

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**May 4, 2010****Time: 8:00 p.m. – 12:00 p.m.**

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

In attendance were FPC Board members Lloyd Bradshaw, Mark Andre and Jim Ostrowski. Chair Gary Nakamura was absent.

Agenda #1: Road Rules: Review of Anadromous Salmonid Protection rules related to roads and the Road Rules Task Force (RRTF) regulatory proposal.**“Hydrological disconnection” of road drainage features.**

Board staff Chris Zimny introduced the information documents that were the subject of the meeting. Of focus for the meeting were revisions to the RRTF plead of March 2, 2010 FPC for section 923.2 (a) (5) for recommendations to address “hydrological disconnection” of road drainage features. The FPC considered several alternative language presented in a plead documented dated 4-30-10. The FPC directed staff to prepare its preferred alternative for the June 2010 meeting to include the term in this section and limit language to the exclude additional “how” to implement hydrological disconnection and simply retain the performance standards that the term must be accomplished..

New road distance from watercourses.

There was discussion regarding the appropriate distance that new roads and landings should be located from watercourses. This consideration would be related section 923.1 (b) and 923.4 (m). At issue is whether new roads, reconstructed roads, or landings should be permitted within 100 ft of watercourse. This is an issue because new ASP rules allow a 100 ft WLPZ for Class I and Class II L watercourse.

Pete Cafferata of Cal Fire and Drew Coe of the Central Valley Regional Water Quality Control Board, the FPC’s science advisors, reported on literature findings on the topic. The bulk of the literature indicated that under certain soil/geological conditions, up to 130 ft was an appropriate distance. However, they noted that road surfacing and frequency of drainage feature on the road had significant influence on the travel distance of sediment discharged from the road. The greater the number of drainage runoff features, the less concentration of runoff and the likelihood of lesser travel distances. Other information from FEMAT studies indicated 150 ft was appropriate. Some studies showed that for roads with unknown BMP standards, travel distances could be as long as 600 ft.

The FPC members had initial agreement on retaining the existing RRTF language of 3/2/10 that contains substantial distances for new roads of over 300 ft from the watercourse for steep

slopes (>50%) (see 923.4 (m)). They noted concerns for slopes up to 50%, lesser concern with slopes that were gentler, and discussed distances for Class II watercourses.

Approval of a timber harvest plan that utilizes private roads.

Staff brought forward a public comment on regulation or policy would prevent CAL FIRE from approving a timber harvest plan that utilizes private property as a log haul route over the objection of the private property owner. The FPC considered when and if this topic should be discussed in the Road Rules review. Initial response by FPC was plans should not be disapproved because of lack of information on haul routes having bona fide legal rights of way. FPC asked CAL FIRE to state its plan review policy on addressing plans submitted without bona fide rights-of-way disclosed. A date will be set by staff to discuss the issue.

Agenda #2: Amendments to 14 CCR 914.7 and 923.1 resulting from changes to definitions of “Saturated Soils and “stable operating surface”.

Public comment was reviewed related to amendments needed for sections 914.7 and 923.1 of the existing FPRs. The comments requested regulatory amendments to address unintended consequences resulting from changes made in 2009 to the “saturated soils” and “stable operation surface” definitions. The amendments made in 2009 extracted from the definition resultant environmental impacts (e.g. turbidity in watercourses) and solely retain the characteristics/definition of a stable operating surface or saturated soils (e.g. pumping of water from soil fines). In doing this, section 914.7 and 923.1 now prohibit any operations on saturated soils and the letters suggest this is an unintended purpose of the 2009 amendments.

The FPC considered several alternative language amendments. The amendments all focused on allowing certain operations on saturated soils as long as they did not “threaten to cause” or actually cause discharge of turbid waters to watercourses. The FPC asked staff to formalize language for consideration at the June 2010 meeting. An action to notice the proposal could occur at the June Meeting.

Agenda #3: Discussion of the publication: Site Index for major Young-Growth Forest and Woodland Species in Northern California, Krumland and Eng. Discussion of 14 CCR 1060 Site Classification.

Agenda item was deferred until June 2010. The FPC noted that public comments were received on the topic in written form and were included in the public handouts.

Agenda #4: Discussion of items for next month’s agenda, review of 2010 Priorities. Potential Agenda Items for April 2010:

The FPC identified the following items for the June 2010 FPC agenda.

1. Review of Anadromous Salmonid Protection rules related to roads and the Road Rules Task Force (RRTF) regulatory proposal. Continue review of proposed regulatory sections 923.1 through 923.5. Focus is considerations of comments on: “hydrological disconnection”; “consistent language for preventing sediment discharge”; and “erosion site assessment”.
2. Potential amendments to Forest Practice Rules sections 914.7 and 923.1 resulting from changes made in 2009 to the “saturated soil conditions” and “stable operation surface”

definitions. **Possible Action Item:** Recommendation to the Board for publishing a 45 day notice of proposed rulemaking.

4. Discussion of the publication: Site Index for major Young-Growth Forest and Woodland Species in Northern California, Krumland and Eng. Discussion of 14 CCR 1060 Site Classification.

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 1st quarter 2010; sent to board for adoption in Feb 2010. Section 100 filing pending receipt of final action from court by the BOF.
3. **Development of pilot programs for SERM projects** **Objective/Status:** *Complete process and guidelines by end of 2010; CAL FIRE holding monthly discussion meetings with members of the public and NFMS representative.*
4. **Regulatory amendments to Fire Tools and Civil Penalty regulations in FPRs:** **BOF adopted Final regulation and FSOR on 3/3/10. Staff will file with OAL..**
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: Forest legacy Program Regulation under consideration by RPC as of March 1 2010.**
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 affect. 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 4th 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