

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

Meadows and Wet Areas, and Cutover Land Amendments, 2021

Board of Forestry and Fire Protection

Title 14 of the California Code of Regulations

Division 1.5, Chapter 4,

Subchapters 1, 3, 4, 5, 6, and 7

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))

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

PRC § 4551 requires the Board to "...adopt district forest practice rules... to ensure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, wildlife, and water resources..." and PRC § 4553 requires the Board to continuously review the rules in consultation with other interests and make appropriate revisions.

Furthermore, PRC § 4551.5 requires that these regulations adopted by the Board "...apply to the conduct of timber operations and shall include, but shall not be limited to, measures for fire prevention and control, for soil erosion control, for site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities, for water quality and watershed control, for flood control, for stocking, for protection against timber operations that unnecessarily destroy young timber growth or timber productivity of the soil, for prevention and control of damage by forest insects, pests, and disease..."

Prior to 2012, the term "Cutover Land" was defined within the Forest Practice Act as "...land which has borne a crop of commercial timber from which at least 70 percent of the merchantable original growth timber stand has been removed by logging or destroyed by fire, insects, or tree diseases and which is now supporting, or capable of growing, a crop of commercial timber or other forest products, and which has not been converted to other commercial or agricultural use." This definition was repealed by statutory amendment in 2011 (Chapter 584, AB 1414) and the references to the repealed statute (PRC § 4522.5) were generally repealed from the Forest Practice Rules in 2017. However, the use of the term "Cutover Land" persists in various provisions of the rules, which now lack clarity in the application of that term.

Within 14 CCR § 895.1, the term “Cutover Land” is used within the definition for “Wet Meadows and Other Wet Areas” to exclude those cutover Timberlands from those natural areas which are both moist on the surface throughout most of the year and support aquatic vegetation, grasses and forbs as their principal vegetative cover. The term “Meadows and Wet Areas” is similar but refers to area which are either moist on the surface throughout most of the year and/or support aquatic vegetation, grasses, and forbs as their principal vegetative cover; this broader definition includes dry meadows. However, there are currently two existing identical definitions for “Meadows and Wet Areas”, one for the Northern Forest District, and one for the Southern Forest District. The Coast Forest District does not have an existing definition for “Meadows and Wet Areas”.

The **problem** is that when the term “Cutover Land” was removed from the Rules in 2011, some examples of the term persisted in various provisions of the rules, which now lack clarity in the application of the term. In addition, the definitions of “Meadows and Wet Areas” for the Northern Forest District and the Southern Forest District are identical, while there is no definition of “Meadows and Wet Areas” for the Coast Forest District even though the term is used within numerous provisions applicable to the Coast Forest District. The distinction without a difference between the definitions for the Northern and Southern Forest Districts, and the lack of a definition within the Coast Forest District, causes issues of clarity within the regulations which should be addressed.

Additionally, some of the provisions within the “Aspen, Meadows and Wet Areas Restoration” special prescription silviculture described within 14 CCR §§ 913.4(e), 933.4(e), 953.4(e) use undefined terms, or altered versions of defined terms, which lack clarity in application.

Finally, the existing regulations use modified versions of defined terms which lead to issues of clarity within the regulations.

The **purpose** of the proposed action is to remove references to “Cutover Land” from the Rules and combine the definitions for “Meadows and Wet Areas” for the Northern and Southern Forest Districts and extend that definition to cover all forest districts in California, as well as to improve clarity using defined terms within “Aspen, Meadows and Wet Areas Restoration” special prescription, and within rules specific to the High Use Subdistrict.

The **effect** of the proposed action is to align the terms used in the Rules with existing definitions and promote clarity and consistent application of the rules throughout the state.

The **benefit** of the proposed action is rules that are clearer, more consistent, and accurately reflect the terms defined by the Rules.

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 §§ 895.1, 906, 912.7 (932.7, 952.7), 912.9 (932.9, 952.9), 913.4 (933.4, 953.4), 916.3 (936.3, 956.3), 921.4 (961.4), 923.1 (943.1, 963.1), 923.4 (943.4, 963.4), 927.10 (953.7 953.12), 1027.1, 1034, 1038.4, 1051, 1051.4, 1072.4, 1090.5, 1092.09, 1094.6, 1094.8

Amend §895.1. Definitions

The proposed action combines the identical definitions for “Meadows and Wet Areas” for the Northern Forest District and the Southern Forest District and applies the definition to all forests in the state including the Coast Forest District. The purpose of this amendment is to clarify the applicability of this term, which is being used within the proposed action to promote consistency of terms and to improve the clarity of the regulations. This amendment is necessary to improve the consistent implementation of the regulations.

The proposed action removes the reference to “cutover lands” from the definition of “Wet Meadows and Other Wet Areas”. The purpose of this amendment is to remove a phrase that is no longer clear within the Act and Rules, thereby improving clarity and accuracy. This amendment is necessary to improve the consistent implementation of the regulations.

Amend § 906. Forest Districts

The proposed action removes the reference to “cutover lands” from the definition of Forest Districts. The purpose of this amendment is to remove a phrase that is no defined within the Act or Rules thereby improving clarity and accuracy. This amendment is necessary to improve the consistent implementation of the regulations.

Amend § 913.4, 933.4, 953.4 Special Prescriptions

The proposed action clarifies the information that must be provided to describe the condition of aspen stands that are being restored: the assumption that upland stands are mixed with conifers is removed, and the description of a stand’s structure is amended to include information on whether the stand is pure aspen or mixed with conifer. The purpose of this amendment is to clarify the stand condition description, allowing for a broader range of restoration activities. In addition, the defined term “Riparian” is substituted for the undefined “wet meadow”. The purpose of this amendment is to improve clarity; beyond the substitution of a defined term for an undefined term, other uses of “meadow” in the text refer to land dominated by grasses and forbs, and aspens are a woody species. This amendment is necessary to improve the consistent implementation of the regulations.

§ 916.3, 936.3, 956.3 General Limitations Near Watercourses, Lakes, Marshes, Wet Meadows and Other Wet Areas.

The proposed action brings the title of the section into agreement with the text. The purpose of this amendment is to make the definitions of an action consistent throughout the text. This amendment is necessary to improve the consistent implementation of the regulations.

§ 953.12. High Use Subdistrict.

The proposed action replaces text of “cutover” with the term “harvested. The term “cutover” here applies to those lands which have been harvested under the silvicultural methods described in the balance of 14 CCR § 953.12, not to the phrase “cutover lands” as was previously defined within the Act and Rules. The use of this term here is archaic and lacking clarity and has been revised to “harvested” to indicate that the condition applies to those lands upon which trees have been harvested. This amendment is necessary to improve the clarity of the provision and to promote consistent implementation of the regulations.

§ 1027.1. Basis of Denial.

The proposed action removes text that only applies to “cutover lands”. The purpose of this amendment is to remove a phrase that is no longer extant from the Rules thereby improving clarity and accuracy. This amendment is necessary to improve the consistent implementation of the regulations.

Non substantiative amendments

Capitalized and utilized terms defined pursuant to 14 CCR § 895.1 and this Article throughout the amendments where appropriate.

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 to remove references to a term that is no longer defined, standardize a definition, and the general use of defined terms, across all forest districts, and clarify stand description requirements for aspen regeneration projects.

The proposed action represents a continuation of existing rules related to meadows and wet areas as defined under the Forest Practice Rules. There is no economic impact associated with the proposed action.

Creation or Elimination of Jobs within the State of California

The proposed action does not mandate any action on behalf of the regulated public and represents a continuation of existing forest practice regulations. It is anticipated that any firms or jobs which exist to engage in this work will not be affected. No creation or elimination of jobs will occur.

Creation of New or Elimination of Businesses within the State of California

The regulatory amendments as proposed represent a continuation of existing forest practice regulations and are intended to clarify in their application. Given that the businesses which would be affected by these regulations are already extant, it is

expected that proposed regulation will neither create new businesses nor eliminate existing businesses in the State of California.

Expansion of Businesses Currently Doing Business within the State of California

The regulatory amendments as proposed represent a continuation of existing forest practice regulations and are intended to clarify their application. The proposed regulation will not result in the expansion of businesses currently doing business within the State.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The action will result in increased clarity and consistency in the Forest Practice Rules.

Business Reporting Requirement (pursuant to GOV § 11346.5(a)(11) and GOV § 11346.3(d))

The proposed regulation does not require a business reporting requirement.

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)). The proposed action would result in increased clarity and consistency in the Forest Practice Rules, and as a result, promote a more clear and transparent governance. The proposed action will not affect the health and welfare of California residents or worker safety.

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. CALFIRE Report to the Board of Forestry and Fire Protection on Newly Effective Forest Practice Rules and Suggested Rule Modifications for Consideration, December 9, 2020

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: Make regulation less prescriptive

This action would replace the prescriptive standards for Meadows and Wet Areas, and Cutover Land Amendments with performance-based regulations. This alternative may reduce clarity and consistency with other portions of the rules which rely upon the existence of the current operational limitations in order to ensure that forest resources are preserved.

Alternative #3: Proposed Action

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.

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 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 agency rulemaking process.

The proposed action is as prescriptive as necessary to address the problem and contains a mix of performance-based and prescriptive requirements. Current forest practice rules surrounding surface fuel hazard reduction from timber operations are based in prescriptive minimum requirements for the protection of the state's forest resources, which are necessary in order to accommodate for the various levels of individual project review which occurs for various permitting vehicles for timber operations. The prescriptive regulations proposed in this action are necessary in order to provide adequate clarity within the regulations.

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 alternatives were 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, but does 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 practicing forestry in California that the Board brings to bear on regulatory development.

The aspen stand characteristics description within the proposed action represents a continuation of existing rules related to the Special Prescriptions created because of Timber Operations conducted under the Forest Practice Rules. There is no economic impact associated with the proposed action.

The proposed action will not have a statewide adverse economic impact directly affecting businesses as it does not impose any requirements on businesses.

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 related to conducting Timber Operations on private, state, or municipal forest lands.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS CEQA

CEQA requires review, evaluation, and environmental documentation of potential significant environmental impacts from a qualified Project. Pursuant to case law, the review and processing of Plans has been found to be a Project under CEQA.

Additionally, the Board's rulemaking process is a certified regulatory program having been certified by the Secretary of Resources as meeting the requirements of PRC § 21080.5.

While certified regulatory programs are excused from certain procedural requirements of CEQA, they must nevertheless follow CEQA's substantive requirements, including PRC § 21081. Under PRC § 21081, a decision-making agency is prohibited from approving a Project for which significant environmental effects have been identified unless it makes specific findings about alternatives and mitigation measures

Further, pursuant to PRC § 21080.5(d)(2)(B), guidelines for the orderly evaluation of proposed activities and the preparation of the Plan or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program are required by the proposed action and existing rules.

The proposed action would be an added element to the state's comprehensive Forest Practice Program under which all commercial timber harvest activities are regulated. The Rules which have been developed to address potential impacts to forest resources, including both individual and cumulative impacts, project specific mitigations along with the Department oversight (of rule compliance) function expressly to prevent the potential for significant adverse environmental effects. In addition, clarity and consistency of Regulatory Definitions provide necessary framework for proposed activities.

In summary, the proposed action amends or supplements standards to an existing regulatory scheme and is not a mitigation as defined by CEQA. The Board concludes that the proposed action will not result in any significant or potentially significant adverse environmental effects and therefore no alternative or mitigation measures are proposed to avoid or reduce any significant effects on the environment (14 CCR § 15252(a)(2)(B)).