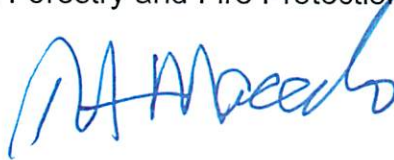


Memorandum

Date: April 17, 2017

To: Mr. Matt Dias
Executive Officer
California Board of Forestry and Fire Protection

From: Richard Macedo
Branch Chief
Habitat Conservation Planning Branch



Subject: **Recommendations for the Oak Woodland Management Exemption (Forest Practice Rules Section 1038 (I))**

On September 24, 2016, the Governor signed and approved Assembly Bill 1958 (AB 1958). This bill amended statute to create a new exemption from Timber Harvesting Plans for the purpose of conserving California black and Oregon white oak woodlands and associated grasslands. AB 1958 also included a mandate that the Board of Forestry and Fire Protection (Board) adopt regulations to implement the statute by January 1, 2018 (Public Resources Code Section 4584(k)(10)). At the November 2016 meeting of the Board's Forest Practice and Management Joint Committee (Committee), the Executive Officer provided rule plead language for AB 1958. The Committee briefly discussed the rule plead at its April 11, 2017 meeting, but has not formally opened the comment period for the proposed regulatory language.

Although the formal comment period has not yet begun, the California Department of Fish and Wildlife (CDFW) has reviewed the proposed rule language and has suggestions for the Committee's consideration. CDFW recognizes that the process of adopting regulations can take a significant amount of time and effort. We hope to avoid potential delays by providing our initial comments early. We look forward to hearing Committee discussions on the subject and hope to assist the Committee and Board where warranted.

CDFW's comments at this time fall into two broad categories: 1) Requested clarifications and 2) Recommendation. CDFW believes that the Board can add language to *clarify* the intent of the legislature. We also *recommend* language where the Executive Officer has noted decision points.

1) Requested Clarifications

CDFW requests that the Board include additional language to clarify and further define four items in the current rule plead.

First, subsection (1)(a)-(b) limits the exemption use to 300 acres per timberland owner over a five year period. This is in contrast to the less than three acre conversion exemption under Section 1104.1(a) of the Forest Practice Rules (FPRs), which allows only one conversion exemption in one contiguous ownership in a five year period. CDFW requests that the Board clarify that the number of exemptions is not limited, only the acreage treated is limited.

Second, subsection (3)(B) requires "a description of the preharvest stand structure and statement of the postharvest stand stocking levels." CDFW recognizes that this language comes directly from the statute. However, we request further clarity regarding the term "preharvest stand structure." As written, it is unclear whether the preharvest and postharvest measurements will be comparable.

Third, CDFW requests clarification on what a countable tree is when calculating basal area of California black or Oregon white oak.

Fourth, regarding slash treatment under subsection (5)(e), CDFW suggests clarifying the slash treatment timing. As written it is unclear whether the slash treatment needs to be completed within 24 months and should be no more than 18 inches deep *upon completion* or if the slash should be no more than 18 inches deep within 24 months. In the latter interpretation, treatment of slash could leave piles greater than 18 inches deep, with the assumption that by the time the 24 months has passed the slash will have naturally decomposed to a depth of 18 inches or less. Additionally, CDFW supports the Executive Officer's option to provide more clarity or an enforceable standard regarding the configuration of treated slash.

2) Recommendation

At multiple points of the rule plead, the Executive Officer notes that a decision needs to be made about what term to use for describing the exemption area. CDFW agrees with the Committee's decision to use the defined term *Harvest Area* (FPR Section 895.1). For this exemption, the limitations and requirements apply to the area where trees are felled and removed (i.e., the Harvest Area). For instance, CDFW believes the 300-acre limit should just apply to the Harvest Area. Additionally, the minimum 35 square-feet of basal area per acre of Oregon white oak or California black oak, or both, should be present in the Harvest Area, where the trees are being felled.

Aside from the clarifications and recommendation requested above, CDFW would like to emphasize our general support for monitoring efforts. Although the opportunity cost of monitoring can be prohibitive, collecting data on successes or failures of this exemption will be important for future oak woodland conservation efforts. Such data will also inform the California Legislature on whether this exemption should be extended past its January 1, 2024 sunset date. CDFW urges the Committee and the Board to consider potential monitoring options during discussions of this rule plead.

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If you have questions or need additional information regarding this matter, please contact Mr. William Condon at (916) 651-3110, or by email at william.condon@wildlife.ca.gov.

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