

BOARD OF FORESTRY AND FIRE PROTECTION

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February 2, 2017

Jesse Noell
8050 Elk River Road
Eureka, CA 95503

Mr. Noell,

This is the California State Board of Forestry and Fire Protection's (Board) response to petitioners'¹ resubmitted "2007 Petition for Emergency Rules" (Petition), which the Board received on January 5, 2016. (Gov. Code, § 11340.7, subd. (a).)

Pursuant to Government Code section 11340.6, a petition for the adoption, amendment, or repeal of a regulation, such as the Petition, must state all of the following "clearly and concisely:"

- (a) The substance or nature of the regulation, amendment, or repeal requested.
- (b) The reason for the request.
- (c) Reference to the authority of the state agency to take the action requested.

After careful review, the Board hereby denies your Petition because, as explained below, it does not clearly and concisely identify the Board's authority to take the emergency regulatory actions it requests. (Gov. Code, § 11340.6, subd. (c).) Specifically, the Petition requests two things. First, it requests that the Board take emergency regulatory action to issue a 'stop work' order on all THPs in Elk River – regardless of whether they have already been approved or not – "until stream channel conditions and water quality have recovered." (Petition, p. 1.) Second, the Petition requests that the Board take emergency regulatory action to "prevent the filing of timber harvest plans upstream of the Residential areas of Elk River...." (*Ibid.*, emphasis added.)

The Petition does not cite authority that would enable the Board to take the requested emergency regulatory actions. Instead, the Petition attempts to rely on the emergency regulatory procedure in Public Resources Code section 4555 (Section 4555). (Petition, p. 5.) That emergency procedure does not apply because: (1) it only allows for the delay in the approval of a THP that has not already been issued; and (2) it may only be initiated if the Director of the Department of Forestry and Fire Protection (Director) determines that the approval of a THP could result in immediate, significant, and long-term harm to natural resources of the state. (Pub. Resources Code, § 4555.) Here, the Director has not made the required determination of immediate, significant, and long-term harm to the natural resources. And, even if that determination had been made, Section 4555 would only enable the delay in the approval of a THP pending consideration of possible emergency amendments to the Board's rules. Section 4555 does not authorize the Board to issue a stop work order on all THPs as the Petition requests (i.e., even

¹ The petitioners are Ms. Christina Pasteris, Mr. Norm Pasteris, Mr. Jesse Noell, Ms. Stephanie Bennett, Ms. Kristi Wrigley, Mr. Scott Keele, and Ms. Susan Keele.

THPs that have already gone through environmental review, been approved, and which, in many cases, have already been relied upon). The Petition also fails to identify any authority that would enable the Board to “prevent” individuals from even “filing” THPs upstream of the Residential areas of Elk River through promulgation of emergency regulation, as the Petition requests. (Petition, p. 1.)

Therefore, the Board denies the Petition. Petitioners are encouraged to participate in the existing environmental review process and the Board’s meetings. Any interested person may contact me and/or obtain a copy of the Petition from the Board’s website at <http://bofdata.fire.ca.gov/regulations/>.

Best Regards,

A handwritten signature in blue ink, appearing to read "Matt Dias", with a stylized flourish at the end.

Matt Dias
Executive Officer
Board of Forestry and Fire Protection