

Board of Forestry and Fire Protection

NOTICE OF PROPOSED ACTION

“Oak Woodland Management Exemption, 2017”

**Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 4: Subchapter 7, Article 2
Amend: § 1038**

[Notice Published August 11, 2017]

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 Thursday, September 28th, 2017, at its regularly scheduled meeting commencing at 9:00 a.m., at Porterville Fire Station #2, 500 N. Newcomb Street, Porterville, CA 93257. 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.

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 at 5:00 P.M. on Monday, September 25, 2017.

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: Eric Hedge
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
Room 1506-14
1416 9th Street
Sacramento, CA 95814

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

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)

14 CCR § 1122 Note: Authority cited: Sections 4551, 4553, 4584 and 4584.1, Public Resources Code. Reference: Sections 4290, 4291, 4516, 4527, 4584, 4584.1 and 4597, Public Resources Code; and *EPIC v. California Department of Forestry and Fire Protection and Board of Forestry* (1996) 43 Cal. App.4th 1011.

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. (FPA) 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 forest practice rules and regulations to, among other things, "...assure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish and wildlife, and water resources." Additionally, through PRC § 740 the Board shall determine, establish, and maintain an adequate

forest policy. Additionally, general policies for guidance of the Department of Forestry and Fire Protection (Department) shall be determined by the Board.

Pursuant to authority given to the Board in the FPA, the Board is proposing the following action to create the “Oak Woodland Management Exemption, 2017.” The proposed action is in response to the passage of Assembly Bill (AB) 1958 (Wood), which chaptered and subsequently amended specifically PRC § 4584(k). It was the intent of the legislature, under AB 1958, to give the Board discretion on whether to exempt landowners from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC §§ 4585 and 4587) of the FPA when engaged in timber operations that manages timberlands specifically for the growth, proliferation and perpetuation of California black oak (*Quercus kelloggii*) and Oregon white oak (*Quercus garryana*) and their associated grasslands when specific conditions are met. Additionally, this exemption will help to clarify that the removal of conifers (Group A Commercial Species) from a stand of California black and/or Oregon white oaks (Group B Commercial Species) is not a land conversion, as defined pursuant to 14 CCR § 1100 et al.

The authority to take the proposed action was allowed by Assembly Bill (AB) 1958 (Wood 2016), and developed in response to the research showing that conifers are encroaching on deciduous oak woodland habitats on the north and northwest regions of California, specifically California black and Oregon white oak woodlands, and reducing the distribution and viability of these hardwood stands. California black and Oregon white oak woodlands support high levels of biodiversity, provide mast and habitat for wildlife species, and are highly valued by Native Americans as cultural sites and by ranchers for their inherent quality as working landscapes (Valachovic et al., 2015).

California black oak (*Quercus kelloggii*) occurs within the states of Oregon and California (Fryer 2007). It is a highly drought tolerant species of oak, and occurs in both pure stands and scattered groves. California black oak sprouts prolifically after trees are cut or burned (McDonald 1990) and their acorns, as a means of reproduction, require bare mineral soil or light duff conditions with adequate solar radiation (Fryer 2007). Initially shade-tolerant early in life, as they mature they become increasingly shade-intolerant, whereas mature trees require full sun conditions (Fryer 2007). Historically, California black oak stands adapted to frequent understory fires to help remove competing vegetation.

Oregon white oak (*Quercus garryana*) distribution ranges through the states of California, Oregon and Washington, and into in British Columbia, Canada (Stein 2004). The tree can tolerate heavy clay soils and drought and is commonly found on exposed south facing slopes, inland valleys, and along flood plains (Stein 1990- Silvics of NA). Oregon white oak can also grow in conditions that are favorable to conifer species, where the somewhat slow-growing oak is easily outcompeted by conifers that grow faster and taller, often crowding out this species in the absence of periodic fire (Stein 2004). Like the California black oak, Oregon white oak is classified as moderately-intolerant to completely shade-intolerant, historically relying on frequent understory fires

to kill competing conifers, establish favorable soil conditions for reproduction, and maintain open-story conditions (Stein 2004).

Loss of these species to conifer encroachment has been widespread and dramatic throughout their ranges in California and Oregon (UCANR 2017). It has been the consensus of the California research community that conifer encroachment has been directly linked to anthropogenic fire suppression and exclusion, and land conversion to other uses throughout the state (Cocking et al., 2015). During the past century, immediate suppression of fires has altered normal fire regimes, allowing shade-intolerant and fire dependent species such as California black and Oregon white oaks to decline in health, while shade tolerant conifer species such as Douglas-fir (*Pseudotsuga menziesii*) have thrived (Cocking et al., 2015). These deciduous oak species are fire adapted, depending on frequent, low to moderate intensity fires to prevent establishment of invading fire-sensitive vegetation and supply conditions suitable for regeneration (Fryer 2007, Cocking et al. 2015). Once conifers have been established in the understory of the oaks, within 20-40 years the conifers gain canopy dominance, eliminate sunlight, and lead to oak decline and death. Moreover, studies have shown as conifer encroachment peaks, it sharply reduces the flammability of oak woodlands and associated grasslands, further perpetuating the reduction in fire return intervals which hampers oak vitality (Cocking et al., 2015).

Because of these conditions and the economic and ecological importance of these woodlands, stakeholders, such as the Buckeye Conservancy, the Northcoast Regional Land Trust, UC Cooperative Extension researchers, and members of the public requested that the Board consider a regulatory pathway for landowners to manage for California black oak, Oregon white oak, and their associated communities. In response to this concern, and relying on the experience of the Board members themselves, the Board proposed the “White and Black Oak Woodland Management Special Prescription.” This special prescription allows for the development of a silvicultural prescription that “...shall be designed to reduce water, light, and nutrient competition from Group A species in order to promote the sustained viability of Oregon white oak and California black oak stands” (14 CCR § 913.4(f)) and must be used proposed and approved within a Plan (14 CCR § 895.1). This rulemaking effort was approved and went into effect on January 1, 2017.

Much of the distribution of California black and Oregon white oak woodlands in California are located on private land, and therefore fall under the authority of the California Forest Practice Rules (FPRs). Although this special prescription attempted to resolve the problem of conifer encroachment on California black and Oregon white oak woodlands, many private landowners and public stakeholders felt that it was prohibitively expensive as the special prescription required Plan submission and adherence to stocking requirements. Furthermore, the special prescription is generally directed at later stages of conifer encroachment, allowing landowners to harvest larger diameters of the encroaching conifers. A need was demonstrated that a low-cost alternative to incentivize the management of California black and Oregon white oak woodlands from encroaching smaller diameter conifers was necessary to implement the

intent of the FPA. The stakeholders and members of the public called upon their state Assemblyman Dr. Jim Wood, who represents the 2nd Assembly District that comprises Del Norte, Humboldt, Mendocino, Trinity and part of Sonoma County, to introduce legislation allowing landowners to operate under an exemption from the FPA, when managing for California black oak and Oregon white oak species.

The culmination of Assemblyman Wood's efforts, fueled by overwhelming amounts of research showing a rapid decline in oak woodland distribution in the north and northwest regions of California, led Assemblyman Wood after proposing Assembly Bill (AB) 1958 to remark that, "I am pleased that this measure has received such great support. Oak woodlands provide natural fuel breaks and essential habitat for wildlife and livestock, however current laws are preventing landowners from protecting oaks that are threatened by encroaching conifers." His efforts led to the ultimate passage of AB 1958 by the legislature, which was approved by Governor Edmund G. Brown, Jr. and filed with the Secretary of State on September 24th, 2016. This assembly bill, among other things, led to the revision of PRC § 4584, adding subsection (k) that allows an exemption from the FPA when managing for California black and/or Oregon white oak woodlands and specific conditions are met.

The **purpose** of the proposed action is to make permanent amendments to 14 CCR § 1038(e), and to add subsection (l), creating the oak woodland management exemption. This will make the FPRs congruent with the mandate of an oak woodland management exemption (PRC § 4584(k)) that is required by statute.

The **effect** of the proposed action is to allow for timber operations that manage specifically for California black oak (*Quercus kelloggii*) and Oregon white oak (*Quercus garryana*) an exemption from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC §§ 4585 and 4587) of the FPA when specific requirements are met.

The **benefit** of the proposed action is to address the concerns regarding the reduction and vitality of the California black and Oregon white oak woodlands with the Northern and Coast Forest Districts (14 CCR §§ 906-909.1) of the State of California. A voluminous amount of research has found that in the past few decades, the distribution and health of these woodlands has been declining rapidly. Research points out conifer encroachment, fire suppression and land conversion via anthropogenic causes have been the main culprits. This proposed action will allow landowners to manage their lands specifically for white and black oak woodlands, thereby enhancing biological health and diversity through the promotion of beneficial oak woodlands and resulting in an overall improvement in and benefit to environmental quality statewide.

There is no comparable federal regulation or statute.

Board staff conducted an evaluation on whether or not 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 (including 14 CCR §§ 895.1 and 1038) 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 exemptions and found no existing 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; it simply amends current regulatory language.

Statute to which the proposed action was compared: Excerpts from the Public Resources Code (PRC): §§ 4290, 4291, 4516, 4527, 4551, 4553 and 4597.

No documents are incorporated by reference.

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 related to the management of California's oak woodlands. 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.

This amendment creates an exemption from the FPA when engaged in the cutting or removal of trees to restore and conserve California black and Oregon white oak woodlands, and incentivizes landowners to specifically manage for the health and vitality of California black and Oregon white oak woodlands.

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 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.

Pursuant to **GOV §11346.5(a)(8)**, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support this initial determination:

The Board relied on their own expertise and familiarization with forestry and State rulemaking law and policy to develop this rulemaking package. Additionally, discussion and comments from researchers actively involved in California hardwood management helped craft and provided support for this rulemaking effort.

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:

- (A) will not create jobs within California;
- (A) will not eliminate jobs within California;
- (B) will not create new businesses,
- (B) will not eliminate existing businesses within California
- (C) will not affect the expansion or contraction of businesses currently doing business within California.
- (D) will yield nonmonetary benefits. For additional information on the benefits of the proposed regulation, please see anticipated benefits found under the Introduction Including Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address.

The types of businesses that will be impacted includes consulting forester and logging businesses.

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. Although consulting foresters and logging businesses will be effected by this regulation, 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)

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 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.

The proposed action is to allow for timber operations that manage specifically for California black oak (*Quercus kelloggii*) and Oregon white oak (*Quercus garryana*) an exemption from the Plan preparation and submission requirements (PRC § 4581) and from the completion and stocking reporting requirements (PRC §§ 4585 and 4587) of the FPA when specific requirements are met.

CONSIDERATION OF ALTERNATIVES

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: Eric Hedge
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-8007

The designated backup person in the event Mr. Hedge is not available is Matt Dias, Executive Officer for the Board of Forestry and Fire Protection. Mr. Dias may be contacted at the above address or by phone at (916) 653-8007.

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:

http://bofdata.fire.ca.gov/regulations/proposed_rule_packages/