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September 6, 2024

Edith Hannigan
Executive Officer
Board of Forestry and Fire Protection
Email: edith.hannigan@bof.ca.gov

Re: Call for Regulatory Review

Dear Ms. Hannigan:

The following is the California Forestry Association's (Calforests) input regarding the Board of Forestry's the Board of Forestry & Fire Protection Annual Call for Regulatory Review. This review asks for the following:

1. Areas where questions exist on interpretation of the regulatory standards, including potential solutions.
2. Issues encountered in achieving compliance with the regulatory standards, including potential solutions.
3. Suggested regulatory modifications which would either clarify existing rule language to better achieve the intended resource protection or would reduce regulatory inefficiencies and maintain the same or better level of protection.

Issue 1- Noticing issues

These issues involve rules for the procedures for noticing. They include nearby landowner information and the procedures for noticing the public and those nearby landowners during preparation of a Timber Harvest Plan (THP).

Landowner information

Timber Harvest Plans (THPs) are governed by Title 14 CCR 1032.7 which states in part:

- (e) The RPF preparing the Plan shall furnish to the Department at the time of submission of the Plan, the names and mailing addresses of all property owners within three-hundred (300) feet of the Plan boundary. Either a list compiled from the **latest equalized assessment roll or a list provided by a title company doing**

business in California compiled within sixty (60) days of submission of the Plan
shall be deemed sufficient for compliance with the subsection.

This issue has recently caused some confusion. It appears that county assessors' lists may conflict with information given by other sources, such as proprietary services utilized by real estate firms doing market research (e.g., Land Vision or Parcel Quest). Please note that these services are not the equivalent of a title company.

This has led to some plans not being accepted for filing, because the Department is utilizing a different data source not covered in the Forest Practice Rules that result in Plan returns, even though the Plans themselves are in conformance with all other rules of the Board. Here it is worth noting Public Resources Code:

4582.75. Rules and provisions of this chapter as criteria for reviewing timber timber harvesting plans.

The Rules adopted by the board and the provisions of this chapter **shall be the only criteria** employed by the director when reviewing timber harvesting plans pursuant to Section 4582.7

The situation is uncomfortably akin to underground regulation, and we would ask the Board for further discussion to clarify the issue.

Noticing landowners

Secondly, there appears to be inconsistency for the procedures in noticing that would be well served by further discussion.

1. Noticing upon receipt
2. Noticing upon filing
3. Posting of physical notice on property

THPs, THPs with certain counties, NTMPs, and WFMPs may have some nuances between them. This can cause some illogical or frustrating outcomes. For instance, Santa Cruz County rules under 926.3 (d) require that:

The plan submitter shall have the Notice of Intent published in a newspaper of general circulation in the area, **concurrently with the submission** of the plan to the Director. Proof of publication of notice shall be provided to the Director prior to his/her determination made pursuant to 14 CCR § 1037.4.

“Concurrently” is subject to some level of interpretation, and it has caused confusion over the last year. A different example is the domestic water notifications (14 CCR § 1032.10). These have always followed the procedure of publishing BEFORE submission. The document verifying same is then attached to the submitted plan. This approach would provide a practical way to solve the problem of interpreting “concurrently”.

Lastly, and in a larger context, there is the issue of when notifications by the Department should occur. Is it within two days of receipt of the Plan? What if the Plan is returned? Is it truly a Plan until it is filed? Is filing date a better timing for notification?

Physical posting of the property may need to be done multiple times- which is not only time consuming and costly, but may also be ultimately confusing to the public. In general, if mailed notifications are done, should the physical posting be limited to such time as when the plan is filed, and review is beginning?

We believe that this issue- noticing- should be discussed to provide as much consistency as possible across various counties and harvest documents.

Issue 2- MSP

MSP under Options “A” and “B” could be well served by further discussion. The Department and the landowners providing the information would benefit from discussions on the procedures and requirements necessary to facilitate efficient review. This would also comport with Public Resources Code 4592.5 (see discussion under THP forms below).

Issue 3- Archaeology

Recently, new Native American Contact Lists (NACL) have been made available by the Department for the purpose of notification. These lists are confusing, as they include tribal entities that are more far ranging geographically when compared to the past lists. Using El Dorado County as an example, there are tribal contacts provided that are in Elk Grove, Susanville, and Gardnerville. These can be some distance away from a proposed project. It appears that the Department may be currently relying upon different criteria when compared to the recent past to determine tribal entities to be notified for “formal notification of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe”. Some of the tribal contacts seem to be new inclusions. It would be helpful to understand their addition to the list so that evaluators might have a better understanding in assessing the cultural impacts of the project.

Also, again using El Dorado County as an example, there are now approximately 45 contacts listed representing 14 distinct tribal entities. For various entities relying upon the FPRs, such as utilities, counties, agencies, and on-site personnel, it appears more efficient to identify a single point of contact for each tribal entity to avoid confusion. The concern here is that without such a single point of contact, miscommunication will occur.

Issue 4 THP Forms

The adoption of AB 2889 resulted in Public Resources Code 4592.5. It states, “The department shall provide guidance and assistance to ensure the uniform and efficient implementation of processes and procedures regulating the filing, review, approval, required modification, and

completion of timber harvesting plans, and the appeal of decisions relating to timber harvesting plans”.

The Department has prepared a new THP form. Discussion on this new form could help illuminate potential issues for plan preparers, since this iteration has new data requests and formatting compared to previous forms. This discussion could also potentially assist in preparing additional guidance for plan preparers as required by PRC 4592.5. Furthermore, given the recent announcement of a review of the process for the evaluation of harvest plans, this discussion could be of great use to the contracted consultants (NiVAK), who are tasked with conducting a review of, and make recommendations for, the THP process with the goal of achieving a higher level of efficiency in Plan review.

Issue 5- AB 2276

On August 29th, AB 2276 was enrolled by the Legislature. It is likely that this will soon be signed by the Governor.

This bill would (1) repeal the Small Timberland Owner Exemption, (2) rename the Forest Fire Prevention Exemption the Forest Resilience Exemption, revise the standards and criteria for qualifying for that exemption, and extend that exemption until January 1, 2031, and (3) extend until January 1, 2031, the other exemption described above. The bill would also revise requirements governing compliance with the cutting or removal of trees to restore and conserve California black or Oregon white oak woodlands and associated grasslands. **The bill would require the board to adopt emergency regulations** that the board considers necessary to implement and ensure compliance with these requirements and with the Forest Resilience Exemption requirements. The bill would also make conforming changes.

This issue is mentioned because the provision for emergency adoption indicates that this issue should be given a high priority in the Board’s workplan

Issue 6- Silviculture, Southern Subdistrict

There are several issues regarding the Southern Subdistrict. The first issue are the rules specific to Santa Cruz County. Under “Special Harvesting Methods 926.25” the language

(3) Regardless of re-entry period, no more than forty (40) percent of the trees greater than fourteen (14) inches and less than eighteen (18) inches d.b.h. shall be harvested.

A similar rule was modified for the Southern subdistrict in 2019, but this inclusion was inadvertently overlooked in the Santa Cruz County rules, creating a conflict between the two. This provision should be stricken, to allow for better stocking control, as was the case for the Southern subdistrict.

This existing rule results in a high stem count due to retention of smaller trees. As the stem counts increased and fire conditions have worsened, fuel management has become a much greater objective. Removing the small tree retention standard will allow landowners to the flexibility to effectively control understory fuels.

The second issue affects both the Southern subdistrict and Santa Cruz County rules. In both cases, certain Special Prescriptions under 913.4, which did not exist when those rules were originally adopted, have been developed by the Board which practitioners feel would be useful in the current post-CZU fire environment. These are:

- Fuelbreak/Defensible Space,
- Aspen, Meadow and Wet Area Restoration, and
- White and Black Oak Woodland Management

The inclusion of the Special Prescriptions would allow for these treatments to address fuel conditions while also restoring open areas across the landscape. There are limited options in the Santa Cruz Mountains Region to address the loss of grassland, meadows, and oak woodlands due to forest and woodland incursion. This results in landscapes that have higher tree density and higher fuel loads, contributing to extreme fire conditions.

To avoid future issues like the one mentioned previously, it should be considered in both 913.8 Special Harvesting Methods for Southern Subdistrict [Coast] and 926.25 Special Harvesting Methods [Santa Cruz County].

George D. Gentry

A handwritten signature in blue ink that reads "George Gentry". The signature is written in a cursive, flowing style.

Senior Vice President
California Forestry Association