

# California Department of Forestry and Fire Protection

## Report to the Board of Forestry and Fire Protection's Policy Committee On Recently Adopted Rules and Potential Changes to Existing Forest Practice Rules



November 2007

## **Introduction**

The California Department of Forestry and Fire Protection (CAL FIRE) presents this report to the Board of Forestry and Fire Protection's (Board) Policy Committee (committee) in response to the procedures outlined in the memo entitled, Board Procedure for the Review of Forest Practice Rule Modifications (October 4, 2006). The memo states that CAL FIRE will make a presentation to the committee at the regularly scheduled November meeting regarding the following:

- Areas where questions exist on interpretation of the regulatory standards, including potential solutions.
- Issues encountered with achieving compliance with the regulatory standard of rules, including potential solutions.
- Suggested regulatory modifications which would either 1) clarify existing rule language to better achieve the intended resource protection, or 2) which would reduce the regulatory burden on the public and maintain the same level of protection.

In an effort to provide the committee with the above-requested information, CAL FIRE has queried plan review and field staff regarding implementation of recently adopted rules by the Board, queried its harvesting document database to determine use of the various rules, and queried plan review and field staff regarding any other area of the rules that has presented difficulty in implementation or interpretation. The report first presents information related to recently adopted rules (2004-present), the extent of their use, comments provided by plan review and field staff, any difficulties found in implementation, and suggested changes to improve the rules. The report then provides information regarding other existing forest practice rules, which staff have indicated could be modified to make them more useful or to add clarity. For the most part, specific line-by-line revisions to a given forest practice rule are not contained in this report. Furthermore, CAL FIRE has, and continues to, work with the Board through various committees, subcommittees, and task groups to develop alternatives to the existing regulations (e.g., the road rules committee, the interagency task group working on 2112 rules, the TAC, etc.) CAL FIRE hopes that the Board will consider current and previous work done in these committees. CAL FIRE can provide specific recommended changes to the Board as this process moves forward.

## **Recently Adopted Rules**

This section looks at recently adopted rule packages, the extent of their use, any difficulties encountered in interpretation or enforcement, and suggested changes. Recently adopted rule packages are considered those that have gone into effect from 2004 to the present.

## Rules Effective in 2004

### Variable Retention Silvicultural Method (14 CCR § 913.4(d) [933.4(d), 953.4(d)]) and Minimum Stand Age

The variable retention rule package created an additional silvicultural method providing an approach to harvesting based on the retention of structural elements or biological legacies from the pre-harvest stand for integration into the post-harvest stand to achieve various objectives.

The following table describes variable retention silvicultural prescription usage since adoption:

<b>Variable Retention Silvicultural Method Use 2004-2007</b>	
<b>Timber harvesting plans (THPs) approved with variable retention since rule adoption</b>	61
<b># plans in Coast Forest District</b>	59
<b># plans in Northern Forest District</b>	2
<b># plans approved in 2004 with variable retention</b>	24
<b># plans approved in 2005 with variable retention</b>	12
<b># plans approved in 2006 with variable retention</b>	13
<b># plans approved in 2007 with variable retention</b>	12
<b>Average acres variable retention/plan</b>	83
<b>Total acres treated with variable retention</b>	16,845
<b>Percent of total plans with variable retention</b>	3.5

Several THPs submitted in the Coast Forest District proposed application of variable retention in units where the dominant and co-dominant trees were less than 50 years old. Based on guidance from the Board's rules, CAL FIRE has taken the position that the age limitations specified in 14 CCR § 913.1(a)(1) [933.1(a)(1), 953.1(a)(1)] apply where variable retention is used to regenerate even-aged stands.

The Board's rules under 14 CCR § 913.4 (d)(11) [933.4 (d)(11), 953.4 (d)(11)] prohibit application of a subsequent variable retention harvest for at least 50 years for Site Class I, 60 years for Site Class II and III, and 80 years for Site Class IV and V. Therefore, variable retention should not be re-applied to stands created through its use for time periods commensurate with those contained in 14 CCR § 913.1(a)(1) [933.1(a)(1), 953.1(a)(1)], and the initial entry for variable retention should only occur on stands that have met the minimum stand age requirement specified in 14 CCR § 913.1(a)(1) [933.1(a)(1), 953.1(a)(1)]. The guidance provided in 14 CCR § 913.4(d)(11) [933.4(d)(11), 953.4(d)(11)] is applicable to the initial entry under variable retention used to regenerate even-aged stands, just as it is applicable to all other stands harvested under the even-aged regeneration method. The plan submitter can deviate from this if shorter rotation ages are proposed in demonstration of maximum sustained production of high quality timber products (MSP) pursuant to 14 CCR §§ 913.11(a) or (b) [933.11(a) or (b), 953.11(a) or (b)].

CAL FIRE addressed this issue with a memo providing guidance to plan review and field staff in July 2004. However, CAL FIRE requests the Board amend the variable retention rule to clarify the application of this regulation.

**Rules Effective in 2005**

AB 47 Mapping Requirements (14 CCR § 912.9, Board of Forestry Technical Rule Addendum No. 2, Cumulative Impacts Assessment)

This rule package amended the Board Technical Rule Addendum No. 2, Cumulative Impacts Assessment, Past and Future Activities to require the inclusion of a map depicting the silvicultural method and category for past, present, and reasonably foreseeable future timber harvesting projects on land owned or controlled by the timberland owner within the planning watershed.

CAL FIRE has not received any substantive comments and presents no comments on this rule.

Transition Silvicultural Method (14 CCR §§ 913.2(b) [933.2(b), 953.2(b)] and 913.11 [933.11, 953.11])

The Board amended the transition silvicultural method to increase the allowable pre-harvest stand basal area from 25 to 50 square feet more than the selection basal area standards and to allow retention of smaller seed trees where 18-inch dbh trees were not present in the pre-harvest stand. The changes were intended to allow use of this prescription on lower site plans.

The following table describes transition silvicultural prescription usage just prior to, and since, the rule amendment:

Transition Silvicultural Method Use 2000-2007								
Year	Total Plans	Coast Transition Plans	Northern Transition Plans	Southern Transition Plans	Total Transition Plans	% Total Plans with Transition	Average Acres Transition/Plan	% Plan Acreage by Transition
2000	885	32	5	6	43	5	79	26
2001	786	40	3	2	45	6	141	47
2002	671	19	2	5	26	4	72	40
2003	543	21	8	8	37	7	69	21
2004	587	24	3	3	30	5	83	31
2005	522	19	1	2	22	4	117	42
2006	458	15	2	0	17	4	168	37
2007	316	13	2	3	18	6	190	55

On a percentage basis, the number of plans utilizing the transition method does not reflect an increase in use of this silvicultural prescription since passage of the rule in 2005.

CAL-FIRE presents no further comments on this rule at this time.

Fuel Hazard Reduction Emergency and Forest Fire Prevention Exemption (14 CCR §§ 895.1, 1052, 1052.1, 1052.4, 1038(e), and 1038(i))

The Fuel Hazard Reduction Emergency was adopted as an emergency rule in 2004, and the Forest Fire Prevention Exemption was adopted in 2004. Both of these rule packages were in effect in 2005 and remain so.

The following table describes Fuel Hazard Reduction Emergency and Forest Fire Prevention Exemption Notice usage since adoption:

Fuel Hazard Reduction Emergency					
Total Notices	57	Average Acres/Notice	41	% Projects with Violations	12
Proposed Acres	2361	% Projects Operated	79	% Projects Completed	68
Completed Acres	2055	% Projects Inspected	82	% Projects Expired	100
Acres Completed in Sierra-Cascade Region: 1858		Acres Completed in Coastal Region: 195			
Acres Completed in Southern California Region: 2					
Forest Fire Prevention Exemption					
Total Notices	26	% Projects Inspected	54	% Projects with Violations	4
Proposed Acres	1196	Average Acres/Notice	46	% Projects Complete	42
Completed Acres	321	% Projects Operated	58	% Projects Expired	13
Acres Completed in Sierra-Cascade Region: 308		Acres Completed in Coastal Region: 6			
Acres Completed in Southern California Region: 7					

CAL FIRE has presented information regarding the difficulties encountered in interpretation and enforcement, and has suggested changes during the Board's and Legislature's deliberations on these packages earlier this year. Any recommended changes have been incorporated during the Board's rule hearings in October 2007. Thus, CAL FIRE presents no further comments on this rule at this time.

**Rules Effective in 2006**

Lake Tahoe Region Exemption (14 CCR §§ 895, 895.1, 1038, and 1038(f))

The Board adopted this rule package in order to make changes to an existing exemption notice to facilitate fuels treatments in the Lake Tahoe Basin. At present, CAL FIRE's database shows that the exemption has not been utilized since it was amended. CAL FIRE presumes that appropriate changes to make the exemption more useful to timberland owners will result from work being done

by the California-Nevada Lake Tahoe Fire Commission and therefore declines to make any recommendations at this time.

Performance-Based Hazard Reduction (14 §§ CCR 957, 957.11, and 957.12)

The Board adopted this rule package to provide the opportunity to develop performance-based slash treatment measures, instead of the existing prescriptive requirements. This is meant to provide flexible standards for treatment of logging slash to reduce fire and pest hazards in logging areas and to determine whether timberland owners will utilize a performance-based approach if given the opportunity. The rule applies to timber operations in the Southern Forest District, and it expires on December 31, 2008. The performance-based hazard reduction rule has not been used since it went into effect.

CAL FIRE presents no further comments on this rule at this time.

**Rules Effective in 2007**

Watercourse Rules Streamlining (14 CCR §§ 916.5(e) [936.5(e), 956.5(e)] and 916.9 [936.9, 956.9])

The Board adopted the watercourse streamlining rule 1) in order to allow sample identification and marking of the watercourse and lake protection zone (WLPZ) on NTMPs on slopes over 50% and in watersheds with threatened or impaired values (T or I watersheds), 2) to clarify when the WLPZ has to be identified and marked in T or I watersheds (since some language was left out of a previous watercourse and lake protection rule package by the Office of Administrative Law), and 3) to allow timber operations in the WLPZ, equipment limitation zone or equipment exclusion zone in T or I watersheds under emergency notices to remove dead or dying conifers.

CAL FIRE staff note that the change to 14 CCR § 916.9(t) [936.9(t), 956.9(t)] has been beneficial to at least one timberland owner and likely to more in the future:

The allowance for WLPZ operations with an emergency notice has been a nice alternative to offer to our rural residential landowners who have had blow down in the recent wind events. Having it under an emergency and not under an exemption ensures RPF involvement. So far it looks like we have only had one landowner propose to use it for that purpose, but we can expect a couple in any given year. This appears to be a very beneficial provision.

Otherwise, CAL FIRE has not received any substantive comments and presents no further comments on this rule package.

## Aspen Restoration (14 CCR §§ 939.15 and 959.15)

The Board amended the rule sections to allow clearcutting of aspen stands with no requirement for restocking to regenerate aspen trees. It applies in the Northern and Southern Forest Districts. CAL FIRE has been unable to estimate the extent of use, since it has not tracked the implementation of this rule in its harvesting document database. Aspen regeneration has occurred on more than one THP in Siskiyou Unit and local CAL FIRE and DFG representatives support the restoration and enhancement of aspen stands through clearcutting of conifers to provide more sun and growing space for aspens.

CAL FIRE presents no further comments on this rule at this time.

## **Existing Forest Practice Rules**

### Substantive Rule Issues (Any rule quotes are in italics.)

#### 1. **14 CCR § 895.1, Crop of Trees, Available for, and Capable of.**

The PRC § 4526 defines timberland as land “...*which is available for, and capable of, growing a crop of trees of any commercial species used to produce lumber and other forest products...*” The Board has defined a “crop of trees,” as any number of trees [emphasis added] that can be harvested commercially. The current rules do not define what kind of land is “available for, and capable of” growing, nor how many trees constitute, a crop of trees. As currently defined, in combination with the Board’s definition of “crop of trees,” timberland is any land that can support even a single specimen from the list of commercial species. Therefore, timber operations include the removal for commercial purposes of any solid wood forest product from any land where a commercial species is capable of growing, regardless of whether that species exists on site at the time, or whether any commercial species is proposed for harvest. This broad application of the statute significantly impacts CAL FIRE’s scarce resources. It requires the regulation of many low impact timber operations or other operations that would not otherwise be considered forest management for timber production, such as hazard tree removal and fuel hazard reduction projects. Regulating these small operations reduces CAL FIRE’s ability to provide active inspections on those operations that have a higher likelihood of causing significant environmental damage. Other requirements, such as obtaining the services of an RPF and an LTO, may reduce a landowner’s ability to complete these minor projects in a cost effective manner. The Board should consider amendments to 14 CCR § 895.1, which would clarify how many trees constitute a crop and define what “available for, and capable of” mean in the context of the definition of timber operations.

2. **14 CCR § 895.1, Watercourse or Lake Transition Line**
  - (a) for a watercourse with an unconfined channel (a channel with a valley to width ratio at bankfull stage of 4 or greater) means that line defined by the landward margin of the most active portion of the channel zone area readily identified in the field by riverine hardwood and conifer trees at least twenty-five (25) years in age at breast height.
  - (b) for a watercourse with a confined channel means that line that is the outer boundary of a watercourse's 20-year return interval flood event floodplain. This outer boundary corresponds to an elevation equivalent to twice the maximum depth of the adjacent riffle at bankfull stage. The bankfull stage elevation shall be determined by field indicators and may be verified by drainage area/bankfull discharge relationships.
  - (c) for a lake, it is that line closest to the lake where riparian vegetation is permanently established.

The Riparian Protection Committee (RPC) in its 2005 report, Flood Prone Area Considerations in the Coast Redwood Zone, recommends that the rules no longer include separate definitions for confined and unconfined channels. While the physical distinction exists, in practice the separate definitions have led to confusion and proven difficult to use in the field. It is more important to adequately define flood prone areas and the attributes of these features that require protection than to accurately characterize the degree of channel confinement. Rather than relying on distinctions in channel confinement, the RPC considers the identification of riparian functions and proper management to protect or restore those functions to be a more direct route to adequate riparian protection goals.

3. **14 CCR § 898.1(d) [in part]**, *Any substantial deviations (as described in 895.1), except as covered in 1040, in the conduct of a timber operation, or the inclusion of significant new information, made between the close of public comment and the date of the Director's decision will require returning the plan to the review team and reopening the public comment period for ten working days.*

Based on a recent court decision (Joy Road), CAL FIRE has been re-circulating harvesting documents that include significant new information for at least 30 days in cases where the plan requires a subsequent field visit by review team staff. Recirculation is intended to allow for the public to review the final document and reports associated with the field inspection. If the inclusion of significant new information in a harvesting document does not require a field visit, then CAL FIRE re-circulates to allow at least 15 days of public availability of the final plan. CAL FIRE has relied on direction from legal council and guidance contained in PRC § 21091 and 14 CCR § 15105, which set public review periods for draft environmental impact reports. The time period described in the rules does



not appear consistent with either current California Environmental Quality Act (CEQA) statute or guidelines, nor with legal opinion expressed by CAL FIRE's legal counsel. The Board should consider amending this section to be current with CEQA regarding inclusion of significant new information and public review periods for timber harvesting documents. If it chooses to amend this subdivision, the Board should consider utilizing a definition of significant new information consistent with CEQA.

4. **14 CR § 898.2 Special Conditions Requiring Disapproval of Plans.**

This rule section does not address public safety, which could make it ineffective in protecting the public.

To address this, the Board can amend the rule section to add an additional subdivision that would allow disapproval of a plan when the California Geological Survey indicates implementation of the plan would result in adverse slope stability impacts that could affect the health and safety of the public.

5. **14 CCR § 913.11(a) [933.11(a), 953.11(a)].**

This subdivision provides for the demonstration of maximum sustained production of high quality timber products as explained in the THP for an ownership, within an assessment area set by the timber or timberland owner. The demonstration of MSP involves producing landowner-specified timber products while accounting for certain constraints, balancing growth and harvest over time, maintaining adequate site occupancy, and making provisions for adequate regeneration. This type of MSP demonstration has, for the most part, supplanted the Sustained Timber Production Assessment contained in a Sustained Yield Plan (SYP) for large industrial ownerships. However, given the large areas covered under such MSP demonstrations and their potential complexity in terms of application, the rule provides very little in the way of explanation as to the contents, filing guidelines, review timelines, effective period, relation to an individual THP, inventory standards, monitoring, and reporting of such demonstrations. Whereas the rules pertaining to the SYP contain specific sections that address the SYP's relation to THPs, SYP Contents, Sustained Timber Production Assessment, Compliance and Effectiveness Evaluation, SYP Effective Period, Review of Sustained Yield Plan, and Timber Harvest Plans Submitted Within a SYP Management Unit, no such rule sections exist for the MSP demonstration per 14 CCR § 913.11(a) [933.11(a), 953.11(a)]. Recognizing the scope and complexity of the SYP caused the Board to formulate thorough rules that were commensurate with the potential area of application and the complexity of content. The same was not done for the MSP demonstration per 14 CCR § 913.11(a) [933.11(a), 953.11(a)]. Given its broad use and application, the Board

should consider forming a technical working group to begin to consider changes to this existing MSP rule to provide more concrete standards for the MSP demonstration per 14 CCR § 913.11(a) [933.11(a), 953.11(a)].

6. **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 the RPF to either clearly describe the location of heavy equipment operations in the Class III equipment limitation zone (ELZ) or to flag or otherwise identify such areas 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. While acknowledging that mapping is not the only way of clearly describing a location of heavy equipment operations, these two subdivisions appear to be in conflict. One requires the clear description of heavy equipment operations in the Class III ELZ, which would include all watercourse crossings, and could be done by mapping such locations. The other rule requires the mapping of watercourse crossings but not all of them. This rule conflict has caused confusion with both RPFs and plan reviewers. CAL FIRE has taken the position that when an RPF chooses to describe the location of heavy equipment operations in the Class III ELZ by mapping, he or she must map all such locations, including all classified watercourse crossings, whether they will be flowing water during timber operations or not. To ensure consistency between these two rules, CAL FIRE recommends the Board amend the rules to delete the allowance in 14 CCR § 1034(x)(7) that Class III crossing that are dry at the time of use not be mapped.

7. **14 CCR § 916.8 [936.8, 956.8].**

This rule section allows the Board to determine whether nominated planning watersheds are sensitive to further timber operations, and, if so, then identify the specific resources that are sensitive and specific mitigation measures that will provide the necessary protection.

This rule has been in effect since 1994, and CAL FIRE is not aware of a nominated watershed ever having been classified as sensitive by the Board. The current forest practice rules contain ample provisions to ensure that specific mitigation measures are incorporated into plans to protect any identified sensitive resources. Furthermore, the Regional Water Quality Control Boards have separate authority under Porter-

Cologne through their waste discharge requirements and waiver process to address specific water quality resources that are threatened. Due to the lack of use of this rule section and to adequate provisions contained in current laws and regulations, CAL FIRE recommends the Board delete this rule.

8. **14 CCR § 916.9(e) [936.9(e), 956.9(e)] [in part]**, *Channel zone requirements (1) There shall be no timber operations within the channel zone with the following exceptions: (E) Class III watercourses where exclusion of timber operations is not needed for protection of listed salmonids.*

This rule subparagraph has been a source of dissention on field inspections relative to Class III watercourses in clearcut units. It is apparent to some involved with field review of proposed timber operations that a single tree left in the middle of a clearcut unit will likely blow over, and that if the root ball is in a watercourse channel, it will deliver sediment. While 14 CCR § 916.9(e)(1)(E) [936.9(e)(1)(E), 956.9(e)(1)(E)] appears to provide for the removal of such trees, it has not prevented disagreements over retention of Class III channel trees in clearcut units. The Board should consider an additional exception that would allow the removal of such channel trees, provided there is no reason to retain them for the protection of listed salmonids.

9. **14 CCR § 916.9(k) [936.9(k), 956.9(k)]**, *From October 15 to May 1, the following shall apply: (1) no timber operations shall take place unless the approved plan incorporates a complete winter period operating plan pursuant to 14 CCR § 914.7(a) [934.7(a), 954.7(a)], (2) unless the winter period operating plan proposes operations during an extended period with low antecedent soil wetness, no tractor roads shall be constructed, reconstructed, or used on slopes that are over 40 percent and within 200 feet of a Class I, II, or III watercourse, as measured from the watercourse or lake transition line, and (3) operation of trucks and heavy equipment on roads and landings shall be limited to those with a stable operating surface.*

This subdivision is potentially ambiguous. First, one may not conduct timber operations between October 15 and May 1 without a complete winter operating plan in T or I watersheds. This requirement almost re-defines the winter period for T or I watersheds, and yet it does not explicitly state that the operations during the October 15 to May 1 period are subject to the winter operating plan. It is implied but not explicitly stated. One way to clarify the rule would be to actually define the winter period in T or I watersheds as being October 15 to May 1 and refer to the T or I winter period in the subdivision. This would make the October 15 to May 1 period subject to a full winter operating plan. Another way of

addressing this would be to define a fall operating period (FOP) and a spring operating period (SOP) under 14 CCR § 895.1 and refer to those periods in the subdivision. The subdivision should also state that operations during the T or I winter period or the FOP, SOP and winter period are subject to the complete winter operating plan.

10. **14 CCR § 916.9(I) [936.9(I), 956.9(I)]**, *Construction or reconstruction of logging roads, tractor roads, or landings shall not take place during the winter period unless the approved plan incorporates a complete winter period operating plan pursuant to 14 § CCR 914.7(a) [934.7(a), 954.7(a)] that specifically address such road construction. Use of logging roads, tractor roads, or landings shall not take place at any location where saturated soil conditions exist, where a stable logging road or landing operating surface does not exist, or when visibly turbid water from the road, landing, or skid trail surface or inside ditch may reach a watercourse or lake. Grading to obtain a drier running surface more than one time before reincorporation of any resulting berms back into the road surface is prohibited.*

This subdivision prohibits road construction and reconstruction during the winter period, unless the plan contains a full winter operating plan, and restricts road use year-round. It is not clear whether the winter period to which this subdivision refers is the defined winter period per 14 CCR § 895.1 (November 15 to April 1) or the expanded period during which a winter operating plan is required in T or I watersheds (October 15 to May 1). Also, the inclusion of the use restriction that applies year-round is confusing. To make this clearer, the Board should separate these two restrictions into distinct paragraphs and state whether the construction and reconstruction prohibition applies during the November 15 to April 1 period or the October 15 to May 1 period.

11. **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...*

This subdivision 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. There are parcels where the buildable area is within the WLPZ, and the county does the CEQA review and permits the house site there. It seems appropriate for CAL FIRE to be able to defer to the county in these situations.

In addition, the Board should also consider how the restriction of timber operations in the WLPZ affects timber operations conducted in compliance with defensible space regulations. There currently appears to be a conflict

between this subdivision and PRC § 4291 and 14 CCR § 1299. The Board should amend this subdivision to resolve these conflicts.

12. **14 CCR § 919.9 [939.9] [in part]**, *Every proposed timber harvesting plan, NTMP, conversion permit, Spotted Owl Resource Plan, or major amendment located in the range of the northern spotted owl shall follow one of the procedures required in subsections (a)-(g) below for the area within the boundary as shown on the map and also for adjacent areas as specified within this section.*

Currently, the only subdivisions of 14 CCR § 919.9 [939.9] that continue to apply to timber operations proposed in the range of the northern spotted owl are: (d), which applies to plans submitted under an approved Habitat Conservation Plan; (e), which requires discussion with the U.S. Fish and Wildlife Service (USFWS) or technical assistance; and (g), which requires habitat retention and review by CAL FIRE. With limited involvement from the Department of Fish and Game and likely reduced future involvement from USFWS, the Board needs to consider amending this whole rule section.

13. **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.*

The NOI provides important information about the proposed timber operations and the area in which this will occur. In order to make the NOI more applicable to the logging area and to be inclusive of all operations proposed as a part of the plan, CAL FIRE recommends the Board consider amending the following paragraphs:

- 1032.7(d)(4) requires stating the acres proposed to be harvested. This provides a description of the area where silvicultural prescriptions will be applied, but may not encompass all potential impacts, such as road or landing construction. In order to better represent the area where all potential impacts will occur, the 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.
- 1032.7(d)(5) requires stating the regeneration methods and intermediate treatments to be used. However, by requiring only those silvicultural methods, this paragraph may not capture all possible treatments that may occur under a plan, such as special prescriptions and other types of associated timber harvesting, such as road right-of-way or timberland conversion.

14. **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.*

This rule section has presented a few problems in interpretation, which could be made easier through clarification. The following are areas where CAL FIRE has had questions regarding this section during plan review:

- The code section requires notifying downstream landowners whose property receives surface drainage from the proposed timber operations. There has been some debate among CAL FIRE plan review staff as to what constitutes surface drainage. Is it overland flow or does it only occur in the channel of a watercourse?
- Publication may need to be given in a newspaper of general circulation in the area affected by the proposed project. CAL FIRE assumes this requires notification in a newspaper of general circulation 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].
- CAL FIRE often receives harvesting documents where notification of downstream landowners was done more than a year prior to plan submittal. It seems reasonable and practical to require more current notification in which the post-marked date is no more than one year prior to submittal of the plan.
- CAL FIRE staff has questioned whether a harvesting plan has to be returned in cases where the RPF requests an exemption from one

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

15. **14 CCR § 1034, Contents of Plan.**

Changes to the contents of plan section can be made to better facilitate this rule section’s functionality. These are:

- **(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.*

The mapping of watercourse crossings required by this paragraph needs to be reconciled with the requirement to clearly describe the location of heavy equipment operations in the Class III ELZ per 14 CCR § 916.4(c)(1) [936.4(c)(1), 956.4(c)(1)]. This has been previously discussed.

- **(x)(9)**, *[On a plan map, show the] Location of all watercourses with Class I, II, III, or IV waters.*

To ensure all waters are provided with adequate protection, 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.

Finally, the contents of plan section provides the closest thing in the rules to a list of what has to be contained in a plan in order for CAL FIRE to file it upon completion of first review. Thus, the contents of plan section is very important to the RPF preparing a plan and CAL FIRE plan review staff. There are numerous other items that a plan must include scattered

throughout the rules, but the contents of plan section is the place where the highest concentration of such required information is located. The Board should consider amending 14 CCR § 1034 at the same time it adopts or amends any rule that adds anything that could be considered a required portion of a harvesting plan. This may lead to redundant rules, but it would ensure a central location where the plan preparing RPF could be assured of finding what is considered essential information in a harvesting document. Possible alternatives are to provide cross references to the various plan content requirements scattered throughout the rules in this rule section or to create an index providing such cross reference information. Also, the Board may want to consider a rule package that consolidates all required plan contents under 14 CCR §§ 1034, 1051, 1090.5, and 1092.09.

16. **Technical Rule Addendum No. 4, Minimum Distances Required by Law, Fire Safe THP Vegetation Treatment.**

This diagram of required defensible space, which is provided in the exemption section of the rules, does not show the 30-to-100 foot zone around structures wherein fuels treatment are required per PRC §4291(b) and 14 CCR § 1299(a)(2). The Board should amend this technical rule addendum to be consistent with existing defensible space rules.

17. **14 CCR § 1051, Modified THP.**

The modified timber harvesting plan (MTHP) is intended to provide an easier-to-prepare harvesting document for projects proposing timber operations within the scope of limitations applicable to such plans. MTHPs have not been extensively submitted. Since 2000, there have been 165 MTHPs, which represent 3% of total THPs during that period. The Board could make changes to this rule section to make the MTHP more attractive to timberland owners by expanding the allowable acreage, limiting the application to small timberland owners, and modifying certain limitations. CAL FIRE has made changes to the rule that it thinks would make it more attractive to timberland owners while retaining the resource protection intended by the original rule package. CAL FIRE can submit the suggested rule changes to the Board upon request.

18. **14 CCR § 1054.8, Order of the Board**, *Following the public hearing, the Board shall determine whether, upon the record before it, the plan is in conformance with the rules and regulations of the Board and the provisions of the Act. If the Board determines that the plan is in conformance with the rules and regulations of the Board and the provisions of the Act, it shall make its order approving the plan. If the Board determines that the plan is not in conformance with the regulations of the Board and the provisions of the Act, it shall make its order*



*disapproving the plan. Approval of the plan by the Board constitutes authorization that timber operations may commence and be conducted in accordance with the plan as approved and in accordance with the rules and regulations of the Board and the provisions of the Act. Timber operations shall not take place where the Board disapproves the plan. Disapproval of a plan shall be without prejudice to the applicant submitting a plan at any later time complying with the rules and regulations of the Board and the provisions of the Act. Where the Board approves the plan, notice thereof shall be filed with the Secretary of Resources, and within 10 working days such notice shall be transmitted to the agencies and persons referred to in 14 CCR 1037.3, and for posting at the places referred to in Section 1037.1. The order of approval shall include written response to significant environmental points raised during the evaluation process.*

The process and timelines described in this rule section are not consistent with the process and timelines outlined in PRC § 4582.7(d) and 14 CCR § 1037.6 regarding disapproval of the plan by the Board and the provision for bringing the plan into conformance. In addition, neither this section nor PRC § 4582.7(d) are consistent with CEQA and current case law regarding re-circulation of plans with significant new information. The Board should consider amending this rule section to make it consistent with statute and code current regarding plan review process and timelines.

19. **1090.7(e)**, [Notice of Timber Operations (NTOs) shall contain] *Identification of silvicultural prescriptions to be applied.*

CAL FIRE must track the implementation of management actions outlined in a nonindustrial timber management plan (NTMP) in order to ensure reasonable compliance with the goal of uneven-aged management and sustained yield. The ability to track acres treated under an NTO should allow CAL FIRE to better determine if the yearly timber operations are consistent with the management scheme described in an NTMP. The Board should amend this subdivision to require the RPF to state the number of acres of the silvicultural prescriptions to be applied in the NTO.

20. **14 CCR § 1092.04(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.*

The NOI provides important information about the proposed timber operations and the area in which this will occur. In order to make the NOI more applicable to the logging area and to be inclusive of all operations proposed as a part of the plan, CAL FIRE recommends the following changes:

- 1092.04(d)(4) requires stating the acres proposed to be harvested. This provides a description of the area where silvicultural prescriptions will be applied, but may not encompass all potential impacts, such as road or landing construction. In order to better represent the area where all potential impacts will occur, the 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.
- 1092.04(d)(5) requires stating the regeneration methods and intermediate treatments to be used. However, by requiring only those silvicultural methods, this paragraph may not capture all possible treatments that may occur under a plan, such as special prescriptions and other types of associated timber harvesting, such as road right-of-way or timberland conversion.

#### Non-Substantive Rule Issues

1. The passage of AB 1423 allows the Department of Forestry and Fire Protection to be referred to as CAL FIRE. The legislation has made the acronym, CDF, obsolete. CDF is defined in 14 CCR § 895 and is used in various sections of the forest practice rules. The Board should amend 895 to add CAL FIRE, change any reference to CDF as rule changes occur to sections referring to that abbreviation, and eventually delete CDF when all references have been removed from the rules.
2. **14 CCR § 895.1, *Erosion Hazard Rating*** (For the Coast and Southern Forest District:) means the rating derived from the procedure specified in 14 CCR 912.5 (952.5) designed to evaluate the susceptibility of the soil within a given location to erosion. **Erosion Potential:** (For the Southern Forest District:) See 14 CCR 952.5 (Ref. Sec. 4562 PRC). **Estimated Erosion Potential** (For the Northern Forest District:) means the product of the soil and slope values derived from the table in 14 CCR 932.5 or as such product may be modified in accordance "with the instructions contained in that section" (Ref. Sec. 4562, PRC). **Substantial Deviation means...[in part]...(4)** Change in location, nature or increase in length of proposed logging roads incorporating one or more of the following criteria: **(B)** Any road located in an extreme Erosion Hazard Rating area in the Coast Forest District, extreme Estimated Erosion Potential area in the Northern Forest District, or a high Erosion Potential area in the Southern Forest District. **14 CCR § 1092.26(d) [in part]**, Change in location, nature or increase in length of proposed logging roads incorporating one or more of the following criteria: **(2)** Any road located in an extreme Erosion Hazard Rating area in the Coast Forest District, extreme Estimated

*Erosion Potential area in the Northern Forest District, or a high Erosion Potential area in the Southern Forest District.*

The term, erosion hazard rating (EHR), is used in rule sections requiring an RPF to estimate the EHR per the procedure contained in Board Technical Rule Addendum #1, and in various other places in the rules (Technical Rule Addendum No. 2, 14 CCR §§ 914.2(f) [934.2(f), 954.2(f)], 914.2(j) [934.2(j), 954.2(j)], 914.6(c) [934.6(c), 954.6(c)], 914.7(b) [934.7(b), 954.7(b)], 921.5(a), 926.8(h), 1034(x)(8), 1035(d)(2)(C), 1035(f), 1037.10(a)(8), 1051(a)(4), 1090.5(w)(8), 1090.7(n)(8), 1090.14(b)(4)(B), 1092.09(l)(9), and 1092.11(d)(2)(C)). Erosion potential and estimated erosion potential are terms that were not deleted when a portion of the rules pertaining to estimating erosion potential were changed in 1982. They were referenced in the body of the rules that were repealed at that time, but were not removed from 14 CCR § 895.1. The Board should delete them from 14 CCR § 895.1 and make appropriate changes to subparagraph (B) in the definition of substantial deviation in 14 CCR § 895.1 and paragraph (2) in 14 CCR § 1092.26(d) to make the use of the term, erosion hazard rating, consistent throughout the rules and in each of the three forest districts.

3. **14 CCR § 895.1, Fire Protection Zone** (*For the Coast and the Southern Forest District:*) means that portion of the logging area within 100 feet (30.48 m) as measured along the surface of the ground, from the edge of the traveled surface of all public roads and railroads; and within 200 feet (60.96 m) as measured along the surface of the ground, from permanently located structures currently maintained for human habitation. **Fire Protection Zone** (*For the Northern Forest District:*) means that portion of the logging area within 100 ft. (30.48 m), as measured along the surface of the ground, from the edge of the traveled surface of all public roads and railroads, and 50 ft. (15.24 m) as measured along the surface of the ground from the traveled surface of all private roads, and within 100 ft. (30.48 m), as measured along the surface of the ground, from permanently located structures currently maintained for human habitation (Ref. Sec. [4562], PRC).

The definition, fire protection zone, was deleted from the hazard reduction rules in 1991. At that time, CAL FIRE alerted the Board that it should eliminate the definition:

It is recommended that the definitions, “fire protection zone” and “lopping” found in 14 CCR 912, 932, and 952 be repealed because either they are not used in the hazard reduction rules or they have been changed by the proposed rules.

To which the Board replied:

The Board agrees that the definitions “fire protection zone” and “lopping” have not been used or have been changed by the proposed rules. Accordingly, the definitions for these terms will be repealed or changed in accordance with those set forth in the proposed regulations for the sake of consistency.

The Board has never repealed the definition of fire protection zone. It should do so in order to resolve this matter.

4. **14 CCR § 914.1(d) [934.1(d), 954.1(d)]**, *Felling practices shall conform to requirements of 914.4, 934.4, 954.4 to protect bird nesting sites.*

14 CCR § 914.1(d) [934.1(d), 954.1(d)] rule language references 14 CCR § 914.4 [934.4, 954.4], which does not exist. The correct reference appears to be 14 CCR § 919.2 [939.2, 959.2]. The Board should change this rule section to reference the correct rule, since 914.1(d) [934.1(d), 954.1(d)] is currently not enforceable.

5. **14 CCR § 916.4(b) [936.4(b), 956.4(b)] [in part]**, *The standard width of the WLPZ and/or the associated basic protection measures shall be determined from Table I (14 CCR 916.5 [936.5, 956.5]) or Section 916.4(c) [956.4(c), 956.4(c)], and shall be stated in the plan.*

This subdivision requires the WLPZ width and associated basic protection measures for plans located in non-T or I watersheds to be stated in the plan, but there is no such requirement for the WLPZ width and associated basic protection measures for T or I watersheds and watersheds with coho salmon (coho watersheds). To make the inclusion of applicable watercourse and lake protection measures in all harvesting plans required, the Board should amend this subdivision to require protection measures in T or I and coho watersheds be stated in the plan.

6. **14 CCR § 916.9(b) [936.9(b), 956.9(b)]**, *Pre-plan adverse cumulative watershed effects on the populations and habitat of anadromous salmonids shall be considered. The plan shall specifically acknowledge or refute that such effects exist. Where appropriate, the plan shall set forth measures to effectively reduce such effects.*

Given that this subdivision requires the RPF to specifically acknowledge or refute whether pre-plan adverse cumulative watershed effects on the populations and habitat of anadromous salmonids exist and to consider them, CAL FIRE believes that portion of this subdivision should be moved to 14 CCR § 912.9 [932.9, 952.9] or Board Technical Rule Addendum No. 2.

7. **14 CCR § 926.3(d)**, *The plan submitter shall have the Notice of Intent published in a newspaper of general circulation in the area, concurrently with the submission of the plan to the Director. Proof of publication of notice shall be provided to the Director prior to his/her determination made pursuant to 14 CCR 1037.6.*

The reference to 14 CCR § 1037.6 appears to be incorrect, since 1037.6 describes what to do when a plan does not conform to the rules of the Board. The subdivision should likely refer to 14 CCR § 1037.4. The Board should amend this subdivision to refer to 14 CCR 1037.4.

8. **14 CCR § 1037.3, Agency and Public Review.**

This rule section is composed of three subdivisions followed by a paragraph:

*The Director shall invite written comments, and will consider these comments. All comments regarding plans shall be in writing and shall be addressed to the Director at the regional office where the plan is filed. Comments from reviewing public agencies shall be considered based on the comments' substance, and specificity, and in relation to the commenting agencies' area(s) of expertise and statutory mandate, as well as the level of documentation, explanation or other support provided with the comments.*

The Board should amend this section to make the above paragraph consistent with the rest of the rule section.

9. **14 CCR § 1100, (e)** *"Compatible Use" compatible use as defined in Gov. C. 51100 (h) and 51111, as made specific by county or city ordinance adopted pursuant thereto (Ref.: Sec. 51100 (h) and 51111, Gov. C.), (f) "Contiguous" two or more parcels of land that are adjoining or neighboring or are sufficiently near to each other, as determined by the County Board of Supervisors or City Council, that they are manageable as a single forest unit (Ref.: Section 51100 (b), Government Code.), (m) "Timberland" timberland as defined in PRC 4526, for land outside a TPZ. Timberland as defined in Gov. C. 51100(f), for land within a timberland production zone (Ref.: Sec. 4526, PRC; Sec. 51100(f), Gov. C.).*

There are several incorrect code sections quoted herein:

- Under "Compatible use," the reference to GC § 51100(h) should likely be to GC § 51104(h).
- Under "Contiguous," the reference to GC § 51100(b) should likely be to GC § 51104(b).

- Under "Timberland," the reference to GC § 51100(f) should likely be to GC § 51104(f).

10. **14 CCR 1104.1, Conversion Exemptions.**

AB 671 (filed with Secretary of State October 9, 2001) changed PRC § 4584 to prohibit someone from obtaining more than one less than three acre conversion exemption in a five-year period. The legislation requires the application for conversion exemption to advise the public regarding violations of the conversion exemption, including associated fines. When the forest practice rules were amended to conform to the change to the PRC, an addendum to the less than three acre conversion exemption form was developed in order to address the requirement of advising the public about violations of the exemption and associated fines. However, the form has never been amended to incorporate the language contained in the addendum. The addendum language should be incorporated into the less than three acre conversion exemption form and can be done as a non-substantive change per 1 CCR § 100. CAL FIRE recommends the following changes to the language contained in the addendum for clarity:

PRC 4584 provides that violations of this exemption for one-time conversion of less than 3 acres to a non-timber use exemption, including conversions applied for in the name of someone other than the person or entity implementing the conversion in bona fide good faith, is a violation of this Division 4, Chapter 8 of the Public Resources Code. ~~and~~ Penalties may accrue up to ten thousand dollars (\$10,000) for each violation pursuant to Article 8 (commencing with Section 4601).