



Resource Protection Committee Small Landowner THP (SLTHP) January 26, 2015

- PROBLEM OVERVIEW

Small Landowner Regulatory Improvement

California's small forest landowners find it difficult, if not impossible, to practice sustainable forest management on their private family ownerships. Non-corporate forest landowners control approximately 3.2 million acres of the state's nearly 8 million acres of private timberlands. Of these, the smallest landowners owning less than 160 acres of timber are particularly sensitive to costs and are geographically dependent on local revenue opportunities. These family ownerships are often not well represented in local and state venues that formulate tenets that regulate commercial forest management. The unintended consequence is the adoption of policies, often based on intensive industrial practices, which have culminated in a disproportionately burdensome regulatory system. This drives small ownerships towards more aggressive harvesting of timber to recoup costs or to engage in actions that would produce other sources of revenue. These alternative revenue generating projects including sub-dividing, forest conversion and fragmentation, all of which are in opposition of what was intended during the multi-decade development of the California Forest Practice Rules.

- RELEVANT LEGAL INFORMATION.

Authority: PRC §740, §4551

Reference: PRC §4551.5, §21080.5

Consistency: Title 14 CCR 15063, 15070, 15252

- RELEVANT FACTUAL INFORMATION.

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- PROPOSED TEXT OF THE REGULATION.

1038.5 Small Landowner THP

- (a) "Small timberland owner" means a landowner whom owns less than 40 acres of timberland.
- (b) "Uneven aged management" means the management of a specific forest, with the goal of establishing a well-stocked stand of various age classes and which permits the periodic harvest of individual or small groups of trees to realize the yield and continually establish a new crop.
- (c) "Various age classes" means a stand with at least three distinct layers of tree crowns (size classes).
- (d) On an ownership of 40 acres or less of timberland, a small landowner timber harvest plan may be filed by a plan submitter, providing that the following conditions and mitigations are met:
 - (1) No more than 60% of the existing trees greater than 18' DBH may be harvested . The retained trees shall be well distributed over the harvest area. A sample area must be marked before submission of the THP. The sample area shall include at least 10% of the area which is representative of the range of conditions present in the area. Silvicultural methods are restricted to selection methods except as outline in 1038.5 (d)(2).
 - (2) Clearcutting and shelterwood removal, as defined in 14 CCR 913.1(a) [933.1(a), and 953.1(a)] shall not be used, except for legally deeded rights-of-way or easements for utility purposes which are documented in the plan by the RPF by reference to specific deeds or surveys.
 - (3) Stocking standards must be met immediately after harvesting operations are completed.
 - (4) No heavy equipment operations on slopes greater than 50%, or on areas with high or extreme erosion hazard ratings.
 - (5) No construction of new skid trails on slopes over 40%.
 - (6) No timber operations in Special Treatment Areas except log hauling on existing roads not requiring reconstruction.
 - (7) No timber operations on slides or unstable areas.
 - (8) New road construction is confined to 600 feet and a 1,000 foot limit total of road construction and reconstruction combined.
 - (9) No heavy equipment operations within a watercourse or lake protection zone, meadows, or wet areas, except for maintenance of existing roads, drainage facilities or structures.
 - (10) No listed species will be directly or indirectly adversely impacted by proposed timber operations. For timber operations which potentially could adversely affect a listed species or the habitat of the species, the consultation process with DFG pursuant to F&GC 2090 or 2081 shall be completed before the THP is approved.
 - (11) Timber harvesting is only allowed in the WLPZ if: 1) sanitation-salvage harvesting is the only silvicultural system to be used in the WLPZ and it must be in compliance with 14 CCR 916.4(b) [936.4(b), 956.4(b)]; or 2) if harvesting removes no more than 30% of any existing canopy layer. Harvesting under 2) above shall not occur again in the WLPZ for a 10-year period following completion of the THP.
 - (12) No timber operations within potentially significant archaeological sites.
 - (13) No alternatives, exceptions, or in-lieu practices allowed for watercourse or lake protection measures, standard road and landing widths, or erosion control measures, except for use of existing roads within WLPZ after compliance with examination, evaluation, and mitigation(s)

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per 14 CCR 916.4(a) [936.4(a), 956.4(a)].

- (14) Winter timber operations except as conditioned by the Director to avoid potential significant cumulative impacts shall be in accordance with 14 CCR 914.7 (a) and (b) [934.7 (a) and (b), 954.7(a) and (b)].
- (15) Harvesting will not reduce the amount of timberland occupied by late succession forest stands currently greater than or equal to 5 acres in size.
 - (16) In addition to (1)-(15) all other rules of the Board shall apply to operations specified in this section.

Contents of Small Landowner THP

A plan submitted under section 1051 above shall contain all the provisions of 14 CCR 1034 except the following: (o), (x)(7), (z), (cc), (dd), (ee), and the RPF shall:

- (a) Identify and map those areas currently understocked and not to be harvested that are at least three acres in size.
- (b) Use a topographic map base with a minimum scale of 1:12,000.
- (c) Certify in the THP that the conditions or facts stated in items 1-16 above exist on the THP area at the time of submission, and that *[in]* the preparation, mitigation, and analysis of the THP, no identified potential significant effects remain undisclosed.
- (d) Certify that a meeting will be held at the SLTHP site before timber operations commence with the RPF responsible for the plan or supervised designee and the licensed timber operator who will be operating on the SLTHP where the contents and implementation of the plan have been reviewed and discussed.
- (e) Operations pursuant to this section shall use an alternative to the cumulative impacts assessment specified in 14 CCR 898, 912.9 [932.9, 952.9], and Technical Rule Addendum No.2. Operations conducted according to this section are presumed to be unlikely to cause a significant adverse impact to the environment due to the specific restrictive mitigations required in (1)-(15) above.

This presumption of unlikely impacts shall not apply to THPs for which: 1) the Director determines it does not meet the criteria of subsection (a), or 2) the Director determines in consultation with trustee or responsible agencies, or upon review of public comments that a fair argument exists that significant individual or cumulative impacts will result from timber operations. Where issues (a fair argument) are raised the RPF shall complete the appropriate portion of Technical Rule Addendum No. 2 and submit that information for the Director's review.
- (f) The initial study prepared by the RPF
- (g) An environmental checklist containing the information required in Appendix G of the California Environmental Quality Act

Review of Small Landowner THP

Initial Study.

- (a) The RPF shall conduct an initial study to determine if the project may have a significant effect on the environment.
 - (1) All phases of project planning, implementation, and operation must be considered in the initial study of the project.
 - (2) An initial study may rely upon expert opinion supported by facts, technical studies or

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other substantial evidence to document its findings. However, an initial study is neither intended nor required to include the level of detail included in an THP.

(b) Results.

(2) The RPF shall prepare a SLTHP if there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment.

(c) Purposes. The purposes of an initial study are to:

(1) Provide the RPF and the Department with information to use as the basis for deciding whether to prepare an EIR or negative declaration;

(2) Enable an applicant or lead agency to modify a project, mitigating adverse impacts, thereby enabling the project to qualify for a SLTHP;

(3) Provide documentation of the factual basis for the finding in a SLTHP that a project will not have a significant effect on the environment;

(d) Contents. An initial study shall contain in brief form:

(1) A description of the project including the location of the project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries. The brief explanation may be either through a narrative or a reference to another information source such as an attached map, photographs, or an earlier harvest plan. A reference to another document should include, where appropriate, a citation to the page or pages where the information is found.

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study.

(e) Format. Sample forms

(f) Consultation. The RPF shall consult informally with all responsible agencies and all trustee agencies responsible for resources affected by the project to obtain the recommendations of those agencies as to whether a THP or a SLTHP should be prepared.

(g) A SLTHP may be prepared when the initial study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment.

(h) The initial study identifies potentially significant effects, but:

(1) Alternatives to the activity and mitigation measures to avoid or reduce any significant or potentially significant effects that the project might have on the environment, or

(2) A statement that the agency's review of the project showed that the project would not have any significant or potentially significant effects on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment. This statement shall be supported by a checklist or other documentation to show the possible effects that the agency examined in reaching this conclusion.

(i) The Director shall require a preharvest inspection of modified timber harvest plans when substantial question by Review Team members exist on plan contents or environmental impacts, and where winter operations are proposed according to 914.7 (a) and (b) [934.7(a) and (b), 954.7 (a) and (b)].

- ALTERNATIVES.

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1. Status quo. Allow small landowners to continue to utilize existing procedures, such as exemptions, THPs, modified THPs, and NTMPS.
2. Use an approach to lighten requirements for smaller landowners. This cohort of landowner consists generally of family ownerships. These properties are the location of a primary or secondary residence or undeveloped parcels that are utilized for purposes of recreation. Given this pattern of land use, the resulting management practices of these ownerships, including timber harvesting activities, are conducted under a conservation ethic. The goals of these landowners, with assistance of their Registered Professional Forester, often include:

“Light Touch” single tree and “Group” selection Preservation of aesthetic values
Hazard reduction for wildfire Timber stand improvement
Maintenance of wildlife trees and other biological legacies Extended period of time between harvesting activities

3. Utilize thresholds.

Performance Standard v. Prescriptive Standard: "In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative." (Gov. Code, § 11346.2, subds. (b)¶ & (b)(4)(A))

- **PURPOSE AND NECESSITY FOR THE DRAFTED REGULATIONS TBD**

Purpose: The purpose of the proposed regulations should reflect the intent of the statute(s) being implemented, interpreted, or made specific in the rulemaking. How do the proposed regulations address the problem identified by the agency? To find the purpose of a statute, look first to the words of the pertinent statute(s). Sometimes the purpose is set out at the beginning of the chapter or article, or maybe in un-codified statutory provisions. If the purpose is not set out in the language of the statute, purpose may be gleaned from legislative history materials. If you can't identify the purpose from either the words or the legislative history, sometimes the purpose is obvious from what the statute addresses. You may sometimes find the purpose of a statute stated in a court decision.

Benefits:

Ecological Benefits:

- Maintains terrestrial habitat values of forested landscapes
- Protects, maintains and enhances aquatic resources by incorporating standards that are more rigorous than current Forest Practice Rules

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- Working forests are recognized for the long term sequestration and storage of green house gases.

Social:

- Incentivizes forest practices that are accepted by many conservation groups
- Promotes the conservation ethic within private small scale working forests
- Promotes long term sustained yield of high quality forest products
- Compatible with all Certification systems Economic:
- Allows the small landowner to achieve compliance of the California Forest Practice Rules and CEQA in a cost effective manner
- Provides employment opportunity to rural communities
- Provides state agencies with cost effective review process
- Could generate additional revenue for the state

Necessity: An agency must be able to demonstrate why each provision of the regulation is reasonably necessary to effectuate the purposes of the statute(s) or other provisions of law the regulation implements, interprets or makes specific, AND is reasonably necessary to address the problem the agency intends to address. In other words, explain why the agency is addressing the problem and effectuating the purpose of the statute in this particular way.

Documents Relied Upon: Identify each technical, theoretical, empirical study, report, or similar document, if any, the agency is relying upon to support the necessity for the regulation. Sometimes an explanatory statement will itself be adequate. Other times the statement or one or more of its parts will have to be demonstrated by the use of studies, reports, documents or other material relied upon by the agency. The bottom line is that the rulemaking record must contain substantial evidence to demonstrate that the regulation is reasonably necessary to effectuate the purposes of the statute(s) or other provisions of law the regulation implements, interprets or makes specific, AND address the problem the agency intends to address.

- **FISCAL /ECONOMIC EFFECTS OF THE REGULATION. TBD**

Economic Impact Assessment (EIA): Except for major regulations (discussed above), the agency must prepare an Economic Impact Analysis/Assessment (BIA) that analyzes whether and to what extent the regulation will affect:

- the creation or elimination of jobs within the State of California,
- the creation of new businesses or the elimination of existing

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businesses within the State of California,

- the expansion of businesses currently doing business within the State of California, and
- the benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

This assessment must be based upon adequate information concerning the consequences of the proposed regulation. (See Gov. Code, § 11346.3, subd. (e)). In other words, the BIA must contain sufficient information to explain how the agency reached the stated results.

Cost Impacts On Representative Person or Business: Describe the cost impacts known to the agency that a representative private person or business would incur to comply with the proposed regulation. This is "the amount of reasonable range of direct costs, or a description of the type and extent of direct costs, that a representative private person or business necessarily incurs in reasonable compliance with the proposed action." (Gov. Code, §

Reporting Requirement: Determine whether the proposed regulation establishes a reporting requirement that applies to business. If a reporting requirement created by the regulation does apply to business, your agency must include a finding the NOPA that the requirement "is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses."

Warning: If you do not include this finding, the reporting requirement does not apply to business. (Gov. Code, § 11346.3 subd. (d))

Effects on Small Business: Determine whether the selected alternative affects small business using the definition of "small business" in the APA at section Government Code section 11342.610. If you decide the selected alternative does not affect small business, prepare a brief explanation of the reasons for that decision. (1CCR 4)

- **ADDITIONAL CONSIDERATIONS. TBD**

Consistency With Existing State Regulations: The agency must evaluate whether the proposed regulation is inconsistent or incompatible with existing state regulations. (Gov. Code, § 11346.5, subd. (a)(3)(D))

Federal Conformity: Determine whether the proposed regulation differs substantially from an existing comparable federal regulation or statute. If it does, draft a brief description of the significant differences and identify the full citation of the federal regulations or statutes. This information will be used when drafting the NOPA. (Gov. Code, § 11346.5, subd. (a)(3)(B))

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Identical to Existing Federal Regulation: Determine whether the proposed regulation is identical to previously adopted /amended federal regulation. If so, then include a statement to that effect in the NOPA along with a citation to where an explanation of the provisions of the regulation can be found. If applicable, this is sufficient to satisfy the ISOR and FSOR requirements. (Gov. Code §§ 11346.2, subd. (c) and 11346.9, subd. (c))

Efforts to Avoid Duplication or Conflict with Federal Regulations: This evaluation applies only to a department, board, or commission within the Environmental Protection Agency, the Natural Resources Agency, or the Office of the State Fire Marshal. Draft a description of your efforts to avoid unnecessary duplication or conflict with federal regulations addressing the same issues. You may adopt differing regulations "upon a finding of one or more of the following justifications:

a) The differing state regulations are authorized by law; or b) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment. This evaluation must be made available to the public. (Gov. Code, § 11346.2, subd. (b)(6))