

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

**Wet Areas, Meadows, and Restoration Activities, 2024
Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations
Division 1.5, Chapter 4,
Subchapters 1, 4, 5, 6, and 7**

INTRODUCTION INCLUDING PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS (pursuant to GC § 11346.2(b)(1)) ...NECESSITY (pursuant to GC § 11346.2(b)(1) and 11349(a))....BENEFITS (pursuant to GC § 11346.2(b)(1))

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973, PRC § 4511, *et seq.* (FPA) the State Board of Forestry and Fire Protection (Board) is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands.

PRC § 4551 requires the Board to "...adopt 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.

Furthermore, PRC § 4551.5 requires that these regulations adopted by the Board "...apply to the conduct of timber operations and shall include, but shall not be limited to, measures for fire prevention and control, for soil erosion control, for site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities, for water quality and watershed control, for flood control, for stocking, for protection against timber operations that unnecessarily destroy young timber growth or timber productivity of the soil, for prevention and control of damage by forest insects, pests, and disease...".

During the 2023 call for Regulatory Review the California State Water Resources Control Boards raised an issue with the definitions for the terms "Meadows and Wet Areas" and "Wet Meadows and Other Wet Areas". The two terms originated from different Forest Districts, and have a different set of uses. The term "Meadows and Wet Areas" is used in the Forest Practice Rules to describe both areas that do not support a crop of trees and areas that can be covered by the restoration special prescription described in §913.4(e) (§933.4(e), 953.4(e)). "Wet Meadows and other Wet Areas" is used to define areas that require additional measures to prevent ecological impacts. The two terms have very similar definitions which rely on a combination of surface moisture and the presence of aquatic vegetation, grasses, or forbs. The existing definitions also do not account for shifts in climate trends. An area that is "moist on the

surface” for most of a year with historically average precipitation may not meet that criterion in a drought year, and an area that is “moist on the surface” during a flood year may not provide the species habitat and other ecosystem services that a wet area is presumed to provide. The potential vegetation options in the existing definitions include aquatic plants, which are at least partially submerged in water, and grasses and forbs, which include both species that can only grow in saturated soils and species that can survive in a wide range of soil moisture levels. This lack of consistency means that the size of wet areas waxes and wanes from year to year leading to confusion about protections and an atmosphere of regulatory uncertainty.

Current regulations for the Aspen, and Meadows and Wet Areas restoration special prescription (§§913.4(e), 933.4(e), 953.4(e)) apply only to removal of trees from wet areas and meadows that are currently dominated by non-woody vegetation. The century-long exclusion of fire and other traditional ecological management tools from the forests of California has led to many meadows being overgrown by trees. Current regulation does not allow for restoration to the historical boundaries of meadows and wet areas, limiting the ability to expand these vital habitats.

The **problem** is that the definitions of the terms “Meadows and Wet Areas” and “Wet Meadows and Other Wet Areas” conflate “meadows” and “wet areas”, two disparate ecological systems with different management requirements. The two existing definitions also do not account for multi-year climate and rainfall trends. In wet years, an area could meet the surface moisture requirement and be dominated by dryland grass species, would fall under the definition for “Wet Meadows and Other Wet Areas”, and would merit the protections accorded to “Wet Meadows and Other Wet Areas”. In a dry year, a different area could lack the surface moisture requirement and be dominated by woody hydrophytic plants, would not meet the definition for “Wet Meadows and Other Wet Areas”, and would not merit those protections.

Additionally, within the “Aspen, Meadows and Wet Areas Restoration” special prescription as described within 14 CCR §§ 913.4(e), (933.4(e), 953.4(e)) meadow restoration via conifer removal is restricted to areas that are currently meadows. As meadows are by definition dominated by grass species, meadows that have been overgrown by conifers due to historical shifts in forest management would not meet the definition and could not be restored using this regulatory pathway.

The **purpose** of the proposed action is to replace the defined term “Wet Meadows and Other Wet Areas” with the new defined term “Wet Areas”, to remove the defined term “Meadows and Wet Areas” and replace it with an undefined term for “meadows” and the new defined term “Wet Areas”, and to update the Aspen, Meadows, and Wet Areas Restoration Special Prescription to allow for restoration of the historical extent of meadows and wet areas.

The **effect** of the proposed action is to align definitions with appropriate ecological systems, allow for accurate protections of environmental resources in an uncertain climate, and expand the potential ecosystems eligible for restoration work.

The **benefit** of the proposed action is rules that allow for the protection of wet areas regardless of annual variation in rainfall and climate, expanded tools for the restoration of meadows and wet areas, and the production of definitions that are clearer, more consistent, and accurately reflect the operational protections required by the Rules.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL (pursuant to GOV § 11346.2(b)(1)) AND THE RATIONALE FOR THE AGENCY'S DETERMINATION THAT EACH ADOPTION, AMENDMENT OR REPEAL IS REASONABLY NECESSARY TO CARRY OUT THE PURPOSE(S) OF THE STATUTE(S) OR OTHER PROVISIONS OF LAW THAT THE ACTION IS IMPLEMENTING, INTERPRETING OR MAKING SPECIFIC AND TO ADDRESS THE PROBLEM FOR WHICH IT IS PROPOSED (pursuant to GOV §§ 11346.2(b)(1) and 11349(a) and 1 CCR § 10(b)). *Note: For each adoption, amendment, or repeal provide the problem, purpose, and necessity.*

The Board is proposing action to amend 14 CCR §§ 895.1, 912.7 (932.7, 952.7), 913.4 (933.4, 953.4), 916.3 (936.3, 956.3), 921.4 (961.4), 923.1 (943.1, 963.1), 923.2 (943.2, 963.2), 923.4 (943.4, 963.4), 923.9 (943.9, 963.9), 953.7, 1034, 1038.2, 1038.4, 1051, 1051.4, 1072.4, 1090.5, 1092.09, 1094.6, 1094.8

Amend §895.1. Definitions

The proposed action replaces the definition for “Wet Meadows and Other Wet Areas” and replaces it with a definition for “Wet Area” and removes the definition “Meadows and Wet Areas”. The purpose of this change was to provide a new definition that does not conflate “meadows” and “wet areas”, two different types of ecological systems, and allows for regulatory management of these systems between years with highly variable rainfall. This was necessary because the similarity of the two existing defined terms with separate meanings caused confusion and difficulties with implementation, as did the combination of different ecological systems within the same term.

The proposed action removes the reference to “wet areas” from the definition of “Connected Headwall Swale”, The purpose of this amendment is to remove a phrase that now has a different meaning in the Rules, thereby improving clarity and accuracy and to update defined terms in other parts of the rules. The proposed action also capitalizes the use of “Wet Areas” in the definition for “Riparian”. The purpose of this amendment is to update the use of a phrase to the defined term now present in the rules. These amendments are necessary to improve the consistent implementation of the regulations.

Amend § 912.7 Resource Conservation Standards for Minimum Stocking

The proposed action changes the wording in this list of habitats that do not normally bear a crop of trees and thus do not have minimum requirements for the number of trees per acre to replace the now-defunct term “Meadows and Wet Areas” with a reference to meadows and the new defined term “Wet Areas”. The purpose of this amendment is to remove an outdated defined term and replace it with an updated

defined term, thereby improving clarity and accuracy. This amendment is necessary to improve the consistent implementation of the regulations.

Amend § 913.4, 933.4, 953.4 Special Prescriptions

Throughout this section, the outdated defined term “Meadows and Wet Areas” is updated to the undefined term “meadows” and the defined term “Wet Area”. The purpose of the retention of “meadows” is to allow the use of the restoration special prescription under the broadest possible applicable conditions. This is necessary to allow for the restoration of these essential ecological systems.

The proposed action adds a provision to the Aspen, Meadows, and Wet Areas restoration special prescription that allows meadow and Wet Area restoration activities to occur within the historical boundaries of these systems, instead of only within the current boundaries of these systems. The purpose of this rulemaking is to allow the restoration of the full extent of meadow and wet area systems that have experienced conifer encroachment and hydrologic disruption in recent decades, and have consequently become smaller. This amendment is necessary to allow for the restoration of these essential ecological systems.

The proposed action updates a phrase that previously stated that, when restoring wet areas, consultation with the appropriate Regional Water Quality Control Board was required if the applicable basin plan identifies wet areas as a beneficial use. The rule text has been altered to specify that consultation with the appropriate Regional Water Quality Control Board must occur whenever any restoration of a wet area is proposed. This is necessary because the Water Boards currently do not use “wet areas” as terminology for ecological systems that meet the “Wet Areas” definition. This amendment is necessary to improve the consistent implementation of the regulations.

Amend § 916.3, 936.3, 956.3 General Limitations Near Watercourses, Lakes, Marshes, Wet Meadows and Other Wet Areas.

In this section, the outdated defined term “Meadows and Wet Areas” is updated to the undefined term “meadows” and the defined term “Wet Area”. The purpose of the retention of “meadows” is to allow the protection of noncommercial vegetation and soils within these environments. This is necessary to allow for the protection of these essential ecological systems.

Amend §921.4, 961.4 Stocking Requirements [Coast, Southern, STA]

In this section, the outdated defined term “Meadows and Wet Areas” is updated to the undefined term “meadows” and the defined term “Wet Area”. The purpose of the retention of “meadows” is to exempt these areas from stocking requirements. This is necessary because these ecosystems do not historically bear timber, and should not be used to defined overall stocking.

Amend § 953.7 Riparian Vegetation [Southern]

In this section, the outdated defined term “Meadows and Wet Areas” is updated to the undefined term “meadows” and the defined term “Wet Area”. The purpose of the retention of “meadows” is to allow the protection of noncommercial Riparian vegetation

in a wider range of environments. This is necessary to allow for the protection of these essential ecological systems.

§ 1038.2 Mapping Standards for Notices of Exemption

In this section the outdated term “Meadows and Wet Areas” is updated to the defined term “Wet Areas”, The purpose of this change is to be consistent with the use of the term to provide mapping requirements for Roads and Landings in other sections of the rules. This amendment is necessary to improve the clarity, consistency, and the consistent implementation of the regulations.

Non substantiative amendments

Capitalized and updated terms defined pursuant to 14 CCR § 895.1 and this Article throughout the amendments where appropriate.

ECONOMIC IMPACT ANALYSIS (pursuant to GOV § 11346.3(b)(1)(A) -(D) and provided pursuant to 11346.3(a)(3)

The effect of the proposed action is to remove references to terms that are no longer defined, provide a standardized definition and the general use of defined terms, clarify circumstances where consultation with the Regional Water Quality Control Boards is necessary, and provide a mechanism that allows for the restoration of historical meadow extent.

The proposed action represents a continuation of existing rules related to meadows and wet areas as defined under the Forest Practice Rules. There is no economic impact associated with the proposed action.

Creation or Elimination of Jobs within the State of California

The proposed action does not mandate any action on behalf of the regulated public and represents a continuation of existing forest practice regulations. It is anticipated that any firms or jobs which exist to engage in this work will not be affected. No creation or elimination of jobs will occur.

Creation of New or Elimination of Businesses within the State of California

The regulatory amendments as proposed represent a continuation of existing forest practice regulations and are intended to clarify in their application. Given that the businesses which would be affected by these regulations are already extant, it is expected that proposed regulation will neither create new businesses nor eliminate existing businesses in the State of California.

Expansion of Businesses Currently Doing Business within the State of California

The regulatory amendments as proposed represent a continuation of existing forest practice regulations and are intended to clarify their application. The proposed regulation will not result in the expansion of businesses currently doing business within the State.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The action will result in increased clarity and consistency in the Forest Practice Rules. The proposed action will also provide environmental benefits by accounting for the impacts of variation from precipitation on water-dependent ecological systems. The proposed action will not affect the health and welfare of California residents or worker safety.

Business Reporting Requirement (pursuant to GOV § 11346.5(a)(11) and GOV § 11346.3(d))

The proposed regulation does not require a business reporting requirement.

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)). The proposed action would result in increased clarity and consistency in the Forest Practice Rules, and as a result, promote a more clear and transparent governance. The proposed action will not affect the health and welfare of California residents or worker safety.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT RELIED UPON (pursuant to GOV SECTION 11346.2(b)(3))

The Board of Forestry and Fire Protection relied on the following list of technical, theoretical, and/or empirical studies, reports, or similar documents to develop the proposed action:

1. Weixelman, Dave A., et al. "A field key to meadow hydrogeomorphic types for the Sierra Nevada and southern Cascade Ranges in California." US Forest Service, Pacific Southwest Region, Vallejo, California, USA (2011).

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION CONSIDERED BY THE BOARD, IF ANY, INCLUDING THE FOLLOWING AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES (pursuant to GOV § 11346.2(b)(4)(A) and (B)):

- **ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACTS ON SMALL BUSINESS AND/OR**

- **ALTERNATIVES THAT ARE LESS BURDENSOME AND EQUALLY EFFECTIVE IN ACHIEVING THE PURPOSES OF THE REGULATION IN A MANNER THAT ENSURES FULL COMPLIANCE WITH THE AUTHORIZING STATUTE OR OTHER LAW BEING IMPLEMENTED OR MADE SPECIFIC BY THE PROPOSED REGULATION**

Pursuant to **GOV § 11346.2(b)(4)**, 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, 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.

Alternative 1: No Action Alternative

The Board considered taking no action, but this alternative was rejected because it would not address the problem.

Alternative #2: Make regulation less prescriptive

This action would replace the prescriptive standards for defining wet areas and expanding meadow restoration activities with performance-based regulations. This alternative may reduce clarity and consistency with other portions of the rules which rely upon the existence of the current operational limitations in order to ensure that forest resources are preserved.

Alternative #3: Proposed Action

Alternatives 1 and 2 would not be more effective or equally effective while being less burdensome or impact fewer small businesses than the proposed action. Specifically, alternatives 1 and 2 would not be less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation.

Additionally, alternatives 1 and 2 would not be more effective in carrying out the purpose for which the action is proposed and would not be as effective and less burdensome to affected private persons than the proposed action or would not be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action. Further, none of the alternatives would have any adverse impact on small businesses.

Prescriptive Standards versus Performance Based Standards (pursuant to GOV §§11340.1(a), 11346.2(b)(1) and 11346.2(b)(4)(A)):

Pursuant to **GOV §11340.1(a)**, agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be

reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the agency rulemaking process.

The proposed action is as prescriptive as necessary to address the problem and contains a mix of performance-based and prescriptive requirements. The prescriptive regulations proposed in this action are necessary in order to provide adequate clarity within the regulations.

Pursuant to **GOV § 11346.2(b)(1)**, the proposed action does not mandate the use of specific technologies or equipment.

Pursuant to **GOV § 11346.2(b)(4)(A)**, the abovementioned alternatives were considered and ultimately rejected by the Board in favor of the proposed action. The proposed action does not mandate the use of specific technologies or equipment, but does prescribe specific actions.

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))

The fiscal and economic impact analysis for these amendments relies upon contemplation, by the Board, of the economic impact of the provisions of the proposed action through the lens of the decades of experience practicing forestry in California that the Board brings to bear on regulatory development.

The meadow and wet area regulations within the proposed action represents a continuation of existing rules for Timber Operations conducted under the Forest Practice Rules. There is no economic impact associated with the proposed action.

The proposed action will not have a statewide adverse economic impact directly affecting businesses as it does not impose any requirements on businesses.

DESCRIPTION OF EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICT WITH THE CODE OF FEDERAL REGULATION (pursuant to GOV § 11346.2(b)(6))

The Code of Federal Regulations has been reviewed and based on this review, the Board found that the proposed action neither conflicts with, nor duplicates Federal regulations. There are no comparable Federal regulations related to conducting Timber Operations on private, state, or municipal forest lands.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS CEQA

CEQA requires review, evaluation, and environmental documentation of potential significant environmental impacts from a qualified Project. Pursuant to case law, the review and processing of Plans has been found to be a Project under CEQA.

Additionally, the Board's rulemaking process is a certified regulatory program having been certified by the Secretary of Resources as meeting the requirements of PRC § 21080.5.

While certified regulatory programs are excused from certain procedural requirements of CEQA, they must nevertheless follow CEQA's substantive requirements, including PRC § 21081. Under PRC § 21081, a decision-making agency is prohibited from approving a Project for which significant environmental effects have been identified unless it makes specific findings about alternatives and mitigation measures.

Further, pursuant to PRC § 21080.5(d)(2)(B), guidelines for the orderly evaluation of proposed activities and the preparation of the Plan or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program are required by the proposed action and existing rules.

The proposed action would be an added element to the state's comprehensive Forest Practice Program under which all commercial timber harvest activities are regulated. The Rules which have been developed to address potential impacts to forest resources, including both individual and cumulative impacts, project specific mitigations along with the Department oversight (of rule compliance) function expressly to prevent the potential for significant adverse environmental effects. In addition, clarity and consistency of Regulatory Definitions provide necessary framework for proposed activities.

In summary, the proposed action amends or supplements standards to an existing regulatory scheme and is not a mitigation as defined by CEQA. The Board concludes that the proposed action will not result in any significant or potentially significant adverse environmental effects and therefore no alternative or mitigation measures are proposed to avoid or reduce any significant effects on the environment (14 CCR § 15252(a)(2)(B)).