

**Board of Forestry and Fire Protection**

**NOTICE OF PROPOSED ACTION**

**“Spotted Owl Resource Plan Amendment, 2022”**

**Board of Forestry and Fire Protection  
Title 14 of the California Code of Regulations  
Division 1.5, Chapter 4,  
Subchapter 1**

**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 August 17, 2022, at its regularly scheduled meeting commencing at 9:00 a.m., at the Auditorium on the first floor, RM 1-302, 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 GoToWebinar online meeting platform or telephone conferencing. To participate via GoToWebinar online meeting platform please email [PublicComments@bof.ca.gov](mailto:PublicComments@bof.ca.gov) by 4:30 p.m. on August 16, 2022, 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 on at the conclusion of the public hearing on August 17, 2022.

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 sent to the Board via facsimile at the following phone number:

(916) 653-0989

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, and 4553, Public Resources Code

**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..." of the state and PRC § 4553 requires the Board to continuously review the rules in consultation with other interests and make appropriate revisions.

The Northern Spotted Owl was listed as Threatened pursuant to the Endangered Species Act (ESA) in 1990, prohibiting "take", defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (the Endangered Species Act §3(18)). In 2017, the California Fish and Game Commission (FGC) listed the species as Endangered pursuant to the California Endangered Species Act (CESA) which also prohibits "take" defined as "to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill" (Fish and Game Code, §86).

Various regulatory mechanisms were developed at the state and federal level to avoid take of this species, or to provide for some form of "incidental take" for otherwise lawful activities. As a result, regulated forest landscapes are now subject to multiple mechanisms for take avoidance, largely

through extensive surveys and the protection of appropriate habitat for foraging, nesting, and roosting within a specific radius of known nest sites. One of these mechanisms is the Spotted Owl Resource Plan, a streamlined process to avoid take across multiple ownerships.

A Spotted Owl Resource Plan is a take avoidance strategy that demonstrates an approach to preventing a taking of the Northern Spotted Owl while conducting timber harvest operations. This process is managed by the California Department of Forestry and Fire Protection (CAL FIRE) in collaboration with the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS). Spotted Owl Resource Plans advance the conservation of NSO through a consistent protocol for monitoring and reporting on a geographic scale, describe and define protection measures for NSO given various situations in timber harvesting plans located in the SORP and provide for data and information exchange to ensure that USFWS, CDFW, CAL FIRE, and SORP enrollees have the most current information on Northern Spotted Owl populations and access to data across ownerships. This process is managed by the California Department of Forestry and Fire Protection (CAL FIRE) in collaboration with CDFW and USFWS.

A Spotted Owl Resource Plan necessarily involves coordination of multiple timber harvesting plan areas. As currently defined in the Forest Practice Rules (§895.1), Spotted Owl Resource Plans do not specifically include Nonindustrial Timber Management Plans (NTMPs) and Working Forest Management Plans (WFMPs); regulatory pathways for managing nonindustrial timberlands to create and maintain uneven aged timber stand conditions and sustained yield of timber. These plans may include multiple landowners and are limited in size. These nonindustrial timberland owners would benefit significantly from the opportunities for multi-owner cooperative survey efforts, the ability to describe and define protection measures given specific management and site circumstances, and the provisions for data sharing and information exchange with other SORP enrollees and relevant agencies.

The **problem** is that the current regulatory description of a Spotted Owl Resource Plan does not include reference to Nonindustrial Timber Management Plans or Working Forest Management Plans, giving the incorrect impression that those methods for forest management are excluded from this pathway to meet regulatory requirements for avoiding take of Northern Spotted Owls.

The **purpose** of the proposed action is to clarify that nonindustrial timberland owners can use Spotted Owl Resource Plans to meet the regulatory requirements for surveys and take avoidance of Northern Spotted Owls.

The **effect** of the proposed action is wider usage by nonindustrial timberland owners of a landscape-level protection from take for Northern Spotted Owls.

The **benefit** of the proposed action is a mechanism for wider usage of landscape-level protections for the Northern Spotted Owl, a federally listed threatened and state listed endangered species. The proposed action also provides clarity on the usage of a regulatory mechanism.

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. Otherwise, Board staff evaluated the balance of existing State regulations related to watercourse protection during timber operations 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 4, 5, & 6, 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 related to management plans for the non-industrial harvesting of timber. 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)). The proposed action will result in a more efficient and effective regulatory scheme for the determination of Class II-L watercourses and improved regulatory certainty to the public through the elimination of certain regulatory sunset provisions. 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))**

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. No adverse impacts are to be expected.

**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) 619-9795

The designated backup person in the event Ms. Van Susteren is not available is Eric Hedge, Regulations Program Manager for the Board of Forestry and Fire Protection. Mr. Hedge 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/>