



Forest Landowners OF CALIFORNIA

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Marc Andre
Chair of Management Committee
Board of Forestry and Fire Protection
1416 Ninth Street
Sacramento, CA 95814

Dear Mr. Andre,

On behalf of Forest Landowners of California (FLC), the following comments are submitted in connection with the draft proposed changes to the NTMP offered at the Management Committee meeting in October. As background, FLC was the primary organization behind the development and legislative language in SB 1566 (Keene, 1989) that created the NTMP as an alternative to the THP process. As the legislation clearly states the goal is to provide “light touch” forest management that requires unevenaged silviculture in exchange for locking in the rules at the time the plan is approved. In 2013, FLC again worked with the Legislature to expand the NTMP up to 15,000 acres (the Working Forest Management Plan (WFMP)¹) to encourage the scale of this management option for non-industrial forest landowners who had timber ownerships greater than 2,500 acres. The development of regulations for the WFMP took almost three years to complete; implementation was further delayed by legal action that was partially resolved by provisions of SB 901 this past summer.

It is estimated that there are more than 800 NTMPs that have been approved since the early 1990s. They range in size from less than 10 acres to slightly more than 3,000 acres where several ownerships have joined together under a single NTMP. Based on some preliminary analysis, the average NTMP size ranges from 300 to 400 acres in any given county. The Coastal Region, including Humboldt, Mendocino and Sonoma counties has the largest number of NTMPs approximately 66 percent of the total by number and acres. Preliminary analysis indicates approximately 10 to 15 percent or 129 separate plans have been cited for various violations of the Forest Practice Rules (FPRs) during the last 27 years, approximately 4.5 violations per year. While these numbers may suggest that revisions to the current rules regarding NTMPs are needed, additional cursory analysis suggests that the largest share of violations are administrative in nature rather than violations of field related issues, such as take of endangered species, silviculture or WLPZ violations.

While the Board has historically expressed concern for smaller non-industrial owners, regulatory efforts have largely been unsuccessful in encouraging non-industrial owners to manage their

¹ SB 901 signed in 2018 reduced the allowable acreage from 15,000 to 10,000 acres.

lands for forest health and resilience. Based on information from U.S. Forest Research, analysis of FLC and California Tree Farm program membership, and U.S. Forest Service Forest Inventory and Analysis (FIA) growth data, it is estimated that only 1,500 to 3,000 owners are currently actively managing their timberlands to provide for carbon sequestration, wildlife habitat, and forest products. The U.S. Forest Service estimates that there are some 200,000 non-industrial owners in the state. Thus, only 1.5 percent of forest owners in California are actively managing their forest land. Assuming that many owners have small parcels, less than 10 acres, that are in the Wildland Urban Interface (WUI), one might reasonably reduce the non-industrial forestland ownership population to 50,000 people. This smaller population size still suggests that owners who are involved in active management constitute between 3 and 6 percent of this subsample. This low participation rate has largely remained unchanged during the last decade despite significant educational efforts by the Universities, NGOs and state agencies such as Cal Fire.

The Board of Forestry, the Governor’s Executive Order B52-18 dated May 10, 2018, the Forest Health Task Force, and the report of the Little Hoover Commission have each recognized the need to increase the pace and scale of active forest management in the State. FLC believes that portions of the draft Pending NTMP amendments do assist in increasing pace and scale. However, FLC believes a significant segment of the proposal rules potentially reverse that direction without justification except some anecdotal evidence of relatively isolated incidents. As an alternative FLC also offers some proposed solutions.

The following comments are applicable to the Document cited as MGMT 1(a) from the November Management Committee Board Materials. Page and line numbers are cited to facilitate discussion.

Page 1 lines 13 and 14 CCR § 1090 Rule Application

The last sentence of 1090 states that “. . . In subchapter 7 this equivalency will occur for all sections except 1031 through 1042.” This language has resulted in different interpretations by Cal Fire and other agencies throughout the years especially with respect the provisions of 1038(a through l) regarding the use of exemptions as a part of or in lieu of an Notice of Timber Operations (NTO) and a possible conflict with the statutory language of the NTMP. The issue was presented to the Board in the spring of 2018. As a result, Chairman Gillless sent a letter to the Ken Pimlott, Cal Fire Director, on April 30, 2018. The Director responded in a letter dated May 4, 2018 requesting clarification from the Board regarding exemptions and approved NTMPs.

FLC understands that the Department may raise this issue again in 2019. Given the Board’s current workload, FLC **supports the proposed deletion of, or reference to, 14 CCR §1038** and suggest that clarification be deferred to the larger resolution of the 1038 Exemption process. It should be noted that Cal Fire’s position has changed throughout the years, and there are currently approved NTMPs that explicitly include provisions for the use of an exemption. FLC will provide further information on this issue in the future.

Page 2 lines 3 and 4 Designated Agent Issue

FPR 1090.5(3)(a) allows for the use of a designated agent in place of the timberland owner(s). The draft proposal appears to require a designated agent as a part an NTO and other NTMP

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requirements. See the proposed requirements requiring a designated agent to perform certain duties in 1090.7 (page 8 line 11), 1090.9(h and i) responsibilities of the Plan Submitter (page 12 lines 3 through 10), 1090.12 RPF responsibilities (page 13 line 5 and lines 9 through 11), 1090.13 Notification of commencement of operations (page 13 lines 18 and 19), and 1095.25 minor deviations (page 14 line 9).

At the present time, the term Designated Agent is not defined in the current FPRs 14CCR § 1090 et al. for NTMPs. The term was defined in the WFMP rules in 1094.2(a). As a part of the development of those rules, Cal Fire requested a definition of a Designated Agent to avoid potential problems where a WFMP may have multiple unrelated owners or multiple RPFs who were managing portions of the WFMP without consulting other owners or RPFs. Cal Fire cited several anecdotal stories of issues regarding multiple NTMP owners, but did not provide any statistics to substantiate the magnitude of the issue. Cal Fire also concluded that the issue was a civil matter between the affected owners not affecting the enforcement of the NTMP's provisions directly. For non-agency participants in the rule making process (landowners and foresters), the proposal for a Designated Agent was a minor issue relative to other issues that had not been resolved. As a result, there was concurrence with Cal Fire's request for the language included in the WFMP regulations **without the expectation that such a requirement would be included in the NTMP regulations.**

Because the NTMP is relatively smaller than a WFMP and would tend to be less complex in terms of ownership, it is unclear how often the issue would arise in the context of an NTMP. If the goal is to identify multiple ownerships and provide additional control during harvest operations, Cal Fire will have to revise its current classification of ownership. A cursory review of approximately 475 NTMPs identified as having multiple landowners indicated most consisted of husband or wife, extended family members or were legal entities such as LLCs, etc. Only about 10 to 15 percent consisted of two or more apparently unrelated parties. In addition, there were other NTMPs with multiple owners who were not classified as multiple owners.

Furthermore, it is possible many existing owners may have to designate an agent as ownership becomes more complex due to estate planning or other changes in ownership circumstances. As an example of the potential unnecessary paperwork, if the Plan submitter or the RPF is the designated agent, they could have to send certified letters to themselves.

Proposed Solution

FLC suggests adding language similar to the current language in 1094.2(a) and 1094.6(e)(1). This proposed language could also be included in 895.1 with a few changes to the proposed language below.

“Designated Agent” means a person granted sole authority, through written certification of all the Working Forest Landowner(s) designated in a submitted or approved NTMP, to conduct those activities specifically assigned to a Designated Agent by Board Rules.

A Designated Agent shall only be required when an NTMP includes one or more legal parcels owned by more than a single ownership or has more than one RPF responsible for the NTMP. A single ownership may include, but is not limited to, entities comprised as a single ownership of divided interest, natural persons with undivided interests, or a legally established artificial person (such as limited liability companies, corporations, partnerships, or trusts).

Proposed NTMP Plan Mapping Requirements

Page 6 lines 19 through 25 and page 7 lines 1 through 9

Item (ii) Boundaries’ of areas sample marked for each silvicultural method.

It is unclear why this requirement has been proposed except that it is in the WFMP regulations 1094.6(e)(3). 14CCR 1034(x)(2) only require the mapping of the boundaries of different regeneration methods, intermediate treatments, special harvesting methods, and alternative prescriptions are applicable. Has any statistical data showing the need for such a requirement been provided by any agency involved in reviewing NTMPs? Normally, the landowner or RPF who prepared the Plan would accompany any agency staff on a PHI or other type of inspection, and the area of the sample mark could be identified on the ground. Furthermore, if a harvest is not completed within a short time frame after approval of the NTMP, the sample mark may well become immaterial because of changes due to abiotic and/or biotic factors that were not present at the time of NTMP submission.

Proposed provisions of 1090.5(jj through qq) are included in the WFMP and also conform to the mapping provisions of 1034.(x) and would seem reasonable additions to the NTMP for NTMPs approved after the effective date of any changes adopted by the Board of Forestry.

Proposed provision 1090.5(rr) appears to come from the provision 1094.6(e)(13) of the WFMP. As noted in the draft document the term “strata” is not defined. However, the definition of late successional stands is defined differently in 895.1 and 1094.2(b). A blanket rule using the latter definition could penalize smaller landowners who have maintained small patches of older trees. In addition, it seems unlikely that a 10-acre patch of older forest would contribute much in the way of habitat for species such as NSO, fisher or marten, or great grey owl that require much larger home ranges.

FLC suggests that the issue be resolved at the time of submission and NTMP review with consideration of conditions on the site to govern appropriate mitigation.

Proposed NTMP NTO Mapping Requirements

Page 10 lines 17 through 25 and page 11 lines 1 through 4

These requirements except for 1090.7(s and v) are all included in the WFMP rules 1094.8(u)(4). The draft rules for the NTMP NTO seem duplicative of the NTMP mapping requirements for the most part and are likely to create unnecessary paperwork especially for smaller NTMPs and generally discourage the use of the NTMP process. At the November Management Committee

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meeting no justification of necessity was provided for inclusion in the current NTO regulations. 1090.7(s) is likely to be covered by a Lake and Streambed Alteration agreement between the NTMP submitter and CDFW.

The language of a limited Standard Operating Practices (SOP) in 1090.7(v) is included in the WFMP rules 1094.8(t). It is not mentioned in the current NTMP statutory language or regulations. The SOP procedures for the WFMP are limited to tractor operations on unstable areas, slopes greater than 65%, tractor operations where slopes are greater than 50% and EHR is high or extreme (1094.6(z)), or use of landings, roads and skid trails in the WLPZ or other defined wet areas (1094.6(cc)). The concept of an SOP for WLPZ activities seems similar to the Master Agreement for Timber Operations (MATO) process for larger companies. To date, FLC knows of no MATO or similar agreements designed for NTMP owners. Informally, FLC has been told that too much paperwork is involved for agency staff to prepare a MATO type document for smaller landowners including those with NTMPs.

If the Board adopts some type of SOP procedure it should be voluntary and a part of the plan submission. Inclusion within an NTO should only be required as proposed below.

Proposed Solution

If these proposed mapping requirements are retained in the regulations for the NTO, the RPF is not required to include the maps within the NTO for 1090.7(q through v) unless significant changes have occurred on the ground between the approval of the plan and the preparation of an NTO.

Items Not Addressed in the Draft Changes

Mr. Dias suggested that language should be included to indicate that any changes to the current rules would be prospective and not applicable to approved NTMPs. No appropriate language was included in the draft proposal. This raises the issue of rule applicability to plans submitted and approved before the effective date, presumably January 2020.

Depending upon the outcome of Board's decisions regarding the requirement for an NTO as a part of the NTMP document, and the use of Exemptions in provisions of 14 CCR 1038, would a Designated Agent be involved submitting an Exemption to Cal Fire and a letter to the timberland owners?

Respectfully submitted,



Valdek Parik
President
Forest Landowner (Mendocino County)



Lawrence Camp
Legislative Co-chairman
RPF No. 1698