

Board of Forestry and Fire Protection

Final Statement of Reasons (FSOR), pursuant to GOV § 11346.9(a)

“Less Than 3 Acre Conversion Amendments, 2016”

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

Division 1.5, Chapter 4,

Subchapter 7, Article 7

Amend: § 1104.1(l)

UPDATE OF INFORMATION CONTAINED IN ISOR (PURSUANT TO GOV § 11246.9(a)(1)):

There has been no additional information gained by the Board of Forestry and Fire Protection (Board) that requires updating of the ISOR filed as OAL File No. Z-2016-0628-04, Published on July 8, 2016.

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

The rule text was adopted in its 45-Day noticed form.

REITERATION OF DISCLOSURES REGARDING THE ADOPTED REGULATION, RESULTS OF ECONOMIC IMPACT ANALYSIS, AND ANTICIPATED BENEFITS:

The results of the economic impact assessment are provided below pursuant to **GOV § 11345.5(a)(10)** and prepared pursuant to **GOV § 11346.3(b)(1)(A)-(D)**. The adopted action:

- (A) will create jobs within California;
- (A) will not eliminate jobs within California;
- (B) will create new businesses;
- (B) will not eliminate existing businesses within California;
- (C) will beneficially affect the expansion of businesses currently doing business within California;
- (D) will have nonmonetary benefits.

The types of businesses that will be impacted are industrial and nonindustrial forest landowners, forestry consulting, logging firms, lumber mills, and private construction contractors. Therefore, both large and small businesses may have positive economic impacts. Significant archeological sites will remain protected.

Businesses will be beneficially impacted by the proposed action. Currently, regulations would be cost prohibitive for a landowner to convert a small area of timberland (less than 3 acres) to other uses when a significant archeological site exists. However, this regulatory action provides a path to ensure feasibility regarding less than 3 acre conversions when archeological sites are present. The primary benefit of this proposal is lowering the permitting

cost of the Conversion Exemption for landowners wishing to complete a conversion of timberland that is less than three acres.

The effect of this proposed action is to provide landowners a regulatory pathway to complete a Conversion Exemption where a significant archeological resource has been found on the proposed project site. Current regulations, as interpreted by the Department would require the landowner to obtain an approved Timber Harvesting Plan (THP) and Timberland Conversion Permit (TCP). The Timberland Conversion Permit would have to be supported with a Mitigated Negative Declaration (MND) to be in compliance with CEQA. Together the estimated permitting cost for the THP, TCP, and MND is approximately \$25,000-40,000. The proposed action would require an RPF preparing a conversion exemption report based on an independent site visit and a joint site visit with a Department Archeologist to concur that capping the significant archeological site would result in no harm to the site. This is estimated by staff to cost the landowner in the range of \$2,000 to \$4,000. Thus, the cost impacts for these regulatory changes are negative.

Mandate on local agencies and school districts (pursuant to GOV § 11346.9(a)(2):

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

Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code sections commencing with GOV § 17500 (pursuant to GOV § 11346.9(a)(2):

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

ALTERNATIVES DETERMINATION (pursuant to GOV §11346.9(a)(4) and (5)):

Except as set forth in the ISOR and provided in the summary and responses to comments, no other alternatives have been proposed or otherwise brought to the Board's attention. Based upon the findings below and a review of alternatives the Board has determined the following:

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

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

- The Board finds the adopted alternative fulfills the obligations of the Board specified in statute and represents a product based upon compromise and the greatest degree of consensus achievable at the time the Board authorized noticing of the proposed action.
- The Board finds Public and Agency representatives reviewed and provided input into the adopted alternative.
- The Board finds the adopted alternative strikes a balance between performance based and prescriptive standards.
- The Board finds that a minimum level of prescriptive standards were needed to implement the statute. The proposed action is, in fact, a mix of performance based and prescriptive standards as are the entire Forest Practice Rules (FPRs). Alternative #3 considered decreasing the specificity of regulatory standards, but was rejected. Increasing the reliance on performance based standards was not reasonably expected to be as effective and less burdensome.
- The Board finds that where local government has approved a subdivision through the California Environmental Quality Act (CEQA) process and issued a subsequent building permit, PRC § 4628 does not require a Timberland Conversion Permit (TCP).
- The Board found that currently the FPRs and CEQA are not completely consistent in the treatment of significant or unique archeological sites. CEQA (PRC § 21083.2(b)) provides that impacts to significant or unique archeological sites are adequately addressed if the site is left preserved in place or undisturbed (no harm). The current FPRs specifically state that no timber operations will take place on a significant archeological site. The Board's Management Committee noted that the CEQA process provided a specific action of capping the significant or unique site with soil to meet the "preserved in place or left undisturbed standard" of CEQA. The Committee considered adding this CEQA language as an exception where timber operations could take place on a significant archeological site to improve the FPRs consistency with CEQA.
- The Board finds the proposal will provide only minor monetary benefits primarily due to the small number of new projects expected to result from the regulatory proposal.
- The Board finds the proposed regulatory proposal will make some currently cost prohibitive projects feasible because of the reduction in project permitting fees.

BOARD'S ADOPTED ALTERNATIVE (update, pursuant to GOV § 11346.9(a)(1)), of information pursuant to GOV § 11346.2(b)(4): Take Action as Proposed and Modified through the Formal Public Review and Comment Process (Alternative #4)

The Board chose to adopt the rule text as presented in the 45-day Notice No substantive modifications, through the formal public review and comment process, were made.

This alternative provides a pathway for landowners to utilize the Conversion Exemption while providing a “no harm” outcome for the protection of significant archeological sites.

Under the current rules a landowner would not be able to use a Conversion Exemption where a significant archeological site is found. The landowner would need to obtain an approved THP, TCP, and MND to remove trees and complete construction on their property. It is estimated that this would place the burden of \$25,000 in permitting fees on the landowner and may make the project infeasible.

This alternative would relieve the burden of excessive permitting fees for the landowner and still provide “no harm” to an existing significant archeological site.

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

Alternative #1: No Action.

Adoption of this alternative would not have provided landowners an affordable pathway to expand the building footprint on their property, nor would it protect or leave a significant archeological site undisturbed that was not located in the approval of the initial subdivision and building permits by local government.

The Board rejected this alternative due to the failure to meet the stated purpose of the regulatory proposal.

Alternative #2: Take Action to increase the Specificity of the Regulation Needed to Implement the Statute.

The Board committee reviewed the current regulations for areas where specifics could be adopted to address permitting less than 3 acre conversions where significant archeological resources are at risk. It was found that currently the FPRs and CEQA are not completely consistent in the treatment of significant or unique archeological sites. CEQA (PRC § 21083.2(b)) provides that impacts to significant or unique archeological sites are adequately addressed if the site is left preserved in place or undisturbed. The current rules specifically state that no timber operations will take place on a significant archeological site. The Board committee noted that the CEQA process provided a specific action of capping the significant or unique site with soil to meet the “preserved in place or left undisturbed standard” of CEQA. The Committee considered adding this CEQA language as an exception where timber operations could take place on a significant archeological site.

The alternative was rejected as it did not provide a process of professional review to assure that there would be no harm to an existing significant archeological site.

Alternative #3 Take Action to Decrease the Specificity of the Regulation Needed to Implement the Statute.

This alternative would decrease the specificity of the regulation needed to implement the statute. This alternative would provide maximum flexibility for participants allowing them to develop performance based standards to implement the statute.

Under this alternative the Board could have chosen to amend its regulations as they pertain to timberland conversion to recognize that land zoned for residential purposes has already received local approval and review, and that a Conversion Exemption would apply in such instances. This would be a broad exemption and relies on the work that has often been done many years in the past. In the case of the Rasmussen example, the subdivision was approved by local government in 1959. At that time there was little interest for the protection of significant archeological resources at the local government level. In more recent times archeological surveys are done far more frequently in local government review processes, yet a chance exists that some significant archaeological sites are missed during these surveys. The risk of this occurring is greater where large areas of rural timberland are subdivided and developed at a later time.

This alternative was rejected due to the increased risk of harm to significant archeological sites. There would also be an increased risk of harm occurring to other resources, such as water quality, if a broad exemption from the rules of the Board is provided.

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

The comments below are identified in the following format: The letter S or W followed by a series of numbers separated by a hyphen, followed by the name and affiliation (if any) of the commenter (e.g. W1-8: John Doe, Healthy Forest Association).

S: Indicates the comment was received from a speaker during the Board's Public Hearing on the 45-Day Notice of proposed rulemaking.

W: Indicates the comment was received in a written format.

1st number: Identifies the comments in the order in which it was received.

2nd number (following the hyphen): Represents the specific comment within a written comment or speaker comment. The specific comments are numbered in the order in which they were presented.

Commenter: The person presenting the comment and the organization, if any, with which they are affiliated, follows the comment identifier.

For example, W1-8 would represent the 8th comment within the 1st written comment received, and S5-3 would represent the 3rd comment given by the 5th speaker at the Board's Public Hearing.

**WRITTEN COMMENTS AND RESPONSES RESULTING FROM 45-DAY NOTICE
OF PROPOSED RULEMAKING PUBLISHED July 8, 2016**

W1-1: Mr. Jeff Engel, Plumas County Supervisor, District 6

Mr. Engel expressed frustration that the Rasmussen's have been delayed for over 3 years in constructing a garage on their property due to regulatory standards on Timberland Conversion Permits and the use of an exemption from that permit.

Board Response: The problem is current regulations (14 CCR § 1104.1(a)(2)(I)) strictly prohibits the use of a Conversion Exemption where timber operations take place on a significant archeological site as defined in 14 CCR § 895.1. Discussions with Department of Forestry and Fire Protection (Department) Archeologists show that often there are actions that can be taken before timber operations are conducted that will avoid harm to historical or archeological resources that exist where timber operations will take place. The Archeologist report, in this case example, acknowledged that the trees in the proposed area of conversion could be removed and still preserves the integrity of the archeological site. To accomplish this would require a specific mitigation to avoid the potential harm.

The action recommended by the landowner's Archeologist was to cover the site with engineering cloth and a layer of soil before timber operations took place. This action is referred to as "capping" the site. The Department Archeologist agreed this action would be effective. In discussion with Department Archeologist it was confirmed that this action (mitigation) is an often used approach for the protection of historical or archeological resources. This mitigation is also approved specifically in the California Environmental Quality Act (CEQA) in PRC § 21083.2(b)(3) for the protection of unique archeological resources.

The Board accepted this information and developed regulatory language amendments for the Less than 3 acre Timberland Conversion Exemption that would allow an exception to the current rule standard. The exception included in the rule amendment would be in concurrence with the Department Archeologist that capping a significant archeological site and proceeding with the proposed project would leave the significant archeological site undisturbed (no harm).

Rule Text Edit: No

W2-1: Helge Eng, Deputy Dir. Resource Mgt., CAL FIRE

Mr. Eng expressed support for the proposed rule amendments for Less Than 3 Acre Conversion Exemptions. Mr. Eng noted that the proposed regulatory language requires a Department Archeologist to review and concur a significant archeological site will not be harmed if timber operations occur on the site.

Board Response:

The Board appreciates the Department support for the proposed regulatory amendment. The Board is adopting the proposed Less Than 3 Acre Conversion Amendment, 2016

Rule Text Edit: No

<p>SPEAKER COMMENTS AND RESPONSES RESULTING FROM PUBLIC HEARING CONDUCTED August 24, 2016</p>
--

S1-1: Ms. Penny Rasmussen, Gray Eagle property owner

Ms. Rasmussen reviewed the problems encountered in identifying and obtaining the appropriate permits necessary for her to move forward with the construction of a garage located on her property near Gray Eagle California. This was a recap of the problem requiring the regulatory amendments as stated in the Initial Statement of Reasons published by the Board on July 8, 2016.

Board Response: The Board moved forward with the proposed amendment as noticed and directed staff to prepare the Final Statement of Reasons for adoption at the September 2016 meeting.

Rule Text Edit: No

S2-1: Mr. Richard Ginger, Forests Forever

Mr. Ginger commented that he did not see the need for a Timberland Conversion Permit under the circumstances presented by Ms. Rasmussen and urged the Board to make the regulatory changes necessary to allow her project to move forward.

Board Response: The Board moved forward with the proposed amendment as noticed and directed staff to prepare the Final Statement of Reasons for adoption at the September 2016 meeting.

Rule Text Edit: No