

## **NOTICE OF DECISION - FINDINGS**

### **AB 2420, Forest Fire Prevention Exemption, 2005**

The findings are made pursuant to Section 21080.5 of the Public Resource Code (PRC), and Sections 1144-1145 of Title 14 California Code of Regulations (14 CCR). These findings pertain to the amendment of 14 CCR Sections 1038(e) Exemption, 1038(i) Exemption, and 1038.2 Exemption Form. The amendments were adopted by the State Board of Forestry and Fire Protection (Board) on July 14, 2005.

#### **I. BACKGROUND AND AUTHORIZATION:**

The Z'berg - Nejedly Forest Practice Act of 1973 (ref. Division 4, Chapter 8 of the Public Resources Code) establishes the State's interest in the use, restoration, and protection of the forest resources. In this Act, Legislature stated its intent to create and maintain an effective and complete system of regulation for all timberlands. Public Resources Code Sections 4512, 4513 and 4551, gives the Board the authority to adopt such rules and regulations necessary to assure continuous growing and harvesting of commercial forest tree species; and to protect the soil, air, fish, wildlife and water resources.

The adopted amendments are being promulgated under the Board's statutory authority of PRC 4551. The adopted regulation implements a legislative amendment to Public Resource Code (PRC) 4584 (k) authorized under Assembly Bill (AB) 2420, known as the Forest Fire Protection Act of 2004. This legislation authorized the Board to create a Forest Fire Prevention Exemption. This new class of Exemption would exempt persons who conduct timber operations from preparing and submitting Timber Harvest Plans, completion reports, and stocking reports when harvesting trees and other commercial forest products for the purpose of reducing the rate of fire spread, fire duration and intensity, fuel ignitability, and ignition of tree crowns.

#### **II. DESCRIPTION OF REGULATORY ACTION:**

The regulation is required by statute PRC 4584(k) to address the public problem with hazard fuel and wildfire conditions previously discussed. The adopted regulation addresses wildfire issues by treating surface, ladder and, crowns of trees, for reduction of fire hazard needed for immediate and long term preservation of the public peace, health and safety, and the general welfare. The treatments required by AB 2420 include reducing tree crowns to no less than 40-60 percent crown closure, increasing height to live crown base distance to greater than eight feet, reduction of surface fuel to meet a four foot flame length fire behavior objective, and limited removal of trees less than 18 to 24 inches stump diameter with prioritization on removal of smaller trees contribute to meeting fuel hazard reduction goals.

The adopted regulation addresses the hazardous wildfire situation on private timberlands by providing regulatory relief for expedited fuel hazard reduction of live and dead fuels. The adopted regulation adds a new class of Exemption. The new class of exemption provides regulatory cost relief to those harvesting commercial timber under the parameters of this regulation. By permitting the fuel hazard reduction treatments to be exempt from the preparation of a Timber Harvesting Plan, significant cost savings are accrued by the submitter do to the elimination of costly Plan preparation.

Specific proposes and necessities of each subsection of the regulation are described below:

Subsection 1038 (e) is amended to add the adopted exemption to the list of exemptions that may not commence for five working day from he date of the Director's receipt of the exemption. This time provides CDF to more thoroughly review information provided on the exemption form and ensure appropriate operating conditions are present.

Subsection 1038 (i) provides the intent of the adopted exemption and specifically requires that this class of exemption be for the purpose of fuel hazard reduction.

Subsection 1038 (i) (1) limits the logging area to a maximum project area of 300 acres per exemption. This is necessary as the size of project must be consistent with the one year time frame statutory limitation per exemption. Operations larger than 300 acres are not likely to be completed in one operating season.

Subsection 1038 (i) (2) requires that following logging operations, the retained trees will have a larger average diameter than the preharvest stand. This is necessary to ensure that the smaller more suppressed trees that represent the most hazardous fuel component are treated and the more fire resistant, larger trees are retained.

Subsection 1038 (i) (3) , (4) and (5)(A),(B) requires a Registered Processional Forester to prepare the exemption notice, describe the pre and post harvest forest conditions, meet minimum post harvest stocking standards, be involved in the designation of harvest trees, consult with timber operators conducting the logging, prepare archaeological assessments, and provide a map of the project area.. This ensures that prudent and effective decisions are made regarding the selection of trees to be harvested, improving the effectiveness of the fuel reduction and minimizing any potential for significant adverse environmental affects resulting from the logging operations. It also identifies an established professional as the responsible person for outcomes of the operations. This subsection also creates a form that clearly identifies the nature of the project and helps CDF in the enforceability of the regulation.

Subsection 1038 (i) (6) requires that trees to be harvested or retained be designated by the RPF. This improves communications and understanding between the RPF, Licensed Timber Operator conducting the logging operations, and CDF inspector, helping ensure the appropriate trees are harvested.

Subsection 1038 (i) (7) require the RPF to disclose archeological information to ensure protection of cultural resources.

Subsection 1038 (i) (8) limits tree harvest to a maximum 18 inches stump diameter except 500 feet from structures where harvest is a maximum 24 inches stump diameter when justified. This is necessary to ensure that the smaller more suppressed trees that represent the most hazardous fuel component are treated and the more fire resistant, larger trees are retained; the highest value assets at risk (communities) receive the most intensive fuel treatment; and ensure that potential significant impacts to biological values are avoided.

Subsection 1038 (i) (9) (A), (B), (C), (D), and (E) specifies the post harvest conditions including minimum canopy closures by forest type . This ensures that the smaller more suppressed trees that represent the most hazardous fuel component are treated and the

more fire resistant, larger trees are retained. It also ensures that potential significant impacts to biological values are avoided.

Subsection 1038 (i) (10) requires that “ladder” fuels be treated to create 8 foot separation between live trees crown and surface fuels. Ladder fuels are the smaller trees and vegetative that helps spread fire from the surface to the crowns of larger trees. Increasing the space free of fuels between the ground surface and retained larger trees helps ensure reduction of the spread of wildfire.

Subsection 1038 (i) (11) requires surface fuels, including existing live and dead vegetation and slash created during harvesting operations, to be treated to achieve a goal of four foot flame lengths when burned under severe fire weather conditions. This ensures that fire intensity is reduced to levels that do not promote fire to spread into retained trees and provides a level of heat intensity that is manageable for fire suppression forces.

Subsection 1038 (i) (12) requires the treatment for fuel hazard reduction be accomplished on at least 80 percent of the project area. This ensures the hazard is adequately reduced while providing for areas to be untreated to meet non-fire resource objectives such as wildlife habitat, streamcourse vegetative buffers and aesthetic screening.

Subsection 1038 (i) (13) requires projects under the adopted regulation to comply with resource protection standards applicable to all classes of exemption. These requirements limit operations to areas and times which will minimize impacts to natural resources. These requirements have been found previously by the Board to be necessary and prudent for the conduct of operations that are exempt from oversight and reviews required by Timber Harvesting Plans.

Subsection 1038 (i) (14) requires CDF to conduct an on-site inspection after timber operations are completed. This ensures that the operations conducted under the adopted regulation comply with regulation requirements and meet the objective of fuel hazard reduction and protection of natural resources.

Subsection 1038 (i) (15) provides a sunset date of January 1, 2008, after which this class of exemption would be terminated. This termination provides the Board with the opportunity to revise the regulation to improve effectiveness, evaluate the extent of the remaining fuel hazard situation, and avoid any longer term unintended consequences.

Amendments to section 1038.2 provide instructions for the type of information needed to be provided on the exemption form for this class of exemption. This amendment is necessary as previous requirements for information on exemption forms did not include the statutorily required information (such as map of project area).

### **III. GENERAL FINDINGS ON ADOPTED REGULATION**

**The State Board of Forestry and Fire Protection recognizes the urgent, extensive and on-going wildfire hazard existing on private forest lands resulting from the combination of increasing quantity and arrangement of natural vegetation.** This wildfire hazard is a significant threat to human and natural resources on approximately 3 million of the State’s 7.8 million acres of private, productive, and commercially available forest lands (referred to as *timberlands*). The imminent nature of the fuel hazard problem has also been repeatedly recognized by many high profile efforts including the Governor’s

Blue Ribbon Fire Commission of 2004, General Accounting Office report on western National Forest fire conditions, the Western Governors' Association promulgation of the National Fire Plan, the USDA Forest Service (USFS) Sierra Nevada Forest Plan Amendment, 2004, and legislation proposed by the California State Assembly.

**The Board finds modern fire frequency exhibits longer return intervals and greater intensities in most areas than prior to European settlement, with the result being that California's wildlands have more potential for catastrophic wildfires.** Past disruptions of natural fire cycles and other activities have resulted in wildfires of increasing intensity and severity that are a threat to the forest ecosystem, air quality, fresh water supplies, private citizens, emergency services personnel, and the overall public health and safety of California. Much of the State's timberlands have fuel and slope conditions that would support high or very high fire behavior when burned under severe weather conditions. Fires that burn in these areas under hot, dry, and windy conditions are difficult to control even by the world's most comprehensive wildland fire protection system. Fuel treated areas provide a better success rate for initial attack under these conditions. However, on wind driven fires, no control measures will completely work, even treated acres will burn. Treatments provide an anchor point where aggressive suppression will work when weather conditions become more favorable.

**The Board finds fire hazard, the combination of terrain, fuel type and fuel condition, is steadily becoming more hazardous on timberlands.** Healthy forests are a common goal for Californians, but overstocked forests cause increased tree mortality resulting in the build up of flammable fuels. Recent measurements by the USFS Forest Inventory and Analysis Program (FIA) indicate increasing level of stocking on private lands over the last three decades with millions of acres of coniferous forest types having stand densities far beyond stocking levels associated with the site capacity. This suggests that stands are very susceptible to significant levels of pest mortality and increased dead fuel loads. When combined with on-going drought and atmospheric zone damage, these conditions can lead to catastrophic wildfire events. The treatment of these hazardous fuels creates an opportunity to reduce the impact of wildfires on communities and natural and cultural resources, and restores health to fire-adapted ecosystems.

**The Board finds that the proposed regulation is needed to address a hazardous situation present with action needed for immediate preservation of the public peace, health and safety, and the general welfare.** The situation is based on:

- **The values at stake requiring wildland fire protection services are extensive and at imminent threat.** The Board finds that approximately 3 million acres of all conifer forest types on private land available for timber harvesting in the wildland urban interface have significant fire threat (exposed to High, Very High or Extreme Fire Threat as defined by the California Department of Forest and Fire Protection's Fire and Resource Assessment Program, FRAP). This area includes tens of thousands of homes with median prices of hundreds of thousands of dollars per home.
- **There is a certainty that the risk of wildfire will remain high for decades to come.** The combination of seasonal meteorological events and fuel conditions combine annually to create a substantial fire threat. Fire history shows that these events will vary in location within the state on an annual basis. Currently, this is particularly true in Southern California, where significant insect mortality has increased hazardous fuel loading.

- **The combination of fuel, weather and valuable human and natural resource assets have created increasing amount of wildfire and increasing losses across all vegetation types (forest, shrublands, and grasslands).** Major wildland fires in California, epitomized by the extraordinary fires of October, 2003, threaten a wide range of public and private assets. In 2003, wildfires destroyed more than 730,000 acres and 3,600 residential structures, and resulted in the tragic loss of 25 lives in California. The southern California wildfires were followed by mudslides that tragically killed 14 people. The subsequent mudslides possibly resulted from vegetation lost to wildfire and flash flooding.

Recent five year average shows over 500,000 acres were burned, and as seen recently in 2003, this annual total varies greatly with over 700 thousand acres burned in some years. While the area burned in wildfires varies greatly year to year, when viewed statewide, there has been an apparent increase in high fire years (total area burned greater than 500,000 acres) since 1985.

While the acreage and number of wildfires is extensive and increasing on a statewide basis, a more significant trend is the climbing wildfire-related financial losses. From 1947 to 1990, the dollar damages to structures and other resources in State Responsibility Areas (SRA) exceeded \$100 million (2001 dollars) only once. Between 1990 and 2001, losses exceeded \$100 million five times.

**Given these trends, the Board finds the need to reduce wildlife threat and hazardous fuel conditions in the state's private timberlands.** To address this condition, action is needed for cutting and removal hazardous fuels, including trees, shrubs and other woody material to eliminate the vertical and horizontal continuity of tree crowns, ladder fuels and surface fuels, for the purpose of reducing the rate of fire spread, fire duration and intensity, and fuel ignitability. This action is necessary to expedite projects to increase safety and protection for forest ecosystems, air quality, fresh water supplies, private citizens, emergency services personnel, and the overall public health and safety of California, by reducing fire threats where ecosystem and public safety risks are excessive.

**The Board finds that regulatory amendments are within the scope and consistent with, existing legislation including PRC 4584(k), the Forest Practice Rules (Title 14 CCR, Chapters 4, 4.5 and 10), and California Environmental Quality Act.**

**The Board finds that allowing filing of an Exemption instead of a Timber Harvesting Plan (THP) when operations are conducted in accordance with the proposed rule conditions creates regulatory relief.** This finding is based the substantial difference in cost between preparation of a THP and an Exemption.

**The Board finds the proposed regulation, which treats surface, ladder and, to a lesser extent crowns of trees, are necessary to reduce fire hazard.** Such treatments include reducing tree crowns to no less than 40-60 percent crown closure, increasing height to live crown base distance to greater than eight feet, reduction of surface fuel to meet a four foot flame length fire behavior objective, and limited removal of trees less than 18 inches outside stump diameter, except if the goal of fuel reduction cannot be achieved by removing trees less than 18 inches outside stump diameter, trees less than 24 inches outside stump diameter may be removed if that removal is confined to locations specific in the regulation. All tree removal requirements prioritize on removal of smaller trees necessary to meet fuel hazard reduction goals. These standards for treatment were identified in the authorizing legislation and confirmed by the Board, through reviewing

technical comments (in the rule making file), as adequate to reduce fire behavior to a four-foot flame height when burning in average severe fire weather and to meet the goal of reducing the vertical and horizontal continuity of fuels. This flame height condition is an acceptable level of heat intensity to allow use of hand crew suppression forces.

**The Board finds it is necessary to limit the duration of the regulation for a three year period ending on December 31, 2008.** This limited period of use will provide the Board an opportunity to assess the application of the rule and the extent of the remaining emergency condition in the forest.

**The Board finds the regulation has incorporated mitigation measures that will eliminate or substantially lessen significant effects on the environment where feasible including potential impacts of individual projects and those projects taken together.** The Board analyzed the potential cumulative effects and significant adverse environmental effects resulting from the treatments proposed in this regulation. The Board finds the regulation has impacts that are individually limited and not cumulatively considerable. This is based on, among other things, the application of the regulation on a limited geographic area, incorporation of mitigation measures to minimize potentially significant impacts, and application of the operational provisions of the Forest Practice Rules. These findings are discussed below.

The estimated potential available area where the adopted regulation could be applied is approximately 1.3 million acres and could be as high as 2.9 million acres. This lesser estimate resulted from GIS analysis of timberlands in the WUI excluding large portions of forested areas located on steep slopes greater than 40% unsuitable for mechanical equipment use. Other areas excluded are adjacent to hydrologic features such as lakes, perennial streams and rivers. These areas are considered as not available for treatment under this regulation.

Of the possible area of treatment (1.3 to 2.9 million acres), annual application of the regulation is expected to be very limited. The expected application of the regulation is less than 5000 acres per year over a three year period. The limited extent and wide geographic dispersion results in a less than significant level of cumulative impacts of the adopted regulation when all adopted and foreseeable projects are evaluated on a combined basis.

Mitigation measures include avoiding removal of larger trees; prohibiting operations in watercourses; no operation on steep slopes; no new road construction; watershed protection measures specifically designed for the unique water quality values in the Lake Tahoe Basin; incorporating protection requirements of species that may be impacted, including retention of special habitat elements (snags and down large woody debris), to maintain and enhance wildlife values, screening and cover to provide shelter and migration corridors; review and disclosure of threatened, endangered or sensitive species, and no operation in areas with a Board defined sensitive species; and cultural resource surveys. The Board has also required post harvest retention of a minimum of 100 square feet basal area, post harvest increase in quadratic mean diameter, and post harvest canopy retention standards. These will insure that removal will focus on smaller trees, as well as insuring that the stand after treatment will be stocked. Many other resource protective requirements are included by reference to and incorporation of standards in 14 CCR 1038 (b) (1)-(10).

In addition to the specific components of the regulation described above, all other operational components of the States Forest Practice Rules are applicable. Together, the

mitigation measures, application of the FPRs, and the limited scope of operations, assisted the Board in determining that the regulation will avoid any significant cumulative significant effects and eliminate or substantially lessen individual potentially significant effects on the environment.

Finally monitoring requirements for all regulations, pursuant to PRC 4553, will provide information to assess impacts from applications of Emergency Notice projects over the initial three year period. This information is provided to the Board in annual reports from CDF. This process ensures the mitigation measures are effective as predicted.

**The Board finds the adoption of the regulation to be consistent with other federal laws and plans designed to address similar conditions on federal land.** Consistency is found when comparing the Board's adopted rule to the Healthy forest Restoration Act of 2004, and the Sierra Nevada national forest plan amendments. These laws and plans address the need for fuel hazard reduction, reduction in conditions that will result in a catastrophic fire and vegetation treatment that will maintain or improve habitat, water quality and other resource conditions. The Board reviewed these laws and plans and incorporated into its regulation relevant requirements consistent with the laws and plans that contribute to goals of fuel hazard reduction and wildlife habitat protection.

#### **IV. FINDINGS ON ALTERNATIVES**

The Board has considered minor regulatory alternatives as the authorizing statues highly limited regulatory options. The alternatives primarily relate to various methods to measure the maximum tree size to be harvested and the method allowed for designating trees to be harvested. These alternatives were rejected following because they were determined to be inconsistent by the legislative authors with the intent of the legislation.

#### **V. SUMMARY OF FINDINGS ON POTENTIAL IMPACTS AND COST**

##### **FINDINGS REGARDING POTENTIAL SIGNIFICANT ADVERSE ENVIROMENTAL IMPACTS**

The Board analyzed the potential cumulative effects and significant adverse environmental effects resulting from the treatments adopted in this regulation. The Board determined that the regulation has impacts that are individually limited and not cumulatively considerable. This determination is based on, among other things, the application of the regulation on a limited geographic area, incorporation of mitigation measures to minimize potentially significant impacts, and application of the operational provisions of the Forest Practice Rules. These findings are discussed above under **General Findings**. No other alternative before the Board provided better protection and yet met the purpose of the adopted regulation.

##### **FINDINGS ON COSTS**

The Board has determined the adopted action will have the following effects:

- Mandate on local agencies and school districts: The Board finds there are no additional costs any state mandated costs to local agencies of government or school districts that require reimbursement under Part 7, Div. 4 Sec. 17500 GC

because of any duties, obligations or responsibilities imposed on state or local or agencies or school districts.

- Costs or savings to any State agency: The Board finds there are unknown additional costs or savings to state agencies. Potential fiscal savings were previously disclosed in the original AB 2420 bill analysis. It is unknown if this regulation will result in net costs or savings. THP review is a costly process, ranging from \$30,000 to \$40,000 General Fund per THP. To the extent that landowners file for an exemption instead of filing a THP, this regulation would result in General Fund savings, however, that savings would be offset by increased costs for inspections that are not required by the THP process. The regulation could result in potentially significant General Fund cost avoidance by reducing forest fire risk and making it easier for Forestry to contain fires while they are small, thereby preventing large wildfires. Forestry annually spends more than \$400 million from the General Fund on fire protection and suppression.
- 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: None
- Other non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in federal funding to the State: None
- The Board has made an initial determination that there will be no statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This determination is based on the regulation being not mandatory, and those choosing to use it will incur substantially less permit preparation costs than existing permitting regulations.
- Cost impacts on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or businesses would necessarily incur in reasonable compliance with the adopted action.
- Significant effect on housing costs: None
- 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.
- Effect on small business: None. The Board has determined that the adopted amendments will not have an adverse affect on small business. The adopted regulation is designed to provide regulatory relief, leading to substantial reduction in regulatory filing and preparation fees.
- The adopted rules do not conflict with, or duplicate Federal regulations.
- This regulation 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.

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