

BOARD OF FORESTRY AND FIRE PROTECTION

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RE: Proposed Rulemaking for Medical Cannabis Cultivation

The California Board of Forestry and Fire Protection (Board) appreciates the opportunity to comment on the draft regulatory proposal for Medical Cannabis Cultivation. Pursuant to the Forest Practice Act of 1973 (PRC, §§ 4511–4629.13), the Board represents the state's interests in forest resources on private and state lands, and determines, establishes, and maintains forest policy for the state. The Board acts under the mandate of state law to promulgate regulations as they pertain to issues such as, but not limited to, forest management on non-federal timberlands within California, classification of State Responsibility Area (SRA), land use regulations supporting fire prevention, and fire suppression activities within the SRA.

Additionally, Health and Safety Code § 11362.769 states that indoor and outdoor medical marijuana cultivation shall be conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, water quality, woodland and riparian habitat protection, agricultural discharges, and similar matters. The Board, through the California Forest Practice Rules (14 CCR §§ 895–1115.3) (FPR's), maintains an existing set of regulations that addresses potential impacts to timberland resilience and productivity, wildlife and fisheries habitat, and water quality. The FPR's are promulgated by the Board taking into consideration the public need for high quality forest products, watershed protection, aesthetic and recreational enjoyment, fisheries and wildlife habitat, and the continued sequestration of atmospheric carbon dioxide.

The Board offers the following comments regarding resource protection concerns within forested landscapes from medical cannabis cultivation that should be considered by the California Department of Food and Agriculture (CDFA) in the promulgation of regulations within Title 3, Division 8, Chapter, Chapter 1, section 8000 – 8708, as well as the Initial Statement of Reasons (ISOR) and the Standard Regulatory Impact Assessment (SRIA).

Comments on DRAFT Regulatory Proposal:

§ 8102(b)(11): As stated in the ISOR (pg 13), this proposed regulatory provision is necessary to ensure that the applicant “has complied with the California Environmental Quality Act (CEQA)” by providing evidence, through documentation, of an environmental document. Many persons engaged in cannabis cultivation within “timberlands” (PRC § 4526) may have obtained CEQA coverage through submission of Plans, as defined in 14 CCR § 895.1, or Exemptions, pursuant to 1104.1(a), to CAL FIRE for the commercial harvest of forest products as required by the Forest Practice Act and the FPR's. These Plans or Exemptions are not intended to, nor do they, provide the necessary analysis of potential significant adverse impacts to the environment that may be associated with cannabis cultivation. As such, Plans and Exemptions for the commercial harvest of forest products as required by the Forest Practice Act and FPR's should not be certified by CDFA as a demonstration of CEQA compliance for cannabis cultivation for applicants seeking licensure for cannabis cultivation if a local jurisdiction does not prepare a CEQA document.

The Board's mission is to lead California in developing policies and programs that serve the public interest in environmentally, economically, and socially sustainable management of forest and rangelands, and a fire protection system that protects and serves the people of the state.

§ 8102(b)(18): This proposed regulatory provision requires that applicants seeking licensure for cannabis cultivation provide evidence of permits by the applicable Regional Water Quality Control Board, State Water Board, or verification that a permit was not necessary. Cultivation of cannabis within the timberlands of California often results in conversion of timberland to a non-timber growing use, as well as impacts to water quality. The conversion of timberland to a use other than growing timber requires, prior to conversion, a Timberland Conversion Permit (or its equivalent) to be approved by CAL FIRE or, if eligible, a Less Than 3 Acre Conversion Exemption to be accepted by CAL FIRE. Therefore, the Board requests that a provision similar to 8102(b)(11) be included to address the requirements of timberland conversion. The Board offers the following language for consideration: Evidence of Plans, as defined in 14 CCR § 895.1 or Exemption, pursuant to 14 CCR § 1104.1(a) accepted by CAL FIRE for the conversion of timberland, if applicable.

§ 8107. Good Standing: Existing operators applying for permits who are currently not in good standing with a local jurisdiction may not have closely followed state standards for development in the SRA. The SRA Fire Safe Development Standards (14 CCR Division 1.5, Chapter 7, Subchapter 2, Articles 1-5) apply to residential, commercial, and industrial construction in the SRA, including the construction of accessory buildings, mobile homes, and other non-permanent structures. These laws provide for minimum wildfire protection standards, including basic emergency access, water supply requirements, signing and building numbers, and vegetation modification, for construction in the SRA. The Defensible Space laws applicable in the SRA (14 CCR § 1299.01 *et. seq.*) require vegetation treatment around buildings and structures intended to support the protection of persons or animals to reduce the likelihood of burning vegetation igniting homes and other property and allow firefighters access to developments to protect them from turning into an ignition source that can perpetuate wildfires and increase the fire's impact on the environment.

The Board recommends that the document verifying good standing with local jurisdictions include a certification that the applicant has complied with SRA Fire Safe Development Standards (14 CCR Division 1.5, Chapter 7, Subchapter 2, Articles 1-5) and Defensible Space laws (14 CCR § 1299.01 *et. seq.*).

§ 8313. Environmental Protection Measures: As previously mentioned, Health and Safety Code § 11362.769 states that indoor and outdoor medical marijuana cultivation shall be conducted in accordance with state and local laws relating to, but not limited to, land conversion, as well as, woodland and riparian habitat. As proposed, § 8313 does required licensees to comply with certain regulatory standards, but fails to indicate that Board rules and regulations must also be complied with where applicable. These regulatory provisions include the FPRs, the SRA Fire Safe Regulations, and Defensible Space Regulations. Therefore, the Board requests that a provision be added to § 8313 that requires that licensed medical cultivators must comply with Board regulations where applicable. The Board offers the following language for consideration: Compliance with all Board of Forestry and Fire Protection regulations, including but not limited to, the Forest Practice Rules (14 CCR §§ 895–1115.3), the SRA Fire Safe Regulations (14 CCR § 1270 *et. seq.*) and Defensible Space Regulations (14 CCR § 1299.01 *et. seq.*), where applicable.

Comments on SRIA:

SRIA Section 1.5.3 Enforcement, Local Agency and M CCP Costs

Pursuant to Public Resources Code (PRC) § 4125, the Board has been granted the authority to classify lands in the state as State Responsibility Area (SRA) for the purposes of determining areas in which the financial responsibility of preventing and suppressing fires is primarily the responsibility of the state.

Over 90% of the wildfires that occur on SRA land are human caused, and an increase of human presence in the SRA increases the risk of wildfires. This is of particular concern given the effects of increasing temperature regimes and an ever-lengthening fire season. Many indoor and outdoor grow operations and cultivation sites occur in wildland areas of the SRA that historically were sparsely populated. With the legal permitting of medical and recreational uses of cannabis, the Board is concerned that the level of cannabis cultivation in the SRA will to continue to increase. The SRIA should consider the potentially significant fiscal impacts to CAL FIRE arising from the increased risk and occurrence of wildfires, as well as impacts to the health and welfare of fire suppression personnel from extended and repeated exposure to wildfire. Additionally, an analysis should be conducted on the ability of local

and/or state fire protection services (i.e. CAL FIRE) to respond to the elevated number of emergency incidents that may result from an increased level of permanent and/or transient habitation within the SRA.

CAL FIRE is the state agency responsible for the enforcement of Board regulations. In this enforcement capacity, CAL FIRE must review submitted Plans or Exemptions pursuant to the Forest Practice Act and Forest Practice Rules. Additionally, CAL FIRE is responsible for inspecting the project locations to assure compliance with Board regulations. In instances where violations are identified, CAL FIRE is required to document the violation and potentially pursue remediation of any associated environmental damage that may have occurred. Repeated violations that demonstrate a pattern in practice by the offender or violations that result in elevated levels of environmental damages may result in more complex levels of enforcement actions, such as civil penalties (PRC § 4601.1).

CAL FIRE, through the SRA Fire Prevention Program, conducts inspections of accessory buildings, mobile homes, and other non-permanent structures to ascertain if defensible space has been attained by property owners and to assure compliance with PRC § 4291 and Board regulations. In instances where defensible space standards have not been met, CAL FIRE issues violations and conducts additional inspections to motivate property owners to work towards achieving compliance with state laws and regulations. The SRIA should consider the potentially significant fiscal impacts to CAL FIRE that may occur as a result of the amplified amount enforcement that will be necessary as the permanent and/or transient habitation within the SRA increases as a result of the licensing of cannabis cultivators.

The Board appreciates the broad outreach conducted by California Department of Food and Agriculture to garner input on the ISOR, SRIA and draft regulatory proposal for medical cannabis cultivation. To achieve the public benefit of safeguarding the environment through implementation of protection measures and enforcement of existing environmental protection laws, as outlined in the ISOR (pg. 3), the Board's regulations should be prudently cited within the medical cultivation regulatory scheme to assure that cultivators are aware of these regulatory requirements. Additionally, the analysis of fiscal costs assumed by state agencies, as required by Gov. Code §§ 11346.36(b)(4) and 11346.36(b)(5), should consider the effects of the draft regulatory proposal as it pertains to the broadened response by local and state fire protection services and enforcement of the Board's regulations by CAL FIRE that may occur as a result of the licensing of licensing of medical cannabis cultivators. The Board appreciates the opportunity to comment and extends our assistance in this rulemaking effort.

Best Regards,

A handwritten signature in blue ink, appearing to read "Matt Dias", with a stylized flourish at the end.

Matt Dias
Executive Officer
State Board of Forestry and Fire Protection