

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

“Broadcast Burning and the Southern Subdistrict Amendments”

Draft Document

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations
Division 1.5, Chapter 4,
Subchapter 1, Article 1
Subchapters 4, 5, and 6, Articles 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...”.

Timber Operations are further defined within PRC § 4527 as “...the cutting or removal, or both, of timber or other solid wood forest products...from Timberlands for commercial purposes, together with all the incidental work, including, but not limited to, construction and maintenance of roads, fuel breaks, firebreaks, stream crossings, Landings, skid trails, and beds for the falling of trees, fire hazard abatement, and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities...”.

Within the regulation of those Timber Operations incidental to the cutting or removal of timber, the Board has adopted rules within the Forest Practice Rules (Rules)(Chapter 4, Division 1.5, Title 14 California Code of Regulations) related to both the treatment of surface fuels following timber operations (Article 7 “Hazard Reduction”, of Subchapters 4, 5, and 6) and site preparation (Article 5 “Site Preparation, of Subchapters 4, 5, and 6). Within this regulatory framework, the Board has adopted rules which impose prescriptive limits and prohibitions on certain activities, including a general prohibition on Broadcast Burning in the Southern Subdistrict of the Coast Forest District (14 CCR § 895.1).

The **problem** is that, since the adoption of the “Hazard Reduction” and “Site Preparation” regulations within Articles 7 and 5, respectively, forest conditions have changed from those which existed over 3 decades ago and portions of the existing regulations are no longer suited to address those modern conditions.

Anthropogenic activity, including fire suppression without active forest management, as well as increases in human-caused wildfires, over the last several centuries has resulted in alterations to the natural fire regime, which has resulted in substantial ecosystem stress statewide, particularly in forest and shrub-dominated habitats¹. Additionally, 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 conditions². 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. 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.

This increased risk brought on by increased fuels has resulted in a need to provide as many appropriate fuel treatment methods as possible in order to reduce this hazard. One such appropriate method of fuels treatment is Broadcast burning, which is defined by the “Dictionary of Forestry” as “a prescribed fire allowed to burn over a designated area within well-defined boundaries to achieve some land management objective”³. The definition of this term in existing regulations in 14 CCR § 895.1 presents the term in strict relationship with site preparation activities, or those activities necessary to promote forest regeneration, and not including those activities specifically intended to reduce fuel hazard. While this adopted definition does serve the function of a

1 Ainsworth, J. and Doss, T. A. 1995. Natural history of fire & flood cycles. California Coastal Commission.

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.

3 Helms, John A. 1998. The Dictionary of Forestry. Bethesda, MD: Society of American Foresters.

comprehensive regulatory site preparation scheme, it also creates issues of clarity in application of the regulations related to Broadcast Burning.

Additionally, Broadcast Burning is currently prohibited in the Southern Subdistrict of the Coast Forest District, an area consisting of the Timberlands in the counties of Santa Cruz, Santa Clara, San Mateo, San Francisco, and Marin as situated within the boundaries of the Coast Forest District (14 CCR § 895.1), per 14 CCR §§ 917.3, and 917.4(d). While this prohibition was initially intended to serve multiple purposes, including reducing damage to redwood regeneration, and reducing the risk of accidental fire in areas with generally high levels of development, those risks are now outweighed by the risks of excess fuels on the landscape and the threat they create with regard to damaging wildfire. The Timberlands within the Southern Subdistrict of the Coast Forest District have historically experienced minimally destructive wildfires due to the high levels of precipitation and humidity. This trend has not continued in recent years, however, as highlighted by the destruction which followed the CZU Complex fire in 2020, which burned over 86,000 acres and destroyed 7,000 buildings.⁴ Allowing the utilization of Broadcast Burning, including the expanded definition, within the Southern Subdistrict of the Coast Forest District would provide land managers an additional tool which could be utilized to reduce these fuels across the landscape, as applied appropriately.

Finally, the existing regulations related to surface fuel treatment generally lack clarity and consistency in their use of terminology and stated applicability of provisions.

The **purpose** of the proposed action is to: 1) revise and expand the definition of Broadcast Burning to reflect a more technically appropriate and widely-accepted definition; 2) eliminate the prohibition on Broadcast Burning, for any purpose, within the Southern Subdistrict of the Coast Forest District; 3) improve the efficacy of existing regulations related to surface fuel treatment; 4) improve the clarity of the existing regulations related to surface fuel treatment.

The **effect** of the proposed action is to provide an opportunity to utilize Broadcast Burning, for any purpose, within the Southern Subdistrict, as well as to develop a regulatory scheme related to the reduction of hazardous forest fuels generated by timber operations, both statewide and specific to the Southern Subdistrict of Coast Forest District, which is clear and effective.

The **benefit** of the proposed action is an elimination of the prohibition on a certain method of treatment for potentially hazardous fuels. The elimination of this prohibition may provide an additional opportunity to treat fuels across a landscape thereby providing additional opportunity to reduce the potential for damaging wildfire in those areas, thereby improving public health and safety. Additionally, the treatment of landscape fuels without requiring piling or bunching of fuels with heavy machinery, may potentially result in less utilization of such machinery potentially resulting in less of the

⁴ CZU Lightning Complex (Including Warnella Fire)". Cal Fire Incidents. California Department of Forestry and Fire Protection. October 27, 2020.

soil compaction or disturbance which may result from the use of such equipment. Any reduction in soil disturbance or compaction will result in improved environmental quality statewide.

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, 916.9, 917.2, 917.3, 917.4, 936.9, 937.2, 956.9, and 957.2

Amend § 895.1. Definitions.

The proposed action modifies the definition of "Broadcast Burning" to mean the use of fire for burning over a designated area to reduce hazard or achieve any other management objective which is consistent with the FPA, in addition to preparing an area for regeneration. The purpose of this amendment is to provide clarity surrounding the term, which has a much broader meaning in the vernacular than had previously existed in the regulations. This amendment clarifies that the term means burning across an area to accomplish a variety of objectives, rather than only site preparation. This clarification of the term is necessary to clarify the application of existing and amended regulations with regard to these burning activities. Please see discussion of amendments below for additional information.

The proposed action provides that the definition of the term "Approved and Legally Permitted Habitable Structure" is applicable throughout the Rules, not simply to 1038(c)(6). The purpose of this amendment is to clarify the applicability of this term, which is being used within the proposed action in order to promote consistency of terms to improve the clarity of the regulations. The term is being used to replace the existing undefined term of "permanently located structures maintained for human habitation" within 14 CCR §§ 917.2, 917.4, 937.2, and 957.2. The use of the existing defined term is suitable and appropriate to address the similar scope of applicability of these regulations. This amendment is necessary to improve the consistent implementation of the regulations. Please see discussion of those previously identified sections for additional information.

Amend §§ 916.9(q), 936.9(q), 956.9(q). Protection and Restoration of the Beneficial Functions of the Riparian Zone in Watersheds with Listed Anadromous Salmonids.

The proposed action clarifies that the term “Broadcast Burning” is being used exclusively in relation to site preparation within the existing provision related to site preparation. This amendment does not alter the substantive or material aspects of this provision, but clarifies the use of the term “Broadcast Burning” within this existing provision in light of the expanded definition proposed within 14 CCR § 895.1. This amendment is necessary to clarify that the scope or requirements of the existing provision remain unchanged which is necessary to ensure consistent application and implementation of this provision.

Amend §§ 917.2, 937.2, and 957.2. Treatment of Slash to Reduce Fire Hazard.

The proposed action eliminates an exception for the applicability of the section in the Southern Subdistrict of the Coast Forest District. The purpose of this amendment is to make the fuel treatment standards within the section applicable to the Southern Subdistrict of the Coast Forest District. The existing regulations in this section are already applicable to the remainder of the Coast Forest District and those standards contained within are suitable and appropriate for use in the Southern Subdistrict of the Coast Forest District for the purposes of reducing the fire hazard created by certain forest fuels. This amendment is necessary in order to clarify this applicability, as well as to address a potential inconsistency in the existing regulations within 14 CCR § 917.4, which contains specific standards for the treatment of slash in the Southern Subdistrict of the Coast Forest District and states that “[t]o reduce fire hazards within the Southern Subdistrict of the Coast Forest District, treatment of slash created by Timber Operations shall be done in addition to requirements of 14 CCR § 917.2...” These amendments eliminate this inconsistency, which seemed to simultaneously require compliance and provide an exception.

Additionally, the proposed action eliminates a reference to the definition for “Lopping for Fire Hazard Reduction”. This reference is unnecessary, and its removal is necessary to improve the clarity of the regulations.

Amend §§ 917.2(b), 937.2(b), and 957.2(b)

The proposed amendment capitalizes the word “slash” to make clear that it is used as defined within 14 CCR § 895.1. This amendment is necessary to improve the clarity of the regulations.

Amend §§ 917.2(c), 937.2(c), and 957.2(c)

The proposed action requires that all Slash, as defined by 14 CCR § 895.1, within 100 feet of certain structures, be removed or piled and burned, in addition to Woody Debris less than 8 inches in diameter. The purpose of this amendment is to clarify this fuel hazard treatment requirement, which is necessary in order to reduce fire hazard from surface fuels within 100 feet of certain structures. Additionally, this amendment improves what may have been an existing inconsistency in the regulations where Woody Debris between 1 and 8 inches in diameter required treatment, but woody debris

is defined as material greater than 4 inches in diameter and would not include materials as small as 1 inch in diameter. This amendment clarifies, through the inclusion of the term Slash, which is defined as larger than 1 inch, that those fuels between 1 and 4 inches require specific treatment in those areas adjacent to certain structures. This amendment is necessary in order to promote accurate implementation and enforcement of these provisions.

The proposed action additionally eliminates the condition that the provision is applicable to Slash and Woody Debris that are created by Timber Operations because, by definition in 14 CCR § 895.1, both of those are created as a result of Timber Operations. The removal of the phrase “created by timber operations” here eliminates a redundant statement and improves the clarity of the regulations. This amendment is necessary in order to promote the clarity of the regulations, as well as their implementation and enforcement.

Additionally, the proposed action makes the term “diameter” lower case, as it is not being used in the defined sense per 14 CCR § 895.1. The definition of “Diameter” in 14 CCR § 895.1 identifies that a measurement of a tree to be taken at 4.5 feet above average ground level. The term is used here in the common definition, as simply a cross-sectional measurement of surface fuels. This amendment is necessary to clarify this distinction and to support accurate implementation of the regulations.

The proposed action replaces the term “permanently located structures maintained for human habitation” with the defined term “Approved and Legally Permitted Habitable Structures”. The purpose of this amendment is to improve the clarity of this provision and to make certain that certain provisions are applicable only to those structures which satisfy the conditions of the defined term, which is related to certain residential structures. The existing phrase utilized similar terminology to achieve a similar result, but the ambiguity of the distinction between the two phrases created issues of clarity in the regulations. The use of the defined term here is suitable and appropriate for implementation of fuel hazard reduction standards following timber operations.

Finally, the proposed action capitalizes the terms of “Slash” and “Lopped for Fire Hazard Reduction”, which are defined within 14 CCR § 895.1. The capitalization of these terms serves to indicate that they are being used in their defined capacity, which includes certain prescriptive conditions. The purpose of this amendment is to utilize these conditions and definitions in order to improve the clarity of the regulations in order to improve accuracy of implementation and enforcement. These amendments are necessary to achieve such improvements.

Amend §917.3. Prescribed Burning of Slash

The proposed action eliminates the restriction on prescribing Broadcast Burning for slash treatment in the Southern Subdistrict of the Coast Forest District, subject to certain conditions. The purpose of this amendment is to permit the practice of Broadcast Burning for the purpose of slash treatment in the Southern Subdistrict of the Coast Forest District in order to provide an additional tool for the treatment of slash and the

reduction of surface fuels and corresponding fire hazard in this region which has recently experienced extremely destructive wildfire. This amendment is necessary in order to clarify the elimination of this prohibition and to clarify the applicability of Broadcast Burning in the Coast Forest District.

The proposed action capitalizes the terms of “Slash”, which is defined within 14 CCR § 895.1. The capitalization of this term serves to indicate that it is being used in its defined capacity, which includes certain prescriptive conditions. The purpose of this amendment is to utilize these conditions and definitions in order to improve the clarity of the regulations in order to improve accuracy of implementation and enforcement. These amendments are necessary to achieve such improvements.

Amend § 917.3(a)

The proposed action eliminates a provision which permits the use of Broadcast Burning in the Coast Forest District within Zone A, as defined by PRC § 4423 because none of the areas within Zone A, as defined, exist within the Coast Forest District as defined by 14 CCR § 907. The purpose of this amendment is to eliminate any potential confusion that this provision may cause, given the conflict in geographic scopes. This amendment is necessary to eliminate any potential issues of consistency and application.

The remainder of the section has also been re-numbered and citations updated to reflect this elimination.

Amend § 917.3(b)

The proposed action eliminates certain regulatory temporal limitations on the use of Broadcast Burning for Slash treatment and instead implements the statutory temporal limitation on burning within PRC § 4423 as a requirement for such treatment, along with compliance with the provisions of Project-type burning permit during that time as well. The purpose of this amendment is to eliminate any inconsistencies between the allowable burn periods as described in statute and regulation, as well as to make consistent the requirements for certain permits, which are explicit and self-executing within PRC § 4423. This amendment is necessary to clarify these limitations and requirements within the entirety of the Coast Forest District.

Amend § 917.4. Treatment of Logging Slash in the Southern Subdistrict

The proposed amendment capitalizes the word “slash” throughout this section to make clear that it is used as defined within 14 CCR § 895.1. This amendment is necessary to improve the clarity of the regulations.

The proposed action additionally eliminates the condition that the Slash must be “created by Timber Operations”, or “created by current Timber Operations” throughout this section because, by definition in 14 CCR § 895.1, Slash are created as a result of Timber Operations. The removal of the phrase “created by timber operations” here eliminates a redundant statement and improves the clarity of the regulations. The elimination of the phrase “created by current Timber Operations” requires all Slash,

regardless of which Timber Operation it was generated by, to receive certain treatment as well. Theoretically this does not impose any new treatment requirements as all previous Timber Operations required the described fuel treatments to be conducted, and so un-treated Slash should not exist across the landscape. Nevertheless, wherever Slash exists it has the potential to create a hazardous fuel condition and, where treatment of Slash is necessary to reduce such hazard, the time at which the Slash was generated does not have any bearing on the hazard and so all Slash must receive treatment in these instances. This amendment is necessary in order to promote the clarity of the regulations, as well as their implementation and enforcement.

Amend § 917.4(a)

The proposed action states that, within the Southern Subdistrict of the Coast Forest District, a specified area surrounding public roads must be kept free of all Slash. Previously, the provision clarified that this area be kept free of slash which was greater than 1 inch in diameter, but the regulatory definition of Slash identifies the material as between 1 inch and 4 inches in diameter. The elimination of this open-ended diameter description of Slash eliminates any inconsistency or confusion in application and is necessary in order to promote accurate implementation and enforcement of the regulations.

Additionally, the proposed action requires that Slash within 100 to 200 feet of certain structures be treated by certain methods by no later than April 1 of the year following its creation. This treatment requirement previously existed for the entirety of the distance of 200 feet from those certain structures, but has been modified as described above in order to promote consistency with 14 CCR § 917.2(c), compliance with which is required by the existing provisions of 14 CCR § 917.4. This amendment is necessary to ensure appropriate implementation and enforcement of fuel hazard reduction standards. Please see discussion of adoption of 14 CCR § 917.4(b) below for additional information.

The proposed action replaces the term “permanently located structures maintained for human habitation” with the defined term “Approved and Legally Permitted Habitable Structures”. The purpose of this amendment is to improve the clarity of this provision and to make certain that certain provisions are applicable only to those structures which satisfy the conditions of the defined term, which is related to certain residential structures. The existing phrase utilized similar terminology to achieve a similar result, but the ambiguity of the distinction between the two phrases created issues of clarity in the regulations. The use of the defined term here is suitable and appropriate for implementation of fuel hazard reduction standards following timber operations.

Adopt new § 917.4(b)

The proposed action adopts fuel treatment standards for an area within 100 feet of an Approved and Legally Permitted Habitable Structure within the Southern Subdistrict of the Coast Forest District which are consistent with those in the Coast Forest District as a whole within 14 CCR § 917.2(c), and compliance with which is required by existing provisions in the un-lettered introduction to 14 CCR § 917.4. The purpose of this

amendment is to ensure consistent and appropriate fuel treatment standards within the Southern Subdistrict of the Coast Forest District, and the fuel treatment standards within 100 feet of a structure as described in 14 CCR § 917.2(c) are suitable and appropriate for implementation within the Southern Subdistrict. This amendment is necessary to clarify this fuel treatment standard.

Amend § 917.4(d) (Formerly 917.4(c))

The proposed action eliminates a requirement that Slash receive certain treatment over a certain time period when “adjacent to a Logging Area”. The purpose of this amendment is to eliminate the ambiguity contained within the phrase “adjacent to”, as the term “Logging Area” is defined within 14 CCR § 895.1 as a specific area and a requirement related to “adjacency” is unclear with regard to that specific area. This amendment is necessary in order to clarify those areas where this fuel treatment is necessary to promote accurate implementation and enforcement of the regulations.

Additionally, the proposed action requires that Slash along roads in the Logging Area be lopped concurrently with its creations, where the previous rule required that such lopping occur along roads not in the logging area. The purpose of this amendment is to improve the clarity and eliminate uncertainty of this fuel treatment requirement. The term “Logging Area”, as defined within 14 CCR § 895.1, includes the area where Timber Operations are being conducted, and the term “Slash” is defined as a certain size class of materials which is created by Timber Operations, therefore all Slash which exists was generated by Timber Operations and is included within the Logging Area by virtue of definition. This amendment is necessary to clarify the fuel treatment standard along roads in the Logging area in order to promote the reduction of hazardous fuels in those areas.

Amend § 917.4(d)

The proposed amendment requires that, on existing maps which are required for the permitting of various Timber Operations, the boundaries of any areas where Tractor Operations are proposed for use on areas designated for Cable Yarding must be shown. The purpose of this amendment is to require disclosure of such areas to the Department and is necessary to provide for the enforcement of the prescriptive limitations of Tractor Operations in such areas in order to ensure the adequate protection of forest resources.

Non-Substantive Amendments

1. Capitalized and utilized terms defined pursuant to 14 CCR § 895.1 and this Article throughout the amendments where appropriate.
2. Included written and Arabic numbers where they exist.
3. Improved grammar and spelling throughout.

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 an opportunity to utilize Broadcast Burning, for any purpose, within the Southern Subdistrict, as well as to develop a

regulatory scheme related to the reduction of hazardous forest fuels generated by timber operations, both statewide and specific to the Southern Subdistrict of Coast Forest District, which is clear and effective.

The fuel treatment requirements within the proposed action represent a continuation of existing rules related to the reduction of hazardous forest fuels created as a result of Timber Operations conducted 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 benefit of the proposed action an elimination on the prohibition on a certain method of treatment for potentially hazardous fuels. The elimination of this prohibition may provide an additional opportunity to treat fuels across a landscape without requiring piling or bunching of fuels with heavy machinery, thereby potentially resulting in less utilization of such machinery and potentially resulting in less soil compaction or disturbance which may result from the use of such equipment. Any reduction in soil disturbance or compaction will result in improved environmental quality statewide.

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)). 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. Board of Forestry and Fire Protection, CAL FIRE, “2018 Strategic Fire Plan for California”, August 22, 2018.
2. Little Hoover Commission, “Fire on the Mountain: Rethinking Forest Management in the Sierra Nevada”, Report #242, February 2018.
3. Helms, John A. 1998. The Dictionary of Forestry. Bethesda, MD: Society of American Foresters.

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 existing prescriptive standards for surface fuel treatment with performance-based regulations.

The Board rejected this alternative as it would create issues of clarity, enforceability, and implementation as well as potentially increasing fuel hazard within already hazardous areas. The prescriptive fuel treatment requirements are necessary to reduce and improve surface fuel conditions.

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 course of the agency rulemaking process.

The proposed action is as prescriptive as necessary to address the problem, and contain 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 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.

The proposed action utilizes largely extant prescriptive requirements for timber operations to regulate surface fuel hazard reduction requirements. The proposed action imposes a mix of performance and prescriptive requirements on Tethered Operations which are a continuation of the existing requirements on fuel treatment as a whole.

Plans, and other regulatory mechanisms which permit timber operations, contain a mix of project relevant avoidance and mitigation measures to reduce the risk for potential significant adverse effects.

State representatives review every Plan to determine if a Project will have a significant adverse environmental impact. Prior to making a decision of approval or denial, the review team (the Director) often supplements the information provided by the RPF and the plan submitter when necessary to ensure that all relevant information is considered. The review team (the Director) has broad discretion to request the necessary information be provided to the Department and responsible agencies to facilitate review and development of appropriate mitigation measures to ensure that the Project will not cause a significant adverse environmental impact. Local and federal agency representatives are also involved in the review process.

Pursuant to 14 CCR § 896(a), it is the Board's intent that no Plan shall be approved which fails to adopt feasible mitigation measures or alternatives from the range of measures set out or provided for in the Rules which would substantially lessen or avoid significant adverse impacts which the activity may have on the environment

Once Plans are approved, state representatives continue with compliance inspections of approved Plans until the conclusion of the Plan's lifespan. Where the Rules or approved Plan provisions have been violated, specified corrective and/or punitive enforcement measures, including but not limited to financial penalties, are imposed upon the identified offender(s).

In summary, the proposed action does not have the potential to result in significant adverse environmental effects.