

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

“Coastal Commission Special Treatment Areas Silviculture Amendments, 2023”

Board of Forestry and Fire Protection

Title 14 of the California Code of Regulations (14 CCR):

Division 1.5, Chapter 4, Subchapters 4 and 6

Article 7 – Hazard Reduction, and Article 11 – Coastal Commission Special Treatment Areas

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...” of the state and PRC § 4553 requires the Board to continuously review the rules in consultation with other interests and make appropriate revisions.

In 1977 the California Coastal Commission designated specified “Coastal Commission Special Treatment Areas” for “identifiable and geographically bounded forest areas that constitute a significant wildlife or plant habitat area, an area of special scenic significance, and any land where timber operations could adversely affect public recreation areas or the biological productivity of any wetland, estuary, or stream that is especially valuable because of its role in a coastal ecosystem”. In 1979, the Board adopted regulation that specified different timberland management requirements within Coastal Commission Special Treatment Areas to preserve the natural and scenic resources responsible for an area’s Special Treatment Area designation.

In the intervening decades the climate has grown warmer and drier, and forest fires have become larger and more destructive, even in coastal areas that previously did not experience high-intensity wildfires. In addition, several regulatory pathways have been introduced to combine timber harvest with additional ecological protections. There have also been advances in silviculture that increase the survival of seedlings in forest habitats.

The **problem** is that regulations concerning timber harvest in Coastal Commission Special Treatment Areas do not account for the changing climate and fire hazard levels,

advances in silviculture, and new regulatory pathways that limit the environmental impacts of timber management.

The **purpose** of the proposed action is to update regulations to reflect existing regulatory standards based on best scientific knowledge and management approaches.

The **effect** of the proposed action is Forest Practice Rules for Coastal Commission Special Treatment Areas that conform to the existing framework for timber harvest while considering the natural and scenic resources that led to the designation of those areas as Special Treatment Areas.

The **benefit** of the proposed action is broader options for forest resiliency and management while still maintaining the ecological and aesthetic values that led to the designation of Coastal Commission Special Treatment Areas and consistency in application of 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 § 917.2, § 921.3(a), § 921.4, § 921.6, § 961.3, and § 961.3 as well as adding § 921.3(e), § 921.3(f), § 921.3(h), § 961.3(e), § 961.3(f), and § 961.3(h).

Amend §§ 917.2

The proposed action removes the exclusion of the Coastal Commission Special Treatment Areas of the Coast Forest District from the standards for treatment of slash created by timber operations within the plan area, near approved and legally permitted structures and on adjacent roads within the Coastal Zone.

The problem is that the Coastal Commission Special Treatment Areas were excluded from slash treatment requirements to limit fire hazard when this rule was developed due to potential visual impacts of treatment and the history of low fire risk in the area. The purpose of this amendment is to require treatment of slash – whether via chipping, burning, or removal from the site – along roads and near legally permitted structures to aid in firefighting efforts and the protection of lives and property. The necessity of this amendment is the need for added protection due to the increasing fire risks in California forests.

Amend §§ 921.3(a) [961.3(a)]

The proposed action addresses commercial thinning or selection methods for harvest, to provide options for making an even-aged stand support multiple age classes. It removes the requirements that leave trees be “Countable Trees”, that 50% percent of trees with a diameter at breast height of 12-18 inches remain after thinning, and that the remaining canopy cover for leave trees be greater than 50%. It also removes a description for the measurement of d.b.h. (tree diameter at breast height) that conflicts with the term as defined in § 895.

The problem is that the existing regulations limit the ability to manage for resilient forests by limiting the ability to select specific tree size classes to meet the specific requirements of a site: for example, to manage a stand for only large old trees, or to have a wide range of age classes while still meeting stocking standards. The purpose of this amendment is to bring these into accordance with the regulations set forth in §913.8, Special Harvesting Methods for Southern Subdistrict, which address managing an even-aged stand to become an uneven-aged stand. The Southern Subdistrict is used as a model because it is another area with special rules due to the natural and scenic qualities of the area. This change is necessary to allow for management methods that increase the resilience of forest stands in the face of climate change and wildfire.

Add §§ 921.3(e) [961.3(e)]

The proposed action allows for the use of Fuelbreak/Defensible Space as a silvicultural method within a plan. After harvest, the fuelbreak must meet minimum timber stocking standards as set forth in §912.7 (for the Coast Forest District) and §952.7 (for the Southern Forest District), resulting in an area with mature trees and limited ladder and surface fuels. The area also must meet the objectives of a community fuelbreak areas with written concurrence on that fact from a public fire agency and the Director.

The problem is that there is no existing silvicultural method that allows for fuelbreaks within Coastal Commission Special Treatment Areas. The purpose of this addition is to provide a silvicultural option for shaded fuelbreaks in these areas. This is necessary due to increasing wildfire severity, including increased wildfire severity in areas that previously did not see high-intensity wildfire in the past.

Add §§ 921.3(f) [961.3(f)]

The proposed action allows for the use of Variable Retention as described in § 913.4(d) (§ 953.4(d) in the Southern Forest Region) in Coastal Commission Special Treatment Areas. Variable retention is an approach to harvesting based on the retention of structural elements or biological legacies (trees, snags, logs, etc.) from the pre-harvest stand for integration into the post-harvest stand to achieve ecological, social, and geomorphic objectives.

The problem is that there is no existing silvicultural method that allows for retention of specific elements within Coastal Commission Special Treatment Areas. The purpose of this addition is to provide a silvicultural option that allows for the preservation of parts of the stand. This is necessary to provide protection for parts of a stand such as wildlife

habitat, socially important elements, and avoidance options for areas that may have topographic complexity.

Add §§ 921.3(h) [961.3(h)]

The proposed action allows for an alternative prescription when, in the judgment of the RPF, an alternative regeneration method or intermediate treatment offers a more effective or feasible way of achieving objectives of section than anything provided In §921.3 (in the Coast Forest District) and §961.3)in the Southern Forest District). This prescription must comply with §913.6 (in the Coast Forest District) and §953.6 (in the Southern Forest District) and is subject to director approval. If the proposed alternative prescription has the effect of a clearcut then the limitations for a clearcut apply. This includes limitations to acreage, separation from other units, yarding, exceptions, and stocking. These prescriptions are required to protect the natural and scenic qualities of Coastal Commission Special Treatment Areas.

The problem is that the current regulations do not account for circumstances where the optimal management of a site is not described by specific regulations within the Forest Practice Rules. The purpose of this amendment is to provide guidelines for alternative prescriptions. This is necessary because there is significant variation in the timberlands of California and it necessary to provide a management option that covers unusual circumstances.

Amend §§ 921.4 [§961.4]

The proposed action modifies the stocking requirements for the Coastal Commission Special Treatment Areas to reflect the standards set forth in § 912.7 for the Coast Forest District and § 952.7 in the Southern Forest District. The problem is that these regulations were written during a period where the survival of seedlings was much lower, so stocking standards required landowners to plant many seedlings per acre to compensate for tree mortality. Advances in the quality of seedstock and knowledge of the needs of tree seedlings have significantly increased survival, resulting in a need for adjusted stocking levels as relates seedlings. In addition, stocking levels in the Coastal Commission Special Treatment Areas were set at 1.5 times that of the rest of the state, because at the time regulations were written aesthetic qualities were based on the appearance of densely spaced trees. The proposed change is necessary because dense stands of trees are more susceptible to drought mortality, pathogen mortality, and high intensity wildfire, and the resulting death of the stand significantly affects the aesthetic qualities of the area.

Amend §§ 921.6

The proposed action removes the prohibition on broadcast burning on lands harvested under the commercial thinning and selection silvicultural methods in Coastal Commission Special Treatment Areas.

The problem is that there are limited options for the treatment of slash and other fuels throughout the state. This amendment allows for an additional slash treatment option within Coastal Commission Special Treatment Areas. This is necessary to remove fuels from these areas due to elevated wildfire risks.

Non substantiative amendments

Capitalized and utilized terms defined pursuant to 14 CCR § 895.1 and standardized numbering systems and units of measurement throughout the amendments where appropriate.

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 update rules in Coastal Commission Special Treatment Areas to reflect other extant Forest Practice Rules and current management practices based on the best available science.

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 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 Forest Practice Rules that reflect the knowledge gained by four decades of study to provide options to manage forests for resilience in the face of increased fire severity and climate change, protecting the environment by preserving the natural and scenic qualities that led to the designation of Coastal Commission Special Treatment Areas. It also provides measures for reduction of wildfire severity through forest management and options for a fuelbreak prescription and fuel treatment near structures and roads, providing safe zones and egress routes for those workers that fight wildfires and providing protection for the homes, businesses, and lives of California residents.

The proposed action also provides clarity and consistency within the Forest Practice Rules.

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 efficacy in the Forest Practice Rules, and as a result, promote more efficient implementation and enforcement of the regulations. The proposed action provides some fire protection benefits to the health and welfare of California residents and provides protection for wildfire egress routes to improve the safety of workers who work in the Coastal Commission Special Treatment Areas.

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. California Coastal Act, PRC 20 § 30000 (1976).
<https://www.coastal.ca.gov/coastact.pdf>. accessed May 1, 2023.
2. 2020 CALFIRE Incident Overview, California Department of Forestry and Fire Protection, Accessed May 13, 2021 <https://www.fire.ca.gov/incidents/2020/>
3. 2021 CALFIRE Incident Overview, California Department of Forestry and Fire Protection, Accessed May 13, 2021 <https://www.fire.ca.gov/incidents/2021/>
4. 2022 CALFIRE Incident Overview, California Department of Forestry and Fire Protection, Accessed May 1, 2023 <https://www.fire.ca.gov/incidents/2022/>

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 management of timber operations in the Coastal Commission Special Treatment Areas with performance-based regulations. This alternative would potentially impact the natural and scenic qualities that led to the designation of Coastal Commission Special Treatment Areas and 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.

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. Current Forest Practice regulations within the Coastal Commission Special Treatment Areas are based in a mix of performance based, and prescriptive minimum, requirements for the protection of the state's forest resources, which are necessary in order to accommodate for the various levels of individual project review which occurs for various permitting vehicles for timber operations. The regulations proposed in this action do not impose any new prescriptive regulations than already exist.

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 proposed regulation adds flexibility and more latitude to landowners to achieve desired outcomes than is currently extant within the rules. Landowners may use a broader set of silvicultural prescriptions under this proposal, creating the opportunity to make a more economically viable project. 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 is an element of the state's existing 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 does not represent any change to the levels of environmental protection provided by the Rules, it updates references in the Forest Practice Rules to reflect the regulations and guidance documents from the listing agencies.

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)).