Board of Forestry and Fire Protection

FINAL STATEMENT OF REASONS (FSOR), pursuant to GOV §11346.9(a)

“Spotted Owl Resource Plan Amendment, 2022”

Board of Forestry and Fire Protection

**Title 14 of the California Code of Regulations**

**Division 1.5, Chapter 4,**

**Subchapter 1**

**Amend 14 CCR §§ 895.1**

# UPDATE OF INFORMATION CONTAINED IN ISOR (pursuant to GOV §11346.9(a)(1))

No information contained in the Initial Statement of Reasons (ISOR) requires an update. All material relied upon was identified in the ISOR and made available for public review prior to the close of the public comment period.

# SUMMARY OF BOARD’S MODIFICATIONS TO 45-DAY NOTICED RULE TEXT AND INFORMATION REQUIRED PURSUANT TO GOV §11346.2(b)(1)) (pursuant to GOV §11346.9(a)(1))

The rule text was adopted as noticed for 45 Days.

# MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS (pursuant to GOV §11346.9(a)(2)):

The adopted regulation does not impose a mandate on local agencies or school districts.

# COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT WHICH MUST BE REIMBURSED IN ACCORDANCE WITH THE APPLICABLE GOVERNMENT CODE SECTIONS COMMENCING WITH GOV §17500 (pursuant to GOV §11346.9(a)(2)):

The adopted regulation does not impose a reimbursable cost to any local agency or school district.

# ALTERNATIVE 3, BOARD’S ADOPTED ALTERNATIVE (update, pursuant to GOV §11346.9(a)(1)), of information pursuant to GOV §11346.2(b)(4)): Adopt Rulemaking Proposal as Modified Through Formal Public Review and Comment Process

The Board selected Alternative #3 as proposed.

The proposed action is the most cost-efficient, equally or more effective, and least burdensome alternative. Alternatives 1 and 2 would not be more effective or equally effective while being less burdensome or impact fewer small businesses than the proposed action. Specifically, alternatives 1 and 2 would not be less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation than the proposed action. Additionally, alternatives 1 and 2 would not be more effective in carrying out the purpose for which the action is proposed and would not be as effective and less burdensome to affected private persons than the proposed action or would not be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action. Further, none of the alternatives would have any adverse impact on small business. Small business means independently owned and operated, not dominant in their field of operations and having annual gross receipts less than $1,000,000.

ALTERNATIVES DETERMINATION (pursuant to GOV §11346.9(a)(4) and (5))

No other alternatives have been proposed or otherwise brought to the Board's attention, except as set forth in the ISOR and provided herein in the summary and responses to comments. Based upon the findings below and a review of alternatives the Board has determined the following:

* No alternative considered would be more effective in carrying out the purpose for which the regulation was intended.
* No alternative would be as effective and less burdensome to affected private persons than the adopted regulation.
* No alternative would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.
* No alternative considered would lessen any adverse economic impact on small businesses.

**FINDINGS (BASED ON INFORMATION, FACTS, EVIDENCE AND EXPERT OPINION) TO SUPPORT THE ALTERNATIVES DETERMINATION**

* The Board finds that Spotted Owl Resource Plans provide an effective landscape-level habitat protection pathway for Northern Spotted Owl.
* The Board finds that this pathway for take avoidance provided by a Spotted Owl Resource Plan should explicitly be extended to non-industrial landowners.
* The Board finds that the adopted alternative improves the clarity and consistency of terms used throughout the rules.
* The Board finds the adopted alternative strikes a balance between performance based and prescriptive standards.
* The Board finds that a minimum level of prescriptive standards were needed to implement the statute.
* The Board finds that the adopted alternative fulfills the obligations of the Board, specified in statute, and represents a product based upon compromise and the greatest degree of consensus achievable at the time the Board authorized noticing of these amendments.
* The Board finds that various agency representatives reviewed and provided input into these amendments.

# BRIEF SYNOPSIS OF ADDITIONAL ALTERNATIVES CONSIDERED AND REJECTED (update, pursuant to GOV §11346.9(a)(1)), of information pursuant to GOV §11346.2(b)(4))

## 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 defining Spotted Owl Resource Plans with performance-based regulations. This action could lead to issues of clarity surrounding implementation and enforcement of the regulations. This alternative may reduce clarity and consistency with other portions of the rules which rely upon the existence of the regulatory requirements that exist in order to ensure that Northern Spotted Owls are preserved.

# SUMMARY AND RESPONSE TO COMMENTS (pursuant to GOV 11346.9(a)(3))

The comments below are identified in the following format: The letter S or W followed by a series of numbers separated by a hyphen, followed by the name and affiliation (if any) of the commenter (e.g., W1-8: John Doe, Healthy Forest Association).

S: Indicates the comment was received from a speaker during the Board hearing associated with the Notices of Proposed Action.

W: Indicates the comment was received in a written format.

1st number: Identifies the comments in the order in which it was received.

## WRITTEN COMMENTS AND RESPONSES RESULTING FROM 45-DAY NOTICE OF PROPOSED RULEMAKING PUBLISHED November 19, 2021

**Comment W1 (Matthew Reischman, Deputy Director, Resource Management, CAL FIRE)**

Dear Ms. Van Susteren,

The California Department of Forestry and Fire Protection (CAL FIRE) supports the Board of Forestry and Fire Protection’s (Board) adoption of the proposed rule change entitled “Spotted Owl Resource Plan Amendment, 2022. CAL FIRE appreciates the opportunity to provide comments on the proposed change to the definition of Spotted Owl Resource Plan (SORP) in the California Forest Practice Rules 14 CCR §895.1.

CAL FIRE provided a Northern Spotted Owl (NSO) presentation to the Board of Forestry’s Forest Practice Committee on March 1, 2022. The presentation included a summary of definitions and regulations pertaining to NSO as well as their application, or lack thereof, within various types of timber harvesting plans. The presentation also provided a list of suggested changes to the FPRs, either through modification or removal. One recommendation was to change the definition of Spotted Owl Resource Plan to include Nonindustrial Timber Management Plans (NTMP) and Working Forest Management Plans (WFMP). Spotted Owl Resource Plan (SORP), per 14 CCR §895.1:

*“means a plan that demonstrates an approach to preventing a taking of*

*the northern spotted owl while conducting timber harvest operations. A*

*Spotted Owl Resource Plan necessarily involves more than one timber*

*harvest plan area.”*

As presented by CAL FIRE, this definition is interpreted as applying only to timber harvesting plans and not NTMPs or WFMPs based on the language in the second sentence. Because small timberland owners do not typically submit more than one timber harvesting plan, one could further interpret that SORPs would apply almost exclusively to large, industrial timberland owners.

In 2021, CAL FIRE and California Department of Fish and Wildlife, with input from United States Fish and Wildlife Service, finalized the Eastside SORP that covers the northeast portion of the NSO range in California. The primary purpose of this SORP is to address the large, unique geographic area whose stand type, climate, topography, hydrology, and owl densities are not typical of NSO. Additionally, the Eastside SORP was developed to combine the multiple landscape-level NSO take avoidance plans utilized by industrial landowners, but also make enrollment available across small private timberland owners, particularly those with NTMPs or WFMPs.

NTMPs and WFMPS are long-term timber available to small, private timberland owners seeking to manage their property as uneven aged stands on a long-term basis. NTMPs cover land ownerships of up to 2,500 acres and WFMPs between 2,500 and 15,000acres. The Legislative findings and declaration in PRC §4593 apply to both plan types, whereby PRC §4593(b) states:

*“The Legislature further finds and declares that minimal environmental harm is*

*caused by prudent management of non industrial timberlands because low*

*volume production and dispersion around the state of these small tracts*

*reduces damage to aesthetics, air quality, watersheds, and wildlife.”*

Given their uneven aged timber management, NTMPs and WFMPs typically do not modify NSO habitat in the sense of reducing it from nesting/roosting to foraging or foraging to non-habitat, but rather results in maintenance or improvement of habitat. There are over 650 NTMPs and one WFMP currently within the range of the Northern Spotted Owl (Figure 1.) accounting for over 260,000 acres of potential NSO habitat.

Including NTMPs and WFMPs in the SORP definition provides another tool for small timberland owners and acknowledges the benefits of these landowners for providing longterm management strategies that furthers the conservation and management of NSO and their habitat.

CAL FIRE appreciates the Board’s consideration of the proposed SORP definition

modification and enacting it so quickly. CAL FIRE appreciates the opportunity to comment on the proposed SORP definition change and looks forward to engaging in further NSO discussions. If you have any questions or comments regarding this letter, please contact CAL FIRE Forest Practice Biologist Stacy Stanish (Anastasia.Stanish@fire.ca.gov or 916-616-8643).

Sincerely,

MATTHEW REISCHMAN

Deputy Director

Resource Management

**Response:** The Board appreciates the support of the Department.

**Rule Text Change:** No

## VERBAL COMMENTS AND RESPONSES RESULTING FROM PUBLIC HEARING CONDUCTED May 5, 2022

**Comment S1 (Tim Ryan, California Department of Fish and Wildlife (CDFW))**: CDFW would like to offer their support for this amendment to the Rules. Spotted Owl Resource Plans are a promising pathway for both landowners managing their land and as a method to avoid take of the Northern Spotted Owl. Preliminary results from the first Spotted Owl Resource Plan to be implemented, the Eastside SORP, are very impressive. CDFW supports this rulemaking.

**Response:** The Board appreciates the support of the Department of Fish and Wildlife.

**Rule Text Change:** No