

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

“Notice of Intent Amendments, 2022”

**Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 4**

**Subchapter 7
Articles 2 & 6.8
Amend: §§ 1032.7, 1092.04**

INTRODUCTION INCLUDING PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS (pursuant to GC § 11346.2(b)(1))...NECESSITY (pursuant to GC § 11346.2(b)(1) and 11349(a))....BENEFITS (pursuant to GC § 11346.2(b)(1))

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

Pursuant to PRC § 4551.5, the rules and regulations that the Board is authorized to adopt include measures for the conduct of Timber Operations and for the preparation of Timber Harvesting Plans.

Additionally, pursuant to PRC § 4582, Timber Harvesting Plans must “...be filed with the department in writing by a person who owns, leases, or otherwise controls or operates on all or any portion of any Timberland and who plans to harvest the timber thereon.” One of the requirements of the Timber Harvesting Plan is “[a] description of the silvicultural methods to be applied...” (PRC § 4582(d)).

Furthermore, PRC § 4582.3 requires the Board to adopt regulations regarding “...notice of intent to harvest timber, to be given within two working days following submission of a timber harvesting plan”- in order to notify both the Department of Forestry and Fire Protection (Department), and those who may be affected by Timber Operations of proposed activities. The Board has adopted such regulations for Timber Harvesting Plans (THP), and Programmatic Timber Harvesting Plans (PTHP) (a similar permitting scheme), within 14 CCR §§ 1032.7 and 1092.04, respectively.

Currently, the Forest Practice Rules include provisions for multiple silvicultural method types which may be utilized in a THP or PTHP, however the regulations regarding notices of intent to harvest timber only require disclosure of some of those silvicultural methods. The **problem** is that notice of intent to harvest timber regulations which do not

require disclosure of all silvicultural methods proposed in a THP or PTHP fail to accurately disclose proposed project activities to the Department and persons which may be potentially affected by Timber Operations.

The **purpose** of the proposed action is to require the disclosure of all proposed silvicultural methods within the footprint of a THP or PTHP.

The primary **benefit** of the proposed action is the maintenance of a comprehensive regulatory scheme which allows for the clear and consistent application and enforcement of notice of intent with THP/PTHP. Additionally, the improvement of notification processes will benefit the efficiency of the Department review and enforcement of the regulations.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL (pursuant to GOV § 11346.2(b)(1)) AND THE RATIONALE FOR THE AGENCY'S DETERMINATION THAT EACH ADOPTION, AMENDMENT OR REPEAL IS REASONABLY NECESSARY TO CARRY OUT THE PURPOSE(S) OF THE STATUTE(S) OR OTHER PROVISIONS OF LAW THAT THE ACTION IS IMPLEMENTING, INTERPRETING OR MAKING SPECIFIC AND TO ADDRESS THE PROBLEM FOR WHICH IT IS PROPOSED (pursuant to GOV §§ 11346.2(b)(1) and 11349(a) and 1 CCR § 10(b)). *Note: For each adoption, amendment, or repeal provide the problem, purpose and necessity.*

The Board is proposing action to amend 14 CCR §§ 1032.7 and 1092.04

The fundamental **problem** is that current notice of intent regulations does not require disclosure of all potential silvicultural methods which may be used in a plan and may result in incomplete disclosure of proposed project activities.

The **effect** of the proposed action is to require full disclosure of silvicultural methods on a notice of intent provided for THPs and PTHPs.

The primary **benefit** of the proposed action is the maintenance of a comprehensive regulatory scheme which allows for the clear and consistent application and enforcement of notice of intents provided for with THPs and PTHPs.

Amend §§ 1032.7 (d)(5)

The proposed amendment requires disclosures of "Silvicultural Systems, including Special Prescriptions, and Alternative Prescriptions", in addition to "Regeneration methods and Intermediate Treatments" on a notice of intent with THP. The phrase "Silvicultural Systems" is defined in 14 CCR § 895.1 as being synonymous with the phrase "silvicultural methods" as used within PRC 4582(d). The purpose of this amendment is to improve the clarity of the regulations through the utilization of defined terms and to improve the consistency of the regulations through such use. The amendment is necessary in order to appropriately disclose proposed activities to the Department and potentially affected parties consistent with the requirements of PRC § 4582.3.

Amend §§ 1092.04 (d)(5)

The proposed amendment requires disclosures of “Silvicultural Systems, including Special Prescriptions, and Alternative Prescriptions”, in addition to “Regeneration methods and Intermediate Treatments” on a notice of intent with PTHP. The phrase “Silvicultural Systems” is defined in 14 CCR § 895.1 as being synonymous with the phrase “silvicultural methods” as used within PRC 4582(d). The purpose of this amendment is to improve the clarity of the regulations through the utilization of defined terms and to improve the consistency of the regulations through such use. The amendment is necessary in order to appropriately disclose proposed activities to the Department and potentially affected parties consistent with the requirements of PRC § 4582.3.

ECONOMIC IMPACT ANALYSIS (pursuant to GOV § 11346.3(b)(1)(A)-(D) and provided pursuant to 11346.3(a)(3))

The effect of the proposed action is to require full disclosure of all potential silvicultural methods consistent with current Rules regarding THPs and PTHPs.

Business is not expected to expand or contract because of the proposed action. The proposed action is an extension of current forest practice regulation and simply requires accurate disclosure of proposed activities., it is not expected that the proposed action will result in expansion or contraction of businesses.

The regulatory amendments as proposed represent a continuation of existing forest practice regulations and are intended to clarify in their application. Given that the businesses which would be affected by these regulations are already extant, it is expected that proposed regulation will neither create new businesses nor eliminate existing businesses in the State of California.

The geographic extent is all state and privately owned Timberland Statewide.

There are no reporting requirements associated with the proposed action.

The proposed action will have a neutral effect on health, welfare, and worker safety, but may benefit the State’s environment through improved review and enforcement efficacy of notices of intent provided for certain timber harvesting operations.

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

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

- Will not create jobs within California (GOV § 11346.3(b)(1)(A)).
- Will not eliminate jobs within California (GOV § 11346.3(b)(1)(A)).
- Will not create new businesses (GOV § 11346.3(b)(1)(B)).

- Will not eliminate existing businesses within California (GOV § 11346.3(b)(1)(B)).
- Will not affect the expansion or contraction of businesses currently doing business within California (GOV § 11346.3(b)(1)(C)).
- Will yield nonmonetary benefits (GOV § 11346.3(b)(1)(D)). For additional information on the benefits of the proposed regulation, please see anticipated benefits found under the “Introduction Including Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address”. The proposed action will not affect the health and welfare of California residents or worker safety.

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION CONSIDERED BY THE BOARD, IF ANY, INCLUDING THE FOLLOWING AND THE BOARD’S REASONS FOR REJECTING THOSE ALTERNATIVES (pursuant to GOV § 11346.2(b)(4)(A) and (B)):

- **ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACTS ON SMALL BUSINESS AND/OR`**
- **ALTERNATIVES THAT ARE LESS BURDENSOME AND EQUALLY EFFECTIVE IN ACHIEVING THE PURPOSES OF THE REGULATION IN A MANNER THAT ENSURES FULL COMPLIANCE WITH THE AUTHORIZING STATUTE OR OTHER LAW BEING IMPLEMENTED OR MADE SPECIFIC BY THE PROPOSED REGULATION**

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

Alternative #1: No Action Alternative

The Board considered taking no action, but the no action alternative was rejected because it would not address the problem.

Alternative #2: Make Existing Regulation Less Prescriptive

This action would replace the existing prescriptive standards for notice of intent requirements with performance-based regulations. The Board rejected this alternative as it would create issues of clarity, enforceability, and implementation within existing regulations for notice of intent requirements. The prescriptive use of existing regulations related to notice of intent requirements are necessary to promote the clarity of the regulations.

Alternative #3: Proposed Action

Alternatives 1 and 2 would not be more effective or equally effective while being less burdensome or impact fewer small businesses than the proposed action. Specifically, alternatives 1 and 2 would not be less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the

authorizing statute or other law being implemented or made specific by the proposed regulation than the proposed action.

Additionally, alternatives 1 and 2 would not be more effective in carrying out the purpose for which the action is proposed and would not be as effective and less burdensome to affected private persons than the proposed action or would not be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action. Further, none of the alternatives would have any adverse impact on small business. Small business means independently owned and operated, not dominant in their field of operations and having annual gross receipts less than \$1,000,000.

Prescriptive Standards versus Performance Based Standards (pursuant to GOV §§11340.1(a), 11346.2(b)(1) and 11346.2(b)(4)(A)):

Pursuant to **GOV §11340.1(a)**, agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the course of the agency rulemaking process.

The proposed action is as prescriptive as necessary to address the problem. It allows for the clear and consistent application and enforcement of notice of intent requirements for THPs and PTHPs.

Pursuant to **GOV § 11346.2(b)(1)**, the proposed action does not mandate the use of specific technologies or equipment.

Pursuant to **GOV § 11346.2(b)(4)(A)**, the abovementioned alternatives were considered and ultimately rejected by the Board in favor of the proposed action. The proposed action does not mandate the use of specific technologies or equipment, but does prescribe specific actions.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE RELIED UPON TO SUPPORT INITIAL DETERMINATION IN THE NOTICE THAT THE PROPOSED ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS (pursuant to GOV § 11346.2(b)(5))

The fiscal and economic impact analysis for these amendments relies upon contemplation, by the Board, of the economic impact of the provisions of the proposed action through the lens of the decades of experience practicing forestry in California that the Board brings to bear on regulatory development.

DESCRIPTION OF EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICT WITH THE CODE OF FEDERAL REGULATION (pursuant to GOV § 11346.2(b)(6))

The Code of Federal Regulations has been reviewed and based on this review, the Board found that the proposed action neither conflicts with, nor duplicates Federal

regulations. There are no comparable Federal regulations for timber harvesting on State or private lands.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS CEQA

CEQA requires review, evaluation and environmental documentation of potential significant environmental impacts for a qualified Project. Pursuant to case law, the development of Timber Harvest Plans (THP) has been found to be the functional equivalent to an Environmental Impact Report (EIR) under CEQA. Additionally, the Board's rulemaking process is a certified regulatory program having been certified by the Secretary of Resources as meeting the requirements of PRC § 21080.5.

While certified regulatory programs are excused from certain procedural requirements of CEQA, they must nevertheless follow CEQA's substantive requirements, including PRC § 21081. Under PRC § 21081, a decision-making agency is prohibited from approving a Project for which significant environmental effects have been identified unless it makes specific findings about alternatives and mitigation measures

Further, pursuant to PRC § 21080.5(d)(2)(B), guidelines for the orderly evaluation of proposed activities and the preparation of THPs or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program are required by the proposed action and existing rules.

The proposed action would be an added element to the state's comprehensive Forest Practice Program under which all commercial timber harvest activities are regulated. The Rules which have been developed to address potential impacts to forest resources, including both individual and cumulative impacts, project specific mitigations along with the Department oversight (of rule compliance) function expressly to prevent the potential for significant adverse environmental effects.

The proposed action utilizes extant regulations regarding the definition of "Silvicultural Methods" and "Silvicultural Systems" to clarify the requirements for disclosure of proposed activities on a notice of intent for a THP or PTHP. This action does not deviate from the current implementation or enforcement of the regulations but clarifies application.

Plans, and other regulatory mechanisms which permit timber operations, contain a mix of project relevant avoidance and mitigation measures to reduce the risk for potential significant adverse effects.

State representatives review every Plan to determine if a Project will have a significant adverse environmental impact. Prior to making a decision of approval or denial, the review team (the Director) often supplements the information provided by the RPF and the plan submitter when necessary to ensure that all relevant information is considered.

The review team (the Director) has broad discretion to request the necessary information be provided to the Department and responsible agencies to facilitate review and development of appropriate mitigation measures to ensure that the Project will not cause a significant adverse environmental impact. Local and federal agency representatives are also involved in the review process.

Pursuant to 14 CCR § 896(a), it is the Board's intent that no Plan shall be approved which fails to adopt feasible mitigation measures or alternatives from the range of measures set out or provided for in the Rules which would substantially lessen or avoid significant adverse impacts which the activity may have on the environment. Once Plans are approved, state representatives continue with compliance inspections of approved Plans until the conclusion of the Plan's lifespan. Where the Rules or approved Plan provisions have been violated, specified corrective and/or punitive enforcement measures, including but not limited to financial penalties, are imposed upon the identified offender(s).

In summary, the proposed action does not have the potential to result in significant adverse environmental effects.