



COAST ACTION GROUP
126 Steiner Ct.
Santa Rosa, CA 95404

July 13, 2015

Affiliate of Redwood Coast Watersheds Alliance

Matt Dias
BOARD OF FORESTRY AND FIRE PROTECTION
P.O. Box 944246
SACRAMENTO, CA 94244-2460

Response to Request for Financial Information - WFMP Rules Package/Approval

For reasonable and accurate response for this request, there must be reasonable and factually supported data on which any economic considerations can be made.

Since there are numerous questions and inconsistencies in available data and assumptions, fair argument can be made that any current findings on economic effects of the WFMP would have a very low level of confidence.

Given (from WFMP supporting documents – including ISOR and legislation analysis).

Currently NTMPs comprise just over 300,000 acres.

Landowners with NTMPs under 2,500 acres would be encouraged to purchase additional acres to qualify for WFMP (it is not clear how this effect the growth and total size of the projected WFMP land base with additional issue related to total potential acreage arising from the admitted intent to allow property combining (with no acreage limitations) from different ownerships. This would lead to an unknown number total acreage likely to become part of WFMP – over time.

The ISOR – Economic Impact – States that WFMPs are not likely to create new business or eliminate existing business.

Current analysis provided by the Board of Forestry indicates that there are 81 properties with the potential of 1,200,000 acres to be included in WFMPs. With the elimination of properties in the southern sub-district that total acreage is estimated to be approx. one million acres.

Analysis of Current information – implications related to making economic findings

The largest single problem of making any economic finding(s) in this case, is having a reasonable accurate idea of what the potential land base for WFMPs – and – starting from Zero – how fast the real land base will grow. Without this information in reasonably accurate form and economic findings are pure guesswork. Thus, a model (based on other reasonable assumptions) would necessarily have to be created.

The potential land base (when you consider the objective and intent to pull in NTMPs and also combining smaller landowners to reach WFMP minimum size criteria) probably should be adjusted from 1 million acres to somewhere to between 2 and 3 million acres (potential land base). Note. This is a hard one since nobody had any idea how this might go. With these new numbers for acreage economic impacts can be magnified and be quite different than originally expected. Additionally, the potential effects on the environment would exponentially be effected.

Admittedly, the initial (starting base) will not be large. It all depends on how fast WFMPs will be organized and become reality. The NTMP land base seems to be growing at a rate of 15 to twenty percent per year (maybe even more). Those land base growth percentage might be applied to any projections.

Additionally, over time – if the acreage potential and actual acreage put into WFMPs – with necessary responsible agency review (initial environmental review by responsible agency, 5 year review, 1,600 permitting, TMDL WDR and Basin Plan compliance: the newer expanded potential acreage for WFMPs indicates large cost increases for the managing agencies (Note: Concerns from CalFire, CGS, and the Regional Board(s) in the Comment File).

Considering these new numbers, how are these costs to the State being accounted for?
This is a question you might want to be dealing with.

Given the above noted considerations, the information you request cannot be supplied until the baseline assumptions are corrected and the acreage base numbers are made more accurate.

Alan Levine

For Coast Action Group

From: Dias.Matt@BOF
To: Borras.Thembi@BOF
Subject: FW: Comments: Request for Information Re: WFMP regulations
Date: Tuesday, August 04, 2015 6:58:01 AM
Attachments: [wfmp_draftregs_comments_epic_4_7_14_final.pdf](#)
[wfmp_45daynotice_comments_epic_3_2_15_final.pdf](#)
[wfmp_45daynotice_comments_epic_6.15.15_final.pdf](#)
[12_45-Day_Public_Comment_Gienger_WFMP_Recieved_061515.pdf](#)
[economicdatarequest_response_epic_8_3_15_V2.pdf](#)
[NCRWQCB_Mar_2_2015.pdf](#)
[mgmt_2.2_ncrwqcb_wfmp_comments_04_04_14.pdf](#)
[DFW_Comment_Plead_6_16_14.pdf](#)
[15_45-Day_Public_Comment_CAL_FIRE_WFMP_received_030215.pdf](#)
[mgmt_2.4_wfmp_cal_fire_comment_letter_04_07_14.pdf](#)

I have not save or stored any of these data. I am leaving it to you. MD

Matt Dias
Acting Executive Officer
State Board of Forestry and Fire Protection
916.653.8031 Office
matt.dias@bof.ca.gov

From: Rob DiPerna [mailto:rob@wildcalifornia.org]
Sent: Monday, August 03, 2015 2:51 PM
To: Dias, Matt@BOF
Subject: Comments: Request for Information Re: WFMP regulations

Dear Mr. Dias:

Please find enclosed EPIC comments in response to the Board's request for information regarding economic impacts of adoption of the regulations to implement the Working Forest Management Plan and all associated referenced-attachments.

Please do not hesitate to contact me should there be questions. We appreciate your attention to this matter.

Thank you.

Rob DiPerna
California Forest and Wildlife Advocate
Environmental Protection Information Center
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Arcata, CA 95521
Office: (707) 822-7711
Cell: (707) 845-9528
rob@wildcalifornia.org
www.wildcalifornia.org



Keeping Northwest California Wild Since 1977

Sent via Electronic Mail to: Matt.Dias@bof.ca.gov on Date Shown Below

August 3, 2015

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

RE: Working Forest Management Plan Regulations Request for Economic Data

Dear Mr. Dias:

I am submitting this letter on behalf of the Environmental Protection Information Center (EPIC) in response to the attached June 26, 2015 “request for information” issued by the Board of Forestry and Fire Protection to gather “information . . . on the economic impact associated with the Working Forest Management Plan (WFMP) regulations that the Board of Forestry and Fire Protection adopted during their normally scheduled meeting on June 16th, 2015.” According to the request, the WFMP “regulation will be submitted to the OAL in 2015 and will be supported by the information” provided by commenters.

EPIC has previously submitted comments on the WFMP in an effort to ensure that the rules as adopted by the Board of Forestry and Fire Protection (Board) would meet the requirements of the legislation and be legally compliant with governing laws, including the Administrative Procedures Act, the Forest Practice Act, and the California Endangered Species Act. The Board’s approval on June 17, 2015 failed to address these and many other comments, and as such, EPIC maintains that the Board violated the law in its approval on June 17, 2015. Because the Board staff intends to use the requested information to support submission of the WFMP regulations to OAL, EPIC submits this comment to

further document its concerns regarding the WFMP regulations, as pertinent to the ten questions presented.

Request for Access to the Requested Economic Information

As you know, on July 9, 2015, Alan Levine and Sharon Duggan reviewed the WFMP Administrative Record at the Board offices, with the assistance of Thembi Borrás. At that time, nearly two weeks after issuance of the request, there was no information included as responsive to the June 26, 2015 request. On July 22, 2015, EPIC again requested, this time by letter, any responsive information, only to be advised in a July 24, 2015 letter from the Board's legal counsel that these documents would not be made available until August 17, 2015. The letter from the Board sets forth a number of reasons for this delay, all of which EPIC finds implausible. The Board staff is currently in the process of gathering this economic information at the Board offices. It is not being sent to other offices, is not expected to be particularly voluminous, is not based upon consulting with other agencies, and does not require specific computer programming to extract data. Therefore, it is not credible that fulfillment of our request requires searching for and collecting information from field offices, that the documents requested are so voluminous that they cannot be timely provided, that consultation with other agencies is required, or that some computer programming is needed to extract the data. Instead, this is information which is being submitted to the Board in response to a public request sent to a defined and limited list of interested persons. Accordingly, EPIC renews its request to review all responsive data. EPIC believes that if the Board is transparent in its process, this information will be promptly posted to the Board's website. Otherwise, EPIC will come to the Board offices in Sacramento to review this data.

Please let us know by Tuesday, August 4 whether all of the responsive information will be posted to the Board's website and if so, by when. If not, please be advised that EPIC will come to the Board's offices on Friday, August 7 to review this obviously public information.

Gathering Evidence to Support WFMP Regulations Post-Adoption

EPIC refers to the Initial Statement of Reasons (ISOR) at pages 115–116, issued for and in support of the adopted WFMP regulations. These pages provide the "ECONOMIC IMPACT ANALYSIS (pursuant to GOV § 11346.3(b)(1)(A)-(D))" for the WFMP which have been adopted by the Board. The Board, and the public in its comments, reviewed and relied upon the following statements:

- "The proposed action is not likely to create or eliminate jobs within the State of California.
- "[T]he number of jobs related to implementation of the State's Forest Practice Program, in the public or private sector, is not likely to change as a result of the proposed action.
- "The proposed action is not likely to create new businesses or eliminate existing businesses within the State of California.

- “[N]o loss of business is likely to occur as a result of the proposed action.
- “[N]o new businesses would likely be generated as a result of the proposed action.
- “The proposed action will not likely result in the expansion of businesses currently doing business within the State.
- “The proposed action may have a beneficial effect on the environment.
- “The proposed action is not expected to have an effect upon the health and welfare of California residents, worker safety, the prevention of discrimination, or the promotion of fairness or social equity.
- “Neither is the proposed action expected to result in an increase in the openness and transparency in business and government.”

The Board was required to have an evidentiary basis for these statements at the time they were made, and if not, those statements needed to be adjusted so that by the time of Board approved the regulations, the statement of reasons was reliable. Yet now, after approval, staff is soliciting information to support the WFMP rules. EPIC believes this attempt to solicit and gather evidence to “support” the regulation when submitted to OAL violates the law and is contrary to the APA, the Forest Practice Act, and CEQA.

Response to the Ten Questions in the Board’s Request for Economic Information

Applicability of Previous Comments to the Economic Analysis

The ISOR recognizes that there is a relationship between economics and environmental protection, as evidenced by its reference to the claimed “beneficial effect[s] on the environment” in the Economic Impact Analysis. EPIC maintains that the approved regulations will not have a “beneficial effect” on the environment, as detailed in its and other comment letters. Because the June 26, 2015 request seeks information about economics and perceived beneficial effects on the environment, concerns about environmental impacts must also be included for the economic analysis to be complete.

As EPIC and others have noted, a number of issues raised in comments were ignored throughout the process of developing the regulations from late 2013 to the adoption on June 17, 2015. These issues include but are not limited to: the lack of “rigorous timber inventory” standards, requirements for uneven-aged management over time, standards for long-term sustained yield, protection of water quality, measures to ensure identification and protection of species. The failure to address these environmental protections issues constitutes an economic concern. For instance, the lack of rigorous

timber inventory standards and the lack of a guarantee for use of uneven-aged management has the very real cost of declining inventory over time. Similarly, the failure to include necessary standards to ensure consideration of potential erosion sites, and compliance with existing water quality standards and applicable Total Maximum Daily Load (TMDL) has the very real potential of significant costs association with impacts to water quality and water supply—a concern that California is currently trying to address in every facet of life. The failure to require actual surveys and inspections for protected species has the real potential of reducing ecological biodiversity, which contributes to overall forest health and stability. These are but a few examples intended to illustrate, as the ISOR attempted to do, the obvious connection between the economics of the WFMP and its environmental impacts.

Accordingly, comments by EPIC and others concerning potential environmental issues are as relevant in response to the ten questions soliciting economic data as they were in response to the entire rule package before it was adopted by the Board. Particularly relevant once again are those comments raised by sister agencies, which the Board staff have elected to not include because they were raised in response to Management Committee versions of the WFMP. As EPIC understands it, the Board staff takes the position that earlier comments were addressed through changes to versions of the WFMP regulations, such that earlier comments are no longer applicable. EPIC disputes this position, as many of these earlier comments were not addressed by the final and adopted WFMP regulations. Therefore, EPIC includes and incorporates by reference herein the following comments, as evidence in response to all ten questions, and as raised specifically by Question 9. These must be considered in the context of the June 26, 2015 request.

- Comments from the California Geological Survey, dated March 2, 2015, 4 pages and accompanying transmittal email (1 page);
- Comments from the North Coast Regional Water Quality Control Board, dated April 4, 2014 (3 pages) and March 2, 2015 (5 pages);
- Comments from the California Department of Fish and Wildlife, dated June 16, 2014 (2 pages) and in response to July 11, 2014 version (3 pages);
- Comments from the California Department of Forestry and Fire Protection, dated April 8, 2014 (4 pages), undated questions (2 pages), and March 2, 2015 (7 pages);
- Comments from Richard Gienger, dated March 2, 2015 (1 page).

Response and Comments to Each Question in the Request for Economic Information

There is one common response that applies to all ten questions: Given the lack of adequate standards and measures in the adopted WFMP regulations to ensure that the WFMP meets legislative

intent and complies with other laws, the Board needed answers to these questions prior to its June 17, 2015 approval, if for no other reason than to understand the potential for environmental impacts, information about the number of eligible landowners (#1), types and number of businesses which could be impacted, including small businesses (#'s 2, 3, 4), number of potential new businesses (# 5), new jobs created (#6), cost for WFMP preparation (#7), cost to execute a WFMP (#8), beneficial effects (#9), and economic benefits to landowner (#10) all should have been included and documented to the Board and the public prior to June 17, 2015.

1. How many eligible landowners will submit a WFMP? In 2015? In 2016? In 2017? In 2018? The ISOR states that there are at least 81 landowners who would qualify under the new WFMP. ISOR p. 5. As you know, EPIC also attempted to obtain the evidence behind this statement, and was refused. Obviously, the number of eligible landowners depends on the number of ownerships that have anywhere from 1 up to 15,000 acres in non-industrial timberlands. Is this number really only 81 landowners, or is it a much larger number? Gathering this information now to support the adopted regulations violates the law.

2. What type of businesses will be impacted (e.g. forestry consulting entities)? Will any other type of business be impacted? The ISOR Economic Impact Analysis identifies “Registered Professional Forester, Licensed timber Operators, Professional Biologists, Professional Botanists and Professional Geologists” as “entities” needed to service the WFMP. ISOR p. 115. Are there others, particularly those who may be needed to do the inevitable restoration work caused as a result of the lack of standards? Gathering this information now to support the adopted regulations violates the law.

3. How many businesses will be impacted? As illustrated above, the ISOR concludes that businesses will not be impacted. ISOR p. 115. Gathering this information now to support the adopted regulations violates the law.

4. What percentage of those are small businesses (independently owned and operated, not dominant in their field of operations and having annual gross receipts less than \$1,000,000)? The ISOR answers this question as well, stating that “the proposed action will not have a significant adverse economic impact on business, including small business, as defined by GOV. § 11342.60 . . . no loss of business is likely to occur as a result of the proposed action.” ISOR p. 120. Gathering this information now to support the adopted regulations violates the law.

5. How many, if any, businesses will be created? If so, what type? As with questions 3 and 4, the ISOR states that “no new businesses would likely be generated as a result of the proposed action.” ISOR p. 115. Gathering this information now to support the adopted regulations violates the law.

6. How many jobs, if any, will be created? If so, what type? The ISOR at page 115 states that the “proposed action is not likely to create or eliminate jobs within the State of California...[and] the number of jobs related to implementation of the State’s Forest Practice Program, in the public or private

sector, is not likely to change as a result of the proposed action.” Gathering this information now to support the adopted regulations violates the law.

7. How much will it cost a landowner to have a RPF (including biologists etc.) prepare a WFMP? (range based on project area, topography, brush, size of trees and number of trees). The ISOR addresses this question as well, advising that the “cost of preparing this management plan is greater than a typical THP, much of which is the result of the required sustained yield analysis. However, unlike a THP, which is good for no more than seven years, a NTMP and WFMP last in perpetuity and the additional cost is recaptured over time because subsequent harvest entries can be conducted under a much simpler notice to the Department that is tiered off of the NTMP or WFMP.” ISOR p. 4. Gathering this information now to support the adopted regulations violates the law.

8. How much will it cost a landowner to have a LTO execute the WFMP (e.g. \$/MBF)? (range based on project area, topography, brush, size of trees and number of trees). This question is unclear because it fails to consider over what period of time a landowner may implement the WFMP. A WFMP extends in perpetuity, and any costs should be evaluated in perpetuity. And as noted at the outset in response to these questions, any projection must consider the environmental impacts associated with the lack of adequate standards and measures that are required to implement the legislative intent and protect the environment. And as noted immediately above in response to Question # 7, the ISOR concludes that any additional costs will be “recaptured over time” because of the simpler notice process for subsequent harvest. Gathering this information now to support the adopted regulations violates the law.

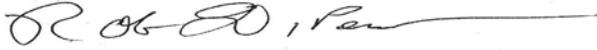
9. Regarding the benefits, beneficial effects upon the environment could be related to fire resiliency, habitat, aesthetics, carbon sequestration and decreased conversion. What other beneficial effects upon the environment are anticipated? EPIC has responded to this question above. EPIC maintains that the WFMP as adopted will not benefit the environment, because of the lack of standards, basic measures to protect timberlands, water quality, and protected species, and the failure to meaningfully review the WFMP as required by the legislation. As stated above, these and other environmental harms must be included in an economic analysis.

10. What is the economic benefit to the landowner, how much might a landowner make from the sale of the timber/biomass? (range based on project area, distance to a processing facility, topography, brush, species, size of trees and number of trees). The ISOR maintains that the WFMP will “help keep ranches and other non-industrial forest properties economically viable and make them less likely to be subdivided for housing or converted into golf courses.” ISOR pp. 4–5. EPIC is unaware of any evidence in the record that documents this claim. More importantly, given the utter lack of standards for the 5-Year Review process, this claim is pure speculation. Gathering this information now to support the adopted regulations violates the law.

EPIC appreciates consideration of these comments. EPIC requests that the Board respond to these comments in its response to comments, which we understand Board staff will prepare for

submission to OAL in the Final Statement of Reasons. Please do not hesitate to contact me at the number provided below should there be questions.

Sincerely,



Rob DiPerna
California Forest and Wildlife Advocate

Environmental Protection Information Center
145 G Street, Suite A
Arcata, California 95521
Office: (707) 822-7711
Email: rob@wildcalifornia.org

Enclosures

EPIC Letter regarding WFMP Draft Regulations to Management Committee. April 7, 2014.

EPIC Letter regarding WFMP 45-day Notice. March 2, 2015.

EPIC Letter Regarding WFMP 45-day Notice. June 15, 2015.

Comments from the California Geological Survey, dated March 2, 2015.

Comments from the North Coast Regional Water Quality Control Board, dated April 4, 2014.

Comments from the North Coast Regional Water Quality Control Board, March 2, 2015.

Comments from the California Department of Fish and Wildlife, dated June 16, 2014.

Comments from the California Department of Forestry and Fire Protection, dated April 8, 2014.

Comments from the California Department of Forestry and Fire Protection, March 2, 2015.

Comments from Richard Gienger, dated March 2, 2015.



Keeping Northwest California wild since 1977

Sent via e-mail to george.gentry@fire.ca.gov on date shown below

April 7th, 2014

Mr. Stuart Farber, Chair
Management Committee
California Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244

Re: EPIC comments regarding proposed regulatory language for implementation of Assembly Bill 904 “Working Forest Management Plan”

Dear Chairman Farber and Committee Members:

The Environmental Protection Information Center (EPIC) has reviewed a “February 17, 2014 Draft” set of regulations for the “Working Forest Management Plan,” hereinafter referred to as “Draft Regulations.” We believe it is important that the implementing regulations provide an adequate structure for AB 904’s goal to ensure long term benefits and require rigorous timber inventory standards for non-industrial landowners who may choose to develop the “Working Forest Management Plan” (WFMP). In an effort to assist in achieving the legislation’s intent, EPIC provides the following comments and suggestions for development of regulations to implement AB 904.

It is equally important that the implementing regulations provide for documentation of conditions in a manner that is consistent with common & current professional practice and organization for planning documents. This includes documentation of conditions and recovery measures necessary for compliance with the laws which AB 904 identifies as requiring compliance, including CESA, CEQA and Porter-Cologne Water Quality Act.

I. Legislative Intent Must Guide Development of Regulations.

The WFMP is intended “[t]o ensure *long-term benefits* such as *added carbon sequestration*, local and regional employment and economic activity, *sustainable production of*

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timber and other forest products, aesthetics, and the maintenance of ecosystem processes and services,” and thus “shall comply with *rigorous timber inventory standards* that are subject to periodic review and verification.” PRC § 4597(a) (5), emphasis added. The Legislature specifically requires that the governance of the WFMP “shall be implemented in a manner that complies with the applicable provisions of this chapter and other laws, including, but not limited to, the Timberland Productivity Act of 1982 (Chapter 6.7 (commencing with [Section 51100](#)) of [Division 1 of Title 5 of the Government Code](#)), the California Environmental Quality Act (Division 13 (commencing with [Section 21000](#)) of the [Public Resources Code](#)), the Porter Cologne Water Quality Control Act (Division 7 (commencing with [Section 13000](#)) of the [Water Code](#)), and the California Endangered Species Act (Chapter 1.5 (commencing with [Section 2050](#)) of the [Fish and Game Code](#)).” *Id.* (b). These important requirements are not included in the NTMP statute. See PRC § 4593.

AB 904 authorizes the Board of Forestry to not only adopt regulations for specific sections, but also to adopt any regulations “needed to implement this article . . .” PRC § 4597.20. It is therefore very important to develop provisions which implement the WFMP statute, and are not largely only a regurgitation of the existing NTMP regulations, as they would be insufficient to implement the statute.

Our comments first identify the statutory provisions which require interpretation and guidance and how in our view the Draft Regulations have or have not provided this interpretation and guidance. We then provide a review of specific provisions of the Draft Regulations which have not already been addressed.

II. AB 904 Statutory Provisions Require Interpretation and Guidance.

Section 4597 (a)(5) - Legislative intent

The statute provides that to “ensure long-term benefits,” such as “added carbon sequestration,” “sustainable production of timber and other forest products,” and the “maintenance of ecosystem processes and services,” the working forest management landowner “shall comply with rigorous timber inventory standards that are subject to periodic review and certification.”

Regulation is needed to identify and/or provide these “rigorous standards.” While some of the content of the statute (i.e., § 4597.2(c)) may be viewed as providing standards, even if fully adopted as regulation, they do not provide sufficient guidance and interpretation.

It is not clear whether Draft Regulations section 1094.6 subsection (d) is intended to provide these “rigorous standards.” As an initial matter, the Draft Regulations are unclear and/or wrongly formatted, as there is a subsection (d) on page 5 and another on page 6. The subsection (d) on page 6 appears to be the intended version. This version suffers from ambiguity, in that while it requires a “description of the plan area within which timber operations are to be conducted,” it then lists numerous items that go beyond a description of the plan area, requiring information as to what activities, operations, and measures are proposed, rather than the required description of the plan area. It would make better sense to require first a description of the plan

area, and then separately provide the requirements to identify the proposed activities, operations, methods, etc.

Separate from these concerns, however, is the failure to adequately bring forward the intent of Public Resources Code Section 4597. The “rigorous timber inventory standards” need to be defined and identified as such, and provisions must be included to ensure their “periodic review and certification.” PRC § 4597(a)(5). The Legislature provided some guidance as to what are relevant standards. PRC § 4597.2(c). These too require interpretation and effective regulation. We believe the Draft Regulations need to establish rigorous and enforceable standards.

In providing this guidance, it is important that the maintenance of ecosystem processes and services includes provisions that adequately describe those processes and services and their maintenance in the context of the 14 CCR 916(b) , as well as the Porter-Cologne definition of Water Quality Control: “. . . protection and correction of water pollution and nuisance." A comprehensive description of the plan area is key. Mandatory compliance with 14 CCR 916.4 is necessary.

Section 4597.1 - Definitions

AB 904 did not define what it meant by “long-term benefits” such as “sustained production of timber and other forest products,” “added carbon sequestration,” “ecosystem processes,” and “ecosystem services.” The Board needs to give definition to and provide parameters for these terms if the objectives are to be satisfied, as they are at the heart of the WFMP.

In addition, the definition of “sustained yield” provided in the Draft Regulations section 1094.3 should be amended to address the use of the word “commercial.” It is unclear what that term means; it is clear that the WFMP is limited to non-industrial timberlands. At a minimum, the definition should refer to “non-industrial commercial timberland.” We note that the definition of “sustained yield” is not a substitute for a definition of “sustained production of timber and other forest products.”

Section 4597.2 - WFMP Contents

As a general comment, the Draft Regulations section 1094.6, identifying the WFMP content, in large part either use the same provisions as in the NTMP content regulations, or simply restate the language in Public Resources Code Section 4597.2 in defining the WFMP content. As the NTMP is a different kind of plan, which does not require all of the rigorous standards as in the WFMP, incorporating some of the NTMP provisions may be confusing and inaccurate. We note those below, as appropriate, when discussing specific sections.

And while there is nothing inherently incorrect with merely restating the legislation, the Board as the regulatory body is duty bound to provide adequate interpretation and clarity in order to ensure that the Legislative objectives are satisfied. This is why the Legislature gave the Board

the right to adopt any regulations “needed to implement” AB 904. There are certain areas in particular where this interpretation is needed, as discussed herein.

Overall, the format and accessibility of a WFMP is key. It should include a table of contents, and be readily accessible through internet

Long-term sustained yield estimate and/or plan.

The statute requires information used to “determine long-term sustained yield” (subsection (c), (c)(3)), and refers to (1) “long-term sustained yield estimates” (subsection (c)(3)), (2) “long-term sustained yield projections” (subsection (i)(2)(A)), and (3) a “long-term sustained yield plan” (subsection (i)(1)(A)). While the statute does not then expressly require a “long-term sustained yield estimate” or “long-term sustained yield plan,” it surely is implied that a proposed “long-term sustained yield” will be provided, and that the WFMP will include a “long-term sustained yield plan.” The Draft Regulations do not provide this, and perpetuate the confusion by simply repeating the language of the statute. *Compare* PRC § 4597.2(c), (f), (i)(A) with Draft Regulations § 1094.6(d)(6), (9), (13). We do not find in the Draft Regulations, for example, an express requirement in section 1094.6 to even identify the “long term sustained yield.” This must be required, and based on the language in AB 904 Section 4597.2 a WFMP must include a “long term sustained yield plan.” The Board needs to adopt regulations to implement this requirement. Absent this, there is no real way to verify compliance over time.

Impacts to species and species habitat.

The statute requires the WFMP’s “long-term sustained yield projections” to include an “assessment” which “addresses” listed and other species that could be adversely impacted by potential changes to habitat (subsection (i)(2)(C)(i)), species habitat needs (subsection (i)(2)(C)(ii)), and constraints to timber management etc. (subsection (i)(2)(C)(iii)). Regulations are needed to interpret what is meant by an “assessment” and “address[ing]” these resources and potential impacts. For example, how is the WFMP to “address” these resources; what standards are to be applied; what criteria? Unfortunately, the Draft Regulations provide no insight or interpretation, as they merely adopt the statute’s language. *Compare* PRC § 4597.2(i)(2)(A) with Draft Regulations § 1094.6(d)(15). Regulations are needed to make clear what is required and what standards will apply to the assessment.

Similarly, subsection (i)(2)(C)(iii) refers to the “cumulative impacts assessment,” yet it is not specifically required by the statute and the Draft Regulations simply adopt the statute’s language. A cumulative impacts assessment should be and needs to be expressly required – with its measurable required contents. Mere reference to the term “plan” at the outset of the Draft Regulations is insufficient to impose this requirement. The cumulative impacts assessment is required because the language in Draft Regulations section 1094.6(d)(12) requires disclosure of state or federally listed threatened, candidate, endangered, or rare plant or animal species located within the “biological assessment area.” Presumably, that is intended to refer to a biological assessment area within a cumulative impacts analysis, but absent an express requirement for such an analysis, that term is unclear.

4597.6 - Review Process for WFMP.

There are provisions within this statute which need regulatory interpretation.

Initial Inspection.

Subsection (b)(2), while somewhat in-artfully written, does require an initial inspection. The Draft Regulations simply adopt its language, § 1094.18(d)(2), without providing any guidance as to the scheduling of the initial inspection in a manner that involves all public agencies who have expressed a desire to participate in the inspection. This is needed to ensure that adequate review team agency participation and review occurs.

Appeal of denial.

Subsection (c) refers to the right to a “hearing” before the Board of Forestry, should a WFMP be denied.

Subsection (e)(1) refers to the ability of the working forest landowner to request, and the Board to conduct, a public hearing when the WFMP has been denied. Subsection (e)(4) then refers to an “appeal to the board.”

The Draft Regulations use this same language. §§ 1094.18(e)(1)-(h). These provisions are confusing at best. Does the landowner have a right of appeal, or merely a right to request a hearing? This is clearly an area where the Legislature needs the Board’s assistance to interpret the statute and make it clear, to clarify and make consistent that the landowner’s right to a hearing is a right of “appeal” which includes the public hearing.

Subsection (c) also provides that if the director denies the WFMP, s/he shall “state the reasons” for the denial. Subsection (e)(3) provides that if the Board overturns the director’s denial, it shall prepare “findings and its rationale” for overturning the decision. Again, the Draft Regulations simply adopt this language, failing to provide consistency and transparency for these decisions, by requiring that the director adopt “findings and rationale.” Draft Regulations § 1094.18(e), (g). In addition, EPIC believes it is necessary that both the director’s findings and the Board’s findings are issued publicly and made available in the same manner that all the other notices are posted.

Subsection (e)(4) provides that if the WFMP denial is upheld, then the director shall notify the landowner as to what changes are needed. The Draft Regulations provide nothing further. § 1094.18(h). Regulation is needed to require findings by the Board of Forestry to identify any reasons it may have, in addition to or different from those provided by the director’s statement of reasons (findings and rationale) that may become clear as a result of the appeal and public hearing process.

Regulation is also needed to clarify the process for a post-appeal review including provisions for a post-appeal inspection should it become necessary and for inter-agency review.

4597.7 - Substantial deviations

This section specifically requires the Board to define actions that would be considered to “substantially deviate[]” from the approved WFMP. Draft Regulations section 1094.15(b) provides the same definition of “substantial deviation” as in 14 CCR § 895.1. EPIC believes that more thought needs to be given to this section, to include criteria to identify substantial changes to the core provisions of AB 904 such as the rigorous timber inventory standards and LTSY, as well as the need for increased carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, and the maintenance of ecosystem processes and services.

4597.8 - Non substantial deviations

This section specifically requires the Board to “specify, by regulation, those nonsubstantial deviations that may be taken.” The Draft Regulation section 1094.15(a) appears to be nothing more than what already exists in the NTMP regulation 1090.14(a). This is insufficient, as the WFMP is intended to be much more rigorous than the NTMP, particularly given its very large acreage of up to 15,000 acres. A clear standard must be used to define what is insignificant, so as to not seriously affect the key objectives of a WFMP. Section 1094.15(a) is unclear as well, failing to define or provide standards for what may be “minor in scope” and what may be presumed to be “reasonable.” Better regulation is needed to limit the potential for abuse of so-called “minor” deviations.

4597.10 and 4597.16 - Cancellation/Termination of WFMP

This section authorizes the landowner to cancel the WFMP, but provides no process by which that is to occur, other than through a written notice. Draft Regulations section 1094.28 adopts this language, without providing interpretation or guidance as to what kind of notice is provided, whether it must be circulated by the Department for review, whether other agencies and/or the public are entitled to receive this notice for the purpose of ensuring compliance with “rigorous timber inventory standards,” adopted commitments for sustainability, ecosystem maintenance, added carbon sequestration, wildlife protection, etc. Since the overall legislative intent is to ensure long-term benefits and verification of WFMP provisions, a regulatory process must be adopted to provide this in the event a landowner wants to cancel the WFMP. It is insufficient to simply allow for satisfactory completion of any given notice of operations.

Subsection (a) of section 1094.28 adopts the language of AB 904 Section 4597.16. Just as regulations are needed to define a process for landowner cancellation, so too regulations are needed to define what standards and process CalFire may use to cancel a WFMP. This process must include criteria to evaluate the WFMP in conjunction with the rigorous inventory standards and other objectives which the WFMP is intended to meet. Regulation is needed to provide standards to evaluate for satisfying these objectives, and to also ensure that if a WFMP is cancelled, whatever mitigation and protection measures required by the WFMP are fully satisfied, so that a landowner may not simply walk away from commitments which were incorporated to ensure the long-term benefits identified by the legislature.

4597.11 - WFMP Notice

This section outlines the contents for the notice to operate under an approved WFMP. Once again, the Draft Regulations largely simply adopt the statutory language, without providing needed guidance and interpretation. *Compare* PRC § 4597.11(a) - (l) with Draft Regulation § 1094.8(a) - (m). Many of the statutory provisions need interpreting regulations.

Subsection (e) provides for a “statement” that no archaeological sites have been discovered in the harvest area since the approval of the WFMP. However, the WFMP contents outlined in Draft Regulation section 1094.6 make no reference to “archaeological sites,” referring only to “cultural or historical resources.” The current regulations do not define any of these three terms. Regulations are needed to clarify that the results of a search for “archaeological sites” must be documented in the WFMP.

Subsection (f) also provides for a “statement” that protected and listed species “have not been discovered,” and specifies requirements for disclosure of documented occurrences of these species and development of take avoidance and mitigation measures if this information is not provided in the approved WFMP. It goes on to specify a requirement to report “documented occurrences of the species” as obtained from publically available sources, but does not require an actual search for these protected species within the WFMP area or the area proposed for operations.

These two subsections do not expressly require a plan area “search” or “survey,” yet it is obvious that to make the required “statements” some search must have been done. Regulation is needed to clarify that an actual on-the-ground search for archaeological sites and these protected plant and animal species must be conducted and documented in the Notice. This search should be done within the proposed area of operations as well as through the review of public and readily available sources of information, including management area review. Otherwise, the landowner may make the statement that the sites and/or species have not been discovered, without any search.

Similarly, subsection (g) provides for a statement that “no physical environmental changes in the harvest area [] are so significant as to require any amendment” of the WFMP. Regulation is needed to clarify that an assessment and review of the land covered by the WFMP and proposed area of operation under the notice has been conducted to determine whether there are significant physical environmental changes which require a WFMP amendment.

Subsection (j) requires statement of “special provisions to protect unique areas within the area of timber operations,” but as with previously noted subsections, fails to require the elemental step to actually determine if any “unique areas” are within the area of timber operations. A requirement to determine if unique areas exist must be included.

Subsection (m) requires an update on erosion control mitigation measures “if conditions have changed.” Regulation is needed to interpret and provide standards for what constitutes “changed” conditions.

Draft Regulation subsection 1094.8(n) appears to be simply repeating what is in the statute, requiring any other information the Board may require by regulation. This appears unnecessary.

There is a second subsection “m” to Draft Regulation section 1094.8, on page 17, which appears to include some of the same requirements as for an NTMP. It is unclear, in the absence of effective regulation to ensure that the objectives of AB 904 will be implemented, to know whether some of these provisions and what they may allow in terms of operations are appropriate. We note that in the version we have reviewed, for subsection (m)(3)(2) there is a comment which reads “Delete regeneration methods to alleviate need to map unevenaged silviculture.” We do not understand why such a deletion would be appropriate, as a prime objective of the WFMP is to achieve uneven aged timber stands, and thus mapping those stands would seem advantageous toward documenting compliance.

4597.12 - Five Year Review

This section outlines a process for the five-year review of an approved WFMP.

Subsection (a) provides that the director shall convene a “meeting with the interdisciplinary review team” to “review” the administrative record and other information to “verify” that operations have been conducted in accordance with the WFMP. A field inspection “may” be conducted if a review team member requests one. As with other provisions, this language contemplates, yet does not expressly state, that an actual review must be done to “determine” if the Director can “verify” compliance. Regulation is needed to clarify this.

Subsection (b) provides that the Board shall adopt regulations for the development of a “plan summary” before each five-year review, for the purpose of allowing the review team to analyze information, including the number of notices of timber operations, the acreage operated under each notice, the violations received, and the volume harvested in relation to the projections of harvest in the plan.

The Draft Regulations section 1094.26(b) adopt these provisions. Subsection (b)(1)-(4) provides additional information, but it poorly worded so that it is unclear under what circumstances this information is required. It is also unclear whether this information constitutes the “plan summary” required by AB 904 Section 4597.12. If for example subsection (b)(1) is information to be provided in all instances, it requires an RPF for the WFMP owner to certify compliance. How then is that to occur? There are no provisions outlining the timing and manner in which that is to occur. Subsection (b)(3) is similarly unclear and objectionable. How are violations “received?” Either they are a part of the record or not. What standards are to apply to determine whether “potentially significant impact to public trust resources may occur from continuance of the WFMP?” And what is the process by which Cal Fire may be presented with “a fair argument that a project may have a significant effect on the environment?”

AB 904 section 4597.12 subsection (c) provides for public notice of the five-year review and a copy of the plan summary, with the ability to provide additional information to the review team for the five-year review. Draft Regulations section 1094.26(c) adopts this language,

without providing the necessary guidance as to how the public review can occur. The public is entitled to not only notice, but a defined period of time in which to review the plan summary and five-year review, particularly if the public wants to provide “a fair argument” as to significant effects on the environment and to public trust resources.

The Board needs to develop clear provisions for the five-year review to adequately implement the statute, to provide (1) a defined process and content for the “plan summary”, (2) a defined process for the five year review, which includes notice, scheduling, and agency and public access, (3) the standards which will be used to evaluate compliance with the WFMP as well as the legislative objectives such as uneven-aged management, added carbon sequestration, sustained production of timber and other forest products, aesthetics, maintenance of ecological systems and processes, etc., and (4) findings that are necessary to document the required “verification” required in Section 4597.

Section 4597.15 - Immediate Operation

This section provides that if the RPF certifies that the written notice conforms to and meets the requirements of the WFMP, then operations may immediately commence. While Section 4597.14 provides for disciplinary action against an RPF who makes any material misstatement, we find no provision in AB 904 which prevents and remedies impacts from immediate operations which are inconsistent with the approved WFMP. Regulation is needed to specify that should it be determined that a notice is materially misleading, the director has the right to and must immediately stop operations and proceed with Notice of Violation as provided in the FPR. The landowner as well as the RPF must be subject to discipline and held accountable.

Section 4597.17 - Change from NTMP to WFMP

This statute provides for a NTMP landowner to transition to a WFMP and requires the Board to adopt regulations to establish this amendment process. The Draft Regulations section 1094.29 appear to have not yet addressed this need. At this point, EPIC encourages the Board to draft regulation which clearly identifies how such a transition may occur, in a manner that ensures that the underlying NTMP provisions have been fully satisfied, and the rigorous standards imposed by the WFMP shall be incorporated.

Section 4597.18 - Safe Harbor Agreements

This provision allows a landowner submitting a WFMP to simultaneously seek a safe harbor agreement from the Department of Fish and Wildlife pursuant to the Fish and Game Code. The Draft Regulations adopt the statute’s language. The Draft Regulations simply adopts the statutory language. In doing so, they fail to address how the review process for the WFMP shall proceed in conjunction with, or independent from, the application for a safe harbor agreement. Clarity as to how these two application processes may proceed, and/or coincide, should be provided.

Section 4597.19 - State Restoration Projects

This section specifies that a state restoration grant application may not be summarily denied on the basis that the proposed restoration project is a condition of the harvesting plan. The Draft Regulations simply adopt the statute's language, failing to deal with some ambiguity. The term "harvesting plan" is not used in any other section of the Draft Regulations, so it is unclear what this references.

Section 4597.20 - Adoption of Regulations

This section gives the Board full authority to adopt regulations it finds necessary to implement AB 904. Thus, the Board needs to exercise its full authority to provide legitimate interpretation and guidance through regulation to advance AB 904's legislative intent.

III. Comments on Specific Draft Regulations.

In addition to those Draft Regulations which are referenced above, the following are specific Draft Regulations which need refinement or change.

Unnumbered Introduction to Working Forest Management Plan

The introduction which provides for equivalency of the term THP, timber harvesting plan, or word plan to the WFMP does not ensure that key information requirements and particularly the obligation to provide a cumulative effects assessment will be satisfied. Refinement is needed to ensure that at a minimum, key information requirements that are necessary to evaluate the WFMP are included. This can occur here or in the WFMP Contents regulation, at § 1094.6.

Section 1094.2 - Definitions

In addition to what is identified above, EPIC suggests the following changes:

The statute defines "late succession forest stand" as "stands of dominant and predominant trees that meet the criteria of the California Wildlife Habitat Relationships System class 5D, 5M, or 6 with an open, moderate, or dense canopy closure classification, often with multiple canopy layers, and are at least 10 acres in size. Functional characteristics of late succession forest stands include large decadent trees, snags, and large down logs." AB 904, § 4597.2(g)(3). In addition, AB 904 provides that "[n]othing in this requirement shall be interpreted to preclude active management on any given acre of an approved plan if the management is conducted in a manner that maintains or enhances the overall acreage of late succession forest stands that existed in the plan area upon initial plan approval ." AB 904, §4597.(g)(1). EPIC recommends that the Board take notice of the Legislature's recognition that late succession forest stands can be much smaller than the current 20-acre limitation, to as little as one acre. Given this recognition by the Legislature that acreage of at least 10 acres--- or as small as 1 acre – qualify as late succession forest stands, EPIC recommends that the Board adopt a definition which permits late succession

forest stands one acre or larger, This is consistent with current Department policy. In addition, EPIC suggests that the Board apply the new definition of “late successional forest stands” across the board by amending the definition of “late successional forest” currently contained in 14 CCR 895.1 to reflect a change from the minimum 20 acres down to the one acre or more in order to ensure consistency of identification, and application of this definition across all ownerships and as a part of all timber harvest planning documents.

“Long-term sustained yield” for the WFMP should incorporate the objective and standard of “uneven-aged management” such that the planning horizon for an “un-evenaged forest encompassed by the WFMP has reached a balance between growth and yield.”

Section 1094.3 - WFMP Submittal and Notice of Preparation

The intent language provided in this section needs to be expanded to reference that the WFMP is for non-industrial landowners, and it should include the objectives set forth in Public Resources Code Section 4597(a)(5).

Section 1094.6 - Contents of the WFMP

In addition to comments concerning subsections of 1094.6 addressed above, EPIC suggests that the preliminary statement, which is patterned after the NTMP regulation at 14 CCR 1090.5, is too limiting. The WFMP should serve not only the functions as outlined, but the express function of developing an uneven-aged forest which ensures long-term benefits such as added carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, and the maintenance of ecosystem processes and services.

Section 1094.6 (d)(7) - Methods used to avoid significant sediment discharge to watercourses from timber operations

This section needs better definition and precision, particularly as to the phrase in the last sentence which permits “compliance with similar requirements of other applicable provisions of law.” This is very vague and ambiguous, and needs specificity.

Section 1094.6 (d)(10) - Description of late succession forest stands

This section uses an undefined phrase – “a constraint of no net loss.” This needs definition so that it can be an enforceable standard.

Section 1094.6 (d)(13)(A) - Description for each management unit

This subsection illustrates well the issue concerning the need for a “LTSY plan,” as it expressly refers to the “LTSY plan,” yet as discussed above, the regulations do not require a “LTSY plan.” The regulations should require an LTSY plan.

Section 1094.6 (d)(15) - LTSY projections for reduction in trees greater than 12 inches in diameter or reduced level of inventory of a major stand type

This subsection appears to permit a reduction in LTSY, provided certain resources (protected species, species habitat, and constraints no timber management) are “addressed.” EPIC objects to this provision, as written, as it appears to permit reduction in overall canopy and age classes. The subsections (A), (B) and (c) are also all unclear to the extent they require the WFMP to “address” the identified resources and issue, as it the term “address” is too vague and without criteria to gauge whether the information to be presented may be adequate. Stricter standards are required to ensure that any such reduction in LTSY must be limited, so as to prevent disregard for the core objectives of a WFMP.

Section 1094.6 (d)(17) - Certification of personal inspection of plan area

One of the ongoing concerns in private land forestry is the lack of disclosure and inspection of the entirety of a plan area. This subsection should be amended to require that the certification attests to personal inspection of “all of the plan area.”

Section 1094.6 (d)(18) - Any other information required by regulation

This subsection appears unnecessary.

Section 1094.6 (d)(25) - Description of cumulative impacts analysis

As referenced above, the Draft Regulations need to include an express required that a cumulative impacts analysis is required.

Section 1094.10 (d) - Plan submitted responsibility

It is unclear to EPIC why a provision would be included to exempt corporations from the duty to file a notification of change in responsibilities or substitution of an RPF “because the RPF of record on each document is the responsible person.” This makes no sense, as the RPF of record is always a responsible person, subject to significant license requirements. A corporation is no different than a person under the code, Public Resources Code Section 4525, and should be treated no differently when it comes to notifying the Department of changes of the RPF for WFMP implementation.

Section 1094.11 (e) - Registered Professional Forester Responsibility

This subsection refers to “attainment of the resource conservation standards of the WFMP.” As discussed above, the Draft Regulations do not identify requirements for or specifics of “resource conservation standards” for any given WFMP. Thus, this terminology is meaningless. Draft Regulation section 1094.6 must include express resource conservation standards.

Section 1094.17 - Agency and Public Review for the WFMP
Section 1094.18 - Director's Determination

We address these two sections together because we believe they need to be reorganized to better outline first the review process for the WFMP, and second the decision-making process for the WFMP.

To illustrate this need, we note that while section 1094.17 provides for posting of the WFMP, and circulation to other public agencies, it says nothing about a review process for the general public. That is found in section 1094.18(a)-(c). These provisions should be in the same regulation.

With respect to introduction to section 1094.17, the placement of the proposed plan is provided as either in a location OR on an internet Web site. The proposed plan should be available BOTH in a location and on an internet Web site.

Section 1094.17(a) permits the Department to "bill such persons," but it is entirely unclear what "persons" are referenced here. This appears to be a consequence of cutting and pasting from the NTMP regulations, and the deletion in the Draft Regulations of the provision that the Department shall transmit a copy of any specific plan to any person who has made a written request for it. EPIC believes that this subsection needs to be reinserted.

The provisions of section 1094.18(a)-(c) should be placed in section 1094.17, as provisions identifying "agency and public review for the WFMP." Additional language is needed to identify the manner and format in which the public may provide comments.

The Draft Regulations adopt AB 904 Section 4587.6(a) process for public review. Section 1094.18 (d) identifies what is needed for approval. While technically this is part of the Director's determination, it is clearly part of the review process. It is unfortunate that the Draft Regulations simply adopt the structure of AB 904 Section 4587.6, rather than organize the regulations to deal first with the review process, and second with the decision process. Additionally, Section 4587.6(a) does not provide a provision to determine "completion of final interagency review of the plan." This provision is adopted in Draft Regulations subsection 1094.18(d)(4). A provision is needed to define what constitutes "completion of final interagency review of the plan." The Board should address this through regulation.

Draft Regulations section 1094.18(e) - (h) effectively provides a right of appeal to a landowner in the event the Director finds the WFMP is not in conformance with the rules. As discussed above, the Draft Regulations need to clarify the process as an "appeal" process, and provide appropriate procedures to document decision-making.

Section 1094.20 - Nonconformance of the WFMP

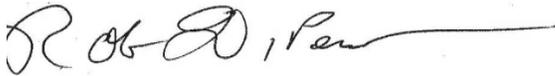
This section appears to be a copy of the NTMP regulation 14 CCR 1090.20, and by reference to 14 CCR § 1054, appears to introduce conflicting provisions from those set forth in

Draft Regulations section 1094.18. Careful review is needed to determine whether this section should be included.

IV. Conclusion

EPIC appreciates the opportunity to provide comments to the Committee at this early stage of regulatory development for the WFMP. Please do not hesitate to contact me at the number provided below if there are questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob DiPerna", with a long horizontal flourish extending to the right.

Rob DiPerna
California Forest and Wildlife Advocate

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Email: rob@wildcalifornia.org



Keeping Northwest California wild since 1977

Sent via electronic mail to: publiccomments@bof.ca.gov on date shown below

March 2, 2015

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

RE: Comments on 45-day Notice for Proposed Adoption of Regulations for the Working Forest Management Plan

Dear Chairman Gilles and Board Members:

The Environmental Protection Information Center submits these comments for consideration by the Board of Forestry and Fire Protection in its review of the proposed regulations for the “Working Forest Management Plan” documents and review process.

The Environmental Protection Information Center (“EPIC”) is a community-based, membership driven environmental non-profit organization that speaks for both its members and supporters. EPIC has established a long history of engagement in the monitoring and enforcement of laws and regulations related to private timberland management over the last 37 years. EPIC has been on the forefront of enforcing laws requiring sustainable forest practices, including its successful challenge to the Pacific Lumber/Maxxam Sustained Yield Plan. EPIC advocates on behalf of its members for sustainable forest practices to ensure protection of all natural resources, including water, protected and listed species, and cultural and historic sites. EPIC members are directly impacted by private land forest operations, particularly in terms of impacts to natural resources, water quality and quantity, ecological processes, and aesthetics. Timber operations which cause adverse environmental harm have a direct impact on EPIC members, particularly because of the loss of timberland productivity and failure to adequately protect natural resources which depend on quality timberlands. For example, EPIC members from throughout California require clean and adequate water sources, and pure air – resources which are directly affected by poorly regulated logging practices throughout California. EPIC maintains rulemaking by the Board of Forestry and Fire Protection (“Board”) must adhere to all applicable laws to ensure sustainable forestry and protection of natural resources will be an effective standard for private land timber management.

Environmental Protection Information Center
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INTRODUCTION

EPIC believes management planning is a good thing, particularly to define long-term resource planning, identify and evaluate landscape issues, provide mechanisms to remedy legacy and operational environmental impacts, and provide an ongoing feedback-loop that monitors practices and conditions to maintain ecological processes and increase productivity and sustainable forestlands while protecting natural resources.

The California Legislature passed AB 904 to provide a landscape planning mechanism for non-industrial timberland owners with ownerships of less than 15,000 acres. While EPIC did not support AB 904, now that it is law, EPIC wants to see it implemented in a manner that is effective and consistent with the Legislative intent “to encourage long-term planning, increased productivity of timberland, and the conservation of open space on a greater number of nonindustrial working forest ownerships and acreages.” (PRC § 4597(a)(3)). Thus, EPIC supports the policy to “encourage prudent and responsible forest resource management of nonindustrial timberlands” through development of good “Working Forest Management Plans.” (PRC § 4597(a)(4)). EPIC believes, as did the Legislature when it enacted AB 904, that to achieve benefits such as “added carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, aesthetics, and the maintenance of ecosystem processes and services,” the Working Forest Management Plan must “comply with *rigorous timber inventory standards* that are subject to periodic review and verification. (*Id.*, (a)(5)). (Emphasis added).

A Working Forest Management Plan (“WFMP”), by definition, is a management plan with objectives of “maintaining, restoring, or creating uneven aged managed timber stand conditions, achieving sustained yield, and promoting forestland stewardship that protects watersheds, fisheries and wildlife habitats, and other important values.” (PRC § 4597.1 (j)). Only land owners with less than 15,000 acres of timberland, and who are not primarily engaged in the manufacture of wood products, are eligible to secure approval of a WFMP. (*Id.*, (I)). These landowners must have the objective of “an uneven aged timber stand and sustained yield” which they propose to achieve through implementation of a WFMP. (PRC § 4597.2).

The Legislature directed the Board of Forestry to adopt regulations as needed to implement AB 904 provisions. (See, e.g., PRC §§ 4597.2(1), 4597.3, 4597.8, 4597.11(m), and 4597.12(b)). EPIC has previously provided comment on Board committee drafts of proposed WFMP regulations. Because we believe much of what EPIC has identified in the past remains relevant to the currently proposed regulations, we include a copy of comments from April 7, 2014 (Attachment A). One of EPIC’s primary concerns was the Board’s failure in previous draft to provide actual interpretation and clarity of the statutes enacted pursuant to AB 904, and instead to simply restate much of the statutory language. EPIC strongly disagrees with this approach, as we believe AB 904 requires interpretation and guidance for effective implementation. EPIC identified many examples of this and refer the reader to our earlier comments. The Board’s Initial Statement of Reasons (“ISOR”) now tries to justify this practice under a theory that “duplication of statute” was necessary for “consistency” and “to satisfy the clarity standard.” (ISOR, at p. 7). EPIC disagrees. Because the draft regulations now duplicate language, or in some cases introduce new language which further confuses the statutory standards, many of the regulations do not satisfy the Administrative Procedures Act standards for clarity and consistency.

Underlying this regulatory effort is the reality that several hundred thousand acres of forest land may be eligible for and receive Working Forest Management Plan approval. As lifetime plans, it is critical that the Legislative intent be fully and accurately implemented in a manner that protects timberland and other natural resources. The regulations as drafted do not provide the basic information required by, or offer interpretation of, governing statutes in a manner that will achieve the California's stated goals and objectives in authorizing WFMPs.

These comments focus on core issues which must be addressed through changes in the proposed regulations, before the Board may act to approve a set of regulations for the WFMP. The regulations fail to satisfy the statutory duty embodied by AB 904. They lack necessary definitions. They fail to require content to ensure that long term sustained yield ("LTSY") is plainly stated, and achieved through implementation of unevenaged management and monitoring. The regulations fail to provide adequate measures to protect water quality, protected and listed species, and cultural and historic sites. They fail to ensure that cumulative impacts are properly evaluated and mitigated. The regulations fail to meet governing statutory requirements by permitting exceptions to standard rule provisions, and authorizing stocking standards which do not achieve increased timberland productivity. The regulations also fail to meet the statutory requirement for a Five Year Review process. Because of these failures, the Board's proposed rules do not satisfy CEQA requirements.

EPIC requests that the Board consider and respond in writing to all comments presented, evidence submitted, and the suggestions made.

I. LEGAL FRAMEWORK

Rulemaking is subject to the requirements of the California Administrative Procedure Act ("APA"). To be effective, a regulation must be consistent and not in conflict with the governing statute, and must be reasonable necessary to effectuate the purpose of the statute. (Gov't Code § 11342.2). To be approved by the Office of Administrative Law, the regulations must satisfy these criteria: necessity, authority, clarity, consistency, reference and nonduplication. (Gov't Code § 11349.1). "Necessity" means to effectuate the purpose of the governing statute, taking into account the totality of the record before the agency at the time of approval. (Gov't Code § 11349 (a)). "Clarity" means the regulation must be "easily understood" by those who are directly affected by them; "consistency" means "being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions or other provisions of law." (*Id.*, subd. (c) and (d)). A notice of proposed rulemaking must include discussion of "matters required by statute(s) applicable to the specific state agency or to any specific regulation or class of regulations." (Gov't Code § 11345.5 (a)(4)).

This means the Board's rulemaking must meet the standards of the Forest Practice Act, including AB 904, the legislative bill which enacted the Working Forest Management Plan provisions codified in the Forest Practice Act as Public Resources Code sections 4597 - 4597.22. Thus, rules must satisfy the Forest Practice Act goal of maximum sustained production of *high quality timber products* while protecting natural resources and other values. (PRC § 4513, emphasis added). And rules must comply with AB 904's intent, which requires a Working Forest Management Plan to "comply with rigorous inventory standards" intended to "ensure long-term benefits such as added carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, aesthetics, and the maintenance of ecosystems processes and services." (PRC § 4597 (a)(5)).

One of the others laws which the Board must follow in the review and approval of regulations is the California Environmental Quality Act (“CEQA”). Pursuant to CEQA, the Secretary of Resources has certified the rulemaking process by the Board as a "regulatory program" within the meaning of Public Resources Code section 21080.5. Section 21080.5 of CEQA provides a mechanism for the use of an environmental review document “in lieu of the environmental impact report.” In adopting regulations, the Board must comply with all requirements of CEQA except those provisions of Chapters 3 and 4 of CEQA (commencing with sections 21100 and 21150), and Public Resources Code section 21167. The Board must also comply with its certified program, consisting of its legislative mandates and regulations. A certified program remains subject to other provisions in CEQA, including the policy of avoiding significant adverse effects on the environment, (14 CCR § 15250), and adequate evaluation and mitigation of cumulative impacts. (*EPIC v. Johnson* (1985) 170 Cal.App.3d 604).

The CEQA certification statute specifies the minimum requirements for Board regulations. These include requirements that the rules ensure that projects approved pursuant to Board rules (1) will not be approved if there are feasible alternatives or feasible mitigation measures available that could substantially lessen a significant adverse effect of the activity on the environment; and (2) are subject to and include orderly evaluation and which requires the plan document to be consistent with the environmental protection purposes of the FPA. (PRC § 21080.5(d)(2)(A), (B)). The CEQA certification also requires that the plan that is subject to the rules, such as the Working Forest Management Plan, must include a “description of the proposed activity with alternative to the activity, and mitigation measures to minimize any significant adverse effect on the environment from the activity.” (PRC § 21080.5(d)(3)(A)). CEQA requires that any project be evaluated for the potential for, and avoidance at time of approval of, significant and cumulative adverse impacts upon the environment. (PRC §§ 21000, 21001, 21003.1, 21080.5(d)(3)(A)).

This means the Board must comply with its own rulemaking regulations, as well as Public Resources Code section 21080.5 (d). Among other things, these provisions require the Board to evaluate and mitigate possible significant adverse environmental effects, and propose reasonable alternatives to rule proposals. (14 CCR § 1142). The Board must also evaluate during its process how well the proposed rules would serve the policies of the Forest Practice Act (“FPA”), eliminate any avoidable environmental damage, serve the production of high quality timber while maintaining the productivity of all affected resources, and how the rule proposal could be modified to more effectively accomplish the purposes of the Forest Practice Act. (14 CCR § 1144).

In summary, the proposed regulations fail to provide for adequate standards to address significant adverse individual cumulative impacts on the environment, fail to provide standards for mitigation and/or minimization of significant adverse individual or cumulative impacts, and fail to identify or describe reasonable alternatives to the proposed regulations that could potentially minimize or mitigate to insignificance any potential significant adverse individual or cumulative impacts to the environment.

EPIC contends that the Board has failed to satisfy these requirements, as discussed below.

II. THE REGULATIONS FAIL TO SATISFY THE INTENT OF THE STATUTE

A. The Regulations Fail to Provide Essential Standards.

AB 904 expressly declares that the “working forest management plan shall comply with rigorous timber inventory standards.” (PRC § 4597(a)(5)). These standards are needed to ensure the long-term benefits outlined in the statute, including “added carbon sequestration,” “sustainable production of timber and other forest products,” and “the maintenance of ecosystems processes and services.” Yet, the proposed regulations fail to identify any “rigorous timber inventory standards.” In fact, the proposed regulations do not provide any clearly stated timber inventory standards. While proposed rule 1094.6 requires “description” of “inventory design and standards,” including types of projections or models used to make projections of growth and yield, (subsection (f)), or “inventory design and timber stratification criteria” to support growth and yield calculations used to determine LTSY, (subsection (g)), these provisions do not provide any actual standard, much less a “rigorous” timber inventory standard, that must be satisfied. In fact, in doing a search of the entire proposed rule package, there is not one reference to “inventory standard,” or “timber inventory.” Thus, the rules fails to meet the required APA standards, and in the absence of clear statement of the required “rigorous inventory standards,” there is a serious question as to whether these rules, as currently drafted, can even satisfy the APA authority, necessity and consistency standards.

The proposed rules also fail to provide clear definitions for the “long-term benefits” the rigorous timber inventory standards are intended to ensure. For example, the proposed rule package fails to define or give interpretation to the terms such as “added carbon sequestration,” “sustained production of timber and other forest products,” or “maintenance of ecosystems processes and services.” (PRC §4597(a)(5)). This failure contributes to the legal deficiency of the rule package, by not providing necessary interpretation of core statutory provisions.

Proposed rule 1094.6 states that a “function” of the WFMP is to “provide information and direction for timber management so it complies with*management objectives of the landowner(s).*” (Emphasis added). AB 904 says nothing about landowner management objectives. Introducing this provision to guide the WFMP, while failing to provide the statutory “rigorous timber inventory standards,” or definition of stated objectives, is contrary to the statute and not authorized. As such, it violates the APA. Moreover, the proposed regulations place no definition on what may constitute landowner’s “management objectives.” There is nothing “rigorous” about allowing a landowner’s unbridled management objectives to define timber management as contemplated by AB 904. This too violates the APA due to a lack of authority and consistency.

The proposed rules, and specifically rule 1094.6, do not require an express statement and identification of “long term sustained yield.” While there are provisions that require submission of information as to how the plan submitter estimates LTSY, there is no plain requirement for the WFMP submitter to *state* the LTSY. Nor is there any provision which stipulates that the WFMP submitter must conduct uneven aged management to reach LTSY, or to maintain LTSY. The ISOR advises that this rule package is intended to “incentivize” uneven aged management (ISOR at p. 4), yet the rules themselves do not provide any clear incentive much less a requirement to conduct uneven aged management over time, into the future, or upon realization of the (unstated) LTSY. This is yet another reason why the proposed rules are not authorized by statute, and do not satisfy the intent and purpose of AB 904, e.g., to provide “increased productivity of

timberland” and achieve the long-term objective of an “uneven aged timber stand and sustained yield through implementation of a working forest management plan.” (PRC §§ 4597(a)(3), 4597.2).

Additionally, the rules lack any metric to evaluate, consistently over time, whether statutory goals for “sustained production of timber” and “sustained yield” are being achieved. (PRC §§ 4597, 4597.2). Specifically, the rules fail to require regular and ongoing reporting of volume harvested and volume remaining, for at least tree size, species, and stands. In order to achieve sustainability, the volume removed—such as Scribner volume, cubic or board feet – must be recorded to determine whether estimates for removal are being followed. It is also necessary to provide regular reporting of emerging growth, in order to evaluate whether growth projections for the LTSY are accurate or need adjustment. This is needed entirely independent of any Five Year Review for compliance; it is needed to ensure that the purposes of the WFMP are being fulfilled over time.

The failure to provide these key provisions in the proposed rules mean that not only has the APA not been followed, but equally CEQA requirements have not been met. The ISOR summarily concludes that the proposed rule package will not result in significant adverse environmental effects. (ISOR at p. 106). This is insufficient based on the potential for real harm due to the lack of “rigorous timber inventory standards,” clear statement of LTSY, measures to ensure use of uneven aged management over time, and adequate recording and monitoring of volumes harvested and growth occurring. The lack of these measures means, simply, that WFMPs and their implementation, have the very real potential to cause significant adverse effects on the environment, and particularly timberland productivity and inventories over time, which in turn can adversely impact many natural resources.

The proposed rules and the ISOR do not appear to encompass real consideration of baseline conditions with regard to the status and plight of threatened and endangered species, nor do the proposed rules or the ISOR adequately address how forest management under the guise of a WFMP may affect these conditions and trends. There is an inherent presumption that the proposed rules will not have a significant adverse impact on the environment (*See* ISOR at p. 106). Furthermore, as described in more detail below, the proposed rules do not contain adequate standards or safeguards regarding the identification and protection of threatened or endangered species within the WFMP assessment area.

There are numerous examples of forest-associated species that are currently listed as threatened or endangered and that are well-known to be in decline based on the best available science and research that may be adversely affected by the lack of adequate standards and mitigations in the proposed rules.

One well-known species that is experiencing well-documented declines in vital demographic statistics is the Northern Spotted Owl (“NSO”). The latest range-wide demographic study for the NSO (Forsman et al. 2011) (Attachment B), documents declines in reproduction, apparent survival, and overall populations in most study areas. Forsman et al. (2011) concludes that past and ongoing habitat loss, combined with increased competition from non-native invasive barred owls are partially responsible for these declines. (Forsman et al. 2011; Abstract).

Anadromous salmonid species in California, particularly in coastal watersheds, are similarly in peril. For example, the National Marine Fisheries Service’s (“NMFS”) Final Recovery Plan for

the Southern Oregon/Northern California (“SONCC”) Evolutionary Significant Unit (“ESU”) of Coho salmon (National Marine Fisheries Service 2014) (Attachment C) notes that literally thousands of Coho once returned to Northern California and Southern Oregon rivers and streams, but that today, over three quarters of SONCC Coho salmon independent populations are at high risk of extinction. (NMFS 2014, at p. E-2). The 2014 SONCC Coho recovery plan includes and assessment of the 2010 Anadromous Salmonid Protection Rules (“ASP”) which currently regulate timber harvest activities on private ownerships within the range of the SONCC Coho. NMFS staff actively engaged and participated in BOF meetings and expressed concern to the BOF that the ASP rules, while resulting in some improvements to riparian protections, would not adequately protect anadromous salmonids until several inadequacies in the Forest Practice Rules were addressed (NMFS 2009). NMFS identified several weaknesses in the existing ASP rules, including the failure to address rate-of-harvest. The NMFS Final Recovery Plan for the SONCC Coho states:

In addition, NMFS believes the use of scientific guidance will provide additional limitations on the rate of timber harvest in watersheds to avoid cumulative impacts of multiple harvests, and provide greater protections to ensure the integrity of high gradient slopes and unstable areas. This may include limiting the areal extent of harvest in such areas. (NMFS 2014, at p. 3-55).

While the Board of Forestry continues to fumble around with its feeble attempts to tweak the language contained in Technical Rule Addendum No. 2 (cumulative impacts assessment), the Board is missing the larger picture related to the causes of, and the need to further regulate, the cumulative impacts of timber harvest activities on properly functioning habitat conditions for Coho and other listed salmonids.

More recently, another forest-associated species has been proposed for listing under the federal Endangered Species Act (“ESA”) by the U.S. Fish and Wildlife Service (“USFWS”). The USFWS has proposed listing of the Pacific Fisher as a “threatened” species under the ESA. In its 2014 Species Assessment Report for the Pacific Fisher, the USFWS cites large-scale loss of important habitat components for the fisher due to past ‘vegetation management’ and timber harvest, and current ‘vegetation management’ activities. (USFWS 2014 at p. 55). (Attachment D).

Finally, past and contemporary forest management have had a devastating impact on the federal-threatened and state-endangered Marbled Murrelet. Raphael et al. (2011) in Northwest Forest Plan—the first 15 years (1994–2008): status and trend of nesting habitat for the Marbled Murrelet (Attachment E) estimated a loss of about 13 percent of the higher suitability habitat present at baseline, (1994—Advent of Northwest Forest Plan) over this same period. Fire has been the major cause of loss of nesting habitat on federal lands since the Plan was implemented; timber harvest is the primary cause of loss on non-federal lands. (Raphael et al. 2011 at Abstract). The Marbled Murrelet is well-known to primarily rely on old growth and late successional forest types for its survival. Raphael et al. (2011) shows that habitat for the Marbled Murrelet continues to decline, and that this species continues to be in great peril.

Neither the proposed rules themselves, nor the ISOR describing the rules appear to consider the potentially significant adverse individual or cumulative effects of forest management activities to be permitted under the WFMP regulations on these species, and fail to describe reasonable alternatives that would minimize or substantially lessen such impacts in violation of CEQA.

EPIC proposes that the Board return to the committee to draft regulations which include provisions needed, as outlined herein.

B. The Proposed Regulations Fail to Define Several Terms Which Require Definition.

The proposed regulations lack clarity and consistency because of the failure to define essential terms. These include those terms identified above – added carbon sequestration, sustainable production of timber and other forest products, maintenance of ecosystem processes and services, and rigorous timber inventory standards. (PRC § 4597(a)).

In addition, there are terms used in the proposed rules which have not been defined, and are not clear in their use. These include:

- “forestland stewardship” (1094.3);
- “management objectives of the landowner(s)” (1094.6);
- “baseline conditions” (1094.6(f)(1));
- “timber volume” (1094.6(g));
- “similar requirements” (1094.6(i));
- “LTSY plan” (1094.6 (m)(1));
- “address” (1094.6(n));
- “necessary deviation” (1094.8);
- “physical environmental changes” (1094.8(h));
- “significant changes” (1094.16(d)(1)); and
- “proprietary information” (1094.29(e)).

All of these terms require definition in order to understand their specific meaning, as well as the rule or rule provision which uses these terms. Without definition, the rules which use these terms do not satisfy the APA standard of clarity. Moreover, as ambiguous terms, they may not protect the environment, because to the extent any one or all of them are intended to act as a requirement, that requirement cannot be satisfied without a definition. Thus, the lack of definition contributes to the failure to adequately evaluate potential significant adverse environmental effects, define mitigation, and evaluate feasible alternatives – all in violation of CEQA.

III. THE REGULATIONS VIOLATE APA STANDARDS AND CEQA.

The following are comments on specific provisions of the rules which EPIC believes illustrate the lack of APA and CEQA compliance. Here EPIC focuses on what it believes are key substantive provisions which must be changed and amended before they can be adopted.

A. The Proposed Rule Specifying WFMP Content Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

In reviewing the proposed WFMP content rule, 1094.6, EPIC identified six substantive areas which we believe require changes in order to satisfy the APA and CEQA standards articulated above. These are: (1) LTSY, (2) water quality, (3) wildlife and protected species, (4) cultural and

historic sites, (5) cumulative impacts analysis, and (6) use of exceptions to standard rule requirements. For all of the provisions identified below, the ISOR failed to provide a reasonable and adequate discussion of potential significant adverse impacts, or necessary mitigation, or considered alternatives that could have eliminated or substantially reduced these potential effects, in violation of CEQA.

1. Long Term Sustained Yield

To begin, EPIC reiterates that a major flaw in the proposed rules is the failure to require an express statement of long term sustained yield. This is compounded by the failure to require an express statement to show how uneven aged management over time will be used and implemented. In addition, the following subsections are insufficient and require changes, as recommended here.

Subsection (f) requires a description of the “planning horizon associated with the estimate of LTSY,” and “the period of time necessary to estimate achievement of LTSY.” As worded, neither of these provisions are clear as to what is meant by the “estimate” for “achievement” of LTSY. Does determination of LTSY depend on merely an estimate, unknown at the time of WFMP approval? If that is so, the regulations need to identify the controls in place to ensure the WFMP objectives toward sustainability and uneven aged management will be achieved. We could find no requirement that the WFMP plainly state the time needed to achieve actual LTSY. This subsection must be clarified to have meaning, and provide better standards to specify LTSY. In the absence of controls, this provision leaves room for unrealistic estimates for achievement of LTSY, and does not provide for increased productivity of timberlands, or protection of resources – in violation of the APA. And the ISOR fails to evaluate the potential for significant adverse impacts to resources from the lack of definition and controls.

Subsection (g) requires a description of inventory design and timber stand stratification criteria which show that the projected inventory supports the growth and yield calculations used to determine LTSY “by volume.” “Volume” is never defined, so there is no clarity to the term “LTSY by volume.” Volume can be Scribner volume, board foot or cubic volume, or basal area volume. This must be clarified to provide uniformity in determining LTSY. Subsection (g) also provides three “minimum standards” which must be satisfied in the required description of inventory criteria. While (1) and (2) appear relatively straightforward, subsection (3) introduces further ambiguity, as it requires projections of LTSY “and volumes available for harvest,” without defining what kind of volume (e.g., Scribner, board or cubic foot, or basal area) is being projected. It also provides that the projections for LTSY and volumes available for harvest by Stand or Strata shall be “aggregated for the area covered by the WFMP to develop the LTSY estimate.” This is unclear. Stands grow at different rates, density, with different competition and site qualities. All may be different from one stand to the next, from one strata to the next, all within the area covered by one WFMP. “Aggregating” does not take these differences into account and may result in skewed LTSY projections. This could result in failing to meet the statutory WFMP objectives, accompanied by adverse environmental impacts on resources such as timber, water quality, and protected species. Yet potential impacts of this language have not been analyzed are required by CEQA. These provisions must be fully defined and interpreted so as to protect timber and natural resources.

Subsection (h) lacks clarity because, while it requires a description of the property and planned activities, it does not provide a time frame for those projections. Thus, for example, while

requiring information about the “projected timber volumes and tree sizes to be available for harvest,” there is no requirement to identify the time frame for these expected harvest potentials. Is this on an annual basis? For how many years? This is necessary information to understand the accuracy and effectiveness of projected LTSY. Subsection (h) does not define a time frame for projected volumes and tree sizes. The WFMP is permitted to extend into perpetuity; if perpetuity is the time frame then a statement that identifies reliable projected volumes into perpetuity is required. To be clear and consistent with the objectives of the statute, a defined metric should be articulated to monitor the volume and tree size projections over time. If projections into perpetuity are not the metric, then a realistic time frame must be established, at the end of which the WFMP must be reviewed for conformance to the projections.

Subsection (h) also places no limits on the type of silvicultural method to be applied, even though the statute is clear that the WFMP is intended to achieve “uneven aged timber stand and sustained yield.” PRC § 4597.2. Indeed, nowhere do the regulations actually limit or restrict silvicultural methods to uneven-aged management. This is contrary to the plain language of the statute to achieve uneven aged management.

Subsection (m) requires information for management units, including identification of the acres and estimated growth and yield for each planned harvest entry covering the period of time necessary to meet growth and yield objectives. The regulations do not require the WFMP to plainly state the period of time necessary to achieve growth and yield. This can have adverse environmental impacts because the WFMP is a perpetual plan, and without required time frames, adherence to the policies to ensure protection of the environment, such as sustained production of timber and other forest resources, may be forestalled.

To further illustrate the lack of clarity for LTSY, subsection (p) requires the WFMP to describe “a future schedule of inventory sampling and analysis of LTSY.” We interpret this provision to provide some kind of monitoring measure to evaluate the LTSY projections as the WFMP is implemented. However, there is no requirement here, or elsewhere, that specifies the *time frame* for such a schedule of inventory sampling and analysis of LTSY. In the absence of any meaningful time frame, this measure fails to provide the necessary structure to ensure that LTSY and sustained yield is being achieved. Moreover, there is no provision here or elsewhere which requires disclosure of volumes actually harvested, as opposed to “projections” of yield. This information is necessary to ensure that LTSY - and thus the WFMP objective for sustainability - is being achieved. Absent this, the subsection undermines and obfuscates the legislative directive and threatens ecological processes.

2. Water Quality Protection

Subsection (h) fails to require information about *potential* erosion sites, even though such disclosure and analysis should be readily available upon an adequate field inspection. This failure leaves the proposed rules in direct conflict with requirements of the recently-adopted “Road Rules” package. This oversight raises the potential for significant adverse environmental effects from this regulation which has not been evaluated in the ISOR as required.

Subsection (h) authorizes reliance on so-called “similar requirements of other applicable provisions of law” in lieu of providing the required description of methods used to avoid significant sediment discharge to watercourses. However, in the absence of a definition for

“similar requirements,” this exemption renders the provision unclear and ambiguous, and may result in significant adverse impacts to the environment which are not analyzed in the ISOR.

3. Protection of Wildlife and Other Vulnerable Listed Species

Subsection (l) requires disclosure only of “known locations” of listed or protected plant and animal species and their key habitats. This is insufficient, and fails to meet the statutory objective to maintain ecosystem processes (PRC § 4597(a)(5)), and protect fisheries and wildlife habitats (PRC § 4597.1(j)). There is no requirement to conduct an investigation or protocol surveys to determine the *presence* of protected and listed species or their habitat. This is an omission that must be corrected to ensure that the WFMP satisfies the legislative intent and does not cause adverse impacts to protected and listed species.

Subsection (n) provides standards for LTSY projections which project a reduction in trees greater than 12 inches dbh or reduced inventories of Major Stand Types or for a percentage of Stands or Strata. In those circumstances, the WFMP must provide an “assessment” which “addresses” listed and protected species and their habitat needs. It is entirely unclear what it means to “address” these resources. If the intent is to ensure that these vulnerable species are protected when tree size and quantity are significantly reduced, then the regulation must provide standards to ensure protection. In the absence of having to actually look for species subsection (l), merely “addressing” these vulnerable species is not sufficient. Absent some standard to credibly evaluate potential impacts from reduced tree and stand size, this provision poses threats to protected and listed species and their habitat needs which constitutes a potential significant environmental effect which has not been analyzed or mitigated as required by CEQA and Board rules.

As described above, both past and contemporary forest management are important factors contributing to the decline of many threatened and endangered fish and wildlife species. The lack of clarity and adequate standards in the proposed rules has the potential to result in significant adverse individual and cumulative effects to these species and their habitats. The proposed rules and the ISOR describing the rules fail to provide a mechanism for analysis of, disclosure of, and mitigation to insignificance of potentially significant adverse impacts to threatened and endangered species and thus violate CEQA.

4. Failure to Ensure Protection of Archeological, Cultural, and Historic Sites

Subsection (q) suffers from the same inadequacy as for protected species. By only requiring description of “known” cultural or historical resources, the WFMP fails to ensure protection for these resources. Surveys and field investigations should be required.

5. Lack of Cumulative Impacts Analysis in WFMP

Subsection (w) is confusing because it simply requires the WFMP to include a “description of the cumulative impacts analysis.” The WFMP must provide a cumulative impacts assessment pursuant to Technical Rule Addendum No. 2. (14 CCR § 898; 14 CCR 912.9). Yet the proposed subsection permits the WFMP to include only a description of that analysis. The full analysis as required by the Forest Practice Rules and CEQA must be included in the WFMP, and any requirement less than that violates the Forest Practice Act and CEQA.

6. Allowance for Exceptions to Standard Requirements Places Resources at Risk

Subsections (y) through (z), (bb) through (ee), and (ii) are provisions to authorize exceptions to standard FPA rule provisions in certain circumstances. These subsections are unclear as to whether they are intended to apply to the entire area covered by the WFMP, identified Management Units, or only to specified location stated in the WFMP. Such exceptions appear contrary to the Legislative intent and purpose of the WFMP; authorizing the WFMP to utilize exceptions and alternative practices for all time poses a real – and unanalyzed – threat to the environment. Moreover, permitting exceptions for all time is contrary to the Legislative intent to encourage prudent and responsible forest management – with increased productivity of timberland. (PRC § 4597(a)(1), (3), (5)).

These subsections are contrary to the APA standards for necessity, consistency and clarity, and have not been properly evaluated pursuant to CEQA. They pose the risk, over time, of causing significant adverse environmental effects. These exceptions, for example, if they are to be allowed as permanent standards, must be assessed in the context of the best science detailing what our forests can expect in 10, 20, 30 and 50 years from now due to climate change and other conditions.

Subsection (ii) authorizes certain exceptions, for tractor operations on steep and unstable slopes and lands, roads and skid trails to be located in watercourse zones, to be approved as “standard operating practices.” This standardized ‘permission’ has not been properly analyzed under CEQA for the potential for significant impacts. It permits use of an undefined “deviation,” with alternative mitigation to be incorporated into the WFMP—without any mention of public review and comment. Mitigation is required to remedy significant environmental impacts. If there is a need for mitigation, there is a need for CEQA review. This provision ignores that requirement, and its process is contrary to the APA and CEQA.

B. The Proposed Rule for WFMP Annual Notice Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

The WFMP is to be implemented through submission of an annual notice, which permits operations immediately upon submission. (PRC § 4597.11; proposed rule 1094.8.) Like the WFMP, it must be a public record. As identified above, terms in the provisions for the WFMP Notice are not defined. The proposed annual Notice requirement also does not require information to document what has already occurred to implement the WFMP or to identify new conditions or potential impacts. In this way, the Notice does not provide a clear statement of the information needed to ensure that the Legislative intent to encourage increased productivity of timberlands (PRC § 4597(a)(3)), and to establish uneven aged management and sustained yield through the implementation of the WFMP. (PRC § 4597.2).

At the outset, the proposed Notice rule directs that “[a]ll necessary deviations shall be approved by the Director prior to submission” of the Notice. The proposed rule does not define what constitutes a “necessary” deviation, and whether a “necessary” deviation is a substantial, minor or some other kind of deviation. The proposed rule also does not define who decides what a

necessary deviation is or what process the Director must use to approve a “necessary” deviation. This provision lacks clarity.

The proposed Notice provisions suffer from many of the same defects as in the proposed WFMP content rule. For LTSY and sustained yield, the proposed Notice rule lacks any disclosure of volumes and tree sizes available for harvest. This information is necessary to document what has occurred, and what timber operations have been or are proposed to be conducted to achieve the long-term objective of uneven aged management and LTSY. The WFMP requires a one-time description of projected timber volumes and tree sizes to be available for harvest and frequencies of harvest. (PRC § 4597.6(h)). The annual Notice, to be meaningful, needs to provide an annual record toward and update to those projections, to evaluate WFMP compliance. While subsection (l) requires a statement that the Notice conforms to the provisions of the WFMP, it does not require data to support this conclusion. That statement must be based upon actual substantial evidence. At a minimum, the Notice should include a statement identifying what volumes and tree sizes are available for harvest, in relation to the WFMP projections, and evidence documenting efforts to achieve the LTSY.

For wildlife and protected species, subsection (g) requires only review of public sources and databases to report whether there are any “known” occurrences of these species. While this subsection does refer to a species which has or has not been “discovered” there is no affirmative duty to conduct a protocol survey or other investigation to look for these protected species. This is necessary to fulfill the legislative intent to promote forestland stewardship which protects fisheries and wildlife habitats. (PRC § 4597.1(j)).

Similarly, subsection (f) permits a statement that no archaeological sites have been discovered, without a corresponding duty to conduct some kind of survey to determine if such sites do exist.

Subsection (h) requires a statement, based on a field evaluation, that “there are no physical environmental changes” in the Notice area “that are so significant as to require any deviation of the WFMP.” The proposed rule do not define what is meant by “physical environmental changes” and what that term may encompass. The lack of definition makes this subsection confusing and without clarity, as no thresholds are provided. The provision is also unclear because earlier in the proposed rule it is clear that there can be no outstanding “necessary deviations” once the Notice is submitted. Whether “necessary deviations” means the same as or something different from “physical environmental changes” is not known, adding to the confusion. Since the submission of the Notice permits operations to commence immediately, in the absence of clear standards or thresholds, there is no ability to evaluate whether the statement is accurate. As with other provisions, evidence must be provided which documents that a field evaluation was conducted of the entire area covered by the Notice, and documents the conditions observed during the field evaluation.

For water quality protection, subsection (m) is good because it, unlike so much else, requires an “updated” erosion control implementation plan. However, it too does not require any actual evidence upon which conclusions as to *current* conditions are based. The mapping requirement under subsection (s)(10) perpetuates the deficiency in the WFMP - to require mapping only of “known” unstable areas or slides, rather than also documenting locations which are potentially unstable or at risk. This must be expanded to require identification of “potential” unstable areas.

Subsection (r) requires description of the WFMP exceptions which have “standard operating practices,” without requiring evidence or data that documents the continued justification for such exceptions. The Notice rule should include a requirement for some evidence to justify the continued need for the exceptions.

The proposed Notice regulation does not require a statement disclosing whether there are any ongoing operations in the WFMP area. As a result, it is unclear to what extent more than one, or several, areas within the WFMP may be under operation in any given year. This poses the potential for significant cumulative impacts which would need to be evaluated, yet there is no requirement for the disclosure or evaluation of multiple operations.

C. The Proposed Rule For Substantial Deviations Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

Proposed rule 1094.23 outlines the circumstances under which a change to the WFMP shall be deemed a “substantial deviation.” Subsection (c) provides examples of such deviations, including “[c]hange in location of timber harvesting operations or enlargement of the area or *volume planned to be cut*.” (Emphasis added). However, no threshold for a change in the “volume planned to be cut” is included. A threshold must be established, such as the 10% standard used for a Sustained Yield Plan in section 1091.13(a).

In addition, this subsection also reveals the lack of an effective annual monitoring component that documents the volume cut in any given year. This reporting is necessary to keep track of what volumes may be cut going forward, and to determine whether the growth and yield projections are accurate or need adjusting to maintain LTSY.

D. The Proposed Rule for Stocking Standards Fails to Meet the Intent of the Statute and Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

The Legislature authorized the WFMP as a tool to achieve “increased productivity of timberland.” (PRC § 4597(a)(3)). Proposed rule 1094.27 (a) is inconsistent with this intent because it permits stocking to be satisfied using minimum stocking standards, rather than require an increase in productivity over time. To “increase productivity” means to require a standard higher than just “maintaining” minimum stocking standards, which is what subsection (a) authorizes. This is not authorized by the WFMP statutes, and was not analyzed in the ISOR for its potential to cause significant adverse environmental impact to the environment. This will not “benefit” the environment, and as the potential to degrade the environment by not doing as contemplated by the Legislature – to increase timberland productivity and utilized uneven aged management.

E. The Proposed Rules for the Five Year Review is Inconsistent with the Statute and Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

Proposed rule 1094.29 sets forth provisions for what is called a “Five (5) Year Review of the WFMP” (“5-Year Review”). This section is not clear, particularly as to the contents of the summary and 5-Year Review. The Legislature directed the board to adopt regulations for this specific section, and the proposed regulation fails to meet this duty, satisfy APA standards of clarity, or ensure CEQA compliance.

First, the proposed rule is not consistent with the statute, Public Resources Code section 4597.12. By statute, the Department is to first develop a summary, and then conduct the 5-Year Review. (PRC § 4597.12(b) [“develop a plan summary *before each five-year review*”]). (Emphasis Added). Proposed rule 1094.29 (a) and (b) make a mishmash of this clear process, obfuscating when the summary is done in relation to the 5-Year Review.

Second, the proposed rule fails to be clear as to the public’s right of review. The statute provides that the public shall have a right to review the summary and provide comment for the 5-Year Review. (PRC § 4597.12(c)). However, joining in subsection (b) the “summary” and development of the 5-Year Review, the proposed rules deprive the public of its 30-day right of review as contemplated in subsection (a). The public must be given an adequate period of review for the summary, to provide input into what information the review team agencies and the Department need to consider in conducting the 5-Year Review. And, the public should be given a right to comment upon whatever document encompasses the 5-Year Review.

Third, the rules are not clear as to what is to be included in the “summary” preceding the 5-Year Review, or what shall be included in the 5-Year Review. If the summary is the document from which the 5-Year Review is to be conducted, a clear statement is necessary in order for the public to exercise its role to present “additional information relevant to the purpose of the five (5) year review,” as stated in subsection (a). And the required contents for a 5-Year Review must be delineated.

It is unclear whether a 5-Year Review will include the information outlined in subsections (b) or (c) , i.e., number of WFMP Notices, the acreage operated under each WFMP Notice, the violations received, the volume harvested in relation to projections of harvest in the WFMP. The only information that the review team is actually required to analyze is “significant episodic events occurring during the previous 5 years.” (1094.29(c)). The proposed rule needs to be clear as to what is to be included in the 5-Year Review and whether it is only a “summary” or something more. The proposed rule needs to specifically identify what information must be reviewed by the review team and be made equally available for public review.

Subsection (d) provides three distinct and valid reasons why the Department “shall provide written comments that a review of the WFMP content and procedures may be necessary”: (1) notices of violation have been issued; (2) the 5-Year Review indicates potentially significant adverse impacts to the environment may occur from continuance of the WFMP; or (3) the Department is presented with a fair argument that a project may have a significant adverse impact on the environment. However, the subsection provides no standards or process for the “review of the WFMP content and procedures.” These are required, to make the proposed rule meaningful and clear. It is unclear if this subsection is referring to the “5-Year Review,” or something else. The proposed rule is also not clear as what process the Department uses to “confer” with the Designated Agent. This provision must be clarified, and the process must be transparent and subject to public review.

Subsection (e) is a restatement of the subsection (d) of the statute. (PRC § 4597.12 (d)). However, it conflicts with other provisions of the statutory scheme and proposed rules. The WFMP “shall be a public record.”(PRC § 4597.2; proposed rule 1094.3). That means all the information identified in proposed rule 1094.6 is a public record. Similarly, the WFMP Notice is a public record. (PRC § 4597.11, proposed rule 1094.8). The 5-Year Review is based upon a

review of this public information. Subsection (e) authorizes a WFMP landowner to prevent public disclosure of “proprietary information.” Permitting a landowner to not disclose *undefined* information, which is completely relevant to a determination of WFMP compliance, is contrary to the fundamental premise of the Forest Practice Act and CEQA to require public access and review.

CONCLUSION

The proposed WFMP rules are inconsistent with the enacting statute by failing to provide “rigorous timber inventory standards,” and fail to comply with basic CEQA and APA requirements. The proposed rules are inadequate to ensure LTSY, and are inadequate to provide for wildlife and water quality protection and enhancement. EPIC therefore recommends that the proposed WFMP implementing rules be remanded back to the Management Committee for additional work to address the deficiencies identified.

EPIC appreciates the opportunity to provide these comments, and requests a written response. Please do not hesitate to contact me at the number provided below should there be questions.

Sincerely,



Rob DiPerna
California Forest and Wildlife Advocate

Environmental Protection Information Center
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Enc. – See Attachments List

Attachments

Attachment A: EPIC Letter regarding WFMP Draft Regulations to Management Committee. April 7, 2014.

Attachment B: Forsman, E.D., R.G. Anthony, K.M. Dugger, E.M. Glenn, A.B. Franklin, G.C. White, C.J. Schwarz, K.P. Burnham, D.R. Anderson, J.D. Nichols, J.E. Hines, J.B. Lint, R.J. Davis, S.H. Ackers, L.S. Andrews, B.L. Biswell, P.C. Carlson, L.V. Diller, S.A. Gremel, D.R. Herter, J.M. Higley, R.B. Horn, J.A. Reid, J. Rockweit, J. Schaberel, T.J. Snetsinger, and S.G. Sovern. 2011. Population Demography of the northern spotted owls: 1985-2008. *Studies in Avian Biology*.

Attachment C: National Marine Fisheries Service. 2014. Final Recovery Plan for the Southern Oregon/Northern California Coast Evolutionarily Significant Unit of Coho Salmon (*Oncorhynchus kisutch*). National Marine Fisheries Service. Arcata, CA.

Attachment D: U.S. Fish and Wildlife Service, 2014b. Draft Species Report Fisher (*Pekania pennanti*), West Coast Population. January 13, 2014.

Attachment E: Raphael, Martin G.; Falxa, Gary A.; Dugger, Katie M.; Galleher, Beth M.; Lynch, Deanna; Miller, Sherri L.; Nelson, S. Kim; Young, Richard D. 2011. Northwest Forest Plan—the first 15 years (1994–2008): status and trend of nesting habitat for the marbled murrelet. Gen. Tech. Rep. PNW-GTR-848. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 52 p.



Keeping Northwest California wild since 1977

Sent via electronic mail to: publiccomments@bof.ca.gov on date shown below

June 15, 2015

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

RE: Comments on 45-day Notice for Proposed Adoption of Regulations for the Working Forest Management Plan

Dear Chairman Gilles and Board Members:

The Environmental Protection Information Center submits these comments for consideration by the Board of Forestry and Fire Protection in its review of the proposed regulations for the “Working Forest Management Plan” documents and review process.

The Environmental Protection Information Center (“EPIC”) is a community-based, membership driven environmental non-profit organization that speaks for both its members and supporters. EPIC has established a long history of engagement in the monitoring and enforcement of laws and regulations related to private timberland management over the last 37 years. EPIC has been on the forefront of enforcing laws requiring sustainable forest practices, including its successful challenge to the Pacific Lumber/Maxxam Sustained Yield Plan. EPIC advocates on behalf of its members for sustainable forest practices to ensure protection of all natural resources, including water, protected and listed species, and cultural and historic sites. EPIC members are directly impacted by private land forest operations, particularly in terms of impacts to natural resources, wildlife and fisheries, water quality and quantity, ecological processes, and aesthetics. Timber operations which cause adverse environmental harm have a direct impact on EPIC members, particularly because of the loss of timberland productivity and failure to adequately protect natural resources which depend on quality timberlands. For example, EPIC members from throughout California require clean and adequate water sources, and pure air – resources which are directly affected by poorly regulated logging practices throughout California. EPIC maintains rulemaking by the Board of Forestry and Fire Protection (“Board”) must adhere to all applicable laws to ensure sustainable forestry and protection of natural resources will be an effective standard for private land timber management.

Environmental Protection Information Center
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INTRODUCTION

EPIC believes good management planning can benefit resource protection, particularly if it defines long-term resource planning standards, identifies and evaluates landscape issues, provide mechanisms to remedy legacy and operational environmental impacts, and includes an ongoing feedback-loop that monitors practices and conditions to maintain ecological processes and increase productivity and sustainable forestlands while protecting natural resources.

The California Legislature passed AB 904 to provide a landscape planning mechanism for non-industrial timberland owners with ownerships of less than 15,000 acres. While EPIC did not support AB 904, now that it is law, EPIC wants it to be implemented in a manner that is effective and consistent with the Legislative intent “to encourage long-term planning, increased productivity of timberland, and the conservation of open space on a greater number of nonindustrial working forest ownerships and acreages.” (PRC § 4597(a)(3)). Thus, EPIC supports the policy to “encourage prudent and responsible forest resource management of nonindustrial timberlands” through development of good “Working Forest Management Plans.” (PRC § 4597(a)(4)). EPIC believes, as did the Legislature when it enacted AB 904, that to achieve benefits such as “added carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, aesthetics, and the maintenance of ecosystem processes and services,” the Working Forest Management Plan must comply with *rigorous timber inventory standards* that ensure uneven aged management and sustainability, and are subject to periodic review and verification. (*Id.*, (a)(5)). (Emphasis added).

A Working Forest Management Plan (“WFMP”), by definition, is a management plan with objectives of “maintaining, restoring, or creating uneven aged managed timber stand conditions, achieving sustained yield, and promoting forestland stewardship that protects watersheds, fisheries and wildlife habitats, and other important values.” (PRC § 4597.1 (j)). Only landowners with less than 15,000 acres of timberland, and who are not primarily engaged in the manufacture of wood products, are eligible to secure approval of a WFMP. (*Id.*, (i)). These landowners must have the objective of “an uneven aged timber stand and sustained yield” which they propose to achieve through implementation of a WFMP. (PRC § 4597.2).

The Legislature directed the Board of Forestry to adopt regulations as needed to implement AB 904 provisions. (See, e.g., PRC §§ 4597.2(1), 4597.3, 4597.8, 4597.11(m), and 4597.12(b)). EPIC has previously provided comment on Board committee drafts of proposed WFMP regulations. From our review of this most recent proposal, it does not appear that the Board has made changes as suggested by EPIC, or addressed important issues which render the regulations vulnerable to challenge as not being in compliance with the Administrative Procedure Act or other laws. To secure the record on this lack of response, EPIC includes with this comment letter its previous comment letters date April 7, 2014 and March 2, 2015, which are incorporated by reference herein (**Attachments A and B**). EPIC has once again reviewed the entire rule package and provides these comments to identify its concerns.

One of EPIC’s primary concerns all along is the Board’s failure in previous drafts to provide actual interpretation and clarity of the statutes enacted pursuant to AB 904, and instead to simply restate much of the statutory language. It is clear from this most recent rule package that the Board proposes to adopt a rule package which relies extensively on the statutory language without interpretation and guidance for effective implementation. EPIC strongly disagrees with this approach, as it fails to provide the necessary guidance to ensure the legislative goals and

objectives. EPIC presented many examples of this in our earlier comments, which are incorporated by reference here. The Board's Initial Statement of Reasons ("ISOR") again tries to justify this practice under a theory that "duplication of statute" was necessary for "consistency" and "to satisfy the clarity standard." (ISOR, at p. 7). EPIC disagrees. Because the draft regulations now duplicate language, or in some cases introduce new language which further confuses the statutory standards, many of the regulations do not satisfy the Administrative Procedure Act standards for clarity and consistency. In the absence of necessary guidance and interpretation, the regulations as drafted do not provide the basic information required by, or offer interpretation of, governing statutes in a manner that will achieve the California's stated goals and objectives in authorizing WFMPs.

Underlying this regulatory effort is the reality that over one million acres of forest land may be eligible for and receive Working Forest Management Plan approval. According to the ISOR, "there are at least 81 landowners who would qualify under the new WFMP program." (ISOR, at p. 5). That represents an additional **1,214,999** acres that could be placed under the proposed lifetime plans. The Board estimates that of these 81, "at least 60 used even aged management (i.e. clear cutting) at some point." (*Id.*).

EPIC tried to identify the location of these 81 ownerships to evaluate their location and determine the potential for impact within differing forested areas and ecosystems. EPIC requested a copy of the source document(s) for this statement. In response, the Board staff provided legislative analyses which included the same statement as in the ISOR. In response to a follow-up request, Board staff provide a 2-page "NTMP Expansion Study" document issued by the California Department of Forestry and Fire Protection ("CAL FIRE: or "Department") which described CAL FIRE's process to identify WFMP eligible forestland in California, resulting in a map specifically identifying 80 potential landowners that could be eligible for a WFMP. When asked for this information, the Board could not provide it. EPIC has also asked CAL FIRE for this information through a Public Records Act Request ("PRA"), with no success as of this date. In personal communications with CAL FIRE's Dennis Hall about our request, Mr. Hall indicated that CAL FIRE did not have a responsive document behind the statement; rather, Mr. Hall indicated that the "analysis" was done via a GIS database query, stating that all that the Department could give us was its entire GIS database. In its June 9, 2015 written response to our PRA, the Department stated it would not respond to the PRA until June 25, 2015 as responsive documents were not located at the CAL FIRE Sacramento Headquarters.

This denial of access to information informing these rules has frustrated EPIC's ability to fully evaluate the impact of these proposed regulations. EPIC needs to know the location of the potential 1.2 million acres of forestland that could be eligible for WFMP in order to evaluate the potential for impacts on ecological areas and habitats not evaluated in the proposed regulations or the ISOR. It is imperative that the Legislative intent be fully and accurately implemented in a manner that protects timberland and other natural resources.

These comments focus on core issues which EPIC requests be responded to with changes in the proposed regulations, before the Board may act to approve WFMP regulations. The regulations fail to satisfy the statutory duty embodied by AB 904. They lack necessary definitions. They fail to require content to ensure that long term sustained yield ("LTSY") is plainly stated, and achieved through implementation of uneven aged management and monitoring. The proposed regulations do not require uneven aged management over time. The regulations fail to provide adequate measures to protect water quality, protected and listed species, and cultural and historic

sites. They fail to ensure that cumulative impacts are properly evaluated and mitigated. The regulations fail to meet governing statutory requirements by permitting exceptions to standard rule provisions, and authorizing stocking standards which do not achieve increased timberland productivity. The regulations also fail to meet the statutory requirement for a Five Year Review process. Because of these failures, the Board's proposed rules do not satisfy CEQA requirements.

EPIC requests that before the Board takes action on the proposed rules, it consider and respond in writing to all comments presented, evidence submitted, and the suggestions made.

I. LEGAL FRAMEWORK

Rulemaking is subject to the requirements of the California Administrative Procedure Act ("APA"). To be effective, a regulation must be consistent and not in conflict with the governing statute, and must be reasonable necessary to effectuate the purpose of the statute. (Gov't Code § 11342.2). To be approved by the Office of Administrative Law, the regulations must satisfy these criteria: necessity, authority, clarity, consistency, reference and non-duplication. (Gov't Code § 11349.1). "Necessity" means to effectuate the purpose of the governing statute, taking into account the totality of the record before the agency at the time of approval. (Gov't Code § 11349 (a)). "Clarity" means the regulation must be "easily understood" by those who are directly affected by them; "consistency" means "being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions or other provisions of law." (*Id.*, subd. (c) and (d)). A notice of proposed rulemaking must include discussion of "matters required by statute(s) applicable to the specific state agency or to any specific regulation or class of regulations." (Gov't Code § 11345.5 (a)(4)). The proposed rules do not meet these standards.

The Board's rulemaking must meet the standards of the Forest Practice Act, including AB 904, the legislation which enacted the Working Forest Management Plan provisions codified in the Forest Practice Act as Public Resources Code sections 4597 - 4597.22. Rules must satisfy the Forest Practice Act goal of maximum sustained production of *high quality timber products* while protecting natural resources and other values. (PRC § 4513). (Emphasis added). Rules must comply with AB 904's intent, which requires a Working Forest Management Plan to "comply with rigorous inventory standards" intended to "ensure long-term benefits such as added carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, aesthetics, and the maintenance of ecosystems processes and services." (PRC § 4597 (a)(5)). The proposed rules are not in compliance with the Forest Practice Act governing goals because they lack necessary standards and clarity.

The Board must follow the California Environmental Quality Act ("CEQA") in the review and approval of regulations. Pursuant to CEQA, the Secretary of Resources has certified the rulemaking process by the Board as a "regulatory program" within the meaning of Public Resources Code section 21080.5. Section 21080.5 of CEQA provides a mechanism for the use of an environmental review document "in lieu of the environmental impact report." In adopting regulations, the Board must comply with all requirements of CEQA except those provisions of Chapters 3 and 4 of CEQA (commencing with sections 21100 and 21150), and Public Resources Code section 21167. The Board must also comply with its certified program, consisting of its legislative mandates and regulations. A certified program remains subject to other provisions in CEQA, including the policy of avoiding significant adverse effects on the environment, (14 CCR

§ 15250), and adequate evaluation and mitigation of cumulative impacts. (*EPIC v. Johnson* (1985) 170 Cal.App.3d 604).

The CEQA certification statute specifies the minimum requirements for Board regulations. These include requirements that the rules ensure that projects approved pursuant to Board rules (1) will not be approved if there are feasible alternatives or feasible mitigation measures available that could substantially lessen a significant adverse effect of the activity on the environment; and (2) are subject to and include orderly evaluation and which requires the plan document to be consistent with the environmental protection purposes of the FPA. (PRC § 21080.5(d)(2)(A), (B)). The CEQA certification also requires that the plan that is subject to the rules, such as the Working Forest Management Plan, must include a “description of the proposed activity with alternative to the activity, and mitigation measures to minimize any significant adverse effect on the environment from the activity.” (PRC § 21080.5(d)(3)(A)). CEQA requires that any project be evaluated for the potential for, and avoidance at time of approval of, significant and cumulative adverse impacts upon the environment. (PRC §§ 21000, 21001, 21003.1, 21080.5(d)(3)(A)).

The Board must comply with its own rulemaking regulations, as well as Public Resources Code section 21080.5 (d). Among other things, these provisions require the Board to evaluate and mitigate possible significant adverse environmental effects, and propose reasonable alternatives to rule proposals. (14 CCR § 1142). The Board must also evaluate during its process how well the proposed rules would serve the policies of the Forest Practice Act (“FPA”), eliminate any avoidable environmental damage, serve the production of high quality timber while maintaining the productivity of all affected resources, and how the rule proposal could be modified to more effectively accomplish the purposes of the Forest Practice Act. (14 CCR § 1144).

The proposed regulations fail to satisfy these legal standards. The ISOR and the proposed rules do not provide adequate standards to evaluate significant adverse individual and cumulative impacts on the environment, fail to provide standards for mitigation and/or minimization of significant adverse individual or cumulative impacts, and fail to identify or describe reasonable alternatives to the proposed regulations that could potentially minimize or mitigate to insignificance any potential significant adverse individual or cumulative impacts to the environment.

In addition, the APA requires the agency to consider all relevant matters presented to it before adopting regulations. (Gov’t Code § 11346.8). Despite this clear obligation, the Board’s Notice of Proposed Action advises that the Board will not consider any oral comments presented at the scheduled June 17 hearing. The notice advises that “[a]t 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 summary of their statements.” (Notice, at p. 1). (Emphasis added). The Notice then states that 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.” (Notice, at p. 2). (Emphasis added). In this way, the Notice advises that oral statements given at the public hearing will not be considered by the Board. This violates the APA and eviscerates the fundamental purpose and function of the public hearing for rule making.

II. THE REGULATIONS FAIL TO SATISFY THE INTENT OF THE STATUTE

A. The Regulations Fail to Provide Essential Standards.

AB 904 expressly declares that the “working forest management plan shall comply with rigorous timber inventory standards.” (PRC § 4597(a)(5)). These standards are needed to ensure the long-term benefits outlined in the statute, including “added carbon sequestration,” “sustainable production of timber and other forest products,” and “the maintenance of ecosystems processes and services.” Yet, the proposed regulations fail to identify any “rigorous timber inventory standards.” In fact, the proposed regulations do not provide any clearly stated timber inventory standards. While proposed rule 1094.6 requires “description” of “inventory design and standards,” including types of projections or models used to make projections of growth and yield, (subsection (g)), or “inventory design and timber stratification criteria” to support growth and yield calculations used to determine LTSY, (subsection (h)), these provisions do not provide any actual standard, much less “rigorous” timber inventory standards, that must be satisfied. In doing a search of the entire proposed rule package, there is not one reference to “inventory standard,” or “timber inventory.” The rules fail to meet the required APA necessity and consistency standards because they do not include “rigorous timber inventory standards.”

The proposed rules fail to provide clear definitions for the “long-term benefits” the rigorous timber inventory standards are intended to ensure. For example, the proposed rule package fails to define or give interpretation to the terms such as “added carbon sequestration,” “sustained production of timber and other forest products,” or “maintenance of ecosystems processes and services.” (PRC §4597(a)(5)). This failure contributes to the legal deficiency of the rule package, by not providing necessary interpretation of core statutory provisions.

AB 904 expressly requires that a WFMP include the objective of “maintaining, restoring or creating uneven aged managed timber stand conditions,” PRC § 4597.1 (j), and that a WFMP may be submitted only by a landowner “with the long-term objective of an uneven aged timber stand ... through the implementation of the [WFMP].” (PRC § 4597.2). Yet, the proposed rules do not include any requirement that the landowner state or commit to the objective of uneven aged management. Nor does the proposed rule package require an express statement and identification for uneven aged management. Instead, proposed rule 1094.6 states that a “function” of the WFMP is to “provide information and direction for timber management so it complies with ...*management objectives of the landowner(s)*.” (Emphasis added). AB 904 says nothing about undefined landowner management objectives. Introducing this ambiguous provision to guide the WFMP, while failing to provide the statutory “rigorous timber inventory standards,” and regulations to require implementation of the stated objective of uneven aged management, is contrary to the statute and not authorized. As such, it violates the APA. The proposed regulations place no limits on or definition of what may constitute landowner’s “management objectives.” There is nothing “rigorous” about allowing a landowner’s unbridled management objectives to define timber management as contemplated by AB 904. This too violates the APA due to a lack of authority and consistency.

The proposed rules, and specifically rule 1094.6, do not require an express statement and identification of “long term sustained yield.” While there are provisions that require submission of information as to how the plan submitter estimates LTSY, there is no plain requirement for the WFMP submitter to *state* the LTSY. As noted above, there is no provision which stipulates that

the WFMP submitter must conduct uneven aged management to reach LTSY, or to maintain LTSY. The ISOR advises that this rule package is intended to “incentivize” uneven aged management, (ISOR at p. 5), yet the rules themselves do not require uneven aged management over time, into the future, or upon realization of the (unstated) LTSY, much less incentives to use uneven aged management. As such they do not satisfy the intent and purpose of AB 904, e.g., to provide “increased productivity of timberland” and to be a plan to achieve the long-term objective of an “uneven aged timber stand and sustained yield through implementation of a working forest management plan.” (PRC §§ 4597(a)(3), 4597.2).

Additionally, the rules lack any metric to evaluate, consistently over time, whether statutory goals for “sustained production of timber” and “sustained yield” are being achieved. (PRC §§ 4597, 4597.2). Specifically, the rules fail to require regular and ongoing reporting of volume harvested and volume remaining, at least for tree size, species, and stands. In order to achieve sustainability, the volume removed—such as Scribner volume, cubic or board feet – must be recorded to determine whether estimates for removal are being followed. It is also necessary to provide regular reporting of emerging growth, in order to evaluate whether growth projections for the LTSY are accurate or need adjustment. This is needed entirely independent of any Five Year Review for compliance; it is needed to ensure that the purposes of the WFMP are being fulfilled over time.

The failure to provide these key provisions in the proposed rules means that not only has the APA not been followed, but equally CEQA requirements have not been met. The ISOR summarily concludes that the proposed rule package will not result in significant adverse environmental effects. (ISOR at p. 121). This conclusion is insufficient because it is not based on substantial evidence. There is the potential for actual harm due to the lack of “rigorous timber inventory standards,” express articulation of landowner objectives, clear statement of LTSY, stated measures and commitment to use of uneven aged management over time, and adequate recording and monitoring of volumes harvested and growth occurring. The lack of these measures means, simply, that WFMPs and their implementation, have the very real potential to cause significant adverse effects on the environment, and particularly timberland productivity and inventories over time, which in turn can adversely impact many natural resources. The ISOR fails to consider or evaluate this potential under CEQA.

The proposed rules and the ISOR do not include real consideration of baseline conditions with regard to the status and plight of threatened and endangered species, nor do the proposed rules or the ISOR adequately evaluate how forest management under the guise of a WFMP may affect these conditions and trends. There is an inherent presumption that the proposed rules will not have a significant adverse impact on the environment. (*See* ISOR at p. 121). As described in more detail below, the proposed rules do not contain adequate standards or safeguards regarding the identification and protection of threatened or endangered species within the WFMP assessment area.

There are numerous examples of forest-associated species currently listed as threatened or endangered that are well-known to be in decline based on the best available science and research. Based on this evidence, these species may be significantly adversely affected by the lack of adequate standards and mitigations in the proposed rules. Yet the ISOR fails to consider and evaluate the potential for significant adverse impact on these species. One well-known species that is experiencing well-documented declines in vital demographic statistics is the Northern Spotted Owl (“NSO”). The latest range-wide demographic study for the NSO documents

declines in reproduction, apparent survival, and overall populations in most study areas. (Forsman et al. 2011, “Population Demography of the northern spotted owls: 1985-2008” (“Forsman et al. 2011”). (**Attachment C**). This study concludes that past and ongoing habitat loss, combined with increased competition from non-native invasive barred owls are partially responsible for these declines. (Forsman et al. 2011; Abstract). Yet the proposed rule package, in the absence of necessary standards, would permit logging in ways that are harmful to this species.

EPIC specifically objects to the use of existing Rule 919.9(g) [939.9(g)] within a WFMP. CAL FIRE admits that so-called “Option-(g)” under Rule 919.9 [939.9] is inadequate to protect the NSO. At the March 6, 2013 Board hearing, CAL FIRE Deputy Director Duane Shintaku declared the insufficiency of Rule 919.9 (g) to prevent “take” of the NSO:

"[F]rankly, the Department recognizes that frankly Ken knows we have been working with him prior to retirement in the Service and we have recognized the problems with option-g for quite some time and even before we were handed the full brunt of the responsibility back in 2008 we had heard from the service that option-g was really not adequate. So where did that leave the Department?...there were really just two options....We were really just relying on option-e, the other option that allowed people to avoid take through an HCP and the third was option-g so for quite some time the boards rules with respect 919 and NSO have been outdated, and if you think about it they have been around for 20 years and it's no big mystery that the science has informed what owls need across the landscape.... so first of all CAL FIRE agrees with EPIC in terms of the obsolete nature of option-(g).... so really where we are today is what we are call g+.... what that means is we recognize g is not going to get it done, but the rules specifically say an RPF only has the choices (a)-(g) in order to address a spotted owl in a THP, so because the RPF has to say I am using option-(g)—coupled with the fact that we know option-g is obsolete—that forces the Department into what I would consider a full-blown CEQA analysis. We have to make sure that significant impacts, cumulative impacts and take are all addressed in the plan, and we just use the (g) vehicle to get that done. What does that mean? It means that most of the plans... in which the RPF says I am using option-(g), do not rely on the minimums in the rule today. What that generally means is that they look at the most recent Fish and Wildlife Service guidance and take that high quality nesting/roosting/foraging and the parameters, distances, operating periods incorporated into the plan ...if the only remaining option is option-e.... that creates a huge problem for the plan preparing RPF as well as the Department.” (Shintaku 2013, Testimony before Board of Forestry, March 2013). (**Attachment D**).

Extending the use of a regulation which is ineffective to prevent illegal take of the NSO is contrary to the statutory function of the WFMP to promote forestland stewardship that protects wildlife habitats.

Anadromous salmonid species in California, particularly in coastal watersheds, are similarly in peril. For example, the National Marine Fisheries Service's (“NMFS”) has documented that of the literally thousands of Coho, which once returned to Northern California and Southern Oregon rivers and streams, today have over three quarters of SONCC Coho salmon independent populations at high risk of extinction. (“Final Recovery Plan for the Southern Oregon/Northern California (“SONCC”) Evolutionary Significant Unit (“ESU”) of Coho Salmon” (“NMFS 2014” or “Recovery Plan”), at p. E-2). (**Attachment E**). This Recovery Plan includes an assessment of

the 2010 Anadromous Salmonid Protection Rules (“ASP”) which currently regulate timber harvest activities on private ownerships within the range of the SONCC Coho. NMFS staff actively engaged and participated in Board meetings and expressed concern to the Board that the ASP rules, while resulting in some improvements to riparian protections, would not adequately protect anadromous salmonids until several inadequacies in the Forest Practice Rules were remedied. The NOAA Fisheries Service expressed this to the Board in a letter dated September 8, 2009:

“For the last 10 years, NMFS representatives have been recommending to the BOF develop either no-take rules (e.g., similar to those for federally listed northern spotted owl and marbled murrelet) or move forward on the development of a section 10(a)(1)(B) statewide permit (e.g. Habitat Conservation Plan [HCP]) that authorizes incidental take of listed salmonid species...However, NMFS finds that the proposed Anadromous Salmonid Protection Rules are not no-take rules, and are unlikely to meet the intent of the rules themselves and are not likely to abate the risk of extinction for listed salmonids where these Rules are implemented.” (NOAA Fisheries letter to Stan Dixon, California Board of Forestry 9/8/09). (**Attachment F**).

While the proposed rules implicitly indicate the WFMP must comply with Technical Rule Addendum No. 2 for evaluation of cumulative impacts, this is insufficient because the existing Addendum No. 2 fails to adequately evaluate cumulative impacts to anadromous salmonids. While the Board continues to fumble around with its feeble attempts to tweak the language contained in Technical Rule Addendum No. 2 (cumulative impacts assessment), the Board is missing the larger picture related to the causes of, and the need to further regulate, the cumulative impacts of timber harvest activities on properly functioning habitat conditions for Coho and other listed salmonids. The ISOR should have discussed the Board’s related rulemaking project to amend Technical Rule Addendum No. 2 and what effects it could have on the WFMP requirement for cumulative impacts assessment.

More recently, another forest-associated species has been proposed for listing under the federal Endangered Species Act (“ESA”) by the U.S. Fish and Wildlife Service (“USFWS”). The USFWS has proposed listing of the Pacific Fisher as a “threatened” species under the ESA. In its Draft Species Assessment Report for the Pacific Fisher, the USFWS cites large-scale loss of important habitat components for the fisher due to past ‘vegetation management’ and timber harvest, and current ‘vegetation management’ activities. (U.S. Fish and Wildlife Service, 2014b, “Draft Species Report Fisher (*Pekania pennant*), West Coast Population, January 13, 2014,” at p. 55). (**Attachment G**). The proposed WFMP rules do not attend to the need to prevent loss important habitat components for this species, and the ISOR fails to discuss this as a potential significant adverse environmental effect.

Finally, past and contemporary forest management has had a devastating impact on the federal-threatened and state-endangered Marbled Murrelet. The most recent science indicates that there is an estimated 13 percent loss of the higher suitability habitat over baseline during the period from 1994 to 2008. (Raphael et al. (2011). “Northwest Forest Plan—the first 15 years (1994–2008): status and trend of nesting habitat for the marbled murrelet” (“Raphael et al. 2011)). (**Attachment H**). Fire has been the major cause of loss of nesting habitat on federal land since the Northwest Forest Plan was implemented; timber harvest is the primary cause of loss on non-federal lands. (Raphael et al. 2011, at abstract). The Marbled Murrelet is well-known to primarily rely on old growth and late successional forest types for its survival. Raphael et al. (2011) shows

that habitat for the Marbled Murrelet continues to decline, and that this species continues to be in great peril.

Neither the proposed rules themselves, nor the ISOR describing the rules, actually require consideration of the potentially significant adverse individual or cumulative effects of forest management activities to be permitted in perpetuity under the WFMP regulations on these species, and fail to describe reasonable alternatives that would minimize or substantially lessen such impacts in violation of CEQA.

The proposed rules also do not contain adequate safeguards or standards to ensure the “maintenance of ecological processes and services” as required by the enacted statute. In particular, there is a lack of adequate standards to require adequate description and evaluation of pre-existing conditions, most notably watercourse conditions. 14 CCR 916.4 articulates a detailed information-gathering requirement for RPFs to utilize in describing and evaluating pre-existing conditions. However, the proposed regulations fail to articulate meaningful standards for disclosure of the information gathered pursuant to the evaluation conducted under 14 CCR 916.4, and fail to articulate measures to be taken to address pre-existing and legacy conditions identified as a result of the analysis. The WFMP is an “in-perpetuity” plan, and as such, the implementing regulations must contain adequate requirements not only for evaluating, but also for addressing pre-existing, legacy, and ongoing impacts. Lacking these safeguards, these regulations have the potential to result in a significant adverse impact on the environment. Moreover, the ISOR fails to evaluate the potential for significant adverse impact to ecological processes and services due to the lack of adequate standards, as required by CEQA for Board rulemaking.

B. The Proposed Regulations Fail to Define Several Terms Which Require Definition.

The proposed regulations lack clarity and consistency because they fail to define essential terms. These include those terms identified above – added carbon sequestration, sustainable production of timber and other forest products, maintenance of ecosystem processes and services, and rigorous timber inventory standards. (PRC § 4597(a)).

In addition, terms used in the proposed rules which have not been defined, and are not clear in their use, include:

- “forestland stewardship” (1094.2(l), 1094.3);
- “management objectives of the landowner(s)” (1094.6);
- “baseline conditions” (1094.6(g)(1));
- “timber volumes” (1094.6(i));
- “similar requirements” (1094.6(j) OPTION 2);
- “LTSY plan” (1094.6 (n)(1));
- “addresses” (1094.6(o));
- “necessary deviations” (1094.8);
- “physical environmental changes” (1094.8(i));
- “significant changes” (1094.16(d)(1)); and
- “proprietary information” (1094.29(g)).

All of these terms require definition to understand their specific meaning, as well as the rule or rule provision which uses these terms. Without definition, the rules which use these terms do not satisfy the APA standard of clarity. Moreover, as ambiguous terms, they may not protect the environment, because to the extent any one or all of them are intended to act as a requirement, that requirement is not readily defined or determined. The ISOR fails to identify or evaluate the potential significant adverse impact from these undefined terms. The lack of definition contributes to the failure to adequately evaluate potential significant adverse environmental effects, define mitigation, and evaluate feasible alternatives – all in violation of CEQA.

III. THE REGULATIONS VIOLATE APA STANDARDS AND CEQA.

The following are comments on specific provisions of the rules which EPIC believes illustrate the lack of APA and CEQA compliance. There are key substantive provisions which must be changed and amended before the proposed rules can be adopted to be in compliance with the law. EPIC requests that the Board consider and respond to each of these items before it takes final action to adopt proposed WFMP rules.

A. The Proposed Rule Specifying WFMP Content Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

In reviewing the proposed WFMP content rule 1094.6, EPIC identified six substantive areas which require changes in order to satisfy the APA and CEQA standards articulated above. These are: (1) LTSY, (2) water quality, (3) wildlife and protected species, (4) cultural and historic sites, (5) cumulative impacts analysis, and (6) use of exceptions to standard rule requirements. For these provisions as identified below, the ISOR failed to provide a reasonable and adequate discussion of potential significant adverse impacts, or necessary mitigation, or considered alternatives that could have eliminated or substantially reduced these potential effects, in violation of CEQA.

1. Long Term Sustained Yield

To reiterate, a major flaw in the proposed rules is the failure to require an express statement from the landowner, in the WFMP or otherwise, of the objective commitment to long term sustained yield and uneven aged management. The failure to require an express statement to show how uneven aged management over time will be used and implemented is a flaw. In addition, the following subsections are insufficient and require changes, as recommended here.

Subsection (g) requires a description of the “planning horizon associated with the estimate of LTSY,” and “the period of time necessary to estimate achievement of LTSY.” As worded, neither of these provisions are clear as to what is meant by the “estimate” for “achievement” of LTSY. It is unclear whether the determination of LTSY depends on merely an estimate, unknown at the time of WFMP approval, or something more. The regulations need to identify the controls in place to ensure the WFMP commitment toward sustainability and uneven aged management will be achieved. We could find no requirement that the WFMP plainly state the time needed to achieve actual LTSY or to require a stated commitment to uneven aged management over time. This subsection must be clarified to have meaning, and provide better standards to specify LTSY and uneven aged management. In the absence of controls, this provision leaves room for unrealistic estimates for achievement of LTSY, and does not provide for increased productivity of timberlands, sustainability, or protection of resources – in violation

of the APA as well as the Forest Practice Act. The ISOR fails to discuss or evaluate the potential for significant adverse impacts to resources from this lack of definition and controls.

Subsection (h) requires a description of inventory design and timber stand stratification criteria which show that the projected inventory supports the growth and yield calculations used to determine “LTSY by volume.” Because “volume” is never defined, the term “LTSY by volume” lacks necessary clarity. Volume can be Scribner volume, board foot or cubic volume, or basal area volume. The volume measurement must be clarified to provide uniformity in determining LTSY.

Subsection (h) also provides three “minimum standards” which must be satisfied in the required description of inventory criteria. Subsection (3) requires projections of LTSY “and volumes available for harvest,” without defining what kind of volume (e.g., Scribner, board or cubic foot, or basal area) is being projected. It also requires that the LTSY projections and volumes available for harvest by Stand or Strata shall be “aggregated for the area covered by the WFMP to develop the LTSY estimate.” This is unclear. Stands grow at different rates, density, with different competition and site qualities. All may be different from one stand to the next, from one strata to the next, all within the area covered by one WFMP. “Aggregating” does not take these differences into account and may result in skewed LTSY projections. This could result in failing to meet the statutory WFMP objectives, accompanied by adverse environmental impacts on resources such as timber, water quality, and protected species. Yet potential impacts of this language have not been analyzed as required by CEQA. These provisions must be fully defined and interpreted so as to protect timber and natural resources, and provision must be made to evaluate the potential impacts from such aggregating of areas.

Subsection (i) lacks clarity because, while it requires a description of the property and planned activities, it does not provide a time frame for those projections. Thus, for example, while requiring information about the “projected timber volumes and tree sizes to be available for harvest,” there is no requirement to identify the time frame for these expected harvest potentials. Is this on an annual basis? For how many years? This is necessary information to understand the accuracy and effectiveness of projected LTSY. Subsection (i) does not define a time frame for projected volumes and tree sizes. The WFMP is permitted to extend into perpetuity; if perpetuity is the time frame then a statement that identifies reliable projected volumes into perpetuity is required. To be clear and consistent with the objectives of the statute, a defined metric is needed to monitor the volume and tree size projections over time. A realistic time frame must be established for these projections, at the end of which the WFMP must be reviewed for conformance to those projections.

Subsection (i) also places no limits on the type of silvicultural method to be applied, even though the statute is clear that the WFMP is intended to achieve “uneven aged timber stand and sustained yield.” PRC § 4597.2. Indeed, nowhere do the regulations actually limit or restrict silvicultural methods to uneven-aged management. This is contrary to the plain language of the statute to achieve uneven aged management.

Subsection (n) requires information for management units, including identification of the acres and estimated growth and yield for each planned harvest entry covering the period of time necessary to meet growth and yield objectives. The regulations do not require the WFMP to plainly state the LTSY or the period of time necessary to achieve growth and yield. This can have adverse environmental impacts because the WFMP is a perpetual plan, and without

required time frames, adherence to the policies to ensure protection of the environment, such as sustained production of timber and other forest resources, may be forestalled.

To further illustrate the lack of clarity for LTSY, subsection (q) requires the WFMP to describe “a future schedule of inventory sampling and analysis of LTSY.” It appears – though not specifically stated – that this is intended to provide a schedule to update inventory sampling and LTSY analysis. There is no requirement here, or elsewhere, that specifies the *time frame* for a future schedule of inventory sampling and analysis of LTSY. In the absence of any meaningful time frame, this measure fails to provide the necessary structure to ensure that LTSY and sustained yield is being monitored and achieved. There is no provision here or elsewhere which requires disclosure of volumes actually harvested, as opposed to “projections” of yield. This information is necessary to ensure that LTSY - and the required objective for uneven aged management and sustainability - is being achieved. Absent this, the subsection undermines and obfuscates the legislative directive and threatens ecological processes.

For each of these provisions, the ISOR fails to evaluate the potential for significant adverse impact on resources as a consequence of ambiguity, lack of clarity, and failure to implement the statute.

2. Water Quality Protection

Subsection (j) provides two options – one which requires submission of an erosion control implementation plan with “information” as required by 14 CCR § 923.1 (e) – and a second option which requires description of “methods” to be used to avoid significant sediment discharge to watercourses from timber operations. Option 1 is insufficient to ensure protection of potential erosion sites, as section 923.1 (e) sets forth only operation standards for roads and landings, rather than identifying measures to be implemented to ensure erosion control for all operations. Option 2 does provide more disclosure as to what shall be done to avoid erosion from all timber operations (rather than just roads and landings), but authorizes reliance on so-called “similar requirements of other applicable provisions of law” in lieu of providing the required description of methods used to avoid significant sediment discharge to watercourses. In the absence of a definition for “similar requirements,” this exemption renders the provision unclear and ambiguous, and may result in significant adverse impacts to the environment which are not analyzed in the ISOR.

3. Protection of Wildlife and Other Vulnerable Listed Species

The proposed rules fail to require documentation that the WFMP landowner has conducted surveys or searches for protected wildlife, plant and other vulnerable species. Subsection (m) requires disclosure only of “known locations” of listed or protected plant and animal species and their key habitats. This is insufficient, and fails to meet the statutory objective to maintain ecosystem processes, (PRC § 4597(a)(5)), and protect fisheries and wildlife habitats. (PRC § 4597.1(j)). An actual investigation using applicable protocol surveys to determine the *presence* of protected and listed species or their habitat is necessary to ensure that the WFMP satisfies the legislative intent to not cause adverse impacts to protected and listed species.

Subsection (o) requires an assessment for LTSY projections projecting a reduction in trees greater than 12 inches dbh or reduced inventories of Major Stand Types or for a percentage of Stands or Strata, which “addresses” listed and protected species and their habitat needs. It is

entirely unclear what it means to “address” these resources. If the intent is to ensure that these vulnerable species are protected when tree size and quantity are reduced as described, then the regulation must provide standards to ensure protection. In the absence of having to actually look for species, merely “addressing” these vulnerable species is not sufficient. To satisfy legislative intent, the proposed rules need a standard to credibly evaluate potential impacts from reduced tree and stand size; otherwise, this provision poses threats to protected and listed species and their habitat needs which constitutes a potential significant environmental effect which has not been analyzed or mitigated as required by CEQA and Board rules.

It is well established that past and contemporary forest management are important factors contributing to the decline of many threatened and endangered fish and wildlife species. The lack of clarity and adequate standards in the proposed rules has the potential to result in significant adverse individual and cumulative effects to these species and their habitats. The proposed rules and the ISOR describing the rules fail to provide a mechanism for analysis of, disclosure of, and mitigation to insignificance of potentially significant adverse impacts to threatened and endangered species and thus violate CEQA.

4. Failure to Ensure Protection of Archeological, Cultural, and Historic Sites

Subsection (r) suffers from the same inadequacy as the subsection for protected species. By only requiring description of “known” cultural or historical resources, the WFMP fails to ensure protection for these resources. Surveys and field investigations should be required, and the ISOR should evaluate the potential for significant adverse impact on the environment if this information is not required.

5. Lack of Cumulative Impacts Analysis in WFMP

Subsection (x) is confusing because it simply requires the WFMP to include a “description of” the cumulative impacts analysis, whereas section 898 requires that a plan include a cumulative impacts assessment using Technical Rule Addendum No. 2 methodology. (14 CCR §§ 898, 912.9). A full cumulative impacts assessment must be included in the WFMP, as required by the Forest Practice Rules and CEQA; any requirement less than that violates the Forest Practice Act and CEQA.

6. Allowance for Exceptions to Standard Requirements Places Resources at Risk

Subsections (z), (aa), and (cc) through (ff) authorize exceptions to standard FPA rule provisions in certain circumstances. These subsections are unclear as to whether they are intended to apply to the entire area covered by the WFMP, identified Management Units, or only to specified location(s) stated in the WFMP. Such exceptions appear contrary to the Legislative intent and purpose of the WFMP; authorizing the WFMP to utilize exceptions and alternative practices in perpetuity poses a real – and unanalyzed – threat to the environment. Moreover, permitting exceptions for all time is contrary to the Legislative intent to encourage prudent and responsible forest management – with increased productivity of timberland. (PRC § 4597(a)(1), (3), (5)). These exceptions are contrary to the APA standards for necessity, consistency and clarity, and have not been properly evaluated in the ISOR or within the WFMP, as required by CEQA. They pose the risk, over time, of causing significant adverse environmental effects. As permanent

standards, they must be assessed in the context of the best science detailing what our forests can expect in 10, 20, 30 and 50 years from now due to climate change and other conditions.

Subsection (ii) authorizes development of so-called “standard operating practice(s)” for two of these exceptions: for tractor operations on steep and unstable slopes and lands, and for use of landings, logging roads, and skid trails in protected watercourse zones. This standardized ‘permission’ has not been properly analyzed under CEQA for the potential for significant impacts. It permits use of an undefined “deviation,” with alternative mitigation to be incorporated into the WFMP—without any mention of public review and comment. CEQA requires mitigation to remedy significant environmental impacts. If there is a need for mitigation, there is a need for CEQA review. This process is contrary to the APA, Forest Practice Act, and CEQA.

B. The Proposed Rule for WFMP Annual Notice Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

The WFMP is to be implemented through submission of an annual notice, which permits operations immediately upon submission. (PRC § 4597.11; proposed rule 1094.8). Like the WFMP, it must be a public record. As identified above, certain terms in the proposed rule for the WFMP Notice are not defined. The proposed annual Notice also does not include a requirement for information documenting what operations have already occurred under the WFMP, or identifying new conditions or potential impacts. In this way, the Notice does not provide a clear statement of the information needed to ensure that the Legislative intent to encourage increased productivity of timberlands, (PRC § 4597(a)(3)), and to establish uneven aged management and sustained yield through the implementation of the WFMP. (PRC § 4597.2).

At the outset, the proposed Notice rule directs that “[a]ll necessary deviations shall be approved by the Director prior to submission” of the Notice. The proposed rule does not define what constitutes a “necessary” deviation, and whether a “necessary” deviation is a substantial, minor or some other kind of deviation. The proposed rule also does not define who decides what a “necessary” deviation is or what process the Director must use to approve a “necessary” deviation. This provision lacks clarity.

The proposed Notice provisions suffer from many of the same defects as in the proposed WFMP content rule.

For LTSY and sustained yield, the proposed Notice rule lacks any disclosure of volumes and tree sizes scheduled for harvest. This information is necessary to document what timber operations have been or are proposed to be conducted to achieve the long-term objective of uneven aged management and LTSY. The WFMP requires a one-time description of projected timber volumes and tree sizes to be available for harvest and frequencies of harvest. (PRC § 4597.6(h)). The annual Notice, to be meaningful, needs to provide an annual record toward and update to those projections, to evaluate WFMP compliance. While proposed subsection (m) requires a statement that the Notice conforms to the provisions of the WFMP, it does not require data to support this conclusion. That statement must be based upon actual substantial evidence. At a minimum, the Notice should include a statement identifying what volumes and tree sizes are scheduled for harvest, in relation to the WFMP projections, and evidence documenting efforts to achieve the LTSY.

For wildlife and protected species, subsection (h) requires review of only public sources and databases to report whether there are any “known” occurrences of these species. There is no obligation to conduct protocol surveys or other investigation to look for these protected wildlife and plant species. This is necessary to fulfill the legislative intent to promote forestland stewardship which protects fisheries and wildlife habitats. (PRC § 4597.1(j)).

Similarly, subsection (g) permits a statement that no archaeological sites have been discovered, without a corresponding duty to conduct some kind of survey to determine if such sites do exist.

Subsection (i) requires a statement, based on a field evaluation, that “there are no physical environmental changes” in the Notice area “that are so significant as to require any deviation of the WFMP.” The proposed rule does not define what is meant by “physical environmental changes” and what that phrase may encompass. The lack of definition makes this subsection confusing and without clarity, as no thresholds are provided. The provision is also unclear because earlier in the proposed rule it is clear that there can be no outstanding “necessary deviations” once the Notice is submitted. Whether “necessary deviations” means the same as or something different from “physical environmental changes” is not known, adding to the confusion. Since the submission of the Notice permits operations to commence immediately, in the absence of clear standards or thresholds, there is no ability to evaluate whether the statement is accurate. As with other provisions, evidence must be provided which documents that a field evaluation was conducted of the entire area covered by the Notice, and documents the conditions observed during the field evaluation. The failure to require this kind of investigation leaves the real potential for significant adverse impact on protected species or archaeological and cultural sites, an eventuality that is not mentioned or evaluated in the ISOR.

For water quality protection, subsection (n), like other provisions, does not require any actual evidence upon which conclusions as to *current* conditions are based. The mapping requirement under proposed subsection (u)(10) perpetuates the deficiency in the WFMP - to require mapping only of “known” unstable areas or slides, rather than also documenting locations which are potentially unstable or at risk. This must be expanded to require identification of “potential” unstable areas.

Subsection (t) requires description of the WFMP exceptions which have “standard operating practices,” but fails to require identification of the site-specific locations for which these standard operating practices may occur. This means the potential for significant adverse environmental impact is never evaluated as required by the FPA and CEQA.

The proposed Notice regulation does not require a statement disclosing whether there are any ongoing operations in the WFMP area, even though the proposed rules permit operations to occur beyond a one-year time frame. (*See* Proposed rule 1094.25(b) (report may be filed annually for work not completed)). It is unclear to what extent more than one, or several, areas within the WFMP may be under operation in any given year. This poses the potential for significant cumulative impacts which would need to be evaluated, yet there is no requirement for the disclosure or evaluation of multiple operations. The ISOR does not mention or evaluate the potential for significant adverse environmental impacts which may occur due to the multiple year operations.

C. The Proposed Rule For Substantial Deviations Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

Proposed rule 1094.23 specifies a number of circumstances which are “presumed to be “substantial deviations”” of the WFMP. However, subsection (c)(14) then states that changes to an erosion control implementation plan as a result of operations to implement the provisions of an approved erosion control plan “shall not be considered a substantial deviation.” This makes no sense and does not belong.

D. The Proposed Rule for Stocking Standards Fails to Meet the Intent of the Statute and Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

The Legislature authorized the WFMP as a tool to achieve “increased productivity of timberland.” (PRC § 4597(a)(3)). Proposed rule 1094.27 (a) is inconsistent with this intent because it permits stocking to be satisfied using minimum stocking standards as set forth in 14 CCR section 1071, rather than require an increase in productivity over time. To “increase productivity” means to require a standard higher than merely “maintaining” minimum stocking standards. Use of minimum stocking does not effectuate the legislative purpose of the WFMP. Moreover, the proposed rules permit stocking reports to be filed within 5 years, in which case that information will not be subject to the proposed 5-Year Review. This will not “benefit” the environment, and has the potential to degrade the environment by not doing as contemplated by the Legislature – to increase timberland productivity and utilized uneven aged management. Furthermore, the proposed rules do not include an affirmative obligation to conduct effective annual monitoring to keep track of what timber operations occur each year, what volumes were removed and what volumes may be cut going forward, and to determine whether the growth and yield projections are accurate or need adjusting to maintain LTSY. The ISOR fails to mention or evaluate the potential for significant adverse impacts from not requiring heightened stocking standards to ensure increased productivity over time.

E. The Proposed Rules for the Five Year Review is Inconsistent with the Statute and Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

Proposed rule 1094.29 sets forth provisions for what is called a “Five (5) Year Review of the WFMP” (“5-Year Review”). This section is not clear, particularly as to the contents of the summary and what constitutes the “5-Year Review.” The Legislature directed the board to adopt regulations to implement the statute section 4597.12, and the proposed regulation fails to meet this duty, satisfy APA standards of clarity, or ensure CEQA compliance.

The proposed rule is not consistent with the statute, Public Resources Code section 4597.12. By statute, the Department is to first develop a summary, and then conduct the 5-Year Review. (PRC § 4597.12(b) (“develop a plan summary *before each five-year review*”). (Emphasis added). In addition, the statute requires the Department to provide notice of the review and copy of the 5-Year Summary to the public so that the “public may submit additional information relevant to the purpose of the five-year review and the review team may consider this

information when conducting its review.” (PRC § 4597.12(c)). Proposed rule 1094.29 makes a mishmash of this clear process, obfuscating when the 5-year Summary is done in relation to the 5-Year Review, as well as the public’s right of review and comment. As such, it fails to meet the APA standards for clarity and is contrary to the authorizing legislation.

The proposed rule places the public notice and comment period before issuance or completion of the 5-Year Summary and 5-Year Review, by requiring the public notice “*at least 30 days prior to each five (5) year anniversary date of the WFMP approval*” and public notice to be submitted “*during the thirty (30) day period.*” (Proposed rule 1094.29(a)). (Emphasis added). Subsection (b) only requires preparation of the 5-Year Summary “*within thirty (30) days of each five year anniversary of a WFMP approval.*” (Emphasis added). By allowing the 5-Year Summary to be prepared “*within 30 days*” of the anniversary date, the Department can prepare the 5-Year Summary (and convene the review meeting) within 30 days *before* **or** 30 days *after* the anniversary date. This deprives the public of its right of review as provided in the statute, forcing the public to comment in a vacuum before the Summary or Review may even be conducted. The public must be given an adequate period of review for the 5-Year Summary, to provide input into what information the review team agencies and the Department need to consider in conducting the 5-Year Review. In addition to AB 904, both the FPA and CEQA require that the public is entitled to review and comment on whatever document encompasses the 5-Year Review.

The rules are not clear as to what is to be included in the “summary” preceding the 5-Year Review, or what constitutes and shall be included in the 5-Year Review. If the 5-Year Summary is the document from which the 5-Year Review is to be conducted, a clear statement is necessary in order for the public to exercise its role to present “additional information relevant to the purpose of the five (5) year review,” as stated in subsection (a). This is also needed for the public agency review process.

It is unclear what information is required to be included in either the 5-Year Summary or the 5-Year Review. It is not clear whether a 5-Year Summary or 5-Year Review will include the information outlined in subsections (b) or (c), i.e., number of WFMP Notices, the acreage operated under each WFMP Notice, the violations received, the volume harvested in relation to projections of harvest in the WFMP. The only information that the review team is actually required to analyze is “significant episodic events occurring during the previous 5 years.” (Proposed rule 1094.29(c)). The proposed rule needs to identify what is to be included in the 5-Year Summary and 5-Year Review. The proposed rule needs to specifically identify what information must be reviewed by the review team and be made equally available for public review and comment.

Subsection (d) provides three distinct and valid reasons why the Department “shall provide written comments that a review of the WFMP content and procedures may be necessary”: (1) notices of violation have been issued; (2) the 5-Year Review indicates potentially significant adverse impacts to the environment may occur from continuance of the WFMP; or (3) the Department is presented with a fair argument that a project may have a significant adverse impact on the environment. However, the subsection provides no standards or process for the “review of the WFMP content and procedures.” This is needed to make the provision meaningful. And as discussed above, because the public is effectively denied a right of review and comment, it is given no meaningful way to provide a “fair argument” as to potential impacts. Moreover, the proposed rule is also not clear as what process the Department uses to “confer”

with the Designated Agent. This provision must be clarified, and the process must be transparent and subject to meaningful public review and comment.

Subsection (g) is a restatement of the subsection (d) of the statute. (PRC § 4597.12 (d)). However, it conflicts with other provisions of the statutory scheme and proposed rules. The WFMP “shall be a public record.” (PRC § 4597.2; proposed rule 1094.3). That means all the information identified in proposed rule 1094.6 is a public record. Similarly, the WFMP Notice is a public record. (PRC § 4597.11, proposed rule 1094.8). The 5-Year Review is based upon a review of this public information. Yet, proposed subsection (g) authorizes a WFMP landowner to withhold “proprietary information.” Permitting a landowner to not disclose *undefined* information of its choosing, in the face of a public record and which is completely relevant to a determination of WFMP compliance, is contrary to the fundamental premise of the Forest Practice Act and CEQA to require public access and review.

CONCLUSION

The proposed WFMP rules are inconsistent with the enacting statute by failing to provide “rigorous timber inventory standards,” and fail to comply with basic CEQA and APA requirements. The proposed rules are inadequate to ensure a commitment to uneven aged management, LTSY, sustainability, and are inadequate to provide for wildlife and water quality protection and enhancement. The ISOR fails to satisfy CEQA and the Board rules governing its CEQA duties for rulemaking, because it fails to identify or evaluate the potential for significant adverse impacts arising from the many issues identified above. EPIC therefore recommends that the proposed WFMP implementing rules be remanded back to the Management Committee for additional work to correct the deficiencies identified.

EPIC appreciates the opportunity to provide these comments, and requests a written response. Please do not hesitate to contact me at the number provided below should there be questions.

Sincerely,



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Enc. – See Attachments List

Attachments

Attachment A: EPIC Letter regarding WFMP Draft Regulations to Management Committee. April 7, 2014.

Attachment B: EPIC Letter regarding WFMP 45-day Notice. March 2, 2015.

Attachment C: Forsman, E.D., R.G. Anthony, K.M. Dugger, E.M. Glenn, A.B. Franklin, G.C. White, C.J. Schwarz, K.P. Burnham, D.R. Anderson, J.D. Nichols, J.E. Hines, J.B. Lint, R.J. Davis, S.H. Ackers, L.S. Andrews, B.L. Biswell, P.C. Carlson, L.V. Diller, S.A. Gremel, D.R. Herter, J.M. Higley, R.B. Horn, J.A. Reid, J. Rockweit, J. Schaberel, T.J. Snetsinger, and S.G. Sovern. 2011. Population Demography of the northern spotted owls: 1985-2008. *Studies in Avian Biology*.

Attachment D: Shintaku 2013. Testimony before Board of Forestry. March 2013.

Attachment E: National Marine Fisheries Service. 2014. Final Recovery Plan for the Southern Oregon/Northern California Coast Evolutionarily Significant Unit of Coho Salmon (*Oncorhynchus kisutch*). National Marine Fisheries Service. Arcata, CA.

Attachment F: NOAA Fisheries 2009. Letter to Mr. Stan Dixon, Chairman Board of Forestry and Fire Protection. September 9, 2009.

Attachment G: U.S. Fish and Wildlife Service, 2014b. Draft Species Report Fisher (*Pekania pennanti*), West Coast Population. January 13, 2014.

Attachment H: Raphael, Martin G.; Falxa, Gary A.; Dugger, Katie M.; Galleher, Beth M.; Lynch, Deanna; Miller, Sherri L.; Nelson, S. Kim; Young, Richard D. 2011. Northwest Forest Plan—the first 15 years (1994–2008): status and trend of nesting habitat for the marbled murrelet. Gen. Tech. Rep. PNW-GTR-848. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 52 p.



DEPARTMENT OF CONSERVATION

CALIFORNIA GEOLOGICAL SURVEY

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Board of Forestry and Fire Protection
Attn: Thambi Borrás
Regulations Coordinator
publiccomments@BOF.ca.gov
P.O. Box 944246
Sacramento, CA 94244-2460

March 2, 2015

Re: Proposed Rulemaking Regarding "Working Forest Management Plan"

Dear Chairman Gilles and Members of the Board:

The California Geological Survey (CGS) has reviewed the proposed revisions to the Forest Practice Rules contained in Title 14 California Code of Regulations, titled "*Working Forest Management Plan*". These proposed rule revisions are presented in the 45-day notice circulated by the Board of Forestry and Fire Protection (Board) on January 16, 2015.

It is understood that the *Working Forest Management Plan* (WFMP) is modeled after Non-industrial Timber Management Plans (NTMP) to allow nonindustrial landowners with no more than 15,000 acres to apply for a timber harvesting document that would allow for long-term approval. A WFMP would last in perpetuity, similar to a NTMP.

Below CGS offers one general and nineteen specific comments on the proposed rule package.

General Comment:

1. To be consistent with the "2013 Road Rules" rule package, and the road requirements for THPs, CGS recommends that a number of modifications be incorporated into sections 1094.6 and 1094.8 of the WFMP, as noted in the "Specific Comments" below. CGS has attempted to incorporate provisions of the 2013 Road Rules into the comments below; however, we recommend that a more detailed analysis of the 2013 Road Rules be conducted to ensure that the WFMP is consistent with the new roads rule package.

Specific Comments:

CGS's first three comments below relate to ground disturbance, winter operations, and the five year review; the subsequent comments relate to roads and consistency with the 2013 Road

Rules. CGS's recommended changes are shown in **bold** by the ~~strikethrough~~ and double underline text presented below.

§1094.6 Contents of WFMP.

1. CGS believes that it is important for each WFMP to include a general description of areas that may be sensitive to ground disturbance along with the discussion of the impacts and protections for the beneficial uses of water so that linkages can be made between proposed operations and potential impacts. This is consistent with the provisions of other regional scale documents such as SYPs (§1091.6)

1094.6 (t) A description of areas known to be sensitive to ground disturbance, and the potential impacts to, and protections for, the quality and beneficial uses of water.

2. The proposed rule package continues to set different standards for Winter Operating Plans within watersheds with listed anadromous salmonids (ASP watersheds) than the standards for those watersheds outside the zone of anadromy. As proposed in the current rule package, in areas outside ASP watersheds a Winter Operating Plan is not required if a limited series of measures are specified in the WFMP. Regardless of the presence of anadromy, CGS recommends that a Winter Operating Plan be required if winter operations are proposed. This requirement will provide clarity on the measures to be taken to limit potential impacts due to operations conducted during the winter period.

1094.6 (aa) Winter period operating plan ~~where appropriate~~ if winter operations are proposed.

§1094.29 Five (5) Year Review of WFMP

3. CGS believes that significant storms should be included in the list of "significant episodic events" to be analyzed as part of the five (5) year review.

1094.29 (c) For the purpose of 14 CCR 1094.29(b), each five (5) year review shall allow the review team to analyze information including the number of Working Forest Harvest Notices, the acreage operated under each Working Forest Harvest Notice, the violations received, the volume harvested in relation to projections of harvest in the WFMP... The review team shall also analyze any significant episodic events occurring during the previous five (5) years including disease and drought caused tree mortality, windthrow, significant storms, wildfire, and landslides. If the Department or a review team agency...

Road related comments:

§1094.6 Contents of WFMP.

4. 1094.6 (d) (3) Location of public roads within the plan area, and private roads appurtenant to the timber operations where such roads are under the ownership or control of the timberland owner(s) and are contiguous with the plan area, and classification of all proposed and existing logging roads as permanent, seasonal, ~~or~~

temporary, or deactivated. Location and miles of proposed new, reconstructed, and abandoned roads. Location of roads that provide access to rock pits and water drafting sites, and the location of water drafting sites.

5. 1094.6 (d) (4) Location of proposed and existing roads and landings in watercourses, lakes, marshes, wet meadows, or other wet areas, the watercourse and lake protection zone, other than at road watercourse crossings, and landings outside the watercourse and lake protection zone that are greater than ¼ acre in size or whose construction involves substantial excavation.
6. 1094.6 (d) (14) Location of all existing and proposed permanent watercourse crossing drainage structures, and temporary crossings on Class I and II watercourses on roads, including those crossings to be abandoned or deactivated.
7. 1094.6 (d) (18) Location of logging road grades greater than 15 percent for over 200 continuous feet or logging road grades exceeding 20 percent.
8. 1094.6 (d) (19) Location of logging roads across unstable areas or connected headwall swales.
9. 1094.6 (d) (20) Location of excess material disposal sites on slopes greater than 40 percent or on active unstable areas.
10. 1094.6 (d) (21) Location of logging roads and landings across slopes greater than 50 percent for 100 lineal feet or more within 100 feet of the boundary of a WLPZ that drains toward the zoned watercourse or lake.
11. 1098.6 (d) (22) Location of logging roads and landings across slopes greater than 50 percent for 100 linear feet or more within 100 feet of the boundary of a WLPZ that drains toward the zoned watercourse or lake.

§1094.8 Working Forest Harvest Notice Content

12. 1094.8 (s) (4) Location of public roads within the Working Forest Harvest Notice area, and private roads appurtenant to the timber operations where such roads are under the ownership or control of the timberland owner(s), and are contiguous with the Working Forest Harvest Notice area. The current classification of all proposed and existing logging roads as permanent, seasonal, ~~or~~ temporary, or deactivated shall be included. Location and miles of proposed new, reconstructed, and abandoned roads. Location of roads that provide access to rock pits and water drafting sites, and the location of water drafting sites.
13. 1094.8 (s) (5) Location of proposed and existing roads and landings in watercourses, lakes, marshes, wet meadows, or other wet areas, the watercourse and lake protection zone, other than at road watercourse crossings, and landings outside the watercourse and lake protection zone that are greater than ¼ acre in size or whose construction involves substantial excavation.

14. 1094.8 (s) (7) Location of all existing and proposed watercourse crossings on logging and tractor roads, including those crossings to be abandoned or deactivated; if a permanent culvert is involved, its minimum diameter shall be provided.
15. 1094.8 (s) (13) Location of logging road grades greater than 15 percent for over 200 continuous feet or logging road grades exceeding 20 percent.
16. 1094.8 (s) (14) Location of logging roads across unstable areas or connected headwall swales.
17. 1094.8 (s) (15) Location of excess material disposal sites on slopes greater than 40 percent or on active unstable areas.
18. 1094.8 (s) (16) Location of logging roads and landings across slopes greater than 50 percent for 100 lineal feet or more within 100 feet of the boundary of a WLPZ that drains toward the zoned watercourse or lake.
19. 1098.8 (s) (17) Location of logging roads and landings across slopes greater than 50 percent for 100 linear feet or more within 100 feet of the boundary of a WLPZ that drains toward the zoned watercourse or lake.

CGS staff will be available at the Board meeting to answer any questions you may have.

Sincerely,



William R. Short, CEG
Supervising Engineering Geologist
Forest and Watershed Geology Program Manager

North Coast Regional Water Quality Control Board

April 4, 2014

Mr. Stuart Farber and Ms. Mary Rickert
Management Committee
Board of Forestry and Fire Protection
P. O. Box 944246
Sacramento, CA 94244-2460

Dear Mr. Farber and Ms. Rickert:

Subject: Comments on the February 17, 2014 Draft, Working Forest Management Plan

File: Timber, General

North Coast Regional Water Quality Control Board (Regional Water Board) staff have reviewed the "*Board of Forestry and Fire Protection, February 17, 2014 Draft, Working Forest Management Plan*" (February Draft) that was distributed at prior to the March 4, 2014 meeting of the Management Committee (FPC) of the Board of Forestry and Fire Protection (BOF or Board), and would like to take this opportunity to inform the Board's Management Committee (Committee) of the results of that review.

Assembly Bill 904 created a new alternative for managing "working forest" timberlands up to 15,000 acres in size. The Bill states that "It is the policy of the state to encourage prudent and responsible forest resource management of nonindustrial timberlands by approving working forest management plans in advance and authorizing working forest timber harvest notices to be filed ministerially." Working Forest Management Plans (WFMPs) are intended to build on the model provided by nonindustrial timber management plans.

The February Draft proposes to add Sections 1094 through 1094.31 to the Forest Practice Rules (FPR) in order to implement regulation of WFMPs. Much of the language contained in the February Draft is copied directly from the Bill. The following are comments and recommendations based on our review of the February Draft.

Page 7, Line 14 and 15: The proposed language speaks of "potential to discharge sediment attributable to timber operations into waters of the state..." Anthropogenic sediment

sources within the plan area are likely to be impacted or exacerbated by timber operations whether or not they are directly “attributable,” and existing Regional Water Board Waste Discharge Requirements make no such distinction. In order to be consistent with applicable water quality objectives and provide for the protection of the applicable beneficial uses of water, the words “attributable to timber operations” should be deleted.

Regional Water Board staff propose the following revision to page 7, lines 14 and 15:

“... potential to discharge sediment ~~attributable to timber operations~~ into waters of the state in violation of water quality requirements ...”

Page 7, Line 17: Beginning on line 16, the February Draft states, “erosion control implementation plan, and a schedule to implement erosion controls that prioritizes significant existing erosion site.” This language was modified from the Bill. The language in the Bill is “major sources of sediment,” but BOF staff changed it “for consistency with ASP and Road Rules.” To be truly consistent with the ASP and Road Rules, and to be consistent with applicable water quality objectives and provide for the protection of the applicable beneficial uses of water, the proposed language should use the term introduced in the Road Rules package, “Significant Existing or Potential Erosion Site.”

Regional Water Board staff propose the following revision to page 7, lines 16 and 17:

“... erosion control implementation plan, and a schedule to implement erosion controls that prioritizes significant existing or potential erosion sites.”

Page 16, lines 1: It is impossible to properly assess the physical environmental changes within the Working Forest Notice area without a field evaluation. This should be clearly stated in the rule language.

Regional Water Board staff propose the following revision to page 16, line 1:

“(h) A statement that, based on a field evaluation, there are no physical environmental changes...”

Page 16, Line 20: An updated erosion control implementation plan would be the most efficient method to provide an update of erosion control mitigation measures. This should be explicitly stated.

Regional Water Board staff propose the following revision to page 16, line 20:

“(m) An updated erosion control implementation plan that reflects ~~an~~ erosion control mitigation measures for the harvest area and any appurtenant roads...”

Page 30, Line 24: “but not limited to” This phrase is in the Bill, but is stricken in the February Draft. We assume BOF staff felt the phrase is redundant since in a strictly grammatical sense, “including” implies that there may be other non-listed items, but current common usage tends to be restrictive. That is, without the phrase “but not limited to,” the regulation could be interpreted to require only the information specifically listed for the Five-Year Review analysis. The phrase should not be stricken.

Regional Water Board staff propose the following revision to page 30, line 24:

“... allow~~s~~ the review team to analyze information includin~~g~~, but not limited to, the number...”

Page 31, line 3 and 4: It is difficult to certify that “any Working Forest Harvest Notices are in compliance with WFMP” without an on-the-ground field evaluation. This should be clearly stated in the proposed language.

Regional Water Board staff propose the following revision to page 30, line 24:

“(1) The 5-year review shall include a certification by an RPF that, based on a field evaluation, the WFMP and any Working Forest Harvest Notices are in compliance with WFMP.”

Regional Water Board staff believe that without these proposed revisions, it is likely that the proposed WFMP regulations may not insure compliance with the Water Quality Control Plan for the North Coast (Basin Plan). We recommend that rules be developed that are consistent with applicable water quality objectives and protection of the applicable beneficial uses of water. This approach would help our agencies and provide the people of the state with efficient government.

If you or your staff have any questions regarding our comments, please contact me at 707-576-2756.

Sincerely,

Original Signed By

David Fowler
Regional Water Board staff
Nonpoint Source and Timber Harvest



North Coast Regional Water Quality Control Board

March 2, 2015

Mr. George D. Gentry
Executive Officer
Board of Forestry and Fire Protection P. O.
Box 944246
Sacramento, CA 94244- 2460

Dear Mr. Gentry:

Subject: Comments on the Board of Forestry and Fire Protection proposed Working Forest Management Plan, dated January 16, 2015, Title 14 of the California Code of Regulations

File: Timber, Board of Forestry, General

Enclosed is a Memorandum dated, March 2, 2015, which provides Regional Water Board staff comments on the proposed Working Forest Management Plan, as published January 16, 2015. These comments were prepared by David Fowler, Regional Water Board staff.

We appreciate having had the opportunity to participate and to provide substantial input during the development process of this rule package to ensure actions authorized under this regulation comply with Regional Water Quality Control Board water quality requirements.

Overall we believe the proposed Working Forest Management Plan rules provide an opportunity for long term planning and management of timberlands and protection of resources. We are concerned, however, that the proposed rule language is reactive rather than proactive with respect to the requirement addressing erosion sites. Addressing only active and existing erosion sites while ignoring potential erosion sites is inconsistent with other existing sections of the Forest Practice Rules, the requirements of the Water Quality Control Plan (Basin Plan) for the North Coast, and the Porter- Cologne Water Quality Control Act.

JOHN W. CORBETT, CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

5550 Skylane Blvd., Suite A, Santa Rosa, CA 95403 | www.waterboards.ca.gov/northcoast





North Coast Regional Water Quality Control Board

We believe that by not addressing potential erosions sites, it is likely that the proposed WFMP regulations will not insure compliance with the North Coast water quality requirements, nor the Water Quality Control Plan for the North Coast Region. We recommend that rules be developed that are consistent with applicable water quality requirements and protection of the applicable beneficial uses of water. This approach would help our agencies and provide the people of the state with efficient government.

Again, thank you for the opportunity to review and comment. If you or your staff have any questions or concerns regarding our comments or would like additional information, please contact David Fowler (707- 576- 2756) or Jim Burke (707- 576- 2289) of our staff.

Sincerely,

Fred Blatt
Water Boards
Digitally signed by Fred Blatt
Date: 2015.03.02 11:55:08 -08'00'

Fred Blatt
Division Chief
Nonpoint Source & Surface Water Protection Division

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North Coast Regional Water Quality Control Board

March 2, 2015

To: Fred Blatt
Division Chief
Nonpoint Source and Surface Water Protection Division

From: David Fowler
Representing review staff

Subject: Review and Comments on the Board of Forestry and Fire Protection proposed Working Forest Management Plan, dated January 16, 2015, Title 14 of the California Code of Regulations

North Coast Regional Water Quality Control Board (Regional Water Board) staff worked cooperatively and collaboratively with members of the Board of Forestry and Fire Protection (BOF or Board), their staff, staff from the California Department of Forestry and Fire Protection, the California Department of Fish and Wildlife, the California Geological Survey, and members of the public during the development and review process of the proposed *Working Forest Management Plan* (WFMP) sections of the Forest Practice Rules (FPRs). The Public Review draft of the WFMP rules was published on January 16, 2015 for a 45 day comment period. Regional Water Board staff have reviewed the draft text.

Assembly Bill 904 created a new alternative for managing “working forest” timberlands up to 15,000 acres in size. The Bill states that “It is the policy of the state to encourage prudent and responsible forest resource management of nonindustrial timberlands by approving working forest management plans in advance and authorizing working forest timber harvest notices to be filed ministerially.” WFMPs are intended to build on the model provided by nonindustrial timber management plans.

The proposed WFMP rules contain many commendable goals and objectives. However, please consider the following comments and suggested revisions we believe are necessary to align the proposed language of a portion of section of 1094.6(i), part of the “Contents of WFMP” (page 17, lines 16 through 22) with other pertinent FPR rule sections, as well as Water Quality requirements. Aligning the FPR language and water quality requirements at this stage of rule development is far more efficient than addressing the matter in the Regional Board’s permitting process. The proposed subsection states:

“1094.6(i) A description and discussion of the methods to be used to avoid significant sediment discharge to watercourses from timber operations. This shall include disclosure of active erosion sites from roads, skid trails, crossings, or any other structures or sites that have the potential to discharge sediment attributable to timber operations into waters of the state resulting in significant sediment discharge and violation of water quality requirements. The WFMP shall also include an erosion control implementation plan and a schedule to implement erosion controls that prioritizes significant existing erosion site(s). ...”

While Regional Water Board staff strongly support the intent of this section, including a description and discussion of methods to be used to avoid significant sediment discharge and an erosion control implementation plan in WFMPs, addressing only “active” and “existing” erosion sites is problematic. Besides being reactive rather than proactive, addressing only active and existing erosion sites is inconsistent with other existing sections of the Forest Practice Rules, sections of the recently enacted Road Rules, the requirements of the Water Quality Control Plan (Basin Plan) for the North Coast, and the Porter- Cologne Water Quality Control Act.

WFMPs must comply with all applicable requirements of the Forest Practice Rules. Section 916.4(a) [936.4(a), 956.4(a)] requires an RPF to conduct a field examination and evaluate areas near, and areas with the *potential* to directly impact, watercourses and lakes for sensitive conditions, identify those conditions, and describe measures to protect and restore to the extent feasible, the beneficial uses of water. Section 923.1(e) [943.1(e), 963.1(e)] of the new Road Rules requires road inventories. It requires an RPF to evaluate all logging roads and landings in the logging area, including appurtenant roads, for evidence of significant existing *and potential* erosion sites, and specify necessary and feasible treatments for those sites.

Comment [WU20]: Comment L7-1

Additionally, WFMPs must comply with the requirements of the regional Basin Plans or the Porter- Cologne Water Quality Control Act. Both the Act and the Basin Plans recognize threatened or potential discharges as well as active or existing discharges.

Comment [WU21]: Comment L7-2

It should be noted that proposed section 1094.6(i) covers two distinct and very different items. The first is a requirement to describe and discuss the methods to be used to *avoid* significant sediment discharge to watercourses. The second is a requirement for an erosion control management plan.

The first part of section 1094.6(i) twice uses the term “significant sediment discharge,” a term that is defined in the Forest Practice Rules definitions, section 895.1. The definition of “significant sediment discharges” includes the concept of potential as well as active discharges. Because of this, the use of the phrase “active erosion sites” in line 17 is confusing. Regional Water Board staff suggest deleting the word “active” from line 17 so that the sentence will read, “This shall include disclosure of ~~active~~ erosion sites...”.

Comment [WU22]: Comment L7-3

The description of the contents of the erosion control implementation plan uses the undefined term “significant existing erosion site(s)” (line 22). Besides conflicting with

other existing regulations and statutes, since this term is undefined, it leads to ambiguity and the inevitable question of “What is *significant*?” This could be avoided by using the existing term defined in section 895.1, “significant existing or potential erosion site.”

Comment [WU23]: Comment L7-4

We believe the BOF should avoid use of an undefined term for the contents of a sediment control implementation plan, especially when it adds ambiguity and makes this section internally inconsistent with the rest of the Forest Practice Rules.

In order to make the WFMP language internally consistent with other provisions of the Forest Practice Rules and to make it consistent with the requirements of the regional Basin Plans and the Porter- Cologne Water Quality Control Act, Regional Water Board staff suggest changing lines 20 through 22 to read: “The WFMP shall also include an erosion control implementation plan and a schedule to implement erosion controls that prioritizes significant existing **or potential** erosion site(s).”

Comment [WU24]: Comment L7-5

Lastly, the last sentence of section 1094.6(i) is unclear (page 17, lines 22 through 24). It was copied directly from AB 904 and the wording is somewhat convoluted. It appears the intent of this section is to allow erosion control plans developed in compliance with the requirements of other agencies to fulfill the requirements of this section. A similar allowance exists for prescribed maintenance period inspections in section 923.7 [943.7, 963.7](k)(2). In order to avoid confusion and clearly state the intent of this sentence, Regional Water Board staff suggest using section 923.7(k)(2) as a template. Regional Water Board staff suggest replacing the last sentence of proposed section 1094.6(i) with, “Erosion control implementation plans developed pursuant to California Regional Water Quality Control Board requirements may be used to satisfy the erosion control implementation plan requirements of this section.”

Comment [WU25]: Comment L7-6

In summary, Regional Water Board staff suggest proposed section 1094.6(i) (page 17, lines 16 through 24) should be revised to read:

1094.6(i) “A description and discussion of the methods to be used to avoid significant sediment discharge to watercourses from timber operations. This shall include disclosure of ~~active~~ erosion sites from roads, skid trails, crossings, or any other structures or sites that have the potential to discharge sediment attributable to timber operations into waters of the state resulting in significant sediment discharge and violation of water quality requirements. The WFMP shall also include an erosion control implementation plan and a schedule to implement erosion controls that prioritizes significant existing **or potential** erosion site(s). ~~This subdivision shall not apply to the extent that the RPF provides documentation to the Department that the WFMP is in compliance with of other applicable provisions of law.~~ **Erosion control implementation plans developed pursuant to California Regional Water Quality Control Board requirements may be used to satisfy the erosion control implementation plan requirements of this section.**”

1 'BOARD OF FORESTRY AND FIRE PROTECTION

2
3 June 6th, 2014 DRAFT

4
5 "WORKING FOREST MANAGEMENT PLAN"

6 **895.1 Definitions:**

7 **Plan means:**

8 (a) Timber Harvesting Plan (THP) as described in PRC 4582.

9 (b) Nonindustrial Timber Management Plan (NTMP) as described in PRC 4593.2(e).

10 (c) Program Timber Harvesting Plan (PTHP) as described in 14 CCR 1092 and 1092.1.

11 (d) Working Forest Management Plan (WFMP) as described in PRC 4597.

12
13 Article 7.7

14 Where the abbreviation THP, the term Timber Harvesting Plan, or the word plan is used in Chapter 4,
15 Subchapters 1 through 6 and Chapter 4.5 it shall also mean Working Forest Management Plan as
16 specified in Article 7.7 of the PRC. In Subchapter 7 this equivalency will occur for all sections except 1031
17 through 1042 that are not referenced in this Article.

18
19 1094.1 Working Forest Management Plan and Working Forest Harvest Notice Filing Locations

20 The Working Forest Management Plan (WFMP) or Working Forest Harvest Notice for proposed timber
21 operations provided for by Article 7.7, Chapter 8, Part 2, Division 4 of the PRC (commencing with Sec.
22 4597) shall be submitted in writing to the Director at the appropriate CAL FIRE Review Team Office
23 having jurisdiction for the timber operations, and shall contain the information specified in 14 CCR §
24 1094.6 and 1094.8. [NOTE: For CAL FIRE Review Team Office addresses, see 14 CCR § 1032.]

25
26 1094.2 Definitions

27 The following definitions apply to this article:

1 (a) "Late succession forest stands" - means stands of dominant and predominant trees that meet the
2 criteria of the California Wildlife Habitat Relationships System class 5D, 5M, or 6 with an open,
3 moderate, or dense canopy closure classification, often with multiple canopy layers, and are at least 10
4 acres in size. Functional characteristics of late succession forest stands include large decadent trees,
5 snags, and large down logs.

6 (b) "Long-term sustained yield" (LTSY) means the average annual growth sustainable by the inventory
7 predicted at the end of a 100-year planning horizon, or a shorter planning horizon if the forest
8 encompassed by the WFMP has reached a balance between growth and yield.

9 (c) "Major stand type" means a stand that occupies an area equal to or greater than 25 percent of a
10 WFMP.

11 (d) "Management unit" means a geographically identifiable area delineated for silviculture or
12 management purposes. A management unit is intended to reflect an area scheduled for harvest under
13 the plan in any given year, but may also be designated to address specific resource sensitivities.

14 (e) "Stand" means a geographically identifiable group of trees sufficiently uniform in age-class
15 distribution, composition, and structure and growing on a site of sufficiently uniform quality to be a
16 distinguishable unit.

17 (f) "Strata" means a grouping of similar stands defined for silvicultural or management purposes, usually
18 according to similarities in stand composition, structure, and age.

19 (g) "Sustained yield" means the yield of commercial wood that an area of commercial timberland can
20 produce continuously at a given intensity of management consistent with required environmental
21 protection and that is professionally planned to achieve over time a balance between growth and
22 removal. Sustained yield management implies continuous production planned so as to achieve, at the
23 earliest practical time, a balance between growth and harvest.

24 (h) "Uneven aged management" means forest management with the goal of establishing a well-stocked
25 stand of various age classes, which permits the periodic harvest of individual or small groups of trees to
26 achieve sustained yield objectives of the WFMP, and provide for regeneration of trees and maintenance
27 of age class structure.

1 (i) "Working Forest Harvest Notice" means notice of timber harvest operations, pursuant to an approved
2 WFMP, which meets the requirements of Section 4597.11.

3 (j) "Working forest landowner" means an owner of timberland with less than 15,000 acres who has an
4 approved WFMP and is not primarily engaged in the manufacture of forest products.

Comment [MRD11]: "equal to or less" deleted per Workshop discussion on May 29th.

5 (k) "Working forest management plan" (WFMP) means a management plan for working forest
6 timberlands, with objectives of maintaining, restoring, or creating uneven aged managed timber stand
7 conditions, achieving sustained yield, and promoting forestland stewardship that protects watersheds,
8 fisheries and wildlife habitats, and other important values. Other important values include maintained
9 forest ecosystem processes and services. A WFMP shall not exceed 15,000 acres.

Comment [CDFW2]: From 4597.(a)(5); under the Legislature's findings and declarations.

10 (l) "Working forest timberlands" means timberlands owned by a working forest landowner.

Comment [MRD13]: Language added per Workshop discussion on May 29th.

12 1094.3 WFMP Submittal and Notice of Preparation

13 A WFMP may be submitted with the Department in writing by a person who intends to become a
14 working forest landowner with the long-term objective conducting timber operations through
15 ~~implementation of an uneven aged timber stand and sustained yield through the implementation~~ of a
16 WFMP. The WFMP shall be prepared by a RPF. It shall be public record and shall include all of the
17 specified in 14 CCR §1094.6:

Comment [CDFW4]: "working forest management plan" is already defined and includes "promoting forestland stewardship" in addition to "with the long-term objective of an unevenaged timber stand and sustained yield".

Comment [WU5]: PRC 4597.2

18 (a) A plan shall be submitted by the person(s) who owns the timberland included in the plan.

19 (b) Where the timber is owned by parties other than the ~~landowner~~ timberland owner(s), the ~~landowner~~
20 timberland owner(s) shall give prompt written notice of such plan to those parties.

21 (c) The plan submitter(s) shall prepare and submit to the Director, with the plan, a Notice of Preparation
22 to Harvest Timber (Notice of Preparation).

23 (1) If any proposed plan boundary lies within 300 ft. of any property owned by any person other
24 than the plan submitter(s), or

25 (2) With any plan amendment that changes a plan boundary so that the new boundary lies
26 within 300 ft. of any property owned by any person other than the plan submitter(s), or

1 (3) With any plan amendment that changes the silvicultural method if a Notice of Preparation
2 was required for the plan by condition (1) or (2) above.

3 (d) A Notice of Preparation shall include the following information:

4 (1) The name(s) of the plan submitter(s).

5 (2) The location of the plan area by county, section, township, and range, and the approximate
6 direction and distance to the plan area from the nearest community or well-known landmark.

7 (3) The name of the nearest perennial blue line stream flowing through or downstream from the
8 plan area.

9 (4) The acreage of the WFMP area and the acreage of the working forest timberlands within
10 which timber operations under the WFMP are to be conducted included in the plan.

Comment [CDFW6]: Added to provide clarity.
The WFMP area and working forest timberlands are not necessarily synonymous.

11 (5) The silvicultural method(s) proposed.

12 (6) The estimated earliest date that the Director may approve the plan as he/she has indicated
13 in the WFMP instructions as specified in 14 CCR § 1094.17.

14 (7) A statement that the public may review the plan at the specified CAL FIRE Review Team
15 Office and a reasonable per page copy fee may be set by the Director for additional copies.

16 (e) The person(s) submitting the plan shall furnish to the Department at the time of submission of the
17 plan, a list of all persons, including their mailing addresses, who hold legal or equitable title to property
18 within 300 ft. of the plan boundary. Either a list compiled from the latest equalized assessment roll or a
19 list provided by a title insurance company doing business in California shall be ~~deemed~~ sufficient for
20 compliance with the subsection.

21 (f) The Department shall mail copies of the Notice of Preparation within two working days of receipt of
22 the plan to all persons identified in (e) above.

23 (g) Prior to plan submission, the person submitting the plan shall post a copy of the Notice of
24 Preparation at a conspicuous location that is easily visible to the public and near the plan site.

25 Notwithstanding other Board rules and regulations, the notices required by 14 CCR § 1032.10 of article
26 2.0 shall be completed prior to submission of the WFMP, and within counties with special rules, (14CCR,
27 Subchapter 4, Art. 13, Subchapter 6, Art. 13) the noticing requirements will be the same as for a THP.

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1094.4 Notice of Preparation-Distribution by Director

The Director shall distribute copies of each Notice of Preparation within two working days of receipt to:

- (a) The Office of the County Clerk of the county in which operations are proposed for posting at the customary place for posting environmental affairs.
- (b) The local Unit headquarters for posting.
- (c) At such other locations ~~as~~ the Director ~~may~~ ~~deems~~ desirable and feasible to provide adequate public notice.
- (d) Any additional distribution of the Notice of Preparation required by the rules ~~and regulations~~ of the Board for individual counties.
- ~~(e) A publically available internet database.~~

1094.5 Request for Notification of WFMP or Working Forest Harvest Notice Submission

- (a) Each applicable CAL FIRE Review Team Office shall maintain a list of WFMPs or Working Forest Harvest Notice submitted each day.
- (b) When any person requests a ~~notice of submission of a~~ WFMPs, the Director shall provide the person, free of charge, with a copy of the list of WFMPs or Working Forest Harvest Notices submitted on the date or dates requested. If no specific date is requested, a copy of the lists for the preceding week shall be provided.

Comment [MRD17]: "preparation" deleted and migrated back to original language of "submission". Change made per Workshop discussion on May 29th.

1094.6 Contents of WFMP

The WFMP shall serve ~~four~~ ~~three~~ functions: 1) to provide information the Director needs to determine whether the proposed WFMP conforms to the rules of the Board; 2) ~~to meet the objectives stated in the definition of WFMP;~~ 3) to provide information and direction for timber management so it complies with the rules ~~and regulations~~ of the Board and the management objectives of the landowner; and ~~3) 4) to disclose the potential effects of timber management to the public and to the review team agencies.~~ For the WFMP to serve these functions, it shall, as a minimum, contain the following information:

Comment [CDFW8]: Suggested addition to the list of WFMP functions, recognizing this paragraph was taken from NTMP regulations.

1 (a) Name, address and telephone number of the timberland owner(s) ~~or and~~ designated agent pursuant
2 ~~to 1094.10.~~

Comment [MRD19]: Language added per Workshop discussion on May 29th, 2014.

3 (b) Name, address, and telephone number of the timber owner(s) (if different).

4 (c) Name, address, telephone number, and registration number of RPF who prepared the plan.

5 ~~(d) A description of the plan area within which timber operations are to be conducted. The description~~
6 ~~shall include the following:~~

7 ~~(d) A United States Geological Survey quadrangle map or equivalent, of a scale not less than 2" per mile,~~
8 ~~indicating the location of all streams, the location of all proposed and existing logging truck roads. ~~and~~~~
9 ~~the boundaries of all site I classification timberlands to be stocked in accordance with subdivision (b) of~~
10 ~~Section 4561. In addition this map(s) shall include:~~

11 (1) Boundaries of WFMP management unit(s). ~~Boundaries of management units shall not~~
12 ~~exceed a single ownership which can include, but is not limited to, entities comprised as a single~~
13 ~~ownership of divided interest, natural persons with undivided interests, or a legally established artificial-~~
14 ~~person (such as limited liability companies, corporations, partnerships, or trusts).~~

Comment [MRD110]: Language added per Workshop discussion on May 29th, 2014.

15 (2) Boundaries of yarding (logging) systems, if more than one (1) system is to be used.

16 (3) Location of public roads within the plan area, and private roads appurtenant to the timber
17 operations where such roads are under the ownership or control of the timberland owner and are
18 contiguous with the plan area, and classification of all proposed and existing logging roads as
19 permanent, seasonal, or temporary roads.

20 (4) Probable location of proposed and existing landings in the watercourse and lake protection
21 zone, and landings outside the zone that are greater than 1/4 acre in size or whose construction involves
22 substantial excavation.

23 (5) Location of area(s) of ~~low, moderate,~~ high or extreme erosion hazard ratings.

Comment [MRD111]: Language added per Workshop discussion on May 29th, 2014.

24 (6) Location of all ~~Class I, II, III, or IV waters including, watercourses, lakes and wet meadows and~~
25 ~~other wet areas watercourses with Class I, II, III, or IV waters.~~

Comment [CDFW12]: Revised to provide a consistent set of "waters" to be disclosed; i.e., not just "watercourses".

26 (7) Location of known unstable areas or slides.

1 (8) Location of understocked areas and other areas not normally bearing timber to at least a 20-
2 acre minimum, or as specified in the district rules.

3 (9) Location of boundaries of timber-site classes needed for determination of stocking standards
4 to be applied, ~~down to at least a 2010-acre minimum or as specified in the district rules.~~

Comment [MRD113]: Language deleted per Workshop discussion on May 29th, 2014.

5 (10) The locations and classifications of roads, watercourse crossings, and landings to be
6 abandoned shall be shown.

7 (11) A soils map where available.

8 (12) Location of ~~late S~~successional ~~F~~forest stands or strata

9 (13) Location of unique areas including Coastal Commission Special Treatment Areas or other
10 special treatment areas and locations of State- or federally listed threatened, candidate, and
11 endangered species; rare plants, sensitive species; and species that meet the criteria under Title 14,
12 California Code of Regulations, Section 15380(d) of the California Environmental Quality Act ~~Guidelines.~~

Comment [CDFW14]: This list of species categories is repeated six times in the draft rules. We suggest defining these as "special-status species" under **1094.2 Definitions** instead of repeating this text each time.

13 (14) Location of all existing and proposed permanent watercourse crossing drainage structures,
14 and temporary crossings on Class I and II watercourses on roads.

Comment [MRD115]: Added coma after "structures" and deleted "down to at least 20 acre minimum or as specified in district rules." per Workshop discussion on May 29th, 2014.

15 (15) Locations of road failures on existing roads to be reconstructed.

16 (16) Locations of active erosion control sites.

Comment [MRD116]: Added "Locations of" per Workshop discussion on May 29th, 2014.

17 (17) Location of active erosion sites pursuant 1094.6(e)(8).

Comment [MRD117]: Language added per Workshop discussion on May 29th, 2014.

18 (e) A description of the plan area within which timber operations are to be conducted. The description
19 shall include the following:

20 (1) ~~township, range, and section number(s)~~ and approximate plan acreage.

Comment [CDFW18]: Please check for consistent capitalization.

21 (2) county name(s).

Comment [MRD119]: Added "Locations of" per Workshop discussion on May 29th, 2014.

22 (3) CALWATER v2.2 planning watershed number(s), and

23 (4) The forest district and subdistrict (if any) in which the WFMP is located.

24 (5) A description of present and proposed plan area uses other than timber production.

25 (6) A description by the RPF of the inventory design and standards which, at a minimum, shall

26 include:

1 (A) The baseline conditions found on the WFMP including the future conditions and
2 planning horizon associated with the estimate of LTSY.

3 (B) Describe the design of inventory plots or strips, cruise lines and reference points
4 between plots or strips, that are sufficient to facilitate initial review of the WFMP.

5 (C) The type of projections or models used for projecting growth and yield shall be
6 appropriate for stand conditions and the period of time necessary to estimate achievement of LTSY.

7 (7) A description of the inventory design and timber stand stratification criteria that
8 demonstrates that the inventory supporting the growth and yield calculations used to determine LTSY
9 for the WFMPs meets the following minimum standards:

10 (A) For major stand types or strata, the inventory estimate shall be within 15 percent of
11 the mean at one (1) standard error.

12 (B) For stand or strata that make up greater than 10 percent and less than 25 percent of
13 the WFMP area, the estimate shall be no greater than 25 percent of the mean at one (1)
14 standard error.

15 (C) Inventory estimates and growth and yield shall be projected for the purposes of
16 determining LTSY and volumes available for harvest by stand or strata and aggregated for the
17 area covered by the WFMP. ~~to develop the LTSY estimate.~~ LTSY estimates shall reasonably
18 reflect constraints applicable to the working forest timberlands on forest management
19 activities. Reasonable constraints shall include biologic and economic factors, while accounting
20 for limits on productivity due to constraints imposed from consideration of other forest values,
21 including but not limited to, recreation, watershed, wildlife, range and forage, fisheries, regional
22 economic activity, employment and aesthetic enjoyment.

23 (8) A description and discussion of the methods to be used to avoid significant sediment
24 discharge to ~~watercourses-waters~~ from timber operations. This shall include an erosion control
25 implementation plan that a ~~disclosure-discloses of~~ active erosion sites from roads, skid trails, crossings,
26 or any other structures or sites that have the potential to discharge sediment attributable to timber
27 operations into waters of the state resulting in significant sediment discharge and violation of water

Comment [CDFW20]: Suggest specifying here what parameters are being estimated. Stocking? Basal area? Volume?

Comment [CDFW21]: Redundant?

1 ~~quality requirements and b). an amount deleterious to the beneficial uses of water, a~~The WFMP shall
2 ~~also include an erosion control implementation plan and~~ a schedule to implement erosion control
3 ~~practices that prioritizes correcting significant existing erosion site(s).~~ This subdivision shall not apply to
4 the extent that the RPF provides documentation to the Department that the WFMP is in compliance
5 with similar requirements of other applicable provisions of law.

Comment [MRD122]: Does not include "potential" due to 4597.2 and Committee review of legislative intent during May Committee meeting.

6 (9) Special provisions to protect unique areas, if any, within the WFMP area.

7 (10) A description of the property and planned activities including acres and projected growth,
8 existing stand types, major stand types or strata, its current projected growth by strata, silvicultural
9 applications method(s) to be applied to strata to achieve LTSY, projected timber volumes and tree sizes
10 to be available for harvest, and projected frequencies of harvest.

11 _____ (A) Silvicultural method(s) to be applied during the initial harvest(s), projected future
12 harvest(s) and method(s) used in the projected growth and yield to achieve LTSY.

13 (11) A description of late succession forest stands, including their biological legacies and
14 hardwoods, a map or narrative description of their locations in the plan area, their acreage and their
15 composition and structure and how the total acreage and functionality of these stands and -of this type
16 of habitat will be maintained and/or enhanced across the plan area under a constraint of no net loss.

17 Nothing in this requirement shall be interpreted to preclude active management on any given acre of an
18 approved plan if the management is conducted in a manner that maintains or enhances the overall
19 acreage of late succession forest stands that existed in the plan area upon initial plan approval. An
20 exception to the no net loss constraint may be granted through major amendment in the event of a
21 catastrophic loss due to emergency factors such as wildfire, insect, and disease activity. The description
22 shall also include the following:

23 (A) Measures for the Rretention ~~measures and recruitment of for~~ existing and future
24 late succession forest stands and biological legacies such as snags, trees with cavities or basal
25 hollows, and down logs, and ~~address~~ how management of those stands and legacies shall be
26 managed over time appropriate with the forest type, climate, and landowner's forest fire fuels,
27 and wildlife and other WFMP management objectives.

1 (B) Hardwood tree species and how they will be managed over time.

2 ~~(11) Late succession forest stand types or strata shall be mapped.~~

3 (12) Disclosure of the locations with the biological assessment area of state- or federally listed
4 threatened, candidate, and endangered species; ~~or~~ rare plant and sensitive species; and species that
5 meet the criteria under Title 14, California Code of Regulations, Section 15380(d) of the California
6 Environmental Quality Act Guidelines; ~~or animal species located within the biological assessment area,~~
7 their status and habitats; through what efforts they were located; ~~;~~ take avoidance methodologies; ~~;~~
8 enforceable protection measures for species and habitats in the WFMP area and its vicinity where
9 timber operations would likely impact them; ~~;~~ and how forest management will maintain species and
10 habitats within the WFMP ~~these~~ over time.

11 (13) A description of the following for each management unit:

12 (A) Acres by stand or strata and estimated growth and yield for each planned harvest
13 entry covering the period of time the LSY plan establishes as necessary to meet growth and
14 yield objectives. The growth and yield estimates may be based on weighted average of yield for
15 the stand types or strata within the area included in the management unit.

16 (B) Yarding methods to be used.

17 (14) Management units shall be mapped.

18 (15) For LSY projections, pursuant to 14 CCR 1094.6(e)(6), that project a reduction, over 100-
19 year planning horizon or shorter planning horizon until growth and yield are balanced, in quadratic
20 mean diameter of trees greater than 12 inches in diameter or a reduced level of inventory for a major
21 stand type or for a stand or strata that make up greater than 10 percent and less than 25 percent of the
22 WFMP area, an assessment shall be included that does all of the following:

23 (A) Addresses state- or federally listed threatened, candidate, and endangered species;
24 rare plant and sensitive species; species that meet the criteria under Title 14, California Code of
25 Regulations, Section 15380(d) of the California Environmental Quality Act ~~candidate, threatened,~~
26 endangered, and sensitive species; and other fish and wildlife species that timber operations
27 could adversely impact by potential changes to habitat.

Comment [CDFW23]: CDFW recognizes the references to biological legacies and hardwood trees pertain to where they occur within late succession forest stands. The statute and these proposed regulations appear silent with respect of disclosure and management of these important habitat elements outside of late successional stands, with the exception of what is stated under PRC Section 4597.2(i)(2)(A)

1 (B) Addresses species habitat needs utilizing the "WHR system" described in "A Guide to
2 Wildlife Habitats in California," California Department of Fish and Wildlife, 1988, or comparable
3 typing system approved by the Director after consultation with the California Department of
4 Fish and Wildlife.

Comment [MRD124]: Language added per
Workshop discussion on May 29th, 2014.

5 (C) Addresses constraints to timber management, the impact of the availability and
6 distribution of habitats ~~in on~~ the ~~WFMP ownership-area~~ and within the cumulative impacts
7 assessment area identified in the plan in relation to the harvest schedule, and the impacts of the
8 planned management activities utilizing the existing habitat as the baseline for comparison.

9 (D) Discusses and includes feasible measures planned to avoid or by other means
10 mitigate potentially significant adverse impacts on fish or wildlife. Mitigation measures, which
11 can include, but are is- not limited to,- recruitment or retention of large down logs greater than
12 16 inches in diameter and 20 feet in length, retention of trees with structural features such as
13 basal hollows, cavities, large limbs, or broken tops, retention of hardwoods, and retention or
14 recruitment of snags greater than 24 inches in diameter and 16 feet in height.

15 (16) A certification by the RPF preparing the plan that the RPF or a designee has personally
16 inspected the plan area and has clearly explained to the working forest landowner(s) that the plan is a
17 long-term commitment that may require ongoing investments, including inventory sampling, species
18 inventories or surveys and road maintenance, for the purpose of managing the plan.

19 ~~(16) Any other information the board requires by regulation to meet its rules and the standards~~
20 ~~of this chapter.~~

21 (17) The WFMP shall describe a future schedule of inventory sampling and analysis of LTSY,
22 which shall consider:

23 (A) Site class, projected growth and yield and harvest(s).

24 (B) Original projections or model calibration and accuracy.

25 (C) Episodic events including disease and drought caused tree mortality, windthrow, fire
26 and reforestation.

1 | (18) A description of any cultural or historical resources known to exist with a description of
2 | possible impacts and protection methods to be used during timber operations.

3 | (19) Whether a timberland conversion certificate is in effect, its date of expiration, and its
4 | identification number.

5 | (20) Whether a timber harvesting plan is on file with the Department for any part of the plan
6 | area and if a Report of Satisfactory Stocking has been issued by the Department (show plan number).

7 | (21) A description of potential impacts ~~to,~~ and protections, for the quality and beneficial uses of
8 | ~~water.s within watercourses, lakes, and wet areas.~~

Comment [MRD125]: Added "to" after impacts and deleted language per Workshop discussion on May 29th, 2014.

9 | (22) A description of how the site preparation standards and stocking standards will be met.

10 | (23) A description of slash treatment for site preparation, fire protection and pest protection
11 | consideration.

12 | (24) A description of the cumulative effects analysis with supporting information, including
13 | impact of projected harvesting over the life of the plan.

14 | ~~(25) A copy of the forest practice regulations in effect at the time of submission or provide~~
15 | ~~payment to CALFIRE for the cost of a current California Forest Practice Rulebook at the time of Plan~~
16 | ~~approval.~~

Comment [MRD126]: Language deleted per Workshop discussion on May 29th, 2014 and replace with new (25) below.

17 | (25) The Department shall make available a copy of the California Forest Practice Regulations in
18 | effect at the time of WFMP approval.

19 | (26) Explanation and justification for, and specific measures to be used for, tractor operations on
20 | unstable areas, on slopes over 65%, and on areas where slopes average over 50% and the EHR is high or
21 | extreme.

22 | (27) Explanation and justification for tractor operations in areas designated for cable yarding.

23 | (28) Winter period operating plan where ~~appropriate~~proposed.

24 | (29) Explanation and justification for ~~locating and using e-of- landings, roads and skid trails~~
25 | ~~within in watercourses, lakes, marshes, or wet meadows and other wet areas and within their adjacent~~
26 | ~~WLPZs, equipment exclusion zones or equipment limitation zones, protection zones, , and other wet~~
27 | ~~areas as ladings, roads, or skid trails.~~

Comment [MRD127]: Language restructured per Workshop discussion on May 29th, 2014.

1 (30) Explanation and justification of any in-lieu or alternative practices for watercourse and lake
2 protection.

3 (31) Explanation of alternatives to standard rules for harvesting and erosion control.

4 (32) Explanation and justification for landings that exceed the maximum size specified in the
5 rules.

6 (33) A description of soils, surface erosion hazard, mass wasting erosion hazard, and erosion
7 control measures.

8 (34) A description of the existing and proposed road system to be used in implementation of the
9 WFMP, including the diameter of any permanent culverts and the dimensions of any bridges on Class I,
10 II, or III watercourses.

Comment [MRD128]: Language added per Workshop discussion on May 29th, 2014.

12 1094.7 Working Forest Harvest Notice

13 The ~~working forest landowner~~ designated agent pursuant to 14 CCR § 1094.10 who owns, leases, or
14 otherwise controls or operates on all or any portion of any timberland within the boundaries of an
15 approved WFMP, and who plans to harvest any of the timber during a given year, shall file a Working
16 Forest Harvest Notice with the Department in writing. A Working Forest Harvest Notice shall be filed
17 prior to the harvesting of any timber and shall be effective for a maximum of one (1) year from the date
18 of filing. ~~if the~~ The designated agent identified pursuant to 14 CCR § 1094.10 person who files the
19 Working Forest Harvest Notice is not the owner of the timberland, the person filing the notice shall
20 notify the timberland owner(s) by certified mail that the Working Forest Harvest Notice has been
21 submitted and shall certify that mailing to the Department.

Comment [MRD129]: Language added per Workshop discussion on May 29th, 2014.

Comment [WU30]: 4597.11

22 Notwithstanding any other provisions of this ~~chapter~~ article, if a RPF certifies by written declaration, on
23 behalf of the timber owner(s) or operator(s), that the Working Forest Harvest Notice conforms to and
24 meets the requirements of the approved WFMP under which it is filed, timber operations may
25 commence immediately. If the notice has been filed by mailing, operations may commence three days
26 after the Working Forest Harvest Notice has been mailed.

Comment [MRD131]: Language added per Workshop discussion on May 29th, 2014.

Comment [WU32]: 4597.15

1 **1094.8 Working Forest Harvest Notice Content**

2 The Working Forest Harvest Notice shall be a public record, including Department posting on a publically
3 available internet database. All necessary amendments shall be approved by the Director prior to
4 submission of a Working Forest Harvest Notice. ~~and The Working Forest Harvest Notice~~ shall include all
5 of the following information:

Comment [MRD133]: Language added per Workshop discussion on May 29th, 2014.

6 (a) Name, address, and telephone number of the timberland owner(s) or designated agent.

Comment [MRD134]: The use of the word "agent" here may cause confusion with the submitter(s) agent. Possible to insert "of the submitter pursuant to 1094.10.

7 (b) Name, address, and telephone number of the timber owner(s)(if different)

8 (c) Name, address, ~~and~~ telephone number ~~and registration number~~ of the licensed timber operator
9 conducting operations as per the Working Forest Harvest Notice.

10 (d) Name, ~~and~~ address, ~~telephone number~~ and registration number of the RPF preparing the

Comment [MRD135]: Language added per Workshop discussion on May 29th, 2014.

11 WFMP Working Forest Harvest Notice and the name, address, and registration number of the RPF
12 responsible pursuant to 14 CCR § 1035(e) and (f) if different.

Comment [MRD136]: Language added per Workshop discussion on May 29th, 2014.

13 (e) A ~~current~~ description of the land on which the work is proposed to be done including the
14 identification number of the WFMP.

Comment [MRD137]: Language added per Workshop discussion on May 29th, 2014.

15 (f) A statement that no archaeological sites have been discovered in the harvest area since the approval
16 of the WFMP.

17 (g) A statement that ~~state- or federally listed threatened, candidate, and endangered species; rare~~
18 plants and sensitive species; and species that meet the criteria under Title 14 California Code of
19 Regulations, Section 15380(d) of the California Environmental Quality Act Guidelines ~~state or federally~~
20 listed rare, threatened, candidate, or endangered plant or animal species have not been discovered

21 incidentally or during species surveys in the logging harvest area and elsewhere in the biological
22 assessment area in locations where timber operations under the WFMP could impact these species
23 since the approval of the WFMP. After the initial year the plan is approved, prior to submitting the

Comment [CDFW38]: This addresses potential impacts to such species situated outside of the WFMP area but close enough to where timber operations could result in significant impacts or take.

24 Working Forest Harvest Notice, a review shall be conducted of the California Natural Diversity Database
25 or other public databases acceptable to the Department after consultation with the California
26 Department of Fish and Wildlife for any species in the categories listed above as threatened,
27 endangered, candidate, or rare, or species that meet the criteria of endangered or rare as provided in 14

1 ~~CCR § 15380-~~ When a Working Forest Harvest Notice is filed, and after the initial year the plan is
2 approved, it shall comply with the following:

3 (1) ~~Information on~~ Documented occurrences obtained from a review of public and readily
4 available sources, and from confirmed incidental observations and through surveys, of state- or federally
5 listed threatened, candidate, and endangered species; rare plant and sensitive species; and species that
6 meet the criteria under Title 14, California Code of Regulations, Section 15380(d) of the California
7 Environmental Quality Act Guidelines of species state or federally listed as threatened, endangered,
8 candidate, or rare within the biological assessment area, and outside the area, identified in the Working
9 Forest Harvest Notice not addressed in the approved plan shall be submitted to the Director as a minor
10 deviation concurrently with the filing of a Working Forest Harvest Notice.

11
12 (2) Occurrences of State- or federally listed threatened, candidate, and endangered species; rare
13 plant and sensitive species; and species that meet the criteria under Title 14, California Code of
14 Regulations, Section 15380(d) of the California Environmental Quality Act Guidelines species that are
15 state or federally listed as threatened, endangered, candidate, or rare, discovered incidentally or
16 through surveys inside or in proximity to the area identified in the Working Forest Harvest Notice not
17 addressed in the approved plan shall be submitted to the Director as an amendment proposing a
18 substantial deviation to the plan, prior to filing a Working Forest Harvest Notice. The amendment shall
19 contain take avoidance and other mitigation measures developed in consultation with the Department and
20 the appropriate jurisdictional agency (i.e., California Department of Fish and Wildlife, United States Fish and
21 Wildlife Service, and/or National Marine Fisheries Service) if no such information is currently contained
22 within the approved plan or incidental take authorization provided by the appropriate jurisdictional
23 agency.

Comment [CDFW39]: Close enough to where timber operations within the area could impact species situated outside the area.

24
25 (h) A statement that, based on a field evaluation, there are no physical environmental changes in the
26 Working Forest Harvest Notice area that are so significant as to require any amendment of the WFMP.

1 (i) A certification by the RPF that states either of the following:

2 (1) The Working Forest Harvest Notice as carried out will protect the beneficial uses of water,
3 soil stability, forest productivity, and wildlife as provided by the rules and regulations of the Board and
4 other applicable provisions of law.

5 (2) Compliance with the rules and regulations of the Board and the provisions of this ~~chapter~~
6 article that were in effect at the time the WFMP was approved will not result in any significant
7 degradation to the beneficial uses of water, soil stability, forest productivity, or wildlife ~~and shall protect~~
8 all listed species. This paragraph shall only apply if the RPF certifies that adherence to current or
9 modified rules and regulations of the Board would cause unreasonable additional expense to the
10 working forest landowner(s).

Comment [MRD140]: Based on Department recommendation and Committee discussion in May.

11 (j) Special provisions to protect unique areas, if any, within the area of timber operations.

12 (k) The expected dates of commencement and completion of timber operations during the year.

13 (l) A statement that the Working Forest Harvest Notice conforms to the provisions of the approved
14 WFMP. If any aspects of the proposed operation are less protective than the current forest practices
15 rules, an explanation of the deviation and how resource values will be adequately protected.

16 (m) An updated erosion control implementation plan that ~~reflects on~~ erosion control mitigation
17 measures for the harvest area and any appurtenant roads if conditions have changed since the ~~Working~~
18 Forest Management Plan-WFMP was approved and a certification from the RPF that no additional
19 listings of water bodies to the Section 303(d) of the Clean Water Act (33 U.S.C. Sec. 1313(d)) list have
20 occurred on the lands of the plan.

21 ~~(n) Any other information the Board provides by regulation to meet its rules and the standards of this~~
22 ~~chapter and other applicable provisions of law. flaw.~~

23
24 (n) In addition, the Working Forest Harvest Notice shall include:

25 (1) The type of ~~heavy~~ equipment to be used for yarding or road construction.

1 (2) Instructions on felling, yarding, road construction or reconstructions, hauling, erosion control
2 work, site preparation, erosion control maintenance, winter operations, watercourse protection
3 measures ~~and~~ slash treatment ~~and~~ road maintenance.

4 (3) A verification that the LTO has been briefed by the RPF on the content of the notice and
5 intentions of implementation to comply with the management plan.

6 (o) On a USGS quadrangle or equivalent map, of a scale not less than 2" to the mile, the following
7 information pertinent to the Working Forest Harvest Notice shall be clearly provided. Additional maps
8 may be required to show specific details, and may be planimetric. ~~Color coding maps shall not be used~~
9 ~~unless additional black and white maps are provided to clearly show the same features. Color coding~~
10 ~~shall not be used.~~ A legend shall be included indicating the meaning of the symbols used. See the district
11 rules for the appropriate minimum mapping acreages. ~~Maps shall be updated to reflect current field~~
12 ~~conditions.~~

Comment [MRD141]: Language added per Workshop discussion on May 29th, 2014.

13 (1) Boundaries of area(s) ~~to be harvested~~ where timber operations are to occur under the
14 Working Forest Harvest Notice.

15 (2) Boundaries of areas for specified regeneration methods, intermediate treatments, special
16 harvesting methods, and alternative prescriptions that are to be applied.

17 (3) Boundaries of areas for specified yarding (logging) systems, if more than one (1) system is to
18 be used.

19 (4) Location of public roads within the Working Forest Harvest Notice area, and private roads
20 appurtenant to the timber operations where such roads are under the ownership or control of the
21 timberland owner(s), and are contiguous with the Notice area, and ~~current~~ classification of ~~all~~ proposed
22 and existing logging roads as permanent, seasonal, or temporary roads.

Comment [MRD142]: Language added per Workshop discussion on May 29th, 2014.

23 (5) Location of proposed and existing landings in the watercourse and lake protection zone, and
24 landings outside the zone that are greater than 1/4 acre in size or whose construction involves
25 substantial excavation.

26 (6) ~~Location of~~ Road failures on existing roads to be reconstructed.

Comment [MRD143]: Language added per Workshop discussion on May 29th, 2014.

1 (7) Location of all existing and proposed watercourse crossings on logging and tractor roads. ~~if a~~
2 ~~permanent culvert is involved, its minimum diameter shall be provided~~ For permanent culverts and
3 ~~bridges, the design, types and dimensions (e.g. minimum diameter, length, and width) shall be~~
4 ~~disclosed..~~

5 (8) Designate areas of low, moderate, high or extreme erosion hazard rating, if more than one
6 (1).

7 (9) Location of watercourse with Class I, II, III or IV waters.

8 (10) Location of known unstable areas or slides.

9 (11) Location of unique areas.

10 (p) The Department shall make available a copy of the California Forest Practice Regulations, or portions
11 thereof, that apply to each filed Working Forest Harvest Notice.

Comment [MRD144]: Language added per Workshop discussion on May 29th, 2014.

12

13 1094.9 WFMP Professional Judgment

14 Where the rules or these regulations provide for the exercise of professional judgment by the RPF or the
15 Director, if there is a disagreement and if requested by either party, they shall confer on the WFMP area
16 during the WFMP review inspection and reach agreement, if possible, on the conditions and standards
17 to be included in the plan.

18

19 1094.10 Plan Submitter(s) Responsibility

20 The plan submitter(s), or successor in interest, shall:

21 (a) Ensure that an RPF conducts any activities which require an RPF.

22 (b) Provide the RPF preparing the plan or amendments with complete and correct information regarding
23 pertinent legal rights to, interests in, and responsibilities for land, timber, and access as these affect the
24 planning and conduct of timber operations.

25 (c) Identify an agent that represents plan submitter(s).

Comment [MRD145]: Language added per Workshop discussion on May 29th, 2014.

26 (d) Within five (5) working days of change in designated agent responsibilities, file with the Director a
27 notice which identifies a newly designated agent.

Comment [MRD146]: Language added per Workshop discussion on May 29th, 2014.

- 1 (e) Sign the WFMP certifying knowledge of the plan contents and the requirements of this section.
- 2 (f) Within five (5) working days of change in RPF responsibilities for WFMP implementation or
3 substitution of another RPF, file with the Director a notice which states the RPF's name and registration
4 number, address, and subsequent responsibilities for any RPF required field work, amendment
5 preparation, or operation supervision. ~~Corporations need not file notification because the RPF of record~~
6 ~~on each document is the responsible person.~~
- 7 (g) Provide a copy of the approved WFMP and Working Forest Harvest Notice to the LTO.
- 8 (h) Notify the Director prior to commencement of site preparation operations. Receipt of a burning
9 permit is sufficient notice.
- 10 (i) Provide the RPF preparing the Working Forest Harvest Notice and LTO each a copy of the current
11 WFMP and subsequent amendments.
- 12 (j) Any change in LTO responsibilities shall be provided to the Director in writing.
- 13 (h) Provide the RPF preparing the Working Forest Harvest Notice and LTO each a copy of a current Lake
14 or Streambed Alteration Agreement, as appropriate, pursuant to Section 1600 et seq. of the Fish and
15 Game Code that covers activities subject to this jurisdiction for activities covered under the Working
16 Forest Harvest Notice.
- 17
- 18 **1094.11 Registered Professional Forester Responsibility**
- 19 (a) Upon submission of a WFMP, the RPF who prepares and signs a plan is responsible for the accuracy
20 and completeness of its contents.
- 21 (b) The RPF preparing the plan shall: 1) Inform the Director and landowner(s) by phone or letter if he or
22 she will be attending the review inspection; and 2) Provide the landowner(s) a copy of the rules and
23 regulations of the Board in effect on the date of WFMP approval.
- 24 (c) The RPF preparing the Notice of Preparation shall list or describe in the Notice of Preparation any
25 work which will be performed by the RPF or supervised designee. This may include, but is not limited

Comment [MRD147]: Language deleted per Workshop discussion on May 29th, 2014.

1 to, field work in identifying watercourse and lake protection zones or special treatment areas, marking
2 trees, or other activities. The RPF is only responsible for the activities required of the RPF by the rules
3 and regulations of the Board and those activities for which he or she is employed.

4 (d) The RPF preparing the Notice of Preparation shall, in writing, inform the plan submitter(s) of their
5 responsibility pursuant to Section [1094.9] of [this] Article [6.5] for compliance with the requirements of
6 the Act and, where applicable, Board rules and regulations regarding site preparation, stocking, and
7 maintenance of roads, landings, and erosion control facilities. [NOTE: CAL FIRE will be working with the
8 Board, Barclays and OAL to correct the language in this Section (d).]

9 (e)The RPF who prepares the WFMP or prepares the Working Forest Harvest Notice, or any other RPF
10 who is employed by the owner(s) or operator(s), shall report to the owner or operator if there are
11 deviations from the WFMP that, in the RPFs judgment, threaten the attainment of the resources
12 conservation standards of the WFMP.

Comment [WU48]: 4597.13

13
14 **1094.12 Interaction Between RPF and LTO on Working Forest Harvest Notice**

15 From the start of the preparation of the Working Forest Harvest Notice preparation but before
16 commencement of operations, the responsible RPF shall meet with either the LTO, or supervised
17 designee, who will be on the ground and directly responsible for the harvesting operation. The meeting
18 shall be on site if requested by either the RPF or LTO. If any amendment is incorporated to the Working
19 Forest Harvest Notice by an RPF after the first meeting, that RPF or supervised designee shall comply
20 with the intent of this section by explaining relevant changes to the LTO; if requested by either the RPF
21 or LTO, another on-site meeting shall take place. **Written documentation of LTO/RPF meetings required**
22 **under this provision shall be submitted to the Department.** The intent of any such meeting is to assure
23 that the LTO:

24 (a) Is advised of any sensitive on-site conditions requiring special care during operations.

25 (b) Is advised regarding the intent and applicable provisions of the approved Working Forest Harvest
26 Notice including amendments.

27

1 1094.13 Licensed Timber Operator Responsibilities

2 Each Licensed Timber Operator shall:

3 (a) Inform the responsible RPF and plan submitter(s), either in writing or orally, of any site conditions
4 which in the LTO's opinion prevent implementation of the Working Forest Harvest Notice.

5 (b) Keep a copy of the applicable approved Working Forest Harvest Notice and amendments available
6 for reference at the site of active timber operations.

7 (c) Comply with all provisions of the Act, Board rules and regulations, the applicable Working Forest
8 Harvest Notice and any approved amendments.

9

10 1094.14 Notification of Commencement of Operations

11 For each Working Forest Harvest Notice submitted, within fifteen (15) days before, and not later than
12 the day of the start up of a timber operations, the submitter(s) of the Working Forest Harvest Notice,
13 unless the WFMP identifies another person as responsible, shall notify CAL FIRE of the start of timber
14 operations. The notification, by telephone or by mail, shall be directed to the appropriate Unit
15 Headquarters, Forest Practice Inspector, or other designated personnel.

16

17 1094.15 WFMP Deviations

18 ~~(a) "Minor deviations" means any change, minor in scope, in a plan which can reasonably be presumed~~
19 ~~not to make a significant change in the conduct of timber operations and which can reasonably be~~
20 ~~expected not to significantly adversely affect timberland productivity or values relating to soil, water~~
21 ~~quality, watershed, wildlife, fisheries, range and forage, recreation, and aesthetic enjoyment or to result~~
22 ~~in a violation of the applicable water quality control plan.~~

Comment [MRD149]: Language moved to 1094.24 per Workshop discussion on May 29th, 2014.

23 ~~(b) All other changes are presumed to be substantial deviations because they could significantly affect~~
24 ~~the conduct of timber operations and potentially could have a significant adverse effect on timber~~
25 ~~productivity or values relating to soil, water quality, watershed, wildlife, fisheries, range and forage,~~
26 ~~recreation, and aesthetic enjoyment. Such actions include, but are not limited to:~~

Comment [MRD150]: Language moved to 1094.23 per Workshop discussion on May 29th, 2014.

- 1 (1) Change in location of timber harvesting operations or enlargement of the area or volume
2 planned to be cut.
- 3 (2) Change in the silvicultural method and cutting system on any portion of the plan area.
4 (3) Change in type or location of logging (yarding) system or basic type of equipment.
5 (4) Change in location, nature or increase in length of proposed logging roads incorporating one
6 or more of the following criteria:
- 7 (A) Any road in a Watercourse or Lake Protection Zone or where sidecast will extend
8 into the Watercourse or Lake Protection Zone;
- 9 (B) Any road located in an extreme Erosion Hazard Rating area;
10 (C) Any road where the average side slope exceeds 50%;
11 (D) Any road where unstable areas, active soil movement, or slide areas must be
12 traversed;
- 13 (E) Any increase in gradient allowed by the District Rules as an exception and not
14 provided for in the original plan;
- 15 (F) Any road extension of more than 600 ft. (182.9m);
- 16 (5) Any use of existing roads not shown in the original plan when reconstruction work to allow for
17 vehicle travel will be substantial. Substantial work on an existing road means more than minor repair
18 and dressing of the travel surface and removal of vegetation to allow for vehicle passage;
- 19 (6) Use of any roads not shown in the plan which would affect the key habitat of rare or endangered
20 species or other critical wildlife habitat;
- 21 (7) Enlargement of landings where such enlargement was not justified in the plan;
22 (8) Any change of operation in, or designation of, the Watercourse or Lake Protection Zone;
23 (9) Any downgrading of watercourse classification;
24 (10) A change to winter operation where summer operation was previously specified;

25
26 **1094.15 Notice of WFMP Filing**

1 (a) The Director shall prepare a notice of filing which shall contain the basic information contained in the
2 Notice of Preparation pursuant to 14 CCR § 1094.3, plus the assigned timber management plan number.

3 (b) Within two working days of the date the plan is filed, the Director shall transmit copies of the Notice
4 of Filing to:

5 (1) The person submitting the plan.

6 (2) The office of the County Clerk of the county in which the operations are proposed. The

7 Notice of Filing shall be posted at the normal place for posting environmental notices.

8 (3) The local Unit headquarters for posting.

9 (4) At such other locations as the Director may deem desirable and feasible to provide adequate
10 public notice.

11 (5) All public agencies having custodial responsibility for lands within 300 ft. of the WFMP
12 boundary.

13 (6) An Internet-based notification

14 (7) To any person who requests notifications in writing.

Comment [WU51]: Language from 4597.3

15 (c) Notice of Filing may be transmitted through internet-based e-mail.

16
17 **1094.16 Agency and Public Review for the WFMP**

Comment [WU52]: May have to add language from 4597 (5)(b). To be discussed.

18 Upon receipt of the proposed WFMP, the Department shall place the proposed plan, or a true copy of
19 the proposed plan, in a location or on an Internet Web site available for public inspection in the county
20 in which timber operations are proposed under the plan. For the purpose of interdisciplinary review, the
21 Department shall also transmit a copy to the Department of Conservation, the Department of Fish and
22 Wildlife, the appropriate California regional water quality control board, the county planning agency,
23 and all other agencies having jurisdiction by law over natural resources affected by the plan. The
24 Department shall invite, consider, and respond in writing to comments received from public agencies to
25 which the plan has been transmitted and shall consult with those agencies at their request.

Comment [WU53]: Inserted from 4597.5

26 (a) The Director shall also transmit a copy of any specific plan to any person who has made a written
27 request therefore.

1 (b) The Department shall bill such persons for the cost of providing such copies and such monies shall
2 be paid to the Department.

3 (c) The Director shall take the following steps when significant new information is added to the plan
4 during the course of plan review or during the Director's Determination period.

5 (1) When significant changes are limited to a few sections or portions of the plan, the
6 Department need only recirculate the sections or portions that have been modified.

7 (2) When significant changes are not limited to a few sections of the plan, the Department shall
8 recirculate the entire plan.

9 (3) The Department shall prepare a Letter of Recirculation which shall include:

10 (A) A brief description of the proposed project and its location. Such information shall
11 include:

12 (1) The Plan number and County.

13 (2) The names of the timberland owner(s) and the plan submitter(s).

14 (3) The location of the plan area by county, section, township, and range.

15 (4) The name of the nearest major watercourse or CAL-WatershedWATER v2.2 ID.

16 (5) The acres proposed to be harvested.

17 (6) The silvicultural systems to be used.

18 (7) A summary of changes made to the plan and a brief description of significant new
19 information contained in the plan.

20 (8) Clarification as to whether the entire plan or only those recirculated portions of the
21 plan, are open for public comment.

22 (9) The starting and ending dates for the review period during which public comments
23 will be received.

24 (10) The date, time, and place of any scheduled public meetings when known by the
25 lead agency at the time of notice.

26 (11) The address where copies of the plan record is available for public review.

1 (d) The Letter of Recirculation shall be sent to all review team members; any agency, person, or
2 organization that commented on the plan; and all landowners who received a Notice of Intent (or
3 Preparation).

4 (e) The Department need only respond to:

5 (1) Comments received during the initial circulation period that relate to sections or portions of
6 the plan that were not revised and recirculated, and

7 (2) Comments received during the recirculation period that relate to the sections or portions of
8 the plan that were revised and recirculated.

9 (f) The Department shall include with the Notice of Submissions Filing, a Notice of Recirculation pursuant
10 to 14 CCR § 1032.9.

11

12 **1094.17 Director's Determination**

13 The Department shall provide a minimum time period for public comment, starting from the date of the
14 receipt of a WFMP, as follows:

Comment [MRD154]: Language added per Workshop discussion on May 29th, 2014.
Comment [WU55]: 4597.6

15 (a) Ninety (90) days for a WFMP for less than 5,000 acres.

16 (b) One hundred ten (110) days for a WFMP for between 5,000 and 9,999 less than 10,000 acres.

17 (c) One hundred thirty days (130) for a WFMP for between 10,000 and 14,999 15,000 acres.

Comment [WU56]: Intent and addition of time should state 130 to 140 days. Discuss in committee.
Department Comment #25: 1094.18 (a) (1)(2)(3) should be considered a minimum period and indicated that period may be longer. Committee should review entire comment in Department letter.

18 (d) Before a WFMP may be approved, all of the following requirements shall be met:

19 (1) Within thirty (30) working days of the receipt of a WFMP, or within forty (40) working days of
20 the receipt of a plan to which a road management plan is appended, the Department shall determine if
21 the plan is accurate, complete, and in proper order, and if so, the plan shall be filed. An unfiled plan
22 shall be returned to the applicant with an explanation that includes provisions for resubmitting the plan.

Comment [MRD157]: Language added per Workshop discussion on May 29th, 2014.
Comment [SLF 2nd58]: Need to insert rule citation intended. (14 CCR 1093)
Comment [WU59]: 4597.6

23 (2) The initial inspection shall be initiated within twenty (20) working days from the date of filing
24 of the WFMP, and completed no more than thirty (30) working days from the date of filing.

25 (3) Upon completion of the initial inspection, the Department shall have up to forty five (45)
26 working days to conduct the final interagency review of the plan.

1 | (4) The public comment period shall end **twenty (20)** working days after the completion of the
2 | final interagency review of the plan or until the requirement in subdivision (a) is met, whichever is
3 | greater.

4 | (5) After the final interagency review and public comment period has ended, the Department
5 | shall have up to **thirty (30)** working days to review the public input, to consider recommendations and
6 | mitigation measures of other agencies, to respond in writing to the issues raised, and to determine if the
7 | plan is in conformance with the applicable rules **and regulations** adopted by the Board and other
8 | applicable provisions of law.

9 | (e) If after final interagency review the Director determines that the plan is not in conformance with the
10 | rules and regulations of the Board or this **chapterarticle**, the Director shall deny and return the plan,
11 | stating the reasons for the denial and advising the person submitting the plan of the person's right to a
12 | hearing before the Board.

13 | (1) If the Director does not act within the time periods provided in paragraphs (1) through (5) in
14 | subdivision (b), the Director and the working forest landowner(s) submitting the WFMP shall negotiate
15 | and mutually agree upon a longer period for the Director to review the plan. If a longer period cannot be
16 | mutually agreed upon, the WFMP shall be deemed denied and returned to the working forest
17 | landowner(s) submitting the plan.

18 | (2) A working forest landowner(s) to whom a plan is denied pursuant to subdivision (c) or (d)
19 | may request, within **thirty (30)** working days from the receipt of the plan, a public hearing before the
20 | Board. The Board shall schedule a public hearing to review the plan to determine if the plan is in
21 | conformance with the rules and regulations of the Board and this **chapterarticle**.

22 | (f) Board action shall take place within **thirty (30)** working days from the filing of the appeal, or a longer
23 | period mutually agreed upon by the board and the person filing the appeal.

24 | (g) If the Director's decision to deny the plan is overturned by the Board, the Board shall prepare
25 | findings and its rationale for overturning the decision, and return the plan to the Department for
26 | approval by the Director.

Comment [WU60]: 4597.6

1 | (h) If the plan is not approved on appeal to the Board, the Director, within **ten (10)** working days of
2 | Board action, shall advise the plan submitter(s) regarding changes needed that would achieve
3 | compliance with this **chapter-article** and other applicable provisions of the law. The plan submitter(s)
4 | shall have **forty five (45)** working days from the date of the notification letter, or longer, if mutually
5 | agreeable to the Department and the plan submitter to revise the plan to bring it into full conformance
6 | with the rules and regulations of the Board and this **chapterarticle**. Upon receipt of the information
7 | requested of the plan submitter(s), the Department shall recirculate the plan and reopen the public
8 | comment period for **thirty (30)** working days. Prior to determining whether to approve the proposed
9 | revised plan, the Director shall have **thirty (30)** working days to review public input and consider
10 | recommendations and mitigation measures of other agencies, and to respond in writing to issues raised.

11

12 | **1094.18 Review Teams to be Established to Review Timber Management Plan**

13 | Interdisciplinary review teams shall be established by the Director to review plans and assist the Director
14 | in the evaluation of proposed timber management plan(s) and its impacts on the environment. The
15 | Review Team composition, function, tasks and procedures shall be the same as those described in 14
16 | CCR § 1037.5.

17

18 | **1094.19 Nonconformance of WFMP**

19 | If the Director determines that a plan is not in conformance with the rules **and regulations** of the Board
20 | the plan shall be returned in accordance with 14 CCR § 1054. In addition, the Director shall state any
21 | changes and reasonable conditions that in the Director's professional judgment are needed to bring the
22 | plan into conformance with the applicable rules of the Board and offer to confer with the RPF in order to
23 | reach agreement on the conditions necessary to bring the plan into conformance.

24

25 | **1094.20 Conformance of WFMP**

1 If the Director determines that the plan is in conformance with the rules of the Board, then the person
2 submitting the plan shall be notified timber operations thereunder may only commence after
3 submission of a Working Forest Harvest Notice as prescribed in 14 CCR § 1094.7.

4
5 **1094.21 Notice of Conformance of the WFMP**

6 Within ten (10) working days of the date a plan is found in conformance, the Director shall transmit a
7 notice thereof to the agencies and persons referred to in 14 CCR § 1094.16 and for posting at the places
8 named in 14 CCR § 1094.15. A copy of the notice shall be filed with the Secretary of Resources. The
9 notice of conformance shall include a written response of the Director to significant environmental
10 points raised during the evaluation process.

11
12 **1094.22 Public Inspection**

13 Notices of Conformance, pursuant to 14 CCR § 1094.22 and notices of approval by the Board, pursuant
14 to 14 CCR § 1054, shall be available for public inspection, and a list of such notices shall be posted on a
15 weekly basis in the Office of the Resources Agency. Each such list shall remain posted for a period of
16 thirty (30) days.

17
18 **1094.23 Amendment Substantial Deviation**

19 The working forest landowner may submit a proposed amendment-substantial deviation to the
20 approved plan and shall not take any action that substantially deviates, as defined by the Board, from
21 the approved plan until the amendment-substantial deviation has been filed with the Director and the
22 Director has determined, after completion of the interagency review and public comment period, either
23 of the following:

24 (a) The amendment-substantial deviation is in compliance with the current rules and regulations of the
25 Board and the provisions of this chapter.

Comment [MRD161]: Landowner, Plan Submitter, RPF, or Agent of Plan Submitter?

Comment [WU62]: 4597.7

1 (b) The ~~amendment-substantial deviation~~ is in compliance with the rules and regulations of the Board
2 and the provisions of this chapter that were in effect at the time the WFMP was approved. The Director
3 may only make this determination if the RPF explains, justifies, and certifies both of the following:

4 (1) The adherence to new or modified rules and regulations of the Board would cause
5 unreasonable additional expense to the working forest landowner(s).

6 (2) Compliance with the rules and regulations of the Board and the provisions of this chapter
7 that were in effect at the time the WFMP was approved will not result in any significant degradation to
8 the beneficial uses of water, soil stability, forest productivity, or wildlife.

9 (c) Review timelines for substantial deviations of WFMPs shall conform to the direction provided in
10 Section 4582.7, except for amendments that add acreage covered by the original WFMP that exceeds 10
11 percent or 500 acres, whichever is greater. Amendments that add acreage in excess of 10 percent or
12 500 acres shall be reviewed pursuant to the procedures specified in Section 4597.6.

Comment [MRD163]: Department Comment #27: Subsection (c) should be under a section regarding the review process of an amendment and not under a section regarding determination of an amendment.

13 (d) The following changes are presumed to be substantial deviations because they could significantly
14 affect the conduct of timber operations and potentially could have a significant adverse effect on timber
15 productivity or values relating to soil, water quality, watershed, wildlife, fisheries, range and forage,
16 recreation, and aesthetic enjoyment. Such actions include, but are not limited to:

17 (1) Change in location of timber harvesting operations or enlargement of the area or volume
18 planned to be cut.

19 (2) Change in the silvicultural method and cutting system on any portion of the plan area.

20 (3) Change in type or location of logging (yarding) system or basic type of equipment.

21 (4) Change in location, nature or increase in length of proposed logging roads incorporating one
22 or more of the following criteria:

23 (A) Any road in a Watercourse or Lake Protection Zone or where sidecast will extend
24 into the Watercourse or Lake Protection Zone.

25 (B) Any road located in an extreme Erosion Hazard Rating area.

26 (C) Any road where the average side slope exceeds 50%.

1 (D) Any road where unstable areas, active soil movement, or slide areas must be
2 traversed.

3 (E) Any increase in gradient allowed by the District Rules as an exception and not
4 provided for in the original plan.

5 (F) Any road extension of more than 600 ft. (182.9m).

6 (5) Any use of existing roads not shown in the original plan when reconstruction work to allow
7 for vehicle travel will be substantial. Substantial work on an existing road means more than minor repair
8 and dressing of the travel surface and removal of vegetation to allow for vehicle passage.

9 (6) Use of any roads not shown in the plan which would affect the key habitat of rare or
10 endangered species or other critical wildlife habitat.

11 (7) Enlargement of landings where such enlargement was not justified in the plan.

12 (8) Any change of operation within, or designation of, Watercourse or Lake Protection Zones.

13 (9) Any downgrading of watercourse classification.

14 (10) A change to winter operations where summer operations were previously specified.

15
16 **1094.24 Report of Minor Deviations**

17 (a) "Minor deviations" means any change, minor in scope, in a plan which can reasonably be presumed
18 not to make a significant change in the conduct of timber operations and which can reasonably be
19 expected not to significantly adversely affect timberland productivity or values relating to soil, water
20 quality, watershed, wildlife, fisheries, range and forage, recreation, and aesthetic enjoyment or to result
21 in a violation of the applicable water quality control plan.

22 (b) Minor deviations may be undertaken by the person who submitted the WFMP or Working Forest
23 Harvest Notice without submission of an amendment to the plan and shall be reported immediately in
24 writing to the Director. Actions described in 14 CCR § 1094.23 which are normally presumed to be
25 substantial deviations may, in a given instance, be minor deviations. Actions listed as substantial
26 deviations in 14 CCR § 1094.23 but considered to be minor by the submitter(s), may be undertaken only
27 if the person who submitted the plan submits the proposed deviation in writing to the Director for

Comment [MRD164]: Submitters, agent, RPF?

1 review and receives approval. Approval shall be given if the Director determines that the proposed
2 minor deviation conforms to the standards provided in 14 CCR § 1094.24(a). The Director shall have five
3 (5) working days to act on the application. If the Director or the representative of the Director does not
4 act within five (5) working days of receipt of such a deviation, timber operations may commence
5 pursuant to such amendment.

6 (c) Newly adopted Board rules or regulations may be incorporated into an approved WFMP through a
7 minor deviation.

Comment [MRD165]: Language added per Workshop discussion on May 29th, 2014.

8 **1094.25 Report of completion of work described in WFMP; Partial completion report**

Comment [MRD166]: Language added per Workshop discussion on May 29th, 2014.

9 (a) Within one (1) month after completion of the work described in the Working Forest Harvest
10 Notice, excluding work for stocking, site preparation, or maintenance of drainage facilities and soil
11 stabilization treatments on skid trails, roads, and landings after the plan period, a report shall be filed by
12 the timber owner(s) or the owner's agent with the Department that all work, except stocking, site
13 preparation, or maintenance of drainage facilities and soil stabilization treatments, has been completed.

Comment [MRD167]: This may be confusing given that the term "agent" has also been applied to the Plan Submitter(s) as well.

14 (b) If all of the work described in the plan has not been completed, a report may be filed annually with
15 respect to a portion of the area covered by the plan which has been completed. The portion completed
16 shall be adequately identified on a map submitted with the report.

17
18 **1094.26 Inspection of completed work**

Comment [MRD168]: Language added per Workshop discussion on May 29th, 2014.

19 Within six (6) months of the receipt of the work completion report specified in 14 CCR § 1094.25, the
20 Director shall determine, by inspection, whether the work described in the report has been properly
21 completed in conformity with the rules and regulations of the Board and the standards of this article. If
22 the work has been so completed, the Director shall issue a report of satisfactory completion of the work.
23 If not, the Director shall take such corrective action as he or she determines to be appropriate in
24 accordance with Article 8 (commencing with Section 4601).

25
26 **1094.27 Stocking Report and Minimum Stocking Standards**

Comment [MRD169]: Language added per Workshop discussion on May 29th, 2014.

27 Within five (5) years after the completion of timber operations or as otherwise specified in the rules, a

1 report of stocking on the entire area logged under the a Working Forest Harvest Notice and shown on a
2 revised map shall be filed with the Director by the timber owner(s) or the agent thereof. If stocking is
3 required to be met upon completion of timber operations the stocking report shall be submitted within
4 six (6) months of the completion of operations.

Comment [MRD170]: This may be confusing given that the term "agent" has also been applied to the Plan Submitter(s) as well.

5 The minimum acceptable stocking standards on logged areas which were acceptably stocked prior to
6 harvest are those specified in the Coast, Northern, and Southern Forest District rules. If not otherwise
7 specified, the following minimum standards apply:

8 (a) On Site I timberlands as defined by the Board, the average residual basal area, measured in stems
9 one inch or larger in diameter shall be at least 85 square feet per acre; or on Site II or lower shall be at
10 least 50 sq. ft. per acre; or

11 (b) The area contains an average point count of 300 per acre on Site I, II, and III lands or 150 on Site IV
12 and V lands as specified in PRC 4561.

13 See 14 CCR § 912.7, 932.7 and 952.7 for information for the point count values of various size trees and
14 for determining how sprouts will be counted toward meeting stocking requirements.

15
16 **1094.28 Inspection of Stocking**

Comment [MRD171]: Language added per Workshop discussion on May 29th, 2014.

17 Within six (6) months of the receipt of the stocking report, the Director shall determine, by inspection,
18 whether the stocking has been properly completed. If so, he shall issue a report of satisfactory
19 completion of stocking. If not, he shall take such corrective action as he deems appropriate in
20 accordance with the provisions of Article 8 (commencing with Section 4601) of this chapter.

21
22 **1094.29 Five-~~(5)~~-year review of WFMP**

23 (a) The Director shall prepare a Notice of Five-year Review that shall include a statement of the purpose of
24 the five-year review, a five-year review summary of the WFMP, the assigned WFMP number and the date the
25 five-year review is to commence.

Comment [CDFW72]: This is the initial suggested change to this section to provide structure to the five-year review process. Note time frames are not provided here nor below. See next comment.

26 (b) At least X days before the date a five-year review is to commence, the Director shall
27 provide the public, in writing or on its Internet Web site, the Notice of Five-year Review.
28

1
2 (ac) For an approved WFMP, the Director shall prepare a five (5) year summary and convene a meeting
3 with the interdisciplinary review team shall be the same as those described in pursuant to 14 CCR §
4 1037.5, every five (5) years to review the plan's administrative record, information obtained pursuant to
5 14 CCR § 1094.29(b), subdivision (b), and any other information relevant to verify current conditions and
6 completed or current operation(s) that operations have been conducted in accordance with the plan
7 and applicable laws and regulations. Participation by review team agencies shall be at the discretion of
8 each agency. If at this meeting a member of the review team determines that a field inspection is
9 necessary to verify that operations have been conducted in accordance with the plan and applicable
10 laws and regulations, then a field inspection may be conducted.

Comment [MRD173]: Language added per Workshop discussion on May 29th, 2014.

Comment [WU74]: 4597.12

Comment [MRD175]: Language deleted per Workshop discussion on May 29th, 2014.

11 (bd) For the purposes of 14 CCR § 1094.29(a) subdivision (a), each five (5) year review shall allow the
12 review team to analyze information including the number of Working Forest Harvest Notices, the
13 acreage operated under each Working Forest Harvest Notice, the violations received, and the volume
14 harvested in relation to projections of harvest in the WFMP. The review team shall also analyze any
15 significant episodic events occurring during the previous five (5) years including disease and drought
16 caused tree mortality, windthrow, and wildfire and landslides. If the Department or a review team
17 agency does not have direct access to information needed for the WFMP summary, the Department
18 may require the landowner(s) to provide this information.

Comment [WU76]: The Dept shall develop a plan summary, for the purposes of subdivision a, that shall include: Discuss in committee.

19 ~~(1) The 5-year review shall include a certification by an RPF that states that, based on a field~~
20 ~~review of harvest(s) and completion(s), the WFMP and any Working Forest Harvest Notices are in~~
21 ~~compliance with WFMP~~

22 ~~(2) The 5-year review shall review the Working Forest Harvest Notices compliance with the~~
23 ~~WFMP and,~~

24 ~~(1) Only if violations are received, or the 5-year review indicates potentially significant impact to~~
25 ~~public trust resources may occur from continuance of the WFMP, or if CAL FIRE is presented with a fair~~
26 ~~argument that a project may have a significant effect on the environment, will the Department shall~~
27 ~~provide written comments that a review of the WFMP content and procedures may be necessary.~~

Comment [MRD177]: Language deleted per Workshop discussion on May 29th, 2014.

Comment [WU78]: Fair argument language is taken from CEQA Guideline 15064(f)(1). Review of 1051.1(d) (MTHP) may be useful to develop language for this portion of WFMP.

Comment [CDFW79]: Section 4597.12 appears to provide that a five-year review is for the review team and the public to understand and verify that operations under the WFMP have been conducted in accordance with the plan and applicable laws and regulations. This seems to narrow the circumstances under which the five-year review would occur and appears inconsistent with the statute.

1 (21) The Department shall have thirty (30) working days to conduct the five (5) year review and
2 determine if the WFMP is operations under Working Forest Harvest Notice were conducted in
3 compliance with the content, objectives and procedures in the WFMP and applicable laws and
4 regulations and notify the working forest landowner(s).

5 (2) Within X working days of the five-year review commencement, an inspection of the WFMP
6 area if determined necessary by the review team shall be initiated and completed no more than Y
7 working days from the five-year review commencement. Upon completion of the inspection, the
8 Department shall have Z working days to conduct the final interagency five-year review of the plan and
9 make findings as to whether operations under the WFMP have been in accordance with the plan and
10 applicable laws and regulations. The Department shall post its findings within this period in the same
11 manner as provided under Section 1094.26(b).

12 (3) The public shall have AA working days after posting of the Department's five-year review
13 findings to provide additional information relevant to the purposes of the five-year review.

14 (4) After additional information from the public has been received within this period, the
15 Department shall have up to BB working days to review the public input, to consider recommendations
16 and information from the review team agencies and to determine whether operations under the WFMP
17 have been in accordance with the plan and applicable laws and regulations, and to post the
18 Department's final determination.

20
21 (ee) For the purpose of allowing the public to monitor a WFMP, the Department shall provide the public,
22 in writing or on its Internet Web site, notice of each five (5) year review and a copy of the plan summary.
23 The public may submit to the review team additional information relevant to the purpose of the five (5)
24 year review and the review team may consider this information when conducting its review.

25 (fd) This section does not authorize the public disclosure of proprietary information without first
26 obtaining the landowner's consent. Proprietary information shall be treated consistent with PRC 21160.

Comment [CDFW80]: Basis for 30 days?

The proposed changes here attempt to provide structure to the five-year review process. The underlying interest appears to include to inform the public of the five-year review (through some sort of notice or communication), provide the review team agencies time to review the record, coordinate on a field review (if needed), provide CalFire time to compile and prepare the results, provide the public an opportunity to review and submit additional information and provide CalFire time to review, incorporate findings and post them. The steps could include :

- 1) CalFire posts Notice of Five-year review and WFMP summary (summary actually prepared before commencement).
- 2) Field Inspection initiated after CalFire and the other review team agencies have reviewed the record and at least one of these agencies concludes inspection is warranted.
- 3) Inspection is completed .
- 4) Completion of interagency review, CalFire posts its findings.
- 5) Completion of period of public input after findings posted).
- 6) CalFire posts final determination after reviewing the combined input from review team agencies and public.

Assuming the above steps are warranted and meet legislative intent, CDFW does not see how all of the above could be completed in 30 days.

Comment [MRD181]: Language added per Workshop discussion on May 29th, 2014.

Comment [MRD182]: Language added per Workshop discussion on May 29th, 2014.

1 **1094.30 Change of Ownership Timberland Owner(s)**

2 In the event of a change of ownership of the land described in the WFMP, the working forest
3 landowner(s) shall notify the new timber landowner timberland owner(s) of the existence of the plan
4 and the need to notify the Department of the new landowner's timberland owner(s) intent regarding
5 assumption of the plan. Notification shall be in writing with a copy to the Department of the new
6 landowner's timberland owner(s) intent regarding assumption of the plan. The new landowner
7 timberland owner(s) shall have one (1) year from the date of the receipt of the notification by the
8 Department to notify the Department in writing and the designated agent of his or her intent regarding
9 assumption of the plan. If the Department does not receive notification within this period, the plan shall
10 expire one (1) year from the date the new landowner timberland owner(s) is advised by the Department
11 of the necessity to assume the plan. If the new timberland owner(s) does not assume the
12 responsibilities as plan submitter(s), then an RPF or agent pursuant to 14 CCR § 1094.10 shall submit an
13 amendment to remove that portion of the plan.

Comment [WU83]: 4597.9

14 After a plan is found in conformance with the rules and regulations of the Board, the Director may file a
15 Notice of Stocking Requirements on the property with the recorder of the county within which the plan
16 is located if any area logged under a Working Forest Harvest Notice has not had a report of satisfactory
17 stocking issued by the Director.

Comment [MRD184]: Language added per Workshop discussion on May 29th, 2014.

19 **1094.31 Cancellation of Plans**

20 The working forest landowner(s) may cancel the WFMP by submitting a written notice to the
21 Department. Once timber operations have commenced pursuant to a Working Forest Harvest Notice,
22 cancellation is not effective on land covered by the notice until a report of satisfactory completion has
23 been issued pursuant to Sections 4585, 4586, and 4587.

24 (a) In conjunction with the five-year review or under any other circumstance, if the Department
25 determines that timber operations have not been conducted in accordance with the WFMP, the
26 objectives of uneven aged management and sustained yield and of promoting forestland stewardship
27 that protects watersheds, fisheries and wildlife habitats, and other important values are not being met

Comment [WU85]: 4597.16

Comment [CDFW86]: This addition reflects the stated objectives for WFMPs in the definition.

1 | by a working forest landowner(s), or there are other persistent violations detected that are not being
2 | corrected, the Department shall cancel a previously approved WFMP and any further timber operations
3 | under the plan shall be terminated. In making a determination to cancel a plan, the Department may
4 | cite the findings of a review conducted pursuant to Section 4597.12. Cancellation of the plan may be
5 | appealed by the plan submitter(s) or landowner(s) utilizing the process prescribed in paragraph (1) of
6 | subdivision (e) of Section 4597.6.

7 |
8 | **1094.32 ~~Expansion of Plans~~ Transition or Expansion of Plans**

9 | ~~If a~~ landowner with a NTMP ~~or a WFMP with less than 2,500 acres of timberland expands his or her~~
10 | ~~total timberland ownership to 2,500 or more acres of timberland, the landowner~~ may transition into a
11 | ~~WFMP for more than 2,500 acres of timberland through an amendment to the plan. Operations may~~
12 | ~~continue under an approved NTMP for a period of one (1) year after filing an amendment to transition~~
13 | ~~the approved NTMP to a WFMP. The RPF responsible for preparation of the amendment to transition~~
14 | ~~an approved NTMP to a WFMP shall review the contents of this article including, but not limited to,~~
15 | ~~sections 1094.1 – 1094.3, 1094.6, 1094.10 -1094.12, 1094.23, 1094.24 and 1094.32 to assure that all~~
16 | ~~required information is included and addressed in the proposed amendment prior to submittal to the~~
17 | ~~Director.~~

Comment [WU87]: 4597.17

18 | ~~24 The Board shall adopt regulations that establish this amendment process.~~
19 | ~~A landowner with an existing WFMP may expand the acreage of the WFMP pursuant to the process~~
20 | ~~described in 1094.23.~~

Comment [MRD188]: Regulations need to be developed.

21 |
22 | **1094.33 Safe Harbor agreement**

23 | A participating landowner(s), in conjunction with the preparation of an application for a WFMP filed
24 | with the Department, may also seek approval of a Safe Harbor Agreement from the Department of Fish
25 | and Wildlife, pursuant to Article 3.7 (commencing with Section 2089.2) of Chapter 1.5 of Division 3 of
26 | the Fish and Game Code. All review costs associated with the Safe Harbor Agreement approval process

Comment [WU89]: 4597.18

1 incurred by the Department of Fish and Wildlife pursuant to this section shall be paid from the fund
2 created in Section 4629.3.

3

4 **1094.34 State Restoration Projects** Notwithstanding any other law, if a person with a WFMP applies for
5 state restoration grant funding for a restoration project that has a significant public benefit, the
6 application shall not be summarily denied on the basis that the project is a required condition of the
7 harvesting plan.

8

9 **1094.35 Southern Subdistrict**

10 This WFMP shall not apply to the Southern Subdistrict of the Coast Forest District, as defined in Section
11 14 CCR § 895.1.

12

Comment [WU90]: Deleted NTMP from 4597.19. Will have to eventually amend NTMP language to include this provision.

**DEPARTMENT OF FORESTRY AND FIRE PROTECTION**

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April 8, 2014

Mr. Stuart Farber
Chairman, Management Committee
State Board of Forestry and Fire Protection
P. O. Box 944246
Sacramento, CA 94244-2460

Re: Working Forest Management Plan (WFMP) Comments

Dear Mr. Farber:

The California Department of Forestry and Fire Protection (CAL FIRE) has conducted an initial review of the draft rule package for the implementation of AB 904 for the "Working Forest Management Plan" to be added to Title 14, California Code of Regulations (CCR) beginning as Section 1094. Although the Department has provided some comments regarding certain minor corrections and suggested language regarding clarity that are included in the April 3, 2014 draft, there will likely be additional comments as the proposed rule language develops. Some of the Department's other concerns in regards to the April 3, 2014 draft include:

- 1) How to handle multiple landowners and plan submitters? The definition 1094.2 (j) defines the "Working forest landowner" as "*owner of timberland with less than 15,000 acres who has an approved WFMP and is not primarily engaged in the manufacture of forest products*". The Department will need clarity on how to handle certain situations, such as:
 - a. Are all owners also plan submitters as stated by 1094.3 (a)?
 - b. Does the reference of 15,000 acres apply to each landowner or collectively?
 - c. Would different owner acres only be combined when there is an undivided interest, and full ownerships require its own WFMP?
 - d. What assurance will CAL FIRE have that harvesting is scheduled, planned, and coordinated in conformance with the RPF's MSP demonstration.

There have been situations in regards to NTMPs in the past, especially as time moves forward when the transfer of ownership occurs through sale or inheritance, and the new owners do not have the same initial objectives.

- 2) Subsection 1094.3 (e) (page 4, line 7) requires notification to persons with property interest within 300 feet of the "plan boundary", which as defined would include all of the appurtenant roads. Considering a 15,000 acre plan, the noticing to all with equitable title within the logging area may have considerable ramifications versus just noticing those within 300 feet of the "logging area".

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- 3) Subsection 1094.3 (f) requires Department notification, and large plans may greatly increase mailing responsibilities.
 - a. Considering Department staffing it may be appropriate to have this responsibility be the Plan Submitter for the proper notification.
 - b. An alternative may be to allow widespread notification through newsprint.
- 4) Section 1094.6 provides three functions, including providing notification to the Department, to provide direction for complying with the rules of the Board, and to disclose potential effects to the public. Should requirements also be included to meet other California laws and regulation such as notification for DFW 1611 projects and to the Department of Water Resources?
- 5) Subsections 1094.6 (d) and (f) requires a “description of the plan area” for mapping (page 5, line 18), and contents of the WFMP (page 6, line 19), which would include the appurtenant roads versus just the logging area, and may include a much larger area. What specific descriptions of appurtenant roads would be required?
- 6) Paragraph 1094.6 (f) (7) refers to potential sediment discharge in an amount “deleterious” to the beneficial uses of water (page 7, line 16), which would be considered a water quality violation. Instead of “deleterious” it may be better to use “significant sediment discharge” to be consistent with the proposed road rules definition.
- 7) Paragraph 1094.6 (g) (10) allows for management of late succession forest stands in a manner that maintains or enhances the overall acreage. This appears to be unclear if maintaining and enhancing would be through retaining late succession forest trees or habitat.
- 8) Subparagraph 1094.6 (g) (10) (B) requires a description of how hardwood trees will be managed (page 8, line 10). Would clarification be necessary in regards to size or age class?
- 9) Paragraph 1094.6 (g) (11) requires disclosure of listed species and how forest management will maintain “these” over time (page 8, line 15), but is unclear if this would be for protection of species, habitats, or both.
- 10) Subparagraph 1094.6 (g) (14) (B) allows for a “comparable typing system” (page 9, line 5) addressing species habitat needs, and perhaps DFW’s white paper addressing WHR 6 should be included as an appropriate reference.
- 11) Section 1094.7 allows (page 11, line 9) the person submitting a Working Forest Harvest Notice to notify the timberland owners by certified mail of the submittal. To assure that the submitter of the Notice has the proper authority the Department would need written authorization signed by all of the appropriate Timberland Owners.
- 12) Subsection 1094.8 (e) for the contents of the Notice (page 12, line 1) requires information of the RPF who prepared the WFMP, but should also provide the information of the supervising RPF for the Notice and the conduct of operations.

- 13) Subsections 1094.8 (f) and (g) need to require certification by the RPF preparing the Notice.
- 14) Paragraph 1094.8 (i) (2) would provide an exception (page 13, line 3) of adherence to certain current or modified rules when it causes an unreasonable expense. This language should be compatible with PRC § 4583, and clarify that it does not apply for protection of listed species.
- 15) Paragraph 1094.8 (m) (2) provides LTO instructions in the Notice and should also include "road maintenance".
- 16) Subsection 1094.8 (n) states (page 13, line 27) "Color coding shall not be used." It is proposed that this could be revised to state "Color coded maps shall not be used unless additional black and white maps are provided to clearly show the same features."
- 17) Paragraph 1094.8 (n) (1) states (page 13, line 8) "Boundaries of area to be harvested." It is proposed that this could be revised to state "Logging area boundary proposed for harvest under the Notice."
- 18) Section 1094.10 describes the Plan Submitter responsibilities, and the concern would be if there are more than on plan submitters.
 - a. Are all plan submitters responsible?
 - b. Should there be one Plan Submitter who is authorized by all of the timberland owners?
- 19) Subsection 1094.10 (f) requires notification to the Director (page 14, line 15) prior to commencement of site preparation operations, which may be state notification to the "appropriate review team office."
- 20) Section 1094.12 requires the RPF and LTO to meet (page 16, line 16), and written notification to the Department may necessary to assure compliance and to provide clarification if available.
- 21) Section 1094.13 provides the LTO responsibilities, which should include notification to the Department of any change in the LTO responsibilities or status.
- 22) Paragraph 1094.16 (b) (7) requires notification in writing (page 19, line 14) to any person who requests to be notified of the filing of a Notice. To provide for efficient notification it would be beneficial to include noticing by e-mail.
- 23) Subsection 1094.17 (a) includes a provision of providing copies of a WFMP to such persons (page 19, line 25), although this doesn't make sense without the deleted provision similar to the NTMP rules that state "The Director shall also transmit a copy of any specific plan to any person who has made a written request therefore."
- 24) Paragraph 1094.17 (b) (2) indicates recirculation of the "entire plan" (page 20, line 6) when the significant changes are not limited to a few sections. For efficiency and clarity, it may be better to just recirculate the "pertinent sections of the plan".

- 25) Section 1094.18 provides for a time period for public comment (page 21, line 10) starting from the receipt of the plan as per PRC § 4597.6. Considering Section 1094.18 (d) there is:
- a. 30 working days (a minimum of 6 weeks or 42 days) to file;
 - b. 30 working days (a minimum of 42 days) to complete the inspection;
 - c. 45 working days (a minimum of 63 days) to complete the interagency review;
 - d. 20 working days (a minimum of 28 days) of additional comment period.

Since Subsection 1094.18 (a) is based on calendar days from the date of receipt, and Subsection 1094.18 (b) is based on working days, it appears that there may be up to a maximum of 175 calendar days, not including holidays that public comment may be open for any size WFMP. Paragraphs 1094.18 (a) (1), (2), and (3) describes the length of public comment period, and should be considered a minimum period and indicate that the period may be a longer.

- 26) Paragraph 1094.18 (d) (2) requires that an inspection (page 21, line 21) be completed no more than 30 working days from the filing date. This could only be 10 working days (two weeks) from the initial inspection, and is not a realistic time frame for an interagency field review for a large WFMP up to 15,000 acres.
- 27) Section 1094.24 provides for Director's determination (page 24, line 14) if either of the flowing conditions are met referring to Subsections 1094.24 (a) or (b). Subsection 1094.24 (c) should be under a section regarding the review process of an amendment and not under a section regarding the determination of an amendment.
- 28) Paragraph 1094.26 (b) (3) indicates (page 26, line 12) the Department will conduct a "review" of the WFMP. Clarification appears to be necessary to what constitutes "a review" in regards to portions or a full review of the entire plan.

Thank you for the opportunity to provide comments regarding this important rule package. I look forward to continue working with the Committee on developing this comprehensive rule package for the implementation of AB 904.

Sincerely;

William D. Solinsky, RPF #2297
Forester III, THP Administration



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March 2, 2015

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

Re: Working Forest Management Plan

Dear Chairman Gilles:

The California Department of Forestry and Fire Protection (CAL FIRE) has reviewed the proposed regulation language included in the 45-day notice for the Working Forest Management Plan (WFMP) scheduled for hearing March 4, 2015.

The Working Forest Management Plan is a comprehensive rule package that requires a considerable amount of review to assure that the implementation meets the objectives of Assembly Bill (AB) 904 for resource protection, uneven-aged management and sustained yield. The bill also requires adoption of regulations allowing CAL FIRE to determine if a submitted WFMP is accurate, complete, in proper order and includes clear and enforceable provisions to meet the intent of the Forest Practices Act.

Please consider the comments included in *Attachment A* during your deliberations on the proposed regulations intended to implement the statutory requirements of Public Resources Code Article 7.7 - Working Forest Management Plan.

Thank you for providing the Department an opportunity to comment on this important rule package. A representative from CAL FIRE will be at the hearing should any questions arise related to this proposed change to the regulations.

Sincerely,

A handwritten signature in blue ink that reads "Duane Shintaku".

DUANE SHINTAKU
Deputy Director
Resource Management

Attachment

Attachment A

**CAL FIRE Comments
on the
Working Forest Management Plan
March 2, 2015**

CAL FIRE provides the following comments for consideration by the Board of Forestry and Fire Protection during their deliberations on the proposed regulations intended to implement the statutory requirements of public Resources Code Article 7.7 - Working Forest Management Plan.

1. CAL FIRE recommends adding the abbreviation “**WFMP Working Forest Management Plan**” to 14 CCR § 895.
2. Page 3, Line 14 (ref. 14 CCR § 895.1(d)): CAL FIRE recommends changing the Public Resources Code (PRC) reference from PRC § 4597 to PRC § 4597.1 to explicitly reference the definition of a Working Forest Management Plan rather than referencing the section that primarily focuses on the legislative intent for Article 7.7 as a whole.
3. Page 7, Line 1 (ref. 14 CCR § 1090.26): CAL FIRE does not support adoption of 14 CCR § 1090.26(d). Adoption of this subsection, in combination with 14 CCR § 1090.26(b), effectively results in transferring to CAL FIRE the responsibility for notifying the new landowners of their responsibilities with regard to the NTMP. CAL FIRE recommends that failure of the transferring timberland owner to notify the acquiring timberland owner of the existence of the NTMP and their responsibilities, including stocking requirements, should be considered a misdemeanor pursuant to PRC § 4601. Such disclosures should remain the responsibility of the seller and the changes proposed by the Board under 14 CCR § 1090.26 do not appear to be consistent with the intent of the legislation with regard to the landowners responsibilities to provide notice. CAL FIRE recommends the Board not adopt the new language proposed under subsection (b) and recommends the following change to subsection (d):

“(d) A violation of this subsection by a timberland owner ~~does not~~ constitutes a misdemeanor ~~crime~~ pursuant to PRC § 4601.”
4. Page 7, Lines 11 through 14 (ref 14 CCR § 1090.28): CAL FIRE recommends that the Board not adopt this new section of regulations. This is primarily a restatement of the statute under PRC § 4597.19 and it is not necessary to transfer this language to regulation. This language is irrelevant to the review, approval and enforcement of the provisions of a NTMP and it is not necessary to include it in regulation.
5. Page 8, Lines 13 through 18 (ref. 14 CCR § 1094.1): This section of the regulations includes language that is not clear and could result in the submission of incorrect information to inappropriate locations. As indicated in *Comment 2* (above), CAL FIRE recommends changing the Public Resources Code (PRC) reference from PRC § 4597 to PRC § 4597.1 to explicitly reference the definitions of Working Forest Management Plan and Working Forest Harvest Notice rather than referencing the section that primarily focuses on the legislative intent for Article 7.7 as a whole. Additionally, the language on line 17 stating in part, “. . . having jurisdiction over timber operations . . .” could be confusing and result in plans and/or notices being submitted to the wrong CAL FIRE office.

Furthermore, the language on line 18 states that the WFMP or the Working Forest Harvest Notice shall contain the information specified in 14 CCR §§ 1094.6 and 1094.8; however, 14 CCR § 1094.6 is only pertinent to the WFMP and 14 CCR § 1094.8 only refers to the contents of the Working Forest Harvest Notice. CAL FIRE recommends the following changes to the proposed regulations:

"The Working Forest Management Plan (WFMP) and ~~or~~ Working Forest Harvest Notice for proposed timber operations, as defined under PRC § 4597.1, pursuant to 4597 et seq., shall be submitted in writing to the Director at the appropriate CAL FIRE Review Team Office specified under 14 CCR § 1032, having jurisdiction for the timber operations, and shall contain at a minimum the information specified in 14 CCR §§ 1094.6 and or 1094.8 as appropriate."

6. Page 9, Lines 3 and 4 (ref. 14 CCR § 1094.2(a)): CAL FIRE believes the definition of "Designated Agent" could be misconstrued to mean the Designated Agent has broad authority to act on behalf of the plan submitter(s) wherever there is a reference to plan submitter(s) in the rules. CAL FIRE does not believe the Board has legislative authority to delegate the legislated responsibilities of the plan submitter(s) to another person. While CAL FIRE supports the use of a single point of contact (e.g., a Designated Agent) for many matters associated with the WFMP, the regulations must be clear that the responsibilities of this 'agent' are restricted to only those specified in the regulations. Furthermore, it must be clear in the plan that all of the Working Forest landowners have signed and approved the authorization of the Designated Agent. CAL FIRE recommends the Board consider the following changes to this definition:

"Designated Agent' means a person granted sole authority through written certification of all by the Working Forest Landowner(s) designated in a submitted or approved WFMP, to conduct those activities specifically assigned to a designated agent in the Rules act on behalf of the plan submitter(s).

7. Page 11, Line 11 (ref. 14 CCR § 1094.3 and 14 CCR § 1094.29(e)): CAL FIRE believes the Board should address more specifically the information required to be included in the WFMP and the Five-Year Review that should be considered proprietary information. The new regulations state under 14 CCR § 1094.3 that the ". . . WFMP shall be prepared by a RPF, shall be public record . . ." [emphasis added], but 14 CCR § 1094.29 (e) on page 47, line 17 states in regard to the Five-Year Review; "This section does not authorize the public disclosure of proprietary information . . .". It is clear the Board and the Legislature intended some of the information, but not all the information, to be available to the public for review. However, the Board's rules do not indicate which parts of the WFMP should be considered proprietary and only reference proprietary information in regard to the Five-Year review. CAL FIRE recommends the Board make clear the information required to be submitted for both the WFMP and the Five-Year Review that CAL FIRE should treat as proprietary information.
8. Page 11, Lines 24 and 25 (ref. 14 CCR § 1094.3(d)(1)): A Designated Agent can neither prepare nor submit a WFMP or Notice of Preparation. Additionally, a Designated Agent is not necessarily required to be identified until after a WFMP is approved (ref. 14 CCR § 1094.10(C) and (d)). Furthermore, CAL FIRE believes plan submitters do not have the authority to delegate their legislated responsibilities to the Designated Agent (reference Comment 6 above). Lastly, it is unclear why a Designated Agent would be listed on the Notice of Preparation without any additional contact information, since they are not

necessarily associated with ownership of the timberland. Therefore, CAL FIRE recommends the reference to a Designated Agent under subsection (1) be deleted.

9. Page 12, Line 16 (ref. 14 CCR § 1094.3(e)): The requirements to prepare a 'Notice of Preparation' apply equally to a WFMP and a substantial deviation to a WFMP. When proposing an enlargement of the WFMP plan area, it should be clear in the regulations that all property owners within 300 ft. of the WFMP area, including the area covered by the substantial deviation, be provided notice. CAL FIRE recommends the following change to this section of the regulations for clarification:

"(e) The person(s) submitting the plan shall furnish to the Department . . . a list of all persons . . . within 300 ft. of the entire plan boundary."

10. Page 14, Line 14 (ref. 14 CCR § 1094.6(a)): The proposed regulations require the contents of the WFMP to include the name of the Designated Agent; however, such a person is not necessarily required at the time of WFMP submission (ref. *Comments 6 and 8* above). CAL FIRE recommends the Board revise the proposed regulations to insert a new subsection (b) that would state:

"(b) Name, address and telephone number of the Designated Agent if known at the time of WFMP submission."

11. Page 14, Line 15 (ref. 14 CCR § 1094.6(b)): CAL FIRE recommends that subsection (b) be revised for clarity to state: "Name, address, and telephone number of the timber owner(s) (if different than the timberland owner(s))."

12. Page 14, Line 25 (ref. 14 CCR § 1094.6(d)): The regulations require the contents of the WFMP to include a description of the silvicultural method(s) to be applied during the initial harvest (ref. 14 CCR § 1094.6(h)(1)). To facilitate the review of a WFMP, CAL FIRE recommends the mapping requirements be revised so that the following new subsection (2) be inserted in the 'Contents' requirements:

"(2) Boundaries of proposed silviculture prescriptions to be applied during the initial entry."

13. Page 16, Line 20 (ref. 14 CCR § 1094(g)): The proposed rule language refers to growth and yield calculations used to determine LTSY by volume; however, no unit of measure is given. Since the California Board of Equalization uses the Scribner board foot system, CAL FIRE recommends referencing this as an appropriate form of measurement for conifer species. CAL FIRE recommends the Board consider referencing cubic feet for hardwood species.

14. Page 17, Line 2 (ref. 14 CCR § 1094.6(g)(3)): This section of the proposed regulations requires that inventory estimates of growth and yield be provided. CAL FIRE recommends that a stand or stock table indicating the tree diameter distribution including total heights be provided to support the inventory estimates. In addition, an inventory stand or strata summary table should be included indicating the: 1) the acreage; 2) number of measured inventory samples or plots; 3) corresponding site class; 4) average conifer and hardwood basal area density; 5) average conifer and hardwood volume per acre; 6) average conifer and hardwood trees per acre; 7) average first period conifer growth per acre; 8) quadratic mean diameter (QMD); and 9) corresponding WHR. This information would allow for greater confidence in the estimate provided.

15. Page 17, Line 3 (ref. 14 CCR § 1094.6(g)(3)): In order to evaluate growth and yield over time, CAL FIRE recommends that subsection (3) be revised to state “. . . determining LTSY and volumes available for harvest by Stand or Strata for each ownership of undivided interest and aggregated for the area covered by the WFMP to develop the LTSY estimate.”
16. Page 17, Line 10 (ref. 14 CCR § 1094.6(h)): The proposed regulations require the inclusion of a description of the property and planned activities including acres and projected growth, existing stand types, Major Stand Types or Strata, etc. CAL FIRE suggests the description also include such specific information as species composition, age classes, present stocking level, present volume per acre, size class distribution, stand management history, and potential pest or protection problems. These requirements are similar to those for Nonindustrial Timber Management Plans (NTMPs) found under 14 CCR § 1090.5(g).
17. Page 17, Line 12 (ref. 14 CCR § 1094.6(h)): This subsection refers to a description of silvicultural method(s) to be applied to Strata to achieve LTSY. In addition, a discussion should be included regarding additional potential silviculture methods that may be utilized during the life of the WFMP such as sanitation salvage, including the forest conditions when these methods would be utilized. This would allow greater confidence in the growth and yield projections and provide greater flexibility for future management should site conditions change over time.
18. Page 21, Line 12 (ref. 14 CCR § 1094.6(cc)): This subsection should be moved down to line 13.
19. Page 23 (ref. 14 CCR § 1094.8): CAL FIRE recommends the Working Forest Harvest Notice Content includes a provision requiring the identification of the silvicultural prescriptions that will be implemented during the harvest conducted under the notice.
20. Page 23, Line 10 (ref. 14 CCR § 1094.8(b)): The proposed regulations require the contents of the Working Forest Harvest Notice to include the name of the Designated Agent. CAL FIRE recommends the Board revise the proposed regulations to insert a new subsection (b) that would state:

“(b) Name, address and telephone number of the Designated Agent.”
21. Page 28, Line 11 (ref. 14 CCR § 1094.10): The reference to “working Forest Notice” is incorrect. This should be changed to “Working Forest Harvest Notice.”
22. Pages 28 and 29, Lines 17 through 25 and 1 through 5 (ref. 14 CCR § 1094.10): The Board should consider allowing the plan submitter to delegate responsibility to the Designated Agent for subsections (f) through (k). CAL FIRE recommends the Board consider adoption of a new subsection (l) stating:

“(l) The plan submitter(s), or successor in interest, may delegate responsibility for 14 CCR § 1094.10(f) through (k) to the Designated Agent, with written notification to the Director.”
23. Page 30, Lines 12 and 13 (ref. 14 CCR § 1094.11(g)): CAL FIRE recommends the RPF provide notice to the Designated Agent as well as those others listed under subsection (g). The following changes to the proposed regulations are recommended:

“(g) The RPF shall without delay notify, in writing, the LTO(s), the plan submitter(s), the designated agent, and the Department of a decision to withdraw professional services from the plan.

24. Page 41, Line 2 (ref. 14 CCR § 1094.23(c)(1)): The current rules applicable to substantial deviations under an SYP (ref. 14 CCR § 1091.13(a)) require an amendment for a change from the average harvesting projections in any ten-year period which exceeds ten percent. CAL FIRE recommends the Board insert a new subsection (c)(2) that would incorporate similar language for a WFMP:

“(2) Change in the average harvesting projections in any ten-year period which exceeds ten percent, including a deviation caused by changes of ownership and catastrophic events.”

25. Page 42, Lines 22 through 24 (ref. 14 CCR § 1094.24(b)): CAL FIRE believes that a Designated Agent should be authorized to submit deviations normally presumed to be substantial deviations, but considered minor deviations by the plan submitter(s). CAL FIRE recommends the following change to the proposed regulations:

“Actions listed as substantial deviations in 14 CCR § 1094.23, but considered to be minor deviations by the submitter(s), may be undertaken only if the person who submitted the plan or the designated agent submits the proposed deviation in writing to the Director for review and approval.”

Page 47, Lines 2 through 4 (ref. 14 CCR § 1094.29(c)): The proposed regulations do not provide the public access to the findings of the five-year review. The rules require the Department to notify the Working Forest Landowner(s) of the findings, but fail to provide similar notification to the public and other review team agencies. CAL FIRE recommends the following changes to the proposed regulations:

“The Department shall notify the Working Forest Landowner(s) of the findings of the five (5) year review and shall provide the public, in writing or on a publically available internet database, a copy of the findings.”

26. Page 48, Line 19 (ref. 14 CCR § 1094.30): CAL FIRE does not support adoption of 14 CCR § 1094.30(e). Adoption of this subsection, in combination with 14 CCR § 1094.30(b), effectively results in transferring to CAL FIRE the responsibility for notifying the new landowners of their responsibilities with regard to the WFMP. CAL FIRE recommends that failure of the transferring timberland owner to notify the acquiring timberland owner of the existence of the WFMP and their responsibilities, including stocking requirements, should be considered a misdemeanor pursuant to PRC § 4601. Such disclosures should remain the responsibility of the seller and the changes proposed by the Board under 14 CCR § 1094.30 do not appear to be consistent with the intent of the legislation with regard to the landowners responsibilities to provide notice. CAL FIRE recommends the Board not adopt the new language proposed under subsection (b) and recommends the following change to subsection (d):

“(d) A violation of this subsection by a timberland owner ~~does not~~ constitutes a misdemeanor crime pursuant to PRC § 4601.”

27. Page 50, Line 2 (ref. 1094.32(a)(1)): CAL FIRE recommends changing the word “and” to “if” as follows:

“(1) Operations may continue under an approved NTMP . . . , and if the landowner notifies the Director”

28. Page 50, Line 20 (ref. 1094.33): CAL FIRE recommends that the Board not adopt this new section of regulations. This is primarily a restatement of the statute under PRC § 4597.18 and it is not necessary to transfer this language to regulation. This language is irrelevant to the review, approval and enforcement of the provisions of a WFMP and it is not necessary to include it in regulation.

29. Page 51, Line 6 (ref. 1094.34): CAL FIRE recommends that the Board not adopt this new section of regulations. This is primarily a restatement of the statute under PRC § 4597.19 and it is not necessary to transfer this language to regulation. This language is irrelevant to the review, approval and enforcement of the provisions of a WFMP and it is not necessary to include it in regulation.

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2 March 2015

comments on the WFMP to <publiccomments@bof.ca.gov>

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

Dear Dear Chairman and Board --

The 45-Day Notice Working Forest Management Plan rules package is inadequate as a Planning Document. It does not provide a professional, and high standard format, that adequately meets the needs of such an ambitious program, nor does it ensure compliance with the needs of specific forest practice rules, notably 14 CCR 916.4 (a) and (b). It has been claimed that implementation of 916.4 is part of the WFMP, but if that implementation is of the standard found in many if not most THPs, that implementation falls way short.

Each WFMP needs to have the basic elementary information presented in the same way, in the same order and format. Additional information can be included as the submitter sees fit, but a set of basic requirements must be standardized that are adequate for the protection and recovery of WFMP forests through generations. This is doable and essential and is missing.

Sincerely,

Richard Gienger