



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Habitat Conservation Planning Branch  
P.O. Box 944209  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



February 26, 2021

Mr. Matt Dias, Executive Officer  
California Board of Forestry and Fire Protection  
PO Box 944246  
Sacramento, CA 94244-2460

## **FOREST PRACTICE RULE UPDATES FOR BOTANICAL RESOURCES**

Dear Mr. Dias:

In response to the California Board of Forestry and Fire Protection's (Board) 2018 annual call for regulatory reform, the California Department of Fish and Wildlife (CDFW) submitted a letter requesting the Board consider reviewing the California Forest Practice Rules (Cal. Code Regs., tit. 14 §895.1 et seq.) to augment the rules for evaluating impacts to botanical resources related to timber harvesting. CDFW thanks the Board for adding botanical resources to the list of 2020 priorities for the Forest Practice Committee and appreciates the immense amount of Board staff time as well as stakeholder engagement on this topic to date.

After several workshops and committee meetings, Board staff introduced a set of draft changes to Technical Rule Addendum No. 2 (Cal. Code Regs., tit. 14 § 912.9 [932.9, 952.9] the Cumulative Impacts Assessments (TRA2)) in January 2021. CDFW, along with other stakeholders, made verbal comments on this draft language at the January 19, 2021 Joint Committee Meeting. CDFW understands the intent of the edits to TRA2 were not to address all the concerns outlined in the Board's Draft Problem Statement on Botanical Resources. Should the Board decide to proceed with the edits to TRA2, CDFW agrees with Board staff that additional actions, documents, or rules changes may also be necessary to complete this effort. CDFW supports the development of regulatory language which would provide the highest level of clarity and certainty for landowners, operators, and agency staff and would create efficiency in plan review while providing a framework for protection of botanical resources through effective information gathering and disclosure. To assist the Forest Practice Committee in determining how best to proceed, CDFW has outlined several key topics for the Board's consideration that should be addressed through regulatory or non-regulatory actions, including scoping, field surveys, and submittal of survey results.

The ideal approach should generate actionable data consistent with the intent of established protocols published by federal and state agencies, including the 2018 CDFW guidance document "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities." These protocols were designed to facilitate a consistent and systematic approach to botanical field surveys and assessments of special status plants and sensitive natural communities so that reliable information is produced and the potential for locating special status plants and sensitive natural communities is maximized. Solutions developed should address the following items:

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### **Survey Preparation “Scoping”**

- Define the project area and biological assessment area, including adjacent U.S. Geological Survey 7.5’ topographic quads.
- Establish the requirement and process for the development of a scoping list of special status plants and sensitive natural communities<sup>1</sup> with the potential to occur within the vegetation and habitat types identified throughout the project area as well as an explanation of the methods and resources used to generate the list. This would include a process for elimination of a species from a scoping list and the rationale for removal based on habitat and species biology factors.
- Update references to appropriate guidance documents and suggested information sources such as the California Natural Diversity Database (CNDDDB), Manual of California Vegetation, and regularly updated published lists including CNDDDB’s Special Vascular Plants, Bryophytes, and Lichens list and State and Federally Listed Endangered, Threatened, and Rare Plants of California list.<sup>2</sup>

### **Field Surveys**

- Outline a process for determining if field surveys are needed based on the results of the scoping process.
- Set expectations for the geographic scope of the surveys and the time of year that surveys would be conducted, including when multiple site visits are needed based on species biology and detectability.
- Define the qualifications needed to conduct a botanical field survey.
  - The Board has already outlined the credentials of a Qualified Botanist in its 2019 California Vegetation Treatment Program Environmental Impact Report (Section 3.6, page 118).
  - In addition to defining qualifications, this section should note that there may be scenarios, due to the specific nature of a particular plant, where an additional expert may need to be consulted.
- Identify when past scoping or surveys are appropriate for use and when scoping or surveys may need to be redone based on the time elapsed since or scope of the original survey, changes to habitat through natural processes or forest management practices, climatic influences, or other relevant factors.

### **Survey Results**

- Outline a process for submittal of survey results and analysis that addresses the following:
  - In most cases, surveys and analysis should be submitted with the completed plan prior to plan review and approval to be considered during the normal review process.

- 1) CDFW highly recommends further discussion with the Board on sensitive natural communities potentially including a presentation to the Board from the CDFW Biogeographic Data Branch.
- 2) CDFW recognizes that referencing these types of documents in regulation can be problematic and discouraged by the Office of Administrative Law. These types of references may be more appropriate in a Technical Rule Addendum or guidance document.

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- For cases when surveys need to be submitted after plan approval, they should be filed as a major amendment or through another process developed by the Board that incorporates the following:
  - Notification of review team agencies
  - Timelines that allow for meaningful review of survey results
  - A forum for official review or comment by review team agencies
  - Timing of survey submittal during the plan review process

Monitoring and protection measures have not been contemplated in this letter, as it is difficult to apply a one size fits all approach due to biogeography of the state and the variety of biological needs of the State's forested botanical species. This proposal focuses on improving plan efficiency and protection of resources through effective information disclosure. We also encourage the Board to consider botanical resource protection effectiveness monitoring or research separate from this regulatory proposal.

Additionally, CDFW encourages the Board to explore new options for botanical survey submittal through the CalTREES online plan submission tool in cases when surveys are not submitted during initial plan review and approval. Currently, many surveys are submitted through CalTREES as minor amendments. This process does not notify CDFW or allow for review. CDFW also strongly encourages pre-consultation on all parts of the review process. For botanical resources, pre-consultation is particularly effective at the scoping stage if a mutually agreeable scoping list can be developed. For addressing the unique needs of small landowners, CDFW staff suggest developing standards and practices as discussed above first, followed by identifying where barriers or challenges may exist for small non-industrial landowners. Solutions or modifications could then be developed to address these specific barriers or challenges. Solutions may include things like incorporating pre-consultation or modified processes related to scoping or surveys when certain conditions are met.

CDFW is committed to working with the Board and other stakeholders on developing language and solutions that provide efficiency in plan review through clarity of expectations and effective information disclosure. We look forward to continued discussions on these topics. If you have questions about this letter or would like further information, please contact Ms. Isabel Baer, Timberland Conservation and Native Plant Program Manager, at (916) 376-8685 or [isabel.baer@wildlife.ca.gov](mailto:isabel.baer@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Jeff Drongesen, Branch Chief  
Habitat Conservation Planning Branch

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