Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

Watercourse Crossings and Emergency Notice Watercourse Crossing Requirements, 2024

**Title 14 of the California Code of Regulations**

**Division 1.5, Chapter 4,**

**Subchapters** **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…”.

Fire suppression without active forest management over the last several centuries has resulted in alterations to the natural fire regime, which has resulted in substantial ecosystem stress[[1]](#footnote-1). Due to fire suppression, the Sierra Nevada and northwestern California have experienced less frequent fires than have historically occurred, causing a buildup of forest fuels, and southern California is experiencing larger and more frequent fires than under historic conditions[[2]](#footnote-2). Additionally, fire suppression in forested areas has resulted in dense forest stands and has caused a build-up of fuels resulting in higher-than-natural intensity and heat of wildfires, which can destroy otherwise fire-adapted plants and damage soil structure[[3]](#footnote-3). Furthermore, the recent and prolonged periods of drought throughout the state have resulted in forests which are more prone to fire due to tree mortality from both drought and pests and are more vulnerable due to fires from the buildup of fuels resulting from these environmental and anthropogenic conditions.

The aggregation of these changing forest conditions and human demographics has resulted in increases in the number of wildfire ignitions, areas burned, and impacts to ecosystems. The increasing prevalence of very large fires (>100,000 acres) across the West, as well as large scale tree mortality events, has led many experts to posit that the US has entered an era of “mega-fires” or “mega-disturbances.” During this decade, although the number of annual fires has decreased compared to the 2000s, the average fire size has increased from approximately 11,000 acres to 15,000 acres.[[4]](#footnote-4) Eighteen of the twenty largest wildland fires of the modern era have occurred since 2000, and fifteen of the most destructive have occurred since 2015 including the 2020 August Complex, which burned over one million acres.

Timberland owners and managers are increasingly using ministerial paths to manage wildfire hazard and mitigate the impacts of increased wildfire impacts and tree mortality. These permits include exemptions and emergencies which address pressing forest management needs such as fuelbreak construction or post-wildfire salvage harvesting. As the number of permits issued and acres treated under these permits increases[[5]](#footnote-5), the potential impact of the ambiguity of the current rules becomes greater.

In 2018, the legislature passed, and the Governor approved, Senate Bill (SB) 901 (Chapter 626), which broadly reorganized the statutory structure of authorization for many of the authorized regulatory exemptions from the Act provided for in PRC § 4584. Acting in response to these changes, the Board broadly restructured the regulatory exemptions provided by most of PRC § 4584 within 14 CCR §§ 1038, 1038.1, 1038.2, 1038.3, and 1038.4 to address the changes stemming from SB 901.

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. Protection of these waters from sediment impacts is implemented under FGC § 1600 et seq. and the Porter-Cologne Water Quality Control Act, Water Code §13260 et seq. 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.[[6]](#footnote-6) These rules apply to timber harvest operations that require the preparation of a Timber Harvest Plan or equivalent document and, after the passage of SB 901, to exemption notices. Historically, the forest practice rules have required that emergency notice timber operations comply with the operational provisions of 14 CCR §§ 923, 943, 963 et seq.. It is only in recent years that climate change has expanded the footprint where emergency notice timber operations could occur to such an extent that full compliance with mapping and notification requirements under 14 CCR §§ 923, 943, 963 et seq. has become necessary.

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) and Equipment Exclusion Zones (EEZ) in emergencies and exemptions, 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.

Fish and Game Code § 1600 et. seq. requires notification of the California Department of Fish and Wildlife (CDFW) for any work that diverts or obstructs the natural flow of any river, stream, or lake; changes the bed, channel, or bank of any river, stream, or lake; uses material from any river, stream, or lake; or deposits or disposes of material into any river, stream, or lake. Emergency work under FGC § 1610 does not require advance notification or approval, meaning that language in the Forest Practice Rules that requires approval from CDFW does not contain a mechanism for emergency work. In addition, before larger wildfires and other climate emergencies became widespread, notification of emergency work in watercourses was uncommon and as such the Forest Practice Rules lack a mechanism for systematic reporting of large-scale impacts to watercourse crossings.

The **problem** is that with the increasing number of acres treated under exemptions and emergencies, certain issues have arisen. Text under the Protection and Restoration of the Beneficial Functions of the Riparian Zone in Watersheds with Listed Anadromous Salmonids (§916.9(s)(4) [§936.9(s)(4), §956.9(s)(4)]) rules allows for work in the Watercourse and Lake Protection Zone (WLPZ) for the construction or reconstruction of approved watercourse crossings in exemptions and emergencies. Under regulatory changes following the passage of SB 901, construction or reconstruction of watercourse crossings under §1038 exemptions has been significantly limited. This left the rules for exemption work in habitat for listed species as more permissive than the rules for exemption work outside that habitat. The use of the word “approved”, here and in §916.9(t)(4) [§936.9(t)(4), §956.9(t)(4), is not clear as to which agency would provide the approval, which could cause confusion given that CAL FIRE is issuing the exemption notice, the local Regional Water Quality Control District has jurisdiction over the potentially impacted watercourse, CDFW has jurisdiction over work impacting the bed and bank of the watercourse, and CDFW and USFWS have jurisdiction for the protection of the listed anadromous salmonids.

The rules addressing emergency timber operations during road construction under §923.1 [§943.1, §963.1] Planning for Logging Roads and Landings and §923.4 [§943.4, §963.4] Construction and Reconstruction of Logging Roads and Landings do not accurately reference the multiple permitting pathways available*.* Areas impacted by emergencies may have coverage for impacts to watercourse crossing under existing 1600 permits or master agreements for timber operations or under post facto notification of emergency work in watercourses under FGC § 1610 as administered by CDFW. There is no clarity on whether the normal regulatory requirements for watercourse crossings apply to emergency circumstances.

Rules addressing emergency notice timber operations were designed for an era with smaller wildfire, drought, and insect damage impacts to forests. As a result, there are no mapping requirements for tractor road crossings and logging road watercourse crossings that will be constructed or reconstructed in emergencies. There is no path to certify that a plan is in compliance with FGC § 1600 et seq. or that CDFW will be notified after the commencement of emergency work that will impact the bed, bank, or channel of a watercourse. There is no path for updates on the additional watercourse crossings that will be constructed or reconstructed as more access to damaged property becomes available due to operations, and the full extent of the impact of the emergency becomes apparent. There is also no specific requirement that construction and reconstruction of watercourse crossings must comply with the operational requirements of the Road Rules covering Watercourse Crossings under § 923.9 [§943.9, §963.9] et seq.

The **purpose** of the proposed action is to align standards for construction or reconstruction of watercourse crossings under exemptions both within watersheds with listed anadromous salmonids and in those watersheds without listed anadromous salmonids. It also clarifies requirements for the construction or reconstruction of watercourse crossings under emergency notice timber operations within watersheds with listed anadromous salmonids. It describes additional appropriate pathways for compliance with FGC § 1600 et seq. Lake and Streambed Alteration Agreements during road construction or reconstruction under emergency notice timber operations. Finally, it addresses several issues that have arising 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 requires that the construction or reconstruction or 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 protections for watercourses following post-fire and drought impacts. An additional effect is the alignment of emergency permit requirements between different agencies and a resolution of conflicts within the Forest Practice Rules.

The **benefit** of the proposed action is rules that protect ecosystems during a uniquely difficult time: immediately after large wildfires or after prolonged drought watercourses are at risk of catastrophic erosion due to the loss of riparian vegetation. The proposed action ensures compliance with existing requirements of the Forest Practice Rules and with the permit processes of other state agencies during a period where streams can become choked with ash and sediment, not due to lack of care on the part of the forester and timber operator, but because the landscape is fragile after the immense impacts of fire or drought. These rules also allow landowners facing these cruel circumstances to repair their property, gradually expand access to areas that have been damaged, and recover timber value that would be lost without quick work without imposing an excessive bureaucratic burden. A minor benefit is that the proposed action increases the clarity and removes conflicts within the Forest Practice 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 §§ 916.9, 923.1, 923.4, 936.9, 943.1, 943.4, 956.9, 963.1, 963.4, and 1052.

# Amend §916.9 [§936.9, §956.9] Protection and Restoration of the Beneficial Functions of the Riparian Zone in Watersheds with Listed Anadromous Salmonids

The proposed action removes §916.9(s)(4) [§936.9(s)(4), §956.9(s)(4)], which allows construction or reconstruction of approved watercourse crossings under exemption notices. The problem with existing text is that watercourse crossings require significant agency oversight to minimize environmental impacts, and that this level of oversight is not feasible under ministerial exemption permits. The purpose of removing the text is to clarify that watercourse crossings must be constructed under circumstances that allow for comprehensive environmental review. This is necessary to address protection of water quality under the increased rate of exemption permits and to clarify rule text.

The proposed action also amends §916.9(t)(4) [§936.9(t)(4), §956.9(t)(4)], which concerns watercourse crossings in emergency notices. The proposed text changes the term “approved watercourse crossings” to “described and mapped watercourse crossings”. The problem with this language was lack of clarity related to the definition of “approved” and which agencies could provide that approval. The purpose of the change is to clarify that watercourse crossings in emergency notices must be documented with clear descriptions and mapped locations for the proposed crossings and included in the application for the exemption as reviewed by the relevant agencies. This is necessary to ensure clarity and oversight of the construction of watercourse crossings in emergency notices.

# Amend §923.1 [§943.1, §963.1] Planning for Logging Roads and Landings.

The proposed action modifies language in §923.1(b)(2) [§943.1(b)(2), §963.1(b)(2)] and §923.1(c)(2) [§943.1(c)(2), §963.1(c)(2)], for the construction or reconstruction of logging road watercourse crossings “that are approved as part of the Fish and Game Code process” to state “for which CDFW has received written notification pursuant to Fish and Game Code”. The problem is that while some areas impacted by emergencies have coverage for impacts to watercourse crossing under existing 1600 permits or master agreements for timber operations, it does not include the post facto notification of emergency work in watercourses under FGC § 1610 as administered by CDFW. Emergency work and related notification is one of the potential circumstances where watercourse crossings pursuant to §923.1 [§943.1, §963.1] are allowed.. The purpose of this change is to include emergency work in watercourses with notification of CDFW as one of the potential circumstances where construction or reconstruction of watercourse crossings can occur. The necessity for this rule change is to clarify that the normal regulatory requirements for watercourse crossings apply to emergency circumstances.

# Amend §923.4 [§943.4, §963.4] Construction and Reconstruction of Logging Roads and Landings.

The proposed action modifies language in §923.4(b)(2) [§943.4(b)(2), §963.4(b)(2)] and §923.4(c)(2) [§943.4(c)(2), §963.4(c)(2)], for the construction or reconstruction of logging road watercourse crossings “that are approved as part of the Fish and Game Code process” to state “for which CDFW has received written notification pursuant to Fish and Game Code”. The problem is that while some areas impacted by emergencies have coverage for impacts to watercourse crossing under existing 1600 permits or master agreements for timber operations, it does not include the post facto notification of emergency work in watercourses under FGC § 1610 as administered by CDFW. Emergency work and related notification is one of the potential circumstances where watercourse crossings pursuant to §923.4 [§943.4, §963.4] are allowed. The purpose of this change is to include emergency work in watercourses with notification of CDFW as one of the potential circumstances where construction or reconstruction of watercourse crossings can occur. The necessity for this rule change is to clarify that the normal regulatory requirements for watercourse crossings apply to emergency circumstances.

# Amend §1052 Emergency Notice

The proposed action takes several measures to improve reporting about watercourse crossings and other potential impacts to watercourses. It adds mapping requirements for tractor road crossings and logging road watercourse crossings that will be constructed or reconstructed [§1052(a)(4)]. It requires that the registered professional forester certify that the plan is in compliance with FGC § 1600 et seq. or that CDFW will be notified within 14 days of commencing emergency work that impacts the bed, bank, or channel of a watercourse in accordance with FGC § 1610 [§1052(a)(12)]. It requires that within 30 days of the commencement of timber operations under the emergency notice, the RPF must provide a table detailing specifics about constructed or reconstructed watercourse crossings [1052(a)(13)] and requires that that table be updated promptly when new watercourse crossings are identified [1052(a)(13)]. Lastly, it clarifies that all construction and reconstruction of watercourse crossings must comply with the operational requirements of § 923.9 [§943.9, §963.9] et seq Watercourse Crossings [1052(b)]. The problem is that current regulations don’t have clear reporting requirements on the location of watercourse crossings that will be constructed or reconstructed, actions that have additional compliance requirements under the Rules. The purpose of the proposed action is to provide those reporting requirements necessary to inform the Department and other agencies about additional work in areas with additional compliance requirements. This is necessary to ensure compliance with state law as relates to FGC § 1600 et seq. or the Porter-Cologne Water Quality Control Act (Water Code §13260 et seq.) during emergency notice timber operations and to ensure appropriate implementation and enforcement of the Rules.

# Non substantiative amendments

Capitalized and updated terms defined pursuant to 14 CCR § 895.1 and this Article throughout the amendments where appropriate and made minor grammar corrections.

# 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 provide compliance pathways for environmental protection in exemption and emergency notice timber operations involving watercourse crossings.

The proposed action represents a continuation of existing rules related to watercourse crossings 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. The proposed action will also provide environmental benefits by providing clarity on compliance and reporting pathways with existing laws for environmental protection. The proposed action will not affect the health and welfare of California residents or worker safety.

## 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. Ainsworth, J. and Doss, T. A. 1995. Natural history of fire & flood cycles. California Coastal Commission.
2. Baker, W.L. and Shinneman, D.J. 2004. Fire and restoration of pinyon‐juniper woodlands in the western United States: a review. Forest Ecology and Management 189:1‐21.
3. Board of Forestry and Fire Protection 2023 Annual Report.
4. 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.
5. CAL FIRE California Interagency Fire Perimeter Database 2017
6. Safford, H.D. and Van de Water, K.M. 2014. Using Fire Return Interval Departure (FRID) analysis to map spatial and temporal changes in fire frequency on National Forest lands in California. Research Paper PSW-RP-266, USDA Forest Service, Pacific Southwest Research Station, Albany, CA.

# 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 limiting impacts from watercourse crossings under ministerial permits 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 and lead to unforeseen environmental impacts.

## 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. 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 regulations for watercourse crossing under ministerial permits within the proposed action represents a continuation of existing rules for 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)).

1. Ainsworth, J. and Doss, T. A. 1995. Natural history of fire & flood cycles. California Coastal Commission. [↑](#footnote-ref-1)
2. Safford, H.D. and Van de Water, K.M. 2014. Using Fire Return Interval Departure (FRID) analysis to map spatial and temporal changes in fire frequency on National Forest lands in California. Research Paper PSW-RP-266, USDA Forest Service, Pacific Southwest Research Station, Albany, CA. [↑](#footnote-ref-2)
3. Baker, W.L. and Shinneman, D.J. 2004. Fire and restoration of pinyon‐juniper woodlands in the western United States: a review. Forest Ecology and Management 189:1‐21. [↑](#footnote-ref-3)
4. CAL FIRE California Interagency Fire Perimeter Database 2017 [↑](#footnote-ref-4)
5. Board of Forestry and Fire Protection 2023 Annual Report. [↑](#footnote-ref-5)
6. 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. [↑](#footnote-ref-6)