

**Board of Forestry and Fire Protection****Notice of Proposed Emergency Action,  
(pursuant to GOV § 11346.1)****“Emergency Rulemaking to Implement Legislative Changes to the Working Forest  
Management Plan Statutes Pursuant to SB 901”****Notice Date: January \_\_, 2019**

The Board of Forestry and Fire Protection (hereinafter “Board”) has adopted emergency regulations to modify Working Forest Management Plan regulations pursuant to Senate Bill No. 901 (SB 901) relating to the Forest Practice Act (commencing with Public Resources Code Section 4511) in accordance with the authority under SB 901. This action is being taken in accordance with Government Code (GOV) §§ 11346.1, 11346.5 (2) through (6) inclusive, and 11349.6. The Board adopted the emergency regulation at their regular meeting scheduled on January 23, 2019.

If you wish to comment on the adopted emergency regulations, you must submit the comment directly to the Office of Administrative Law (hereafter “OAL”) within **five (5) calendar days** of OAL’s posting of the proposed emergency regulations on the OAL web site. You may submit comments on the adopted emergency regulations to:

**Mail:**

OAL Reference Attorney  
300 Capitol Mall, Suite 1250  
Sacramento, California 95814

**Fax:**

(916) 323-6826

**E-mail:**

[staff@oal.ca.gov](mailto:staff@oal.ca.gov).

OAL will accept all comments submitted by the specified deadline.

When you submit a comment to OAL, you must also submit a copy of your comment to the rulemaking agency's specified contact person provided below.

**Mail:**

Eric Hedge  
Regulations Coordinator  
Board of Forestry and Fire Protection  
P.O. Box 944246

Sacramento, CA 944244-2460

**Fax:**

(916) 653-0989

**E-mail:**

[publiccomments@BOF.ca.gov](mailto:publiccomments@BOF.ca.gov)

These regulations will likely be submitted to the Office of Administrative Law on or after January 31, 2019. **If the regulation is submitted to OAL on that date, the public comment period closes on February 5, 2019.**

OAL will confirm that the agency has received the comment. Pursuant to Title 1, California Code of Regulations, §§ 55(b)(1) through (4), the comment must state that it is about an emergency regulation and include the topic of the emergency.

The Board is not required and, in this instance, not likely to respond to comments submitted. However, should the Board choose to respond, it must submit its response to OAL within **eight (8) calendar days** following the date of submission of the proposed emergency regulation to OAL, unless specific exceptions are applicable. [Title 1 CCR § 55].

Pursuant to **GOV § 11346.1(a)(2)(A)**, the specific rule text associated with the proposed action immediately follows this notice.

Pursuant to **GOV § 11346.1(b)(2)**, following is a description of the facts demonstrating the existence of an emergency and the need for immediate action, and demonstrating, by substantial evidence, the need for the proposed regulation to effectuate the statute being implemented, interpreted, or made specific and to address only the demonstrated emergency.

On September 21, 2018, the Governor signed Senate Bill No. 901 (Chapter 626, 2018) (SB 901), which was promptly filed with the Secretary of State and became effective on January 1, 2019. The bill addressed various forest health and management issue with the stated intent of "...improv[ing] forest health and reduc[ing] the risk and intensity of wildfires, thereby protecting the state from loss of life and property damage, reducing greenhouse gas emissions, enhancing ecosystem function, improving wildlife habitats, increasing water supply, improving water quality, reducing the amount of money the state must spend on wildfire response and rebuilding, and increasing carbon sequestration in [the state's] forests."

The bill identifies several urgent matters related to forest health and management, including declarations that "[i]t is the policy of the state to encourage prudent and responsible forest resource management by increasing the pace and scale of fuel reduction, thinning, and the use of prescribed fire as directed by Governor Brown's Executive Order B-52-18", and that "California's small timberland owners find it difficult

to practice sustainable forest management on their private family ownerships". SB 901 addresses these findings through various statutory schemes, including revisions to existing permitting documents and mechanisms which are available to the small, nonindustrial landowners throughout the state.

Within SB 901, SEC. 46, the legislature required that the regulations which the Board adopts "...pursuant to the provisions of this act relating to the Z'berg-Nejedly Forest Practice Act of 1973, established in Article 1 (commencing with Section 4511) of Chapter 8 of Part 2 of Division 4 of the Public Resources Code, shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code", and goes on to further find that the "**...adoption of the initial regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare.**"<sup>1</sup> (Emphasis added.)

The Board concurs with this finding that the adoption of regulations related to these provisions is an emergency and are necessary for the preservation of the public peace, health, safety, and general welfare in the state. The Board adopted these as emergency regulations pursuant to the authority under SEC. 46 of SB 901.

As further background, SB 901 amended sections of the Public Resources Code, including sections of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511) (Forest Practice Act). The sections amended by SB 901 included Sections 4597, 4597.1, 4597.2, and 4597.6, which are part of the Working Forest Management Plan program, Article 7.7 of the Forest Practice Act.

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973, PRC § 4511, et seq. 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.

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<sup>1</sup> SEC. 46 of SB 901 states, in its entirety: "The regulations that the State Board of Forestry and Fire Protection adopts pursuant to the provisions of this act relating to the Z'berg-Nejedly Forest Practice Act of 1973, established in Article 1 (commencing with Section 4511) of Chapter 8 of Part 2 of Division 4 of the Public Resources Code, shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of the initial regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. The board may readopt any emergency regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted under this section. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted or readopted under this section shall remain in effect until revised by the board."

PRC § 4551 requires the Board to adopt forest practice rules and regulations to, among other things, "...assure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish and wildlife, and water resources."

Pursuant to authority given to the Board in the Forest Practice Act, the Board adopted regulations to create the Working Forest Management Plan (WFMP) program, as mandated by the legislature and administration through AB 904 (2016), which chaptered and subsequently amended PRC §§ 4593.10 and 4597 et seq. The Working Forest Management Plan (WFMP) program is a long-term sustainable forest management permitting mechanism available to nonindustrial landowners (with a maximum number of acres of timberland) if they commit to uneven aged management and sustained yield.

Pursuant to **GOV § 11342.545**, this situation calls for immediate action to avoid serious harm to the public peace, health, safety, and general welfare, as expressly determined by the legislature in SB 901. SB 901 addressed various forest health and management issues, including the difficulties facing small timberland owners in practicing sustainable forest management, which prevents them from improving forest health and reducing the risk and intensity of wildfires, helping protect the state from loss of life and property damage, reducing greenhouse gas emissions, enhancing ecosystem function, improving wildlife habitats, increasing water supply, improving water quality, reducing the amount of money the state must spend on wildfire suppression and rebuilding, and increasing carbon sequestration in California's forests. In addition, the difficulties facing small timberland owners impede their ability to practice prudent and responsible forest resource management and to increase the pace and scale of fuel reduction, and management of timberland, thereby limiting their ability to act consistently with state policy. The Board was compelled to respond to the evidence, as described above. These regulations are immediate and necessary to, in part, ease the difficulties facing small timberland owners in practicing sustainable forest management and to improve forest health and management. Further, SB 901 expressly requires that the regulations adopted by the Board be adopted as emergency regulations.

The Board is proposing action to amend 14 CCR §§ 1094, 1094.2(k), 1094.2(l), 1094.6(f)(3), 1094.6(j), 1094.8(n), 1094.17(a)(2), 1094.17(a)(3) and 1094.23(c)(14).

Pursuant to **GOV CODE § 11346.1(b)(2)**, following are the list of each technical, theoretical and empirical study, report, or similar documents, if any, upon which the Board relied to make the "emergency" finding:

Senate Bill No. 901, Chapter 626, signed by Governor Brown on September 21, 2018.

Governor issued Executive Order "B-52-18" issued May 10, 2018.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV §**

**11346.5(a)(2)** (the reference to the authority(s) under which the regulation is proposed and a reference(s) to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific).

**14 CCR § 1094** Note: Authority cited: Sections 4551, 4551.5, 4552 and 4553, Public Resources Code. Reference: Sections 4597 Public Resources Code.

**14 CCR § 1094.2** Note: Authority cited: Sections 4551, 4551.5, 4552 and 4553, Public Resources Code. Reference: Sections 4597.1 and 4597.2, Public Resources Code.

**14 CCR § 1094.6** Note: Authority cited: Sections 4551, 4551.5, 4552 and 4553, Public Resources Code. Reference: Sections 4562.5, 4562.7, 4597.2 and 21000(g), Public Resources Code.

**14 CCR § 1094.8** Note: Authority cited: Sections 4551, 4551.5, 4552 and 4553, Public Resources Code. Reference: Sections 4597.11, Public Resources Code.

**14 CCR § 1094.17** Note: Authority cited: Sections 4551, 4551.5, 4552 and 4553, Public Resources Code. Reference: Sections 4597.6, Public Resources Code.

**14 CCR § 1094.23** Note: Authority cited: Sections 4551, 4551.5, 4552 and 4553, Public Resources Code. Reference: Sections 4582.7, 4597.6, 4597.7 and 4597.8, Public Resources Code.

Pursuant to **1 CCR § 20(c)(1)**, no documents are incorporated by reference in these regulations.

The Board had available the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office in Sacramento, California.

Pursuant to **1 CCR § 48**, the notice required by Government Code section 11346.1(a) shall contain the following or substantially similar statement:

“Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.”

Pursuant to **1 CCR §50(a)(5)(A)** and **GOV § 11346.1(a)(2)** the Board provided a five working-day notice. The proposed action was, at a minimum, posted on the Board's website (pursuant to **GOV § 11346.4(a)(6)**), sent to the Board mailing list (pursuant to **GOV § 11346.4(a)**) and widely distributed via email (pursuant to **GOV § 11340.85**) at least five working days prior to being submitted to the Office of Administrative Law.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(3)**

### **INFORMATIVE DIGEST**

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973, PRC § 4511, et seq. the Board is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands.

Pursuant to PRC §4551 the Board is authorized to adopt forest practice rules and regulations to ensure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, wildlife, and water resources, including, but not limited to, streams, lakes, and estuaries.

Pursuant to PRC §4551.5 the rules and regulations that the Board is authorized to adopt include those that apply to the conduct of timber operations and for the preparation of timber harvesting plans.

Pursuant to PRC §4552 the rules and regulations that the Board is authorized to adopt shall be based upon a study of the factors that significantly affect the present and future condition of timberlands and shall be used as standards by persons preparing timber harvesting plans.

Pursuant to PRC §4553 the rules and regulations that the Board is authorized to adopt shall be continuously reviewed and may be revised, and the Board shall consult with and evaluate the recommendations of concerned federal, state, and local agencies, and other public and private organizations.

Pursuant to this statutory authority, the Board amended 14 CCR §§ 1094, 1094.2, 1094.6, 1094.8, 1094.17, and 1094.23, in accordance with the provisions of the statutes.

The effect of the proposed action is to provide small timberland owners who qualify as working forest landowners with a revised permitting process and requirements to allow them to practice sustainable forest management on their timberland. The proposed action will expressly allow multiple landowners to submit a joint Working Forest Management Plan (PRC § 4597.1), reduce the maximum number of acres within a single WFMP to 10,000 (PRC § 4597.1). In addition, the proposed action will revise the requirement that the WFMP include provisions to address significant sediment discharge to watercourses, including the requirement of an erosion control implementation plan (ECIP), and instead require the WFMP to comply with

the applicable forest practice road rules (PRC § 4597.2).<sup>2</sup> Furthermore, the proposed action will limit the Harvest Area of a WFMP to a single hydrologic area, as identified by CALWATER 2.2.

The primary benefit of the proposed action is help reduce the difficulties facing small timberland owners in practicing sustainable forest management, which will then allow them to improve forest health, including reducing the risk and intensity of wildfires, protecting the state from loss of life and property damage, reducing greenhouse gas emissions, enhancing ecosystem function, improving wildlife habitats, increasing water supply, improving water quality, reducing the amount of money the state must spend on wildfire response and rebuilding, and increasing carbon sequestration in California's forests, thereby furthering state policy.

The proposed action does not differ substantially from an existing comparable federal regulation or statute.

The Board performed a search of existing regulations and concluded that the proposed regulation is not inconsistent or incompatible with existing state regulations.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(4)**.

There are no other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(5)**.

The Board finds that the proposed regulation does not impose a mandate on local agencies or school districts.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(6)**.

No costs or savings to any State agency are expected.

The proposed regulation does not impose a reimbursable cost to any local agency or school district (under Part 7 (commencing with Section 17500 of Division 4)). There are no other nondiscretionary costs or savings imposed on local agencies. There are no costs or savings in federal funding to the State.

The Board took action to authorize emergency rulemaking based on the authority granted to it by the legislature pursuant to SB 901 and by the findings provided pursuant to GOV §

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<sup>2</sup> Specifically, the amended language in PRC § 4597.2, subdivision (d), states: "All necessary information shall demonstrate compliance with Article 12 (commencing with Section 923) of Subchapter 4 of, Article 11 (commencing with Section 943) of Subchapter 5 of, and Article 12 (commencing with Section 963) of Subchapter 6 of, Division 1.5 of Title 14 of the California Code of Regulations"

11346.1(b)(2). The problem that the Board has addressed in the proposed action is described in the findings provided pursuant to GOV § 11346.1(b)(2), which findings were adopted by the legislature and with which the Board concurs.

The purpose of the proposed action is to allow multiple landowners to join together to submit a single Working Forest Management Plan (PRC § 4597.1), reduce the maximum number of acres within a single WFMP to 10,000 (PRC § 4597.1), require the harvest area to be within a single defined hydrologic area (PRC § 4597.1), and revise the requirement for the WFMP to include provisions, including an ECIP, to address significant sediment discharge to watercourses by replacing these with the requirement to comply with the applicable forest practice road rules under 14 CCR § 923 (PRC § 4597.2), including clarifying the related erosion control mitigation measures required in the Working Forest Harvest Notice. In addition, the purpose is to make other clarifying changes necessitated by SB 901.

#### **Amend 14 CCR § 1094**

The purpose of this amendment is to expressly require compliance with applicable regulatory requirements of the State Water Resources Control Board and appropriate Regional Water Quality Control Board. This amendment is necessary for clarity and to ensure consistency with the amendment to PRC § 4597 under SB 901.

#### **Amend 14 CCR § 1094.2(k)**

The purpose of this amendment is to revise the definition of “Working Forest Landowner” to reduce the number of acres of timberland owned from 15,000 to 10,000 or less. This amendment is necessary for clarity and to ensure consistency with the amendment to PRC § 4597.1(i) under SB 901.

#### **Amend 14 CCR § 1094.2(l)**

The purpose of this amendment is to revise the definition of “Working Forest Management Plan (WFMP)” to allow multiple Working Forest Landowners under a single WFMP of no more than 10,000 acres, and to require the Harvest Area to be within a single CALWATER 2.2 hydrologic area. This amendment is necessary for clarity and to ensure consistency with the amendment to PRC § 4597.1(j) under SB 901.

#### **Amend 14 CCR § 1094.6(f)(3)**

The purpose of this amendment is to require the specific hydrologic area number as part of the Plan area description. This amendment is necessary for clarity and to ensure consistency with 14 CCR 1094.2(l) and the amendment to PRC § 4597.1(j) under SB 901.

#### **Amend 14 CCR § 1094.6(j)**

The purpose of this amendment is to remove from the required contents of a WFMP an ECIP or documentation of compliance with similar requirements, and to require documentation to demonstrate compliance with the applicable forest practice road rules, as specified. This amendment is necessary for clarity and to ensure consistency with the amendment to PRC § 4597.2(d) under SB 901.

**Amend 14 CCR § 1094.8(n) Option 1:**

The purpose of this amendment is to remove from the required contents of a Working Forest Harvest Notice (WFHN) an updated ECIP and its contents if conditions have changed since the WFMP was approved, and to specifically require any updated erosion control mitigation measures to comply with the applicable forest practice road rules, as specified.

As discussed within the necessity statement related to amendments to 14 CCR § 1094.6(j), the requirement to include an ECIP within a WFMP has been eliminated within statute and regulation (within this proposed action) and is succeeded by a requirement to document and demonstrate compliance with the applicable forest practice road rules. However, there remains a regulatory requirement within the WFHN content to provide an update to an ECIP (14 CCR § 1094.8(n)). Given that the ECIP is no longer a requisite component of the WFMP, the Board has eliminated the requirement to provide an update to that document within the WFHN. In addition, the elimination of the ECIP and inclusion of the forest practice road rules by SB 901 necessitates further action by the Board to provide regulatory clarification.

The amendment to PRC § 4597.2(d), removing the ECIP and requiring compliance with the applicable forest practice road rules, requires similar amendments to § 1094.8(n) since it and its authorizing statute, PRC § 4597.11(l), address an *update* to the erosion control mitigation measures under the WFHN. The forest practice road rules contain technical and operational information related to erosion control and mitigation, including identification and disclosure of significant existing and potential erosion sites, as well as planning and treatment for those sites. This update to the erosion control mitigation measures required by PRC § 4597.11(l) therefore must include the erosion control information included in the forest practice road rules pursuant to the amendment to PRC § 4597.2(d) in SB 901. This amendment is necessary for clarity and to ensure consistency with PRC § 4597.11(l), the amendment to PRC § 4597.2(d) under SB 901, and 14 CCR § 1094.6(j).

The RPF certification regarding additional listings of water bodies was moved to a new separate subdivision, 14 CCR § 1094.8(x) (see discussion below), as this certification is unrelated to the rest of 14 CCR § 1094.8(n), and the Board determined that it was necessary for clarity and to ensure consistency with PRC § 4597.11(l), the amendment to PRC § 4597.2(d) under SB 901, and 14 CCR § 1094.6(j).]

**Amend 14 CCR § 1094.8(n) OPTION 2:**

The purpose of this amendment is to remove from the required contents of a Working Forest Harvest Notice (WFHN) an updated erosion control implementation plan and its contents if conditions have changed since the WFMP was approved, and to specifically require any updated erosion control mitigation measures to include the information required by the specified forest practice road rules.

As discussed within the necessity statement related to amendments to 14 CCR § 1094.6(j), the requirement to include an ECIP within a WFMP has been eliminated within statute and regulation (within this proposed action) and is succeeded by a requirement to document and demonstrate compliance with the applicable forest practice road rules. However, there remains a regulatory requirement within the WFHN content to provide an update to an ECIP (14 CCR § 1094.8(n)). Given that the ECIP is no longer a requisite component of the WFMP, the Board has eliminated the requirement to provide an update to that document within the WFHN. In addition, the elimination of the ECIP and inclusion of the forest practice road rules by SB 901 necessitates further action by the Board to provide regulatory clarification.

The amendment to PRC § 4597.2(d), by removing the erosion control implementation plan and requiring compliance with the applicable forest practice road rules, requires similar amendments to § 1094.8(n) since it and its authorizing statute, PRC § 4597.11(l), address an *update* to the erosion control mitigation measures under the WFHN Sections 923.1(e)(3) – (5) (and 943.1(e)(3) – (5), and 963.1(e)(3) – (5), as applicable) of the forest practice road rules contain technical and operational information related to erosion control and mitigation, including identification and disclosure of significant existing and potential erosion sites, as well as planning and treatment for those sites. This update to the erosion control mitigation measures required by PRC § 4597.11(l) therefore must include the erosion control information included in the forest practice road rules pursuant to the amendment to PRC § 4597.2(d) in SB 901. This amendment is necessary for clarity and to ensure consistency with PRC § 4597.11(l), the amendment to PRC § 4597.2(d) under SB 901, and 14 CCR § 1094.6(j).

The RPF certification regarding additional listings of water bodies was moved to a new separate subdivision, 14 CCR § 1094.8(x) (see discussion below), as this certification is unrelated to the rest of 14 CCR § 1094.8(n), and the Board determined that it was necessary for clarity and to ensure consistency with PRC § 4597.11(l), the amendment to PRC § 4597.2(d) under SB 901, and 14 CCR § 1094.6(j).]

#### **Adopt 14 CCR § 1094.8(x)**

The purpose of the adoption of this provision is to move the existing certification requirement in 14 CCR § 1094.8(n), which requires an RPF certification regarding additional listings of water bodies since the approval of the WFMP, to a new, separate subdivision. The certification is unrelated to the other subject matter in 14 CCR § 1094.8(n) and is more appropriate in a separate provision. This change is necessary for clarity, both with respect to the certification and the other the rest of § 1094.8(n), and to ensure consistency with PRC § 4597.11(l).

#### **Amend 14 CCR §§ 1094.17(a)(2) and (a)(3)**

The purpose of this amendment is to revise the time period for public comment to reflect the statutory reduction in the maximum number of acres of timberland owned within WFMP from 15,000 to 10,000. The change to § 1094.17(a)(2) specifies the time period applicable for a WFMP between 5,000 and 10,000 acres. 14 CCR § 1094.17(a)(3) is deleted because a WFMP exceeding 10,000 acres is no longer statutorily permitted.

These amendments are necessary for clarity and to ensure consistency with the amendment to PRC § 4597.1(i) under SB 901.

**Amend 14 CCR §§ 1094.23(c)(14)**

The purpose of this amendment is to change the actions that are presumed to be substantial deviations to an approved WFMP. This amendment deletes the provision governing changes to erosion control implementation plans. With the amendment to PRC § 4597.2(d) under SB 901, which removed the requirement for the erosion control implementation plan, there is no longer a requirement for an erosion control implementation plan, and thus this provision lacks a logical connection to the regulatory scheme and lacks statutory authority. This amendment is necessary for clarity and to ensure consistency with the amendment to PRC § 4597.2(d) under SB 901.

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