# Memo on the Joint Policy on Hardwoods

In 1994 the Board of Forestry and Fire Protection (Board) and the Fish and Game Commission (Commission) adopted the Joint Policy on Hardwoods in recognition of the importance of hardwood resources and oak woodlands within the state along with the pressures that face the ecosystems that support oak species. The Joint Policy on Hardwoods also recognizes the continued need for the long-term perpetuation and geographic representation of hardwoods and oak woodlands across the landscape and the need for conservation management of these resources.

The joint policy does not itself provide the Board or Commission with any authority or power beyond what has been established through statute or regulation. It is also not enforceable by any party. Instead, the joint policy is a guidance document reflecting the parties’ intent and goals at the time the joint policy was executed. Implementing any of the goals or guidance in the joint policy can only be done in accordance with the Board’s existing statutory or regulatory authority. The joint policy also expressly establishes policy for the respective departments – CAL FIRE, and the California Department of Fish and Wildlife (CDFW). However, the policies do not bind the parties or the respective departments to specific paths, they are aspirational. Over the last 30 years attempts at implementation of the joint policy by the Board, the Commission, CAL FIRE, and CDFW have run into significant hurdles from inter-agency coordination and appropriate authority. Given the current status of the joint policy, the Board may wish to reassess the necessity of the Joint Policy on Hardwoods.

When the joint policy was passed, the Board and Commission reviewed the need for statewide regulation of hardwoods and decided that it was not necessary at that time. Instead, the Board opted for a renewed effort to encourage local government and citizens to design strategies that will address local hardwood management and conservation under the guidance of the Integrated Hardwood Range Management Program. In the interim years, the Board, in consultation with the Commission, Department of Forestry and Fire Protection, Department of Fish and Game, the Integrated Range Management Program, the Range Management Advisory Committee and several other parties has adopted relevant regulations packages: the Emergency Notice for Sudden Oak Death in 2011, the White and Black Oak Special Prescription in 2016, and, after the passage of AB 1958 in 2015, the Oak Woodland Management Exemption in 2017. Today, the Integrated Hardwood Range Management Program is no longer active, and there is no comparable organization advising the Board on hardwood management issues.

In 2022 the California Wildlife Foundation raised the issue of continued pressure on hardwood resources and oak woodlands, and asked for the Board to consider the possibility for new regulation: specifically the redefinition of “Commercial Species” under §895.1 to include all species of California oak. The original recommendation was not added to the priorities due to issues with Board authority and appropriate regulatory scope. Instead, the Management Committee elected to review the joint policy and assess what steps could be taken to preserve hardwoods, particularly oaks and tanoaks. Emphasis was given to the exclusion of old growth tanoak forests from previous rulemaking and policy efforts, despite the ecological and cultural importance of those ecosystems.

Staff were directed to provide an overview of the Board’s authority as pertains to hardwoods and oak woodlands. The Board of Forestry and Fire Protection’s options for jurisdiction over hardwoods includes the following:

The Professional Foresters Law (PRC §§ 750 – 783) is for the regulation of those persons who practice the profession of forestry. It does not provide authority for the regulation of hardwoods or for other aspects of the for the joint policy. Although professional foresters provide professional services related to forestry, and forestry is the science and practice of managing forested landscapes, and forested landscapes are tree-dominated landscapes, this offers limited, if any, authority for regulation of hardwoods or enforcement. People cutting trees in oak woodland are technically practicing forestry without a license, but the Board does not have a route to prevent these actions or regulate other actions in woodlands or other areas with trees outside of Timberland.

The Board has authority to ensure “the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish and wildlife, and water resources” on Timberland. Several hardwood species are group B commercial species (including black oak, Oregon white oak, tanoak, and other species that vary by Forest District) and all hardwood species growing on timberland that provide habitat for wildlife and value to water resources. (Authority: PRC § 4551). This has been used in the past to provide management options for black oaks and white oaks (§913.4(f)) and to protect the wildlife and water resources that depend on aspen stands (§913.4(e)). The Board also has authority for rules and regulations for Timber Operations including prevention and control of damage by forest insects, pests, and disease. (Authority: PRC § 4551.5) If the Board wanted to expand one of the above special prescriptions or create a special prescription for the management of other species or to address specific measures to protect hardwoods from forest pests and disease, it would be acting within its authority.

Statutes granting authority to the Board for exempt activities include some that are specific to hardwood regulation. The Oak Woodland Management Exemption is specific to black oaks, Oregon white oaks and grasslands associated with the aforementioned species (Authority: PRC § 4584 et seq.), though the scope of the statute is limited to management of those specific species. Under §4584(b), the Board may designate as exempt activities concerning “The planting, growing, nurturing, shaping, shearing, removal, or harvest of immature trees for … minor forest products”. The Board could create an exemption that allows for forest management for non-timber “minor forest products” which would increase production of the products of hardwoods, including acorns, nuts, stems, and roots by removing young trees from hardwood stands that have been overgrown by forest succession.

There are opportunities for county-specific rules that are “related to local needs for timber operations including water distribution systems, flood control, stand density control, reforestation methods” which could impact hardwood regulation. These actions must be requested by a county board of supervisors. (Authority: PRC §4516.8)

In short, the Board has limited authority to implement existing terms of the joint policy. If the Board wished to take action to protect hardwood species, potential routes include creating rules specific to hardwood species growing on timberland, work addressing the prevention and control of damage by forest insects, pests, and disease, creating an exemption concerning the removal of immature trees to aid in the production of designated “minor forest products” that relate to hardwoods, and local rules that would be requested by a county board of supervisors. These changes are entirely within the authority of the Board and do not require the inter-agency coordination that would be described in a joint policy. If the Board wishes to continue to encourage local governments and citizens to address local hardwood management and conservation through the joint policy, a replacement organization for the now-dissolved Integrated Hardwood Range Management Program will be necessary to address the gap in advising entities on hardwood management and conservation.