

Board of Forestry and Fire Protection

Summary of Requests for Regulatory Review in Response to the Annual Call for Regulatory Review

December 11, 2019

The following items represent a summary of certain comments which have been received in response to the Board of Forestry and Fire Protection's (Board's) annual call for regulatory review, which was published September 30, 2019. This list includes only those items which are under the Board's regulatory authority or administration.

Associated California Loggers

ACL requests a cooperative role in any upcoming revisions to Licensed Timber Operator regulations within 14 CCR §§ 1020 through 1030.

Roberta Bugenig

Ms. Bugenig expresses concern over a lack of proper proof of ownership on Timber Harvest Plans or other harvesting permits. Parcel numbers or other proofs of ownership are not generally required but may assist in long-term tracking of ownerships, as well as inspection and enforcement.

California Wildlife Foundation/California Oaks

CFW/CO requests that the Board engage in rulemaking to amend the Forest Practice Rules to achieve a no-net loss standard for oak-forested lands and to extend regulatory authority to achieve this standard for oak woodlands.

CFW/CO requests that monitoring and reporting of oak woodlands described within the Board's Joint Hardwood Policy be conducted and that the results be published.

Yana Valachovic

Ms. Valachovic expresses concern over the lack of a 0-5 foot noncombustible zone within the PRC § 4291 requirements.

California Department of Fish and Wildlife

CDFW requests continued prioritization of "Review of Forest Practice Northern Spotted Owl Rules", as first prioritized by the Board in 2017.

CDFW additionally requests consideration of botany-specific regulations within the Rules to provide clear direction to applicants prior to plan submittal, reduce plan review time, and lead to more flexible management strategies for these resources.

CDFW requests review of existing regulations related to buffer zones for sensitive species within 14 CCR § 919.3 [939.3, 959.3], as well as review of the species included within the list of sensitive species within 14 CCR § 895.1.



ASSOCIATED CALIFORNIA LOGGERS

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November 20, 2019

Dr. J. Keith Gilles, Chairman and Members
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P.O. Box 944246
Sacramento, CA 94244-2460

**RECEIVED 11/20/19 -
Board of Forestry and Fire Protection**

RE: "Board 2019 Regulation and Priorities Review" – Comments of Associated California Loggers

On behalf of Associated California Loggers(ACL), our association of largely family-owned, multi-generational loggers, log truckers and log road builders respectfully submits the following formal request:

REQUEST: HIGH PRIORITIZATION BY THE BOARD OF FORESTRY FOR 2020 AND BEYOND: OVERSIGHT OF COOPERATIVE EFFORTS BETWEEN CALFIRE AND THE LOGGING SECTOR OF THE TIMBER INDUSTRY TO ENHANCE AND MAINTAIN THE LICENSED TIMBER OPERATOR LICENSURE PROGRAM, WITH AN EMPHASIS ON PROPER FUNDING AND STAFFING OF THE PROGRAM, AND AN EMPHASIS ON ADDRESSING INSURANCE REQUIREMENTS THAT ARE LEADING TO REJECTION OF LICNESES AND RENEWALS:

BACKGROUND:

2012-2013: DISASTROUS PROBLEMS IN CALFIRE'S LTO UNIT REQUIRED ATTENTION.

In December of 2012 a number of Licensed Timber Operators (LTOs) were informed that their licenses were unable to be renewed and issued in accord with renewal deadlines, because of "delays in the State Printer's office in getting notices out to LTOS." Though LTOs must postmark their renewal applications by December 1 of the year in which their license expires (per Forest Practice Rule 1026(b)), many LTOs could not do so as they had not received renewal notices.

During this time, LTOs who were offered winter operations jobs were unable to work until the licenses were renewed; delays took anywhere from a number of days to a little over a week of vital working time. ACL was informed that not only was CALFIRE unable to issue license renewal notifications, but that penalties would affix because "LTO's should be aware of the dates upon which their licenses renew." However, even though the State Printer's office failed to issue the notices on a timely basis, we were informed that "(our) hands are tied until the State Printer issues (an) exemption for printing; as they do not have the means to complete the renewal job 'in house,'(and) "all state agencies are required to obtain an exemption from the State Printer's prior to using another vendor for printing services."

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As 2013 continued the LTO program at CALFIRE was in a state of some disarray -- LTOs in the woods in January as their "license year began" had not been issued their license renewals even as they were beginning jobs (their fee checks had been cashed, however.) The "LTO Coordinator" was a single person who, due to an automobile accident and assorted health problems, was not able to process LTO licenses and license renewals on a timely basis.

Additionally, ACL became aware that LTOs were **not receiving any notice** of license renewal deadlines – again, it was presumed that "a person holding an LTO should know when their license is due for renewal." ACL protested that it was a common courtesy – and often a professional requirement(i.e. California law licenses) to remind licensees of upcoming renewal deadlines.

2014: THE BOARD OF FORESTRY ACCEPTS OVERSIGHT OF THE CALFIRE LTO PROGRAM, AS A BOARD PRIORITY.

ACL presented to the Board of Forestry a request that the LTO program at CALFIRE be a Board of Forestry "priority" and the Board of Forestry agreed to place this on their "list of priorities" going forward into 2014, 2015 and beyond.

2014 TO DATE: ACL AND CALFIRE WORK TOGETHER IN COOPERATION TO MAKE NEEDED IMPROVEMENTS TO THE CALFIRE LTO LICENSURE PROGRAM

Working together under Board of Forestry oversight and reporting regularly to the Board, ACL and CALFIRE began a cooperative effort that continues to this day, **with the following positive developments:**

CALFIRE "borrowed" staff from outlying CALFIRE offices in Sacramento and the north state to process license applications and renewals; post cards were created by CALFIRE to remind LTO licensees of upcoming renewal deadlines; and a **new LTO Coordinator, Ruby Idmilao**, was hired to run the program. **ACL is very thankful to CALFIRE for its actions during that time, we believe these efforts in general – and the hiring of Ms. Idmilao in particular –** led to significant improvements in the CALFIRE LTO licensure program, and newfound respect by the State of California for its licensed timber operators and the work that they perform.

2019: NEW CONCERNS ABOUT CALFIRE'S LTO PROGRAM LEAD TO A RENEWED NEED FOR ACL AND CALFIRE TO WORK TOGETHER SO AS TO AVOID MAJOR NEW PROBLEMS EMERGING IN THE PROGRAM IN 2020

Associated California Loggers ACL is concerned that, at this time of transition in the LTO unit, we do not see a "backslide" and return to the licensing difficulties of 2013. CALFIRE should be prepared now to anticipate the difficulties of licensure and renewal reappearing in the next few months – and should take steps (with ACL's help) to avoid such return. One such step would be to again bring in "special help" from other CALFIRE departments so as to process new licenses and renewals – and perhaps to handle the review of Certificates of Insurance, which are evidently "stacking up".

ACL wishes to help CALFIRE officials in charge of the initial licensing and license renewal of Licensed Timber Operators to both license and renew the licenses of LTOs in a timely manner, to ensure that renewals be issued so that an LTO will not have a "gap in time" during which he or she is not licensed and therefore cannot accept, begin or complete work; and to ensure that LTOs continue to receive proper early notice of upcoming renewal dates and requirements.

Over the course of 2019, ACL has learned of concerns – FROM CALFIRE -- about its own LTO licensure operations – that have led us to seek a coordinated effort between ACL and CALFIRE going forward. These concerns include:

ONE: Ruby Idmilao, who had done such good work in administering the LTO program, including licensure and renewals, has been promoted and her position is open pending new applicants for the job. Whoever the new hire will be, they will need to be "brought up to speed" on the LTO license in general – and insurance requirements for the license in particular.

TWO: Evidently to the extent that LTO licensure is tied to the new "CALTREES" computer-based system, "bugs" in the new system could affect the timeliness of LTO licensure and renewal for 2020.

THREE: At this point in time(November 2019), the "Licensed Timber Operator List" meant to be available for public access, has disappeared from the CAL FIRE website.

FOUR: Major concerns have arisen , both at CALFIRE and at ACL , about how "insurance requirements" for LTOs are handled by CALFIRE. We have had license renewals being rejected, LTOs thrown off the official LTO list, and rejections of certificates of insurance and notices of cancellation. This is a crisis that must be dealt with immediately – and that may require action by the Board of Forestry(regulation) or by CALFIRE(policy memorandum). (See below.)

2019: VARIOUS NEW INSURANCE REQUIREMENTS FOR LTO LICENSURE AND RENEWAL CREATE AN IMMEDIATE AND ONGOING CRISIS

We have found that problems have arisen with regard to insurance requirements and the LTO license which will require particular scrutiny by CALFIRE, and, **ultimately, possible regulatory action by the Board of Forestry itself.** LTO license applications and renewals are being rejected because of these insurance requirements. Licensed Timber Operators are being removed from the "LTO List" because of these insurance requirements. These insurance requirements imposed by CALFIRE **CANNOT be met by the insurance industry, in accordance with insurance laws and protocols.** These insurance-based LTO requirements include:

ONE: New CALFIRE policy: "The name on the LTO license must match the name of the insured on the required liability policy." As of July 1, 2019, the LTO division began rejecting certificates of insurance because CALFIRE would not accept multiple LTOs on one license application. At the same time, persons holding LTO licenses found themselves removed from the LTO list because **"two names were not allowed on the list for one applicant."** On recent inspection, the link to the LTO list on the CALFIRE website was removed in its entirety and we are pursuing its restoration for the public.

CALFIRE in an August 8, 2019 e-mail to our association contract logging broker, wrote: " We are requiring that the name on the license matches the name in the named insured box. Listing the name in the remarks section will not be sufficient. We are finding that dealing with the insurance companies is increasingly difficult and time consuming. It is the licensed timber operator's responsibility – and not that of the operator's insurance company -- to know the insurance requirements and ensure the requirements are met. CALFIRE believes that the LTOs are requesting the insurance companies submit the certificates on their behalf, but the LTOs are not aware of what is being submitted and lately in a lot of cases the information has been incorrect. "

Our association contract logging insurance broker responded by e-mail on the same day, August 8, 2019: " Insurers want to do everything that they can to help our clients to comply; however, naming an individual in the named insured section when the named insured on the policy is not that individual is just not feasible. Corporate requirements are that the named insured must be the same as what is on the policy. **Our carriers are not going to list an individual as a named insured on a corporate policy as it could expand their coverage to include personal exposures. They simply will not agree to it. Are you suggesting that the LTOs should change their licensing to reflect their corporate name rather than individual?"**

Our insurance broker continued: "the insurance industry standard is that multiple entities with more than 50% common ownership must be included on the same policy. It is extremely unlikely that underwriters will make exceptions to this, as they do not want to be in the position of having multiple claims for a single occurrence. In the past, a separate LTO number and name have been put in the "Remarks" section of the insurance certificate.

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TWO: New CALFIRE Insurance Requirement: "Notice of cancellation" wording is not meeting CALFIRE requirements and is being rejected. Cancellation language required by CALFIRE **does not match** cancellation language issued by insurers -- and insurers cannot change the language that they use.

Evidently this has to do with whether **or not a "30 Day Notice of Cancellation" can be offered by insurance companies. We are told by our insurance broker: no.** Nonetheless, our broker has begun including its cancellation wording with every CALFIRE LTO certificate in attempt to comply with CALFIRE requirements. It is a separate 4-page endorsement on the policy.

THREE: Evidently, CALFIRE is changing its policy on acceptance of insurance certificates (a) "Mid-stream" given how certificates have been accepted in the past and (b) in a manner that compels the insurance carrier to provide information which, as a matter of trade custom, cannot be done.

It is the opinion of Associated California Loggers that CALFIRE should accept LTO certificates of insurance as they have in the past, before the development of this new policy, with which insurers cannot comply.

FOUR: We would like to add that we understand that the CALFIRE LTO **division is not receiving assistance from the State Department of Insurance** in advising the CALFIRE LTO division on insurance law and procedures. Simply put, at this point in time, **CALFIRE seems to be requiring the insurance industry to do things on behalf of the LTOs that insurance carriers cannot do. The CALFIRE LTO unit needs appropriate advice on insurance law – our brokers are prepared to help offer it.**

FORTHCOMING BOARD OF FORESTRY REGULATORY PROPOSALS ON LTO ISSUES

In meetings with CALFIRE officials held in October of 2019, Associated California Loggers representatives **learned that CALFIRE and staff of the Board of Forestry are working on the introduction of proposed regulations in 2020 and beyond to "revamp the laws pertaining to Licensed Timber Operators" without resort to legislative, statutory action. We believe that a cooperative effort on such proposed regulations among ACL, CALFIRE, and the Board of Forestry is properly placed under the Board of Forestry prioritization and oversight that we are seeking.**

REMINDER: THE LOGGING SECTOR OF THE TIMBER INDUSTRY IS PART OF THE EFFORT TO IMPLEMENT GOVERNOR NEWSOM'S EMERGENCY ORDERS ON WILDFIRE PREVENTION

At a time when the threat of timberland wildfires has risen as has loss of human life, loss of species and habitat, devastation to the lands of California and costs to the budget of California, the positive role that can be played by the LTO community in the prevention, suppression and salvage of wildfires is one that we believe to be strongly supported by state officials. LTOs are already working on some of the first 35 emergency projects as directed in response to Emergency Orders issued by Governor Gavin Newsom. **Time is of the essence to accomplish these treatments. It is therefore imperative that CALFIRE's LTO licensing program be active and timely to keep trained LTOs ready and available for wildfire prevention efforts.**

REMINDER: THE LOGGING SECTOR OF THE TIMBER INDUSTRY PROVIDES VITALLY NEEDED RURAL JOBS AS PROMOTED IN BI-PARTISAN LEGISLATION, ASSEMBLY BILL 1492 OF 2012.

As stated in Public Resources Code Section 4629 as added by Assembly Bill 1492 (Chapter 289) of 2012, "**Section 4629. The Legislature finds and declares..the following: (a) A thriving in-state forest products sector provides public benefits, including employment opportunities in both rural and urban areas, and economic development for rural communities; (and) (b) Enabling continued economically viable production of forest products can help protect the state's forest lands from conversions to other uses...**"

STATUTE AND REGULATION REFERENCES TO ISSUES ABOVE:

STATUTE SECTIONS: Those found in Assembly Bill 1492 (Chapter 289) of 2012, particularly new Public Resources Code Section 4629.

REGULATION SECTIONS:

Forest Practice Rules 1020 -1030.

**SUMMARY: ACL AND CALFIRE, WORKING
TOGETHER WITH BOARD OF FORESTRY OVERSIGHT**

CALFIRE officials themselves have expressed to Associated California Loggers a desire on their part that their LTO programs be promoted in terms of proper staffing, funding, and legislative/regulatory direction. ACL seeks Board of Forestry prioritization of oversight of the CALFIRE LTO licensure unit and its insurance-related issues, on behalf of CALFIRE and industry alike.

Thank you for your consideration of these comments.

Respectfully submitted,



ERIC CARLESON
Executive Director
Associated California Loggers

OCT 21 2019

BOARD OF FORESTRY AND FIRE PROTECTION

These comments are in regard to the lack of proper proof of ownership of the property that the RPF's harvest plan. The Timber operator is also licensed and has no reference as to the ownership of the timber in the Harvest Plan. No parcel # or copy of a deed or written legal paper work to show ownership of the land the timber is going to be removed from.

Of course assuming that all parties involved and licensed are honest that is all fine, when that is not the case if the harvest plan was required to show legal ownership of the timber property it would stop any illegal theft of timber or give a property owner recourse to help recover or prosecute the person illegally taking someone else's timber.

When my timber was taken by my neighbor and the C.D.F. man Rhett Imperial came to inspect the timber harvest he had no way of knowing what land or timber he was inspecting as I received from him a copy of the harvest plan that Jeff Brgent had filed with C.D.F. There were three plans filed in Fortuna C.D.F. office one by me one by Jeff then later another one by Jeff. Because of a legal hassle and the death of my mother I had not taken any timber off my property. My harvest plan had a parcel #, so C.D.F. would know where it was for. No reference to where the timber was to be cut or anything in the other two plans. I know it is the C.D.F. place to police the taking of timber but if the Harvest Plan included a legal description of the timber land to be harvested and it was not being handled in a proper manner how could the

Inspector give a proper inspection and a final answer or approval. The land owner could be notified and could handle the legal actions if any were required. Ignorance of the proper process of handling of the logging process is no excuse for allowing timber theft.

My timber was a little over 1 million feet of timber sold to Trinity River Lumber Co. at \$550. a thousand. They too need to be aware if they are receiving state timber. Once again a proper prepared harvest plan with legal descriptions of the ownership of the land and timber would prevent that.

I have all the paper work to back up what I have written. If you have any questions or care to see any of it please let me know. I'd be happy to show it to you.

Thank you
Roberto Begenig

RECEIVED 11/07/19 -
Board of Forestry and Fire Protection

**THE NEED FOR UNIFORM STATEWIDE PROTECTIONS FOR
NATIVE TREE SPECIES IN THE GENUS *QUERCUS***



CALIFORNIA WILDLIFE
FOUNDATION



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September 18, 2019

California Wildlife Foundation/California Oaks (CWF/CO) requests the State of California and its Board of Forestry and Fire Protection to promulgate uniform statewide protections for oak woodlands and oak-forested lands that are not subject to the Forest Practice Act to thereby sustain their beneficial impacts.

Ecosystem impacts of inadequate oak protections

Oaks (native tree species in the genus *Quercus*) are California's primary old growth resource, yet the state has not enacted sufficient statewide protections to perpetuate this vital ecosystem. Most oaks are not designated as commercial species, thus the ecosystem services they provide do not receive the regulatory attention afforded by the Forest Practice Act. The Board of Forestry and Fire Protection and the Fish and Game Commission's Joint Policy on Hardwoods states:

Hardwood harvesting and other land uses shall be conducted in a sustainable manner which secures resiliency of all hardwood species; enhances the protection of fish, wildlife, and plants associated with hardwood habitats; maintains a baseline of species composition, age structure, and structural complexity of hardwood elements at the landscape level; allows adequate recruitment of other native vegetation in hardwood habitats; and meets state and federal water quality standards. Management decisions in these habitats shall also consider private ownership goals, property rights, and community economics.

The joint policy relies on protections promulgated at the local level, alongside research, education, and information. California's Forests and Rangelands 2017 Assessment summarizes the different approaches to non-federal timberland and rangelands that are not subject to Forest Practice Rules:

For non-federal timberland, Forest Practice Rules and related regulations have evolved to address improved environmental protection, and in some instances, lower the cost of compliance (e.g. through Nonindustrial Timber Management Plans). In addition, there are numerous sustainability initiatives that are changing how forests are managed, for example through voluntary sustainable forestry certification programs, and managing forests to capture carbon in return for compensation in the form of carbon offsets.

...Conversely, the sustainable management of rangelands is addressed through federal and state laws such as the Clean Water Act, Endangered Species Act, and Porter-Cologne Act. Instead of a more comprehensive state regulatory approach such as the Forest Practice Rules, the approach to rangelands involves education, incentives, Best Management Practices, and regulatory mechanisms to correct problems when they arise.¹

The different regulatory approaches have divergent ecosystem outcomes. For example, the assessment reports on water quality impacts: "Rangeland streams show a greater percentage of streams in poor (21%) and very poor (21%) condition."²

The absence of adequate protections for oaks is also negatively impacting carbon storage. In the *California Forest and Rangeland Greenhouse Gas Inventory Development* report prepared for California Air Resources Board, the authors discuss the impact of conversion on carbon

¹Ferkovich, R, L Hartman, J Johnson, C Keithley, M Klaas-Schultz, K Larvie, R Marose, E Meriam, T Meyer, T Moody, A Ong,

² Ibid. 220.

sequestration:

Between 2001 and 2008, the total carbon stored in the forests and rangelands of California decreased from 2,600 million metric tons of carbon (MMTC = 10^6 MgC) to 2,500 MMTC... Aboveground live carbon decreased ~2% ... and total carbon decreased ~4%... most carbon losses occurred from conversion of forest to other natural lands (mainly grasslands) and to human lands (mainly agricultural land)... The decrease in analysis area was almost entirely due to the conversion of natural lands to agriculture. For example, more than 1,900 km² of land classified as tree-dominated in 2001 was classified as pasture/hay in 2008. Nearly 2,000 km² of shrub and herb dominated lands transitioned to some form of croplands in 2008.³

Wildlife is also harmed by lack of oak protections. For example, Butte County's Oak Woodland Resource Assessment Report speaks in general terms about wildlife, yet contains very limited provisions to protect oak habitat in critical winter deer herd migration corridors. Moreover, while the Forest Practice Rules (FPR) address the importance of hardwood habitat for migratory deer herds, the language is specific to hardwoods in a forestry context. The inadequacies of hardwood retention provisions for land not subject to FPR are discussed in subsequent pages:

Appendix Technical Rule Addendum # 2 Cumulative Impacts Assessment

In evaluating cumulative impacts, the RPF shall consider the factors set forth herein.

C. Biological Resources

4. The biological habitat condition of the THP and immediate surrounding area. Significant factors to consider are:

e. Hardwood Cover: Hardwoods provide an important element of habitat diversity in the coniferous forest and are utilized as a source of food and/or cover by a large proportion of the state's bird and mammal species. Productivity of deer and other species has been directly related to mast crops. Hardwood cover can be estimated using the basal area per acre provided by hardwoods of all species.

[Northern and Southern only]: Post-harvest deciduous oak retention for the maintenance of habitats for mule deer and other hardwood-associated wildlife shall be guided by the Joint Policy on Hardwoods between the California Board of Forestry and California Fish and Game Commission (5/9/94). To sustain wildlife, a diversity of stand structural and seral conditions, and tree size and age classes of deciduous oaks should be retained in proportions that are ecologically sustainable. Regeneration and recruitment of young deciduous oaks should be sufficient over time to replace mortality of older trees. Deciduous oaks should be present in sufficient quality and quantity, and in appropriate locations to provide functional habitat elements for hardwood-associated wildlife.

Fish and Game Commission policy addresses California Department of Fish and Wildlife's role in interacting with county government to protect deer habitat. (*Emphasis is added with italicized text, below.*)

It is the policy of the Fish and Game Commission to:

³ Battles, JJ, P Gonzalez, T Robards, BM Collins, DS Saah. Agreement 10-778. 2013, 18.

Conserve, restore, maintain and utilize California's wild deer populations. Such conservation shall be in accordance with the principles of conservation of wildlife resources set forth in Section 1801 of the Fish and Game Code and in accordance with the objectives and elements stated in "A Plan for California Deer, 1976."

Management Program:

- I. The Department shall designate deer herd management units. Such units may encompass a single deer herd or group of deer herds having similar management and habitat requirements and characteristics. Boundaries of such units, unless appropriate, need not follow county boundary lines.
- II. The Department shall develop and submit plans for all deer herd management units to the Commission by December 1, 1985. The goals of such plans shall be the restoration and maintenance of critical deer habitats to perpetuate healthy deer herds in the wild state as set forth in the appropriate deer herd management plans and to provide for high quality and diversified use of deer as a renewable resource in California. Specific objectives shall be stated in each management plan designed to achieve these goals, including objectives relating to the long-term protection of critical seasonal habitat located on both privately owned and public lands. *Such objectives shall be the standards for determining if land use plans (including general plans reviewed pursuant to the Commission's Land Use Policy), proposed development projects and other agencies' plans and programs adequately address deer needs.*⁴

Unfortunately, Butte County's provisions for protecting oak habitat do not adequately complement this Fish and Game Commission policy to sustain vital deer habitat. Butte County's 2030 General Plan (Conservation and Open Space Element), includes a short description of oak woodlands as one of the county's ten biological communities, concluding with the statement: "Oak woodlands are common locally and regionally; however, native oak trees and woodland habitats are declining statewide because of development and land management practices." (Page 233)

Butte County's General Plan Conservation and Open Space (COS) actions that follow rely only on mitigation and specimen trees:

COS-A7.3 Establish a mitigation bank program for impacts to habitats for protected species, such as oak woodlands, riparian woodlands and wetlands, in locations outside of the approved Butte Regional Habitat Conservation Plan and Natural Community Conservation Plan Planning Area, using mitigation fees on new development projects as a funding mechanism.

COS-A7.4 Seek funding to conduct a study to develop an approach to protecting significant specimen trees and tree groves. (Page 244)

The Land Use Element of the 2030 General Plan addresses lot size, but has no requirements except for conservation easements in areas where clustered development is allowed:

The Winter Deer Herd Migration Area Overlay requires a minimum lot size of 20 acres, and the Critical Winter Deer Herd Migration Area Overlay requires a

⁴ See: <http://www.fgc.ca.gov/policy/p3wild.aspx#DEER>.

minimum lot size of 40 acres. Development may be clustered at smaller lot sizes than these minimums in order to protect the deer herd areas, provided that the non-development areas are protected under permanent conservation easements. (Page 4-30)

LU-P1.10 The County shall limit development in foothill and mountain areas that are constrained by fire hazards, water supply, migratory deer habitat, or infrastructure. (Page 4-37)

Removals of oaks on agricultural lands are exempted from mitigation, as discussed in the section below on statewide oak protections, and have limited protections in Butte County, although much of the critical winter deer herd migratory habitat is on agricultural land.

Further, goals articulated in oak woodland management plans of counties throughout California are often not translated into regulations. Many of these plans, which qualify counties to receive Wildlife Conservation Board (WCB) funding to protect oak landscapes, are collections of aspirational statements, voluntary measures, and goals that are not supported by county measures to realize them. Butte County's Oak Woodland Assessment Report, which the county adopted as its oak woodland management plan, calls for maintaining a canopy of 30 percent when oaks are harvested (Policy 4.1.2. *When harvesting oaks for fuel or range improvement, encourage land owners to maintain an average leaf canopy of at least 30 percent...*). However, the county proposed an ordinance to streamline the process for mitigation of impacts to oaks, which used a threshold of removal of 70 percent or greater to trigger California Environmental Quality Act (CEQA) review. The ordinance, which was not enacted, had no mechanism to attain the site-specific goal of 30 percent oak retention, instead it was written to facilitate oak removal. The 30 percent canopy retention figure above is highlighted not because it is sufficiently protective, but instead because its absence in other county planning efforts is illustrative of the arbitrary nature of county oak measures.

The other Butte County plan, which also enables oak woodland conversion and does not incorporate or address the Oak Woodland Assessment Report's canopy retention recommendation for rangelands, is the draft Butte Regional Conservation Plan.

This draft plan covers the western portion of the county, below coniferous forest. Table K-1. Extent of Potential Natural Community Effects within 500 feet of Covered Activities, from Appendix K, Effects in Vicinity of Covered Activities (March 2019, Screencheck final) estimates direct impacts to 96,627 acres of blue oak savanna, blue oak woodland, interior live oak woodland, mixed oak woodland, and valley oak riparian forest and indirect impacts (within 500 feet) to 2,937 acres of these oak communities.

CWF/CO recently received an inquiry from a landowner in Butte County whose property is protected by a number of conservation easements. The landowner had planned to restore valley oaks (*Q. lobata*) under compliance with the easement on that parcel, but the Sutter Butte Flood Control Agency prevented him from doing so because of concerns that the oaks would change the watercourse downstream.

CWF/CO also learned of a property in Butte County where a landowner allowed oak trees to be harvested before a conservation easement with Natural Resources Conservation Service was finalized. We have received reports of similar violations in other counties as well.

Butte County provides an example of protections that are piecemeal, not well integrated across land management and other agencies, and thus not sufficiently protective of oaks or the species

they support. Local oak regulations—when they exist—are also often weak and inadequate in protecting wildlife species that are dependent on oaks. For example, El Dorado County relied on the development of an Integrated Natural Resources Management Plan (INRMP) during the update of its oak ordinance to “plan how best to maintain connectivity through the management of land use patterns and the protection of existing wildlife movement, making informed choices for changes in land use designations or improvements to compromised habitats in order to protect wildlife and plants.” Unfortunately, the requirement for the completion of the INRMP was simply deleted by the county before the oak ordinance was completed, thereby eliminating the primary analysis, which was meant to ensure that habitat connectivity would be maintained with the new regulations.

Informational Issues

Need for Data: Adequate monitoring and reporting is essential to understanding the condition of California’s oak ecosystems and the threats they face. Unfortunately, adequate data are not readily available. The aforementioned California’s Forests and Rangelands 2017 Assessment notes (*emphasis added*):

To address sustainability, in 2010 the Sustainable Rangelands Roundtable (SRR) created a set of five sustainable rangeland management criteria with 64 indicators, modeled after the Montreal Process Criteria for forest management. However, the data to support tracking the SRR indicators is often lacking, despite the existence of several federal programs for monitoring rangeland conditions. *This severely limits our ability to answer important questions about trends in range productivity, soil erosion, water quality, range practices and investments, habitat quality, and oak removals and regeneration.*⁵

California Oaks, then California Oaks Foundation, published two *Oaks 2040* reports (*The Status and Future of Oaks in California* and *Carbon Resources in California Oak Woodlands*) in 2006 and 2008, respectively. The reports include extensive information about oak acreage by county. CWF/CO would like to update the reports but has been challenged by the lack of uniform data about the extent of oak woodlands and oak-forested lands.⁶

Inadequate data also impede local regulations. Consultants who responded to CWF/CO comments on oak provisions of Tuolumne County General Plan update noted (*emphasis added*): “The commenter’s recommendations are not required to be in the Revised Draft Environmental Impact Report, and in fact some would be unenforceable, such as absolute limits on oak removals over time, *which would require mapping and historic information not available to County staff.*”⁷

If data were generated annually to support the following, as specified in the Joint Policy on Hardwoods, it would be beneficial for those data to be distributed more widely:

IV. SPECIFIC POLICY FROM THE COMMISSION TO THE DEPARTMENT OF FISH AND GAME

In addition to the joint policy, the Commission specifically charges the Department of Fish and Game with the following:

⁵ Ferkovich et al. *Supra*. 64.

⁶ Gaman, T, J Firman (*The Status and Future of Oaks in California*), Oakland, CA: California Oak Foundation.

⁷ Final Environmental Impact Report for the Tuolumne County General Plan Update Project (State Clearinghouse No. 201082027, Prepared by Ascent Environmental) Tuolumne County Community Resource Agency. 2018. 3-73

H. Annually, the Department will include a statement in the Director's report to the Commission addressing the status of hardwood conservation.

Trends for California's oaks

Despite inadequate data, it is well known that California's oak ecosystems are not being managed "for long-term health and resiliency, including the perpetuation of their local and broader geographic representation and to continue to provide for their inherent natural and biological values and processes," as expressed in the goal statement of the Joint Policy on Hardwoods.

The Red List of US Oaks identifies five species of California oak that have been evaluated as threatened: Cedros Island oak (*Quercus cedrosensis*), coastal scrub oak (*Q. dumosa*), Engelmann oak (*Q. engelmannii*), island scrub oak (*Q. pacifica*), and island oak (*Q. tomentella*); and four as near-threatened: valley oak (*Q. lobata*), Palmer oak (*Q. palmeri*), Santa Cruz Island oak (*Q. parvula*), and Sadler's oak (*Q. sadleriana*).⁸

The *Indicators of Climate Change in California* report's chapter on changes in forests and woodlands speaks about the drop in tree size of the state's trees: "Compared to 80 years ago, California's forests today have more small trees, fewer large trees, and less biomass. (20) "...Despite a nearly 40 percent overall increase in tree density, the decline in large trees has resulted in about a 20 percent decline in basal area and associated biomass."⁹ Strong statewide oak protections will help to reverse this trend.

Regeneration: Numerous studies point to the role of fragmentation in diminished oak diversity and poor regeneration. For example, the chapter on Genetic Diversity in Oaks authored by Deborah Rogers, Ph.D. in *Oaks in the Urban Landscape: Selection, Care, and Preservation* reports:

...In a comparison of the pollination patterns of California valley oak (*Q. lobata*) in 1944 and 1999 (after considerable thinning), it was determined that the oak pollen did not travel as far as one might expect for a wind-pollinated species (average distance of 65 meters), and that the lower-density stand had fewer trees acting as pollen parents, making the resulting seeds and progeny less diverse. This study suggested a number of implications for this species. First, pollen flow seems to be fairly local for this species, so geographically distinct populations may be quite genetically different from one another. Second, if the remaining oak populations are isolated by intervening developments, they might experience increased inbreeding, which could result in loss of genetic diversity and potentially cause lower viability of natural regeneration.

A study of blue oak (*Q. douglasii*) provided some information on the impacts of fragmentation and thinning on this species... Acorn production was measured over several years in relation to distance among pollen-producing trees and other factors. A relationship was revealed between the number of neighboring pollen producers and the amount of acorn production... These results suggest that thinning in blue oak stands or increasing the distance among small stands (e.g., by

⁸ Jerome, D, E Beckman, CS Kua, K Wenzell, L Kenny, and M Westwood. 2017. *The Red List of US Oaks*. The Morton Arboretum, Botanic Gardens Conservation International, The Global Trees Campaign, The IUCN/SSC Global Tree Specialist Group, The USDA Forest Service.

⁹ Office of Environmental Health Hazard Assessment, California Environmental Protection Agency. 2018. Page 207.

habitat conversion to other land uses) could negatively impact natural reproduction in the residual stands.¹⁰

Additionally, improperly managed grazing also impacts oak regeneration. Many agricultural landscapes contain beautiful large oaks in grasslands with no visible oak recruitment—lovely aesthetically but in essence a *museum* or a *graveyard* rather than an ecosystem. Management Recommendations for Washington’s Priority Habitats: Oregon White Oak Woodlands, cautions:

Overgrazing stimulates alien weed invasion, tramples acorn sprouts, and compacts soils (Silen 1958, U.S. For. Serv. 1965, Saenz and Sawyer 1986, Hanna and Dunn 1996). Limited, short-term, carefully controlled grazing may mimic other thinning measures in young, dense, even-aged oak stands. Grazing is not recommended where oak sprouting and sapling growth are being encouraged, within riparian zones, or where acorn production is desired but scarce (Reed and Sugihara 1987).

...Over-consumption of herbaceous understory exposes oak seedlings, and cattle are more likely to consume woody vegetation after herbaceous cover is consumed. Wildlife species that use a grassy or herbaceous understory may be negatively affected when cover, forage, or breeding structures are reduced or depleted.¹¹

County level information on oak protections

Information about oak protections at the county level is also inadequate, making analysis of county oak protections difficult to undertake. A listing that UC Cooperative Extension prepared in 2003 and posted on the oak woodland management website (ucanr.edu/sites/oak_range/Description_of_County_Oak_Conservation_Policies/) is no longer helpful to those who wish to understand protections by county since a great deal has changed in the intervening 16-years.

A team of University of California (UC) Berkeley Law students updated the information, but the student effort was voluntary and under-resourced. The updated information from 2003 is limited to the 41 counties that were part of the Integrated Hardwood Range Management Program. The 13 additional California counties with significant oak resources—Alpine, Del Norte, Humboldt, Inyo, Kings, Lassen, Plumas, San Mateo, Santa Cruz, Sierra, Siskiyou, Sutter, and Trinity—are not being completed by the students. The students prepared preliminary updates on these 41 counties, but did not complete review of the updates with county staff.

There is an additional need for the listing to include sections on climate adaptation plans, habitat conservation plans, and other planning or regulatory mechanisms that are protective of oaks in some or all parts of counties. Further, to fully assess the efficacy of local efforts, it is important to analyze how county protections align with county oak management plans, how the protections are being enforced, and how effective mitigation measures are restoring or protecting oaks.

Current statewide protections

Senate Bill (SB) 1334 (Kuehl), sponsored by California Oak Foundation (now California Oaks) passed in 2004, brought the conversion of oak woodlands, with a number of exceptions, including conversions on agricultural lands, under the purview of the California Environmental Quality Act (CEQA). The legislation defines *oak* as “a native tree species in the genus *Quercus*,

¹⁰ Costello et al., University of California Agriculture and Natural Resources Publication 3518. 2011. 48-49.

¹¹ Washington Department of Fish and Wildlife. 1998, 20-21.

not designated as Group A or Group B commercial species pursuant to regulations adopted by the State Board of Forestry and Fire Protection...and that is 5 inches or more in diameter at breast height.”

It is estimated that over 80% of oak woodlands are on private land, thus the exemption of agricultural lands limits the scope of the CEQA protections, leaving oaks on rangelands unprotected. Further, CEQA relies on counties to set thresholds for significant environmental impacts. Thus, there is variance by county on when mitigation is required, with many actions unregulated.

California Assembly Bill 52, signed into law in the fall of 2014, brings Tribal Cultural Resources under CEQA. The legislation specifies that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource, as defined, is a project that may have a significant effect on the environment. Thus, oak woodlands and oak-forested lands that are tribal cultural resources are subject to this legislation. The Native American Historic Resource Protection Act, establishes a misdemeanor for unlawfully and maliciously excavating upon, removing, destroying, injuring, or defacing a Native American historic, cultural, or sacred site, that is listed or may be eligible for listing in the California Register of Historic Resources.

California’s Sustainable Groundwater Management Act (SGMA) mandates the preparation of local plans to identify and gradually address the “undesirable results” of groundwater extraction, including impacts on *groundwater-dependent ecosystems*, which include streams and marshes historically maintained by high groundwater levels. Questions addressed by these plans include, for example, “Is a riparian forest sustained historically by high groundwater levels a groundwater-dependent ecosystem?” and “Is groundwater overdraft that denies seedling oaks the moisture they need to survive an undesirable result?” SGMA is driving researchers to assess the relationship between oak forest vitality and groundwater levels and, more broadly, the linkages between ecosystem health and groundwater.¹²

Some North Coast Total Maximum Daily Load (TMDL) action plans for federal Clean Water Act include prohibitions on tree removal, including oak removals, to achieve water quality attainment. For example, the Garcia River Watershed Quality Attainment Action Plan for Sediment includes “Land Management Measures That Apply in Unstable Areas – effective date January 3, 2002” that make no distinction between commercial and non-commercial tree species in a prohibition on tree removals: “14. No more than 50 percent of the existing basal area formed by tree species shall be removed from unstable areas that have the potential to deliver sediment into a watercourse.” (6/2001, 4-44.00). Additionally, the in-stream monitoring measures include a determination for volume of large woody debris, without distinguishing between commercial and non-commercial species: “Identify at least 10 survey units of at least 500 feet long within Class I, II and III streams. Identify and measure all pieces of large woody debris, including logs at least 4 inches in diameter and 72 inches long, and root wads. Note the location of the LWD in the channel, the channel length, wood type, stabilizing factors, pool formation function and orientation and decay class.” (4-52.00)

A number of *Management Special Prescriptions*, alongside legislation enacted with the passage of AB 1958 (Wood), provide landowners in certain districts who wish to remove invading

¹² Eaton, M. Groundwater overdraft threatens riparian oak communities, *Oaks*, Fall-Winter 2017. California Wildlife Foundation/California Oaks. Oakland, CA. (downloadable from: <http://californiaoaks.org/newsletters/>)

conifers to restore and conserve California black (*Q. kelloggii*) or Oregon white oak (*Q. garryana*) woodlands and associated grasslands.

Incentive programs

Conservation tools for private lands include conservation easements, which are funded by a number of programs, including the **Wildlife Conservation Board's Oak Woodland Conservation Fund**. Established through the passage of Assembly Bill 242 (Thomson, sponsored by California Oaks Foundation) in 2001, its legislative intent is to:

- (a) Support and encourage voluntary, long-term private stewardship and conservation of California's oak woodlands by offering landowners financial incentives to protect and promote biologically functional oak woodlands over time.
- (b) Provide incentives to protect and encourage farming and ranching operations that are operated in a manner that protects and promotes healthy oak woodlands.
- (c) Provide incentives for the protection of oak trees providing superior wildlife values on private lands.
- (d) Encourage local land use planning that is consistent with the preservation of oak woodlands, particularly special oak woodlands habitat elements.

Natural Heritage Preservation Tax Credit Program seeks to foster public/private partnerships to resolve land use and water disputes; assist habitat stewardship; and demonstrate California's commitment to protect natural resources by rewarding landowners who perceive habitat as an asset rather than a liability. Funds may be used to protect wildlife habitat, parks and open space, archaeological resources, agricultural land and water, with tax credits provided for donations of qualified land (fee title or conservation easement) and water rights. The program has funding only until 2020.

California Oak Foundation (now California Oaks) conducted 24 estate tax planning workshops for ranchers throughout California with funding from the David and Lucile Packard Foundation in the late 1990s. Many conservation actions resulted. For example, a donation of 4,000 acres of land in Calaveras County to California Department of Fish and Game (now California Department of Fish and Wildlife) in the primary winter range for the migratory Rail Road Flat deer herd received a donation tax credit. A ranch family in the Diablo Range put a conservation easement on 17,000 acres of a 20,000-acre ranch in San Luis Obispo and Fresno counties. That easement also retired over 2,000 building lots, ensuring the land would retain its habitat values.

The Forests and Rangelands Assessment also reported that survey results show that over two-thirds of ranchers are receptive to the possibility of financial incentives for improving environmental quality. Continued funding for these efforts is important to sustain and enhance ecosystem services.¹³

Specific Recommendations

Chapter 15, Sustainability of Sierra Nevada Hardwood Rangelands of Sierra Nevada Ecosystem Project: Final report to Congress, vol. III, Assessments and scientific basis for management options, concludes with reflections on the Integrated Hardwood Rangelands Management Program's accomplishments and the challenges that remain:

Since conversion to residential and industrial uses is ultimately a land use

¹³ Ferkovich et al. *Supra*. 64

decision, it is a political process involving action by elected officials with input from different constituencies. The political and economic forces vary greatly in different parts of the Sierra Nevada. Since “success” in this area involves multiple individuals agreeing on a political course of action, this issue will present the largest challenge for a research and education strategy. It needs to be evaluated very carefully over the next several years to determine if education and research alone are sufficient to sustain the ecological values of hardwood rangelands.¹⁴

Unfortunately, the ecological values of oak rangelands and other oak ecosystems have not received adequate coordinated statewide action in the intervening 23-years since the Sierra Nevada Ecosystem Project’s 1996 report to Congress. It is in the interest of the state that oak trees remain standing to sustain their beneficial impacts on climate stability, watershed protection, as plant and animal habitat, and as culturally significant landscapes.

Precisely because most oaks are not commercial species their value is greatest when they are standing. An opportunity exists to craft protections to correct the many deficiencies in oak protections described in this paper. Below are suggestions for statewide oak protections focused on habitat, watershed protection, and carbon sequestration. CWF/CO suggests the state consult with tribal entities to incorporate cultural protections for oaks in protective measures.

Promulgate statewide enforceable, measurable, and effective protections for oaks that are not commercial species

In a paper delivered at the California Oak Symposium the ecosystem case for uniform statewide oak protections was articulated:

The current forest policies and conservation strategies for California’s forests fail to recognize the natural continuum between conifer and hardwood types. As a consequence, a dichotomy has developed between statewide and local conservation strategies that creates a double standard for environmental protection and regulatory burden to landowners. Examining the North Coast case of anadromous fish and their biological dependence on oak dominated forest landscapes illustrate the need for consistent environmental protective measures regardless of forest type. Given commonly expressed policies to move toward watershed level planning, ecosystem management, and sustainable land use practices, the differential treatment of conifers and hardwoods based on economic value should be reexamined.¹⁵

Below are recommendations by California Wildlife Foundation/California Oaks for actions to bring greater protections to oaks:

1. Adopt a no-net-loss policy for oak ecosystems—a standard that Los Angeles County has adopted for its unincorporated areas. We recommend that the Board of Forestry and Fire Protection engage in rulemaking to amend the Forest Practice Act to achieve a no-net loss standard for oak-forested lands and to extend regulatory authority to achieve this standard for oak woodlands.

¹⁴ Standiford, RB, J Klein, B Garrison. 1996. University of California, Davis: Centers for Water and Wildland Resources.

¹⁵ Guisti, GA and AM Merenlender. 2002. Inconsistent Application of Environmental Laws and Policies to California’s Oak Woodlands In: Proc. 5th California oak symposium: Oaks in California’s changing landscape . Gen Tech Rep PSWGTR-184. 2002. USDA Forest Service, Pacific Southwest Research Station: 473-482.

2. Work with the legislature to reauthorize funding for the tax credit program for oak woodland conservation donations under Wildlife Conservation Board.
3. Restore state subvention payments to counties with lands under the Williamson Act.
4. Prioritize transitioning lands under Williamson Act to protections under conservation easements, land donations in fee, or tax credits and work with appropriate agency partners to achieve these protections.
5. Issue a memorandum to clarify that the loss of oak woodlands on agricultural lands need to be assessed for GHG emissions under CEQA, notwithstanding the fact that those conversions are not subject to the mitigation requirements of PRC 21083.4.
6. Conduct the monitoring and reporting of oak woodlands called for in the Joint Hardwood Policy and publish and distribute this information widely.
7. Investigate the effectiveness of oak replanting associated with mitigation to understand the success of replacement trees in mitigating oak losses.
8. Work with the legislature to reduce development in oak woodlands in *very high fire severity zones* throughout the state.



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November 13, 2019



RECEIVED 11/20/19
Board of Forestry and Fire Protection

Matt Dias
Executive Officer
Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

Re: Defensible Space Policy (PRC 4291)

Dear Matt:

As you put together the 2020 Board priorities, I am writing to ask if the Board has some discretion in the interpretation of our existing defensible space code?

We are in desperate need for uniform messaging around defensible space. California's current defensible code (PRC 4291) does not address near home vegetation and as the last three fire seasons have demonstrated, does not protect homes and buildings from ember-driven ignitions that occur near homes and commercial buildings. There is clear science that demonstrates that a zone 0 (a.k.a. a 0-5 noncombustible zone) is essential to help homes and buildings resist embers and the development of spot fires adjacent to the building. (See demonstration video at <https://disastersafety.org/wildfire/protect-your-home-from-wildfire/>) Incorporating a 0 to 5-foot noncombustible zone would address the missing piece in defensible space protection.

I have attached a few thoughts around defensible space in relation to the recent efforts with AB 1516 (2019) that may be helpful to this conversation.

Thanks for your time and consideration of this request.

Warmest regards,

Yana Valachovic
County Director and Forest Advisor, RPF #2740
yvala@ucanr.edu

California needs improved defensible space messaging

...to save lives, protect homes, and other vital resources

Defensible space must include a 0 to 5-foot noncombustible zone:

- Wildland fires spread** by a combination of a moving flame front and the **wind distribution of burning embers**. Embers are small pieces of plants, trees, or buildings that are light enough to be blown through the air and can result in the rapid spread of wildfire by where embers are blown ahead of the main fire, starting new fires.
- Home and building loss during wildfires occur as a result of some part of the building igniting from one or more of the three basic wildfire exposures: 1) embers, 2) radiant heat, and 3) direct flame contact. **Embers cause the majority of wildfire home ignition by directly igniting the home or igniting vegetation or materials on or near your home** that results in flames touching the house or a high heat (radiant heat) exposure that may directly ignite combustible siding or break glass in a window.
- The 0 to 5-foot noncombustible zone addresses the missing piece in defensible space protection. California's current defensible code (PRC 4291) that does not address near home vegetation and **does not protect homes and buildings from ember-driven ignitions** that occur near homes and commercial buildings.
- Adopting 1516 would help provide improved messaging for California.** Educational messaging has not consistently addressed (see Figure 1) the vulnerability of homes and buildings to the ignition of combustible materials in the area close to the home (i.e. the 0 to 5-foot zone).
- By working from the house outward there are many ways that **residents and business owners can participate in creating their own fire resilience.**

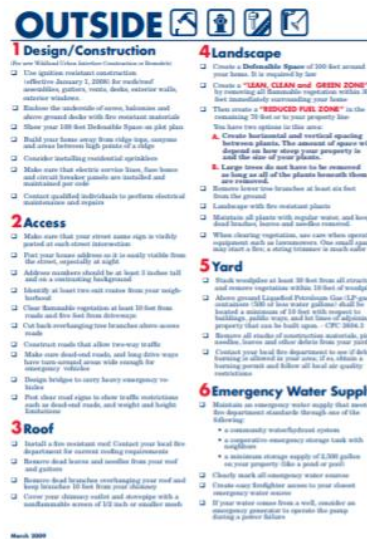


Figure 1. California has been a leader in defensible space guidance (PRC 4291) and construction code policy with Chapter 7A, however, given new awareness of the importance of the noncombustible zone, educational materials need consistent messaging. See point 1 where vegetation is allowed immediately around the house.

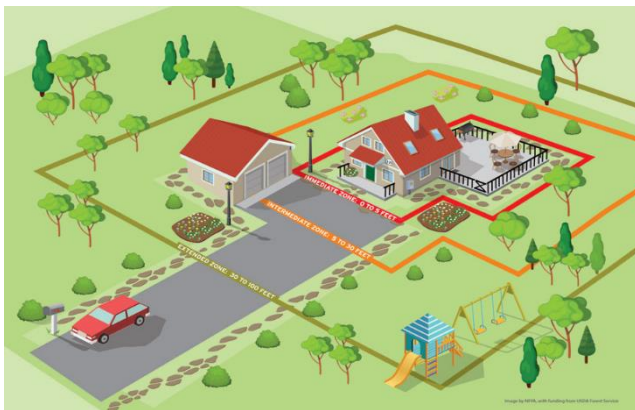


Figure 2. Many organizations in the US and California have already moved to incorporating a noncombustible zone, however, none have as much influence on Californian's behavior as CAL FIRE does. Image courtesy of the National Fire Protection Association.

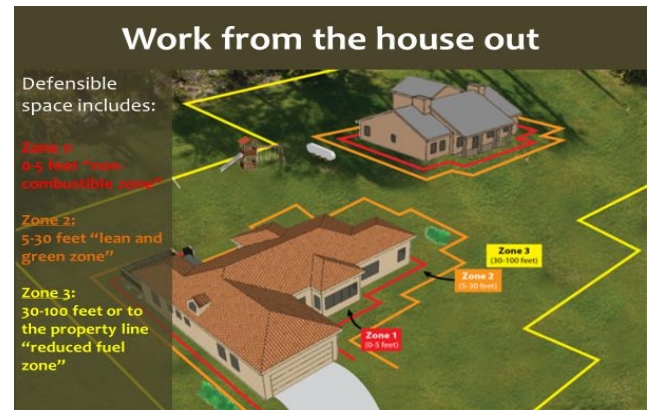


Figure 3. Both UC Cooperative Extension and the Insurance Institute for Business & Home Safety (IBHS) have adopted a three-zone system demonstrating the importance of a noncombustible zone 5-feet outward of a building. Image is courtesy of IBHS.

Why invest in defensible space?

6. **Ember-ignitions are responsible for the majority of home ignitions.** Wildfires that have had the highest number of home loss all have had a significant component of wind (e.g. Tunnel Fire, Tubbs Fire, Cedar Fire, Camp Fire, etc.)
7. The National Fire Protection Association/ Firewise, Insurance Institute for Business & Home Safety (IBHS), UC Cooperative Extension, California Fire Safe Council, FIRESAFE Marin, University of Nevada Living with Fire (among others) all **have adopted 0 to 5-foot noncombustible language** as part of their defensible space and home hardening guidance. It is important to create unified educational messaging to improve the resilience of California's homes and businesses.
8. **California's building code (Chapter 7A) is helping** reduce the vulnerability of homes to wildfire, however, it would be bolstered by improvements in California's Defensible Space Code (PRC 4291). The town of Paradise had 142 new homes built to the 2008 Chapter 7A standards; however, only 42% survived. The good news is that the trend is improving with the new construction codes, but we could be doing better. The addition of the 0 to 5-foot **noncombustible zone is the missing ingredient.**
9. The cities **Paradise and Redding** had homes that survived their 2018 wildfires, but had **significant damage because of the lack of near-home defensible space**, resulting in cracked windows, entry into the under eave vents, and fascia combustion (see Figure 5).
10. We must do everything we can to help prevent the tragedies of the 2017 and 2018 fire seasons. **AB 1516 is an important tool to help California achieve fire resiliency.**

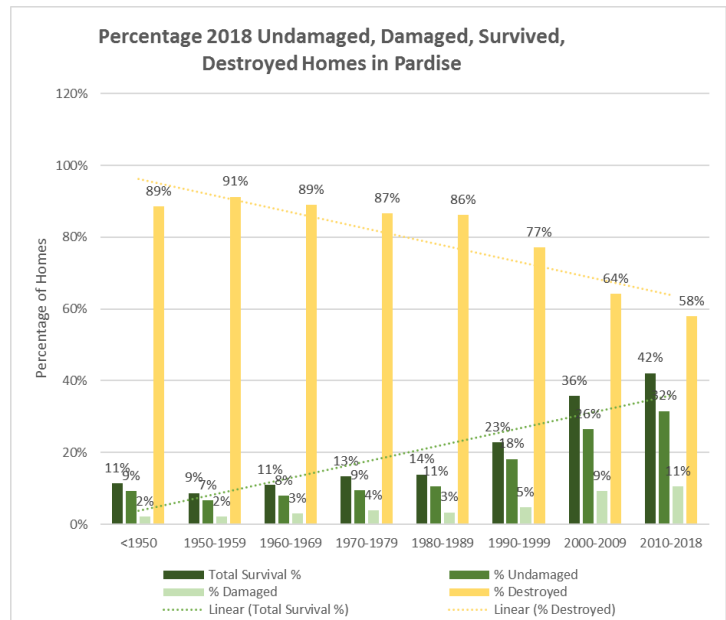


Figure 2. Data from the Camp Fire demonstrating that home survival rates in Paradise are improving with 2008's Chapter 7A construction standards. The noncombustible zone is the missing element in fire resiliency.



Figure 3. Cracked windows on a newly constructed Paradise home attributed to the use of combustible mulches surrounding the home (left image), cracked windows in Redding attributed to embers igniting combustible mulch and landscape plants (middle image), and new research from IBHS demonstrates the importance of incorporating a noncombustible zone (right image with rock mulch on the right-hand side). See <https://disastersafety.org/wildfire/protect-your-home-from-wildfire/> for more details on the research.)



November 22, 2019

Received 11/22/19
Board of Forestry and Fire Protection

Mr. Matt Dias, Executive Officer
California Board of Forestry and Fire Protection
1416 Ninth Street
PO Box 944246
Sacramento, CA 94244-2460

Board of Forestry and Fire Protection 2019 Regulations and Priority Review

Dear Mr. Dias:

California Department of Fish and Wildlife (CDFW) staff has considered potential changes to the California Forest Practice Rules (Cal. Code Regs., tit. 14 § 895.1 et seq.) in response to the Board of Forestry and Fire Protection (Board) announcement, *Board of Forestry and Fire Protection 2019 Regulations and Priority Review*, dated September 30, 2019. As the Board discusses its priorities and potential regulatory changes, CDFW recommends (1) retaining northern spotted owl Forest Practice Rules review as a Priority 1 topic, (2) revisiting and formally prioritizing the inclusion of botany-specific language in the Forest Practice Rules, and (3) reviewing and revising Forest Practice Rules pertaining to Board Sensitive Species and associated buffer zones and critical periods.

(1) Northern Spotted Owl

CDFW requests that the Board's Forest Practice Committee retain "Review of Forest Practice Northern Spotted Owl Rules" as a Priority 1 topic for 2020. The Board initially prioritized this item after CDFW's first request in 2017. Since then, the Board has facilitated numerous discussions and heard testimony from stakeholders, as detailed in the Board's 2018 Annual Report. However, the Board's Forest Practice Committee has not identified a problem statement due, in part, to numerous parallel activities surrounding northern spotted owl management. CDFW believes that recent developments may inform the Board's approach to developing a problem statement and ultimately reviewing the northern spotted owl rules:

- CDFW facilitates an executive level group including the U.S. Fish and Wildlife Service (USFWS), California Department of Forestry and Fire Protection (CAL FIRE), and Board staff to enhance interagency coordination of northern spotted owl conservation and management topics.
- Landowner concerns have been heard, and are being examined and addressed at various levels: CDFW staff are available for consultations and

pre-consultations; the USFWS is revising its “no take” guidance documents (Attachments A and B) to specify flexibility under certain scenarios; CAL FIRE is leading an effort to develop a programmatic Spotted Owl Resource Plan for portions of northeastern California; and the USFWS has established a working group to produce a Programmatic Safe Harbor Agreement for northern spotted owl.

- CDFW released the Spotted Owl Observations Database Management Framework¹ to address recurring questions related to the Spotted Owl Observations Database processes. This public document increases transparency and provides clarity about CDFW’s spotted owl data, especially for abandonment and invalidation of northern spotted owl activity centers. Additionally, CDFW presented an overview of this framework to the Board in April 2019 and continues to make outreach efforts to stakeholders emphasizing the importance of providing high quality spotted owl data to the database manager and to CDFW review team staff during timber harvest plan review.
- The barred owl threat to northern spotted owls continues to be a top concern and priority. By facilitating the Barred Owl Science Team (BOST) CDFW and our partners support northern spotted owl conservation and recovery by providing scientific review and recommendations regarding the threat of barred owl to resource management agencies.

CDFW looks forward to working with the Board to construct a formal problem statement and begin to review and update the Forest Practice Rules for northern spotted owl.

(2) Botany Regulations

CDFW requests that the Board prioritize strengthening the Forest Practice Rules to include specific rules for botanical resources. CDFW initially made this request to the Board in November 2018 that was further supported by a related presentation at the May 2019 Board meeting in Chico.

The Forest Practice Rules contain no botany-specific regulations. Instead, the timber harvesting process relies on guidance documents written by CDFW and CAL FIRE to fill in the regulatory gaps. The omission of scoping, mitigation, and management practices for botanical resources creates regulatory uncertainty and results in avoidable impacts to these resources. Augmenting the Forest Practice Rules will provide clear direction to applicants prior to plan submittal, reduce plan review time, and lead to more flexible management strategies for these resources.

¹ Spotted Owl Observations Database Management Framework is posted online:
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=166159&inline>

CDFW is ready to collaborate with the Board and stakeholders to develop rules for the disclosure and protection of California's botanical resources.

(3) Buffer Zones for Sensitive Species

CDFW requests that the Board revisit the rules that protect the nests of sensitive species found in Forest Practice Rules Section 919.3 [939.3, 959.3]. This section contains rules governing nest buffers and critical periods for all Board of Forestry Sensitive Species found in Forest Practice Rules Section 895.1, except for California condor, great gray owl, northern spotted owl, and marbled murrelet. While northern spotted owl and marbled murrelet are addressed in their own Forest Practice Rule sections, great gray owl and California condor are only mentioned in Forest Practice Rules Section 895.1. Identifying nest buffers and critical periods for these Board of Forestry Sensitive Species in Forest Practice Rules Section 919.3 will not only improve consistency of the Forest Practice Rules, but will improve the timber harvesting process and allow for greater conservation of imperiled forest species.

Additionally, CDFW believes that the list of Board of Forestry Sensitive Species found in Forest Practice Rules Section 895.1 would benefit from several additions, including from guilds other than birds. Denning mammalian species, such as marten and fisher, would be a logical choice for inclusion, as buffers to mammalian den sites are largely analogous to buffers to avian nest sites. Many mammals have long periods of adherence to natal den sites and den sites may be reused in future years—similar to nesting bird behavior.

CDFW is interested in augmenting the list of Board of Forestry Sensitive Species and working with the Board and stakeholders to develop clear language that will benefit California's sensitive species and timberland owners.

Mr. Matt Dias, Executive Officer
California Board of Forestry and Fire Protection
November 22, 2019
Page 4

Conclusion

The topics outlined above will increase the efficiency, effectiveness, and transparency of the timber harvesting review process. CDFW seeks to work collaboratively with the Board, CAL FIRE, and stakeholders to promote regulatory changes and solutions that provide clarity to the Forest Practice Rules, increase resource protection, and improve regulatory certainty for project proponents. Thank you for considering CDFW's requests. If you have any questions about the topics included in this letter, please contact Isabel Baer at (916) 651-3110 or isabel.baer@wildlife.ca.gov. CDFW looks forward to working with the Board and its staff.

Sincerely,



Richard Macedo, Branch Chief
Habitat Conservation Planning Branch

Attachment

cc: J. Keith Gillless, Ph.D, Chair
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ec: California Board of Forestry and Fire Protection
publiccomments@bof.ca.gov

California Department of Fish and Wildlife

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EDMUND G. BROWN JR., Governor
 CHARLTON H. BONHAM, Director



November 15, 2018

Mr. Matt Dias, Executive Officer
 California Board of Forestry and Fire Protection
 PO Box 944246
 Sacramento, CA 94244-2460

Dear ^{Matt} Mr. Dias:

2018 PRIORITIZATION OF FOREST PRACTICE RULE UPDATES FOR BOTANICAL RESOURCES

The California Department of Fish and Wildlife (CDFW) requests that the California Board of Forestry and Fire Protection (Board) consider reviewing the California Forest Practice Rules (Cal. Code Regs., tit. 14, § 895.1 et seq.) to augment the rules for evaluating impacts to botanical resources related to timber harvesting. In recognition of the botanical questions that routinely arise during the timber harvesting review process, CDFW convened an internal working group in early 2017 to review the Forest Practice Rules related to botanical resources and the management of botanical resources on private timberlands. The outcome of this working group is CDFW’s recommendation to augment the Forest Practice Rules for botanical resources to make the timber harvesting review process more effective and efficient.

Clear direction in the Forest Practice Rules will increase the likelihood that potentially significant impacts to botanical resources will be addressed by applicants prior to timber harvesting plan (plan) submittal, and reduce the time and effort necessary to complete plan review. A significant proportion of CDFW’s review effort is dedicated to identifying potential impacts to botanical resource issues, and comments often recommend routine scoping, surveying, or protection. Appendix 3 illustrates some of the potentially significant, adverse impacts that may occur during timber harvesting operations. Many of these impacts could be reduced to a level below significant through routine best management practices implemented during plan preparation and implementation. Augmenting the Forest Practice Rules specific to botanical resources would minimize impacts and increase efficiency for agency and stakeholder plan participants.

More thorough plan disclosure of botanical resources via the Forest Practice Rules has the added benefit of leading to more flexible, effective management strategies for these resources. Thorough documentation of botanical resources, including species’ locations and monitoring of known populations, will contribute to a better understanding of how botanical resources respond to timber harvesting. Such information would allow CDFW and stakeholders to focus review and management efforts on a smaller subset of species needing specific protection, resulting in more defensible and effective

Conserving California’s Wildlife Since 1870

management practices over time.

Background and Need

California has more plant species than any other state in the nation (approximately 6,500 native species), and more than one-third of these are found nowhere else in the world (CNPS 2018). However, 284 species, subspecies, and varieties of native plants are designated as rare, candidate, threatened, or endangered by state or federal law (CDFW 2018a), and over 2,000 more plant taxa are considered to be of conservation concern (CDFW 2018b). According to California Natural Diversity Database (CNDDDB) spatial records, approximately 12,904 special-status plant occurrences have been documented in forested ecosystems (see Appendix 1). There is also a high diversity of plant communities in California, in which 53 percent are considered potentially sensitive (1,347 out of 2,555 plant associations are designated a State Rank of 1-3) (CDFW 2018c).

California law related to timber harvesting establishes the Legislature's intent in the Forest Practice Act that timber harvesting be conducted via "an effective and comprehensive system of regulation" while protecting natural resources (Pub. Resources Code, §§ 4512 & 4513). Likewise, the Forest Practice Rules state "the goal of forest management on a specific ownership shall be the production or maintenance of forests which are healthy and naturally diverse, with a mixture of trees and under-story plants..." (Cal. Code Regs., tit. 14, § 897, subd. (b)(1)). In 2012, Assembly Bill (AB) 1492 passed with direction from the California Legislature to identify areas to improve efficiencies and protect natural resources during the timber harvesting review process (Pub. Resources Code, § 4629.2).

Agencies and land managers have tried to address gaps in the current Forest Practice Rules related to botanical resources through development of guidance documents. In 2005 CDFW developed timber-specific botanical survey guidelines (CDFW 2005) to address many of the common botanical issues that arise during reviews and inspections. A 2009 memorandum issued by the California Department of Forestry and Fire Protection (CAL FIRE 2009), describes practices to address "special-status plants" (rare, threatened or endangered listed species, or species that meet the criteria of California Environmental Quality Act (CEQA) Guidelines §15380(d)) during the scoping process for timber harvesting plans. Landowners address botanical resources through various mechanisms, such as project-specific surveys and protection measures, and may also implement property-wide management plans or agreements.

Botanical scoping and survey processes, and the application of protection measures to avoid significant adverse impacts to botanical resources have been employed inconsistently in timber harvesting plans. In 2016, 44 percent and in 2017, 37 percent of first review comments from CDFW's Region 1 Interior Timberland Conservation Program, were specific to eliciting information about botanical resources missing from

applicants' plans. Commonly addressed topics are shown in Appendix 2.

It is unclear whether botanical resources are being adequately addressed during plan review process and if plan-specific protection measures are effective. Because the Forest Practice Rules do not contain disclosure and protection standards specific to botanical resources, protection measures have been applied inconsistently. Further, landscape-level data for plant populations and plants' responses to timber harvesting is either not collected or is inefficiently used to guide management recommendations. As submitted to CAL FIRE, plan-specific botanical protection measures often employ a one-size-fits-all approach, which may not reflect the diversity of California's native plants and plant communities and their varied responses to timber harvesting.

Healthy plant communities are heterogeneous and resilient environments, adapted to dynamic ecological conditions. In recognition of changing landscape conditions associated with timber harvesting, as well as with other factors such as climate change and severe fires, botanical best management practices need to evolve. While there will always be a need for botanical surveys (i.e. when new species are described, to determine if plants have colonized unoccupied habitat, or when projects are proposed in areas that have never been surveyed) many timberland owners have already expended considerable effort to locate botanical resources on their properties. Having years of botanical surveys on many areas of private timberlands available can allow for a shift in resources towards the active management of botanical resources. Active management practices, compared to common hands-off approaches will benefit the plants while also allowing flexibility in conducting timber operations. CDFW suggests the Board develop a framework for botanical surveys, and shift the focus of botanical resource protection from comprehensive inventorying and avoidance of species, to targeted studies and active management.

Conclusion

California has many unique and rare botanical resources that are in need of protection and management. However, the current Forest Practice Rules' omission of scoping, mitigation, and management practices for botanical resources creates uncertainty and results in avoidable impacts to these resources. Augmenting the Forest Practice Rules to recommend routine scoping, surveying, and protection of botanical resources will provide clear direction to applicants prior to plan submittal, reduce the time and effort necessary for CDFW and other review team agency staff to complete plan review, and lead to more flexible, effective management strategies for these resources.

CDFW asks that the Board consider this request to prioritize the evaluation of existing Forest Practice Rules pertaining to botanical resources during the 2019 rule-making session. CDFW has been working to evaluate botanical regulatory changes for several months and would welcome the opportunity to discuss our findings with the Board. CDFW is committed to working with the Board and stakeholders to develop efficient and

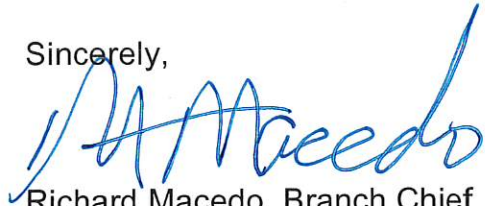
Mr. Matt Dias, Executive Officer
California Board of Forestry and Fire Protection
November 15, 2018
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effective botanical rules.

Please see the CDFW Native Plant Program website at:
<http://wildlife.ca.gov/Conservation/Plants> for more information on rare plant biology,
laws, and best management practices. Additional information specific to timber
harvesting review is provided at: <http://wildlife.ca.gov/conservation/timber>.

If you have questions about this letter or would like further information, please contact
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Sincerely,



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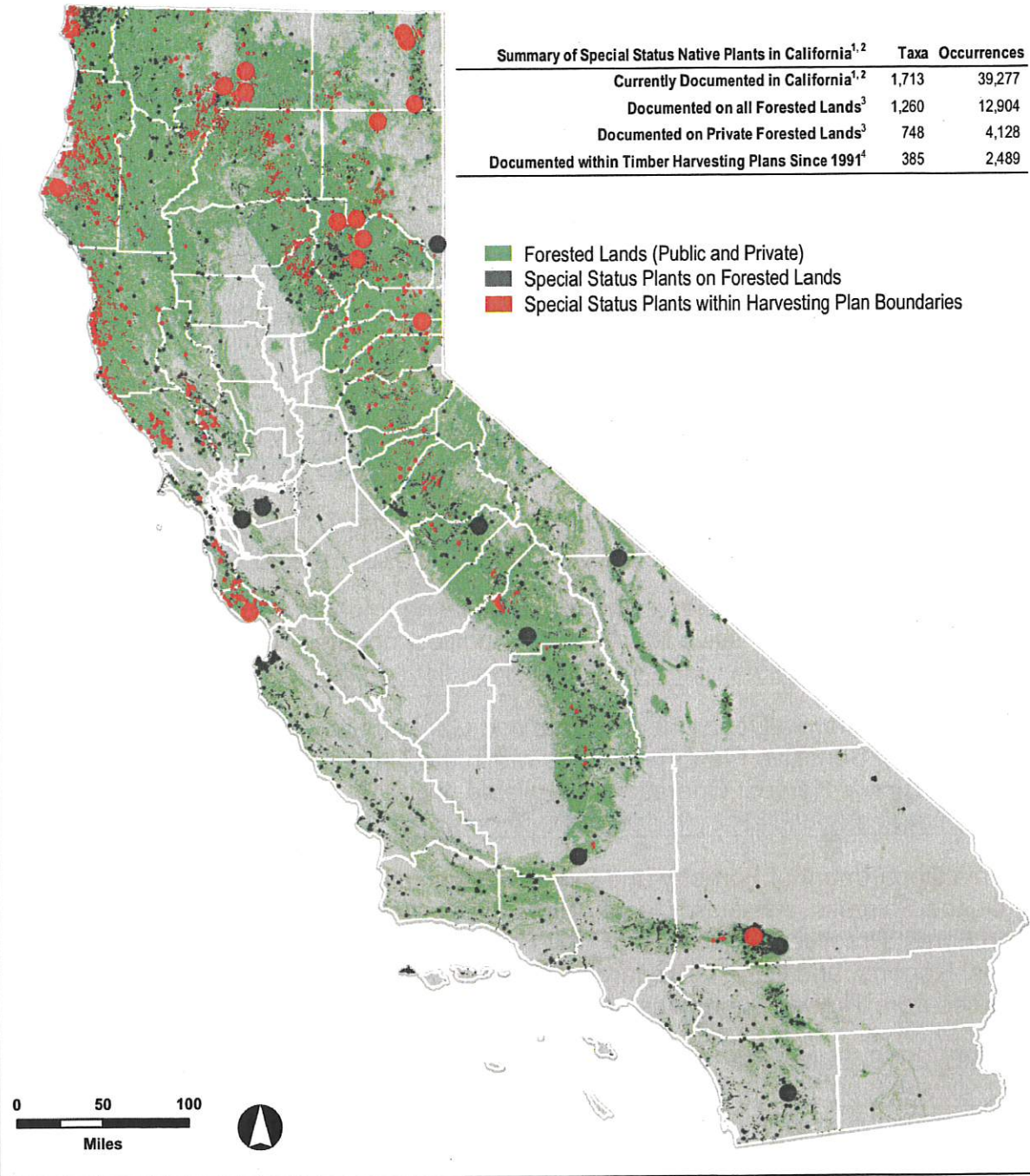
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Appendix 1. Special Status Native Plants Documented on Forested Lands in California 1, 2



- 1) Data derived from the California Natural Diversity Database (CNDDDB), accessed 6/29/2018 (CDFW, 2018d). The CNDDDB is a presence-only database, no inference can be made regarding lands that have never been surveyed. For more information regarding the CNDDDB see Bittman's article in Fremontia (2001).
- 2) Special Status Plants in this map include plants listed or proposed for listing under the Federal Endangered Species Act (ESA), the California Endangered Species Act (CESA), the Native Plant Protection Act (NPPA) and/or California Rare Plant Rank (CRPR) Rank 1 and 2. See CDFW's 2018 protocols for more in-depth description of "Special Status Plants" (CDFW, 2018d).
- 3) Data are approximate, private forested lands derived from subtracting public lands (BLM, 2018) from forested lands (USGS, 2016).

Appendix 2. Topics Commonly Addressed by CDFW During Plan Review for Botanical Resources	
Botanical report general	<ul style="list-style-type: none"> • Missing prior consultation information or incorrect information provided • Report mistakenly truncated
Scoping	<ul style="list-style-type: none"> • Entirely missing from plan • Coverage inadequate and missing plants (a minimum 9-quad search is recommended; however, plants other than those captured in the 9-quad search may have potential to occur in the plan area) • Suitable habitat disclosure inadequate/rationale inaccurate • Sensitive natural communities not addressed • Includes incorrect species' names and/or rankings • Missing, or unclear • Not conducted to most current CDFW protocol level, or of equivalent quality • Spatial coverage omissions, e.g., proposed roads, harvest units, and or high potential habitat omitted, meadow restoration • Density too sparse throughout habitats • Timing inadequate • Sensitive natural communities likely present and need further assessment and disclosure • Resulting survey plant list includes incorrect species' names and/or rankings
Sensitive species	<ul style="list-style-type: none"> • CEQA Guidelines §15380 species inadequately addressed vs. Federal and State listed species • Disclosure of California Rare Plant Rank (CRPR) 3s and 4s lacking
Positive findings	<ul style="list-style-type: none"> • Disclosure details inadequate/missing - CNDDDB form (or equivalent population data) submission required to CDFW per CEQA (Pub. Resources Code § 21003 subd. (e)). • Mitigation measures inadequate/unclear, CDFW suggests consultation to help address this • Adequate defaults needed for future surveys or if additional rare plants found during future operations, until consultation with CDFW occurs • Sensitive natural communities mitigation measures inadequate, CDFW suggests consultation to help address this • Maps of positive findings inadequate or unclear • Maps with positive findings missing or not included in Section II

Noxious weeds	<ul style="list-style-type: none"> • Present and need to be addressed to assess potential significant adverse impacts
Plan other	<ul style="list-style-type: none"> • General disclosure inadequate, what operations will occur on non-timbered habitat, CDFW cannot assess risk to plants • General format issues, discrepancies between botany in different sections (I - V) of the plan
Cumulative impacts	<ul style="list-style-type: none"> • Herbicide cumulative impacts and/or other concerns • Revise plan to include impacts to botanical resources in Section IV
NTMP	<ul style="list-style-type: none"> • Section II need provision or clarification for subsequent NTMP scoping/survey updates in Section II
Reports not submitted with plan	<ul style="list-style-type: none"> • Missing specification that report will be amended into the plan appropriately • - Missing specification that botanical report will be submitted to CDFW, a sufficient number of days prior to operations to allow agency review of the botanical report or as soon as complete • Missing language specifying CNDDDB forms (or equivalent population data) will be submitted to CDFW per CEQA [Pub. Resources Code §21003 subd. (e)]. • NTMP missing provision for subsequent NTMP scoping/survey updates in Section II • Clarification needed that botanical reports are required for negative surveys

Appendix 3. Examples of Adverse Impacts of Timber Operations on Special-Status Plants	
Timber Operation	Impact
Road/ landing/ crossing construction	Crushing with equipment → direct mortality or injury Permanent or temporary loss of habitat
Timber felling	Crushing with equipment or felled trees, or trampling → direct mortality or injury
Tractor yarding	Crushing with equipment → direct mortality or injury Soil disturbance → creates conditions favorable to weeds Soil compaction → physiological stress ^a ; creates conditions favorable to weeds
Tree removal ^b	Reduced shade → physiological stress Vegetation community changes → loss of host species for special-status parasitic plants Vegetation structural changes → increased mammalian herbivory; modification of fire frequency and intensity Decreased relative humidity → physiological stress
Use of logging roads	Dust → reduced photosynthesis, reduced pollination
Water drafting	Reduced water availability → physiological stress
Herbicide application	Direct mortality or injury
Pile burning	Direct mortality or injury
Soil ripping	Direct mortality or injury
Replanting	Eventual excess shade if tree density increased → physiological stress
Construction spoils disposal	Plants buried → direct mortality or injury Introduction of weed seeds
Rock quarry	Permanent or temporary loss of habitat Dust → reduced photosynthesis, reduced pollination
Notes:	
a. Physiological stress can lead to plant mortality.	
b. Some environmental changes, such as tree canopy removal, may be beneficial to some species in some circumstances.	