



CALIFORNIA
NATIVE PLANT SOCIETY

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Protecting
California's native
flora since 1965

October 13, 2023

Board of Forestry and Fire Protection
Attn: Regulations Priority Review
P.O. Box 944246
Sacramento, CA, 94244-2460

Submitted via email to: PublicComments@bof.ca.gov

**Re: California Native Plant Society Comments on Board of Forestry and Fire Protection
2023 Regulations and Priority Review**

Dear Colleagues:

Thank you for the opportunity to comment on the Board of Forestry and Fire Protection (Board) 2023 Regulations and Priority Review. The following comments are submitted on behalf of the California Native Plant Society (CNPS), a non-profit environmental organization with over 12,500 members in 36 Chapters across California and Baja California, Mexico. CNPS's mission is to protect California's native plant heritage and preserve it for future generations through the application of science, research, education, and conservation. We work closely with decision-makers, scientists, and local planners to advocate for well-informed policies, regulations, and land management practices.

For many years, CNPS has been concerned that the Forest Practice Rules do not require botanical surveys or the discussion of special status species with the potential to occur prior to approving a timber harvest plan (THP). As the substantive requirements of the California Environmental Quality Act (CEQA) apply to THPs, they should include sufficient information for reviewing agencies and the public to review and comprehensively understand the potential impacts of a planned project prior to approval.¹ Despite the well-established authority that the substantive requirements of CEQA apply to timber harvest plans,² many THPs do not meet all of the requirements of CEQA due to a failure to survey for botanical resources or to analyze impacts and provide mitigation measures for

¹ *Ebbetts Pass Forest Watch v. California Dept. of Forestry and Fire Protection*, 43 Cal.4th 936, 943 (2008) ("Serving as the functional equivalent of an EIR, a timber harvest plan must 'provide public and governmental decisionmakers with detailed information on the project's likely effect on the environment, describe ways of minimizing any significant impacts, point out mitigation measures, and identify any alternatives that are less environmentally destructive.'" (internal citation omitted)).

² *Environmental Protection Information Center, Inc. v. Johnson*, 170 Cal.App.3d 604, 620 (Cal. Ct. App. 1985) ("CEQA and its substantive criteria for the evaluation of a proposed project's environmental impact apply to the timber harvesting industry, and are deemed part of the FPA and the Forestry Rules.").

these impacts. These issues were raised by the 2018 letter to the Board from the California Department of Fish and Wildlife (CDFW) and in the 2022 letter to the Board from CNPS and the Environmental Protection Information Center (EPIC), attached for reference. The CDFW letter states that, “The current Forest Practice Rules’ omission of scoping, mitigation, and management practices for botanical resources creates uncertainty and results in avoidable impacts to these resources.” The lack of standards specific to botanical resources has led to inconsistent measures to protect special status plant populations. Monitoring of the response of these populations to timber harvest has not occurred or has not been applied to management decisions. Surveys for biological resources are often deferred until after project approval, despite the fact that it is legally required that survey data be submitted early enough so that reviewing agencies and the public have an opportunity to evaluate and consider the data. *See Sundstrom v. County of Mendocino*, 202 Cal.App.3d 296, 307 (Cal. Ct. App. 1988) (internal quotations and citations omitted) (“Environmental problems should be considered at a point in the planning process where genuine flexibility remains.”). The lack of baseline information makes it impossible to design measures to avoid, minimize, or mitigate the impacts of timber harvesting, *See Sierra Club v. State Bd. of Forestry*, 7 Cal.4th 1215, 1236-37 (1994) (failure to obtain necessary information regarding existing conditions and failure to consider site-specific survey data during evaluation of timber harvest plans made meaningful assessment of impacts and development of site-specific mitigation measures impossible; approving timber harvest plans without the necessary information is contrary to CEQA and the Forest Practice Act). Surveys are essential to understand the potential impacts of a project and whether the measures to lessen these impacts would be sufficient, *See Save the Agoura Cornell Knoll v. City of Agoura Hills*, 46 Cal.App.5th 665, 694 (Cal. Ct. App. 2020) (“[A]n updated [plant] survey would not merely be helpful, but would be necessary to formulate an adequate mitigation measure for these affected plant species.”).

We have reviewed the relevant Public Resource Codes (PRCs) and have found that these regulations may lack sufficient guidance to ensure that THPs meet the requirements of CEQA. Regulations, in addition to the provisions laid out in PRC § 4511 et seq., PRC § 740 et seq., PRC § 4290, and PRC § 4291 need to be developed by the Board to ensure that THPs provide sufficient information to meet the requirements laid out by CEQA, and to ensure that the regulations implementing minimum fire safety standards related to defensible space, fuel breaks, and greenbelts in state responsibility areas do not cause significant impacts to the environment.

Z'berg-Nejedly Forest Practice Act - PRC § 4511 et seq.

The Z'berg-Nejedly Forest Practice Act (Forest Practice Act) does not offer clear guidance regarding surveys, monitoring, or mitigation measures for special status plants or other biological resources. To ensure the THPs meet CEQA equivalency the Board should develop additional regulations to require information on botanical resources be analyzed prior to plan approval. This will ensure that potential impacts to the environment and

biological resources are avoided. The Forest Practice Act mentions the protection of “unique areas”, however there is no guidance as to when and how “unique areas” would be identified. As defined in the California Code of Regulations Title 14, § 895.1 “unique areas” are “special treatment areas” which contain one or more significant resource features that may be at risk during timber operations, including key habitat areas of federal or state designated threatened, rare or endangered species. To identify these areas, surveys following CDFW Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (Protocols) should occur prior to project approval to identify any habitat for for state or federally listed threatened or endangered species, BLM sensitive species, USFS species of conservation concern, and species listed on the CDFW Special Vascular Plants, Bryophytes, and Lichens List and Special Animals List. If the registered professional forester is not qualified to perform comprehensive biological surveys they should be required to hire a qualified biologist to conduct these surveys. Based on these findings, mitigation and monitoring plans should be developed for any resources with the potential to be impacted to ensure CEQA compliance of THPs prior to approval. The maps developed for project review, described in PRC 4582. (c), 4593.3. (b), and 4597.2. (b), should include locations of unique areas and special status species observed during surveys, as well as occurrences recorded in the California Natural Diversity Database (CNDDDB).

Regulations to minimize the damage to streamside vegetation should include a mandate to minimize damage to sensitive vegetation communities and special status plant populations in addition to minimizing damage to hardwood trees. This should include mitigation measures and post harvest monitoring of streamside vegetation.

The Forest Practice Act includes a provision that allows regional water quality control boards to prevent the approval of a project where the control board finds that “the timber operations proposed in the plan will result in a discharge into a watercourse that has been classified as impaired due to sediment pursuant to subsection (d) of Section 303 of the Federal Water Pollution Control Act, that causes or contributes, to a violation of the regional water quality control plan.” There should be additional regulation to grant a similar authority to CDFW to prevent the approval of a plan where they determine that a project may have significant impacts to any state or federally listed threatened or endangered species, BLM sensitive species, USFS species of conservation concern, and species listed on the CDFW Special Vascular Plants, Bryophytes, and Lichens List and Special Animals List.

Department of Forestry and Fire Protection - PRC § 740 et seq.

A regulation to give the Director of CDFW similar authority to the authority that is given to the Secretary of the Natural Resources Agency, the Secretary for Environmental Protection, and the Secretary of Food and Agriculture in section 741. (d) to consult with the advisory committee regarding a rangeland resource or wildlife issues should be developed.

Additional regulations should be developed to require that a registered professional forester to have demonstrated ability to identify a wide range of plant and animal species and a familiarity with state and federally listed threatened and endangered species, BLM sensitive species, USFS species of conservation concern, and species listed on the CDFW Special Vascular Plants, Bryophytes, and Lichens List and Special Animals List, or that they hire a qualified biologist to conduct pre approval surveys of the project area if the forester is not qualified to perform comprehensive biological surveys.

Hazardous Fire Areas - PRC § 4290

The board should develop additional regulations to ensure that the potential impacts to the environment or habitats for state or federally listed threatened or endangered species, BLM sensitive species, USFS species of conservation concern, and species listed on the CDFW Special Vascular Plants, Bryophytes, and Lichens List and Special Animals List are avoided during vegetation clearance to meet minimum fire safety standards related to defensible space or during the construction and maintenance of fuel breaks.

PRC § 4290. (b) mentions the inclusion of measures to preserve undeveloped ridgelines to reduce fire risk and improve fire protection, and calls for the Board to define “ridgeline” for the purpose of this subdivision. Additional regulations should define “ridgeline”, as well as clarify the preservation of undeveloped ridgelines to reduce fire risk and improve fire protection. While ridgelines are an opportunistic place to slow the spread of fire they are also often home to soil types and geologic conditions that are occupied by rare and edaphically restricted plant species. If a ridgeline is going to be identified as suitable for fire protection in a THP it should be surveyed following CDFW Protocols to identify and document any resources that could be impacted by active fire suppression activities and protected from any disturbance during the construction or maintenance of fuel breaks or from vegetation clearing to reduce fire risk and improve fire protection.

Mountainous, Forest-, Brush- and Grass-Covered Lands - PRC § 4291

Additional regulations should be developed to ensure that vegetation approved for removal by the State Fire Marshall would not have an impact to any state or federally listed threatened and endangered species, BLM sensitive species, USFS species of conservation concern, and species listed on the CDFW Special Vascular Plants, Bryophytes, and Lichens List and Special Animals List.

In conclusion, we ask that the board update the Forest Practice Rules to require that surveys following CDFW Protocols are conducted in the preparation of THPs, and require the Board to not approve any project where CDFW has informed the director that the project is likely to have significant impacts to biological resources. We would also like the board to develop regulations that would require the consideration of environmental impacts, including impacts to special status species, when implementing treatments designed to

comply with minimum fire safety standards related to defensible space, fuel breaks and greenbelts. We have attached suggested amendments to the relevant PRCs for reference.

Thank you for the opportunity to comment on this review and please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'BW', with a long horizontal stroke extending to the right.

Brendan Wilce
Conservation Program Coordinator
California Native Plant Society
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