

Board of Forestry and Fire Protection

NOTICE OF PROPOSED ACTION

Less Than 3-acre Conversion Exemption Amendments, 2024

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

[Notice to be Published in Notice Register June 7, 2024]

NATURE OF PROCEEDING

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

PUBLIC HEARING

The Board will hold a public hearing on July 24, 2024, at its regularly scheduled meeting commencing at 9:00 a.m., in a conference room on the second floor, RM 2-302, 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 the online meeting platform or telephone conferencing. To participate via the online meeting platform please email PublicComments@bof.ca.gov by 4:30 p.m. on July 23, 2024, 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 July 24, 2024.

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

Written comments shall be submitted to the following address:

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

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

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

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

PublicComments@BOF.ca.gov

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

Authority cited: Sections 4551, 4553, 4584, 4584.1, 4604, 4611 and 4628, Public Resources Code. Reference: Sections 4512, 4513, 4584, 4597, 4628 and 21083.2(b)(3), 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. (Act) 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.

PRC § 4551.5 requires that the rules and regulations adopted by the Board apply to the conduct of Timber Operations, which is defined within PRC § 4527(a)(1) as "the cutting or removal, or both, of timber or other solid wood forest products, including Christmas trees, from Timberlands for commercial purposes, together with all the incidental work, including, but not limited to, construction and maintenance of roads, fuelbreaks, 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, but excluding preparatory work such as treemarking, surveying, or roadflagging." The term "commercial purposes", as used within PRC § 4527 is defined by reference to an illustrative, non-exhaustive list of activities within PRC § 4527(a)(2) that include "(A) the cutting or removal of trees that are processed into logs, lumber, or other wood products and offered for sale, barter, exchange, or trade, or (B) the cutting or removal of trees or other forest products during the conversion of timberlands to land uses other than the growing of timber that are subject to Section 4621,

including, but not limited to, residential or commercial developments, production of other agricultural crops, recreational developments, ski developments, water development projects, and transportation projects.”

Additionally, the Act defines “Timberland” within PRC § 4526 as “land, other than land owned by the federal government and land designated by the board as experimental forest land, which is available for, and capable of, growing a crop of trees of a commercial species used to produce lumber and other forest products, including Christmas trees.”

The Act recognizes that the “forest resources and timberlands of the state are among the most valuable of the natural resources of the state”, and that “it is the policy of this state to encourage prudent and responsible forest resource management...” (PRC § 4512). The act also recognizes that some landowners who own timberland and forest resources may wish to utilize their land for purposes other than the growing, harvesting, and management of timber. To accommodate these activities, the Act contains provisions for the conversion of timberland through several mechanisms including Article 9 of the Act, and PRC § 4584 (g).

PRC § 4584 authorizes the Board to adopt regulations to provide an exemption, from all or portions of the Act, to a person engaging in certain forest management activities specified by the statute.

PRC § 4584 (g) allows the Board to adopt regulations exempting an individual from all or portions of the Act when the landowner is engaged in “[t]he one-time conversion of less than 3-acres to a nontimber use,” can demonstrate a bona fide intent to convert the land use, and has met certain other criteria. The Board has interpreted and implemented these statutory provisions through the adoption of 14 CCR § 1104.1(a). These regulations were adopted by the Board, pursuant to its statutory authority, to provide landowners relief from certain onerous or burdensome portions of the FPRs, including Plan preparation and conversion permit requirements, while maintaining environmental quality by requiring Timber Operations to comply with all other applicable provision of the Act and existing regulations.

Since their initial adoption as part of the Forest Practice Rules (Rules) in 1974, the less than 3-acre Conversion Exemption regulations of 14 CCR § 1104.1(a) have been widely utilized by landowners seeking to accomplish various conversion goals, from the construction of residences to improving rangeland resources, and the Department of Forestry and Fire Protection (Department) has received over 15,000 applications statewide to date. The widespread use of the regulations has brought to light various misapplications and other shortcomings which have been addressed through statutory and regulatory amendments to clarify and make specific the process while maintaining the Less than 3-acre Conversion Exemption as a functional tool for forest land management.

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 but did not revise those exemptions adopted within 1104.1 which were authorized by PRC § 4854.

In 2023, Governor Newsom signed AB 1526, which amended PRC § 4584(g)(2)(A)(iv) to allow the Board to adopt a waiver of the one-time limitation on less than 3-acre conversion if the one-time limitation would impose an undue hardship.

The problems are that, though the provisions exempting Less than 3-acre Conversion activities have long existed within regulation, their implementation (both by the regulated public and the Department which administers them) has been inconsistent and the regulations themselves require clarification of several features. The current regulations lack clarity; for example, applicants are instructed to obtain a county use permit or provide evidence that no permit is required but are not provided with an avenue to certify their contact person at the relevant county if the county lacks an authorized designee.

Additionally, current less than 3-acre conversion exemption regulations do not address the general requirements for other exemptions (as described under § 1038 et seq.) as relates to environmental and safety protections such as surface fuel treatment, watercourse and lake protections, and erosion control. These regulations do not provide a minimally burdensome ministerial permitting process for conversion activities that may impact natural resources and communities.

Under current regulations, work under the less than 3-acre conversion permit is limited to a single conversion event per contiguous land ownership. This leads to circumstances where landowners must determine the full extent of long-term property development within Timberland during a single permit application, often resulting in immediate removal of all commercial trees within the 3-acre potential developed area or the full extent of their property, whichever is smaller. There is no current option in the rules that allows landowners to retain timberland until development is desired, maximizing the number of acres of timberland lost under this permit process. Landowners who do not predict all of the circumstances for future development of their property, including landowners who become disabled and need to install additional facilities for access to their homes, landowners who need to widen driveways and install turnouts to comply with fire safety requirements, and landowners who wish to build additions, ADUs, gardens, or install fire-safe landscaping features, are either faced with requirements to remove any number of trees that are commercial species using both a Timberland Conversion Permit and a Timber Harvest Plan – the functional equivalent of an Environmental Impact Report – to refrain from property development, or to pursue these developments without appropriate permits.

Some aspects of the current less than 3-acre conversion permit application process require clarity to streamline submission, notification, and review. There is no current requirement for the notification of trustee agencies about potential impacts to natural resources, and mapping instructions do not include requirements to denote the location of areas with potential outsized impact including watercourses and unstable areas.

Furthermore, the applicability of the term “Timberland Conversion” as defined within 14 CCR § 1100(g) to less than 3-acre conversion exemptions on Timber Production Zone land is

ambiguous, as the existing regulation states that the existing definition is not applicable to those activities pursuant to 14 CCR § 1104.1.

The purpose of the proposed action is to: 1) revise the regulatory spatial and temporal limitations of the existing less than 3-acre conversion exemption within 1104.1 to provide additional clarity; 2) improve the clarity and efficiency of the regulations related to the regulatory exemptions authorized by PRC § 4584(g) to make them consistent with the regulatory revisions to exemptions following the passage of SB 901 and general purpose of the Act to provide adequate resource protection while maintaining a minimally burdensome ministerial permitting process for those activities; 3) adopt the waiver of the one-time conversion permitted by the passage of AB 1526; 4) establish an option for the waiver of the contiguous land ownership limitation for less than 3-acre conversion exemptions, 5) clarify some aspects of the less than 3-acre exemption submission, notification, and review process; and 6) improve the overall clarity of the regulations and to ensure consistency with the purposes of the Act, particularly those purposes related to resource protection.

The effect of the proposed action is to: 1) provide clarity to applicants on how to complete less than 3-acre conversion exemptions; 2) revise the structure and content of the entirety of 14 CCR § 1104.1 to clarify submission, notification, and operational requirements and limitations for all permitted activities to promote consistency with the statutory changes within SB 901 and elsewhere in the regulations in 14 CCR § 1038 et seq.; 3) provide for waivers of the one-time limitation and contiguous land ownership limitation to use of the less than 3-acre conversion exemption under circumstances that would provide undue hardship to the applicant, while also limiting serial conversion and the loss of timberland, and identify circumstances under which the Department may determine that circumstances qualify as “undue hardship”; 4) update requirements for notification and review processes for relevant agencies for this exemption; and 5) clarify the definition of Timberland Conversion for activities conducted under statutory exemption within PRC § 4584(g) on TPZ lands.

The benefit of the proposed action is the maintenance of a comprehensive regulatory scheme which allows for the clear and consistent application and enforcement of the Forest Practice Rules related to less than 3-acre conversion exemptions. These measures may benefit environmental quality throughout the state through improved clarity regarding prohibitions and limitations related to Timber Operations which are intended to prevent environmental impact and improving mapping and notification requirements. Additionally, the improvement of notification processes will benefit the efficiency of the Department’s inspections and enforcement of exemption operations. Further, waiver of the one-time limitation benefits landowners by allowing them to stagger development over time in response to evolving circumstances, up to the existing aggregate maximum of 3-acres, which also has the incidental benefit of retaining Timberland until the landowner is prepared to proceed with minor developments to their parcel. Finally, waiver of the contiguous land ownership limitation benefits holders of large contiguous ownerships by allowing them, to undertake additional less than 3-acre conversion exemptions on additional properties in the same manner as owners of individual parcels, under appropriate circumstances of undue hardship while protecting against risk of serial conversion.

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

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

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

MANDATED BY FEDERAL LAW OR REGULATIONS

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

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

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

OTHER STATUTORY REQUIREMENTS (pursuant to GOV § 11346.5(a)(4))

There are no other matters as are prescribed by statute applicable to the specific State agency or to any specific regulation or class of regulations.

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

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

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

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

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

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

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

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

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

The proposed action will not significantly affect housing costs.

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

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

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE RELIED UPON TO SUPPORT INITIAL DETERMINATION IN THE NOTICE THAT THE PROPOSED ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS (pursuant to GOV § 11346.2(b)(5) and GOV § 11346.5(a)(8))

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

STATEMENTS OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (EIA)

The results of the economic impact assessment are provided below pursuant to **GOV § 11346.5(a)(10)** and prepared pursuant to **GOV § 11346.3(b)(1)(A)-(D)**. The proposed action:

- Will not create jobs within California (GOV § 11346.3(b)(1)(A));
- Will not eliminate jobs within California (GOV § 11346.3(b)(1)(A));
- Will not create new businesses (GOV § 11346.3(b)(1)(B));
- Will not eliminate existing businesses within California (GOV § 11346.3(b)(1)(B));
- Will not affect the expansion or contraction of businesses currently doing business within California (GOV § 11346.3(b)(1)(C));
- Will yield nonmonetary benefits (GOV § 11346.3(b)(1)(D)). These measures may benefit environmental quality throughout the state through improved clarity regarding conditions and limitations related to Timber Operations which are intended to prevent environmental impact. Additionally, the improvement of notification processes will benefit the efficiency of the Departments inspections and enforcement of exemption operations.

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 Andrew Lawhorn, Forestry Assistant II for the Board of Forestry and Fire Protection. Mr. Lawhorn 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/>