

**Board of Forestry and Fire Protection**

**INITIAL STATEMENT OF REASONS**

**“CATEGORICAL EXEMPTION AMENDMENTS, 2019”**

**Board of Forestry and Fire Protection**

**Title 14 of the California Code of Regulations (CCR) Division 1.5, Chapter 5**

**Subchapter 3, Section 1153**

**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))**

The California Environmental Quality Act (CEQA) (Division 13, Public Resources Code (PRC)) declares a legislative intent that “all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian” (PRC § 21000(g)), and further requires “...governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality” (PRC § 21001(f)).

Generally, these regulations, standards, and procedures are developed by the Secretary of the California’s Natural Resources Agency (CNRA) and the Governor’s Office of Planning and Research (OPR), as directed by PRC § 21083 as follows: “The Office of Planning and Research shall prepare and develop proposed guidelines for the implementation of this division by public agencies. The guidelines shall include objectives and criteria for the orderly evaluation of projects and the preparation of environmental impact reports and negative declarations in a manner consistent with this division.” Included in those guidelines are “a list of classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from [CEQA]” (PRC § 21084(a)). This list of classes, which are “Categorically Exempt” from CEQA, are found within 14 CCR § 15300 *et seq.* and are broad categories which describe the basic qualities of projects that are determined to have no impact and, in some cases, include examples of those project types to guide public agency actions.

As part of the regulatory guidance adopted by CNRA for the implementation of CEQA, 14 CCR § 15300.4 requires that “Each public agency shall, in the course of establishing its own procedures, list those specific activities which fall within each of the exempt classes, subject to the qualification that these lists must be consistent with both the letter and the intent expressed in the classes.”

The Board of Forestry and Fire Protection (Board), in 1979, adopted a regulatory procedure within 14 CCR § 1150 *et seq.* to provide the Board "...with procedures for the orderly evaluation of projects and the preparation of environmental documents pursuant to the California Environmental Quality Act of 1970 (PRC Sections 21000, *et seq.* hereinafter referred to as CEQA) and the State Guidelines for Implementation of CEQA (14 CAC 15000, *et seq.*)" (14 CCR § 1150). Included within these regulatory procedures, consistent with 14 CCR § 15300.4, was a list of activities of the Board which were Categorically Exempt from CEQA environmental documentation requirements (14 CCR § 1153).

The **problem** is that the existing regulatory list of Categorically Exempt projects do not reflect the full scope of Board activities that fall within the existing classes of exempt activities as identified by existing CEQA regulation, and which are therefore exempt from the provisions of CEQA.

The **purpose** of the proposed action is to implement the requirements of 14 CCR § 15300.4 and to update the list of specific Board activities which fall within the exempt classes, as identified within 14 CCR § 15300 *et. seq.*

The **effect** of the proposed action is to: (1) clarify that the actions related to defensible space requirements under the authority of PRC § 4291, including the adoption of Board regulations, are consistent with the letter and intent of 14 CCR § 15304; (2) clarify that the Board approval of state forest management plans in accordance with PRC § 4645 is consistent with the letter and intent of 14 CCR § 15306; (3) clarify that Board actions related to the management of hazardous fire areas in accordance with PRC §§ 4251-4290.5, as well as Board actions presently exempt under 14 CCR § 15307, may be consistent with either, or both, of 14 CCR §§ 15307 and 15308, depending on the project specifics; and (4) clarify the scope of the Board's regulatory categorical exemptions in relation to those within the CEQA guidelines with which they are consistent.

The **benefit** of the proposed action is an increase in openness and transparency in government through the Board's disclosure of the impacts, or lack thereof, of potential future Board activities. Given that future Board actions related to categorical exemptions may be a procedural implementation of CEQA statutes (PRC § 21082), these activities may meet established definitions of regulations. The clarification of these categorical exemptions both makes clear the mechanisms by which the Board may engage in future activities, and avoids the potential for underground regulations.

**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 § 1153**

The **problem** is that the current Board implementation of CEQA statutes and regulations, as they pertain to the list of activities which are consistent with the established classes of categorically exempt activities, are outdated and do not present a complete representation of those Board activities which may be Categorically Exempt.

The **purpose** of the proposed action is to clarify the existing regulations to identify those activities of the Board (outside of activities related to the Z'berg-Nejedly Forest Practice Act), which have been determined to not have an environmental impact and which are consistent with the letter and intent of established classes of Categorically Exempt activities pursuant to PRC § 21084(a) and 14 CCR § 15300 *et seq.*

#### **Amend § 1153 Introductory Language**

The purpose of this amendment is to reference the CEQA regulations governing categorical exemptions, emphasize that the limitations and qualifications on categorical exemptions apply to § 1153, and to highlight the effect of a determination that an activity is categorically exempt. This amendment is necessary to specify the procedures governing the Board's evaluation of projects under CEQA in accordance with PRC § 21082, and to ensure they are consistent with the CEQA statutes and Guidelines. In addition, this amendment is necessary to clarify the relationship between § 1153 and the categorical exemption classes created pursuant to the CEQA regulations, clarify the limitations and qualifications, and to clarify that a determination that a Board activity is categorically exempt results in the activity being exempt from the provisions of CEQA.

#### **Amend § 1153(a)**

The purpose of this amendment is to include Categorical Exemption "Class 4: Minor Alterations to Land" as a category within § 1153, and to specify certain actions included within this category. Actions under the authority of PRC § 4291 may result in direct or indirect minor alterations to land within the scope of 14 CCR § 15304 and therefore are appropriately included in this class. This amendment is necessary to specify, in part, the procedures governing the Board's evaluation of projects under CEQA in accordance with PRC § 21082. Further, this amendment is necessary, in accordance with 14 CCR § 15300.4, to list the Board's activities that fall within the Class 4 Categorical Exemption specified in 14 CCR § 15304.

#### **Amend § 1153(b)**

The purpose of this amendment is to specify activities, in addition to those currently listed, that fall within the § 1153 Categorical Exemption "Class 6: Information Collection." . The approval of state forest management plans under PRC § 4645 falls within this class as they do not result in a serious or major disturbance to an environmental resource. This amendment is necessary to specify, in part, the procedures governing the Board's evaluation of projects under CEQA in accordance

with PRC § 21082. Further, this amendment is necessary, in accordance with 14 CCR § 15300.4, to list the Board's activities that fall within the Class 6 Categorical Exemption specified in 14 CCR § 15306.

**Amend § 1153(c)**

The purpose of this amendment is to include Categorical Exemption “Class 8: Actions by Regulatory Agencies for Protection of the Environment” as a category within § 1153, and to specify certain actions that may be included in either or both Class 7 or Class 8. Class 7 and Class 8 are similar classes of categorical exemptions, with one applying to the protection of natural resources and the other applying to the protection of the environment. The similarity of these classes is underscored by the definition of “environment” under CEQA (14 CCR § 15360), which means the physical conditions affected by a proposed project including land, air, water, minerals, flora, and fauna. These categories within the definition of “environment” may be equally considered natural resources in many contexts. Thus, many activities may fall within either or both of these classes depending on the particular circumstances surrounding the project. This amendment is necessary to specify, in part, the procedures governing the Board's evaluation of projects under CEQA in accordance with PRC § 21082. Further, this amendment is necessary, in accordance with 14 CCR § 15300.4, to list the Board's activities that fall within the either or both the Class 7 and Class 8 Categorical Exemptions specified in 14 CCR § 15307 and § 15308.

**Amend § 1153(c)(1)**

The purpose of this amendment is to specify additional activities that fall within § 1153 Categorical Exemption Classes 7 or 8. Activities within PRC §§ 4251 – 4290.5, which relate to hazardous fire areas, promote the protection of the environment and natural resources by, among other things, creating fire safety standards, requirements for safe access to structures, and recommendations to improve fire safety, and are therefore appropriately included within Classes 7 or 8. This amendment is necessary to specify, in part, the procedures governing the Board's evaluation of projects under CEQA in accordance with PRC § 21082. Further, this amendment is necessary, in accordance with 14 CCR § 15300.4, to list the Board's activities that fall within either or both the Class 7 and Class 8 Categorical Exemptions specified in 14 CCR § 15307 and § 15308.

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

The effect of the proposed action is the following:

- The amendments will have no economic impact. The amendments merely specify additional activities that fall within the existing exempt classes of categorical exemptions that have been created under 14 CCR § 15300 *et seq.* and are exempt from the provisions of CEQA. The proposed action neither imposes or requires additional regulatory cost or burden to the public or state.

Businesses are not expected to expand or contract as a result of these amendments.

No jobs are expected to be created or eliminated as a result of the proposed action.

No businesses, including small businesses, are expected to be impacted as a result of the proposed action. Small businesses mean independently owned and operated, not dominant in their field of operations, having fewer than 100 employees, and having annual gross receipts less than \$1,000,000. No businesses are expected to be created or eliminated.

The geographic extent is Statewide.

The proposed action will not adversely affect the ability of California businesses to compete with other States by making it costlier to produce goods and services in California.

There are no business reporting requirements associated with the proposed action.

The proposed action does not afford the incentive for innovation in products, materials or processes.

The proposed action will have a neutral effect on health, welfare, the environment, and worker safety. However, the proposed action will likely benefit the openness and transparency of the Board's processes in undertaking future projects which may be categorically exempt.

### **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:

1. State of California Public Resources Code (PRC) §§ 21082, 21084
2. Title 14, California Code of Regulations §§ 15300, 15300.2, 15300.4, 15304, 15306, 15307, and 15308.

**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: Proposed Action**

Alternative 1 would not be more effective or equally effective while being less burdensome or impact fewer small businesses than the proposed action. Specifically, alternative 1 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, alternative 1 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 clarifies the nature of potential future Board activities and is not prescriptive in nature.

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 alternative was 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, nor does it prescribe specific actions.

**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 in rulemaking in California that the Board brings to bear on regulatory development.

The proposed action will not have an economic impact.

**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 for categorially exempt activities under CEQA.