

State of California
Office of Administrative Law

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BOARD OF FORESTRY AND FIRE PROTECTION

In re:
Board of Forestry and Fire Protection

Regulatory Action:

Title 14, California Code of Regulations

Adopt sections:

Amend sections: 913.4, 933.4

Repeal sections:

NOTICE OF APPROVAL OF REGULATORY ACTION

Government Code Section 11349.3

OAL Matter Number: 2016-0801-04

OAL Matter Type: Regular (S)

The Board of Forestry and Fire Protection proposed this action to amend sections 913.4 and 933.4 of title 14 of the California Code of Regulations, which are applicable to the Coast Forest District and the Northern Forest District, respectively. The purpose of the amendments is to provide flexibility to landowners to better manage stands of Oregon white oak and California black oak in which conifer species are encroaching.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 1/1/2017 pursuant to section 4554.5 of the Public Resources Code.

Date: September 8, 2016

Richard L. Smith

Richard L. Smith
Senior Attorney

For: Debra M. Cornez
Director

Original: Matt Dias

OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826



DEBRA M. CORNEZ
Director

MEMORANDUM

TO: Matt Dias
FROM: OAL Front Desk
DATE: September 9, 2016
RE: Return of Rulemaking Materials
OAL Matter Number 2016-0801-04
OAL Matter Type Regular (S)

OAL hereby returns the rulemaking record your agency submitted for review regarding "White and Black Oak Management Special Prescription."

If this is an approved matter, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5). **Beginning January 1, 2013**, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State) as follows:

- (1) **January 1** if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
- (2) **April 1** if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
- (3) **July 1** if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
- (4) **October 1** if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

If an exemption concerning the effective date of the regulation approved in this matter applies, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the agency will include the effective date of the regulation. The history note that will appear at the end of the regulation section in the California Code of Regulations will also include the regulation's effective date. Additionally, the effective date of the regulation will be noted on OAL's web site after OAL posts the Internet Web site link to the full text of the regulation that is received from the agency. (Gov. Code, secs. 11343 and 11344.)

Please note this new requirement: Unless an exemption applies, Government Code section 11343 now requires:

1. **Section 11343(c)(1):** Within 15 days of OAL filing a state agency's regulation with the Secretary of State, the state agency is required to post the regulation on its Internet Web site in an easily marked and identifiable location. The state agency shall keep the regulation posted on its Internet Web site for at least six months from the date the regulation is filed with the Secretary of State.
2. **Section 11343(c)(2):** Within five (5) days of posting its regulation on its Internet Web site, the state agency shall send to OAL the Internet Web site link of each regulation that the agency posts on its Internet Web site pursuant to section 11343(c)(1).

OAL has established an email address for state agencies to send the Internet Web site link to for each regulation the agency posts. Please send the Internet Web site link for each regulation posted to OAL at postedregslink@oal.ca.gov.

NOTE ABOUT EXEMPTIONS. Posting and linking requirements do not apply to emergency regulations; regulations adopted by FPPC or Conflict of Interest regulations approved by FPPC; or regulations not subject to OAL/APA review. However, an exempt agency may choose to comply with these requirements, and OAL will post the information accordingly.

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the State Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq. regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2016-0418-01	REGULATORY ACTION NUMBER 2016-0801-04-S	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

<p>2016 AUG -1 A 10:47</p> <p>OFFICE OF ADMINISTRATIVE LAW</p>
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ENDORSED - FILED
In the office of the Secretary of State of the State of California

SEP -8 2016
1:45 pm

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

BOARD OF FORESTRY AND FIRE PROTECTION

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2016, 18-7	PUBLICATION DATE 4/29/16

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) White and Black Oak Management Special Prescription	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)				
<table border="1"> <tr> <td rowspan="3">SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</td> <td>ADOPT</td> </tr> <tr> <td>AMEND 5913.4 (f), 933.4 (f)</td> </tr> <tr> <td>REPEAL</td> </tr> </table>	SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT	AMEND 5913.4 (f), 933.4 (f)	REPEAL
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT		
		AMEND 5913.4 (f), 933.4 (f)		
	REPEAL			
TITLE(S) 14 CCR				

3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §511346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only


4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input checked="" type="checkbox"/> Effective other (Specify) January 01, 2017

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____

7. CONTACT PERSON Matt Dias, Executive Officer	TELEPHONE NUMBER 916-653-8007	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) matt.dias@bof.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE August 01, 2016
TYPED NAME AND TITLE OF SIGNATORY Matt Dias, Executive Officer, State Board of Forestry and Fire Protection	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

SEP 08 2016

Office of Administrative Law

1 **Board of Forestry and Fire Protection**

2 **"White and Black Oak Woodland Management Special Prescription"**

3 **Title 14 of the California Code of Regulations (14 CCR):**

4 **Division 1.5, Chapter 4,**

5 **Subchapter 4, Article 3**

6 **Subchapter 5, Article 3**

7
8 **Amend:**

9 **§ 913.4 [933.4] Special Prescriptions.**

10 The following special harvesting methods are appropriate under certain conditions:*****

11 *****

12 (f) White and Black Oak Woodland Management. Timber harvest within certain
13 deciduous oak woodlands, forests, and savannahs as described herein may occur as
14 necessary to restore or conserve the ecological, cultural, and economic values of these
15 historically oak-dominated stands. The silviculture shall be designed to reduce water,
16 light, and nutrient competition from Group A species in order to promote the sustained
17 viability of Oregon white oak and California black oak stands. Group B species including
18 white and black oaks may also be harvested. The use of this prescription shall be
19 designed to balance the contribution of resource values attributable to Oregon white oak
20 and California black oak stands with the other goals of forest management specified in
21 14 CCR § 897, and shall meet the following requirements:

22 (1) The prescription may be applied to stands in which Oregon white oak
23 (*Quercus garryana*) and/or California black oak (*Quercus kelloggii*) meet or exceed,
24 preharvest, an average of 35 square feet of basal area per acre.

1 (2) The RPF shall provide a description of the stand for which the special
2 prescription is to be applied including:

3 (A) An estimate, by species, of pre-harvest stand composition, diameter
4 distribution, and basal area.

5 (B) A description of natural and any known anthropogenic factors
6 conducive to Oregon white oak and/or California black oak historic and sustained
7 occupancy of the site. This may include discussion of climate, soil, light, aspect, fire
8 regime, management practices, or other relevant factors.

9 (C) A description of any apparent or known trend in changing stand
10 composition occurring over time and the factors likely to be contributing to this trend.

11 (3) The RPF shall provide a description of the planned post-harvest stand
12 condition including, by species, desired stand composition, diameter distribution, and
13 basal area.

14 (4) The RPF shall describe what trees are to be harvested and the method by
15 which those trees shall be identified, as well as any special instructions to the LTO
16 regarding measures to be taken to protect residual oak trees during timber operations.
17 If trees are to be identified by the method of marking, they shall be marked by, or under
18 the supervision of, an RPF prior to harvest. A sample area must be marked prior to the
19 preharvest inspection for evaluation. The sample area shall include at least 10% of the
20 harvest area to a maximum of 10 acres per stand type which is representative of the
21 range of conditions present in the area. The Director may waive the requirements for
22 the remainder of the area when explained and justified by the RPF in the THP.

23 (5) The RPF shall describe how the boundaries of the special prescription shall
24 be identified and, prior to the preharvest inspection, the special prescription boundaries
25 shall be identified on the ground, under the supervision of an RPF.

1 (6) Decadent and Deformed Trees of Value to Wildlife shall be retained unless
2 they pose a safety hazard or are explained and justified by the RPF as to why removal
3 is necessary to facilitate timber operations or the objectives of the harvest or special
4 prescription.

5 (7) Immediately upon completion of timber operations, the post-harvest stand
6 shall contain Oregon white oak and/or California black oak stocking levels that meet or
7 exceed an average of 35 square feet of basal area per acre.

8 (8) Immediately upon completion of timber operations, Group A species shall not
9 exceed 50 percent of the combined Group A and B species post-harvest stand basal
10 area. Oregon white oak and/or California Black oak stocking levels shall not be reduced
11 proportionally relative to Group A species as a result of the harvest.

12
13
14 Note: Authority cited: Sections 4551, and ~~4553 and 4561~~, Public Resources Code.

15 Reference: Section 4512, 4561, 4561.2, 4551.5, 4582 and 4582.5, Public Resources
16 Code.

BOARD OF FORESTRY AND FIRE PROTECTION

P.O. Box 944246
 SACRAMENTO, CA 94244-2460
 Website: www.bof.fire.ca.gov
 (916) 653-8007



SEP -8 A 10 26

MEMO

**OFFICE OF
 ADMINISTRATIVE LAW**

September 08, 2016

Mr. Rick Smith, Senior Attorney
 Office of Administrative Law
 300 Capitol Mall
 Sacramento, California 95814

Subject: File No. 2016-0801-04S

Mr. Smith,

Please find attached the changes and additions to File No. 2016-0801-04S discussed with me on September 6, 2016. The items discussed are listed below:

<u>Item</u>	<u>Description</u>
1.	An updated Table of Contents, that has also been modified to show the full title of the "TECHNICAL DOCUMENTS RELIED UPON BY THE BOARD" as requested.
2.	A corrected original of the Form 399, Fiscal Impact Statement is provided (pg. 5).
3.	A supplement to the Final Statement of Reasons is provided that affirms there is not duplication or rephrasing of statutory in the text. The supplement also recognizes the non-substantive changes made to the text (pg. 28.1).
4.	Six copies of the corrected text are provided. One copy shows the page number that applies to the regulatory file in the lower right hand corner. The other five copies will replace the text attached to the Form STD. 400's that were turned in during initial submission to OAL.
5.	Minutes from the June 15 th , 2016 Board Meeting (pgs. 69.1-69.8).
6.	A CD is included in the file that contains a recording of the June 15 th , 2016 hearing for "White and Black Oak Woodland Management Special Prescription". The page no. for the disk is 69.9.
7.	Technical Document 7: Excerpts from Public Resources Code (pg. 168) and Technical Document 8: Excerpts from Title 14 of the California Code of Regulations (pg. 169).
8.	A revised Certification of Completion and Closure of the rulemaking file (pg.1).

If you have any questions or need additional information, please call me at (916) 653-8007.

Sincerely,

Matt Dias, Executive Officer
 State Board of Forestry and Fire Protection

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