground regulation through the general application of a policy, this alternative was rejected.

Alternative 3: Proposed Action Alternative

The Board accepted the proposed action alternative to address the problem, and it was formed by input from a multitude of researchers, public stakeholders, members of the public, state agencies and the Board's own expertise in forestry, and specifically California hardwood management.

Additionally, the proposed action is the most cost-efficient, equally or more effective, and less burdensome alternative.

Alternatives 1 and 2 would not be more effective or equally effective while being less burdensome or impact fewer small businesses than the proposed action.

Prescriptive Standards versus Performance Based Standards (pursuant to GOV §§11340.1(a), 11346.2(b)(1) and 11346.2(b)(4)(A)):

Pursuant to **GOV §11340.1(a)**, agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the course of the agency rulemaking process.

The proposed action is only as prescriptive as necessary to address the problem. Additionally, the proposed action is performance based. Moreover, the proposed action is a mix of performance based and prescriptive standards as is the entire FPRs. However, the substitution of more performance based standards relative to prescriptive standards was not reasonably expected to be as effective and less burdensome.

Pursuant to **GOV § 11346.2(b)(1)**, the proposed action does not mandate the use of specific technologies or equipment.

Pursuant to **GOV § 11346.2(b)(4)(A)**, the abovementioned alternatives were considered and ultimately rejected by the Board in favor of the proposed action. The proposed action does not mandate the use of specific technologies or equipment, but does prescribe specific actions or procedures. Alternatives 1 and 2 considered by the Board require fewer specific actions or procedures but would result in a less effective regulation.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE RELIED UPON TO SUPPORT INITIAL DETERMINATION IN THE NOTICE THAT THE

PROPOSED ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS (pursuant to GOV § 11346.2(b)(5))

The proposed action will not have a statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states as discussed in the ECONOMIC IMPACT ANALYSIS. Please see page 5 for the discussion within the ECONOMIC IMPACT ANALYSIS.

DESCRIPTION OF EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICT WITH THE CODE OF FEDERAL REGULATION (pursuant to GOV § 11346.2(b)(6))

The Code of Federal Regulations has been reviewed and based on this review, the Board found that the proposed action neither conflicts with, nor duplicates Federal regulations. There are no comparable Federal regulations for timber harvesting on State or private lands.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The Board has considered whether there will be any potentially significant adverse environmental effects from the proposed action. Such consideration was conducted to meet California Environmental Quality Act (CEQA) requirements for a project by using the functional equivalent certification to an EIR granted to the Board for its rulemaking process pursuant to PRC § 21080.5.

The proposed action would be an added element to the State's comprehensive Forest Practice Program under which all commercial timber management is regulated. The Board's FPRs along with the Department oversight of rule compliance functions expressly to prevent adverse environmental effects.

Harvesting Plans and situation-specific exemptions from the FPA contain a mix of avoidance and mitigation measures that are required by the FPRs or are specifically designed by a licensed RPF to reduce the risk for potential adverse effects. They also contain a comprehensive cumulative effects analysis utilized in part to identify potential risks and effects to aid in RPFs in avoidance and mitigation measure development.

State representatives review every harvesting plan (if specific measures are met and prepared by an RPF) prior to a decision as to approval or denial. Local and federal agency representatives are also involved in the review process. Although exemptions are accepted by CAL FIRE ministerially if complete, they are required to meet the specific mandates included in the proposed rule text, the existing FPRs and requires an RPF to attest to specific onsite conditions before and after timber operations take place to address potential impacts to wildlife or archaeological resources. Where FPRs regulatory standards have been violated, specified corrective and/or punitive enforcement measures, including but not limited to financial penalties, are imposed upon the identified offender(s).

In summary, The proposed action amends or supplements standards to an existing regulatory scheme and is not a mitigation as defined by CEQA. The Board concludes that the proposed action will not result in any significant or potentially significant adverse environmental effects and therefore no alternative or mitigations measures are proposed to avoid or reduce any significant effects on the environment (14 CCR § 15252(a)(2)(B)).