

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

Watercourse Crossings and Emergency Notice Watercourse Crossing Requirements, 2025

Title 14 of the California Code of Regulations Division 1.5, Chapter 4, Subchapters 4, 5, 6, and 7

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.* (FPA) the State Board of Forestry and Fire Protection (Board) is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands.

PRC § 4551 requires the Board to "...adopt district forest practice rules... to ensure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, wildlife, and water resources..." and PRC § 4553 requires the Board to continuously review the rules in consultation with other interests and make appropriate revisions.

Furthermore, PRC § 4551.5 requires that these regulations adopted by the Board "...apply to the conduct of timber operations and shall include, but shall not be limited to, measures for fire prevention and control, for soil erosion control, for site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities, for water quality and watershed control, for flood control, for stocking, for protection against timber operations that unnecessarily destroy young timber growth or timber productivity of the soil, for prevention and control of damage by forest insects, pests, and disease...".

During the 2023 call for Regulatory Review the California State Water Resources Control Boards raised an issue about the lack of clarity in the phrase "approved watercourse crossings" as used in §§ 916.9(s) and 916.9(t) [936.9(s) and 936.9(t), 956.9(s) and 956.9(t)]. The Water Boards noted that this phrase, as applied to Timber Operations in Watercourse and Lake Protection Zones (WLPZ) in notices of exemption, lacked clarity as to the definition of "approved". The rule applies to watersheds that contain habitat for anadromous salmonids; when written, the "work in approved watercourse crossings" option was intended to provide an option for state and federal wildlife resource agencies to allow specific watercourse crossings to limit impacts on threatened and endangered salmonid species. The concern raised by the Water Boards that there was no requirement under these rules for consultation with the Water Board

for compliance with section 401 of the Clean Water Act or Water Code §13260 et. seq., creating the potential for a lower standard of review in those watercourses that are endangered fish habitat.

In forests, watercourse crossings are the most significant source of human-caused sediment delivery to waters. Deposition of sediment in waters can result in negative impacts to aquatic ecosystems and habitat for listed (and unlisted) wildlife species. Implementation of rules for road and watercourse crossing construction under the Forest Practice Rules [Logging Roads, Landings, and Logging Road Watercourse Crossings (14 CCR §§ 923, 943, 963 et seq.)] has decreased observed sediment deposition from logging road crossings by 50-88% from historic observations that predate the current Forest Practice Rules.¹

Fish and Game Code § 1602 requires entities that will be taking actions which "substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake" notify the California Department of Fish and Wildlife (CDFW) of specific information pertaining to these actions. If CDFW determines that those actions will not substantially adversely affect an existing fish or wildlife resource, no agreement is required. If CDFW determines there is a potential for substantially adverse effects, that department will issue an agreement to the entity that will undertake the action; the agreement will include reasonable measures necessary to protect the relevant resource(s). The current Forest Practice Rules state that watercourse crossings must be "approved as part of the Fish and Game Code process", but some of these crossings may not require approval after review is completed by CDFW.

Certain circumstances qualify as "Emergency Conditions" under 14 CCR § 1052.1, including land with trees that are dead or dying as a result of insects, disease, wind, drought, or fire, as well as land with fuel hazard conditions that range from "high" to "extreme". Under these circumstances, landowners can submit a notice of emergency timber operations, which waives certain requirements for the preparation of timber harvest plans. Historically, the Rules have required that these emergency notice timber operations comply with only the operational provisions of 14 CCR §§ 923, 943, 963 et seq. (Logging Roads, Landings, and Logging Road Watercourse Crossings). However, the increasing prevalence of very large fires and large scale tree mortality events due to insects, disease, and drought has led many experts to posit that the US has entered an era of "mega-fires" or "mega-disturbances"². As the area affected by large-scale tree mortality events increases, so to do the number of acres harvested under these

¹ Cafferata, P. H., Coe, D. B., & Harris, R. R. (2007). Water resource issues and solutions for forest roads in California. *Hydrological Science and Technology*, 23(1/4), 39.

² Steel, Z. L., Jones, G. M., Collins, B. M., Green, R., Koltunov, A., Purcell, K. L., ... & Thompson, C. (2023). Mega-disturbances cause rapid decline of mature conifer forest habitat in California. *Ecological Applications*, 33(2), e2763.

permits³. In recent years the expanded area harvested under emergency notice timber operations has created challenges for inter-agency assessment of watercourse impacts. Full compliance with mapping and notification requirements pertaining to watercourse crossings under 14 CCR § 923, § 943, § 963 et seq. has become necessary within notices of emergency.

The **problems** are as follows: 1. The Protection and Restoration of the Beneficial Functions of the Riparian Zone in Watersheds with Listed Anadromous Salmonids (14 CCR §916.9(s)(4) [§936.9(s)(4), §956.9(s)(4)]) rules reference a circumstance where work is allowed in the WLPZ which includes construction or reconstruction of approved watercourse crossings under notices of exemption. This results in a lack of clarity in the rules: there are specifications for construction or reconstruction of watercourse crossings in ASP watersheds under exemption notices in §916.9(s)(4) [§936.9(s)(4), §956.9(s)(4)], but construction or reconstruction of watercourse crossings is not permitted in notices of exemption under §1038. In addition, here and in §916.9(t)(4) [§936.9(t)(4), §956.9(t)(4)], the use of the word “approved” is not specific as to which agency would provide approval as multiple agencies provide overview of this process: CAL FIRE issues the notice of acceptance for the notice of exemption, the local Regional Water Quality Control Board has jurisdiction over the potentially impacted watercourse, CDFW has jurisdiction over work impacting the bed and bank of the watercourse, and CDFW and USFWS have jurisdiction for the protection of the listed anadromous salmonids. 2. The rules pertaining to §923.1 [§943.1, §963.1] Planning for Logging Roads and Landings and §923.4 [§943.4, §963.4] Construction and Reconstruction of Logging Roads and Landings do not accurately reflect the process for submitting notification under FGC § 1602. 3. Rules addressing emergency notice timber operations were designed for an era with less extensive wildfire, drought, and insect damage impacts to forests. As a result, there are no mapping requirements for tractor road crossings and logging road watercourse crossings that will be constructed or reconstructed under emergency notice timber operations. There is also no provision that an RPF certify that a plan follows FGC § 1600 et seq. notification requirements or that CDFW will be notified after the commencement of emergency work that will impact the bed, bank, or channel of a watercourse. There is no mechanism to provide updates on the additional watercourse crossings that may be constructed or reconstructed as more access to damaged property becomes available due to operations, and the full extent of the impact of the emergency becomes apparent. There is also no explicit statement within the rules that construction and reconstruction of watercourse crossings must comply with the operational requirements of the Road Rules covering Watercourse Crossings under § 923.9 [§943.9, §963.9] et seq.

The **purpose** of the proposed action is to confirm that current regulatory requirements limiting construction or reconstruction of watercourse crossings under notices of exemption apply in watersheds with listed anadromous salmonids. It also brings the mapping requirements for watercourse crossings under emergency notice timber operations within watersheds with listed anadromous salmonids into compliance with changes made to §1052 below. It updates requirements for compliance with FGC §

³ Board of Forestry and Fire Protection 2023 Annual Report.

1600 et seq. to reflect circumstances where only notification of CDFW is required. Finally, it addresses several issues that have arisen during emergency notice timber operations: adding mapping requirements for tractor road crossings and logging road watercourse crossings; requiring notification of CDFW and certification of compliance with FGC § 1600 et seq. requirements; providing a pathway to update initial emergency notice submissions with new watercourse crossings that require construction or reconstruction; and explicitly states that the construction or reconstruction of watercourse crossings under emergency notices comply with the Road Rules covering Watercourse Crossings under § 923.9 [§943.9, §963.9] et seq.

The **effect** of the proposed action is to provide additional information that facilitates oversight from review team agencies on potential impacts from watercourse crossing construction and reconstruction under emergency notices. An additional effect is the alignment of watercourse notification requirements between different agencies and a resolution of conflicts within the Forest Practice Rules.

The **benefit** of the proposed action is to provide additional certainty of regulatory compliance during the widespread tree mortality events that define emergency conditions, particularly after wildfire, watercourses are at higher risk of erosion. The proposed action ensures compliance with existing requirements of the Forest Practice Rules and with the permit processes of other state agencies after such events. An additional benefit is that the proposed action increases the clarity and removes conflicts within the Forest Practice Rules.

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 §§ 916.9, 923.1, 923.4, 936.9, 943.1, 943.4, 956.9, 963.1, 963.4, and 1052.

Amend §916.9 [§936.9, §956.9] Protection and Restoration of the Beneficial Functions of the Riparian Zone in Watersheds with Listed Anadromous Salmonids

The proposed action removes §916.9(s)(4) [§936.9(s)(4), §956.9(s)(4)], which implies that construction or reconstruction of approved watercourse crossings under notices of exemption is permitted. The problem with existing text is that watercourse crossings are not permitted under notices of exemption. The purpose of removing the text is to clarify that watercourse crossings must be constructed under circumstances that allow for comprehensive environmental review. This is necessary to promote the clarity and consistency of the rules.

The proposed action also amends §916.9(t)(4) [§936.9(t)(4), §956.9(t)(4)], which concerns watercourse crossings in emergency notices. The proposed text changes the term “approved watercourse crossings” to “described and mapped watercourse crossings”. The problem with this language was lack of clarity related to the definition of “approved” and which agencies could provide that approval. The purpose of the change is to clarify that watercourse crossings in emergency notices must be documented with clear descriptions and mapped locations for the proposed crossings and included in the application for the exemption as reviewed by the relevant agencies. This is necessary to ensure clarity and oversight of the construction of watercourse crossings in emergency notices.

Amend §923.1 [§943.1, §963.1] Planning for Logging Roads and Landings.

The proposed action modifies language in §923.1(b)(2) [§943.1(b)(2), §963.1(b)(2)] and §923.1(c)(2) [§943.1(c)(2), §963.1(c)(2)], for the planning of logging road watercourse crossings “that are approved as part of the Fish and Game Code process” to state “for which CDFW has received written notification pursuant to Fish and Game Code”. The problem is that while FGC § 1602 requires notification for all potential actions which will substantially impact the bed, bank, and channel of any river, stream, or lake, those potential actions which CDFW determines will not have substantially adverse effects do not require approval via the Fish and Game Code process. The purpose of this change is to include accurate references to the statutory requirements under FGC § 1600 et seq. The necessity for this rule change is to create clarity and consistency between the Rules and related statutory requirements.

Amend §923.4 [§943.4, §963.4] Construction and Reconstruction of Logging Roads and Landings.

The proposed action modifies language in §923.4(b)(2) [§943.4(b)(2), §963.4(b)(2)] and §923.4(c)(2) [§943.4(c)(2), §963.4(c)(2)], for the construction or reconstruction of logging road watercourse crossings “that are approved as part of the Fish and Game Code process” to state “for which CDFW has received written notification pursuant to Fish and Game Code”. The problem is that while FGC § 1602 requires notification for all potential actions which will substantially impact the bed, bank, and channel of any river, stream, or lake, those potential actions which CDFW determines will not have substantially adverse effects do not require approval via the Fish and Game Code process. The purpose of this change is to include accurate references to the statutory requirements under FGC § 1600 et seq. The necessity for this rule change is to create clarity and consistency between the Rules and related statutory requirements.

Amend §1052 Emergency Notice

The proposed action takes several measures to improve reporting about watercourse crossings and other potential impacts to watercourses. It adds mapping requirements for tractor road crossings and logging road watercourse crossings that will be constructed or reconstructed [§1052(a)(4)]. It requires that the registered professional forester certify that the plan is in compliance with FGC § 1600 et seq. or that CDFW will be notified within 14 days of commencing emergency work that impacts the bed, bank,

or channel of a watercourse in accordance with FGC § 1610 [§1052(a)(12)]. It requires that within 30 days of the commencement of timber operations under the emergency notice, the RPF must provide a table detailing specifics about constructed or reconstructed watercourse crossings [1052(a)(13)] and requires that that table be updated promptly when new watercourse crossings are identified [1052(a)(13)]. Lastly, it clarifies that all construction and reconstruction of watercourse crossings must comply with the operational requirements of § 923.9 [§943.9, §963.9] et seq. Watercourse Crossings [1052(b)]. The problem is that current regulations don't have clear reporting requirements on the location of watercourse crossings that will be constructed or reconstructed, actions that have additional compliance requirements under the Rules. The purpose of the proposed action is to provide those reporting requirements necessary to inform the Department and other agencies about additional work in areas with additional compliance requirements. This is necessary to ensure compliance with state law as relates to FGC § 1600 et seq. or the Porter-Cologne Water Quality Control Act (Water Code §13260 et seq.) during emergency notice timber operations and to ensure appropriate implementation and enforcement of the Rules.

Non substantiative amendments

Capitalized and updated terms defined pursuant to 14 CCR § 895.1 and this Article throughout the amendments where appropriate and made minor grammar corrections.

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 provide compliance pathways for environmental protection in emergency notice timber operations involving watercourse crossings. In addition, it improves the clarity and consistency of the Rules.

The proposed action represents a continuation of existing rules related to watercourse crossings as defined under the Forest Practice Rules. There is no economic impact associated with the proposed action.

Creation or Elimination of Jobs within the State of California

The proposed action does not mandate any action on behalf of the regulated public and represents a continuation of existing forest practice regulations. It is anticipated that any firms or jobs which exist to engage in this work will not be affected. No creation or elimination of jobs will occur.

Creation of New or Elimination of Businesses within the State of California

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.

Expansion of Businesses Currently Doing Business within the State of California

The regulatory amendments as proposed represent a continuation of existing forest practice regulations and are intended to clarify their application. The proposed

regulation will not result in the expansion of businesses currently doing business within the State.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment

The action will result in increased clarity and consistency in the Forest Practice Rules. The proposed action will also provide environmental benefits by providing clarity on compliance and reporting pathways with existing laws for environmental protection. The proposed action will not affect the health and welfare of California residents or worker safety.

Business Reporting Requirement (pursuant to GOV § 11346.5(a)(11) and GOV § 11346.3(d))

The proposed regulation does not require a business reporting requirement.

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)). The proposed action would result in increased clarity and consistency in the Forest Practice Rules, and as a result, promote a more clear and transparent governance. The proposed action will not affect the health and welfare of California residents or worker safety.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT RELIED UPON (pursuant to GOV SECTION 11346.2(b)(3))

The Board of Forestry and Fire Protection relied on the following list of technical, theoretical, and/or empirical studies, reports, or similar documents to develop the proposed action:

1. Board of Forestry and Fire Protection 2023 Annual Report.
2. Cafferata, P. H., Coe, D. B., & Harris, R. R. (2007). Water resource issues and solutions for forest roads in California. *Hydrological Science and Technology*, 23(1/4), 39.

3. Steel, Z. L., Jones, G. M., Collins, B. M., Green, R., Koltunov, A., Purcell, K. L., ... & Thompson, C. (2022). Mega-disturbances cause rapid decline of mature conifer forest habitat in California. *Ecological Applications*, 33(2), e2763.

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 § 11346.2(b)(4)**, 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 this alternative was rejected because it would not address the problem.

Alternative #2: Make regulation less prescriptive

This action would replace the prescriptive standards for limiting impacts from watercourse crossings with performance-based regulations. This alternative may reduce clarity and consistency with other portions of the rules which rely upon the existence of the current operational limitations in order to ensure that forest resources are preserved and lead to unforeseen environmental impacts.

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.

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 businesses.

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 agency rulemaking process.

The proposed action is as prescriptive as necessary to address the problem and contains a mix of performance-based and prescriptive requirements. The prescriptive regulations proposed in this action are necessary in order to provide adequate clarity within the regulations.

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.

The regulations for watercourse crossings within the proposed action represents a continuation of existing rules for Timber Operations conducted under the Forest Practice Rules. There is no economic impact associated with the proposed action.

The proposed action will not have a statewide adverse economic impact directly affecting businesses as it does not impose any requirements on businesses.

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 related to conducting Timber Operations on private, state, or municipal forest lands.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS CEQA

CEQA requires review, evaluation, and environmental documentation of potential significant environmental impacts from a qualified Project. Pursuant to case law, the review and processing of Plans has been found to be a Project 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 the Plan 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. In addition, clarity and consistency of Regulatory Definitions provide necessary framework for proposed activities.

In summary, the proposed action amends or supplements standards to an existing regulatory scheme and is not a mitigation as defined by CEQA. The Board concludes that the proposed action will not result in any significant or potentially significant adverse environmental effects and therefore no alternative or mitigation measures are proposed to avoid or reduce any significant effects on the environment (14 CCR § 15252(a)(2)(B)).