

Board of Forestry and Fire Protection

NOTICE OF PROPOSED ACTION

Watercourse Crossings and Emergency Notice Watercourse Crossing Requirements, 2025

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations
Division 1.5, Chapter 4,
Subchapters 4, 5, 6, and 7**

[Notice to be Published in Notice Register November 22, 2024]

NATURE OF PROCEEDING

Notice is hereby given that the California State Board of Forestry and Fire Protection (Board) is proposing to take the action described in the Informative Digest.

PUBLIC HEARING

The Board will hold a public hearing on January 22, 2025, at its regularly scheduled meeting commencing at 9:00 a.m., in room 2-201 of the Natural Resources Building, 715 P Street, Sacramento, CA. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. Additionally, pursuant to Government Code (GOV) § 11125.1(b), writings that are public records pursuant to GOV § 11125.1(a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person.

Attendees may also participate via the online meeting platform or telephone conferencing. To participate via the online meeting platform please email PublicComments@bof.ca.gov by 4:30 p.m. on January 21, 2025, to request a link to the meeting. A link to the meeting will also be posted under the "Webinar Information" heading on the front page of the Board website, no later than 8:00 a.m. the morning of the hearing.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 PM on January 22, 2025.

The Board will consider only written comments received at the Board office by that time and those written comments received at the public hearing, including written comments submitted in connection with oral testimony at the public hearing. The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Jane Van Susteren
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
715 P Street
Sacramento, CA 95814

Written comments may also be delivered via e-mail at the following address:

PublicComments@BOF.ca.gov

AUTHORITY AND REFERENCE (pursuant to GOV § 11346.5(a)(2) and 1 CCR § 14)

Authority cited: Sections 4551, 4551.5, 4552, 4553, 4562.7 and 21000(g), Public Resources Code.

Reference: Sections 751, 4512, 4513, 4551, 4551.5, 4562.5, 4562.7, 4592, 4597, 4750, 4750.3, 4750.4, 21000(g), 21001(b) and 21002.1, Public Resources Code; Sections 100, 1243 and 13050(f), Water Code; and Sections 1600 and 5650(c), Fish and Game Code. 33 USC 1288(b); 40 CFR 130.2(g); and *Natural Resources Defense Council, Inc. v. Arcata Natl. Corp.* (1976) 59 Cal.App.3d 959, 131 Cal. Rptr. 172.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW (pursuant to GOV 11346.5(a)(3)(A)-(D))

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..."

During the 2023 call for Regulatory Review the California State Water Resources Control Boards raised an issue about the lack of clarity in the phrase “approved watercourse crossings” as used in §§ 916.9(s) and 916.9(t) [936.9(s) and 936.9(t), 956.9(s) and 956.9(t)]. The Water Boards noted that this phrase, as applied to Timber Operations in Watercourse and Lake Protection Zones (WLPZ) in notices of exemption, lacked clarity as to the definition of “approved”. The rule applies to watersheds that contain habitat for anadromous salmonids; when written, the “work in approved watercourse crossings” option was intended to provide an option for state and federal wildlife resource agencies to allow specific watercourse crossings to limit impacts on threatened and endangered salmonid species. The concern raised by the Water Boards that there was no requirement under these rules for consultation with the Water Board for compliance with section 401 of the Clean Water Act or Water Code §13260 et. seq., creating the potential for a lower standard of review in those watercourses that are endangered fish habitat.

In forests, watercourse crossings are the most significant source of human-caused sediment delivery to waters. Deposition of sediment in waters can result in negative impacts to aquatic ecosystems and habitat for listed (and unlisted) wildlife species. Implementation of rules for road and watercourse crossing construction under the Forest Practice Rules [Logging Roads, Landings, and Logging Road Watercourse Crossings (14 CCR §§ 923, 943, 963 et seq.)] has decreased observed sediment deposition from logging road crossings by 50-88% from historic observations that predate the current Forest Practice Rules.¹

Fish and Game Code § 1602 requires entities that will be taking actions which “substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake” notify the California Department of Fish and Wildlife (CDFW) of specific information pertaining to these actions. If CDFW determines that those actions will not substantially adversely affect an existing fish or wildlife resource, no agreement is required. If CDFW determines there is a potential for substantially adverse effects, that department will issue an agreement to the entity that will undertake the action; the agreement will include reasonable measures necessary to protect the relevant resource(s). The current Forest Practice Rules state that watercourse crossings must be “approved as part of the Fish and Game Code process”, but some of these crossings may not require approval after review is completed by CDFW.

Certain circumstances qualify as “Emergency Conditions” under 14 CCR § 1052.1, including land with trees that are dead or dying as a result of insects, disease, wind, drought, or fire, as well as land with fuel hazard conditions that range from “high” to “extreme”. Under these circumstances, landowners can submit a notice of emergency timber operations, which waives certain requirements for the preparation of timber harvest plans. Historically, the Rules have required that these emergency notice timber operations comply with only the operational provisions of 14 CCR §§ 923, 943, 963 et seq. (Logging Roads, Landings, and Logging Road Watercourse Crossings). However, the increasing prevalence of very large fires and large scale tree mortality events due to insects, disease, and drought has led many experts to posit that the US has entered an era of

¹ Cafferata, P. H., Coe, D. B., & Harris, R. R. (2007). Water resource issues and solutions for forest roads in California. *Hydrological Science and Technology*, 23(1/4), 39.

“mega-fires” or “mega-disturbances”². As the area affected by large-scale tree mortality events increases, so do the number of acres harvested under these permits³. In recent years the expanded area harvested under emergency notice timber operations has created challenges for inter-agency assessment of watercourse impacts. Full compliance with mapping and notification requirements pertaining to watercourse crossings under 14 CCR § 923, § 943, § 963 et seq. has become necessary within notices of emergency.

The purpose of the proposed action is to confirm that current regulatory requirements limiting construction or reconstruction of watercourse crossings under notices of exemption apply in watersheds with listed anadromous salmonids. It also brings the mapping requirements for watercourse crossings under emergency notice timber operations within watersheds with listed anadromous salmonids into compliance with changes made to §1052 below. It updates requirements for compliance with FGC § 1600 et seq. to reflect circumstances where only notification of CDFW is required. Finally, it addresses several issues that have arisen during emergency notice timber operations: adding mapping requirements for tractor road crossings and logging road watercourse crossings; requiring notification of CDFW and certification of compliance with FGC § 1600 et seq. requirements; providing a pathway to update initial emergency notice submissions with new watercourse crossings that require construction or reconstruction; and explicitly states that the construction or reconstruction of watercourse crossings under emergency notices comply with the Road Rules covering Watercourse Crossings under § 923.9 [§943.9, §963.9] et seq.

The effect of the proposed action is to provide additional information that facilitates oversight from review team agencies on potential impacts from watercourse crossing construction and reconstruction under emergency notices. An additional effect is the alignment of watercourse notification requirements between different agencies and a resolution of conflicts within the Forest Practice Rules.

The benefit of the proposed action is to provide additional certainty of regulatory compliance during the widespread tree mortality events that define emergency conditions, particularly after wildfire, watercourses are at higher risk of erosion. The proposed action ensures compliance with existing requirements of the Forest Practice Rules and with the permit processes of other state agencies after such events. An additional benefit is that the proposed action increases the clarity and removes conflicts within the Forest Practice Rules.

There is no comparable Federal regulation or statute.

Board staff conducted an evaluation on whether the proposed action is inconsistent or incompatible with existing State regulations pursuant to **GOV § 11346.5(a)(3)(D)**. State regulations related to the proposed action were, in fact, relied upon in the development of the proposed action to ensure the consistency and compatibility of the proposed action with existing State regulations.

² Steel, Z. L., Jones, G. M., Collins, B. M., Green, R., Koltunov, A., Purcell, K. L., ... & Thompson, C. (2023). Mega-disturbances cause rapid decline of mature conifer forest habitat in California. *Ecological Applications*, 33(2), e2763.

³ Board of Forestry and Fire Protection 2023 Annual Report.

Otherwise, Board staff evaluated the balance of existing State regulations related to measures concerning conversion of timberland within State regulations that met the same purpose as the proposed action. Based on this evaluation and effort, the Board has determined that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The proposed regulation is entirely consistent and compatible with existing Board rules.

Statute to which the proposed action was compared: Chapter 8, Part 2, Division 4, Public Resources Code.

Regulations to which the proposed action was compared: Article 4, Subchapters 1, 4, 5, 6, & 7 Chapter 4, Division 1.5, Title 14, California Code of Regulations.

MANDATED BY FEDERAL LAW OR REGULATIONS

The proposed action is not mandated by Federal law or regulations.

The proposed action neither conflicts with, nor duplicates, Federal regulations.

There are no comparable Federal regulations concerning conversion of timberland. No existing Federal regulations meeting the same purpose as the proposed action were identified.

OTHER STATUTORY REQUIREMENTS (pursuant to 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.

LOCAL MANDATE (pursuant to GOV § 11346.5(a)(5)).

The proposed action does not impose a mandate on local agencies or school districts.

FISCAL IMPACT (pursuant to GOV § 11346.5(a)(6))

There is no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

A local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by the act, within the meaning of Section 17556 of the Government Code.

The proposed action will not result in the imposition of other non-discretionary costs or savings to local agencies.

The proposed action will not result in costs or savings in Federal funding to the State.

The proposed action will not result in costs to any State agency. The proposed action represents a continuation of existing forest practice regulations related to the conduct of timber operations and will not result in any direct or indirect costs or savings to any state agency.

HOUSING COSTS (pursuant to GOV § 11346.5(a)(12))

The proposed action will not significantly affect housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE (pursuant to GOV §§ 11346.3(a), 11346.5(a)(7) and 11346.5(a)(8))

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states (by making it costlier to produce goods or services in California).

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) and GOV § 11346.5(a)(8))

Contemplation by the Board of the economic impact of the provisions of the proposed action through the lens of the decades of contemplating forest practice in California that the Board brings to bear on regulatory development.

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)). These measures may benefit environmental quality throughout the state through improved clarity regarding conditions and limitations related to Emergency Notice timber operations which are intended to prevent environmental impacts. Additionally, the improvement of notification processes will benefit the efficiency of the Departments inspections and enforcement of exemption operations. The proposed action will not affect the health and welfare of California residents or worker safety.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS (pursuant to GOV § 11346.5(a)(9))

Persons or businesses who are operating under an Emergency Notice for timber operations may be affected by this rulemaking by the need to meet additional notification requirements for watercourse crossing construction or reconstruction. The impacts of this regulation on these people or businesses is estimated to be between \$1960 and \$3640 per Emergency Notice. Over the last ten years, there have been between 81 and 452 Emergency Notices filed per year.

BUSINESS REPORT (pursuant to GOV §§ 11346.5(a)(11) and 11346.3(d))

The proposed action does not impose a business reporting requirement.

SMALL BUSINESS (defined in GOV 11342.610)

The proposed regulation may affect small business, though small businesses, within the meaning of GOV § 11342.610, are not expected to be significantly affected by the proposed action.

Small business, pursuant to 1 CCR § 4(a):

- (1) Is legally required to comply with the regulation;
- (2) Is not legally required to enforce the regulation;
- (3) Does not derive a benefit from the enforcement of the regulation;
- (4) May incur a detriment from the enforcement of the regulation if they do not comply with the regulation.

ALTERNATIVES INFORMATION

In accordance with **GOV § 11346.5(a)(13)**, 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, or 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.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: Jane Van Susteren
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-8007

The designated backup person in the event Ms. Van Susteren is not available is Daniel Craig, Regulations Program Manager for the Board of Forestry and Fire Protection. Mr. Craig may be contacted at the above address or phone.

AVAILABILITY STATEMENTS (pursuant to GOV § 11346.5(a) (16), (18))

All of the following are available from the contact person:

1. Express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion.
2. Initial Statement of Reasons, which includes a statement of the specific purpose of each adoption, amendment, or repeal, the problem the Board is addressing, and the rationale for the determination by the Board that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed.
3. The information upon which the proposed action is based (pursuant to **GOV § 11346.5(b)**).
4. Changed or modified text. After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the

regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who testified at the hearings, submitted comments during the public comment period, including written and oral comments received at the public hearing, or requested notification of the availability of such changes from the Board of Forestry and Fire Protection. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

FINAL STATEMENT OF REASONS

When the Final Statement of Reasons (FSOR) has been prepared, the FSOR will be available from the contact person on request.

INTERNET ACCESS

All of the material referenced in the Availability Statements is also available on the Board web site at: <https://bof.fire.ca.gov/regulations/proposed-rule-packages/>