

**BOARD OF FORESTRY AND FIRE PROTECTION**

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**Forest Practice Committee Meeting Report**

***Note: agenda items appear below in the order in which they were discussed by the assembly.***

**FOREST PRACTICE COMMITTEE****February 2, 2010****Time: 8:00 p.m. – 12:00 p.m.**

Location: **Resources Bldg.**  
Auditorium  
Sacramento, California

**Agenda #1: Discussion and review of Threatened or Impaired “road rules” and work plan. Update of Road Rules Task Force work including meetings and regulatory proposals.**

Road Rules Task Force (RRTF) members Pete Ribar and Tom Spittler provided a briefing on the status of the regulatory proposals prepared by the RRTF. Mr. Ribar and Mr. Spittler indicated the RRTF is nearing completion of incorporation of the Anadromous Salmonid Protection Rules into the road rules regulatory proposal. The RRTF's current summary matrix and regulatory proposal dated January 27, 2010, were provided to FPC members and the public. The RRTF is expected to hold its next meeting on February 11, 2010, in Sacramento, CA in the Resources Building. The FPC requested staff to provide a list of the persons involved in the RRTF.

The RRTF is planning on providing at the March 3, 2010, FPC meeting a completed matrix and regulatory proposal. Upon completion of the RRTF regulatory proposal, staff will post matrix and the completed regulatory proposal on the Board web site.

The FPC will begin reviewing the completed matrix and regulatory proposal at the March 3 FPC meeting. Board staff was assigned to develop a schedule of review of the various components of the regulatory proposal. The FPC decided to begin the review of the “Intent” sections “Planning for Logging Roads and Landings” sections of the RRTF regulatory proposal at its March 3, 2010 meeting.

The FPC noted that the review process will be conducted at the monthly FPC meetings. All public and agency comment should be forwarded to Board staff, who will distribute the comments to the FPC. The FPC may assign the RRTF issues on the draft regulatory proposal brought forward by public comment.

Other discussion on this topic included review of the Department of Fish and Game letter providing initial comments, and review of comments provided by Mike Laing of the Fly Fishermen's Association. FPC member Jim Ostrowski prepared a comparison between the existing Forest Practice Rules and the recommendation by the DFG to consider inclusion of road regulations in 14 CCR 923.9.2 adopted by the Board for facilitation of coho incidental take permitting in 2007.

The North Coast Regional Board representatives also noted that they have provided a grant to update the Forest and Ranch Road Construction handbook. They expect that this information will be useful in assessing the adequacy of the RRTF regulatory proposal.

**Agenda #2: Discussion of the repeal of § 916.9.2 [936.9.2] and § 923.9.2 [943.9.2] Additional Measures to Facilitate Incidental Take Authorization in Watersheds with Coho Salmon.**

Board staff Chris provided an overview of the court order to repeal these regulations and the previously noticed regulatory action proposed by the Board to repeal these regulations.

Department of Fish and Game representative Glenda Marsh noted that the Department of Fish and Game, who is subject to repeal of related DFG regulations as part of the court order, will be repealing sections specifically listed in the court order and retain other sections in 14 CCR 787 et seq. that were not ordered to be repealed by the court order. Mr. Zimny noted that consultation with DFG attorney familiar with the court order indicated that DFG will wait 60 days after receiving the final court order to repeal the 787 sections. The DFG attorney also noted that DFG considers the regulatory pathway of using the Coho ITP facilitation 2007 board rules is no longer functional.

Mr. Zimny outlined the regulatory options for repealing the Coho ITP facilitation 2007 rules. The Board may repeal the specific sections noted in the court order (14 CCR 916.9.2 and 923.9.2) or they could consider repealing all the regulations that were adopted to facilitate incidental take permit in the Coho ITP facilitation 2007 rules. The complete set of Coho ITP Facilitation 2007 regulations were provided to the FPC members and the public at this meeting.

The FPC deliberated on the topic of which regulations should be repealed as a result of the court order. The FPC found that all the regulations in the Coho ITP Facilitation 2007 regulations were rendered useless by the court order. The FPC also found that while some of the Coho ITP Facilitation 2007 regulations that were not specifically ordered for repeal may have some useful value, that all regulations adopted under the Coho ITP Facilitation 2007 should be repealed to reduce confusion in the Forest Practice Rules. The FPC noted that potentially useful regulations, such as some of the definitions and the 14 CCR 916.11.1 Monitoring and Adaptive Management should be reconsidered by the FPC at the appropriate time for inclusion in the FPRs. The FPC indicated that the repeal sections should be considered as part of the on going T/I rule revision process. After full consideration in this ongoing review process, deleted portions of the Coho ITP 2007 regulations that were not specifically struck down by the court could be readopted by the Board.

Members of the public noted that there may be some utility in retaining portions of the Coho ITP 2007 regulations that were not struck down by the court. Specifically, there was interest in retaining the monitoring adaptive and management section in 14 CCR 916 .11 .1.

Mr. Zimny then outlined for the FPC the two regulatory methods to the repeal rules. The two options presented were 1) repealing the regulation using a Section 100 process or 2) revising its November 2009 proposal, renotice the proposed revisions, and hold a public hearing. Mr. Zimny indicated that the section 100 process would not require re-noticing and a public hearing. In consultation with the Office of Administrative Law reference attorney, repealing all of the Coho ITP Facilitation 2007 rules may be applicable for section 100 process, but that applicability can only be determined upon filing a section 100 with the OAL.

Mr. Zimny advised the Board action to repealing the regulations should be done at the March 3, 2003 meeting, since the action was not properly noticed for the February 2010 meeting.

The FPC concluded the topic by unanimously voting to recommend to the full board repeal of all sections adopted under the Coho ITP Facilitation 2007 rules.

**Agenda #3: Review and discussion of "Fire Tools Civil Penalties, 2010". Possible Action Item: Recommendations to full Board on regulatory proposal.**

Eric Carleson of the Associated California Loggers discussed initiatives by ACL that they intend address as part of their annual work plan. Fire tool regulatory compliance training was one of those initiatives. Mr. Carlson indicated that concerns remained about civil penalties enforcement and the potential additional financial burden to his group by the proposed rules. Instead of regulatory action to move the fire tool laws under the Forest Practice Rules subject to civil penalties, he would prefer to work with Cal Fire to improve compliance with the fire tool laws. Their concern remains that the civil penalty programs expands the ability to impose financial penalties. Mr. Carlson also noted it would be valuable for his membership to have the civil penalties process posted on a web site to improve their familiarity with the topic and reduce expense of accessing the civil penalty process information

FPC members requested copies of Mr. Carleson's initiatives documents. Members indicated they would like to have ACL focused on their concerns with the civil penalties process, particularly the time frames for respondents to request a hearing, to ensure the programs is functioning as intended.

Cal Fire representative Duane Shintaku outlined the steps in the civil penalties review process beginning with the field violations and review through the chain of command. Cal Fire notes that there are many steps and oversight to ensure that civil penalty violations are appropriately imposed.

The FPC found that the issue on the concerns of expanding violations is not a new topic and has been in placed since the inception of the civil penalty program in 2000. The FPC also found that abuses of violation issuance or penalty amount were not founded in historic patterns of civil penalties issued by Cal Fire. The FPC also found that there are many review layers, including appeals to the BOF, for any civil penalty case. These review layers and appeal process provides LTOs reasonable assurance that the civil penalty program will be fairly implemented.

The FPC voted unanimously to recommend to the full board adoption of the previously noticed fire tool regulations. It was noted that initial hearing needs to be re-opened and properly noticed for the March 3, 2010 meeting. At that meeting the Board could take its adoption action.

**Agenda #4: New and Unfinished Business. Discussion and review of the Aspen Restoration, 2006 rule (Title 14 CCR 939.15 and 959.15) regarding acreage limitations.**

**a. Aspen Restoration rules**

Board staff reviewed the previous regulatory proposals being considered by the FPC during 2009. Staff noted the need to field review appropriate Aspen restoration projects to help provide information on appropriate maximum project sizes. Staff is continuing to work to develop a field trip to review Aspen restoration projects. The FPC members noted that the field trip should cover other regulations such as the anadromous salmonid rules and the road rules currently being reviewed by the FPC.

FPC members noted that they are interested in making the case that waiving of stocking standards for aspen stands adjacent should be immediately considered. This would help avoid the unintended consequence of restricting adjacent clear-cut next to Aspen restoration projects. Members suggested that addressing maximum size limits for aspen project would help establish mitigation of environmental impact and ensure that no impact results from the combination of the aspen projects and adjacent clear-cuts. FPC members requested that the Department of Fish and Game identify environmental risks to resources that could result from Aspen restoration projects that are adjacent to other projects and methods to ensure mitigation of those impacts.

**b. Review of public questions on implementation of Anadromous Salmonid Protection Rules.**

Board members reviewed letters received from the public and California Forestry Association on recent Cal Fire interpretations on implementation of the Anadromous Salmonid Protection rules. The letters raised the issues on Cal Fire's interpretation of the reach-distance along a Class II watercourse over which the Class II Large prescriptive standards shall be applied. Questions were raised regarding the clarity of the ASP regulations to support this interpretation. Other issues raised by the public were regarding post harvest stocking standards required adjacent to class III watercourses. The FPC requested that this topic be on the agenda for the March 3, 2010 FPC meeting.

The FPC members requested to receive copies of Cal Fire's Question-and-Answer document on the ASP rules and Pete Cafferata's PowerPoint presentation provided at the training sessions given in January 2010.

**Agenda #5: Discussion of items for next month's agenda, review of 2010 Priorities. Potential Agenda Items for March 2010:**

The FPC identified the following items for the March 2010 RPC agenda.

1. Discussion and review of Threatened or Impaired "road rules" and work plan. Update of Road Rules Task Force meetings and regulatory proposals. Review of proposed regulatory sections on "Intent" and "Planning of Roads, Landings and Watercourse Crossings".
2. Review of public questions on implementation of Anadromous Salmonid Protection Rules.
3. Discussion of next month's agenda and review of priorities.

**FPC ISSUES FOR 2010**

**PRIORITY 1:**

1. **Regulatory amendments for permanent T/I rules: Road rules:** *Consideration of regulatory recommendations made by the interagency road rules committee in October 2007.*  
**Objective/Status: Complete by end of 2010, in progress in FPC.**
2. **Case NO: CGC-07-469244, struck down sections 916.9.2, 923.9.2, 936.9.2 and 943.9.2**  
*Repeal of regulations to remove from the FPRs subsections struck down by the Court.*  
**Objective/Status: Complete by end of 1<sup>st</sup> quarter 2010; sent to board for adoption in Feb 2010.**
3. **Development of pilot programs for SERM projects** **Objective/Status:** *Complete process and guidelines by end of 2010; no progress to date.*
4. **Regulatory amendments to Fire Tools and Civil Penalty regulations in FPRs:** *Issue was remanded back to committee and Dept. for further development.* **Objective/Status: Complete by end of 1<sup>st</sup> quarter 2010; sent to board for adoption in Feb 2010.**
5. **Aspen rules:** *Interpretations vary on opening size allowed for this method, needs clarification.*  
**Objective/Status: Complete by end of 2010, in progress in FPC.**

6. **Restating FPRs in THPs:** Consider allowing the statement of compliance with specific rule section (s) by number, rather than using language out of the FPRs. New THP form under development, will be addressed. **Objective/Status: no progress to date.** .

**PRIORITY 2:**

7. **Other issues: Performance Based Systems Pilot Program, Forest Legacy Program Review/Regulations, Board of Equalization Liaison.** **Objective/Status: no progress to date.**

8. **Rule Interpretations**

**14 CCR § 913.4(d)** Variable retention rules do not specify reentry period for leave areas. Minimum age of application is the same as even age regeneration? **Objective/Status: no progress to date.**

**Department disallows use of the Transition silviculture method when applied to stands which have been previously harvested utilizing the Selection method.** Does not conform with 14CCR § 913.2(b) or (b)(2). Past harvest history should not be a condition of the application of any silvicultural prescription. THP was returned on this issue without being evaluated through PHI to support the determination. **Objective/Status: no progress to date.**

9. **Regulatory proposal development for rule monitoring requirements:** Pending. Phase 3. Rule development to begin in 2010. See also Policy #1 and 6. **Objective/Status: no progress to date.**

10. **Issues related to THP form and content**

**(D09 #5)14 CCR § 916.4(c)(1) [936.4(c)(1), 956.4(c)(1)]** [in part], The location of the areas of heavy equipment use in any ELZ shall be clearly described in the plan, or flagged or marked on the ground before the preharvest inspection. 14 CCR § 1034(x)(7), [On a plan map, show the location of all watercourse crossings of classified watercourses except temporary crossings of Class III watercourses without flowing water during timber operations at that crossing. 14 CCR § 916.4(c)(1) [936.4(c)(1), 956.4(c)(1)] requires RPF to clearly describe, flag or otherwise identify ELZ on the ground prior to the pre-harvest inspection. 14 CCR § 1034(x)(7) requires the RPF to map the location of all classified watercourse crossings except temporary dry Class III crossings. CAL FIRE recommends the Board amend the rules to delete the allowance in 14 CCR § 1034(x)(7). **Objective/Status: no progress to date.**

**(D09 #10)14 CCR § 1034, Contents of Plan.** **Objective/Status: no progress to date.**

**(r),** How the requirements of 14 CCR 1032.7(f) are to be met. The reference to 1032.7(f) is obsolete, since it refers to the past requirement that the RPF distribute and publish a copy of the NOI.

**(x)(7),** [On a plan map, show the location of all watercourse crossings of classified watercourses except temporary crossings of Class III watercourses without flowing water during timber operations at that crossing. (See above)

**(x)(9),** [On a plan map, show the location of all watercourses with Class I, II, III, or IV waters. This paragraph should be amended to add "and lakes."

**(ii),** On a map complying with subsection 1034(x), the locations and classifications of roads, watercourse crossings, and landings to be abandoned shall be shown. This subdivision should

be deleted and the mapping requirement should be incorporated as part of 14 CCR §1034(x), which applies strictly to mapping.

Board should consider amending 14 CCR § 1034 when it adopts or amends any rule that adds elements considered a required portion of a harvesting plan. This ensures a central location where the RPF could be assured of finding what is considered essential information in a harvesting document. Board may want to consider a rule package that consolidates all required plan contents under 14 CCR §§ 1034, 1051, 1090.5, and 1092.09.

**(D09 # 9)14 CCR § 1032.7(d)** [in part]. A Notice of Intent [NOI] shall include the following information: **(4)** the acres proposed to be harvested. **(5)** The regeneration methods and intermediate treatments to be used. **Objective/Status: no progress to date.**

(4) Board should amend this paragraph to include all acres where timber operations will occur, not just the area where timber will be harvested. In doing so, the Board should consider the current definition of logging area and the lack of a definition of plan area.

(5) Requires stating the regeneration methods and intermediate treatments to be used. This paragraph may not capture all possible treatments that may occur, e.g., special prescriptions and other types of associated timber harvesting, such as road right-of-way or timberland conversion.

**(D09 # 9)14 CCR § 1032.10**, The THP submitter shall provide notice by letter to all other landowners within 1,000 feet downstream of the THP boundary whose ownership adjoins or includes a Class I, II, or IV watercourse(s) which receives surface drainage from the proposed timber operations. The notice shall request that the THP submitter be advised of surface domestic water use from the watercourse, within the THP or within 1,000 feet downstream of the THP boundary. When required to notice by letter, publication shall also be given one time by the THP submitter in a newspaper of general circulation in the area affected by the proposed project. Such letter and publication shall notify the party of the proposed timber operation and describe its legal location and identify the name, if any, of the watercourse it may effect. The letter and publication shall request a response by the property owner within ten days of the post-marked date on the letter or the date of publication as appropriate. The RPF may propose, with justification and explanation, an exemption to such notification requirements, and the Director may agree. Copies of either notice, proof of service and publication, and any responses shall be attached to the THP when submitted. If domestic use is noted, the plan shall contain mitigations necessary to protect domestic water use. The plan shall not be submitted until ten days after the above notification(s) have been done. **Objective/Status: no progress to date.**

Overland flow or channel flow?

Publication may need to be given in a newspaper of general circulation. CAL FIRE assumes this requires notification as defined in Government Code §§ 6000-6027.

A tie should be made with the requirement to provide protection to domestic water supplies, as required per 14 CCR § 916.10 [936.10, 956.10].

Require more current notification in which the post-marked date is no more than one year prior to submittal of the plan.

Does a plan have to be returned where the RPF requests an exemption from one of the noticing requirements and CAL FIRE does not accept the request. The rule requires at least ten days passing after notification before submission of the plan.

The 4<sup>th</sup> sentence should be changed to use the proper verb, "affect," in place of "effect."

**PRIORITY 3: Objective/Status: no progress to date.**

11. **Stocking levels:** too high for some forest types.

12. **Should mechanical feller-bunchers be classified as "heavy equipment" in WLPZs?**

13. **Man made watercourses with fish (Class IV):** *what are the appropriate protections?*
14. **14CCR § 1038(c)(3) Slash removal interpretation:** *does the slash need to be removed from the subject property, rather than from within the actual timber operation?*
15. **Abolish in-lieu practices,** *current FPRs comprise minimum standards.*
16. **14 CCR § 914 [934, 954]** *Tractors shall not be used in areas designated for cable yarding except to pull trees away from streams.....Such exception (s) shall be explained and justified... Suggest replacing language to allow usage subject to the limitations of 14 CCR § 914 [934, 954].2 (f)- prohibitions on steep slopes.*
17. **(D09 # 7)14 CCR § 916.9(s) [936.9(s), 956.9(s)]** *[in part], No timber operations are allowed in a WLPZ, or within any ELZ or EEZ designated for watercourse or lake protection, under exemption notices except for...*

*Should be considered in the context of 14 CCR § 1104.1(a)(2)(F), which allows conversion activities in the WLPZ where specifically approved by local permit. Defer to the county in these situations? Restriction of timber operations in the WLPZ affects timber operations conducted in compliance with defensible space regulations. There appears to be a conflict between this subdivision and PRC § 4291 and 14 CCR § 1299.*

18. **Progeny Sites:** *These sites are usually planted over a long period of time 3-10 year period to get various age classes and seed sources. Some of the land may sit fallow for a number of years and not meet a 5 year stocking requirement. Exempt up to 40 acres from meeting the required stocking standard if the property owner designates that area for a progeny plantation.*
19. **1038 exemption:** *This rule allows post-fire timber operations to be “exempt from the plan preparation and submission requirements” which means that the public and decision-makers have little say in how this important forest resource (i.e., post-fire habitat) is protected. Therefore, to better achieve protection of post-fire habitat, this exemption should end. Because post-fire habitat has significant ecological value, there should be better guidance regarding what constitutes “significant adverse effects.”*

**End**

Approved by: C:\Gary\2010\BOF2010\FPCreportFEBRUARY 3 2010CZ.doc