

Board of Forestry and Fire Protection

NOTICE OF PROPOSED ACTION

**“Less Than 3 Acre Conversion Amendments, 2016”
Title 14 of the California Code of Regulations (14 CCR):
Division 1.5, Chapter 4,
Subchapter 7, Article 7
Amend: § 1104.1 (I).**

[Notice Published July 08, 2016]

NATURE OF PROCEEDING

Notice is hereby given that the California State Board of Forestry and Fire Protection (Board) is proposing to take the action described in the Informative Digest.

PUBLIC HEARING

The Board will hold a public hearing on Wednesday, August 23, 2016, at its regularly scheduled meeting commencing at 9:00 a.m., at the Resources Building Auditorium, 1st Floor, 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. Additionally, pursuant to **Government Code (GOV) § 11125.1(b)**, writings that are public records pursuant to **GOV § 11125.1(a)** and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M. on Monday, August 22, 2016.

The Board will consider only written comments received at the Board office by that time and those written comments received at the public hearing, including written comments submitted in connection with oral testimony at the public hearing. The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Matt Dias
Acting Executive Officer
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA 95814

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

publiccomments@BOF.ca.gov

AUTHORITY AND REFERENCE (pursuant to GOV § 11346.5(a)(2) and 1 CCR § 14) 14 CCR § 913.4(f), 933.4(f) Note: Authority cited: Sections 4551, 4553, 4561.2, Public Resources Code. Reference: 4512, 4561, 4561.2, 4551.5, 4582 and 4582.5, Public Resources Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW (pursuant to 11346.5(a)(3)(A)-(D))

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973 (FPA, PRC § 4511, et seq.), the Board is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands.

PRC § 4561.2 authorizes the Board to adopt alternative stocking standards that meet the purposes of PRC § 4561 if those alternative standards reasonably address the variables in forest characteristics, achieve suitable resource conservation, and contribute to specific forest health and ecological goals as defined by the Board. PRC § 4551 requires the Board to adopt district forest practice rules to assure the continuous growing and harvesting of commercial forest trees and to protect the soil, air, fish, and wildlife... PRC § 4553 requires the Board to continuously review and revise the rules in consultation with other interests.

The purpose of the proposed action is to enable landowners to proceed with a Conversion Exemption where significant archeological site (14 CCR § 895.1) exist. The proposal limits the enablement to situations where putting protection over an existing site would avoid harm to the site.

The problem is current regulations (14 CCR § 1104.1(a)(2)(I)) strictly prohibits the use of a Conversion Exemption where timber operations take place on a significant archeological site as defined in 14 CCR § 895.1. Discussions with Department of Forestry and Fire Protection (Department) Archeologists show that often there are actions that can be taken before timber operations are conducted that will avoid harm to historical or archeological resources that exist where timber operations will take place. The Archeologist reports, in this case example, acknowledged that the trees in the proposed area of conversion could be removed and still preserve the integrity of the archeological site. To accomplish this would require a specific mitigation to avoid the potential harm.

The action recommended by the landowner's Archeologist was to cover the site with engineering cloth and a layer of soil before timber operations took place. This action is referred to as "capping" the site. The Department Archeologist agreed this action would be effective. In discussion with Department Archeologist it was confirmed that this action (mitigation) is an often used approach for the protection of historical or archeological resources. This mitigation is also approved specifically in the California Environmental Quality Act (CEQA) in PRC § 21083.2(b)(3) for the protection of unique archeological resources.

Over the last five years there have been between 160 and 300 Conversion Exemptions submitted each year.

There is no comparable federal regulation or statute.

Board staff conducted an evaluation on whether or not the proposed action is inconsistent or incompatible with existing State regulations pursuant to **GOV § 11346.5(a)(3)(D)**. State regulations related to the proposed action were, in fact, relied upon in the development of the proposed action (including portions of §§ 929.7, 949.7, 969.7, 1104.1, and 15064.5 of Title 14 of the California Code of Regulations) to ensure the consistency and compatibility of the proposed action with existing State regulations. Otherwise, Board staff evaluated the balance of existing State regulations related to the system of forest practices applicable to timber management on state and private timberlands developed pursuant to the FPA and related to the protection of archeological resources and found no existing State regulations that met the same purpose as the proposed action. Based on this evaluation and effort, the Board has determined that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The proposed regulation is entirely consistent and compatible with existing Board rules; it amends them, providing a means of implementing a Conversion Exemption where a significant archeological site exists. .

MANDATED BY FEDERAL LAW OR REGULATIONS

The proposed action is not mandated by federal law or regulations.

The proposed action neither conflicts with, nor duplicates Federal regulations.

There are no comparable Federal regulations related to the system of forest practice applicable to timber management on state and private timberlands developed pursuant to the FPA and regarding the existing system of regulation related to the conversion of timberland to a non-timber growing use. No existing Federal regulations that met the same purpose as the proposed action were identified.

OTHER STATUTORY REQUIREMENTS (pursuant to GOV § 11346.5(a)(4))

There are no other matters as are prescribed by statute applicable to the specific State agency or to any specific regulation or class of regulations.

LOCAL MANDATE (pursuant to GOV § 11346.5(a)(5)).

The proposed action does not impose a mandate on local agencies or school districts.

FISCAL IMPACT (pursuant to GOV § 11346.5(a)(6))

There is no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

Regarding costs or savings to any State agency, the anticipated fiscal impact of the proposed amendment to 14 CCR § 1104.1(l)(1) is expected to be less than \$50,000. These costs would result from additional time spent by the Department in the processing of a Conversion Exemption where significant archeological sites exist. The number of the occurrence of this type of Conversion Exemption is expected to be less than 10 per year statewide. The Department has an Archeology program with a staff of professional Archeologists who will make determination of protection for the significant

site, as provided in the proposed regulatory language. Thus very little additional cost is reasonably expected.

The proposed action will not result in the imposition of other non-discretionary costs or savings to local agencies.

The proposed action will not result in costs or savings in federal funding to the State.

HOUSING COSTS (pursuant to GOV § 11346.5(a)(12))

The proposed action will not significantly affect housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE (pursuant to GOV §§ 11346.3(a), 11346.5(a)(7) and 11346.5(a)(8))

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Businesses affected will be beneficially impacted by the proposed action.

Pursuant to **GOV §11346.5(a)(8)**, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support this initial determination:

- Board of Forestry and Fire Protection, 2013 Case Study: Rasmussen Property, This case study included testimony of RPFs, Archeologists, and a landowner.
- Contemplation by the Board of the economic impact of the provisions of the proposed action through the lens of the decades of experience practicing forestry in California that the Board brings to bear on regulatory development.
- Staff report prepared to examine the example of the Rasmussen's effort to obtain a Conversion Exemption.
- Discussions with Department staff on implementation of the current conversion exemption

STATEMENTS OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (EIA)

The results of the economic impact assessment are provided below pursuant to **GOV § 11346.5(a)(10)** and prepared pursuant to **GOV § 11346.3(b)(1)(A)-(D)**. The proposed action:

- (A) will create jobs within California;
- (A) will not eliminate jobs within California;
- (B) will create new businesses;
- (B) will not eliminate existing businesses within California;
- (C) will beneficially affect the expansion of businesses currently doing business within California.
- (D) will have nonmonetary benefits.

The types of businesses that will be impacted are industrial and nonindustrial forest landowners, forestry consulting, logging firms, lumber mills, and private construction contractors. Therefore, both large and small businesses may have positive economic impacts. Significant archeological sites will remain protected.

Businesses will be beneficially impacted by the proposed action. Currently, regulations would be cost prohibitive for a landowner to convert a small area of timberland (<3 acres) to other uses when a significant archeological site exists. However, this regulatory action provides a path to ensure feasibility regarding less than 3 acre conversions when archeological sites are present. The primary benefit of this proposal

is lowering the permitting cost of the Conversion Exemption for landowners wishing to complete a conversion of timberland that is less than three acres.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS (pursuant to GOV § 11346.5(a)(9))

The Board is aware of cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This initial determination is based on the same record facts, evidence, documents, testimony, or other evidence as listed as the basis for the Significant Statewide Adverse Economic Impact.

The proposed action provides the landowner a regulatory pathway to obtain a Conversion Exemption where a significant archeological resource exists. The proposed action relieves the landowner of \$25,000 – 40,000 in costs for a Timberland Conversion Permit and a Timber Harvesting Plan.

BUSINESS REPORT (pursuant to GOV §§ 11346.5(a)(11) and 11346.3(d))

The proposed action does not impose a business reporting requirement.

SMALL BUSINESS (pursuant to 1 CCR 4(a))

Small business, within the meaning of GOV § 11342.610, is expected to be affected by the proposed action. The types of small businesses that will be beneficially impacted by the proposed action are industrial and nonindustrial forest landowners, forestry consulting, logging firms, restoration contractors, lumber mills, biogenic energy producers and shavings plants. Therefore, both large and small businesses may have minor positive economic impacts.

Small business:

- (1) Is legally required to comply with the regulation to the extent that a representative private person hires a small business for implementation;
- (2) Is not legally required to enforce the regulation;
- (3) Does derive a benefit from the enforcement of the regulation by being hired for implementation;
- (4) May incur a detriment from the enforcement of the regulation if they do not comply with the regulation.

CONSIDERATION OF ALTERNATIVES

In accordance with **GOV § 11346.5(a)(13)**, the Board must determine that no reasonable alternative it considers, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: Matt Dias
Acting Executive Officer
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-8007

The designated backup person in the event Mr. Matt Dias is not available is Doug Wickizer for the Board of Forestry and Fire Protection. Mr. Wickizer may be contacted at the above address or by phone at (916) 653-8007.

AVAILABILITY STATEMENTS (pursuant to GOV § 11346.5(a)(16), (18))

All of the following are available from the contact person:

1. Express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion.
2. Initial Statement of Reasons, which includes a statement of the specific purpose of each adoption, amendment, or repeal, the problem the Board is addressing, and the rationale for the determination by the Board that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed.
3. The information upon which the proposed action is based (pursuant to **GOV § 11346.5(b)**).
4. Changed or modified text. After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who testified at the hearings, submitted comments during the public comment period, including written and oral comments received at the public hearing, or requested notification of the availability of such changes from the Board of Forestry and Fire Protection. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

FINAL STATEMENT OF REASONS

When the Final Statement of Reasons (FSOR) has been prepared, the FSOR will be available from the contact person on request.

INTERNET ACCESS

All of the material referenced in the Availability Statements is also available on the Board web site at:

http://bofdata.fire.ca.gov/regulations/proposed_rule_packages/