



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Ecosystem Conservation Division
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EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



August 12, 2013

Eric Huff
Regulations Coordinator
Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

Dear Mr. Huff:

MODIFIED TIMBER HARVESTING PLAN AMENDMENTS, 2013. NOTICE OF PROPOSED RULEMAKING (JUNE 28, 2013)

The Board of Forestry and Fire Protection (BOF) has proposed amendments to its Modified Timber Harvesting Plan (MTHP) rules. The California Department of Fish and Wildlife (CDFW) has participated in committee hearings held on the subject rule package, and this letter is in response to the 45-day rule-making notice published June 28, 2013.

Information provided to the BOF indicates that only 25 MTHPs were submitted and approved from 2008 through fall 2012. The current proposal is intended to increase small landowner participation and the use of the MTHP process. However, the number of MTHPs may not be a good indication of the rule's usefulness. Forest and economic conditions have likely contributed to their limited application, just as they have for the Timber Harvest Plan (THP) in recent years. The rule package includes increasing the maximum allowable acreage and maximum road construction, as well as other operational modifications.

CDFW provides comments on the following sections of the rule package:

1. **1051(a)(5)** currently avoids construction of new skid trails on slopes over 40%. The proposed language increases that limit to 50%, but constrains the distances of new skid trails on slopes between 40% and 50% to 100 feet.

CDFW recommends edits to the amendments providing further guidance regarding the construction and use of these steeper skid trails, such as avoiding proximity to sensitive resources (e.g., streams and seeps) and articulating practical limits on use (e.g., how to measure and how many steep skid trails are there). While the practical limits can arise as issues in standard THPs, in that context they are subject to cumulative impact analysis and more likely to be the focus of field review.

2. **1051(a)(8)** currently limits new road construction to 600 feet and road construction and reconstruction together to 1,000 ft. The proposed language increases those limitations proportionally to the proposed increase in area (100 acres to 160 acres, a change of + 60%). CDFW recommends against the increases for the following reasons:
 - a. Using the same proportional increase for area (a two dimensional metric) for road distance (a one-dimensional metric) is inappropriate. For the proposed 60% increase in acreage (area), the equivalent linear increase requisite for the radius of a circle is to 760 feet and 1265 feet for new and combined construction/reconstruction, respectively (rounded to the nearest 5 feet).
 - b. The proposed restriction is based on the proportional increase in the maximum sizes of MTHPs allowed. However, the restriction will remain the same even if a smaller MTHP is submitted.
 - c. At present, there are a number of at-risk legacy roads on the landscape and the current measures required for reconstructed roads are much improved. Reconstruction of existing roads to current standards may well be viewed as an enhancement. To the extent that is true, 1051(a)(8) should only limit the length of new roads.

3. **1051(a)(10)** currently requires that listed species not be directly or indirectly adversely impacted by proposed timber operations. The proposed language deletes reference to Fish and Game Code section 2090 which is obsolete.

The proposal correctly deletes reference to Fish and Game Code section 2090, but the reference to Fish and Game Code section 2081 needs further elaboration. CDFW suggests that, in order to accurately reflect the existing law, the second sentence should read "For timber operations which potentially could adversely affect a listed species or the habitat of the species, consultation with DFG pursuant to the F&GC shall be completed before the THP is approved."

Thank you for the opportunity to participate in the Modified THP rule making process. We look forward to continuing work with you through the Board's deliberations on this rule package. If you have any questions, please contact Helen Birss, Chief of our Habitat Conservation Planning Branch at 916-653-9834.

Sincerely,


Sandra Morey
Deputy Director

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August 12, 2013
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August 12, 2013

California State Board of Forestry and Fire Protection
Mr. Keith Gilles, Chairman
P.O. Box 944246
Sacramento, CA 94244-2460

RE: Modified Timber Harvesting Plan Amendments 2013.

Dear Chairman Gilles and Board Members,

CLFA supports the proposed amendment to the Modified Timber Harvesting Plan (MTHP) with the following suggestions.

Presently the cost to prepare a Timber Harvesting Plan for a small acreage ownership can most frequently exceed the income generated by the harvest. The MTHP is a potentially useful tool for landowners to feasibly harvest their timber; however the restrictive nature of the existing MTHP process precludes its frequent use. The modifications proposed in this amendment have the potential to increase the utility of this option.

Maintaining the feasibility of timber harvesting on timberlands is an extremely valuable goal in that it de-incentivizes conversion, improves forest health, reduces risk of catastrophic wildfire, and enhances rural economic vitality.

In modernizing the MTHP, CLFA respectfully requests that this Board consider the intent of the 1993 Board that enacted it. That board recognized that timberland owners that do not grow timber for industrial use with holdings too small to make use of NTMPs needed a regulatory mechanism to effectively manage their land. Additionally, that 1993 Board intended that project size and operational limitations would minimize the potential for adverse effects to insignificance.

Please consider the following comments to specific sections of the proposed rule package.

- 1051(a)(1) A modest increase in acreage limits is unlikely to precipitate elevated submissions of MTHPs. The effectiveness of current Forest Practice Rules coupled with the built in operational limitations of the MTHP will minimize the potential for adverse effects to insignificance. CLFA would like to suggest that the Board retain the proposed acreage increase to 160 acres and add a landowner segment with holdings between 160 and 640 acres. This second tier could be permitted to submit a MTHP once every ten years. On ownerships where all the other provisions of the MTHP can be met, particularly in flatter terrain, an expansion up to 640 acres will not cause significant adverse impact. This may be an important factor in areas where species composition doesn't yield high financial returns which suggests that more acreage is necessary to make an operation feasible.
- 1051(a)(4)-(5) CLFA supports amendments as proposed. There are small ownerships with areas of steeper slopes which are otherwise excluded from using a MTHP. Having the option to explain and justify why operations on these slopes is in compliance with the Rules may allow more utilization.
- 1051(a)(6) Allowing limited timber operations within Special Treatment Areas should have some effect in elevating MTHP submissions.
- 1051(a)(7) CLFA supports the amendments to this section as proposed. Allowing for the use of existing logging roads and landings on unstable areas may allow for the use of the only infrastructure available on a small ownership.
- 1051(a)(8) CLFA supports the amendments to this section as proposed. A larger area of potential harvest may require more road construction. It should be noted that new road construction is typically limited to only that which is needed for harvest operations due to associated costs.

- 1051(a)(9) CLFA supports the concept of this proposed change. Small ownerships may be bisected by a watercourse making the only option for a viable harvest to include a crossing. By allowing the construction of permitted crossings such ownerships may be able to better utilize a MTHP. One concern to consider in the proposed wording is the ability to *use* existing crossings. The proposed language may be construed to require that all existing crossings be permitted to allow for their use. Such an interpretation is not consistent with the intent. Please consider clarifying the language to indicate that existing crossings may be used for operations. A possible solution would be to modify line 17 on page 2 to "...except for maintenance and use of existing..."
- 1051(a)(12) Categorical exclusion of heavy equipment operations within potentially significant archaeological sites is not consistent with desire to elevate MTHP submissions. CLFA would support an option for an RPF to propose mitigated heavy equipment operations within potentially significant archaeological sites allowing the Director to make the determination as to whether the proposed operations will significantly degrade the site. Due to the size of ownership under consideration there may be circumstances where there are no feasible alternatives to proposing heavy equipment operations within a site where such operations will have no significant impact excluding otherwise eligible ownerships from utilizing a MTHP.

Twenty years have passed since the inception of the MTHP and in that time the Forest Practice Rules have become drastically more complex, comprehensive, and more protective of the environment. During this time period costs have also increased making it more difficult for landowners to perform a feasible harvest.

When the Modified THP was enacted in 1993, the presumed intent of the Board was that project size and operational limitations would minimize potential for adverse effects to insignificance. In modernizing the Modified THP it is expected that the current Board will take into account that 2013 FPRs are far more protective of the environment as compared to 1993 FPRs.

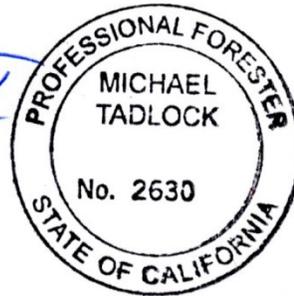
Published Board documents recognize that “protective provisions put in place when the Modified THP was enacted intended for project size and operational limitations to work in tandem to ensure that the potential for adverse effects was minimized to insignificance.”

CLFA supports the concept of increasing the utility of the Modified THP. Allowing for the feasible harvest on more small ownerships will help to protecting economic viability of timberlands and support the economy of the state while maintaining a healthy environment.

Sincerely,



Michael Tadlock
RPF #2630
CLFA President



The California Licensed Foresters Association, with a membership responsible for the sustained management of millions of acres of California forestland, represents the common interests of California Registered Professional Foresters. The Association provides opportunities for continuing education and public outreach to its membership, which includes professionals affiliated with government agencies, private timber companies, consultants, the public, and the academic community. Governed by an elected Board of Directors, CLFA was established in 1980 after the passage of the landmark California Professional Foresters Law.



Keeping Northwest California wild since 1977

September 11, 2013

To: Mr. J. Keith Gilles, Chairman
California Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244

Re: EPIC comments regarding 45-day notice of rulemaking for “Modified Timber Harvest Plan Amendments 2013”

Dear Chairman Gilles and Board Members:

The Environmental Protection Information Center (EPIC) presents the following comments regarding the 45-day notice of rulemaking for “Modified Timber Harvest Plan Amendments 2013.” Please consider these comments as you deliberate the merits of this proposal.

Summary

The proposed 45-day notice of rulemaking package for “Modified Timber Harvest Plan Amendments 2013” would expand the acreage limit of the Modified Timber Harvest Plan (MTHP)(14 CCR 1051 *et seq.*) from 100 acres maximum to a total of 160 acres maximum. The expressed intent of this change is to increase the utility and use of the MTHP for the regulated public. While the acreage limitation expansion may not be problematic, the Board has also chosen to include changes to the operational restrictions currently placed on MTHP holders that would increase the risk of significant adverse direct and cumulative environmental effects. The Initial Statement of Reasons for the 45-day notice fails to adequately address the real potential for significant adverse environmental effects to occur as a result of relaxing important environmental safeguards currently built into the MTHP regulations. In short, there seems to be no direct environmental benefit derived from adopting the MTHP regulatory modifications as proposed in the current 45-day noticed language. Contrarily, the potential for significant adverse environmental effects is substantially increased via the relaxation of specified measures contained in the current MTHP. EPIC therefore opposes the adoption of the “Modified Timber Harvest Plan Amendments 2013” package in its current form.

Environmental Protection Information Center

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Comments regarding 45-day Notice

The 45-day notice of rulemaking on page 1 of 7 states that *“The primary purpose of the amendments is to increase the utility of the existing conventional MTHP. This is to be accomplished through an increase in the maximum size of ownerships allowed to use an MTHP. Other amendments to the conditions and mitigations subsections of Section 1051(a) are similarly intended to promote the MTHP’s utility through improved operational flexibility.”* Thus, it is clear that the Board is primarily concerned with increasing the utility of the MTHP through expanding the acreage limit and relaxing certain extant environmental safeguards.

Similarly, the 45-day notice on page 3 of 7 states that *“The regulation as proposed could result in highly localized beneficial effects upon the environment. These beneficial effects could be related to fire resiliency, habitat manipulation, and aesthetics. However, these prospective benefits are somewhat abstract and may occur at such small scales as to be indistinguishable from the surrounding landscapes. Regardless, it may be presumed at a minimum that the level of protective effect upon the environment will not be reduced as a result of this proposed regulation.”* Board staff does not provide any rationale or evidence to support the statement that environmental protections will not be reduced by the adoption of this proposed regulation change. Similarly, Board staff has not provided any rationale for the assumption that adoption of this regulatory change will increase the use and utility of the MTHP. We find that statements made in the 45-day notice regarding the benefits of increased utility and the presumption that adoption of the change will not result in a significant environmental effect are not based on substantial evidence and are unsupported in the 45-day notice itself.

Comments regarding the Initial Statement of Reasons

On page 2 of 12 of the Initial Statement of Reasons (ISOR) Board staff articulate that the number of MTHPs filed has declined over the years since the regulation was enacted. The ISOR indicates that this decline is likely due to a number of factors. These factors may include ownership size and other constraints in the existing MTHP regulations, timber market value fluctuations, ownership changes, and use of other available permitting options. (ISOR, page 2 of 12) The ISOR goes on to state that *“It is hypothesized that increasing the maximum ownership size in the MTHP regulations would allow a larger number of small private timber owners to utilize this permitting option.”* It is clear from this statement that the Board has not established that a public problem or controversy exists that would compel it to revise the existing MTHP regulations. The ISOR itself admits that the alleged 'problem' to be addressed is the lack of use of the current MTHP, which, as is stated in the 45-day notice language, is likely due to a number of factors. The ISOR fails to provide any evidence to demonstrate a problem, or to justify how the proposed action will solve whatever problem may exist. Furthermore, Board staff does not present any evidence that the proposed MTHP modifications will benefit anyone, including the regulated public it is intended to appease. No facts, no figures, no data are provided to demonstrate how many, if any landowners will be captured by the MTHP expansion, or how many acres across the state may be affected. The ISOR is therefore lacking in substantial evidence to demonstrate either a problem, or that the proposed MTHP revisions will resolve whatever problem may exist.

Pages 7 & 8 of 12 in the ISOR provide a short set of possible alternatives for the Board to consider. These alternatives include a no-action alternative, an alternative that would increase the acreage limit for MTHPs while not revising operational restrictions, and the alternative of adopting the 45-day noticed modifications. In discussing the 'no-action' alternative on page 7 of 12 of the ISOR, Board staff clearly admits that *“Even if the proposed regulatory amendments were adopted, it seems likely that MTHP filings would never exceed the historical average or peak year.”* It seems obvious, therefore, that the adoption of the proposed action is not likely to accrue any benefit, either in terms of relief to the regulated public, or for the environment. Once again, the Board has failed to establish a problem, or to demonstrate that the proposed action will resolve any hypothetical problem.

Finally, pages 8 & 9 of 12 of the ISOR are intend to address the potential for significant adverse environmental effects to result from adopting the MTHP regulations modifications as proposed in the preferred alternative. This section of the ISOR is completely void of analysis, evidence, or other discussion that would substantiate the assertion that no significant environmental effects will occur if the MTHP regulatory modifications are adopted as proposed. Instead, the ISOR relies on the assumption that these proposed Rule modifications will have no effect on the environment because they are augmented by other existing regulations that are intended to reduce or avoid significant adverse environmental effects. Given that no monitoring or other empirical data exists to demonstrate that existing Rules regulating forest practices on private lands in California are adequate or effectively implemented, we find this argument to be speculative and not based on substantial evidence. Given the proposed modifications to the MTHP regulation to relax certain prescriptive operational protective measures, there is more evidence of the potential for adverse impacts to occur if the regulatory modifications are adopted than if they were simply left alone as currently provided.

Proposed Operational Modifications

14 CCR 1051(a)(4): Heavy equipment limitations

The Board is proposing to amend this subsection to allow rather than prohibit heavy equipment operations on slopes greater than 50% or on areas with high or extreme erosion hazard ratings if explained and justified by the RPF and approved by the Director. This proposed change represents a substantial relaxation of existing Rules, and will result in significant adverse direct and cumulative effects on soil erosion and slope stability. Allowance of these practices will increase environmental degradation beyond the existing Rule, resulting in a decrease in existing prescriptive protective measures. Given these factors, it is difficult to agree with Board staff's contention that the proposed rulemaking will not result in decreased protections, or will not result in a significant impact on the environment. Furthermore, there is no evidence to suggest that relaxation of existing operational restrictions in this manner will accrue any benefit for small forestland owners.

14 CCR 1051(a)(5): Skid trail construction restrictions

As amended, the subsection would modify the percent slope threshold for new skid trail construction. The modification would prohibit new skid trail construction on slopes over 50%

rather than the existing limit of 40%. The subsection is further amended to provide a 100' limit on the length of new skid trail construction that may occur on slopes between 40% and 50%. Once again, Board staff argues in the ISOR that the expressed purpose of this change is to allow for greater operational flexibility for smaller forestland owners. No evidence is provided to suggest that such an increase is necessary, or that such an increase will allow more small landowners to effectively manage their timber. Clearly, this will increase significant adverse environmental effects by allowing the construction skid trails on steep slope gradients. Once again, the risk of significant impacts to soil erosion and slope stability is significant when compared to the provisions in the existing Rule. Therefore, the risk of environmental impacts is substantially greater if the proposed Rule change were adopted. Contrary to what Board staff has suggested in the 45-day notice and ISOR for this package, there is considerable evidence that this proposed Rule change will result in greater environmental risk than if the Board were to simply keep the existing Rule.

14 CCR 1051(a)(6): Operations in Special Treatment Areas

The amendment to this Rule would change operational restrictions for MTHPs within Special Treatment Areas (STAs). The existing rule language allows for log hauling on existing roads not requiring reconstruction. As amended, the subsection would also allow other operations so long as they are consistent with the intent and purpose of the STA and the proposal is approved by the Director. What exactly is meant by 'other operations' is not specified in the proposed Rule language. This proposed Rule change lacks specificity, and could result in a wide range of activities being conducted within designated STAs that have been disallowed. Clearly, the proposed Rule change is less environmentally protective than the existing Rule, and the so-called operational flexibility that would potentially result from this change is lacking specific data or other evidence that the current Rule is restricting the utility of the existing MTHP. Board staff has failed to provide substantial evidence to demonstrate that allowing 'other operations' within STAs will result in any benefit to the regulated public. There is clear evidence that this proposed Rule could result in any number of activities that have greater adverse environmental effects than the existing Rule. Again, we disagree with Board staff's assessment that no significant adverse impacts on the environment are likely to occur as a result of the proposed Rule change. Instead, there is a logical rationale to suggest that relaxing existing Rules will result in significant adverse impacts on the environment.

14 CCR 1051(a)(7): Operational restrictions on slide-prone or unstable areas

According to the ISOR, the proposed amendment of this subsection is intended to allow greater operational flexibility with regard to landslides or unstable areas. Existing regulations specify a complete prohibition of timber operations on slides or unstable areas. The amended rule section instead allows for use and maintenance of existing logging roads and landings that do not require reconstruction. This amended Rule does not require small landowners to consult with a Certified Engineering Geologist (CEG) or other professional to assess the potential risks and consider possible alternatives to operations on slide-prone or unstable areas. Given the fact that no cumulative effects assessment is required as part of MTHP review and approval, allowance of operations on slide-prone or unstable areas without associated consultation with a CEG or other qualified professional runs the significant risk of resulting in individual, and cumulative effects.

Furthermore, allowing such operations calls into question the basic assumption contained in 14 CCR 1051.1(d) that MTHP operations are unlikely to result in insignificant adverse environmental effects. 14 CCR 923(d) provides that a THP shall avoid routes that include and may affect slide-prone or unstable areas. Furthermore, 14 CCR 923.1(c) provides that logging roads shall be planned and constructed to avoid unstable areas. The exception to the Rule is that such operations may only be allowed if unavoidable and approved by the Director. If adopted, the proposed modification to 14 CCR 1051(a)(7) will result in less protection for operations under MTHPs than is currently afforded under a THP. We therefore oppose the proposed change to this Rule section.

14 CCR 1051(a)(8): Limitations on length of new road construction

According to the ISOR, the proposed amendment of this subsection is intended to correspond to the proposed increase in ownership size specified in Section 1051(a). Existing rule language allows for 600' of new road construction and no more than 1,000' of new and reconstructed road segments combined. The proposed amended language increases these figures to 960' and 1,600', respectively. No rationale or other evidence is provided to explain why this proposed Rule modification is necessary. Furthermore, no discussion is provided of the potentially significant adverse direct and cumulative effects that would result from the proposed substantial increase in the amount and length of road construction or reconstruction allowed in the MTHP. The idea that this Rule change is being proposed to proportionally increase allowed road construction length to correspond with the expanded acreage limitation fails to justify any corresponding problem or need that will be addressed by the change. The Board staff has provided no data or other evidence that road construction length restrictions are currently a limiting factor to small landowners that may utilize the MTHP. Contrarily, the proposed increase in road construction and reconstruction lengths allowed under an MTHP will increase significant adverse direct and cumulative impacts. As with other proposed Rule changes contained in this package, the Board staff has failed to demonstrate a problem or that this proposed change will resolve any theoretical problem that may exist. Furthermore, the Board staff has failed to adequately consider the potential for significant impacts to occur as a result of increasing total road construction and reconstruction lengths. We therefore oppose inclusion of this proposed Rule modification.

Conclusion

The proposed 45-day notice of rulemaking package for "Modified Timber Harvest Plan Amendments 2013" in its current form has not established that a public controversy or other necessity exists to justify the Rule modifications contained therein. Furthermore, the Board staff has grossly underestimated the potential for significant adverse direct and cumulative effects that would result from relaxing environmental safeguards without adequate analysis or justification. EPIC therefore opposes this proposed rulemaking and recommends that the Board reject this package in its entirety.

Sincerely,

Rob DiPerna
Industrial Forestry Reform Advocate

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