

**BOARD OF FORESTRY AND FIRE PROTECTION**

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**Forest Practice Committee Meeting Report**

**Note: agenda items appear below in the order in which they were discussed by the assembly.**

**FOREST PRACTICE COMMITTEE****March 2, 2010****Time: 8:00 p.m. – 12:00 p.m.**

Location: **Resources Bldg.**  
Auditorium  
Sacramento, California

**Agenda #1: Discussion and review of Threatened or Impaired “road rules” and work plan. Update of Road Rules Task Force work including meetings and regulatory proposals.**

Board staff Chris Zimny introduced the information documents that were the subject of the meeting. Of focus for the meeting was a schedule of review of the various components of the regulatory proposal, the RRTF plead dated March 3, 2010, and a matrix summarizing the proposed changes.

Road Rules Task Force (RRTF) members Pete Ribar and Tom Spittler provided a briefing on the status of the regulatory proposals prepared by the RRTF. They also provided a completed regulatory proposal and summary document (matrix) dated March 2, 2010, which incorporates the Anadromous Salmonid Protection Rules into the road rules regulatory proposal.

The FPC began the review of the “Intent” sections “Planning for Logging Roads and Landings” sections of the RRTF regulatory proposal. Several FPC consensus modifications were made to the March 3, 2010 rule version in the “Intent” sections “Planning for Logging Roads and Landings” sections. Review of the “Planning for Logging Roads and Landings” section was not completed at the March meeting and will resume at the April meeting.

Staff was directed by the FPC to post all documents on the BOF web site and to draft consensus changes agreed upon at the March 2, 2010 meeting. The version with on-going changes will be periodically posted on the website and provided to the FPC members at each FPC meeting. Members of the public wishing to obtain a copy of the rule proposal with the on-going edits should retrieve the document on the BOF web site.

The agenda concluded with discussion of the review process. The FPC noted that the review process will be conducted at the monthly FPC meetings, and stakeholder proposing edits should bring them to the FPC meeting for consideration. It was also noted that a separate extensive contracted science review was not being conducted by the FPC as was done for the riparian function ASP rules in 2006-2009. The FPC intends to rely on existing literature provided by agencies members, the public, and BOF staff as the review continues for each proposed subsection. Members of the public suggested that the 1999 Science Review Panel report be used as part of the science basis

## **Agenda #2: Review of public questions on implementation of the Anadromous Salmonid Protection Rules**

FPC members reviewed letters and heard comments from the public and California Forestry Association on recent Cal Fire interpretations on implementation of the Anadromous Salmonid Protection rules. The letters and comments raised the issues on Cal Fire's interpretation of the reach-distance along a Class II watercourse over which the Class II Large prescriptive standards shall be applied. The public comments revolved around limiting the prescriptive standards for Class II-L watercourses to the actual location of where the class II-L conditions are found, limited to 1000 feet, and not apply the prescription within 1000 feet of the class one watercourse when the Class II-L conditions were not present. The public commenters believe this is the plain english instructions in the adopted regulations.

The FPC discussed several alternatives to address the public concerns. Among the alternatives were issuing a directive to Cal Fire on implementation of the ASP rules, proposing amendments to the adopted ASP regulation to improve its clarity, and getting an OAL opinion on the meaning of the adopted regulation. The FPC agreed to report the discussion to the full board on the March 3, 2010 committee report.

## **Agenda #3: Discussion of items for next month's agenda, review of 2010 Priorities. Potential Agenda Items for April 2010:**

The FPC identified the following items for the April 2010 RPC agenda.

1. Discussion and review of Threatened or Impaired "road rules"; Review of FPC amendments to the Road Rules Task Force regulatory proposals dated March 2, 2010; Review of RRFT proposed regulatory sections 923.1 Planning for Logging Roads and Landings; 916.3 General Limitations Near Watercourses; 923.2 Design and Implementation (Roads & Landings); and 923.3 Mapping and Identification (Roads & Landings)
2. Discussion of next month's agenda and review of priorities.

## **FPC ISSUES FOR 2010**

### **PRIORITY 1:**

1. **Regulatory amendments for permanent T/I rules: Road rules:** *Consideration of regulatory recommendations made by the interagency road rules committee in October 2007. Objective/Status: Complete by end of 2010, in progress in FPC.*
2. **Case NO: CGC-07-469244, struck down sections 916.9.2, 923.9.2, 936.9.2 and 943.9.2** *Repeal of regulations to remove from the FPRs subsections struck down by the Court. Objective/Status: Complete by end of 1<sup>st</sup> quarter 2010; sent to board for adoption in Feb 2010. Section 100 filing pending receipt of final action from court by the BOF.*
3. **Development of pilot programs for SERM projects** *Objective/Status: Complete process and guidelines by end of 2010; CAL FIRE held a discussion meeting on March 2, 2010 with members of the public and NFMS representative.*
4. **Regulatory amendments to Fire Tools and Civil Penalty regulations in FPRs:** *Issue was remanded back to committee and Dept. for further development. Objective/Status: Complete*

by end of 1<sup>st</sup> quarter 2010; BOF adopted Final regulation and FSOR on 3/3/10. Staff will file with OAL.

5. **Aspen rules:** Interpretations vary on opening size allowed for this method, needs clarification. **Objective/Status: Complete by end of 2010, in progress in FPC.**
6. **Restating FPRs in THPs:** Consider allowing the statement of compliance with specific rule section (s) by number, rather than using language out of the FPRs. New THP form under development, will be addressed. **Objective/Status: no progress to date.**

## **PRIORITY 2:**

7. **Other issues: Performance Based Systems Pilot Program, Forest Legacy Program Review/Regulations, Board of Equalization Liaison.** **Objective/Status: no progress to date.**
8. **Rule Interpretations**

**14 CCR § 913.4(d)** Variable retention rules do not specify reentry period for leave areas. Minimum age of application is the same as even age regeneration? **Objective/Status: no progress to date.**

**Department disallows use of the Transition silviculture method when applied to stands which have been previously harvested utilizing the Selection method.** Does not conform with 14CCR § 913.2(b) or (b)(2). Past harvest history should not be a condition of the application of any silvicultural prescription. THP was returned on this issue without being evaluated through PHI to support the determination. **Objective/Status: no progress to date.**

9. **Regulatory proposal development for rule monitoring requirements:** Pending. Phase 3. Rule development to begin in 2010. See also Policy #1 and 6. **Objective/Status: no progress to date.**

## **10. Issues related to THP form and content**

**(D09 #5)14 CCR § 916.4(c)(1) [936.4(c)(1), 956.4(c)(1)]** [in part], The location of the areas of heavy equipment use in any ELZ shall be clearly described in the plan, or flagged or marked on the ground before the preharvest inspection. 14 CCR § 1034(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. 14 CCR § 916.4(c)(1) [936.4(c)(1), 956.4(c)(1)] requires RPF to clearly describe, flag or otherwise identify ELZ on the ground prior to the pre-harvest inspection. 14 CCR § 1034(x)(7) requires the RPF to map the location of all classified watercourse crossings except temporary dry Class III crossings. CAL FIRE recommends the Board amend the rules to delete the allowance in 14 CCR § 1034(x)(7). **Objective/Status: no progress to date.**

**(D09 #10)14 CCR § 1034. Contents of Plan.** **Objective/Status: no progress to date.**

**(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.

**(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.] (See above)

(x)(9), [On a plan map, show the location of all watercourses with Class I, II, III, or IV waters. This paragraph should be amended to add “and lakes.”

(ii), On a map complying with subsection 1034(x), the locations and classifications of roads, watercourse crossings, and landings to be abandoned shall be shown. This subdivision should be deleted and the mapping requirement should be incorporated as part of 14 CCR §1034(x), which applies strictly to mapping.

*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.*

(D09 # 9)14 CCR § 1032.7(d) [in part], A Notice of Intent [NOI] shall include the following information: (4) the acres proposed to be harvested. (5) The regeneration methods and intermediate treatments to be used. **Objective/Status: no progress to date.**

*(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.*

*(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.*

(D09 # 9)14 CCR § 1032.10, 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 request that the THP submitter be advised of surface domestic water use from the watercourse, within the THP or within 1,000 feet downstream of the THP boundary. When required to notice by letter, publication shall also be given one time by the THP submitter in a newspaper of general circulation in the area affected by the proposed project. Such letter and publication shall notify the party of the proposed timber operation and describe its legal location and identify the name, if any, of the watercourse it may effect. The letter and publication shall request a response by the property owner within ten days of the post-marked date on the letter or the date of publication as appropriate. The RPF may propose, with justification and explanation, an exemption to such notification requirements, and the Director may agree. Copies of either notice, proof of service and publication, and any responses shall be attached to the THP when submitted. If domestic use is noted, the plan shall contain mitigations necessary to protect domestic water use. The plan shall not be submitted until ten days after the above notification(s) have been done. **Objective/Status: no progress to date.**

*Overland flow or channel flow?*

*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.*

*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].*

*Require more current notification in which the post-marked date is no more than one year prior to submittal of the plan.*

*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.*

*The 4<sup>th</sup> sentence should be changed to use the proper verb, “affect,” in place of “effect.”*

**PRIORITY 3: Objective/Status: no progress to date.**

11. **Stocking levels:** *too high for some forest types.*
12. **Should mechanical feller-bunchers be classified as "heavy equipment" in WLPZs?**
13. **Man made watercourses with fish (Class IV):** *what are the appropriate protections?*
14. **14CCR § 1038(c)(3) Slash removal interpretation:** *does the slash need to be removed from the subject property, rather than from within the actual timber operation?*
15. **Abolish in-lieu practices,** *current FPRs comprise minimum standards.*
16. **14 CCR § 914 [934, 954]** *Tractors shall not be used in areas designated for cable yarding except to pull trees away from streams.....Such exception (s) shall be explained and justified... Suggest replacing language to allow usage subject to the limitations of 14 CCR § 914 [934, 954].2 (f)- prohibitions on steep slopes.*
17. **(D09 # 7)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.*

18. **Progeny Sites:** *These sites are usually planted over a long period of time 3-10 year period to get various age classes and seed sources. Some of the land may sit fallow for a number of years and not meet a 5 year stocking requirement. Exempt up to 40 acres from meeting the required stocking standard if the property owner designates that area for a progeny plantation.*
19. **1038 exemption:** *This rule allows post-fire timber operations to be "exempt from the plan preparation and submission requirements" which means that the public and decision-makers have little say in how this important forest resource (i.e., post-fire habitat) is protected. Therefore, to better achieve protection of post-fire habitat, this exemption should end. Because post-fire habitat has significant ecological value, there should be better guidance regarding what constitutes "significant adverse effects."*

**End**