

Board of Forestry and Fire Protection

NOTICE OF PROPOSED ACTION

“Nonindustrial Timber Management Plan Amendments, 2019”

**Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 4, Subchapter 7, Article 6.5**

[Notice Published May 31, 2019]

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 August 21, 2019, at its regularly scheduled meeting commencing at 9:00 a.m., at the Natural Resources Building Auditorium, 1416 9th Street, Sacramento, CA. 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 on Monday, July 15, 2019.

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 Program Manager
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)

Authority cited: Sections 4551, 4593.4, 4593.5, 4593.9, and 4594, Public Resources Code. Reference: Sections 4593, 4593.4, 4593.5, 4593.8, 4594, and 4597, Public Resources Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW (pursuant to GOV 11346.5(a)(3)(A)-(D))

The Z'berg-Nejedly Forest Practice Act declares the existence of a public interest in the management and treatment of the forest resources and timberlands of the state. Pursuant to Article 7.5, the Board "shall adopt rules and regulations to implement Article 7.5 (commencing with Section 4593) of Chapter 9 of Part 2 of Division 4 of the Public Resources Code." The provisions of the article (Nonindustrial Timber Management Plan) provided under PRC § 4593(c) declare "that it is the policy of the state to encourage prudent and responsible forest resource management of nonindustrial timberlands by approving nonindustrial timber management plans in advance and withdrawing governmental discretion to disapprove nonindustrial timber harvest notices submitted pursuant to the approved nonindustrial timber management plans." PRC § 4551 requires the Board to "...adopt district forest practice rules... to ensure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, wildlife, and water resources..." and PRC § 4553 requires the Board to continuously review the rules in consultation with other interests and make appropriate revisions.

In 2018, Senate Bill (SB) 901 (chapter 626) approved by the Governor, filed with the Secretary of State, and became effective January 1, 2019. Section 17 of SB 901

amended PRC § 4593.2(e) to read “Nonindustrial timber management plan means a management plan for nonindustrial timberlands with an objective of an uneven aged managed timber stand and sustained yield for each parcel or group of contiguous parcels meeting the requirements of Section 4593.3. A nonindustrial timber management plan may include multiple nonindustrial tree farmers, but shall not cover more than 2,500 acres.”

The proposed action was developed in response to address the statutory amendments in SB 901 related to multiple landowners and acreage restrictions and to additionally 1) expand upon the use of a designated agent for various reporting requirements for NTMPs with multiple landowners; 2) clarify the use of various exemptions within the footprint of a NTMP; and 3) to update the mapping requirements for the NTMP and the associated Nonindustrial Timber Harvest Notice. The problem is that statutory amendments within SB 901 create issues of clarity and consistency with the existing regulations in the Forest Practice Rules (FPRs). Additionally, the Department of Forestry and Fire Protection (Department) requested clarification on the use of exemptions within the footprint of a NTMP; which allow for the bypassing of the Nonindustrial Timber Harvest Notice process contained within the regulations for NTMP to achieve certain, specified, management objectives. Lastly, mapping standards for the NTMP have not been updated for 27 years and do not adequately reflect current technology and other existing regulatory mapping standards.

The **problem** is that the issues of clarity and consistency exist within the Forest Practice Rules (FPRs) related to both existing regulations as well as the statutory amendments within SB 901. Additionally, the Department requested clarification on the use of exemptions within the footprint of a NTMP; which allow for the bypassing of the Nonindustrial Timber Harvest Notice process contained within the regulations for NTMP in order to achieve certain, specified, management objectives. Lastly, mapping standards for the NTMP have not been updated for 27 years and do not adequately reflect current technology and other existing regulatory mapping standards.

The **purpose** of the proposed action is to make the regulations congruent with changes resulting from the passage of SB 901, to update 14 CCR § 1090 et seq. to make the NTMP regulations more consistent with the WFMP regulations, to clarify the use of exemptions within the footprint of an NTMP, and to improve clarity within the existing regulations.

The **effect** of the proposed action is to: 1) clarify and effectuate the statute in the regulations provided for NTMPs in PRC § 4593 to add provisions for multiple landowners; 2) to allow the use of exemptions pursuant to 14 CCR § 1038 et seq. within the footprint of an NTMP; and 3) to update the mapping standards by making them consistent with the companion document and more recently approved WFMP.

The **benefit** of the proposed action is that it will make regulations for NTMPs clearer and more consistent with regulations for WFMPs, and thus allow for better stewardship of California’s forests. SB 901 clarifies what had been assumed in the initial NTMP

regulations: that multiple landowners may indeed participate in an NTMP. The new regulations proposed will provide for a single point of contact for NTMPs with multiple owners by using a designated agent to aid the department in the administration of NTMPs. It will also provide benefits to the nonindustrial tree farmer by clarifying that the use of some exemptions will be allowed within the footprint of an NTMP which is a more flexible permitting vehicle for the landowner than using a Nonindustrial Timber Harvest Notice associated with the NTMP. The clarification elements will make plan development easier for land owners, allow for cooperation amongst landowners, and enable land owners with an NTMP to participate in relevant exemptions within the NTMP area; the updated mapping requirements will help protect California's forests by improving documentation of harvest activities and awareness of sensitive areas in the harvest area. The mapping updates will also make it easier for the Department to review NTMPs and WFMPs by providing consistency between the two plans. Finally, changes to NTMP mapping requirements will improve enforcement and implementation of these regulations by the Department.

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 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 secondary egress routes 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.

Statute to which the proposed action was compared: 4551, 4593.4, 4593.5, 4593.9, 4594, and 4597, Public Resources Code.

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 management plans for the non-industrial harvesting of timber. 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.

A local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by the act, within the meaning of Section 17556 of the Government Code.

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 to any State agency. The proposed action represents a continuation of existing forest practice regulations related to the preparation, submittal, and administration of documents and activities related to the non-industrial management and harvesting of timber, with clarifications which may reduce state costs in the review and administration of these documents and activities.

The proposed action will not result in the imposition of other non-discretionary costs or savings to local agencies.

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 (by making it costlier to produce goods or services in California).

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE RELIED UPON TO SUPPORT INITIAL DETERMINATION IN THE NOTICE THAT THE PROPOSED ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS (pursuant to GOV § 11346.2(b)(5) and GOV § 11346.5(a)(8))

Contemplation by the Board of the economic impact of the provisions of the proposed action through the lens of the decades of contemplating fire safety in land use and development in California that the Board brings to bear on regulatory development.

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:

- Will not create jobs within California (GOV § 11346.3(b)(1)(A));
- Will not eliminate jobs within California (GOV § 11346.3(b)(1)(A));
- Will not create new businesses (GOV § 11346.3(b)(1)(B));
- Will not eliminate existing businesses within California (GOV § 11346.3(b)(1)(B));
- Will not affect the expansion or contraction of businesses currently doing business within California (GOV § 11346.3(b)(1)(C));
- Will yield nonmonetary benefits (GOV § 11346.3(b)(1)(D)). For additional information on the benefits of the proposed regulation, please see anticipated benefits found under the Informative Digest/Policy Statement Overview.

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. 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 businesses, within the meaning of GOV § 11342.610, are not expected to be affected by the proposed action.

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 not 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.

Pursuant to 1 CCR § (b), the reason(s) the regulation affects small business are the same as provided in the Economic Impact Analysis in the Initial Statement of Reasons.

ALTERNATIVES INFORMATION

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 Program Manager
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 phone.

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:

<https://bof.fire.ca.gov/regulations/proposed-rule-packages/>