FINAL STATEMENT OF REASONS (FSOR), pursuant to GOV §11346.9(a)

"NONINDUSTRIAL TIMBER MANAGEMENT PLAN AMENDMENTS, 2019"
Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 4,
Subchapter 4, 5, & 6, Article 12
Amend: §§ 923.3, 943.3, 963.3
Subchapter 7, Article 6.5
Amend: §§ 1090, 1090.01, 1090.5, 1090.6, 1090.7, 1090.9, 1090.10, 1090.13, 1090.17, 1090.25, 1090.26

UPDATE OF INFORMATION CONTAINED IN ISOR (pursuant to GOV §11346.9(a)(1))

No information contained in the Initial Statement of Reasons (ISOR) requires an update. All material relied upon was identified in the ISOR and made available for public review prior to the close of the public comment period.

SUMMARY OF BOARD'S MODIFICATIONS TO 45-DAY NOTICED RULE TEXT AND INFORMATION REQUIRED PURSUANT TO GOV §11346.2(b)(1)) (pursuant to GOV §11346.9(a)(1))

All revisions to the 45-Day noticed rule text are summarized below:

- Within 14 CCR § 1090, the list of sections for which the equivalency of certain terms was established erroneously included sections which were unrelated to the proposed action, which has been corrected.
- The erroneous reference to "working forest landowners" is 14 CCR § 1090.01(a)(1) was corrected to read "nonindustrial tree farmers".
- The statutory definitions of the terms "nonindustrial timberland" and "nonindustrial tree farmer" found within PRC § 4593.2 were adopted within 14 CCR § 1090.01(a)(2) & (3).
- The abbreviated term "Notice" is no longer used to mean the defined term "Notice of Timber Operations"
- Special county noticing rules were amended to include those special county rules which were adopted after the initial adoption of the NTMP notice of preparation rules, but which are extant and applicable.
- A requirement that confirmation by a nonindustrial tree farmer that all necessary field work is functional and usable prior to submission of a Notice of Timber Operations was eliminated.
- Modified the conditional requirement surrounding what manner of nonindustrial tree farmer is required to submit a Notice of Timber Operations to require that the notice be submitted by those individuals who plan to harvest timber on nonindustrial timberland that they control which is within the boundaries of an approved NTMP.
- Utilized defined terms throughout where appropriate

MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS (pursuant to GOV §11346.9(a)(2)):

The adopted regulation does not impose a mandate on local agencies or school districts.

COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT WHICH MUST BE REIMBURSED IN ACCORDANCE WITH THE APPLICABLE GOVERNMENT CODE SECTIONS COMMENCING WITH GOV §17500 (pursuant to GOV §11346.9(a)(2)):
The adopted regulation does not impose a reimbursable cost to any local agency or school district.

<u>ALTERNATIVE 3, BOARD'S ADOPTED ALTERNATIVE</u> (update, pursuant to GOV §11346.9(a)(1)), of information pursuant to GOV §11346.2(b)(4)): Adopt Rulemaking Proposal as Modified Through Formal Public Review and Comment Process
The Board selected Alternative #3 as proposed and modified through the formal public review and comment process. The Board adopted the rule text published with the 45-Day Notice (on May 31, 2019).

The proposed action is the most cost-efficient, equally or more effective, and least burdensome alternative. Alternatives 1 and 2 would not be more effective or equally effective while being less burdensome or impact fewer small businesses than the proposed action. Specifically, alternatives 1 and 2 would not be less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation than the proposed action. Additionally, alternatives 1 and 2 would not be more effective in carrying out the purpose for which the action is proposed and would not be as effective and less burdensome to affected private persons than the proposed action, or would not be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action. Further, none of the alternatives would have any adverse impact on small business. Small business means independently owned and operated, not dominant in their field of operations and having less than 100 employees.

ALTERNATIVES DETERMINATION (pursuant to GOV §11346.9(a)(4) and (5))
No other alternatives have been proposed or otherwise brought to the Board's attention, except as set forth in the ISOR and provided herein in the summary and responses to comments. Based upon the findings below and a review of alternatives the Board has determined the following:

- No alternative considered would be more effective in carrying out the purpose for which the regulation was intended.
- No alternative would be as effective and less burdensome to affected private persons than the adopted regulation.
- No alternative would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. (reference ECONOMIC IMPACT ANALYSIS in ISOR)
- No alternative considered would lessen any adverse economic impact on small business. (reference ECONOMIC IMPACT ANALYSIS in ISOR)

FINDINGS (BASED ON INFORMATION, FACTS, EVIDENCE AND EXPERT OPINION) TO SUPPORT THE ALTERNATIVES DETERMINATION

- The Board finds that the statutorily authorized Non-Industrial Timber Management Plan regulatory program has been a valuable tool in enacting the

state's goals of prudent and productive forest management on private timberlands.

- The Board finds that the statutorily authorized Working Forest Management Plan regulatory program, when utilized, will be similarly valuable in achieving the state's forest management goals.
- The Board finds that, where suitable, it is appropriate for these two similar regulatory schemes to contain similar mapping requirements, as well as utilize a similar "Designated Agent" to promote a single point-of-contact for plans which may include more than one timberland owner.
- The Board additionally finds that statutory changes within SB 901 (Chapter 626, 2018) necessitate regulatory changes in order to promote the clarity of existing NTMP regulations and to fully implement the amended statutes.
- The Board further finds that the use of exemptions pursuant to 14 CCR § 1038 *et. seq.* within the footprint of an NTMP is appropriate and consistent with the forest management goals of the state.
- The Board finds that the adopted alternative is necessary to implement the aforementioned regulatory revisions in order to maintain a fully-functional and comprehensive long-term forest management permitting tool through the Non-Industrial Timber Management Plan regulatory scheme.
- The Board also finds that the adopted alternative promotes fairness and equity through a clearly defined, efficient, and improved professional disciplinary process.
- The Board finds the adopted alternative fulfills the obligations of the Board, specified in statute, and represents a product based upon compromise and the greatest degree of consensus achievable at the time the Board authorized noticing of these amendments.

BRIEF SYNOPSIS OF ADDITIONAL ALTERNATIVES CONSIDERED AND REJECTED (update, pursuant to GOV §11346.9(a)(1)), of information pursuant to GOV §11346.2(b)(4))

Alternative 1: No Action
The Board considered taking no action, but the "No Action" alternative was rejected because it would not address the problems.

The Board rejected this alternative as it does not address the existing issues of clarity which are present within the existing regulations. Additionally, this lack of clarity may affect not only existing certified specialties, but any future certified specialties which may exist in the future.

Alternative #2: Make Existing Regulation Less Prescriptive
This action could include greatly simplifying the Registration of Professional Foresters Rules, Title 14, California Code of Regulations, Chapter 10 and create one standard regulatory section for all Registered Professional Foresters and Specialty Certificates.

This alternative was rejected because the existing statutory requirements for the

registration of professional foresters and Certified Specialists are too disparate for unification. Statute does not allow for a public agency or professional society to submit an independent certification program for professional foresters, but this is the basis of the Certified Specialist program.

SUMMARY AND RESPONSE TO COMMENTS (pursuant to GOV 11346.9(a)(3))

The comments below are identified in the following format: The letter S or W followed by a series of numbers separated by a hyphen, followed by the name and affiliation (if any) of the commenter (e.g. W1-8: John Doe, Healthy Forest Association).
S: Indicates the comment was received from a speaker during the Board hearing associated with the Notices of Proposed Action.
W: Indicates the comment was received in a written format.
1st number: Identifies the comments in the order in which it was received.

WRITTEN COMMENTS AND RESPONSES RESULTING FROM 45-DAY NOTICE OF PROPOSED RULEMAKING PUBLISHED MAY 31, 2019

Comment W1-1: Claire McAdams, President, Forest Landowners of California
"On behalf of Forest Landowners of California (FLC), the organization that helped to create the NTMP statute nearly 30 years ago, we support the Notice of Proposed Action published on May 31, 2019 regarding proposed amendments to Forest Practice Regulations governing the NTMP. FLC urges the Board to approve the regulations and Final Statement of Reasons (FSOR) at its meeting on August 21, 2019.

While disappointed that the maximum size is now limited by statute to 2,500 acres, our organization understands the need to conform to statutory changes by the legislature in 2018."

Board Response: The Board appreciates the support of the Forest Landowners of California.

Rule Text Change: No.

Comment W2-1: Helge Eng, Deputy Director, Resource Management, CAL FIRE
"The California Department of Forestry and Fire Protection (CAL FIRE) supports the rulemaking proposal entitled "NTMP Amendments, 2019." The rule text amendments provide points of additional clarity to the existing Forest Practice Rules for Nonindustrial Timber Management Plans (NTMP). Among them is a new provision for a "Designated Agent," a concept developed during committee deliberations on the Working Forest Management Plan (WFMP). This proposed rule text amendment is an important modification that will assist the Department in its review and ongoing evaluation of NTMPs with multiple non-industrial tree farmers."

Board Response: The Board appreciates the support of Cal Fire.

Rule Text Change: No.

Comment W2-2: Helge Eng, Deputy Director, Resource Management, CAL FIRE

"The Department has worked with non-industrial landowners in their use of the Notice of Timber Operations (NTO) to achieve harvest activities similar to those allowed under Exemptions. The Department believes the NTO can be used as the vehicle for "Exemption-type" timber harvests. To further facilitate NTO use for this purpose, the Department suggests the Board consider a Notice of Timber Operations format specifically for use with Exemptions. The Department could work with Board staff to develop such a template to allow for Exemption use while maintaining consistency with the statutory requirement for NTO submissions on NTMP lands."

Board Response: The creation or development of an NTO process specifically for use with exemptions within NTMP lands is not necessary at this time to achieve the purpose of this rulemaking, which is, in part, simply to clarify the allowance of the use of exemptions within the footprint of an NTMP. The Board may, however, engage in such an effort within a separate action at a later date.

Rule Text Change: No.

Comment W2-3: Helge Eng, Deputy Director, Resource Management, CAL FIRE

"The definition of "Management Unit" in section 1094.2 could be included or referenced in section 1090.01 for clarity.

The "Designated Agent" definition provides for the separation of divided ownerships as separate Management Units. The Board may consider incorporating the proposed revisions to14 CCR§ 1090.5 (w)(1) as indicated in the underlined text below:

(1) Boundaries of management plan(s) and management unit(s). Boundaries of Management Units shall not exceed a single ownership which may include, but is not limited to, entities comprised as a single ownership of divided interest, natural-persons with undivided interests, or a legally established artificial-person (such as limited liability companies, corporations, partnerships, or trusts)."

Board Response: While such a limitation on the boundaries of management units included within the contents of an NTMP within 14 CCR § 1090.5 would make the NTMP regulations more similar to those of the WFMP, such a change is not appropriate here. Primarily, the purpose of this rulemaking in this regard is to standardize mapping requirements between the NTMP and WFMP in order to provide contemporary standards for disclosure within submitted plans. The delineation of management units within an NTMP is guided by operational and considerations as well as forest management goals and is not exclusively a method for disclosure. As such, a requirement as described above may have an effect on the ability of landowners to effectively manage their land. Additionally, a requirement that management units be limited to property lines may impose additional burden in the requisite separate analysis of those additional management units.

Rule Text Change: No.

VERBAL COMMENTS RECEIEVED DURING THE PUBLIC HEARING CONDUCTED AUGUST 21, 2019

Larry Camp, Forest Landowners of California

Mr. Camp stated that he supported the rule text, as proposed in the 45-Day notice, and would support the development of an exemption specific NTO process, but does not support the language proposed by Cal Fire regarding the restriction on management units.

Board Response: The Board appreciates the support of Mr. Camp. Please see responses to W2-2 and W2-3 above.

Rule Text Change: No.

Eric Huff, CAL FIRE

Mr. Huff stated that intergenerational land transfers are not always smooth operations and the language regarding management units that Cal Fire has put forward would address that.

Board Response: Please see response to W2-2 and W2-3 above.

Rule Text Change: No.

WRITTEN COMMENTS RECEIEVED DURING THE 15-DAY NOTIFICATION PERIOD FROM AUGUST 26, 2019 THROUGH SEPTEMBER 10, 2019

No additional comments were received during this period.