

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations**

NOTICE OF PROPOSED RULEMAKING

[Notice Published June 28, 2013]

“Modified Timber Harvest Plan Amendments, 2013”

Title 14 of the California Code of Regulations (14 CCR):

Division 1.5, Chapter 4, Subchapter 7, Article 2 – Timber Harvesting Plan

Amend:

§ 1051(a) Modified THP

[Includes revisions to § 1051(a)(1), § 1051(a)(2), § 1051(a)(4), § 1051(a)(5), § 1051(a)(6), § 1051(a)(7), § 1051(a)(8), § 1051(a)(9), § 1051(a)(10), § 1051(a)(12), § 1051(a)(13), § 1051(a)(14)]

§ 1051.1 Contents of Modified THP

The California State Board of Forestry and Fire Protection (Board) is promulgating a regulation to amend existing Forest Practice Rules for the Modified Timber Harvest Plan (MTHP). The proposed amendments were identified by the Board’s Forest Practice Committee over the course of numerous publicly-noticed meetings. The primary purpose of the amendments is to increase the utility of the existing conventional MTHP. This is to be accomplished through an increase in the maximum size of ownerships allowed to use an MTHP. Other amendments to the conditions and mitigations subsections of Section 1051(a) are similarly intended to promote the MTHP’s utility through improved operational flexibility.

PUBLIC HEARING

The Board will hold a public hearing on Wednesday, September 11, 2013, starting at 8:00 a.m., at the Resources Building Auditorium, 1st Floor, 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M., on Monday, August 12, 2013.

The Board will consider only written comments received at the Board office by that time and those written comments received in connection with oral testimony at the public hearing. The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Eric Huff
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA

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

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Public Resources Code Sections 4511, 4551 and 4551.5.
Reference: Public Resources Code Sections 4512, 4513, 4553, and 4582; and Government Code Section 11340.6.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973, Public Resources Code Section 4511, *et seq.* 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.

Public Resources Code Section 4551 requires the Board to adopt forest practice rules and regulations to, among other things, "...assure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish and wildlife, and water resources."

Existing forest practice regulations, 14 CCR § 1051, *et seq.* specify that a Modified Timber Harvest Plan (MTHP) may be filed with the California Department of Forestry and Fire Protection (*CAL FIRE*) for ownerships of 100 acres or less of timberland. These regulations further require that a series of prescribed conditions and mitigations be met in MTHP filings.

This proposed regulation would elevate the size of ownerships allowed to use a conventional MTHP to a maximum of 160 acres. In addition, the regulations modify the existing prescribed conditions and mitigations found in Sections 1051(a)(4) – 1051(a)(9), and 1051(a)(12). Specifically, revisions are proposed to existing provisions for heavy equipment operations, construction of new skid trails, construction and reconstruction of new logging roads, operations on slides and unstable areas, and heavy equipment operations in archaeological sites. These revisions are partly proposed to conform to the proposed maximum acreage increase. They are also partly intended to increase use of the conventional MTHP by smaller private timberland owners.

The proposed regulation would have no effect upon the existing Modified Timber Harvest Plan for Fuel Hazard Reduction (MTHP-FHR) regulations.

The regulation as proposed could result in highly localized beneficial effects upon the environment. These beneficial effects could be related to fire resiliency, habitat manipulation, and aesthetics. However, these prospective benefits are somewhat abstract and may occur at such small scales as to be indistinguishable from the surrounding landscapes. Regardless, it may be presumed at a minimum that the level of protective effect upon the environment will not be reduced as a result of this proposed regulation.

The proposed regulation is not expected to have an effect upon public health and safety, worker safety, the prevention of discrimination, or the promotion of fairness or social equity. Neither is the proposed regulation expected to result in an increase in the openness and transparency in business and government.

Board staff has evaluated whether or not the proposed regulation is inconsistent or incompatible with existing state regulations pursuant to GC § 11346.5(a)(3)(D) and determined that it is neither inconsistent nor incompatible. The proposed regulation is entirely consistent and compatible with existing Forest Practice Rules and the Z'Berg-Nejedly Forest Practice Act.

DISCLOSURES REGARDING THE PROPOSED ACTION AND RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The results of the economic impact assessment prepared pursuant to GC § 11346.5(a)(10) for this proposed regulation indicate that it will not result in an adverse economic impact upon the regulated public or regulatory agencies. Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California. While it may be speculated that the proposed regulation could benefit the environment, it is not expected to affect the health and welfare of California residents or improve worker safety.

The Board has made an initial determination that there will be no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost impacts on representative private persons or businesses:

The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The MTHP is a voluntary rather than compulsory permitting process available for use at the discretion of private timberland owners. In comparison to a conventional Timber Harvesting Plan (THP), the MTHP is already considered a less costly option. It is anticipated that the proposed amendments to the MTHP regulations would not significantly alter the already lower cost for MTHP preparation. Likewise, the costs associated with harvest operations under an MTHP as revised by the proposed regulations are not likely to be measurably affected.

Effect on small business:

No effect to small business is anticipated as the MTHP is a voluntary permitting process for timber harvesting. The existing MTHP is considered a lower cost alternative to the conventional THP and the proposed regulation is not anticipated to alter this condition.

Mandate on local agencies and school districts:

The proposed regulation does not impose a mandate on local agencies and school districts.

Costs or savings to any State agency:

The proposed regulation will not result in additional costs or savings to a State agency.

Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500:

The proposed regulation does not impose a reimbursable cost to any local agency or school district.

Other non-discretionary cost or savings imposed upon local agencies: The proposed regulation will not result in the imposition of non-discretionary costs or savings to local agencies.

Cost or savings in federal funding to the State:

The proposed regulation will not result in costs or savings in federal funding to the State.

Significant effect on housing costs:

The proposed regulation will have no effect upon housing costs.

Conflicts with or duplication of Federal regulations:

The proposed regulations neither conflict with, nor duplicate Federal regulations. There are no comparable Federal regulations for timber harvesting on State or private lands.

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a)(13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: Eric Huff
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-9633

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

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request. When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address.

All of the above referenced information is also available on the Board web site at:

http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html

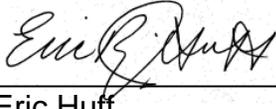
AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice.

The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.



Eric Huff
Regulations Coordinator
Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

“Modified Timber Harvest Plan Amendments, 2013”

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The California State Board of Forestry and Fire Protection (Board) is promulgating a regulation to amend existing Forest Practice Rules for the Modified Timber Harvest Plan (MTHP). The proposed amendments were identified by the Board’s Forest Practice Committee over the course of numerous publicly-noticed meetings. The primary purpose of the amendments is to increase the utility of the existing conventional MTHP. This is to be accomplished through an increase in the maximum size of ownerships allowed to use an MTHP. Other amendments to the conditions and mitigations subsections of Section 1051(a) are similarly intended to promote the MTHP’s utility through improved operational flexibility.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS

Between 1993 and 1995, the Board adopted a series of Forest Practice Regulations that allow a timberland owner with 100 acres or less to use an abbreviated timber harvest permitting process known as the Modified Timber Harvest Plan or “MTHP.” This permitting option includes strict operational constraints intended to reduce the potential for timber harvest-related adverse impacts to less than significant. It also specifies that timberland owners using the MTHP do not have to include a lengthy written cumulative effects analysis common to other conventional permitting options like the Timber Harvesting Plan (THP). In adopting the MTHP regulations, the Board hoped to alleviate some of the financial burden associated with harvest permitting imposed upon smaller private timberland owners.

Thompson and Dicus in their 2005 paper entitled, The Impact of California’s Changing Environmental Regulations on Timber Harvest Planning Costs, calculated the cost of a one-time harvest permit to be in excess of thirty-thousand

dollars (\$30,000.00). The permit cost does not include the annual or periodic expenses of property tax, insurance, or management activities such as erosion control; water, flora, and fauna monitoring; tree planting and timber stand improvement work; pre-commercial thinning and pruning; etc. It is widely recognized that this permitting cost can be prohibitive for small private timberland owners. The permitting cost is particularly limiting during periods of low timber values in log markets. The MTHP was initially adopted by the Board in the early 1990s to help combat the expense of permitting and encourage small private timberland owners to actively manage their timber. Since the Board's initial adoption, the expense of permitting has only increased and log market values have fluctuated considerably.

Like other economic sectors, the log and lumber markets have been depressed to all-time lows over the past several years. These conditions have again resulted in the shrinking of milling capacity and accompanying infrastructure. These localized losses are essentially permanent and significantly damaging to local economies. The shuttering of mills in some instances effectively eliminates management opportunities for small private landowners, particularly for those attempting to grow and harvest lower value tree species.

Use of the MTHP peaked in 1998 with 55 MTHP filings that year. Since then, MTHP filings have steadily declined to between 10 and 20 annually, and dropped to single digits between 2008 and 2010. In 2011-2012, just over ten MTHPs were filed. The decline of MTHP filings over the past decade is likely related to a number of factors. These factors may include ownership size and other constraints in the existing MTHP regulations, timber market value fluctuations, ownership changes, and use of other available permitting options. Of those factors, the only one the Board has any opportunity to alter is the constraints found in the existing MTHP regulations. The purpose of this proposed rulemaking is therefore to address ownership size and the other operational constraints imposed by the existing MTHP regulations.

It is hypothesized that increasing the maximum ownership size in the MTHP regulations would allow a larger number of small private timber owners to utilize this permitting option. The proposed amendments to the operational conditions and mitigations found in the numbered subsections of Section 1051(a) are likewise intended to increase the utility of the existing regulations.

SPECIFIC PURPOSE OF THE REGULATION

Article 2 Timber Harvesting Plan

Section 1051(a)

The proposed amendment to this existing rule section would elevate the maximum ownership size allowed to use this permitting option from 100 acres to 160 acres or a quarter ($\frac{1}{4}$) Section.

A quarter Section refers to a division of land in the Public Land Survey System that is approximately 160 acres or $\frac{1}{4}$ of an approximately 640 acre Section. Total acreage by Section can vary slightly due to unavoidable survey error associated with the curvature of the Earth. A quarter Section may therefore be slightly less than or more than 160 acres (differences are typically estimated at plus/minus 1% of 160 acres).

This rule section amendment is the fundamental element of the rulemaking proposal. It is proposed for the purpose of increasing the number of small private timber ownerships that may qualify for use of this abbreviated timber harvest permitting option.

Section 1051(a)(1)

The proposed amendment of this subsection essentially reiterates the acreage maximum previously specified in Section 1051(a). The purpose for this amendment is to maintain consistency with the acreage increase proposed in Section 1051(a).

Section 1051(a)(2)

The proposed amendment of this subsection is necessary to correct the existing inaccurate reference to existing regulations for evenaged regeneration methods. The existing rule reference leads the regulated public to the wrong location in the regulations for evenaged regeneration methods. Improved clarity and accuracy is therefore achieved by striking the reference to subsection (a) in favor of reference to the whole of Section 913.1 [933.1, 953.1] which completely defines evenaged regeneration methods.

Section 1051(a)(4)

The proposed amendment of this subsection is specifically intended to create more operational flexibility for timberland owners. As amended, the subsection would allow rather than prohibit heavy equipment operations on slopes greater than 50% or on areas with high or extreme erosion hazard ratings. However, this allowance would only be granted when the Registered Professional Forester (RPF) has “explained and justified” that the proposed use would still comply with the harvesting practices and erosion control provisions of existing rule Section 914 [934, 954].

This amendment and a number of those that follow recognize that small ownerships may be operationally constrained to a greater degree than larger ownerships. Whereas larger ownerships can typically find alternatives to operating on steeper or more erosive slopes, smaller ownerships may not have the acreage or topography to do likewise. So long as the proposed operation on such slopes can be explained and justified by the RPF, it may be allowed at the discretion of the *CAL FIRE* Director.

Section 1051(a)(5)

The proposed amendment of this subsection is also intended to create more operational flexibility for timberland owners. As amended, the subsection would modify the percent slope threshold for new skid trail construction. The modification would prohibit new skid trail construction on slopes over 50% rather than the existing limit of 40%. The subsection is further amended to provide a 100' limit on the length of new skid trail construction that may occur on slopes between 40% and 50%.

This amendment recognizes that small ownerships may be operationally constrained to a greater degree than larger ownerships. Whereas larger ownerships can typically find alternatives to new skid trail construction on steeper slopes, smaller ownerships may not have the acreage or topography to do likewise. The amended rule language accordingly provides slightly more opportunity for short segments of new skid trail construction to facilitate greater access to harvested timber.

Section 1051(a)(6)

The proposed amendment of this subsection is intended to allow greater operational flexibility in the context of designated Special Treatment Areas (STAs). The existing rule language allows for log hauling on existing roads not requiring reconstruction. As amended, the subsection would also allow other operations so long as they are consistent with the intent and purpose of the STA, and contingent upon the approval of the *CAL FIRE* Director.

This amendment recognizes that small ownerships may be operationally constrained to a greater degree than larger ownerships. Whereas larger ownerships can typically find alternatives to operating in STAs, smaller ownerships may not have the acreage or topography to do likewise. Though the amended regulations would allow more options for operations in STAs, the allowance for such operations would still be at the discretion of the *CAL FIRE* Director.

Section 1051(a)(7)

The proposed amendment of this subsection is intended to allow greater operational flexibility with regard to landslides or unstable areas. Existing regulations specify a complete prohibition of timber operations on slides or unstable areas. The amended rule section instead allows for use and maintenance of existing logging roads and landings that do not require reconstruction.

This amendment recognizes that small ownerships may be operationally constrained to a greater degree than larger ownerships. Whereas larger ownerships can typically find alternatives to use of logging roads and landings that cross landslides or unstable areas, smaller ownerships may not have the acreage or topography to do likewise.

Section 1051(a)(8)

The proposed amendment of this subsection is intended to correspond to the proposed increase in ownership size specified in Section 1051(a). Existing rule language allows for 600' of new road construction and no more than 1,000' of new and reconstructed road segments combined. The proposed amended language increases these figures to 960' and 1,600', respectively. As the proposed ownership size has been increased by 60%, the proposed allowances for road construction and reconstruction are correspondingly increased by 60%.

Section 1051(a)(9)

The proposed amendment to this subsection is intended to provide formal recognition of the California Department of Fish and Wildlife's (formerly Department of Fish and Game) streambed alteration agreement process. Proposed watercourse crossings are subject to the Forest Practice Rules as well as the California Department of Fish and Wildlife's (CDFW) regulations. The amended rule language recommended by representatives of CDFW specifies that heavy equipment operations may occur in a Watercourse and Lake Protection Zone (WLPZ), meadow, or wet area. However, such operations in a WLPZ, meadow, or wet area must be related to CDFW-permitted watercourse crossing construction or reconstruction.

Section 1051(a)(10)

The proposed amendments to this subsection are intended to clarify the meaning of the term "listed species." The amendments also include the striking of a reference to a Fish & Game Code Section that has been repealed, and a non-substantive editorial revision. Existing rule language has been revised to specify that the rule subsection applies to "~~State-~~listed species" rather than the existing rule's reference to "listed species." As this subsection addresses the requirement for consultation with the State's wildlife agency to address listed species, it seemed appropriate to recognize that the CDFW has responsibility for State-listed rather than all listed species. The existing reference to Section 2090 of the Fish & Game Code has been struck because this Section was repealed by the Legislature some years ago. The last sentence of this subsection has been refined to more clearly articulate the expectation that any necessary consultation with CDFW must occur "prior to plan approval" instead of "before the THP is approved." This last revision is editorial and non-substantive, as the proposed and existing versions of this language essentially convey the same requirement.

Section 1051(a)(12)

The proposed amendments to this subsection modify the existing rule's prohibition of timber operations within potentially significant archaeological sites. The proposed modification recognizes that heavy equipment operations cannot be allowed to occur within archaeological sites. As amended however, the rule language would allow directional tree felling, and tree removal by end-lining or cable yarding contingent upon the *CAL FIRE* Director's approval.

This amendment recognizes that the primary source of impacts to potentially significant archaeological sites is heavy equipment operating within the boundaries of the site. Tree removal through full-suspension yarding or single end-lining from locations outside the boundaries of a site can be accomplished without significant damage to the site. For small ownerships, every tree can be important to making the harvest operation cost-effective. The modest allowance for tree removals from within the bounds of a site, subject to the approval of the Director, is intended to balance protection of cultural resources with small harvest economics.

Section 1051(a)(13)

The proposed amendments to this subsection are limited to the addition of the word “logging” prior to “road” or “roads.” These slight revisions are purely intended to qualify use of the words “road” or “roads” in order to differentiate them from “tractor” roads.

Section 1051(a)(14)

The proposed amendment to this subsection is limited to the addition of the word “period” after the word “Winter” in the beginning of the subsection paragraph. This revision is intended to clarify that the subsection is referring to timber operations in the “winter period” rather than “winter.” This revision is editorial and non-substantive, as the proposed and existing versions of this language essentially convey the same requirement.

Section 1051.1

The existing rule section directs the Registered Professional Forester (RPF) to the harvest plan content requirements of Section 1034 “Contents of Plan.” It has been revised to remove the content exceptions previously listed and instead directs the RPF to include all “applicable” provisions of Section 1034 in an MTHP submission. This revision is editorial and non-substantive.

NECESSITY

Regulatory support for small timberland ownerships has been a priority for the Board over many years. It is generally recognized that the harvest permitting expense alone can render some small ownership operations cost-prohibitive, particularly where lower value species are proposed for management. The Board and others have historically examined a wide variety of permitting alternatives intended to reduce the economic effects of regulation upon smaller timberland owners. The existing MTHP regulations are but one example of the Board’s efforts in this regard. Limited use of the MTHP permitting option since 1995 has led the Board’s Forest Practice Committee to consider revising it somewhat. The obvious intention of this revision effort is to increase the utility of the option such that a greater number of small timberland owners will use it.

There are a limited number of permitting options available to small timberland owners.

Of these available options, the existing MTHP is likely the most cost-effective. However, it is also heavily constrained between the 100 acre ownership size limit and the operational conditions and mitigations. The modest elevation of the ownership size limit and minor modifications to the other operational constraints may help boost the use of this option.

BENEFITS

Small private timberland owners with 160 acres or less (or a quarter Section of land) would be the primary beneficiaries of the proposed regulation. The regulation would provide a greater opportunity for cost-effective timber management than currently exists. This in turn would provide greater potential for increased timber yield tax contributions to local jurisdictions. Attendant benefits in the form of managed forest conditions and support for local economies would likely be highly localized. Portions of the State that do not have milling and utilization infrastructure within a cost-effective hauling distance from timberland owners would receive no direct benefit from the regulation. Other parts of the State in closer proximity to wood utilization centers, generally from Central California north, could realize a modest increase in timber sales. Even so, the scale of the benefit could well be measured in single digit increases in the number of MTHPs filed. The 18 year average for MTHP filings since its initial creation is only 22 per year. Since 2003, the average number of filings has been just over ten. In view of these statistics, this rule proposal may only generate a small number of additional MTHP filings per year. Some average annual number of less than ten additional MTHP filings may well be the measure of success of this rule amendment proposal.

The rulemaking proposal will have no discernible effects upon public health and safety, worker safety, the prevention of discrimination, or the promotion of fairness or social equity. Nor will the rulemaking proposal increase openness and transparency in business and government.

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE BOARD AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES

The following alternatives are under consideration by the Board:

Alternative #1: No Action – Do Not Adopt Regulation

This alternative would result in no change to the existing Forest Practice Rules for MTHPs. The number of MTHP filings would likely be limited to the historical average or less and almost certainly no higher than the peak of 55 filings in 1998. Even if the proposed regulatory amendments were adopted, it seems likely that MTHP filings would never exceed the historical average or peak year.

For these reasons, this alternative remains viable for Board consideration as its deliberations on the petition for rulemaking continue through the Board's initial hearing.

Alternative #2: Adopt the Proposed Acreage Increase, Leave All Other Conditions and Mitigations Unaltered.

This alternative would result in the increase of ownership size allowed to use the MTHP option from 100 acres to 160 acres or a quarter (¼) Section. However, none of the other proposed conforming amendments to the existing operational conditions and mitigations would accompany the acreage increase.

The acreage increase alone could result in some number of additional MTHP filings. However, preservation of the existing operational constraints could mute the effects of the proposed acreage increase. Though unknown, it may be the operational constraints rather than the ownership size limitation that is the limiting factor to greater use of the MTHP option. If so, there could be little to no effect upon the number of MTHP filings in the event this alternative was adopted.

Despite concerns about the effect of retaining the existing operational constraints, this alternative remains viable for Board consideration.

Alternative #3: Adopt Regulatory Modifications as Proposed Without Additional Revision.

This alternative would result in adoption of the rulemaking proposal as currently presented. No further substantive revisions to the rule text would be considered or presented for comment in further public noticing. The Board would take action to adopt the regulations following the initial 45-day Notice hearing.

The acreage increase and accompanying modest revisions to the operational constraints imposed by the existing regulation could generate additional MTHP filings. Even so, the total number of new MTHP filings might still be consistent with the 18-year average of 22. And, it seems highly likely that the total number of MTHPs would never exceed the 1998 peak of 55 filings.

If nothing else the adoption of this rulemaking proposal would clearly show the Board's support for the interests of small private timberland owners. The MTHP as amended in this proposal would represent the state-of-the-art in terms of small landowner regulatory relief. Indeed, the proposal could effectively set the bounds for small ownership permitting for decades to come.

This alternative remains viable for Board consideration as its deliberations on the petition for rulemaking continue through the Board's initial hearing.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The California Environmental Quality Act (CEQA) requires review, evaluation and environmental documentation of potential significant environmental impacts from a qualified project. The Board's rulemaking process was determined to be categorically exempt from environmental documentation in accordance with 14 CCR 1153(b) (1), Declaration of Categorical Exemptions.

The proposed regulatory amendments would be added elements to the State's comprehensive Forest Practice Program under which all commercial timber management is regulated. The Board's Forest Practice Rules along with the Department of Forestry and Fire Protection's (*CAL FIRE*'s) oversight of Rule compliance function expressly to prevent adverse environmental effects.

Harvesting plans contain a mix of avoidance and mitigation measures that are specifically designed by a licensed professional forester to reduce the risk for potential adverse effects. Each harvesting plan also contains a comprehensive cumulative effects analysis utilized in part to identify potential risks and effects as an aid to the forester's avoidance and mitigation measure development. State, local, and federal agency representatives review every harvesting plan prior to a decision as to approval or denial. State representatives continue with compliance inspections of approved plans until the conclusion of the plan's lifespan. Where Forest Practice Rule standards or approved plan provisions have been violated, specified corrective and/or punitive enforcement measures, including but not limited to financial penalties, are imposed upon the identified offender(s).

In summary, the proposed regulation will not result in significant adverse environmental effects. The regulation is an element of a comprehensive avoidance and mitigation program for commercial timber harvesting activities.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

There are no additional costs to any state agency, nor any state-mandated costs to local agencies of government or school districts that require reimbursement under Part 7, Division 4 (commencing with Section 17500) of the Government Code because of any duties, obligations, or responsibilities imposed on state or local agencies or school districts. This rulemaking action can be accomplished with no additional net costs or where such costs exist they would be entered into voluntarily. This rulemaking does not create any savings or additional costs of administration for any agency of the United States Government over and above the program appropriations made by Congress.

There are no mandates to local governments or school districts.

The Board of Forestry has made a preliminary determination that no statewide alternative considered would be any more effective in carrying out the purpose for which this regulation is proposed. Likewise, no other alternative would be any more effective or least burdensome to affected private persons than the proposed action.

ECONOMIC IMPACT ANALYSIS PURSUANT TO GOVERNMENT CODE SECTION 11346.3(B)

The following economic impact analysis is intended to satisfy the requirements of the Administrative Procedures Act, Government Code Section 11346.3(b).

I. Will the proposed regulation create or eliminate jobs within the State of California?

The proposed regulation will not significantly affect jobs in California. The proposed amendments to the existing MTHP permitting option may result in nominal increases in the use of this option. However, it is just as possible that there would be no discernible increase in MTHP use as a result of the regulation's adoption. The number of jobs related to implementation of the State's Forest Practice Program whether public or private sector would not change as a result of this rulemaking proposal.

II. Will the proposed regulation create new businesses or eliminate existing businesses within the State of California?

The proposed regulation will neither create new businesses nor eliminate existing businesses in the State of California. Commercial timber management will continue to occur at current scales across the state regardless of the disposition of the rulemaking proposal.

III. Will the proposed regulation result in the expansion of businesses currently doing business within the State of California?

The proposed regulation will not result in the expansion of businesses currently doing business within the State. The purpose of the rule proposal is to increase the use of an existing timber harvest permitting process directed toward small private timberland owners. The proposal could result in a nominal increase in annual use of the MTHP. However, such an increase would not represent an expansion in the number of small private timberland owners statewide. Timber management will continue at current scales across the state with no discernible expansion or contraction as a result of the rulemaking proposal.

IV. Will the proposed regulation provide benefits to the health and welfare of California residents, worker safety, and the state's environment?

The regulation as proposed does not provide measurable benefits to the health and welfare of California residents, or improve worker safety. It is possible that increased use of the MTHP permitting option could result in highly localized beneficial effects upon the environment. These beneficial effects could be related to fire resiliency, habitat manipulation, and aesthetics.

However, these prospective benefits are somewhat abstract and would occur at such small scales as to be indistinguishable from the surrounding landscapes.

V. What is the estimated expense of proposed regulation upon those most affected?

There is no compulsory expense associated with this proposed regulation. The rulemaking proposal is intended to increase usage of a voluntary permitting process for timber harvesting on small private timber ownerships. It is also intended specifically to extend a less expensive permitting option to a larger number of individuals with ownerships of 160 acres (or quarter Section) of commercial timberland. The cost for preparation of a conventional timber harvest plan was estimated in a 2005 paper by Thompson and Dicus as exceeding thirty-thousand dollars (\$30,000.00). It is anticipated that the proposed regulatory amendments to the MTHP would provide small landowners with a more cost-effective alternative.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Board of Forestry finds that the adoption of these regulations would not have a significant adverse economic impact on small businesses. There will be no reporting or record keeping requirements in these regulations and compliance requirements are set out in the *Initial Statement of Reasons* and the proposed text of the regulations.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board of Forestry and Fire Protection consulted the following listed information and/or publications as referenced in this *Initial Statement of Reasons*. Unless otherwise noted in this *Initial Statement of Reasons*, the Board did not rely on any other technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

1. California Forest Practice Rules, Title 14, Division 1.5, Chapter 4, Subchapter 7, Article 2 – Timber Harvesting Plan, Sections 1051 and 1051.1.
2. Effects of Timberland Parcelization and Regulatory Restriction on Annual Harvest Volumes, Humboldt County, California – analysis prepared for the North Coast Regional Land Trust. Gerstein, Jared, Baldwin, Blomstrom, Wilkinson and Associates, Inc. October 2009.
3. The Impact of California’s Changing Environmental Regulations on Timber Harvest Planning Costs. Sponsored by the California Institute for the Study of Specialty Crops and The Forest Foundation. Thompson, Richard P., Dicus, Christopher A. March 2005.

4. Excerpt from Board Rulemaking File No. 176, "Modified Timber Harvest Plan for Non-industrial Landowners." California Board of Forestry and Fire Protection. May 1993.

Pursuant to Government Code 11346.2(b)(6): In order to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as those addressed under the proposed regulation revisions listed in this *Statement of Reasons*; the Board has directed staff to review the Code of Federal Regulations. The Board staff determined that no unnecessary duplication or conflict exists.

PROPOSED TEXT

The proposed revisions or additions to the existing rule language is represented in the following manner:

UNDERLINE indicates an addition to the California Code of Regulations, and

~~STRIKETHROUGH~~ indicates a deletion from the California Code of Regulations.

All other text is existing rule language.

1 **“Modified Timber Harvest Plan Amendments, 2013”**

2 **Title 14 of the California Code of Regulations (14 CCR):**

3 **Division 1.5, Chapter 4, Subchapter 7, Article 2 – Timber Harvesting Plan**

4
5 **Amend:**

6 **§ 1051(a) Modified THP**

7 **§ 1051.1 Contents of Modified THP**

8
9 **1051 Modified THP**

10 **(a)** On an ownership of ~~400~~ 160 acres, or a quarter (¼) section or less of timberland, a
11 modified timber harvest plan may be filed by a plan submitter, providing that the
12 following conditions and mitigations are met:

13 **(1)** No more than 70% of any existing tree canopy layer is to be harvested on
14 parcels 40 acres or less, and not more than 50% on parcels 41-~~400~~ 160 acres or a
15 quarter (¼) section. The canopy retained shall be well distributed over the harvest area.
16 Not more than 10% of the THP area shall be harvested under the rehabilitation method.
17 A sample area must be marked before submission of the THP. The sample area shall
18 include at least 10% of the area which is representative of the range of conditions
19 present in the area.

20 **(2)** Clearcutting and shelterwood removal, as defined in 14 CCR 913.1~~(a)~~
21 [933.1~~(a)~~, and 953.1~~(a)~~] shall not be used, except for legally deeded rights-of-way or
22 easements for utility purposes which are documented in the plan by the RPF by
23 reference to specific deeds or surveys.

24 **(3)** Stocking standards, specific to *****

1 **(4)** No heavy equipment operations on slopes greater than 50%, or on areas with
2 high or extreme erosion hazard ratings-, except where explained and justified how the
3 protection provided by the proposed practice complies with 14 CCR § 914 [934, 954].

4 **(5)** No construction of new skid trails on slopes over ~~40%~~ 50%. Construction of
5 new skid trails on slopes greater than 40% and less than 50% shall not exceed one
6 hundred feet (100') in linear distance.

7 **(6)** ~~No~~ Timber operations in within Special Treatment Areas ~~except~~ shall be
8 limited to log hauling on existing logging roads not requiring reconstruction and/or other
9 operations consistent with the intent and purpose of the Special Treatment Area as
10 approved by the Director.

11 **(7)** No timber operations shall occur on slides areas or unstable areas-except for
12 use and maintenance of existing logging roads and landings that do not require
13 reconstruction.

14 **(8)** New logging road construction is confined to ~~600~~ 960 feet and a ~~4,000~~ 1,600
15 foot limit total of logging road construction and reconstruction combined.

16 **(9)** No heavy equipment operations shall occur within a watercourse or lake
17 protection zone, meadows, or wet areas, except for maintenance of existing logging
18 roads, drainage facilities or structures-, or for logging and tractor road watercourse
19 crossing construction or reconstruction approved by DFG through notification required
20 pursuant to F&GC § 1600.

21 **(10)** No listed species will be directly or indirectly adversely impacted by
22 proposed timber operations. For timber operations which potentially could adversely
23 affect a State-listed species or the habitat of the species, the consultation process with
24 DFG pursuant to F&GC ~~2090~~ or 2081 shall be completed ~~before the THP is approved.~~
25 prior to plan approval.

1 (11) Timber harvesting is only allowed *****

2 (12) ~~No timber operations within potentially significant archaeological sites. No~~
3 heavy equipment operations shall occur within potentially significant archaeological
4 sites identified pursuant to the criteria for a significant archaeological or historical site
5 listed in 14 CCR § 895.1. Directional felling and tree removal by end-lining and cable
6 yarding may be approved upon the Director's determination that such operations will not
7 adversely affect an identified archaeological site.

8 (13) No alternatives, exceptions, or in-lieu practices allowed for watercourse or
9 lake protection measures, standard logging road and landing widths, or erosion control
10 measures, except for use of existing logging roads within WLPZ after compliance with
11 examination, evaluation, and mitigation(s) per 14 CCR 916.4(a) [936.4(a), 956.4(a)].

12 (14) Winter period timber operations except as conditioned by the Director to
13 avoid potential significant cumulative impacts shall be in accordance with 14 CCR 914.7
14 (a) and (b) [934.7 (a) and (b), 954.7(a) and (b)].

15 (15) Harvesting will not reduce *****

16
17 **1051.1 Contents of Modified THP**

18 A plan submitted under section 1051 above shall contain all the applicable provisions
19 of 14 CCR 1034 except the following: (o), (x)(7), (z), (cc), (dd), (ee), and the RPF shall:

20 (a) Identify and map*****

21
22 ###