

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

“Cumulative Impacts Assessment Checklist Amendments, 2017”

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

Division 1.5, Chapter 4:

Subchapter 4, 5, & 6, Article 2

Amend: § 912.9, 932.9, 952.9;

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))

The regulation of timber harvesting operations by the California Department of Forestry and Fire Protection (CAL FIRE) and the State Board of Forestry and Fire Protection (Board) are certified programs by the Secretary for Resources as meeting the requirements of the California Environmental Quality Act (CEQA, PRC §21000, *et seq.*) process under Public Resource Code (PRC) §21080.5. Timber harvesting plans are considered “functionally equivalent” to an Environmental Impact Report otherwise required under CEQA for projects that could potentially have significant effects on the environment. CEQA requires project submitters to disclose potential significant impacts to reviewing agencies and the public, and to provide mitigation measures to prevent significant, avoidable environmental damage.

Under PRC § 21080.5(d)(1)(i & ii), rulemaking and planning pursuant to the Z'berg-Nejedly Forest Practice Act of 1973 (FPA, PRC § 4511, *et seq.*) are exempted from the requirement to prepare an EIR due to their certification as to meeting certain criteria designed to ensure that the essential standards of CEQA are met, including “...protection of the environment among its principal purposes” and that it “...contains authority for the administering agency to adopt rules and regulations for the protection of the environment...”

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973 (FPA, PRC § 4511, *et seq.*), the Board is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands; and through PRC § 740 “...shall determine, establish and maintain an adequate forest policy. General policies for guidance of the department shall be determined by the Board.”

PRC § 4551 requires the Board to “adopt district forest practice rules... to ensure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, wildlife, and water resources...” and PRC § 4553 requires the Board to continuously review and revise the rules in consultation with other interests.

To accomplish the basic framework and requirements of CEQA, in 1991 the Board adopted 14 CCR § 912.9, 932.9, & 952.9 and Technical Rule Addendum No. 2 which assessed cumulative environmental impacts of Timber Harvesting Plans (THPs) and introduced cumulative impact assessment to Plan development and review.

The California Global Warming Solutions Act of 2006 (Assembly Bill (AB) 32), established requirements for a comprehensive program to reduce Greenhouse Gas (GHG) emissions. It requires state agencies to adopt regulations and other requirements that will reduce statewide GHG emission levels to year 1990 levels by 2020 and to maintain and further continue reductions beyond 2020.

In 2007 the California legislature passed Senate Bill (SB) 97, which recognized the need to analyze GHG emissions as part of the CEQA process. As a result of SB 97, CEQA guidelines were updated to include 14 CCR § 15064.4, which requires a lead agency “...to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project.”

Additionally, in 2012 the California legislature passed SB 1241, which identified the need to assess fire hazard impacts within the CEQA review process via the initial study checklist (PRC § 21083.01(a)). In an effort to align impact analysis within the Plan process within current CEQA guidelines, and given that wildfire presents a serious threat to forested lands throughout the State and that Plans are capable of effecting wildfire risk and hazards through alteration of fuel load, composition, structure, and spatial continuity, the Board determined that wildfire risk and hazard assessment should be included in cumulative impact assessment for Plan documentation.

Furthermore, the Board has determined the Appendix Technical Rule Addendum No. 2 of 14 CCR §§ 912.9, 932.9, and 952.9 (Appendix) should be regarded as a guidance document for the preparation of cumulative impact analyses, and should not be regulatory in nature.

The basis for the proposed action is derived upon a desire to integrate GHG and wildfire risk and hazard assessment into the existing cumulative impact analysis process of 14 CCR §§ 912.9, 932.9, and 952.9 within the Plan development process, to amend the Appendix of Technical Rule Addendum No. 2 to make explicit its function as a guidance document, as well as to make the Forest Practice Rules (FPRs) and the language used within clear, accurate and consistent.

The problem is the cumulative impacts of both GHG emissions and wildfire risks and hazards should be assessed to fully address the potential environmental impacts of a Plan and remain compliant with the provisions of CEQA (14 CCR § 15064.4 and PRC §

21083.01(a)), but currently there is no regulatory requirement within the FPRs by which to do so. Additionally, the Appendix of 14 CCR § 912.9, 932.9, and 952.9 should be considered as a guidance document, but is currently regulatory in nature.

The purpose of this proposed action is to make permanent, through regular rulemaking, these amendments.

The effect of this proposed action is to provide a regulatory requirement for the assessment of cumulative impacts related to GHG emissions and wildfire risks and hazards within the Plan process. The proposed action will also add technical clarity and accuracy to existing regulation of impact analysis and make explicit the guidance function of the existing Appendix of 14 CCR §§ 912.9, 932.9, and 952.9.

The primary benefit of the proposed action is a clear and standardized Plan preparation and review process that provides transparency to both the Director of CAL FIRE (Director) and the general public. Additionally, the proposed action will allow the Forest Practice Rules to become aligned with the existing environmental policy, statutes, and regulations of California, notably with 14 CCR § 15064.4 and PRC § 21083.01(a). Alignment with these policies and statutes, which are intended to minimize environmental impacts, will result in improvements to environmental quality throughout the state. Furthermore, the amendment of the Appendix of 14 CCR §§ 912.9, 932.9, and 952.9 will allow Plan preparers to rely on more performance based standards for the analysis of cumulative impacts and provide relief from current perceived prescriptive based standards of the Appendix.

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 make permanent, through regular rulemaking, amendments to Title 14 CCR §§ 912.9, 932.9 and 952.9 and Technical Rule Addendum No. 2.

The problem is that no regulation exists to require GHG emission or wildfire risk and hazard impact analysis within the Plan process, and that portions of the Appendix which were not intended to serve a regulatory function currently do so.

The purpose of this proposed action is to provide requirements for disclosure of potential or extant environmental impacts related to GHG emission or wildfire risk and hazard to the Plan preparation process, to make clear the guidance nature of the

Appendix, and to update and add technical clarity and accuracy to existing discussion of impact analysis.

Explanation for Why the Proposed Action Clarifies and/or Makes Specific Statute and Existing Rules

Pursuant to PRC § 4511 et seq. and §4553 et al. the Board is authorized to clarify or make specific statute and/or existing rules to satisfy the clarity standard. In this rulemaking effort, the Board exercised its authority to amend current rules set forth under the FPRs. Amending current rules was used to clarify existing assessment criteria and to provide guidance information for the assessment of GHGs and wildfire risks and hazards.

Amend 14 CCR § 912.9, 932.9, 952.9 [All Districts]

The proposed action amends 14 CCR § 912.9, 932.9 & 952.9, titled “Cumulative Impacts Assessment Checklist [All Districts].” The language shall be amended to be congruent and consistent with existing language used elsewhere in code. This includes changing all uses of the “past, present, or reasonably foreseeable probable future projects” (or any iteration thereof), to reflect the terms “Past Projects” and “Reasonably Foreseeable Probable Future Projects” as defined in 14 CCR § 895.1.

The proposed action also incorporates Greenhouse Gases and Wildfire Risk and Hazard in the cumulative impacts assessment table in order to allow for inclusion of these topics into the Plan environmental review process. This is necessary to align the THP environmental review process with the intent of existing statute.

Additional amendments include changing references to the “forest practice rules” and “rules of the Board of Forestry” to “Forest Practice Rules,” all uses of “Plan” have been changed to “Timber Harvest Plan” or “Plan,” and the term “effects” has been changed to “impacts” in order to maintain consistency with PRC § 4511 et seq.

These changes are necessary in order for Plan submitters and the Director to properly consider and assess environmental impacts.

The proposed action amends the portion of 14 CCR §§ 912.9, 932.9, 952.9, titled “Board of Forestry and Fire Protection Technical Rule Addendum No. 2 Cumulative Impacts Assessment” to align the Forest Practice Rules with current statutory and regulatory definitions and terminology. This section has also been revised to provide additional clarity and more accurate language and information. Changes have been made to provide more accurate criteria for assessing potential environmental impacts to the identified resources, which are necessary to both standardize and improve the efficiency of the Plan review process.

Identification of Information Sources has been amended to include additional categories of records that should be utilized for review to fully address cumulative impacts. These additional records types are necessary to allow thorough and accurate impact analysis.

Amend 14 CCR § 912.9, 932.9, 952.9 [All Districts]: Appendix

The proposed action amends the portion of 14 CCR § 912.9, 932.9, and 952.9 titled “Appendix Technical Rule Addendum #2” as the Board has determined that this portion of 14 CCR § 912.9, 932.9, 952.9 was intended to be utilized as a guidance document and should not contain regulatory standards. The proposed amendment makes explicit the guidance nature of the Appendix.

The proposed amendment also improves language and technical clarity and consistency throughout the Appendix.

Appendix: Watershed Resources

The proposed amendment to this guidance portion of the Appendix includes updated and improved technical information to both the “Sediment Effects” and “Peak Flow Effects” portions, which serves to provide Plan preparers the most pertinent guidance in evaluating these effects.

Appendix: Biological Resources

The proposed amendment removes guidance that refers to the utilization of the Joint Policy on Hardwoods between the California Board of Forestry and California Fish and Game Commission as the document has become outdated in terms of applicability. The Board of Forestry and Fire Protection may work on modernizing this policy or a version thereof for future use.

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Whatever you think is best

Appendix: Greenhouse Gas (GHG) Impacts

The proposed action adds a new discussion on to the guidance of impact assessment related to the resource subject of GHG Impacts. This portion of the amendment provides three exemplative options for the assessment of cumulative GHG impacts which range from qualitative analysis to more technical and quantitative methods of assessment. This guidance is necessary to both improve efficiency and accuracy of the Plan preparation and review processes, as well as to ensure that Plans comply with CEQA provisions (14 CCR § 15064.4) and remain valid as functional equivalents to documents prepared under CEQA.

Appendix: Wildfire Risk and Hazard

The proposed action adds a new discussion to the guidance of impact assessment related to the resource subject of wildfire risk and hazard. This portion of the amendment provides a brief discussion of the resource subject, as well as several options for the assessment of potential cumulative impacts related to wildfire risk and hazard. This guidance is necessary to both improve efficiency and accuracy of the Plan preparation and review processes, as well as to ensure that Plans comply with CEQA provisions (PRC § 21083.01(a)) and remain valid as functional equivalents to documents prepared under CEQA.

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

The effect of this proposed action is to provide a regulatory standard for GHG emissions and Wildfire Risk and Hazard within the Plan process to improve efficiency and accuracy with both the disclosure processes of the Plan submitter and the review processes of the Director.

Creation or Elimination of Jobs within the State of California

The proposed action provides regulatory standards for disclosure and review of potential environmental impacts as required by PRC § 21083.01(a) and 14 CCR § 15064.4 and adds technical clarity and accuracy to existing discussion of impact analysis. The proposed action does not require any additional obligations of the regulated public than were previously required by statute, and where the proposed action makes specific statute, it is of limited scope and not anticipated to sustain changes in the job market. No creation or elimination of jobs within the State of California will occur.

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

The proposed action provides regulatory standards for disclosure and review of potential environmental impacts as required by PRC § 21083.01(a) and 14 CCR § 15064.4 and adds technical clarity and accuracy to existing discussion of impact analysis. The proposed action does not require any additional obligations of the regulated public than were previously required by statute, and where the proposed action makes specific statute, it is of limited scope and not anticipated to sustain business enterprises over the long term or result in the elimination of businesses. No creation of new or elimination of existing businesses will take place.

Expansion of Businesses Currently Doing Business within the State of California

The proposed action provides regulatory standards for disclosure and review of potential environmental impacts as required by PRC § 21083.01(a) and 14 CCR § 15064.4 and adds technical clarity and accuracy to existing discussion of impact analysis. The proposed action does not require any additional obligations of the regulated public than were previously required by statute, and where the proposed action makes specific statute, it is of limited scope and not anticipated to result in expansion of businesses. No expansion or retraction of business currently doing business will occur.

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

The proposed action will benefit the health and welfare of California residents, worker safety, and the State's environment by mitigating the risk and hazards of wildfire from timber harvesting projects. By mitigating these risks, landowners are reducing the potential for a catastrophic wildfire that would otherwise result in losses of life and property and impact smoke-sensitive populations. Additionally, the proposed action may improve the ecological health of California's forested landscape, leading to an improved environment.

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.

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.

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 significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed action does not require any additional obligations of the regulated public than were previously required by statute, and where the proposed action makes specific statute, it is of limited scope and not anticipated to result in expansion of businesses. The proposed action will not result in significant or potentially significant adverse economic effects.

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

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

1. Excerpts from Public Resources Code (PRC), 2016: §§ 4512, 4512.5, 4513, 4526, 4551, 4551.5, 4553, 4562, 4562.5, 4562.7, 4582.5, 5093.50, 21000(g), 21001 (f), 21080.4, 21080.5
2. Excerpts from Water Code, 2016: § 100
3. Excerpts from Fish and Game Code, 2016: § 5650(c)

4. Excerpts from California Code of Regulations Title 14: 14 CCR §§ 15183 *et seq*, 15130 *et seq*, and 15126 *et seq*.
5. State Board of Forestry and Fire Protection: *The 2008 Strategic Plan and Report to the California Air Resources Board on Meeting AB 32 Forestry Sector Targets*, October 2008
6. Senate Floor Analysis of Senate Bill 97, prepared August 22, 2007
7. Natural Resources Agency CEQA Guidelines Amendments Adoptions, December 30, 2009
8. Bergman *et al.* *The Carbon Impacts of Wood Products*. Forest Products Society, May 2014
9. Bill Stewart, *What Carbon to Count?* January 2015 BOF Presentation

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**

The Board has considered the following alternatives and rejected all but alternative #3.

Alternative #1: No Action

This alternative would not adopt any stated amendment. Under this alternative, the Board would retain 14 CCR §§ 912.9, 932.9, and 952.9, and Technical Rule Addendum No. 2 in their current form. CEQA does not prescribe a specific method for assessing the GHG emissions from proposed projects and the lead agency has discretion to either use a model or methodology to quantify these emissions or rely on a qualitative analysis under performance based standards.

The Board rejected not improving the clarity of the Forest Practice Rules where there is currently no standard practice on how to disclose and assess potential impacts resulting from GHG emissions or wildfire risk as it relates to timber harvesting. The Plan submitter and the Director will have no regulatory guidance on how to evaluate cumulative impacts resulting from GHG emissions or wildfire, which may lead to inconsistent and/or inadequate findings of significant impacts.

Alternative #2: Take Action to Increase the Specificity of the Regulation Needed to Implement the Statute

This alternative would increase the specificity of the regulation needed to implement the statute.

The Board rejected increasing the specificity of the regulation needed to implement the statute in recognition of the diversity in timberland, management, and mitigations; to allow the final level of prescription to be developed by the participants familiar with the site specific, on the ground conditions. The Board recognized that a "one size fits all" collection of prescriptive standards may not be optimal in all circumstances. Further, the Board found that increasing the specificity, relative to the adopted alternative, did not provide enough flexibility to participants to meet the statutory requirements in alternative ways that were more site-specific and at least as effective in implementing the statutory policy or other provision of law.

Increasing the specificity of the regulation is also equivalent to making the regulation more prescriptive than the alternative and would be more burdensome for those preparing Plans. Therefore, this alternative was rejected

Alternative #3: Take Action as Proposed and Modified through the Formal Public Review and Comment Process

This will provide clarity and standards for both the Plan submitter and the Director. Plan submitters will have improved guidance as to the Director's decision making process. The Director and the general public will also receive standardized, more transparent. Finally, by adopting the proposed action, the Forest Practice Rules would comport with existing statutes.

This is the preferred alternative as it aligns the Plan review process with the CEQA guideline processes as well as State environmental policy and represents a product based upon compromise and the greatest degree of consensus achievable at the time the Board authorized noticing of the proposed action. Public and agency representatives have reviewed the proposed action and provided input, which is reflected in the proposed regulation.

Board Findings Regarding Alternatives

The Board finds that none of the following alternatives:

- Would have any adverse impact on small business.
- Would be 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 than the proposed action.
- Would be more effective in carrying out the purpose for which the action is proposed and would be as effective as 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 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 does not mandate the use of specific technologies or equipment; but does prescribe specific actions or procedures. The proposed action is only as prescriptive as necessary to ensure that the assessment of GHG emissions and wildfire risks and hazards are consistent in Plan documentation. The prescriptions also allow for multiple assessment methods and procedures and for the increased use of performance based standards through the repeal of the Appendix. Wholly performance based standards were not reasonably expected to be as effective and less burdensome in achieving the purpose of the proposed action.

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)**, performance standards were considered in lieu of prescriptive standards. The proposed action does not mandate the use of specific technologies or equipment, but does prescribe specific actions or procedures. Alternatives (1) considered by the Board require fewer of these 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 significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Businesses will not be adversely impacted by the proposed action.

Pursuant to GOV § 11346.5(a)(8), the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support this initial determination:

The Board relied on their own expertise and thorough working knowledge of forestry practices and regulations as experienced forestry and environmental professionals to develop this rulemaking package. Additionally, discussion and comments from the current members of the Board's Forest Practices and

Management committee, as well as with the California Department of Fish and Wildlife, and sincere input from forestry and wildlife interest groups and stakeholders supported this rulemaking effort.

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 research, the Board found that the proposed action neither conflicts with, nor duplicates Federal regulations. There are no comparable Federal regulations related to the system of forest practice applicable to timber management on state and private timberlands developed pursuant to the FPA and regarding the existing system of cumulative impact analysis of GHG and wildfire risk and hazard.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The California Environmental Quality Act (CEQA) requires review, evaluation and environmental documentation of potential significant environmental impacts from a qualified project. The Board's rulemaking process has been certified by the Secretary of Resources as meeting the requirements of 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 Forest Practice Rules along with the Department oversight of rule compliance functions expressly to prevent adverse environmental effects.

Harvesting Plans 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 the RPF's avoidance and mitigation measure development.

State representatives review every harvesting plan prior to a decision as to approval or denial. Local and federal agency representatives are also involved in the review process. State representatives continue with compliance inspections of approved plans until the conclusion of the plan's lifespan. Where FPRs standards or approved plan provisions 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 will not result in significant or potentially significant adverse environmental effects. The proposed action is an element of a comprehensive avoidance, safety abatement and mitigation program for commercial timber harvesting activities.

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