Inter-Agency Road Rules Task Force and Development of Road Rules, 2007
Background

In late 2004, the Board of Forestry and Fire Protection's *Ad Hoc* Road and Watershed Management Committee (Committee) appointed a number of agency, industry, and public members to the Inter-Agency Road Rules Task Force[1] (Task Force). Minutes from the Board's January 2005 meeting note the purpose for forming the Task Force:

> [The *Ad Hoc* Roads and Watershed Committee] addressed the Interagency Road Rules Review Committee (now called Inter-Agency Road Rules Task Force). This Committee includes individuals from all the agencies involved including State Water Quality, Regional Water Quality, North Coast Regional Water Quality, CLFA, and CFA. The first goal was the reorganization of the Road Rules. The first task will be to organize Road Rules and Road Maintenance and try to consolidate all of the information for those particular aspects of roads into those proper sections. The Committee will be looking at the original proposal that came from the Interagency Committee, but also at the other existing rules. They are not going to put a timeframe on this Committee. When the work is completed they will present it to the full Board.

The Task Force has worked for the past two and a half years developing the Road Rules, 2007 rule package. Road Rules, 2007 is an effort to organize the majority of the logging road-, landing-, and logging road watercourse crossing-related regulations contained within the California Forest Practice Rules[2] under one article in Title 14, Chapter 4 of the California Code of Regulations. This has entailed:

- Identifying all logging road-, landing-, and logging road watercourse crossings-related rules.
- Organizing the rules into a logical framework.
- Evaluating the rules for current adequacy and applicability.
- Retaining those rules with current relevance.
- Modifying those rules that need revision.

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[1] The Inter-Agency Road Rules Task Force meetings have been attended by the following: Angela Wilson, Central Valley Water Quality Control Board, Gaylon Lee, State Water Resources Control Board, Jim Ostrowski, California Licensed Forester's Association, Marty Berback, formerly Department of Fish and Game, Pete Ribar, Campbell Timberland Management, Richard Gienger, public representative, Tom Spittler, California Geological Survey, John Munn, Department of Forestry and Fire Protection, Chris Browder, Department of Forestry and Fire Protection, Dave Hope, North Coast Water Quality Control Board, Willie Whittlesey, California Licensed Forester's Association, Charlotte Ambrose, NOAA Fisheries, Clay Brandow, Department of Forestry and Fire Protection, Chris Quirmbach, California Licensed Forester's Association

[2] Road Rules 2007 does not address county-specific logging road-, landing-, and logging road watercourse crossing-related rules.

- Deleting those rules that no longer appear relevant.
- Developing additional rules to address identified areas of concern.

In developing Road Rules, 2007, the Task Force has considered many elements pertaining to logging roads, landings, and logging road watercourse crossings. Taking into consideration all of the elements pertaining to logging roads, landings, and logging road watercourse crossings, the rule package should:

- Include both prescriptive and performance-based components and may incorporate components of other reviewing agencies' road-related requirements.
- Improve clarity, avoid redundancy, combine pertinent rule sections, and simplify existing rule language where possible.
- Consider all logging road-, landing-, and logging road watercourse crossing-related rules, including, but not limited to: 14 CCR §§ 895.1, 914 [934, 954] *et seq.*, 916 [936, 956] *et seq.*, 918.3 [938.3, 958.3], 923 [943, 963] *et seq.*, 1034 *et seq.*, 1035.3, 1051.1, 1090.5, 1090.7, and 1092.09.
- Provide an overall structure for organizing logging road-, landing-, and logging road watercourse crossing-related rules, under which specific rules will then be considered and modified, as necessary.
- Include an intent section that considers a broader range of potential impacts than the existing 14 CCR § 923 [943, 963].
- Organize the rules from the general to the specific.
- Treat logging roads and landings in one group of rule sections and logging road watercourse crossings in a different group of rule sections.
- Address only logging road watercourse crossings.
- Address landings at the end of each section.
- Ensure that any rule section that currently addresses logging and tractor roads is revised to address only tractor roads, so that the logging road portion of the rule may be specifically addressed in 14 CCR § 923 [943, 963] *et seq.*
- Maintain the current level of flexibility for site-specific exceptions, alternative, in-lieu practices, etc.
- Consider the former Inter-Agency Road Rule Task Force proposals.
- Review new rules or substantive revisions using specific criteria.

The specific criteria used by the Task Force when developing new rules or substantially changing existing rules is as follows:

Standards of Review

Note: Because necessity, clarity, and consistency were the principal criteria for rule development, the following standards were not rigidly followed by the Task Force.

Evaluation Criteria:

- Intent

  What is the existing or proposed rule trying to achieve? Goals, objectives, and standards must be clearly articulated to foster a common understanding and attainment of desired outcomes.

- Necessity (Justification)

  - Existing Rule

    What is current implementation or compliance in THP and out on the ground (e.g. problems, failures, successes, and compliance issues)? Is there any available documentation (e.g. Monitoring Study Group (MSG) hillslope monitoring, CAL FIRE enforcement, complaint inspections)? To what area does the rule apply (statewide, certain forest district, threatened or impaired watersheds only)? We need to evaluate or gauge extent of identified problems (e.g. common problem or worst case scenario, due to site specific circumstances or sets of conditions)? Are there existing enforcement actions on the part of CAL FIRE (warnings or inspection comment, violations or citations)? The results of rule application must be verifiable and not just protective (e.g. perception vs. reality). We must be able to verify its effectiveness: develop monitoring approaches to address this issue. Is the rule based upon accepted best management practices (BMPs) or approaches?

  - Proposed Rules

    Does the solution solve the perceived problem or just change or shift the problem to another area?

    Is there a basis for the rule? Is it arbitrary or justified (supported by scientific studies, reference manuals, accepted BMPs, conventional wisdom, or opinion)?

  - Alternative Approaches

    Are there other ways of approaching the problem, such as through training, enforcement, Registered Professional Forester (RPF) responsibility or certification, performance-based vs. prescriptive or incentive-based solutions?

Is there statutory authority for the proposed approach?

- Clarity

  - Is the rule ambiguous (e.g. meets plain English standard and grammatically correct, subject to numerous interpretations)?

  - Are there definitional issues (e.g. undefined terms)?
  - Is the rule properly organized (e.g. is the rule located under the correct or logical section or subsection, is there a need for additional sections or subsections)?

- Consistency

  - Are there inconsistency issues (e.g. differing standards)?
  - Is the rule redundant (e.g. multiple rules addressing same exact issue)?

- Implementation Impacts

  - What is the cost to the RPF (e.g. processing cost, advice costs)
  - What is cost to the Licensed Timber Operator (e.g. operational costs, feasibility, responsibility)?
  - What are the costs to the timberland owner (e.g. increased or decreased flexibility, streamlining vs. delays, opportunity costs)?
  - What are the costs to the review agencies (e.g. personnel requirements, meeting existing timelines, authorities and responsibilities)?
  - What are the costs to members of the public (e.g. disclosure, California Environmental Quality Act compliance)?

- Effectiveness Considerations

  - Over what time scale will the rule be effective: initial (completion), interim (maintenance), long-term (MSG)?
  - Over what spatial scale will the rule be applied: on-site, off-site (e.g. planning watershed)?
  - How will one determine the rule's effectiveness: qualitative (professional judgment), quantitative (random, repeatable), research or experimental caliber (statistically rigorous)?
  - What will be the standard used to judge the rule's success (e.g. no erosion, no delivery, only minor delivery (no significant adverse impact to target species or beneficial use))?

- Cost-Benefit Analysis

- What are the direct, indirect, and cumulative to State and small business expenses associated with implementation of the rule?

- Are there unintended consequences associated with implementation of the rule (e.g. reduced investment, indirectly influences land use decisions, creates unforeseen problems, or underestimates consequences)?

In its development of the rule package, the Task Force has identified at least four outstanding issues that the Forest Practice Committee needs to address:

- Should the Task Force integrate the recently adopted rules pertaining to logging roads, landings, and logging road watercourse crossings contained in the Road Management Plan, 2007 and Coho Salmon Incidental Take Assistance, 2007 rule packages into the proposed Road Rules, 2007 package?
- The terms, “abandoned road” and “abandonment,” have different meanings to different groups of people that use them. The Task Force’s rule package continues to use these terms, but the Forest Practice Committee may want to consider using terms that have less potential conflict in implied meaning. One possibility is to use the terms, “decommissioned road” and “decommission,” as alternatives.
- The Task Force’s proposed rule package uses terms, such as “connected headwall swale” and “stable operating surface,” which have been adopted under Coho Salmon Incidental Take Assistance, 2007, for use in areas beyond watersheds with coho salmon. As such, the Task Force is presenting revisions to the recently adopted definitions for consideration.
- During the late stages of the Task Force’s review of the proposed rule package, it determined that there are some instances where the proposed new rule language uses terms, such as “could,” “may,” and “has a reasonable potential to,” to limit where the rule may apply. The Task Force requests direction from the Forest Practice Committee as to whether such language should be changed to “will.”