

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

“Less Than 3-acre Conversion Maintenance 2022”

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations
Division 1.5, Chapter 4,
Subchapter 7, Article 7,**

Amend § 1100

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 1973¹ (Act), 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.

PRC § 4551.5 requires that the rules and regulations adopted by the Board apply to the conduct of Timber Operations, which is defined within PRC § 4527(a)(1) as “the cutting or removal, or both, of timber or other solid wood forest products, including Christmas trees, from Timberlands for commercial purposes, together with all the incidental work, including, but not limited to, construction and maintenance of roads, fuelbreaks, firebreaks, stream crossings, landings, skid trails, and beds for the falling of trees, fire hazard abatement, and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities, but excluding preparatory work such as treemarking, surveying, or roadflagging.”

Timberland is defined in PRC § 4526 as “land, other than land owned by the federal government and land designated by the board as experimental forest land, which is available for, and capable of, growing a crop of trees of a commercial species used to produce lumber and other forest products, including Christmas trees.”

¹ Chapter 8. Part 2, Division 4 of the Public Resources Code

The term “commercial purposes”, as used within PRC § 4527 is defined by reference to an illustrative, non-exhaustive list of activities within PRC § 4527(a)(2) that include “(A) the cutting or removal of trees that are processed into logs, lumber, or other wood products and offered for sale, barter, exchange, or trade, or (B) the cutting or removal of trees or other forest products during the conversion of Timberlands to land uses other than the growing of timber that are subject to Section 4621, including, but not limited to, residential or commercial developments, production of other agricultural crops, recreational developments, ski developments, water development projects, and transportation projects.” PRC § 4621(a) requires that any “...person who owns Timberlands that are to be devoted to uses other than the growing of timber shall file an application for conversion with the board.”

The Act recognizes that the “forest resources and Timberlands of the state are among the most valuable of the natural resources of the state”, and that “it is the policy of this state to encourage prudent and responsible forest resource management...” (PRC § 4512). The Act also recognizes that some landowners who own Timberland and forest resources may wish to utilize their land for purposes other than the growing, harvesting, and management of timber, and contains within it provisions for the conversion of Timberland to other uses. The provisions for such conversion are contained within Article 9 (titled “Conversion”) of the Act, and Article 7 of Subchapter 7 of the Forest Practice Rules (Rules)².

The specific definition of the conversion of Timberlands is interpreted by the Board within the Rules as the transformation of “...Timberland to a nontimber growing use through Timber Operations where: (A) Future timber harvests will be prevented or infeasible because of land occupancy and activities thereon; or (B) Stocking requirements of the applicable district forest practice Rules will not be met within five years after completion of Timber Operations; or (C) There is a clear intent to divide Timberland into ownerships of less than three acres” on Timberland not zoned for timber production (TPZ), and “...the immediate rezoning of TPZ lands, whether Timber Operations are involved or not, except as exempt from a Timberland conversion permit under 14 CCR § 1104.1.”³ on TPZ Timberlands.

In order to facilitate the use of Timberlands for purposes other than growing timber, the Act and Rules contain several mechanisms to effectuate and regulate the conversion of Timberland, including permitting pathways which require full Environmental Impact Reports and discretionary review by the Department of Forestry and Fire Protection (CAL FIRE), which administrates the Act and Rules, as well as simple ministerial permits which are granted upon acceptance of a complete and accurate application.

Timberland Conversion Permitting

² Chapter 4, Division 1.5, Title 14 of the California Code of Regulations

³ 14 CCR § 1100(g)

The initial issuance of a Timberland Conversion Permit or exemption considers numerous criteria in order to evaluate the suitability of proposed conversion operations. Very generally, the Timber Conversion Permit is conditioned upon: 1) an applicant having a *bona fide* intent to convert Timberland to a nontimbered use⁴; 2) an applicant is granted any re-zoning or use permits prior to approval of a Timberland Conversion Permit⁵; 3) an applicant is a real person of interest; and 4) the proposed conversion will not have any significant environmental impacts⁶. Additionally, the Timber Operations proposed in any conversion project are restricted both spatially and in magnitude by the Act and Rules, which include restrictions on where projects may occur, and how those projects may be carried out⁷. These factors, taken as a whole, serve to guide project design and operation that provides for appropriate environmental and resource protection which is consistent not only with the Act, but with CEQA itself.⁸

In general, the main permitting vehicle in the Act and Rules to effectuate conversion is a Timberland Conversion Permit, as described in PRC § 4621 and 14 CCR § 1100(h), which requires, in addition to the Conversion Permit, a Timber Harvest Plan to conduct timber operations to effectuate the conversion and, often, some other form of environmental analysis compliant with the California Environmental Quality Act (CEQA) in order to analyze the potential environmental impacts of the proposed project on the site of the conversion.

The Act and Rules also provide certain exemptions from these requirements, including those described within PRC §§ 4584(g) and 4628. PRC § 4584(g) authorizes the Board to exempt forest management activities which achieve “[t]he one-time conversion of less than three acres to a nontimber use” from all, or portions of, the Act, with certain conditions and requirements. This exemption has been implemented by the Board within 14 CCR § 1104.1(a).

CAL FIRE accepts and approves anywhere between 150 and 300 permits to engage in some form of Timberland Conversion (either Timberland Conversion Permit, Less than 3-acre conversion permit, or subdivision exemption) annually, though generally 90% or greater of those permits are for less than 3-acre conversion exemptions⁹. The less than 3-acre conversion exemption provides, as described above, a very straightforward, simple, and cost-effective method of converting Timberland, however it is also limited to the “one-time conversion of Timberland”, with the temporal-limitation of “one-time” as described within PRC § 4584(g) being interpreted to apply to a “contiguous ownership” as adopted within 14 CCR § 1104.1(a). Nevertheless, as long as a project proponent

⁴ PRC § 4623

⁵ PRC § 4622

⁶ PRC § 21081, 14 CCR §§ 896, 1106(a)(4)

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

⁸ PRC § 21080.5, 14 CCR § 15251(a) and (e)

⁹ Director’s Report to the Board of Forestry Teleconference Meeting. December 7-8, 2021.

has an application prepared by a Registered Professional Forester, is able to comply with the conditions and restrictions of the exemption, and submits a complete and accurate application, the permit is approved ministerially in, at most, 15 days¹⁰.

The spatial limitation of 3-acres represents many decades of consideration¹¹ and evaluation of the level of size and intensity of Timber Operations which would be too small or trivial to merit consideration under the Rules or unlikely to result in an impact to resources, or *de minimis* operations. While the Act and Rules do not exempt any Timber Operations from those laws in their entirety, the limitation of less than 3-acres has been identified as suitable and appropriate for the streamlined permitting process described above. Additionally, the spatial limitation of less than 3-acres is used within the Act to identify the scale at which counties or local governments may regulate Timber Operations, an act which is explicitly prohibited on operations over 3-acres and on TPZ lands all-together¹².

Though the costs of permitting and implementation vary due to site conditions (topography, species, fuel conditions, etc...) and project specifics (scope and scale of project, locality, etc...), a less than 3-acre conversion exemption may cost as little as \$1,500¹³ and a full Timberland Conversion Permit and associated CEQA analysis and Timber Harvest Plan can easily cost over \$50,000¹⁴.

The **problem** is that, following an initial Timberland Conversion and subsequent Timber Operations and construction activities, photosynthesis and natural regeneration continue as unceasing natural processes and may result in the need to occasionally remove additional trees to maintain an existing non-timbered use in an area which has already been converted, consistent with the regulatory definition of Timberland Conversion, resulting in the need to obtain an additional Timberland Conversion Permit, or exemption, on areas where consideration and analysis of those exact actions had previously occurred and which have already satisfied the criteria for Timberland Conversion. This results in a permitting scheme that is duplicative at best, and extremely costly and detrimental at worst, in order to engage in the very activities that were already permitted.

¹⁰ 14 CCR § 1104.1(a)(4)

¹¹ T.F. Arvola, "Regulation of Logging in California, 1945-197", State of California, the Resources Agency, Department of Conservation, Division of Forestry, Sacramento 1976. P. 90; Edward Martin, "A Tale of Two Certificates. The California Forest Practice Program 1976 Through 1988". State of California, 1989. p. 161-162

¹² PRC § 4516.5(d) and (f)

¹³ "Economic and Fiscal Impact Analysis. Std. 399" Board of Forestry and Fire Protection Rulemaking File 387, 2018. P. 004

¹⁴ Riverside County Planning Department, Riverside County Application Fee Estimator, Online, accessed 5/31/2022. <https://planning.rctlma.org/Development-Process/Fee-Schedule/Cost-Estimator>

Most owners of less than 3-acre parcels of Timberland converted under the Act and Rules used the less than 3-acre conversion exemption to effectuate their initial conversion. However, as described above, trees continue to grow and their cutting and removal can be necessary in order to achieve a variety of goals which benefit both the non-timbered use of the land, as well as in achieving appropriate forest management in general, such as the maintenance of health stand conditions, elimination of hazard trees, and maintenance of non-timbered areas for a variety of land management needs, including the need to reduce fire risk for certain activities. The needs to engage in active management is only magnified under the residential and commercial land uses, where the interface between human activity and the forested landscape is the most fractious and the need to cut and remove trees in order to accommodate those land uses is greatest.

Additionally, the current limitations on tree cutting and removal for conversion activities incentivizes the removal of as many trees as possible during initial less than 3-acre conversion exemptions, as future tree removal to maintain conversions are ineligible for a streamlined process and would instead require a full conversion permit and timber harvest plan. The absence of a viable pathway to cut and remove trees in the future under the current legal scheme results in the need to initially remove as many trees as possible. This incentive may result in the management of forest resources in a way that may not be necessary to effectuate a conversion, or even appropriate or desirable for landowners due simple to the limitations of existing legal schemes. It is both an anomalous and unintended consequence of the extant regulations that acres of trees can be removed under a ministerial less than 3-acre conversion exemption permit, yet *de minimis* noncommercial tree removal to maintain or enhance the completed conversion requires the landowner to comply with expensive, time-consuming, and discretionary conversion permit and timber harvest plan requirements.

Furthermore, the ability to engage in active forest management is, like all matters, dependent upon the economic viability of the activity. Recently, the price of logs, or the marketable product of Timber Operations, has experienced increased volatility, in some cases showing the highest prices in decades, and would initially suggest high viability of cost-effective Timber Operations. The reality for small-scale operations, however, does not provide such an optimistic outlook. Due to the need for heavy machinery and equipment to conduct operations, and the high costs of moving and operating these machines, many operations on less than 3-acres simply do not yield enough volume to result in an economic gain, or to break-even, for small Timberland owners. In a recent CAL FIRE monitoring effort, it was reported that, for operations within 150 feet of a home, the costs to the landowner of harvesting trees ranged from \$1,000 to \$50,000, and averaged \$11,500¹⁵. With these reported costs for the simple cutting and removal of trees, any additional expense or effort in permitting the removal can quickly become burdensome and a non-starter. As a result, it is likely that many forested landscapes

¹⁵ “Report on Exempt Timber Harvesting for the Reduction of Fire Hazard Within 150 Feet of Structures Non-Discretionary Timber Harvest Notice Use and Rule Compliance” CAL FIRE, 2021.

which have been converted to nontimbered uses are not being maintained to promote either the already permitted conversion, or other goals which may support those uses.

Additionally, the applicability of the term “Timberland Conversion” as defined within 14 CCR § 1100(g) to conversion exemptions pursuant to 14 CCR § 1104.1 on Timber Production Zone land is ambiguous, as the existing regulation states that the existing definition is not applicable to those activities pursuant to 14 CCR § 1104.1. Specifically, 14 CCR § 1100(g) defines Timberland Conversion for Timber Operations (1) on non-Timber Production Zone land and (2) on Timber Production Zone land *not* operating under a 14 CCR § 1104.1 conversion exemption, but it fails to address the category of Timber Operations on Timber Production Zone lands that *do* operate under a 14 CCR § 1104.1 conversion exemption.

The **purpose** of the proposed action is to: 1) Clarify the regulatory definition of Timberland Conversion to exclude certain activities on certain lands where a Timberland Conversion has already been completed in order to promote the maintenance of that legal Conversion; and 2) revise the definition of Timberland Conversion within 14 CCR § 1100(g)(2) to address conversion exemption activities on TPZ lands.

The **effect** of the proposed action is an exclusion of certain activities from the definition of Timberland Conversion, placing those activities outside the scope of the Act pursuant to the definition of Timber Operations in 14 CCR § 895.1. Additionally, the definition for Timberland Conversion for conversion exemptions on TPZ lands will be the same as the definition for Timberland Conversion on non-TPZ lands, absent the proposed exclusionary definition within this rulemaking proposal.

The **benefit** of the proposed action is a clear an enforceable regulatory scheme related to the Conversion of Timberlands which improves the ability of certain landowners to maintain their converted Timberlands without the need for duplicative and costly permitting. The proposed action may also result in improvements to the state’s environment through the appropriate maintenance of forest landscapes in areas where human activity is greatest.

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 § 1100

Amend § 1100(g)(1)(B) (formerly (g)(2))

The proposed action imposes the existing regulatory definition of “Timberland Conversion” for activities on non-TPZ Timberland to those on TPZ lands for activities pursuant to 14 CCR § 1104.1. Currently, Timberland Conversion on non-TPZ land in 14 CCR § 1101(g)(1) is identified as transforming Timberland to a non-timber use where “(A) Future timber harvests will be prevented or infeasible because of land occupancy and activities thereon”, among other conditions. However, on TPZ lands, Timberland conversion is identified as “...the immediate rezoning of TPZ lands,” but conversion exemptions pursuant to 14 CCR § 1104.1 are excepted from this requirement of immediate rezoning. If given a literal construction, the extant provision is potentially inconsistent with the purposes and the Act, and the Board’s intent in adopting it, to the extent that it suggests that zoning is the exclusive criteria by which a conversion occurs on TPZ lands. The immediate rezoning of TPZ land, as described in the extant provision, is intended to reflect a situation unique to TPZ land in which a conversion can occur in the absence of timber operations. In addition, the extant language presents a potential issue with the regulations where the filing of a conversion exemption on TPZ land simply becomes a *de jure* conversion even when there is no “conversion” of the land, as that term is commonly understood or as defined other Board regulations or statute. The purpose of the proposed action is to clarify that Timberland conversions pursuant to 14 CCR § 1104.1 exemptions on TPZ lands must comply with those conditions of 1101(g)(1)(A)-(C), which would ensure that actual physical conversion was occurring and that this process is used appropriately. This amendment is necessary to clarify the definition of these activities to adequately implement and enforce regulations related to the conversion of Timberlands.

Additionally, the proposed action eliminates reference to hectares to provide a metric measurement of the reference to 3 acres within 14 CCR § 1100(g)(1)(A)(3.). The purpose of this amendment is to simplify the units of measurement within this provision. In American forestry, outside of academic pursuits, imperial units are the standard units of measurement and metric measurements are not utilized. Furthermore, the fidelity required to provide accurate measurements at three significant figures is unrealistic for application across diverse forested landscapes. It is necessary to clarify the standards of the of the provision.

Adopt § 1104(g)(2)

The proposed action adopts an additional definition of Timberland Conversion which excludes the cutting or removal of trees in order to facilitate a nontimber growing use on certain parcels, and under certain conditions, from the regulatory definition of Timberland Conversion. The purpose of this amendment is to address the challenges described above of effectuating appropriate forest management on previously converted parcels. This amendment is necessary to clarify that tree cutting and removal on certain parcels does not constitute Timberland conversion pursuant to the Act and Rules. Please see statements below for specific purpose and necessity of the conditional elements surrounding the exclusion of certain operations from this definition. However, these additional conditional elements, in combination, also serve the purpose of protecting against abuse of the exemption by limiting qualifying tree cutting and removal

to narrowly tailored circumstances, many of which arguably fall outside the express and intended scope of the Act and Rules in the first place. The conditions, operating as a whole, are necessary to ensure that exempted activities are sufficiently narrowly tailored to maintain consistency with the purposes of the Act and Rules.

Adopt § 1104(g)(2)(A)

The proposed action excludes from the definition of Timberland Conversion the cutting and removal of trees in order to facilitate a nontimber growing use on certain parcels where a previously permitted Timberland Conversion, as defined in 14 CCR § 1100(g)(1), has already been completed during the same ownership. The purpose of this amendment is to ensure that the initial activity of cutting and removing trees as described in 14 CCR § 1100(g)(2) has been considered and evaluated for compliance under the Act and Rules and that those activities will not result in environmental impacts as mandated by 14 CCR § 896, as well as to ensure that subsequent maintenance activities are within the same geographic scope of the initially proposed project. Furthermore, the requirement that the previously permitted Timberland Conversion have been conducted during the same ownership is intended to ensure that subsequent maintenance activities are conducted under a permit which has not expired¹⁶ or has not been transferred, as explicitly prohibited pursuant to 14 CCR § 1106.4. These amendments are necessary to ensure that initial compliance with PRC § 4621(a) has occurred and the activities excluded by the proposed definition of Timberland Conversion in 14 CCR § 1100(g)(1) are simply in service of maintenance of those already converted Timberlands. The amendments are additionally necessary in order to clarify one of the conditional elements of the proposed exclusionary definition of Timberland Conversion, and to provide an enforcement mechanism, by means of an existing permit, to CAL FIRE and the regulated public in understanding the applicability of the proposed definition. Finally, the proposed amendment is necessary in order to ensure that the conversion maintenance activities consistent with the proposed definition of Timberland Conversion remain consistent with the Act. PRC § 4527(a)(2)(B) identifies that the cutting or removal of trees for the conversion of Timberland constitutes Timber Operations, and the proposed amendment ensures that the activities which constitute Timberland Conversion are appropriately permitted and accounted for consistent with the Act, while providing that certain activities which are simply the maintenance of those already converted lands are not subject to this definition.

Adopt § 1100(g)(2)(B)

The proposed action excludes lands designated as TPZ from the definition of Timberland Conversion proposed in 14 CCR § 1100(g)(2). The purpose of this amendment is to clarify the applicability of the proposed definition and avoid interference with other portions of law, namely Government Codes §§ 51100 through 51155 (the California Timberland Productivity Act of 1982), which places certain statutory requirements and obligations on these lands and the management thereof which the Board does not intend to address through this rulemaking. Furthermore, the

¹⁶ PRC § 4584(g)(2)(iii)

proposed action is intended to provide the opportunity for local government to regulate conversion maintenance activities, with which the provisions within PRC § 4516.5(f) interfere on lands designated as TPZ. This amendment is necessary to clarify the applicability of the proposed definition in order to ensure appropriate implementation and enforcement of the regulation.

Adopt § 1100(g)(2)(C)

The proposed action limits the applicability of the proposed definition of Timberland Conversion to parcels of less than three acres in size. The purpose of this amendment is to ensure that the maintenance activities of tree cutting and removal remain within a geographic scope which is both under the jurisdiction of local government regulation and oversight, pursuant to PRC § 4516.5(f) and which is likely to be *de minimis* in geographic scope and nature with regard to potential impacts (please see POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS CEQA for additional discussion regarding potential impacts). Furthermore, the purpose of this limitation is to ensure that, in the event that there is a change in ownership, any new owner may utilize the less than 3-acre conversion exemption in order to achieve any necessary conversion management goals in a manner which has as little burden as possible and still achieves the purpose described in the statements related to the adoption of 14 CCR § 1100(g)(2)(A) above. This amendment is necessary in order to clarify the applicability of the proposed definition of Timberland Conversion in order to promote their implementation and enforcement and to maintain internal consistency of the regulations.

Adopt § 1100(g)(2)(D)

The proposed action excludes the selling, bartering, exchanging, or trading of felled trees from the scope of the proposed definition of Timberland Conversion. Trees which are felled and removed for purposes of conversion maintenance consistent with the proposed definition of Timberland Conversion are consistent with the Act in that they do not constitute Timber Operations pursuant PRC § 4527(a)(2)(B) (please see discussion on the adoption of 14 CCR § 1100(g)(2)(A) above for additional information), however any trees which are cut or removed and offered for sale, barter, exchange, or trade explicitly constitute Timber Operations pursuant to PRC § 4527(a)(2)(A) and must be covered under a harvesting permit and license per PRC § 4581, or some exemption from a harvesting document adopted pursuant to PRC § 4584. Because these activities explicitly fall within the scope of the Act, they are not suitable for inclusion within this definition, which seeks to clarify the applicability, or lack thereof, of the Act for certain activities. This amendment is necessary in order to both clarify this conditional requirement of the proposed definition of Timberland Conversion, and to maintain consistency with the balance of the Act and Rules.

Adopt § 1100(g)(2)(E)

The proposed action limits the applicability of the proposed definition of Timberland Conversion to those parcels which possess an existing residential or commercial nontimber-growing use as evidence by the presence of a legally permitted or authorized residential or commercial building, and where the cutting or removal of trees will not

eliminate or displace the existing residential or commercial use of the parcel. The purpose of this amendment is to clarify the applicability of the exclusionary definition of Timberland Conversion to only those residential and commercial land uses where human presence is likely to be greatest and most persistent (relative to agricultural), resulting in the need to engage in active forest management to maintain converted lands at increased frequency. The amendment is necessary in order to clarify this standard to ensure appropriate implementation and enforcement of the regulation.

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

The regulations related to the elimination of certain activities from the scope of Timberland Conversion and, thus, the Act and Rules is likely to improve the economic efficiency of certain operations through the elimination of duplicative permitting costs. There is likely an economic saving 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, but does eliminate certain activities from existing permitting requirements. 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

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 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 benefit of the proposed action is a clear an enforceable regulatory scheme related to the Conversion of Timberlands which improves the ability of certain landowners to maintain their converted Timberlands without the need for duplicative and costly permitting. The proposed action may also result in improvements to the state's environment through the appropriate maintenance of forest landscapes in areas where human activity is greatest.

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)). 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”.

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: None.

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 conditions of the exclusionary definition of Timberland Conversion with performance-based regulations.

The Board rejected this alternative as it would create issues of clarity, enforceability, and implementation within existing regulations for Timberland Conversion. The prescriptive use of conditions for applicability of the exclusionary definition of Timberland Conversion 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.

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 course of the agency rulemaking process.

The proposed action is as prescriptive as necessary to address the problem, and contain 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 in certain cases.

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 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 extension of 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 relies on existing mechanisms of permitting and analysis for Timberland Conversion Timber Operations and simply provides that a Timberland conversion, which had previously been permitted without environmental impact, and which satisfies the existing legal definition for conversion, may remain in a state of conversion.

Where the proposed action eliminates certain *de minimis* tree cutting and removal activities from the scope of the Forest Practice Act, these activities have generally been categorically determined, by the California Natural Resources Agency, not to have a significant effect on the environment and are already categorically exempt from CEQA pursuant to 14 CCR § 15304. The regulations within the proposed action place additional conditional limitations on the potential scope of these *de minimis* activities through the imposition of conditions on the proposed definition of Timberland Conversion. These prescriptive requirements limit both the scope and the potential for impact for these activities which are generally without impact even outside of the additional conditions, per CEQA guidelines.

Furthermore, any tree cutting or removal activities of less than 3-acres are currently, and will remain, subject to county or local government regulation, including the need to conduct appropriate environmental analysis pursuant to CEQA if such removal would constitute a project under such regulation. The proposed action does not alter or affect the applicability of CEQA or the need to evaluate environmental impact from these activities in any way.

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