Board of Forestry and Fire Protection

FINAL STATEMENT OF REASONS (FSOR)

"WORKING FOREST MANAGEMENT PLAN"

Title 14 of the California Code of Regulations (14 CCR), Division 1.5, Chapter 4, Subchapter 1, Article 1; Subchapters 4, 5 & 6, Articles 3, 6, 9, 13 and 14; Subchapter 7, Articles 2, 6.5, 6.95 and 7. Title 14 of the California Code of Regulations (14 CCR), Division 1.5, Chapter 4.5.

Amend: §§ 895, 895.1, 913.11 [933.11, 953.11], 916.5 [936.5, 956.5], 919.9 [939.9], 923 [943, 963], 923.2 [943.2, 963.2], 923.3 [943.3, 963.3], 923.4 [943.4, 963.4], 923.5 [943.5, 963.5], 923.9 [943.9, 963.9], 929 [949, 969], 945.1, 1038, 1090.26, 1104.1, 1115.3 and Board of Forestry Technical Rule Addendum Number 5: Guidance on Hydrologic Disconnection, Road Drainage, Minimization of Diversion Potential, and High Risk Crossings"

Adopt: §§ 1090.28 and 1094-1094.35

UPDATE OF INFORMATION CONTAINED IN ISOR (pursuant to GOV §11346.9(a)(1))

The ISOR was updated by adoption of a Revised Statement of Reasons (otherwise known as a Supplemental Statement of Reasons) that was noticed on September 1, 2015. The Supplemental Statement of Reasons was provided to augment the necessity statements for the provisions indicated, revise the number of timberland owners eligible to apply for a WFMP, correct the documents relied upon by striking one and adding another, and providing evidence relied upon to support the initial determination that the proposed action will not have a significant adverse impact on business.

All material relied upon was identified in the ISOR and Supplemental Statement of Reasons and made available for public review prior to the close of public comment period.

Following are insignifcant corrections to the Initial Statement of Reasons:

> Including §§ 1090.28 and 1094-1094.35 in the list of documents relied upon was an inadvertent error given that they are not yet included in Title 14 of the California Code of Regulations.

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 with the exception of the modifications listed below.

§1094.6 – Contents of a WFMP

The Board chose to adopt the language included in §1094.6(j) option 2, and exclude the language in §1094.6(j) option 1.

Revisions without substantive effect

Text as depicted in 45-Day Notice (pg 64, line 3)

"Board of Forestry Technical Rule Addendum Number 5: Guidance on Hydrologic Disconnection, Road Drainage, Minimization of Diversion Potential, and High Risk Crossings" (1st Edition, revised 04/21/14)

Corrected Text

"Board of Forestry Technical Rule Addendum Number 5: Guidance on Hydrologic Disconnection, Road Drainage, Minimization of Diversion Potential, and High Risk Crossings" ~~(1st Edition, revised 10/27/14)~~ (1st Edition, revised 04/21/15)

Rationale

An incorrect revision date for Technical Rule Addendum #5 was inadvertently used in the 45-Day Noticed ruled text. Additionally, the change to the revision date was not provided in strikethrough and underline format. The corrected text remedies this mistake and oversight.

Text as depicted in 45-Day Notice (pg 38, line 11)

1094.9 WFMP Professional Judgment

Where the rules or these regulations provide for the exercise of professional judgment by the RPF or the Director, if there is a disagreement and if requested by either party, they shall confer on the WFMP area during the WFMP review inspection and reach agreement, if possible, on the conditions and standards to be included in the plan.

Corrected Text

1094.9 WFMP Professional Judgment

Where these rules provide for the exercise of professional judgment by the RPF or the Director, if there is a disagreement and if requested by either party, they shall confer on the WFMP area during the WFMP review inspection and reach agreement, if possible, on the conditions and standards to be included in the plan.

Rationale

To eliminate redundancy "the rules or these regulations" was changed to "these rules".

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 § 11346.5(a)(10)** and prepared pursuant to **GOV § 11346.3(b)(1)(A)-(D)**. The adopted action:

(A) Will not create or eliminate jobs within California;
(B) Will not create new businesses or eliminate existing businesses within California;
(C) Will not affect the expansion of businesses currently doing business within California.
(D) Will yield nonmonetary benefits.

The Board has determined that adoption of the regulations identified herein will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states (pursuant to GOV §11346.3(a)(2)).

Mandate on local agencies and school districts (pursuant to GC §11346.9(a)(2)):
The adopted regulation does not impose a mandate on local agencies and 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.

Cost impacts on representative private persons or businesses (pursuant to GC §11346.5(a)(9)):
See Economic and Fiscal Impact Statement (STD. 399) and Supplement.

Effect on small business (pursuant to 1 CCR § 4(a) and (b)):
See Economic and Fiscal Impact Statement (STD. 399) and Supplement.

Costs or savings to any State agency (pursuant to GC §11346.5(a)(6)):
See Economic and Fiscal Impact Statement (STD. 399) and Supplement.

Business Reporting Requirement (pursuant to GC §11346.3):
See Economic and Fiscal Impact Statement (STD. 399) and Supplement.

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 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 it is compelled by PRC § 4597.20 to act to implement PRC § 4597 et seq., chaptered as a consequence of the passage of AB 904, by January 1, 2016.

- The Board finds the nonindustrial timber management plan established pursuant to Article 7.5 (commencing with Section 4593) has been successful in meeting the intent of this chapter by encouraging prudent and responsible forest management and discouraging accelerated timberland conversion by private nonindustrial forest landowners.

- The Board finds there have been 763 nonindustrial timber management plans approved by the department covering a combined area of 315,000 acres.

- The Board finds building upon the model provided by the nonindustrial timber management plan, is congruent with the policy of the state to encourage long-term planning, increased productivity of timberland, and the conservation of open space on a greater number of nonindustrial working forest ownerships and acreages.

- The Board finds retaining California's non-industrial private forest lands in forest use provides tremendous benefits, including retention of open space, protection of watersheds, water quality and forest soils, maintenance of diverse habitat for fish and wildlife, preservation of important cultural and historical sites, and promotion of recreational opportunities.

- The Board finds these benefits are all enhanced by the commitment of forest landowners to the long term stewardship and sustainable production requirements of a NTMP. On the broad statewide scale, the overarching public benefit is in encouraging owners of these small wooded parcels to take advantage of their rich forest soils, to enrich and improve their timber stands, to manage them sustainably

into the future, and cumulatively retain that part of the state's rural, working landscape that characterizes California's private timberlands.

- The Board finds the NTMP program is meeting the uneven-aged management requirement of the Forest Practice Act, and given sufficient time to implement current NTMP management prescriptions, landowners will also be able to show that they are meeting the sustained yield requirement. Therefore, the Board has determined that the NTMP program is improving California's timberlands and that the program be continued and expanded upon.

- The Board finds the NTMP acreage limit should be increased to bring more timberlands into the program. This change would benefit both landowners and the state by providing an opportunity for these additional timberlands to be placed into a sustained yield and uneven-aged management regime. The adopted action would allow larger nonindustrial timberland owners to participate in the WFMP program.

- The Board finds the incorporation of a balance of performance and prescriptive standards in the adopted rule set allows for operational flexibility while maintaining a high standard of resource protection.

- The Board finds it has a shared responsibility with timberland owners, managers, and regulatory agencies to ensure implementation of the adopted rules closely follow the intentions conveyed by all parties during the deliberations on the rule components, and that the key elements of practicality and reasonableness are maintained.

BOARD'S ADOPTED ALTERNATIVE (update, pursuant to GC §11346.9(a)(1)), of information pursuant to GC §11346.2(b)(4)): Adopt Rulemaking Proposal as Modified Through Formal Public Review and Comment Process

The Board chose to adopt the rule text as presented in the 45-Day Notice. Modifications, through the formal public review and comment process were proposed, however the Board chose not to modify the 45-Day Noticed rule text for the reasons described below.

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

Alternative #1: No Action

This alternative would result in <u>not</u> adopting new Forest Practice Rules to make specific the WFMP program or amending the existing Forest Practice Rules to incorporate reference to the WFMP. Further, this alternative would result in <u>not</u> amending the existing Forest Practice Rules to make specific parts of the NTMP program to reflect the most current statue.

This alternative was rejected because the Board is compelled by PRC § 4597.20 to act to implement PRC § 4597 et seq., chaptered as a consequence of the passage of AB 904, by January 1, 2016. Although there is no deadline for action associated with the sections of the PRC chaptered as a consequence of the passage of AB 2239 and SB 1345, the Board rejected the no action alternative in order to capitalize on the significant effort associated with obligations set forth in PRC § 4597.20.

Alternative #2: Take Action to Increase the Specificity of the Regulation Needed to Implement the Statute
This alternative would increase the specificity of the regulation needed to implement the statute.

The Board rejected increasing the specificity of the regulation needed to implement the statute in recognition of the diversity in timberland, management, and mitigations, to allow the final level of prescription to be developed by the participants familiar with the site specific, on the ground conditions. The Board found that increasing the specificity, relative to the adopted action, did not provide enough flexibility to participants to meet the statutory requirements in alternative ways that were more site-specific and at least as effective.

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.

The Board rejected decreasing the specificity of the regulation needed to implement the statute because the Board found that a minimum level of prescriptive standards were needed to implement the statute. Decreasing the specificity would generate broader interpretation by the participants and may result in enforcement complications for the Department, who must have the ability to enforce regulatory prescriptive standards for the protection of the public trust resources. It is important to note that the adopted action does include the option for Registered Professional Foresters (RPF) to develop alternative prescriptions, practices, mitigations etc. to take the place of certain prescriptive standards.

This effectively offers the RPF the ability to develop a performance based alternative that provides equal to or greater protection than the Forest Practice Rules. These provisions were included because the Board does recognize that prescriptive standards do not work effectively for all circumstances. It would then be incumbent upon the RPF to explain and justify why the prescriptive standard is not compatible with the proposed project and provides discretion to the Director to approve such proposals.

INCORPORATION BY REFERENCE (pursuant to 1 CCR § 20(c)(1) and (2))
The document incorporated by reference is listed in the ISOR, which was provided with the initial 45-Day notice.

The Board had available the entire rulemaking file, including all information considered as a basis for the adopted rules and the document incorporated by reference, available for public inspection and copying throughout the rulemaking process at its office in Sacramento, California.

Publishing the documents incorporated by reference in full in CCR would be cumbersome, unduly expensive, and impractical. “A Guide to Wildlife Habitats in California,” California Department of Fish and Wildlife, 1988, is widely available to the public.

SUMMARY AND RESPONSE TO COMMENTS (pursuant to GC 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 (Ex. W1-8: John Doe, Healthy Forest Association).

S – indicates the comment was received from a speaker during the Board 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 hearing.

Please note that there is a gap in the numbering system for the written comments and responses resulting from the 45-Day Notice of proposed rulemaking published May 1, 2015 between W12 and W15. This is a result of attachments to written comments originally being identified with a unique number. This gap does not reflect any comments being omitted.

WRITTEN COMMENTS AND RESPONSES RESULTING FROM 45-DAY NOTICE OF PROPOSED RULEMAKING PUBLISHED MAY 1, 2015

W1-1: Alan Levine, Coast Action Group (dated May 20, 2015)

We are frustrated and concerned that after all this work, in committee and external review and comment from responsible agency and the public, that this latest version of rules relating to the implementation of the language and intent of AB 904 is not consistent with: 1) the language and intent of AB 904, California Resources Code, and Federal Clean Water Act requirements.

Board Response: The Board's Management Committee was in contact with representatives of AB 904's author during the development of these regulations to ensure that the legislative intent of various provisions were clear. The input received was discussed at length in numerous public forums (regularly scheduled committee meetings and focused workshops) to come up with the final regulatory language presented in the 45-Day Notice of rulemaking.

The Board is not aware of any regulations or statutes that are in conflict or are inconsistent with the WFMP. As provided in the 45-Day Notice:

> The proposed action neither conflicts with, nor duplicates Federal regulations. There are no comparable Federal regulations for timber harvesting on State or private lands.
>
> Board staff conducted an evaluation on whether or not the proposed action is inconsistent or incompatible with existing State regulations pursuant to GOV § 11346.5(a)(3)(D). State regulations related to the proposed action were, in fact, relied upon in the development of the proposed action, including portions of Title 14 of the California Code of Regulations (§§ 895, 895.1, 912.7 [932.7, 952.7], 913.2, 913.11 [933.11, 953.11], 916.3, 916.4, 916.5 [936.5, 956.5], 919.9 [939.9], 919.11, 923 [943, 963], 923.2 [943.2, 963.2], 923.3 [943.3, 963.3], 923.4 [943.4, 963.4], 923.5 [943.5, 963.5], 923.9 [943.9, 963.9], 929 [949, 969], 936.4 [936.4, 956.4], 945.1, 1032.9, 1032.10, 1035-1035.4, 1037.5, 1038, 1054, 1071, 1090-1090.28, 1092, 1093, 1094-1094.35, 1104.1, 1115.3, 15380(d), GOV § 6254.7, and Board of Forestry Technical Rule Addendum Number 5: Guidance on Hydrologic Disconnection, Road Drainage, Minimization of Diversion Potential, and High Risk Crossings) to ensure the consistency and compatibility of the proposed action with existing State regulations. Otherwise, Board staff evaluated the balance of existing State regulations related to the implementation of the Z'Berg-Nejedly Forest Practice Act and found no existing State regulations that meet the same purpose as the proposed action. Based on this evaluation and effort, the Board has determined that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The proposed regulation is entirely consistent and compatible with existing Forest Practice Rules and the Z'Berg-Nejedly Forest Practice Act.

Rule Text Edit: No.

W1-2: Alan Levine, Coast Action Group (dated May 20, 2015)
Previous comments from CAG (currently in the file on this project) on this subject (June 4, 2014, July 17, 2014, August 20, 2014, February 4, 2015) are still on point and must be considered in the review of this project.

Board Response: Please see responses to these comments below in W5, W4, W3, and W2, respectively.

Rule Text Edit: No.

W1-3: Alan Levine, Coast Action Group (dated May 20, 2015)
At this point, under the proposed rules for the WFMP uneven aged management is the only beneficial goal (as noted in the notice and proposed regulation).

Board Response: In compliance with the Forest Practice Act, the WFMP also provides for benefits related to sequestration of carbon dioxide, recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment, and aesthetic enjoyment. Unevenaged management is specifically identified in the 45-Day Notice because landowners that enter into a WFMP specifically agree to manage their timberlands with the objectives of maintaining, restoring, or creating unevenaged managed timber stand conditions. Pursuant to §1094.3, a WFMP may be submitted to the Department in writing by a person who intends to become a Working Forest Landowner(s) with the long-term objectives of promoting forestland stewardship, uneven aged timber stand(s), and sustained yield through the implementation of a WFMP. Except for the NTMP, other permitting options do not have this constraint.

As provided in the 45-Day Notice:

> In 2003, CAL FIRE issued a report on the NTMP program. The report explained that the NTMP program provides significant benefits to the State in a number of terms including societal benefits.
>
> - The report states that "[r]etaining our non-industrial private forest lands in forest use provides tremendous…benefits, including retention of open space, protection of watersheds, water quality and forest soils, maintenance of diverse habitat for fish and wildlife, preservation of important cultural and historical sites, and promotion of recreational opportunities."
> - "These benefits are all enhanced by the commitment of forest landowners to the long term stewardship and sustainable production requirements of a NTMP. On the broad statewide scale, the overarching public benefit is in encouraging owners of these small wooded parcels to take advantage of their rich forest soils, to enrich and improve their timber stands, to manage them sustainably into the future, and cumulatively retain that part of the state's rural, working landscape that characterizes California's private timberlands."
> - The 2003 report concluded that "the NTMP program is meeting the uneven-aged management requirement of the Forest Practice Act…[and given] sufficient time to implement current NTMP management prescriptions, landowners will also be able to show that they are meeting the sustained yield requirement. Therefore, [CAL FIRE] has determined that the NTMP program is improving California's timberlands and recommends that the program be continued."
> - Additionally, the report recommended that the NTMP acreage limit be increased to bring more timberlands into the program. "This change would benefit both landowners and the state by providing an opportunity for these additional

timberlands to be placed into a sustained yield and uneven-aged management regime." This proposed action essentially implements this recommendation by allowing larger nonindustrial timberland owners to participate in the WFMP program.

In conclusion, the primary purpose of the adopted action is to create the Working Forest Management Plan (WFMP) program, based on the model of the Nonindustrial Timber Management Plan (NTMP) program, to provide nonindustrial landowners with less than 15,000 acres of timberland greater opportunities for cost-effective timber management than currently exist through the application of a timber harvesting document that would allow for long-term approval with certain conditions, such as the use of uneven aged forest management and proof that operations provide for sustained yield and stricter environmental standards (relative to the NTMP). Raising the acreage limit to 15,000 acres through the WFMP will make hundreds of thousands of additional acres of timberland eligible for long-term, sustainable management. The benefits of which include:

- Making non-industrial forest properties more economically viable.
- Incentivizing unevenaged management, which may afford increased carbon sequestration, conservation of scenic values and protection of water quality and fish and wildlife habitat.
- Incentivizing the purchase of additional timberlands.

Other benefits may or may not result. These beneficial effects upon the environment could be related to fire resiliency, habitat, aesthetics, carbon sequestration and decreased timberland conversion. However, these prospective benefits are speculative, but it may be presumed, at a minimum, that the level of protective effect upon the environment will not be reduced as a result of the adopted action.

Rule Text Edit: No.

W1-4: Alan Levine, Coast Action Group (dated May 20, 2015)

It can be argued that the unevenaged commitment is not even totally enforceable as certain evenaged silvicultural prescriptions may be allowed (Group Selection, Alternative Prescription, Rehabilitation – all allowable silviculture prescriptions that can have negative water quality, forest value, and LTSY effects.).

Board Response: The silvicultural methods to be applied to each strata will be disclosed in the WFMP in compliance with § 1094.6(i). A change in this identified silviculture is considered a substantial deviation from the WFMP (§ 1094.23(c)(4)), and would trigger a multidisciplinary review and public comment period for the proposed changes.

The WFMP includes a number of provisions pertaining to the inventory and growth and yield projections. § 1094.6(h) assures high quality estimates of inventory are included in the WFMP by requiring stratification of the WFMP area and identifying the acceptable sampling errors based on the percentage of the total area occupied by each strata. The WFMP includes provisions for future schedule of inventory sampling and analysis of Long Term Sustained Yield (LTSY) (§1094.6(g)) and gives the interdisciplinary review team an opportunity to evaluate the volume harvested in relation to projections of harvest every 5 years (§ 1094.29).

The regulations also contain provisions requiring the Department to cancel a WFMP that

will have significant adverse effects on the environment (§ 1094.29(d)) or is not meeting the objectives of Unevenaged Management and Sustained Yield (§ 1094.31(b)).

Through the regulations identified above, the Board is confident that the Unevenaged Management provisions of the WFMP are enforceable and will be enforced.

See response to comment W15-11, which provides additional relevant information.

Rule Text Edit: No.

W1-5: Alan Levine, Coast Action Group (dated May 20, 2015)
it can be fairly argued that this rule making process is not consistent with the legislation, Cal Water Code, and the federal Clean Water Act.

Board Response: See response to comment W1-1.

Rule Text Edit: No.

W1-6: Alan Levine, Coast Action Group (dated May 20, 2015)
It can be argued that there is no net benefit to the resource or the public.

Board Response: See response to comment W1-3.

Rule Text Edit: No.

W1-7: Alan Levine, Coast Action Group (dated May 20, 2015)
It can also be argued if the only gain to the public and the resource from such a rule is that some evenaged silvicultural practices will be put aside to obtain a forever permit that may not neces-sarily be upgraded or improved upon as regulatory authorities may deem necessary for future Best Management Practices (BAT – Best Available Technology); the out come of such permitting is likely to result with increased risk for resources or diminished resources.

Board Response: This comment is not specific; it is not clear what the specific resource of concern is, and how it is put at risk by the adoption of this regulation.

See response to comments W1-3 and W1-4.

Rule Text Edit: No.

W1-8: Alan Levine, Coast Action Group (dated May 20, 2015)
why not just eliminate evenaged silviculture from available practices under the rules

Board Response: This a general comment about the Forest Practice Rules and is outside the scope of this rulemaking.

Rule Text Edit: No.

W1-9: Alan Levine, Coast Action Group (dated May 20, 2015)
Given the review time lines in the proposed rules there is not sufficient time allowed for responsible agency to adequately address issues on such complex plans.

Board Response: The minimum review period for agencies and the public to evaluate a WFMP are included in §1094.17. These timelines were established by statute in PRC § 4597.6. In recognition that larger plans may be more complex and require additional time to review, the minimum review periods get successively longer commensurate with larger acreage covered by a WFMP. Each of these review periods are longer than those that have been established for other Plans to allow time for a thorough review by the multidisciplinary review team agencies and the public alike.

The public comment period for a WFMP does not close until 20 days after the final interagency review, which may not be less than the minimum time periods of 90, 110, or 130 days depending on the size of the WFMP. In cases where significant new information is added to a WFMP under review, the WFMP would be recirculated and be subject to the additional time periods identified in § 1094.16(d) for the multidisciplinary review team and public to review and comment upon the revised information. The Director would then have 30 working days after the close of public comment period has ended to review all comments and determine if the plan is in conformance with the applicable Board rules and regulations and other applicable provisions of law.

The legislature determined, and the Board agrees, that the review times established in statute strike an appropriate balance between allowing adequate time for the multidisciplinary review team and public to evaluate the WFMP and the regulated public's expectation for an expeditious review.

Rule Text Edit: No.

W1-10: Alan Levine, Coast Action Group (dated May 20, 2015)
it can be fairly argued that the coast for reviewing such large plans will be sig-nificantly greater than accounted for in the Notice. Furthermore, the cost justification analysis indicates there “may” be savings associated with the approval of such large plans. The source or amounts of such savings is not supported by analysis or logical discussion. It is suggested that some undisclosed diminished number of THPs (and NTMPs) that responsible agencies will have to review will be reduces in the future. There are no numbers here and no real logical justifications for assumptions made. CAG suggests costs of review and management of such large timber op-erations for agency review will, by far, outstrip any potential savings – with the net result of compromised resources.

Board Response: The commenter correctly points out that it is speculative to predict the number of plans or NTMPs that will not have to be reviewed in the future due to landowners having an approved WFMP. However, the Board determined that it is very likely that landowners of this size are involved in actively managing their forestlands based on the NTMP Expansion Study (CAL FIRE, 2009), which indicated that 72 of 81 forestland owners with ownerships between 2,500 and 15,000 acres had filed a Timber Harvest Plan on their land in the past.

The costs of developing a WFMP are significant to both the landowner and reviewing agencies at the outset of a WFMP. The benefits of decreased costs to both the landowner and the reviewing agencies accrue over time as both parties have familiarity and certainty

of how operations may occur under the approved WFMP. Representatives from the multidisciplinary review team agencies participated in the public meetings and workshops in which this regulation was developed. No comments were received by the Board that would indicate the agencies would be unduly burdened by reviewing a WFMP. Additionally, the review times for evaluation of the WFMP have been lengthened (reference §1094.17) relative to other Plans, allowing the multidisciplinary review team agencies to distribute this work load over a longer period of time.

The anticipated fiscal impact of the WFMP is provided in the Senate Appropriations Committee Fiscal Summary on AB 904 prepared by Marie Liu on September 3, 2013. According to this summary, the following costs and savings to any State agency are projected. “Cost or savings” means additional costs or savings, both direct and indirect, that a public agency necessarily incurs in reasonable compliance with regulations.

1. One-time costs of at least $150,000 from the Timber Regulation and Forest Restoration Fund to the Board of Forestry for the development of regulations as required by AB 904.
2. One-time costs of approximately $75,000 from the Timber Regulation and Forest Restoration Fund to the regional water quality control boards (RWQCBs) for adoption and revision of general waste discharge requirements.
3. Assuming five WFMPs are submitted each year, annual costs of approximately $500,000 - $750,000 in fiscal year (FY) 2014-15 and growing to $600,000 to $950,000 in FY 2018-19, from the Timber Regulation and Forest Restoration Fund to CAL FIRE, Department of Fish and Wildlife, the RWQCBs, and Department of Conservation for the approval, then ongoing review, of WFMPs. This cost will at least be partially offset by a decrease in timber harvest plans (THPs) and Nonindustrial Timber Management Plans (NTMPs) submitted.
4. CAL FIRE and the reviewing agencies will all incur costs in the review of a WFMP application, the review of harvest notices, and the five-year review of an approved WFMP. The costs to the agencies depend on the number of plans submitted and approved as well as the complexity of those plans.
5. Based on a February 2013 report from the Natural Resources Agency and CalEPA that was required by AB 1492, the Resources Agency, CAL FIRE, DFW, SWRCB, and DOC collectively need approximately $25 million annually and 193 positions to review all discretionary harvest permits (THPs, NTMPs, etc.) received each year. The actual cost to review each THP can vary greatly depending on factors such as the quality of the plan submitted, the size of the plan, and the complexity of the plan. Based on the number of permits submitted in 2011-12, Department staff estimates that the average cost of reviewing a THP is in the high tens of thousands.
6. Staff assumes the workload involved in reviewing and approving a WFMP will be 25-50% higher than a THP because a WFMP allows harvesting indefinitely. Assuming five plans are submitted annually, this proposed action will likely result in costs to the reviewing agencies in the range of the mid to high hundreds of thousands of dollars. Once a WFMP is approved, the reviewing agencies will incur ongoing costs to review harvest notices and to conduct the five-year review. Each WFMP is likely to result in costs collectively across the review agencies of a couple of thousands of dollars annually. Continuing with the assumption of five WFMPs submitted annually, at the end of a five year period, there will be review costs in the low hundreds of thousands of dollars.
7. Staff notes that aside from the initial costs of regulatory development for the WFMP program, the initial and ongoing costs caused by the proposed action may be at least partially offset by a decrease in THPs, depending on the extent that a WFMP

supplants the submission of THPs. The extent to which a WFMP supplants THP submission is speculative.

Finally the additional expenditure will be absorbed within existing budgets and resources. In general, the cost to administer the Forest Practice Program, which includes review and inspection of Plans, is covered by the Timber Regulation and Restoration Fund.

Rule Text Edit: No.

W1-11: Alan Levine, Coast Action Group (dated May 20, 2015)
the intent of AB 904 was to allow for plans in perpetuity if such plans provided serious benefits to the resource – beyond the current FPRs. This goal has not been demonstrated by the currently proposed rule language.

Board Response: See response to comments W1-1 and W1-3.

Rule Text Edit: No.

W1-12: Alan Levine, Coast Action Group (dated May 20, 2015)
How does the proposed language meet the intent stated in the legislation (above or below)?

Board Response: Please see response to comment W1-1 for a discussion of how legislative intent was included in developing these regulations, and response to comments W1-3 and W1-4 for a discussion of other resources considered in the regulations and how the WFMP will meet the objectives of unevenaged management.

The components of PRC §4597.2(d) provided below were adopted within §1094.6(j) Option 2 of the regulation.

A description and discussion of the methods to be used to avoid significant sediment discharge to watercourses from timber operations. This shall include disclosure of active erosion sites from roads, skid trails, crossings, or any other structures or sites that have the potential to discharge sediment attributable to timber operations into waters of the state in an amount deleterious to the beneficial uses of water, an erosion control implementation plan, and a schedule to implement erosion controls that prioritizes major sources of erosion. This subdivision shall not apply to the extent that the registered professional forester provides documentation to the department that the working forest management plan is in compliance with similar requirements of other applicable provisions of law.

Rule Text Edit: No.

W1-13: Alan Levine, Coast Action Group (dated May 20, 2015)
the AB 904 language requires compliance with all applicable laws and statutes (that would include State of California and Federal Code).

Board Response: See response to comment W1-1.

Rule Text Edit: No.

W1-14: Alan Levine, Coast Action Group (dated May 20, 2015)
Referencing the last sentence in the quoted section above and the plane language of the the leg-islation, it is clear that the present rule making language is not consistent with the intent and language of AB 904.

Board Response: Please see response to comment W1-1 for a discussion of how legislative intent was included in developing these regulations**.**

Rule Text Edit: No.

W1-15: Alan Levine, Coast Action Group (dated May 20, 2015)
To comply with State Water Code and the clear wording in AB 904 " Potential" sources of sed-iment must be addressed in an *Erosion Control Implementation Plan*.

Board Response: The Board's Management Committee was in contact with a representative of AB 904's author throughout the regulatory development of the WFMP. According to these conversations "potential erosion sites" were specifically excluded from PRC § 4597.2(d). The Board decided to similarly exclude "potential erosion sites" from the implementing regulation, §1094.6(j) Option 2, to stay true to the legislative intent. The Board considered harmonizing this provision with existing regulations by adopting §1094.6(j) Option 1, but declined in favor of the legislature's intent. §1094.6(j) Option 2 does contain the term Significant Sediment Discharge, which is defined in 14 CCR § 895.1 and includes soil erosion that may discharge in the future based upon visible physical conditions.

The WFMP regulations proposed are not stand-alone regulations. The WFMP must be in compliance with existing law pursuant to 14 CCR § 1094. Essentially all of the Forest Practice Rules apply, except 14 CCR §§ 1032.7 through 1042. The adopted rules, and the existing rules and statute, on which the adopted rules rely, provide a comprehensive set of adequate standards and safeguards. Following are provisions in the adopted rules, existing rules and statute that prevent a significant adverse impact on the environment related to sediment.

Erosion sites are required to be identified and addressed in numerous provisions of this regulation. §1094.6(e)(4)(E) requires mapping "the location of significant existing or potential erosion sites on all roads and landings pursuant to 14 CCR §923.1(e)." §1094.6(e)(8) requires mapping the "location of known unstable areas or slides." §1094.6(e)(16) requires mapping the "locations of logging road failures on existing roads to be reconstructed." §1094.6(j), as adopted, restates much of the language from the quoted statute verbatim in the requirements of the erosion control implementation plan, including the language "sites that have the potential to discharge sediment attributable to timber operations into waters of the state in an amount deleterious to the beneficial uses of water".

14 CCR § 923.2(e) requires specifying feasible treatments to mitigate significant adverse impacts from the road or landing. § 1094.8(p) includes instructions on erosion control work, winter operations and watercourse protection be included in the WFHN. There are sections in the rules specific to soil stabilization and erosion control, not associated with roads. For example, WLPZ rules require soil stabilization. The plan as a whole is required to contain adequate measures to avoid erosion (sediment delivery to watercourses) from all timber operations. 14 CCR §§ 914 [934, 954] to 914.8 [934.8, 954.8] identify protection

measures for timber falling, tractor operations, cable yarding, waterbreaks, winter operations and tractor road watercourse crossings.

See response to comment W4-3 for more examples.

Nothing in these regulations authorizes or encourages violation of the California Water Code and responsible parties associated with approved WFMPs would still be responsible for compliance with the applicable local Basin Plan. Timber operations under the WFMP will apply for coverage through a Waste Discharge Requirement (WDR) or a Waiver of WDRs prior to operations. Representatives from the Regional Water Quality Control Boards are a core member of the multidisciplinary review process for timber harvest permits, including the WFMP. The Board is not aware of any provisions of this regulation that will cause a violation of the State Water Code or applicable Basin Plan.

See response to comment W1-1.

Rule Text Edit: No.

W1-16: Alan Levine, Coast Action Group (dated May 20, 2015)
the Forest Practice Rules do not protect beneficial uses

Board Response: This is a general comment about the Forest Practice Rules and is outside the scope of this rulemaking.

Rule Text Edit: No.

W1-17: Alan Levine, Coast Action Group (dated May 20, 2015)
The point here is that you can not protect or restore water quality values without limiting "potential" sources of pollutants and without dealing with both active and po-tential sources of said pollutant by use of an accountable methodology (this is exactly what TMDLs do and what the rule making process must address).

Board Response: See response to comment W1-15.

Rule Text Edit: No.

W1-18: Alan Levine, Coast Action Group (dated May 20, 2015)
The cur-rent rule language will create a failure to comply with the Federal Clean Water Act (or – set up a situation of non-compliance with the Clean Water Act).

Board Response: See response to comment W1-1 and W1-15.

Rule Text Edit: No.

W1-19: Alan Levine, Coast Action Group (dated May 20, 2015)
please review attached documents in Appendix

Board Response: The Board has received, reviewed and added to the rulemaking record *Santa Monica Baykeeper vs. Kramer Metals* and *Santa Monica Baykeeper vs. International Metals EKCO*.

Rule Text Edit: No.

W1-20: Alan Levine, Coast Action Group (dated May 20, 2015)
The rule making process in this case should be consistent with the FPR intent to protect and recover water quality values (Water Quality Standards).

Board Response: No specific rule or statute is identified that will be violated by implementation of this regulation. See response to comment W1-1.

Rule Text Edit: No.

W1-21: Alan Levine, Coast Action Group (dated May 20, 2015)
it is imperative that the Board of Forestry approve rule making that is fully protective and consistent with all State and Federal Code. (please review court decisions on this subject - attached).

Board Response: No specific statute is identified that will be violated by implementation of this regulation. See response to comments W1-1 and W1-19.

Rule Text Edit: No.

W1-22: Alan Levine, Coast Action Group (dated May 20, 2015)
It is not clearly defined what is to be considered “feasible” and/or the application of the word “feasible” leaves open the possibility that necessary pollutant (sediment) reduction targets are not being met.

Board Response: The term Feasible is defined in §895.1 of the Forest Practice Rules. It is used in § 923.2, 923.4, 923.5, 923.9, and 1094.6 with that definition.

Rule Text Edit: No.

W1-23: Alan Levine, Coast Action Group (dated May 20, 2015)
It is being argued that timber harvest operations must demonstrate compliance with pollution reduction standards required under State and Federal statute. This process would require an Erosion Control Implementation Plan that inventories and monitors all active and potential sources of sediment.

Board Response: See response to comments W1-1 and W1-15. No specific statute is identified that will be violated by implementation of this regulation. The Board is not aware of any conflicting regulations or statutes to the WFMP.

Rule Text Edit: No.

W1-24: Alan Levine, Coast Action Group (dated May 20, 2015)
The language above [§ 1094.6(z), (aa), (cc – ff)] is new and indicates that exceptions are allowed under the proposed rules. These exceptions pose risk of increased sedimentation and, thus, should be reviewed and moni-tored as part of the Erosion Control Implementation Plan. Failure to track the control of active and potential sources (on such large and complex plans and with exceptions to rules) virtually assures that necessary pollution control objectives will not be met.

Board Response: The Forest Practice Rules provide for the RPF to propose, and gives the Director discretion to approve, exceptions to the standard rules when site specific conditions in the field require it. 14 CCR § 923(c) provides this flexibility specific to Logging Roads and Landings. 14 CCR § 916.3(c) provides this flexibility for skid trail use in the Watercourse and Lake Protection Zone (WLPZ). Including this provision in the WFMP is consistent with these existing rules. Requiring an explanation and justification for use of these logging roads, landings, and skid trails requires disclosure of these practices to the public and the multi-disciplinary review team agencies for review prior to plan approval.

The Working Forest Harvest notice (WFHN) provides additional disclosure of sediment sources and requires the Erosion Control Implementation Plan (ECIP) to be updated to reflect current conditions [§ 1094.8(n)] with each WFHN if conditions have changed since approval of the WFMP. Updating, as required by § 1094.8(n), is the process by which treated sites will be removed from the ECIP and new sites will be added to the ECIP for future monitoring. The WFHN and any amendments to the WFMP are public documents submitted to CAL FIRE. This process will also disclose the presence of any additional sites to the interagency review team and the public.

See response to comment W15-38, which contains relevant information.

Rule Text Edit: No.

W1-25: Alan Levine, Coast Action Group (dated May 20, 2015)
The newly added language for erosion control implementation (Option 1 & 2 – p. 27) does not meet the requirements for the control of the pollutant sediment (as discussed above in this com-ment letter).

Board Response: No specific statute is identified that will be violated by implementation of this regulation. See response to comments W1-1 and W1-15 for a discussion of the exclusion of “potential” from §1094.6(j) Option 2.

Rule Text Edit: No.

W1-26: Alan Levine, Coast Action Group (dated May 20, 2015)
Option 1 - restricts assessment and control of sediment sources to roads and landings (thus lim-iting accounting for active and potential sources outside of roads and landings). All sediment sources must be addressed in a Erosion Control Implementation Plan

Board Response: The Board chose to adopt the language included in §1094.6(j) option 2, and exclude the language included in §1094.6(j) option 1.

Rule Text Edit: No.

W1-27: Alan Levine, Coast Action Group (dated May 20, 2015)
Option 2 - language excludes existing active or potential sediment sources (a land owner is re-sponsible for all sediment production on a property or in the plan area), as consideration of sed-iment sources is limited by the word "significant" (significant is not defined) – and would allow failure of consideration of pollutant sources that could and should be controlled. The proposed language does not include in the inventory of sediments sites to be controlled where there is ex-isting potential (but not necessarily active erosion) with a risk of delivery of sediment to surface waters.

Board Response: See response to comment W1-15 and W1-24.

Rule Text Edit: No.

W1-28: Alan Levine, Coast Action Group (dated May 20, 2015)
Both, new options evade responsibility to address potential delivery of pollution that is mandated by legal statute.

Board Response: No specific statute is identified that will be violated by implementation of this regulation. See response to comment W1-1.

Rule Text Edit: No.

W1-29: Alan Levine, Coast Action Group (dated May 20, 2015)
The proposed rule language allows for 30 days (assumed commencing on day of notice) for the public to submit information and comment. This 30 day (assumed from date of notice – issue is not clear) period limits the public ability to analyze and comment on any related agency review documents, findings, field inspection reports related to the 5 year review, and/or the department summary.

Board Response: 1094.29(a) requires the Department to *publish* a public notice for each five year review. The date of publishing is the date that the public is made aware that the 5 year review will occur and that the Department is soliciting comments from the public relative to this review. It is common practice that the public comment period begins on the date a notice is published. Additionally, each individual notice will establish the date on which public comments are due, which may not be less than 30 days from the date the public is notified (the date of publishing) of the 5 year review and the opportunity to submit comments per § 1094.29(a).

Rule Text Edit: No.

W1-30: Alan Levine, Coast Action Group (dated May 20, 2015)
Much of this information would not be available until after the proposed public com-ment period is closed.
The proposed wording restricts the ability of the public to respond with full knowledge of existing conditions. The public should have access to all agency reports and findings and have sufficient time to assess and comment on this information prior to the 5 year review close of comment period for the public.
It is suggested that the public be allowed 20 working days for review of such 5 year review documents until the comment period is closed.

Board Response: The WFMP and all WFHNs will be publically available on CAL FIRE's online THP database (ftp://thp.fire.ca.gov/THPLibrary/) from the time the WFMP is filed. Each WFHN will include any inspections performed and violations issued as is currently the case for THPs and NTMPs in this database. This complete record of the WFMP is available to the public for inspection at any time.

Per § 1094.29 (a), The published notice shall indicate that public comment on the five (5) year review shall be accepted during the thirty (30) day period. The public may submit to the review team additional information relevant to the purpose of the five (5) year review and the review team may consider this information when conducting its review. Per § 1094.29(b) the Director shall prepare a five (5) year summary and convene a meeting with the interdisciplinary review team, pursuant to 14 CCR § 1037.5, within thirty (30) days of each five (5) year anniversary of a WFMP approval to review the plan's administrative record, information obtained pursuant to 14 CCR § 1094.29(c), and any other information relevant to verify that completed or current operation(s) have been conducted in accordance with the plan and applicable laws and regulations.

Solicitation of public comment prior to preparation of the 5-year summary allows any additional information relevant to the purpose of the five (5) year review submitted by the public to be included in the 5-year summary. As pointed out in the first paragraph, the complete record of the WFMP is available to the public for inspection at any time. The only information that will not be publically available is that which is considered proprietary. See response to comment W15-57 for a discussion of proprietary information.

See response to comment W1-9 for a discussion of how the Board determined the review time periods in the WFMP.

Rule Text Edit: No.

W1-31: Alan Levine, Coast Action Group (dated May 20, 2015)
A similar comment period should be applied in the case of substantial deviations.

Board Response: The process for approval of substantial deviations from the plan is defined in §1094.23 and includes a public comment period. This provision points to PRC § 4582.7 and 4597.6 for public comment timelines. The Board deemed that the legislature was clear in their intent to make the timelines associated with the review of substantial deviations commensurate with PRC § 4582.7 and 4597.6.

Rule Text Edit: No.

W1-32: Alan Levine, Coast Action Group (dated May 20, 2015)
Comment from the Regional Board and Coast Action Group has established that the current proposed rules for the WFMP are not consistent with "all State Code".

Board Response: No specific statute is identified that will be violated by implementation of this regulation. See response to comment W1-1.

Rule Text Edit: No.

W1-33: Alan Levine, Coast Action Group (dated May 20, 2015)
Evidence in the proposed rule and related file clearly demonstrate inconsistency with applicable law – including by not limited to: Language and intent of AB 904, State Water Code, Applicable Water Quality Control Plan (Basin Plan), and compliance with TMDL bench marks (which im-plies Clean Water Act violation). It can be fairly argued that the current proposed language is not sufficient to meet the intended goal(s) of protecting and restoring water quality values and forest productivity and wildlife values.

Board Response: See response to comment W1-1.

Rule Text Edit: No.

W1-34: Alan Levine, Coast Action Group (dated May 20, 2015)
Please add these cases to the record.

Board Response: See response to comment W1-19.

Rule Text Edit: No.

W2-1: Alan Levine, Coast Action Group (dated February 4, 2015)
The agency review period for WFMP is not sufficient for the Review Team to effectively review and assess such large properties and provide responsible agencies and the public with complete and accurate information for an informed decision making process.

Board Response: See response to comment W1-9.

Rule Text Edit: No.

W2-2: Alan Levine, Coast Action Group (dated February 4, 2015)
If within the planning document there is not reasonable assurance of compliance of the goal of Long Term Sustained Yield – with measurable targets supported by periodic review that factually supports that identified management activities are meeting such targets. Current language in the WFMP language falls short of providing such assessment and compliance with LTSY.

Board Response: See response to comment W1-4.

Rule Text Edit: No.

W2-3: Alan Levine, Coast Action Group (dated February 4, 2015)
If within the planning document the Erosion Control Implementation Plan in not inclusive of a planning and implementation schedule to remedy active and potential sediment sources with timelines that provide reasonable assurance of compliance with – the Forest Practice Act, Cal Water Code (Porter-Cologne), and the Basin Plan.

Board Response: See response to comments W1-1 and W1-15.

Rule Text Edit: No.

W2-4: Alan Levine, Coast Action Group (dated February 4, 2015)
To be consistent with AB 904 Cal Water Code, CEQA, the Forest Practice Act, and the area Basin Plan(s) inclusion of the word "potential" (to effectively use this word in the rules and mandated Erosion Control Implementation Plan – as part of 1094.6 Contents of WFMP) – must be included in the wording of this section (to assure recognition and remedy, with prioritization, of controllable potential sediment sources).

Board Response: See response to comments W1-1 and W1-15.

Rule Text Edit: No.

W2-5: Alan Levine, Coast Action Group (dated February 4, 2015)
Additionally: the language in the WFMP Rule Making the words for sediment control must in-clude "Potential" sediment sources as well as "Existing or Active" sediment sources as necessary for TMDL compliance with State and/or EPA TMDLs. Definition wording for "Potential" shall be consistent with Cal Water Code and Basin Plan definitions (existing or perched material that is likely to enter a watercourse if not treated).

Board Response: See response to comments W1-1 and W1-15.

Rule Text Edit: No.

W2-6: Alan Levine, Coast Action Group (dated February 4, 2015)
We reference and support discussion on this subject in Regional Board (Region 1) letter to the Board of Forestry September 30,2014 – Comments on Working Forest Management Plan

Board Response: The referenced letter advocates for including "potential" sediment sites in what is now 1094.6(j) option 2.

See response to comment W1-15.

Rule Text Edit: No.

W2-7: Alan Levine, Coast Action Group (dated February 4, 2015)
We request clarifying language to solve issue regarding interpretation of the last sentence in the paragraph above: This subdivision shall not apply to the extent that the RPF provides documentation to the Department that the WFMP is in compliance with similar requirements of other applicable provisions of law." The meaning and intent of this language is unclear – convoluted. The interpretation of this lan-guage is likely to lead to interpretation that diverges from the intent of the AB 904 and necessity to meet legal

requirements to comply with the Basin Plan(s) and other California Code – including CEQA con-sistency requirements.

Board Response: This provision is included to prevent requiring a landowner who already has an approved plan in place for treating controllable sediment discharges from having to perform redundant work to comply with this subdivision. As an example, NTMP holders under the jurisdiction of the North Coast Regional Water Quality Control Board (NCRWQCB) may have an Erosion Control Plan (ECP) identifying all sites across the NTMP and an implementation schedule for treating these sites. If a NTMP holder were to add additional acreage and apply for a WFMP, this ECP could meet the requirements of §1094.6(j). See the NCRWQCB website for more information about the ECP (http://www.waterboards.ca.gov/northcoast/water_issues/programs/timber_operations/non_industrial_tmps/).

Specific regulations satisfying this requirement were not identified in the proposed regulation in recognition that other regulatory standards outside the purview of this Board may change and new regulatory provisions may be created that provide alternative options for meeting this requirement.

Rule Text Edit: No.

W3-1: Alan Levine, Coast Action Group (dated August 20, 2014)

To date, the language in the pleading fails in a test of consistency (AB 904 section 4597.2. (b) and (d)). Additionally, in this rule making process, with final approval of the rule - as a project under CEQA – there is a requirement that the rule be internally consistent. That is; different sections must be consistent with each other (which is not currently the case).

Board Response: No specific text of the regulation is specified as inconsistent with the referenced statute or other provisions of the proposed regulation. §1094.6(e) and (f) include the provisions to comply with PRC § 4597.2(b). §1094.6(j) Option 2, which was adopted by the Board in the final rule language, contains all the provisions required to comply with PRC § 4597.2(d). The Board is not aware of any conflicting regulations or statutes to the WFMP.

Rule Text Edit: No.

W3-2: Alan Levine, Coast Action Group (dated August 20, 2014)

Sample marking in the WLPZ is to be allowed (similar to NTMPs – however NTMPs are smaller and more manageable – thus, this is not a similar situation or issue). The question arises; that with such sample marking (anadromous streams) compliance with ben-eficial use protection (canopy removal, stream temperature, and other habitat issues) can not be fully addressed. Sample marking does not provide, or assure, compliance with actions necessary to attain the desired/target outcomes that are necessary. Nor, does sample marking provide the information necessary for managing agencies to make adequate determinations. Note: THPs re-quire marking the entire WLPZ for ASP compliance.

Board Response: Sample marking is allowed in the WFMP regulations due to the size and longevity of the Plan. It is not practical to require a landowner to flag and mark the Watercourse and Lake Protection Zones (WLPZs) on up to 15,000 acres of timberland when the harvest of most of those acres will not occur for years or decades in the future.

Paint and flagging degrades over time so this work is most effectively done just prior to operations. Additionally, the multi-agency review team has many items of interest to inspect besides the WLPZs during the preharvest inspection (PHI). It is not reasonable to expect every segment of WLPZ to be inspected on the PHI, making sample marking appropriate.

§916.5(e)(B), (D), and (E) of these regulations require the sample mark to be representative of the range of conditions found within the WLPZs in the Plan area. It also allows the Director to determine if the sample mark is adequate for plan evaluation during the PHI.

THPs remain valid for a period of 5 years, with the potential for a single two-year extension, after approval. Paint and flagging may remain visible for this relatively short timeframe prior to operations. Also THPs generally cover smaller areas than NTMPs or WFMPs, making it practical to mark the entire WLPZ prior to the pre-harvest inspection in watersheds with listed anadromous salmonids in conformance with 14 CCR §916.5(e)(D).

Rule Text Edit: No.

W3-3: Alan Levine, Coast Action Group (dated August 20, 2014)
Long Term Sustain Yield - Definition and terminology in the rule language is insufficient. See discussion provided by Sharon Duggan.

Board Response: Long Term Sustained Yield (LTSY) is defined in 1094.2(c). The Board has found that the definition and terminology used will achieve the desired objective of balancing growth and harvest over time in a WFMP.

See response to comment W1-4.

Rule Text Edit: No.

W3-4: Alan Levine, Coast Action Group (dated August 20, 2014)
1094.6 Contents of a Working Forest Management Plan - information provided in WFMP (and this section of the rule language) must go beyond disclosure of the potential effects of the plan – timber management. CEQA requires complete and accurate description of the project – as well as complete analysis of potential effects and mitigatory process. Some areas (sections) of the rule making do contain aspects of (but not all) the necessary information – where this information is absent from other sections. This is a problem of consistency that needs to be fixed.

Board Response: 14 CCR §1094.6 outlines the contents necessary to include in a WFMP for it to serve the three functions identified: determine if the WFMP conforms to the Forest Practice Rules, provide information and direction for timber management, and disclose potential effects to the public.

The final regulatory language was developed through multiple public meetings and focused workshops. Input from affected Agencies and interested stakeholders was deliberated at length and included in the final rule language where the Board was given discretion to make clear or specific provisions of the statute. Numerous subsections of 14 CCR §1094.6 compel the applicant to provide a complete description of the project, analyze the potential significant environmental impacts, and identify any mitigations that

will lessen those impacts.

The comment does not identify specific sections of the regulation that are deficient, and the Board is not aware of any sections that are.

Rule Text Edit: No.

W3-5: Alan Levine, Coast Action Group (dated August 20, 2014)
(d) (4) Probable Location of proposed and existing landings in WLPZ. Probable? I would remove that word. The public and managing agencies need to know the location of these aspects of the plan – for adequate review and assessment.

Board Response: This comment references a draft version of these regulations dated August 18, 2014, and is not relevant to the final regulatory language under consideration here.

Rule Text Edit: No.

W3-6: Alan Levine, Coast Action Group (dated August 20, 2014)
Added to this section should be the location of all existing and potential erosion control issues (road failures, slides, unstable soils, etc.) Or – this information can be contained in the Erosion Control Implementation Plan.

Board Response: Language addressing this concern is included in the final rulemaking language in §1094.6(e)(4)(E).

Rule Text Edit: No.

W3-7: Alan Levine, Coast Action Group (dated August 20, 2014)
(e) (8) This section fails to include potential erosion features that must be located and enumerated in the plan (As per the plain language in AB 904) – or – be inventoried and noted in the Erosion Control Implementation Plan.

Board Response: See response to comment W1-15. This comment references a draft version of these regulations dated August 18, 2014. The current location of this provision is §1094.6(j) Option 2.

Rule Text Edit: No.

W3-8: Alan Levine, Coast Action Group (dated August 20, 2014)
(28) Explanation of justification for use of landings, roads, skid trails in watercourse, marshes, or wet meadows. Isn't there a policy of avoidance of these areas in the Forest Practice Rules? In-cursion into these areas can hardly be justified – or – mitigated.

Board Response: This comment references a draft version of these regulations dated August 18, 2014. The current location of this section is §1094.6(cc).

See responses to comments W1-24 and W15-38, which provide relevant information.

Rule Text Edit: No.

W3-9: Alan Levine, Coast Action Group (dated August 20, 2014)
(34) A description of the Lakes, meadows, and other wet areas : Included should be the location and mapping of these areas.

Board Response: §1094.6(e)(7) requires the mapping of Lakes and Watercourses with Class I, II, III, or IV waters. Wet meadows and other wet areas are required to be mapped, in part, where they are impacted by roads and landings other than at road crossings in accordance with§1094.6(e)(4)(B) and §1094.8(u)(9). These mapping requirements are consistent with the requirements in other sections of the Forest Practice Rules.

Rule Text Edit: No.

W3-10: Alan Levine, Coast Action Group (dated August 20, 2014)
1094.8 Working Forest Harvest Notice Content
Information required in this section is not consistent with 1094.6

Board Response: This comment does not identify specific provisions contained in §1094.8 that are inconsistent with any specific provisions §1094.6. The Board is not aware of any conflicting regulations in the WFMP.

Rule Text Edit: No.

W3-11: Alan Levine, Coast Action Group (dated August 20, 2014)
Certification of compliance by the RPF for beneficial use protection can not be accomplished– if there is failure to identify or locate slides and unstable areas, erosion sources (including potential), wet areas, activities to occur in wet areas or adjacent to or on erosion prone areas – and note ap-plicable mitigation. Most of all of this information should be contained in an Erosion Control Implementation Plan.

Board Response: §1094.6(j) Option 2, as adopted by the Board on June 17, 2015 requires an erosion control implementation plan (ECIP), or documentation of compliance through other means, be included in a WFMP. The ECIP identifies active erosion sites in the WFMP, mitigation methods for avoiding significant discharge from these sites, and a schedule to implement the erosion controls.

The WFHN provides additional disclosure of sediment sources and requires the ECIP to be updated to reflect current conditions [§ 1094.8(n)] with each WFHN if conditions have changed since approval of the WFMP. This is the process by which treated sites will be removed and new sites will be added to the ECIP for future monitoring. As the WFHN is a public document submitted to CAL FIRE, this process will also disclose the presence of any additional sites to the interagency review team and public.

Please see response to comments W1-15 for a discussion of potential erosion sites.

Rule Text Edit: No.

W3-12: Alan Levine, Coast Action Group (dated August 20, 2014)
An Erosion Control Implementation Plan is mandated as part of any WFMP. Certification by the RPF without such a plan in place is not consistent with the wording or intent of AB 904. Contents and use of the Erosion Control Implementation Plan must be fully described in the rule making.

Board Response: The option to document compliance with similar requirement of other applicable provisions of law is contained within the statute at PRC § 4597.2(d). No specific deficiency in the contents and use of the ECIP in the final regulatory language is identified in this comment. The Board is not aware of any deficiencies in the final regulatory language regarding the ECIP.

See response to comments W2-7 and W3-11.

Rule Text Edit: No.

W3-13: Alan Levine, Coast Action Group (dated August 20, 2014)
The use of terminology "unreasonable expense" does not (can not) justify operations that violate the language and intent of: Basin Plan for the North Coast, Porter-Cologne Water Quality Control Act (Cal Water Code), DFG Code, Federal Endangered Species Act, and other California Code. This should be made clear in the Rules for WFMP.

Board Response: This comment is apparently a reference to § 1094.8(j)(2) which provides the RPF to certify that compliance with the Board rules and regulations at the time the WFMP was approved will not have significant impacts on the identified resources, including beneficial uses of water, if the RPF also certifies that adherence to the current Board rules and regulations would cause unreasonable additional expense. This provision does not authorize operations that would violate any of the statutes or regulations mentioned as suggested by the comment.

Rule Text Edit: No.

W4-1: Alan Levine, Coast Action Group (dated July 17, 2014)
This letter speaks to the need to include assessment and inventory of potential sediment sources (as proposed by the Regional Board and required by Cal Water Code and the Basin Plan for the North Coast). It appears the committee has issue determining necessity for inclusion of language requiring assessment and inventorying (including prioritizing remediation of sediment control actions necessary to protect beneficial uses) potential sediment sources as part of the sediment control plan for a Working Forest Management Plan. Please refer to Coast Action Groups previous comments (June 4, 2014).

Board Response: See response to comment W1-15.

Rule Text Edit: No.

W4-2: Alan Levine, Coast Action Group (dated July 17, 2014)
The language AB 904 (above) implies stewardship that protects watersheds and fisheries (as well as other forest values). It can be fairly argued that failure to assess and prioritize for remedy of potential sediment sources fails consistency with the above noted objective (as well as mandates under other California Code).

Board Response: Please see response to comments W1-15 for a discussion of potential erosion sites and W3-11 for a discussion of the Erosion Control Implementation Plan (ECIP).

Rule Text Edit: No.

W4-3: Alan Levine, Coast Action Group (dated July 17, 2014)
This description and mapping should be included as part of Erosion Control Plan (or inventory of roads, erosion sites – ongoing or potential – and schedule for remediation) to be included in the Plan.

Board Response: The disclosure of sediment sources is required by numerous provisions of these regulations. § 1094.6(e)(4)(E) requires mapping of significant existing or potential erosion sites on all roads and landings pursuant to 14 CCR § 923.1(e). § 1094.6(e)(8) requires mapping the location of unstable areas or slides. § 1094.6(j) requires the disclosure of active erosion sites and an implementation schedule for treating them in the ECIP. § 1094.6(gg) requires a description of soils, surface erosion hazard, mass wasting erosion hazard, and erosion control measures.

The WFHN provides additional disclosure of sediment sources and requires the ECIP to be updated with each WFHN if conditions have changed since approval of the WFMP. § 1094.8(n) requires the ECIP be updated to reflect current conditions. § 1094.8(p) requires instructions be provided on erosion control work or erosion control maintenance to be performed under the WFHN. § 1094.8(u)(4)(E) requires mapping of significant existing or potential erosion sites on all roads and landings in the WFHN. § 1094.8(u)(6) requires mapping the location of logging road failures on existing roads to be reconstructed. § 1094.8(u)(10) requires mapping the location of unstable areas or slides.

The schedule for remediation of erosion sites is contained in the ECIP in accordance with § 1094.6(j) Option 2.

Both the ECIP and the information required to be mapped per § 1094.6(e)(4) are a part of the WFMP. It would be redundant to require an additional map with this same information to be included in the ECIP.

See response to comments W1-15 and W3-11 for a discussion of the ECIP.

Rule Text Edit: No.

W4-4: Alan Levine, Coast Action Group (dated July 17, 2014)
The AB 904 language is clear. Any CEQA or legal review of this rule making action will support the inclusion of this language in the rule making process.

Board Response: The above referenced language from PRC § 4597.2(d) is included almost verbatim in § 1094.6(j) Option 2 of the final regulatory language adopted by the Board on June 17, 2015.

Rule Text Edit: No.

W4-5: Alan Levine, Coast Action Group (dated July 17, 2014)
plan review shall include: Field assessment by the RPF (and Regional Board, CDFW, CalFire staff during field review and agency reports).of any and all active and potential sediment sources.

Board Response: The multi-disciplinary review team agencies have the ability to look at any erosion sites of their choosing during the PHI. It is unlikely that all of the sites in a single WFMP would be evaluated on the PHI as the comment suggests. It is more common for the multi-disciplinary review team to choose some representative sample of the sites for field evaluation.

See response to comments W1-15, W3-11, and W4-3 for disclosure of significant existing or potential erosion sites at the time of WFMP submission.

Rule Text Edit: No.

W4-6: Alan Levine, Coast Action Group (dated July 17, 2014)
plan review shall include: Such sources, and potential sources, shall be disclosed in discussion and mapped .

Board Response: See response to comment W4-3.

Rule Text Edit: No.

W4-7: Alan Levine, Coast Action Group (dated July 17, 2014)
plan review shall include: Assessment shall include a description of the issue, estimate of pollutant contribution, or potential contribution, with discussion of relevant potential – need for remedy, and relationship in a priority continuum (schedule for remedy).

Board Response: See response to comments W1-15 and W3-11 for a discussion of the ECIP, including the implementation schedule for treating identified sites.

Rule Text Edit: No.

W4-8: Alan Levine, Coast Action Group (dated July 17, 2014)
plan review shall include: Description of remedial action.

Board Response: See response to comment W3-11; this is included in the ECIP.

Rule Text Edit: No.

W4-9: Alan Levine, Coast Action Group (dated July 17, 2014)
plan review shall include: Prioritization and scheduling be maintained on an inventory list where progress to completion of remedial project completion is tracked (and maintained by CalFire and Regional Board Staff).

Board Response: See response to comment W3-11. The ECIP serves as the inventory list of existing sediment sites to be addressed by the WFMP. The ECIP will be updated by the WFHN to reflect changing conditions such as adding new sites to the list or removing treated sites. The WFMP, including the ECIP, and any WFHN filed will be maintained as part of the official record that CAL FIRE, the interdisciplinary review team agencies, and the public will have access to on a publicly available internet site. See response to comment W1-30 for a full description of the CAL FIRE online THP database.

Rule Text Edit: No.

W4-10: Alan Levine, Coast Action Group (dated July 17, 2014)
Failure to comply with the *"Erosion Control Implementation Plan"* would require revocation of the Working Forest Management Plan

Board Response: § 1094.26 authorizes the Director to take corrective actions as appropriate if work was not completed in accordance with the Board's rules and regulations or the provisions of the approved WFMP as determined by the completion inspection for a Working Forest Harvest Notice. § 1094.29(d) authorizes the Director to cancel a WFMP if operations are not in compliance with the Board's rules and regulations and the provisions of the approved WFMP during the 5 year review. § 1094.31(b) authorizes the Department to cancel a WFMP for persistent violations that are not being corrected. The ECIP becomes an enforceable provision of the WFMP upon approval.

Rule Text Edit: No.

W5-1: Alan Levine, Coast Action Group (dated June 4, 2014)
Current iterations of the rule contain some apparent language changes, differences, that appear to fail to meet the legislative language and/or intent of the legislation.

Board Response: No specific sections are identified that conflict with the statute or legislative intent of the WFMP. The Board is not aware of any conflicts between the WFMP regulations and statute. See response to comment W1-1.

Rule Text Edit: No.

W5-2: Alan Levine, Coast Action Group (dated June 4, 2014)
The bill contains language that indicates noticing and maintenance of web-based documentation of the Plan. Rulemaking language shall indicate that not only the plan should be available on the web – all available documents necessary for accurate review of the plan shall be maintained on the web as part of the Plan.

Board Response: The regulation provides for public posting of information pertinent to the WFMP in a number of sections.

§ 1094.4(e) requires the Notice of Preparation to be posted to a publically available

internet database within 2 days of receipt by the Director. § 1094.16(a) requires the Department to place a copy of the proposed WFMP on a publically available database upon receipt. Any additional documents generated during review of the WFMP, such as review team questions, preharvest inspection reports and public comments, also become part of this Plan file. The Department then maintains these files in their comprehensive online THP database located at the following web address:
ftp://thp.fire.ca.gov/THPLibrary/

This database is also the repository of any Working Forest Harvest Notices filed in compliance with the WFMP, which are required to be posted by § 1094.8. Any active inspections, notice of stocking, or notice of violation generated by the WFHN become part of the WFHN and are also posted to the Plan file in the THP database.

The WFMP and any WFHNs are publically available at any time, including for the 5-year review of the WFMP. The 5-year review notice, summary, and findings are also required to be posted to a publically available internet database by § 1094.29.

Reference to the specific database is not included in the regulation to give the Department flexibility in how they provide this information to the public. The regulation provides the performance standard identifying the minimum information that shall be available on the internet. It is reasonable for the Board and Public to expect that a comprehensive database of information pertinent to each timber harvesting permit is maintained in an equivalent fashion to the existing database going into the future.

The comment is not clear on which additional information should be posted to the Plan file in the THP database. The only information that is to be specifically excluded from posting to a publically available internet database is that which is considered proprietary and will be treated consistent with PRC § 21160 and GOV § 6254.7. The Board is unaware of any additional information that would be necessary for review of the plan that is excluded from posting to a publically available internet database.

See response to comment W15-57 for further discussion on proprietary information.

Rule Text Edit: No.

W5-3: Alan Levine, Coast Action Group (dated June 4, 2014)
As noted above, review periods may need to be altered due to Plan changes and late information provided by the timberland owner, or as required by the Review Team – to attain the stated objectives of the Act and Rules. Thus, additional time for responsible agency and public review may be required. This should be considered in the rulemaking .

Board Response: See response to comment W1-9.

Rule Text Edit: No.

W5-4: Alan Levine, Coast Action Group (dated June 4, 2014)
This description and mapping should be included as part of Erosion Control Plan (or inventory of roads, erosion sites – ongoing or potential – and schedule for remediation) to be included in the Plan.

Board Response: See response to comment W4-3.

Rule Text Edit: No.

W5-5: Alan Levine, Coast Action Group (dated June 4, 2014)
Language shall be included to assure maintenance of inventory , protection, and recruitment of late suc-cessional forest type:

Board Response: § 1094.6(l) requires a description of Late Succession Forest Stands and how this type of habitat will be maintained over time under a constraint of no net loss. See response to comment W1-4 for a discussion of inventory requirements for a WFMP.

Rule Text Edit: No.

W5-6: Alan Levine, Coast Action Group (dated June 4, 2014)
This is to include protection of other wildlife values (as stated – above – and – below)

Board Response: § 1094.6(l) provides for no net loss of Late Successional Forest Stands, retention measures for existing biological legacy features, and a description of how hardwood tree species will be managed. § 1094.6(m) requires the disclosure of state and federally listed, 14 CCR § 15380(d) listed, and sensitive plant or animal species within the WFMP area. The provisions addressing wildlife habitat within PRC § 4597.2(i)(2) for WFMPs that will show a reduction in quadratic mean diameter of trees greater than 12 inches in diameter over the planning horizon are included in § 1094.6(o) of the final regulatory language.

Rule Text Edit: No.

W5-7: Alan Levine, Coast Action Group (dated June 4, 2014)
Clarification of the review period(s) and the opportunity for public participation is needed

The bill would require the department to provide a public comment period of at least 90 days from the date of the receipt of the plan, as specified.

These are very large scale and detailed plans – requiring significant and detailed review and reporting by the land owner and participating agencies. The current language needs to address the issue of additional time need by agencies to obtain required information and for the public to have sufficient time to obtain an review that information.

Additionally, if the plan changes in process or is altered by Second Review recommendations, the public and participating agencies need additional time for review.

Board Response: See response to comment W1-9 for a discussion on the time periods for agency and public review, including recirculation of a WFMP under review when significant new information is provided.

Rule Text Edit: No.

W5-8: Alan Levine, Coast Action Group (dated June 4, 2014)
The language for the 5 year interdisciplinary review shall contain opportunity for public comment on such re-view. 4597.12 (c)

Board Response: A 30-day public comment period for the 5-year review is provided for in § 1094.29(a).

Rule Text Edit: No.

W5-9: Alan Levine, Coast Action Group (dated June 4, 2014)
There is concern (where clarification is needed in the rules) that there will be attempts to amalgamate (combine) properties to qualify these properties, under this act as a Working Forest Management Plan.

Such amalgamation of combining of properties would provide numerous review and management problems – with varying and different – stand types, strata, management goals, erosion problems, ECPs, and other re-quirements. Allowing such combinations of different ownerships (under one plan) would make review and management of the Working Forest Management Plan impossible for responsible agencies review and monitor – and , thus, defeats the intent of the legislation.

Board Response: The Board decided to allow multiple landowners to apply for a WFMP jointly. This decision was based on the assumption that the legislature is aware of current law and given that the Legislature explicitly intended the WFMP to be "building upon the model provided by" the NTMP (PRC 4597(a)(3); see also, 4597(a)(1)) and this allowance exists in the NTMP Program (see, e.g., 1090.5 ["name, address, and telephone number of the timberland owner(s) or designated agent"], 1090.27 ["All parties, who submitted plans or their successors, must sign the request to the Director for cancellation of a plan."]), it can reasonably be assumed that the Legislature intended for WFMPs to be available to multiple landowners. This conclusion is also supported by the constraints that the Legislature put on WFMPs: they must be properties of less than 15,000 acres and the landowner must not be primarily engaged in the manufacture of forest products.

Following are provisions in statute that further support the participation of multiple landowners.

> Pursuant to PRC § 4597.6 the review timelines are provided, which are staggered based on acreage. Not allowing multiple landowners to aggregate their holdings for the purpose of obtaining a single WFMP would mean that there would be more environmental reviews on shorter timelines. So, for instance, if three landowners with 4,000 acres each, aggregate and file one plan, the public will have 130 days to review and comment on that single plan. If they are not allowed to aggregate, the public will be given 90 days in which to review and comment on three separate plans.

Pursuant to PRC § 4597.11, the working forest landowner who owns, leases, or otherwise controls or operates on all or any portion of any timberland within the boundaries of an approved working forest management plan, and who plans to harvest any of the timber during a given year, shall file a working forest harvest notice with the department in writing. The reference to "the working forest landowner who owns, leases, or otherwise controls or operates on all or any portion of any timberland within the boundaries of an approved working forest management plan" suggests the potential participation of multiple landowners because logically another ownership must be involved if the working forest landowner may own only a portion of timberland within the boundaries of an approved working forest management plan.

Pursuant to PRC § 4597.17, if a landowner with a nonindustrial timber management plan or a working forest management plan with less than 2,500 acres expands his or her total timberland ownership to 2,500 or more acres, the landowner may transition into a working forest management plan for more than 2,500 acres through an amendment to the plan. The board shall adopt regulations that establish this amendment process. Given that NTMPs allow participation of multiple landowners, and statute allows the transition from a NTMP to a WFMP, it follows that multiple landowners may also be associated with a WFMP.

The concerns mentioned were taken into consideration and it was decided that multiple landowners with a single WFMP represented no greater problem than a single property with divided ownership possessing a WFMP. CAL FIRE brought forward some concerns about the administration of NTMPs with divided single ownerships and multiple ownerships, and the Board adopted additional requirements into the WFMP to address these issues. Specifically, § 1094.2 defines the concept of the Designated Agent to be the single point of contact for a WFMP. This person is required to be identified in the WFMP pursuant to § 1094.6(b). The Board additionally added the constraint that Management Units, pursuant to § 1094.6(e)(1), not exceed a single ownership.

Through the lens of public policy, following are arguments that support the interpretation that WFMPs should be available to multiple landowners. (1) The Legislative findings state that "it is the policy of the state to encourage prudent and responsible forest resource management." (4597(a)(4).) This policy is best served by allowing multiple landowners with small ownerships to consolidate those properties for the purposes of long-term planning. This policy would be frustrated if non-industrial owners found the WFMP not to be worth the trouble because the landowner does not have enough land to justify the upfront cost of preparing a WFMP. (2) Allowing multiple landowners to file a single WFMP also furthers the public participation goals of the WFMP statutes. Having multiple landowners filing multiple WFMPs rather than one would have the effect of understating the environmental effects of all the WFMPs together and forces the public to engage in multiple review processes rather than one. This also runs the risk of having WFMPs operating at cross-purposes with each other. (3) For the same reasons as (2), allowing multiple landowners to file a single WFMP fosters efficiency in the operation of government. The bureaucratic benefits of reviewing one plan rather than several are obvious.

Through the lens of interpretation, following are arguments that support the interpretation that WFMPs should be available to multiple landowners. (1) The Board's role is to carry out the intent of the Legislature. The Legislature explicitly put constraints on WFMPs

related to ownership size and the nature of the owner (i.e., not an industrial owner). There is no purpose that is served by telling three landowners who collectively own 14,000 acres that they must apply for three separate WFMPs when a single WFMP would be available for the same property if the ownership was consolidated into a single person. Such an interpretation does nothing to further the protective purposes of the WFMP but does frustrate the sound administration of a WFMP program. (2) The interpretation that WFMPs are only available to individual persons leads to absurdity, and it is a canon of statutory interpretation that an interpretation that avoids absurdity is preferred over one that creates it.

In summary, when the statutory scheme as a whole and the purposes of it are considered, the more reasonable interpretation is that WFMPs should be available to multiple landowners, and as the body charged with promulgating the regulations to implement the scheme, the Board has the authority to make rules that allow for multiple landowners to submit a single plan.

Rule Text Edit: No.

W5-10: Alan Levine, Coast Action Group (dated June 4, 2014)
The above language suggests stringent inventory review that maintains forest values (species, water quality, old growth) – and – additionally assures accrual of carbon. Rule language should reflect this.

Board Response: Please see response to comment W1-4.

Rule Text Edit: No.

W5-11: Alan Levine, Coast Action Group (dated June 4, 2014)
Amendments shall comply with existing rules and applicable codes (including the regional Basin Plan) at the time of amendment:

Board Response: The process for substantially deviating from an approved WFMP is included in § 1094.23. The provisions of PRC § 4597.7 have been incorporated into this section. § 1094.23(a)(2) allows for the deviation to comply with the Board rules and regulations at the time the WFMP was approved only if the RPF explains, justifies, and certifies the 2 statements included as (A) and (B) of that subsection. This does not allow the WFMP to violate any applicable codes, including the Basin Plan. Substantial deviations are subject to review by the public and multi-agency review teams as provided for in § 1094.23(b).

Rule Text Edit: No.

W5-12: Alan Levine, Coast Action Group (dated June 4, 2014)
The language in the legislation is very clear regarding criteria used to establish growth and yield targets.

The language in the rules must adequately reflect the legislative language and intent.

Board Response: No specific conflict between the regulations and statute is identified. The Board is not aware of any conflicts between the regulations and the statute. Please see response to comment W1-1 for a discussion of how legislative intent was considered in the development of the WFMP regulations. Also see response to comment W1-4 for a discussion of the inventory and LTSY requirements in the WFMP.

Rule Text Edit: No.

W5-13: Alan Levine, Coast Action Group (dated June 4, 2014)
Rulemaking shall reflect and be consistent with language and intent of the legislation (AB – 904)

This includes Cal Water Code (Porter-Cologne) and the regional Basin Plans. Erosion control planning that does not consider potential erosion sources is not consistent with the Basin Plan. Rulemaking that does not consider Regional Water Board Temperature Policy is not consistent with the Basin Plan.

Board Response: Please see response to comments W1-1 and W1-15.

Rule Text Edit: No.

W5-14: Alan Levine, Coast Action Group (dated June 4, 2014)
All provisions of the section 4597.11 will be clearly stated in enforceable language.

Board Response: The requirements of PRC § 4597.11 have been incorporated into § 1094.8 in enforceable language.

Rule Text Edit: No.

W6-1: Duane Shintaku, CAL FIRE
Page 18, Lines 8 through 13 (ref. 14 CCR § 1094.1): This section of the regulations includes language that is not clear and could result in the submission of incorrect information to inappropriate locations. The language on line 12 stating in part, ". . . having jurisdiction over timber operations . . ." could be confusing and result in plans and/or notices being submitted to the wrong CAL FIRE office. Furthermore, the language on line 13 states that the WFMP or the Working Forest Harvest Notice shall contain the information specified in 14 CCR §§ 1094.6 and 1094.8; however, 14 CCR § 1094.6 is only pertinent to the WFMP and 14 CCR § 1094.8 only refers to the contents of the Working Forest Harvest Notice. CAL FIRE recommends the following changes to the proposed regulations:

"The Working Forest Management Plan (WFMP) and ~~or~~ Working Forest Harvest Notice for proposed timber operations pursuant to PRC § 4597.1 et seq., shall be submitted in writing to the Director at the appropriate CAL FIRE Review Team Office specified under 14 CCR § 1032, ~~having jurisdiction for the timber operations,~~ and shall contain at a minimum the information specified in 14 CCR §§ 1094.6 ~~and~~ or 1094.8 as appropriate."

Board Response: The language of § 1094.1 as currently proposed is consistent with that found in 14 CCR § 1090.1 for the NTMP. Review Team Office locations and the Counties they serve are identified in 14 CCR § 1032. This language has not been shown to be unclear or cause NTMPs to be filed in the incorrect location. The Board has determined that changing the language pointing to this well-established process may confuse the regulated public as to the intent of this subsection and no changes to the regulatory language have been made.

It is unlikely that an RPF would submit information additional to that required by 1094.6 and 1094.8 determined to be necessary for the review of the WFMP to anywhere other than the Review Team Office that is reviewing the WFMP.

Rule Text Edit: No.

W6-2: Duane Shintaku, CAL FIRE

Page 27, Line 1 (ref. 14 CCR § 1094.6(h)(3)): This section of the proposed regulations requires that inventory estimates of growth and yield be provided. CAL FIRE recommends that a stand or stock table indicating the tree diameter distribution including total heights be provided to support the inventory estimates. In addition, an inventory stand or strata summary table should be included indicating the: 1) the acreage; 2) number of measured inventory samples or plots; 3) corresponding site class; 4) average conifer and hardwood basal area density; 5) average conifer and hardwood volume per acre; 6) average conifer and hardwood trees per acre; 7) average first period conifer growth per acre; 8) quadratic mean diameter (QMD); and 9) corresponding WHR. This information would allow for greater confidence in the estimate provided.

Board Response: The Board adopted § 1094.6(h)(1) and (2) to assure that the inventory has been performed to a minimum standard and level of confidence. Further direction for providing growth and yield estimates are included in § 1094.6(i), and § 1094.6(n)(1). The WFMP also requires that periodic future inventories be performed to ensure these estimates continue to reflect any changing conditions to the WFMP area by § 1094.6(g) and (q). The 5-year review, § 1094.29, includes provisions for the interdisciplinary review team to evaluate the volumes harvested in relation to projections for harvest under the WFMP.

The regulations also contain provisions requiring the Department to cancel a WFMP that will have significant adverse effects on the environment (§ 1094.29(d)) or is not meeting the objectives of Unevenaged Management and Sustained Yield (§ 1094.31(b)).

Given the above mentioned standards, periodic updates, and periodic review, the Board decided to use the performance standard provided in § 1094.6(h)(1) and (2) to ensure accuracy of the inventory estimates and not to use the prescriptive standards requested in this comment. There are numerous valid inventory strategies and growth and yield models that a landowner can use to satisfy these requirements. Including the requested level of specificity regarding how to present this information may increase costs upon the regulated public without providing any additional assurances to the interdisciplinary review team agencies or public that harvest levels under the WFMP are appropriate for the projected growth and yield.

Rule Text Edit: No.

W6-3: Duane Shintaku, CAL FIRE

Page 27, Line 2 (ref. 14 CCR § 1094.6(h)(3)): In order to evaluate growth and yield over time, CAL FIRE recommends that subsection (3) be revised to state ". . . determining LTSY and volumes available for harvest by Stand or Strata <u>for each ownership of undivided interest</u> and aggregated for the area covered by the WFMP to develop the LTSY estimate."

Board Response: Administrative boundaries such as property lines do not necessarily have a bearing on the factors that would logically require different inventory sampling. Stand and Strata are defined terms, and encompass those biological factors that would impact inventory estimates and growth and yield projections to determine LTSY for the

WFMP. Requiring a further division of the WFMP to represent property boundaries may introduce increased costs upon the regulated public and without providing any additional assurances to the agencies or public that harvest under the WFMP are appropriate for the projected LTSY.

Additionally, the Board has defined the term Management Unit as limited to a single property as this comment suggests. Pursuant to § 1094.6(e) (1) Boundaries of WFMP Management Units shall not exceed a single ownership which 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). § 1094.6(n)(1) requires estimated growth and yield for each planned harvest in a Management Unit. This information can be reasonably inferred from the Stand or Strata information developed to comply with other relevant provisions.

Rule Text Edit: No.

W6-4: Duane Shintaku, CAL FIRE

Page 27, Line 9 through 13 (ref. 14 CCR § 1094.6(i)): The proposed regulations require the inclusion of a description of the property and planned activities including acres and projected growth, existing stand types, Major Stand Types or Strata, etc. CAL FIRE suggests the following changes to be included as required for Nonindustrial Timber Management Plans (NTMPs) under 14 CCR § 1090.5(g):

"(i) A description of the property and planned activities including acres and projected growth, existing stand types, Major Stand Types or Strata, its current projected growth by Strata, silvicultural method(s) to be applied to Strata to achieve LTSY, projected timber volumes and tree sizes to be available for harvest, and projected frequencies of harvest, and potential pest and protection problems. The description of the existing stand types shall include species composition, age classes, present stocking level, present volume per acre, size class distribution, and stand management history."

Board Response: Please see response to comment W6-2.

Rule Text Edit: No.

W6-5: Duane Shintaku, CAL FIRE

Page 27, Line 14 (ref. 14 CCR § 1094.6(i)(1)): This paragraph refers to a description of silvicultural method(s) to be applied to Strata to achieve LTSY. In addition, a discussion should be included regarding additional potential silviculture methods that may be utilized during the life of the WFMP, including the forest conditions when these methods would be utilized. This would allow greater confidence in the growth and yield projections and provide greater flexibility for future management should site conditions change over time. CAL FIRE recommends a new paragraph (2) stating:

"(2) Additional silvicultural method(s) that may be utilized through the life of the WFMP including the forest conditions when each of these methods would be utilized to achieve LTSY."

Board Response: The silvicultural methods to be applied by Strata to the WFMP are already required to be disclosed by § 1094.6(i). Any change in silvicultural systems would be a Substantial Deviation per § 1094.23(c)(4), and would require an interagency review and public comment period prior to approval.

Rule Text Edit: No.

W6-6: Duane Shintaku, CAL FIRE

Page 27, Line 16 (ref. 14 CCR § 1094.6(j)): This paragraph provides an *OPTION 1* stating "An erosion control implementation plan with information as required by 14 CCR § 923.1(e)." *OPTION 2* is currently based on PRC § 4597.1(d), which has been revised in the attempt to comply with new regulations regarding the planning for logging roads and landings. CAL FIRE supports Option 1.

Board Response: See response to comment W1-15.

Rule Text Edit: No.

W6-7: Duane Shintaku, CAL FIRE

Page 33 (ref. 14 CCR § 1094.8): CAL FIRE recommends the Working Forest Harvest Notice Content include a provision requiring the identification of the silvicultural prescriptions that will be implemented during the harvest conducted under the notice.

Board Response: Provisions exist in the WFMP and WFHN that require the disclosure of the silvicultural systems to be implemented. § 1094.8(u)(2) requires disclosure of the mapped boundaries of silvicultural systems to be used in the WFHN. Additionally, the silviculture to be applied by Strata has already been disclosed in the WFMP prior to the WFHN by § 1094.6(i).

Rule Text Edit: No.

W6-8: Duane Shintaku, CAL FIRE

Page 51, Line 21 (ref. 14 CCR § 1094.23(c)(3)): As currently proposed, an increase in volume to be harvested exceeding ten (10) percent as projected by the LTSY is ambiguous and problematic. As proposed it would be possible to interpret that the 10% threshold is based solely on the estimate of LTSY, not the estimate of periodic harvest for each rolling period leading up to the period that LTSY is based. In addition, the adverse consequence of this threshold would allow over-cutting of the WFMP resulting in substantially delaying the timeline to ultimately reach the LTSY of the original analysis. As a result, certain factors could result in harvest activities producing harvest levels below what had been forecast and would limit optimum stocking levels to maximize productivity. Inherent in the estimate of LTSY is that each silvculture prescription is implemented based on a variety of parameters, including but not limited to, timing, density, and diameter distribution, and any departure may invalidate the LTSY analysis.

The current rules applicable to substantial deviations under an SYP (ref. 14 CCR § 1091.13(a)) require an amendment for a change from the average harvesting projections in any ten-year period which exceeds ten percent. CAL FIRE recommends the Board insert a new subsection (c)(3) that would incorporate similar language for a WFMP:

"(3) Change in the average harvesting projections in any ten-year period which exceeds ten percent, including a deviation caused by changes of ownership and catastrophic events."

Board Response: Pursuant to 1094.23 (c), changes are presumed to be substantial deviations if they could have a significant affect on the conduct of timber operations and potentially could have a significant adverse effect on timber productivity. The Board goes on to list actions that would constitute a substantial deviation, but qualifies the list by stating that substantial deviations are not limited to the actions listed. Although the Board decided not to list "a change to the average harvesting projections in any ten-year period, which exceeds ten percent", it may constitute a substantial deviation. It is unrealistic for the rules to list all actions that would constitute a substantial deviation. It is at the discretion of the RPF to determine if "a change to the average harvesting projections in any ten-year period, which exceeds ten percent" could have a significant affect on the conduct of timber operations and potentially could have a significant adverse effect on

timberland productivity. The RPF's discretion is checked by agency enforcement and the five (5) year review.

Finally, § 1094.23(c)(3) as currently written is non-specific about the event triggering the increase of volume to be harvested so is inclusive of deviations caused by any event, including changes of ownership and catastrophic events as suggested.

See response to comment W1-4.

The Board has determined the language of § 1094.23(c)(3) when taken in context of the entire regulation, including the safeguards presented in response to comment W1-4, is adequate to prevent the scenario presented by this comment.

Rule Text Edit: No.

W6-9: Duane Shintaku, CAL FIRE

Page 57, Lines 21 through 22 (ref. 14 CCR § 1094.29(c)): The proposed regulations do not provide the public access to the findings of the five-year review. The rules require the Department to notify the Working Forest Landowner(s) of the findings, but fail to provide similar notification to the public and other review team agencies. CAL FIRE recommends the following changes to the proposed regulations:

"The Department shall notify the Working Forest Landowner(s) of the findings of the five (5) year review and shall provide the public, in writing or on a publically available internet database, a copy of the findings."

Board Response: The provision to make the findings of the 5-year review available on a publically available internet database is made in § 1094.29(f). The interdisciplinary review team agencies will be participants of the 5 year review and will be well aware of the findings.

Rule Text Edit: No.

W7-1: Clayton Code, California Licensed Foresters Association

The WFMP rule package is the result of months of collaboration between many stakeholders. It is our hope that on June 17, 2015 your board votes to approve this rule package recognizing as we do that the WFMP will meet the needs of the environment, landowners and stakeholders.

Board Response: The Board acknowledges your support for this regulation and appreciates the generally supportive tone of the comment.

Rule Text Edit: No.

W8-1: Charll Stoneman, Forest Landowners of California

FLC is supportive of the proposed rule package; we would like to urge the Board to **adopt Option 2 relative to proposed regulation 1094.6(j)**. As a party to the development of the statutory language, FLC believes that Option 2 more closely reflects the legislative history and intent of the Legislature after the Board's adoption of the Road Rules Package in 2013.

Board Response: The Board has adopted §1094.6(j) Option 2 in the final regulatory language.

Rule Text Edit: No.

W8-2: Charll Stoneman, Forest Landowners of California

Significant input was provide by Cal Fire staff (monitoring provisions), the Water Quality Control Boards (erosion control plan) and the Department of Fish and Wildlife (conservation of both flora and fauna). This input was accepted by most of the stakeholders involved in the process in efforts to balance environmental concerns with the development of a long-term forest management plan that was functional and economically viable.

FLC requests that the Management Committee and Board retain that balance in the final WFMP regulatory language. Throughout the legislative process there seemed to be broad agreement that the interest of the state would be served by enabling moderately large private timberland landowners to commit to a long-term management strategy through the use of a permit such as the WFMP. This benefit to the state will only materialize if the WFMP contains economically affordable monitoring and other requirements so that landowners' interests are served by entering into this permit. Our hope and vision has always been that this permit be widely adopted by eligible landowners and not become an unusable addition to FPRs much like the PTHP/PTEIR has proven to be.

Board Response: No specific provisions disrupting this balance are identified in this comment. The Board's Management Committee was in contact with representatives of AB 904's author throughout the regulatory development process to identify the legislative intent of various provisions (see response to comment W1-1). The Board believes that the final regulatory language meets the legislative intent and retains this balance established by the legislature.

Rule Text Edit: No.

W8-3: Charll Stoneman, Forest Landowners of California

FLC would also ask that the Board consider tasking the Effectiveness Monitoring Committee to monitor the use and implementation of the rule package to ensure that it is not overly burdensome to individual landowners who wish to practice uneven-aged management on their timberlands.

Board Response: This comment is not relevant to the regulations under consideration. The request has been noted and will be considered by the Board.

Rule Text Edit: No.

W9-1: Fred Blatt, North Coast Regional Water Quality Control Board

Overall we believe the proposed Working Forest Management Plan rules provide an opportunity for long term planning and management of timberlands and protection of resources. We remain concerned, however, that the proposed rule language is reactive rather than proactive with respect to the requirement addressing erosion sites. Addressing only active and existing erosion sites while ignoring potential erosion sites is inconsistent with other existing sections of the Forest Practice Rules, the requirements of the Water Quality Control Plan (Basin Plan) for the North Coast, and the Porter-Cologne Water Quality Control Act.

We believe that by not addressing potential erosions sites, it is likely that the proposed WFMP regulations will not insure compliance with the North Coast water quality requirements, nor the Water Quality Control Plan for the North Coast Region. We recommend that rules be developed that are consistent with applicable water quality requirements and protection of the applicable beneficial uses of water. This approach would be consistent with the intent section of AB 904 (Public Resources Code § 4597(b)) and help our agencies and provide the people of the state with efficient government.

Board Response: See response to comments W1-1 and W1-15.

Rule Text Edit: No.

W9-2: Fred Blatt, North Coast Regional Water Quality Control Board

"Option 1" simply equates the contents of an erosion control implementation plan with the requirements of 14 CCR § 923.1(e), the road inventory section of the Road Rules 2013. Regional Water Board staff oppose this option for two reasons. First, since WFMPs are not exempt from the requirements of the rest of the Forest Practice Rules, this section is redundant and adds little to the contents of the WFMP. Second, while Assembly Bill 904 specifies that an erosion control implementation plan includes consideration of "roads, skid trails, crossings, or any other structures or sites that have the potential to discharge sediment," 14 CCR § 923.1(e) is restricted to roads and landings only and could omit other significant sediment discharge sites in violation of water quality requirements . For these reasons, Regional Water Board staff oppose 1094.6(i) "Option 1."

Board Response: The Board declined to adopt option 1 in the final regulatory language.

Rule Text Edit: No.

W9-3: Fred Blatt, North Coast Regional Water Quality Control Board

"Option 2" is based on the language contained in Public Resources Code (PRC) § 4597.2(d). The Management Committee of the BOF spent a great deal of time discussing and considering this option and we very much appreciate the consideration given by the Committee to previous Regional Water Board comments on this section. We strongly support including a description and discussion of methods to be used to avoid significant sediment discharge in an erosion control implementation plan, but continue to be concerned that the proposed language addresses only "active" and "existing" erosion sites.

Besides being reactive rather than proactive, addressing only active and existing erosion sites is inconsistent with other existing sections of the Forest Practice Rules, sections of the recently enacted Road Rules, the requirements of the Water Quality Control Plan (Basin Plan) for the North Coast, and the Porter-Cologne Water Quality Control Act (Porter-Cologne).

Board Response: See response to comment W1-15.

Rule Text Edit: No.

W9-4: Fred Blatt, North Coast Regional Water Quality Control Board

Both Porter-Cologne and the regional Basin Plans recognize threatened or potential discharges as well as active or existing discharges. Since the proposed language of section 1094.6(i) "Option 2" does not address threatened or potential discharges, it has not been implemented in a manner that complies with Porter-Cologne and is therefore it is not consistent with PRC § 4597(b).

Board Response: See response to comment W1-15.

Rule Text Edit: No.

W9-5: Fred Blatt, North Coast Regional Water Quality Control Board

It should be noted that 1094.6(i) "Option 2" (page 27, line22 and 23) uses the term "significant sediment discharge," a term that is defined in the Forest Practice Rules definitions, section 895.1. The definition of "significant sediment discharges" includes the concept of potential as well as active discharges. Because of this, the use of the phrase "active erosion sites" in line 20 is confusing. Regional Water Board staff suggest deleting the word "active" from line 20 so that the sentence will read, "This shall include disclosure of ~~active~~ erosion sites..."

Board Response: See response to comment W1-15.

Rule Text Edit: No.

W9-6: Fred Blatt, North Coast Regional Water Quality Control Board

The description of the erosion control implementation plan schedule uses the undefined term "significant existing erosion site(s)" (line 25). Besides conflicting with other existing regulations and statutes, since this term is undefined, it leads to ambiguity and the inevitable question of "What is *significant*?" This could be avoided by using the existing term defined in section 895.1, "significant existing or potential erosion site."

Board Response: Terms not specifically defined in the rules retain their plain meaning. Merriam Webster defines Significant as follows: *large enough to be noticed or have an effect*. The Oxford Dictionary defines it as: *sufficiently great or important to be worthy of attention; noteworthy*. It should be noted that the defined terms pertaining to significant sediment sites currently in the rules (Significant Existing or Potential Erosion Sites and Significant Sediment Discharge) provide performance standards that require professional discretion in their interpretation. Both refer to "quantities that violate Water Quality Requirements or result in significant or cumulative adverse impacts to the beneficial uses of water." The Board is comfortable that the current language also provides a performance standard that can be applied through professional discretion of RPFs and the interdisciplinary review team to evaluate sites on an individual basis.

Rule Text Edit: No.

W9-7: Fred Blatt, North Coast Regional Water Quality Control Board

In order to make the WFMP language internally consistent with other provisions of the Forest Practice Rules, to make it consistent with the requirements of the regional Basin Plans and the Porter-Cologne Water Quality Control Act, Regional Water Board staff suggest changing line 23 through 25 to read: "The erosion control implementation plan shall also include a schedule to implement erosion controls that prioritizes significant existing **or potential** erosion site(s)."

Board Response: Please see response to comments W1-1 and W1-15.

Rule Text Edit: No.

W9-8: Fred Blatt, North Coast Regional Water Quality Control Board

Lastly, the last sentence of section 1094.6(i) is unclear (page 27, line 25 through page 28, line 2). It was copied directly from AB 904 and the wording is somewhat convoluted. It appears the intent of this section is to allow erosion control plans developed in compliance with the requirements of other agencies to fulfill the requirements of this section. A similar allowance exists for prescribed maintenance period inspections in section 923.7 [943.7, 963.7](k)(2). In order to avoid confusion and clearly state the intent of this sentence, Regional Water Board staff suggest using section 923.7(k)(2) as a template. Regional Water Board staff suggest replacing the last sentence of proposed section 1094.6(i) with, "Erosion control implementation plans developed pursuant to California Regional Water Quality Control Board requirements may be used to satisfy the erosion control implementation plan requirements of this section."

Board Response: This comment refers to the text of § 1094.6(j), not § 1094.6(i). See response to comment W2-7.

Rule Text Edit: No.

W9-9: Fred Blatt, North Coast Regional Water Quality Control Board

Regional Water Board staff **oppose 1094.6(i) Option 1.**

Board Response: Option 1 was not adopted by the Board in the final regulatory language.

Rule Text Edit: No.

W9-10: Fred Blatt, North Coast Regional Water Quality Control Board

Regional Water Board staff **conditionally support 1094.6(i) Option 2** with the following revisions:

1094.6(j) OPTION 2 "A description and discussion of the methods to be used to avoid significant sediment discharge to watercourses from timber operations shall be included in an erosion control implementation plan. This shall include disclosure of ~~**active**~~ erosion sites from logging roads, skid trails, crossings, or any other structures or sites that have the potential to discharge sediment attributable to timber operations into waters of the state resulting in significant sediment discharge and violation of water quality requirements. The erosion control implementation plan shall also include a schedule to implement erosion controls that prioritizes significant existing **or potential** erosion site(s). ~~**This subdivision shall not apply to the extent that the RPF provides documentation to the Department that the WFMP is in compliance with similar requirements of other applicable provisions of law.**~~ **Erosion control implementation plans developed pursuant to California Regional Water Quality Control Board requirements may be used to satisfy the erosion control implementation plan requirements of this section**."

Board Response: See response to comments W1-15 and W2-7.

Rule Text Edit: No.

W10-1: Richard Gienger, himself and Forests Forever

These noticed regulations fall way short of comprising a state-of-the-art management plan that coherently, in well ordered high-standard content, and with basic required templates of information that will stand the immediate and long-term needs for the recovery of California's private timberlands. Basic obvious needs such as adequate implementation of 14 CCR 916.4, and incentives for older higher quality forests are missing. Yes, all-aged management is a worthy goal, but the standards in the present WFMP are not up to the professed or actual needs of future recovered forest and watersheds/.

Board Response: All the operational constraints of the Forest Practice Rules, including those of 14 CCR § 916.4, apply to the Working Forest Management Plan. It is unclear what the comment is referring to in regards to "incentives for older higher quality forests". The WFMP addresses stands of trees having mature characteristics as Late Succession Forest Stands. The definition of Late Successional Forest Stands as applicable to the WFMP was specifically revised to include stands as small as 10 acres (as opposed to the 20 acre minimum stand size provided by the 14 CCR § 895.1 definition). § 1094.6(e)(13) requires that these stands be mapped in the WFMP. § 1094.6(e)(13) requires a description of these stands and how the total acreage of this type of habitat will be maintained across the plan area under a constraint of no net loss.

Rule Text Edit: No.

W11-1: Angela Wilson, Central Valley Regional Water Quality Control Board

The Central Valley Water Board is in agreement with the Memorandum's findings. The Central Valley Water Board opposes 1094.6(i) Option 1 and conditionally supports 1094.6(i) Option 2 if implemented with the revisions recommended in the Memorandum. We agree that the proposed WFMP rules provide an opportunity for long-term planning and management of timberlands and protection of resources. However, we share the North Coast Regional Water Quality Control Board's concerns that the proposed language addresses only active and existing erosion sites and does not include potential erosion sites. This is inconsistent with the requirements of other sections of the Forest Practice Rules, the Porter-Cologne Water Quality Control Act, and the Water Quality Control Plan, Fourth Edition (Revised October 2011) for the Sacramento River and San Joaquin River basins (Basin Plan).

Board Response: Please see response to comments W1-1, W1-15, W2-7 and W9-2.

Rule Text Edit: No.

W12-1: William R. Short, California Geological Survey

The WFMP is held to the 2013 road rules (14 CCR § 923). As written, the WFMP plan and notice contents (14 CCR § 1094.6 and § 1094.8) do not contain all the elements found in 14 CCR § 1034 (contents of plan) which are tied to § 923. CGS believes that this inconsistency between what is listed as WFMP content requirements in § 1094.6 and § 1094.8, and what is listed in the FPR's (§ 923 and § 1034) can be misleading to both plan preparers and reviewers. To limit confusion and potential disagreement during plan preparation and review, CGS recommends that this inconsistency be rectified prior to rule adoption by adding the following mapping items shown in ***bold italics*** from § 1034 (x)(4)(A), (x)(5)(A,C,D,E,F,G), (x)(7), (x)(15), and (x)(16) to § 1094.6 and § 1094.8.

Board Response: The legislative intent of the WFMP was to build upon the model provided by the NTMP [PRC §4597(a)(3)]. In deference to this intent, the Board has adopted only the requirements found in the road rules (14 CCR § 923, 943, and 963, et. seq.) and the NTMP into the WFMP. The referenced provision in this comment, 14 CCR § 1034(x), is included in Subchapter 7, Article 2 which is specific to Timber Harvesting Plans. § 1034(x)(4)(A-E), (5)(A-G) and (6) were added or amended as part of the road rules package and include provisions applicable to Timber Harvesting Plans.

See response to S2-2 for further discussion regarding the applicability of the road rules to the WFMP.

Rule Text Edit: No.

W12-2: William R. Short, California Geological Survey

Additionally § 1034 of the rules includes the following two general provisions that are not explicitly included in the WFMP. Again for clarity, CGS recommends that the following items shown in *bold italics* from § 1034 (ff) and (gg) be added to § 1094.6 and § 1094.8 for the same reasons as stated above.

Board Response: See response to comment W12-1.

Rule Text Edit: No.

W12-3: William R. Short, California Geological Survey

As stated in our previous comment letter, the proposed rule package continues to set different standards for Winter Operating Plans within watersheds with listed anadromous salmonid (ASP watersheds) that the standards for those watersheds outside the zone of anadromy. As proposed in the current rule package in areas outside ASP watersheds a Winter Operating Pan is not required if a limited series of measures are specified in the WFMP. Regardless of the presence of anadromy, CGS recommends that a Winter Operating Plan be required if winter operations are proposed. Since a WFMP does not expire, this requirement will provide long term clarity on the measures to be taken to limit potential impacts due to operation during the winter period. CGS recommends modifying § 1094.6 (bb) by adding the clause shown in *bold italics*.

Board Response: The Board has found compliance with the restrictions of 14 CCR § 914.7(c) provide protection of public trust resources during winter period operations in lieu of a winter period operating plan. The comment does not identify any specific deficiencies in the current standards that would cause the Board to consider modifying them.

Rule Text Edit: No.

Note:There is a gap in the numbering system for the written comments and responses resulting from the 45-Day Notice of proposed rulemaking published May 1, 2015 between W12 and W15. This is a result of attachments to written comments originally being identified with a unique number. This gap does not reflect any comments being omitted.

W15-1: Rob DiPerna, Environmental Protection Information Center (EPIC) (dated June 15, 2015)

One of EPIC's primary concerns all along is the Board's failure in previous drafts to provide actual interpretation and clarity of the statutes enacted pursuant to AB 904, and instead to simply restate much of the statutory language. It is clear from this most recent rule package that the Board proposes to adopt a rule package which relies extensively on the statutory language without interpretation and guidance for effective implementation. EPIC strongly disagrees with this approach, as it fails to provide the necessary guidance to ensure the legislative goals and objectives. EPIC presented many examples of this in our earlier comments which are incorporated by reference here. The Board's Initial Statement of Reasons ("ISOR") again tries to justify this practice under a theory that "duplication of statute" was necessary for "consistency" and "to satisfy the clarity standard."(ISOR, at p. 7). EPIC disagrees. Because the draft regulations now duplicate language, or in some cases introduce new language which further confuses the statutory standards, many of the regulations do not satisfy the Administrative Procedure Act standards for clarity and consistency. In the absence of necessary guidance and interpretation, the regulations as drafted do not provide the basic information required by, or offer interpretation of, governing statutes in a manner that will achieve the California's stated goals and objectives in authorizing WFMPs.

Board Response: This comment is not specific, no specific rule or statute is identified as being unclear or inconsistent. Additionally, it is not clear what the specific resource of concern is, and how it is put at risk by the adoption of this regulation. The Board is unaware of any conflicts between the adopted rule text and the WFMP statute.

Regarding duplication of statute and existing law, the following excerpts from the ISOR are provided:

> It was the intent of the legislature, under AB 904, to structure the Working Forest Management Plan (WFMP) off of the existing Non-Industrial Timber Management Plan (NTMP), which contains duplicated language from statute (PRC § 4593 et seq.), therefore the Board chose to duplicate statute (PRC § 4597 et seq.) in the proposed action to maintain consistency.
>
> Duplication was also used as a tool to provide context and have all related information in one place so that the burden of having to switch between statue and the rules is not placed on the regulated public.
>
> Finally, duplication of the existing NTMP regulations in the proposed action was determined to be a prudent measure because the existing NTMP regulations were developed and informed by experts in the field of forestry and were developed through a collaborative effort between landowner, industry, agency and environmental representatives and were subsequently used to develop PRC § 4597 et seq.

Additionally, the Board did not make specific, interpret or implement statue, where it deemed statute was adequately clear to effectuate the purpose of it.

See response to comment W1-1, which provides additional relevant information.

Rule Text Edit: No.

W15-2: Rob DiPerna, EPIC (dated June 15, 2015)

Underlying this regulatory effort is the reality that over one million acres of forest land may be eligible for and receive Working Forest Management Plan approval. According to the ISOR, "there are at least 81 landowners who would qualify under the new WFMP program."(ISOR, at 5). That represents an additional 1,214,999 acres that could be placed under the proposed lifetime plans. The Board estimates that of these 81, "at least 60 used even aged management (i.e. clear cutting) at some point." *(Id.).*

EPIC tried to identify the location of these 81 ownerships to evaluate their location and determine the potential for impact within differing forested areas and ecosystems. EPIC requested a copy of the source document(s) for this statement. In response, the Board staff provided legislative analyses which included the same statement as in the ISOR. In response to a follow-up request, Board staff provide a 2-pagc "NTMP Expansion Study" document issued by the California Department of Forestry and Fire Protection ("CAL FIRE: or "Department") which described CAL FIRE's process to identify WFMP eligible forestland in California, resulting in a map specifically identifying 80 potential landowners that could be eligible for a WFMP. When asked for this information, the Board could not provide it. EPIC has also asked CAL FIRE for this information through a Public Records Act Request ("PRA"), with no success as of this date. In personal communications with CAL FIRE's Dennis Hall about our request, Mr. Hall indicated that CAL FIRE did not have a responsive document behind the statement; rather, Mr. Hall indicated that the "analysis" was done via a GIS database query, stating that all that the Department could give us was its entire GIS database. In its June 9, 2015 written response to our PRA, the Department

stated it would not respond to the PRA until June 25, 2015 as responsive documents were not located at the CAL FIRE Sacramento Headquarters.

This denial of access to information informing these rules has frustrated EPIC's ability to fully evaluate the impact of these proposed regulations. EPIC needs to know the location of the potential 1.2 million acres of forestland that could be eligible for WFMP in order to evaluate the potential for impacts on ecological areas and habitats not evaluated in the proposed regulations or the ISOR. It is imperative that the Legislative intent be fully and accurately implemented in a manner that protects timberland and other natural resources.

Board Response: This regulation is being developed to be used throughout the state, with the exclusion of the Southern Subdistrict of the Coast Forest District, pursuant to PRC § 4597.22. The number of landowners eligible, their specific location, and their interest in pursuing a long term management strategy as provided by the WFMP will change over time. Additionally, the WFMP allows collections of multiple landowners to jointly apply for a WFMP making the specific locations of these landowners even more uncertain until they apply for a WFMP.

The location of land owned by timberland owners that could be eligible for a WFMP was not used to inform the Board's decision. The Board in developing these regulations accepts that a WFMP may be developed anywhere that the WFMP applies. The evaluation of the potential for impacts on ecological areas and habitats will be conducted per project through the prism of the Forest Practice Rules. Submission of a WFMP starts the rigorous interdisciplinary review process, including public comment, as defined in 14 CCR §§ 1094.3, 1094.4, 1094.15, 1094.16, 1094.17, and 1094.18.

Rule Text Edit: No.

W15-3: Rob DiPerna, EPIC (dated June 15, 2015)

These comments focus on core issues which EPIC requests be responded to with changes in the proposed regulations, before the Board may act to approve WFMP regulations. The regulations fail to satisfy the statutory duty embodied by AB 904. They lack necessary definitions. They fail to require content to ensure that long tern sustained yield ("LTSY") is plainly stated, and achieved through implementation of uneven aged management and monitoring. The proposed regulations do not require uneven aged management over time. The regulations fail to provide adequate measures to protect water quality, protected and listed species, and cultural and historic sites. They fail to ensure that cumulative impacts are properly evaluated and mitigated. The regulations fail to meet governing statutory requirements by permitting exceptions to standard rule provisions, and authorizing stocking standards which do not achieve increased timberland productivity. The regulations also fail to meet the statutory requirement for a Five Year Review process. Because of these failures, the Board's proposed rules do not satisfy CEQA requirements.

Board Response: This is a nonspecific summation of comments that are provided in detail below after which Board response follows.

Rule Text Edit: No.

W15-4: Rob DiPerna, EPIC (dated June 15, 2015)
EPIC requests that before the Board takes action on the proposed rules, it consider and respond in writing to all comments presented, evidence submitted, and the suggestions made.

Board Response: The Board considered all comments presented, evidence submitted, and suggestions made before the Board took action to adopt the rule text as noticed in the 45-Day Notice. Although EPIC requested that the Board respond in writing to all comments presented, evidence submitted, and suggestions made before it took this action, the Board exercised its discretion not to do this. In fact, it would have been unconventional for the Board to have done this, instead, as required by law, the Board responds, in writing within the FSOR, to all relevant comments presented, evidence submitted, and suggestions made that are received within the public comment period.

Rule Text Edit: No.

W15-5: Rob DiPerna, EPIC (dated June 15, 2015)
Rulemaking is subject to the requirements of the California Administrative Procedure Act ("APA"). To be effective, a regulation must be consistent and not in conflict with the governing statute, and must be reasonable necessary to effectuate the purpose of the statute. (Gov't Code § 11342.2). To be approved by the Office of Administrative Law, the regulations must satisfy these criteria: necessity, authority, clarity, consistency, reference and non-duplication. (Gov't Code § 11349.1). "Necessity" means to effectuate the purpose of the governing statute, taking into account the totality of the record before the agency at the time of approval. (Gov't Code § 11349 (a)). "Clarity" means the regulation must be "easily understood" by those who are directly affected by them; "consistency" means "being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions or other provisions of law." *(Id.,* subd. (c) and (d)). A notice of proposed rulemaking must include discussion of "matters required by statute(s) applicable to the specific state agency or to any specific regulation or class of regulations." (Gov't Code § 11345.5 (a)(4)). The proposed rules do not meet these standards.

Board Response: This comment is not specific; no specific rule is identified as being inconsistent or in conflict with statute. Additionally, no specific rule is identified as not being reasonably necessary to effectuate the purpose of the statute or is identified as not being easily understood. The Board is unaware of any conflicts between the adopted rule text and the WFMP statute.

See responses to comments W1-1 and W15-1, which provide additional relevant information.

Rule Text Edit: No.

W15-6: Rob DiPerna, EPIC (dated June 15, 2015)
The Board's rulemaking must meet the standards of the Forest Practice Act, including AB 904, the legislation which enacted the Working Forest Management Plan provisions codified in the Forest Practice Act as Public Resources Code sections 4597 - 4597.22. Rules must satisfy the Forest Practice Act goal of maximum sustained production of *high quality timber products* while protecting natural resources and other values. (PRC §

4513). (Emphasis added). Rules must comply with AB 904's intent, which requires a Working Forest Management Plan to "comply with rigorous inventory standards" intended to "ensure long-term benefits such as added carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, aesthetics, and the maintenance of ecosystems processes and services." (PRC § 4597 (a)(5)). The proposed rules are not in compliance with the Forest Practice Act governing goals because they lack necessary standards and clarity.

Board Response: Pursuant to PRC § 4597(a)(5), to ensure long-term benefits such as added carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, aesthetics, and the maintenance of ecosystem processes and services, the Working Forest Management Plan shall comply with rigorous timber inventory standards that are subject to periodic review and verification.

The Board deemed 14 CCR §§ 1094.2 (c) through (i) and (l), 1094.6 (g), (h), (i) and (q), §1094.29 and § 1094.31(b) to represent rigorous timber inventory standards. For example, § 1094.6(h) assures high quality estimates of inventory are included in the WFMP by requiring stratification of the WFMP area and identifying the acceptable sampling errors based on the percentage of the total area occupied by each strata. §1094.6(q) requires the WFMP to describe a future schedule of inventory sampling and analysis of LTSY. §1094.29 requires a review to occur every 5-years the WFMP remains in effect, including review of the “volumes harvested in relation to projections of harvest in the WFMP”. The regulations also contain provisions allowing the Department to cancel a WFMP that will have significant adverse effects on the environment (§ 1094.29(d)) or is not meeting the objectives of Unevenaged Management and Sustained Yield (§ 1094.31(b)).

Additionally, the WFMP regulations proposed are not stand-alone regulations. The WFMP must be in compliance with existing law pursuant to 14 CCR § 1094, which essentially means all of the Forest Practice Rules, except 14 CCR §§ 1032.7 through 1042, apply.

Achieving maximum sustained production of high quality timber products is supported by the following provisions of the Board’s rules, which apply to the WFMP.

> Pursuant to 14 CCR § 898.2(g), a special condition requiring disapproval of plans is if implementation of the plan as proposed would not achieve maximum sustained production of high quality timber products as provided for by the rules of the Board, and by the intent of the Act.
>
> Pursuant to 14 CCR § 913 [933, 953], the RPF shall select systems and alternatives which achieve maximum sustained production of high quality timber products. This provision has successfully served THPs and NTMPs (on ownerships both larger and smaller than the limits placed on WFMPs) for decades. The Legislature conveys this success in PRC § 4597(a): The Legislature finds and declares all of the following: (1) The nonindustrial timber management plan established pursuant to Article 7.5 (commencing with Section 4593) has been successful in meeting the intent of this chapter by encouraging prudent and responsible forest management and discouraging accelerated timberland conversion by private nonindustrial forest landowners.

Achieving maximum sustained production of high quality timber products is also supported

by the following provisions of statute:

> Pursuant to PRC § 4513, it is the intent of the Legislature to create and maintain an effective and comprehensive system of regulation and use of all timberlands so as to ensure both of the following:
>
> (a) Where feasible, the productivity of timberlands is restored, enhanced, and maintained.
>
> (b) The goal of maximum sustained production of high-quality timber products is achieved while giving consideration to values relating to sequestration of carbon dioxide, recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment, and aesthetic enjoyment.

The WFMP is an expansion of the tested NTMP permit process.

In 2003, CAL FIRE issued a report on the NTMP program. The report (see excerpts below) explained that the NTMP program provides significant benefits to the State.

- "These benefits are all enhanced by the commitment of forest landowners to the long term stewardship and sustainable production requirements of a NTMP. On the broad statewide scale, the overarching public benefit is in encouraging owners of these small wooded parcels to take advantage of their rich forest soils, to enrich and improve their timber stands, to manage them sustainably into the future, and cumulatively retain that part of the state's rural, working landscape that characterizes California's private timberlands."
- The 2003 report concluded that "the NTMP program is meeting the uneven-aged management requirement of the Forest Practice Act…[and given] sufficient time to implement current NTMP management prescriptions, landowners will also be able to show that they are meeting the sustained yield requirement. Therefore, [Cal Fire] has determined that the NTMP program is improving California's timberlands and recommends that the program be continued."
- Additionally, the report recommended that the NTMP acreage limit be increased to bring more timberlands into the program. "This change would benefit both landowners and the state by providing an opportunity for these additional timberlands to be placed into a sustained yield and uneven-aged management regime." This proposed action essentially implements this recommendation by allowing larger nonindustrial timberland owners to participate in the WFMP program.

In conclusion, NTMPs are demonstrating long-term benefits with similar rules and those rules have been found to provide necessary standards and clarity. Consequently the Board deemed these adopted rules to also be adequate. Once again, it is the forest practice rules as a whole that provide a comprehensive set of standards and provide clarity.

See responses to comments W1-4, W6-8, W15-9, W15-10 and W15-11, which provide additional relevant information.

Rule Text Edit: No.

W15-7: Rob DiPerna, EPIC (dated June 15, 2015)

The Board must follow the California Environmental Quality Act ("CEQA") in the review and approval of regulations. Pursuant to CEQA, the Secretary of Resources has certified the rulemaking process by the Board as a "regulatory program" within the meaning of Public Resources Code section 21080.5. Section 21080.5 of CEQA provides a mechanism for the use of an environmental review document "in lieu of the environmental impact report." In adopting regulations, the Board must comply with all requirements of CEQA except those provisions of Chapters 3 and 4 of CEQA (commencing with sections 21 100 and 21 150), and Public Resources Code section 21167. The Board must also comply with its certified program, consisting of its legislative mandates and regulations. A certified program remains subject to other provisions in CEQA, including the policy of avoiding significant adverse effects on the environment (14 CCR § 15250), and adequate evaluation and mitigation of cumulative impacts. *(EPIC v. Johnson* (1985) 170 Cal.App.3d 604).

The CEQA certification statute specifies the minimum requirements for Board regulations. These include requirements that the rules ensure that projects approved pursuant to Board rules (1) will not be approved if there are feasible alternatives or feasible mitigation measures available that could substantially lessen a significant adverse effect of the activity on the environment; and (2) are subject to and include orderly evaluation and which requires the plan document to be consistent with the environmental protection purposes of the FPA. (PRC § 21080.5(d)(2)(A),(B)). The CEQA certification also requires that the plan that is subject to the rules, such as the Working Forest Management Plan, must include a "description of the proposed activity with alternative to the activity, and mitigation measures to minimize any significant adverse effect on the environment from the activity." (PRC § 21080.5(d)(3)(A)). CEQA requires that any project be evaluated for the potential for, and avoidance at time of approval of, significant and cumulative adverse impacts upon the environment. (PRC §§ 21000, 21001, 21003.1 , 21080.5(d)(3)(A)).

The Board must comply with its own rulemaking regulations, as well as Public Resources Code section 21080.5(d). Among other things, these provisions require the Board to evaluate and mitigate possible significant adverse environmental effects, and propose reasonable alternatives to rule proposals. (14 CCR § 1142). The Board must also evaluate during its process how well the proposed rules would serve the policies of the Forest Practice Act ("FPA"), eliminate any avoidable environmental damage, serve the production of high quality timber while maintaining the productivity of all affected resources, and how the rule proposal could be modified to more effectively accomplish the purposes of the Forest Practice Act. (14 CCR § 1144).

The proposed regulations fail to satisfy these legal standards. The ISOR and the proposed rules do not provide adequate standards to evaluate significant adverse individual and cumulative impacts on the environment, fail to provide standards for mitigation and/or minimization of significant adverse individual or cumulative impacts, and fail to identify or describe reasonable alternatives to the proposed regulations that could potentially minimize or mitigate to insignificance any potential significant adverse individual or cumulative impacts to the environment.

Board Response: This comment is not specific. It is not clear in what way the Board did not follow the California Environmental Quality Act ("CEQA") in the review and approval of regulations. It is also not clear in what way the Board did not comply with its own

rulemaking regulations. Additionally, it is not clear what the specific resource of concern is, and how it is put at risk by the adoption of this regulation.

The Board respectfully disagrees with the assertions made in the last paragraph of the comment. The ISOR and the adopted regulation, in combination with existing rules on which the WFMP relies, provide adequate standards to evaluate significant adverse individual and cumulative impacts on the environment, provide standards for mitigation and/or minimization of significant adverse individual or cumulative impacts, and address alternatives.

The California Environmental Quality Act (CEQA) requires review, evaluation and environmental documentation of potential significant environmental impacts from a qualified project. An explanation of the Board's rulemaking process follows.

Rulemaking Process

The Board's rulemaking process has been certified by the Secretary of Resources as meeting the requirements of PRC § 21080.5. Following are the requirements for Certification pursuant to PRC § 21080.5 and the reference to the rules and statues that satisfy the requirements:

Requirements for Certification Pursuant to P.R.C. sec 21080.5

Regulatory Program - 21080.5(b)	P.R.C. § 4511 et seq.
Interdisciplinary approach using natural and social sciences – 21080.5(d)	P.R.C. §§ 4512, 4513, Gov Code §§ 11346.3, 11346.5(a)(12), 11346.9(a)(4)
Enabling legislation – 21080.5(d)(1)	
Protection of the environment among the principal purposes	P.R.C. §§ 4512, 4513, 4551
Authority to adopt rules for protection of the environment	P.R.C. §§ 4551, 4561-4561.6, 4562
Guided by standards in the legislation	P.R.C. §§ 4551-4554, 4561-4563.5
Rules and Regulations – 21080.5(d)(2)	
Activity not be approved if . . . – (d)(2)(A)	14 C.C.R. § 1144(d)
Guidelines – (d)(2)(B)	
Evaluation of proposed activities	14 C.C.R. § 1144(b)
Preparation of the plan	14 C.C.R. § 1142
Consistent with environmental protection purposes	14 C.C.R. § 1144(b)
Consult with all public agencies with jurisdiction – (d)(2)(C)	P.R.C. §§ 4551, 4551.5, 4553, Gov. Code § 11346.4
Written responses – (d)(2)(D)	
In final action on the plan	14 C.C.R. § 1144(c)
To significant environmental points raised	14 C.C.R. § 1144(c)
Notice of decision filed with Resources Agency – (d)(2)(E)	14 C.C.R. § 1145
Notice of filing of the plan – (d)(2)(F)	Gov. Code § 11346.4
To the public	Gov. Code § 11346.4
To any person who requests	Gov. Code § 11346.4
Written document – 21080.5 (d)(3)	
Description of the activity	14 C.C.R. § 1142
Alternatives	14 C.C.R. § 1142(c)
Mitigation measures	14 C.C.R. § 1142(b)

Pursuant to PRC § 21080.5(d)(2)(B), guidelines for the orderly evaluation of proposed activities and the preparation of the plan or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program are required by the adopted regulation and existing rules. Like NTMPs, WFMPs will be subject to and include orderly evaluation and require the plan document to be consistent with the Forest Practice Act.

Pursuant to 14 CCR §1142(a) and (b), the Statements of Reasons accompanying proposed Board rules and regulations shall contain the following material:(a) A statement of possible significant adverse environmental effects, if any, which can reasonably be expected to occur directly or indirectly from implementing the proposal. If there are no significant adverse environmental effects, the report shall so state.(b) A statement of mitigation measures available to minimize the significant adverse environmental impacts, and a discussion of why these measures, if any, have or have not been incorporated in the proposal.

The following is excerpted from the ISOR:

> The proposed action would be an added element 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 oversight of rule compliance function expressly to prevent adverse environmental effects.
>
> Harvesting plans (THPs, NTMPs, WFMPs etc.) contain a mix of avoidance and mitigation measures that are required by the Forest Practice Rules or are specifically designed by a licensed Registered Professional Forester (RPF) to reduce the risk for potential adverse effects. They also contain a comprehensive cumulative effects analysis utilized in part to identify potential risks and effects to aid in the RPF's avoidance and mitigation measure development.
>
> State representatives review every harvesting plan prior to a decision as to approval or denial. Local and federal agency representatives are also involved in the review process. 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 action will not result in significant adverse environmental effects. The proposed action is an element of a comprehensive avoidance and mitigation program for commercial timber harvesting activities.

Pursuant to 14 CCR §1142(c), the Statements of Reasons accompanying proposed Board rules and regulations shall contain a statement and discussion of reasonable alternatives to the proposal, with a brief statement of the pros and cons of each alternative. This discussion may be limited to alternatives which would avoid the significant adverse environmental effects of the proposal. The ISOR provided a statement and discussion of reasonable alternatives to the proposal, with a brief statement of the pros and cons of each alternative.

Pursuant to 14 CCR § 1144(b), during the evaluation process, attention shall be directed to:
(1) How well the proposal would serve the policies of the Forest Practice Act in Public Resources Code Sections 4512 and 4513. (2) How well the proposal would eliminate any avoidable environmental damage. (3) How well the proposal would serve the production of high quality timber while maintaining the productivity of all affected forest resources. (4) Whether and how the proposal could be modified to accomplish the purposes of the Forest Practice Act and environmental protection in a more effective manner.

Attention was directed to these questions during the evaluation process. The discussion included some of the benefits associated with incentivizing management, including avoided conversion. Attention was also directed to the potential for adverse impacts associated with non-management of timberland including insect outbreaks expedited by overstocked stands, increased fire hazard and the missed opportunity to treat sediment sources. See relevant excerpts from the ISOR that follow.

In the long-term, by relieving these landowners of some of the costs and burdens of meeting the regulatory requirements designed for industrial timber companies, NTMPs and WFMPs help keep ranches and other non-industrial forest properties economically viable and make them less likely to be subdivided for housing or converted into golf courses or vineyards. Additionally, incentivizing unevenaged management may afford increased carbon sequestration, conservation of scenic values, and protection of water quality and fish and wildlife habitat.

Today, NTMPs cover over 300,000 acres of California forests. Raising the acreage limit to 15,000 acres through the WFMP will make hundreds of thousands of additional timberland acreage eligible for long-term, sustainable management… *Note: Currently, cumulative impacts are assessed on a plan by plan basis, which means, for these larger ownerships a smaller footprint is considered as compared to if the footprint of the entire ownership were considered. The WFMP will encourage comprehensive analysis of the ownership in relation to the cumulative impact assessment areas.*

…. ….

Additionally, NTMP landowners who are close to the NTMP's 2,500 acreage limit will have an incentive to purchase additional timberlands by transferring to the WFMP. Some NTMP landowners near the 2,500 acre limit have already indicated that they plan to acquire more timberlands if the WFMP program is enacted.

In 2003, CAL FIRE issued a report on the NTMP program. The report explained that the NTMP program provides significant benefits to the State in a number of terms including societal benefits.

- The report states that "[r]etaining our non-industrial private forest lands in forest use provides tremendous…benefits, including retention of open space, protection of watersheds, water quality and forest soils, maintenance of diverse habitat for fish and wildlife, preservation of important cultural and historical sites, and promotion of recreational opportunities."
- "These benefits are all enhanced by the commitment of forest landowners to the long term stewardship and sustainable production requirements of a NTMP. On the broad statewide scale, the overarching public benefit is in encouraging owners of these small wooded parcels to take advantage of their rich forest soils, to enrich and improve their timber stands, to manage them sustainably into the future, and cumulatively retain that part of the state's rural, working landscape that characterizes California's private timberlands."
- The 2003 report concluded that "the NTMP program is meeting the uneven-aged management requirement of the Forest Practice Act…[and given] sufficient time to implement current NTMP management prescriptions, landowners will also be able to show that they are meeting the sustained yield requirement. Therefore, [Cal Fire] has determined that the NTMP program is improving California's timberlands and recommends that the program be continued."

- Additionally, the report recommended that the NTMP acreage limit be increased to bring more timberlands into the program. "This change would benefit both landowners and the state by providing an opportunity for these additional timberlands to be placed into a sustained yield and uneven-aged management regime." This proposed action essentially implements this recommendation by allowing larger nonindustrial timberland owners to participate in the WFMP program.

Pursuant to PRC § 21080.5(d)(2)(A) and 14 CCR § 1144(d), the Board shall not adopt a standard, rule or regulation as proposed, if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which implementation of the proposal may reasonably be expected to have on the environment unless specific economic, social or other conditions are found to make infeasible such project alternatives or such mitigation measures.

The Notice of Decision to the Secretary of Resources of the Natural Resources Agency includes the following statements

1. The Board has considered adverse environmental effects from the adopted action. Such consideration was conducted to meet California Environmental Quality Act (CEQA) requirements for a project by using the functional equivalent certification to an EIR granted to the Board for its rulemaking process pursuant to PRC 21080.5.
2. The Board has not identified any adverse environmental effects as a result of the adopted rules.

<u>Forest Practice Rules (Project Evaluation)</u>
The THP process substitutes for the EIR process under CEQA pursuant to PRC § 21080.5, given the Secretary of the Resources Agency has certified the regulatory program, as described above, pursuant to PRC § 21080.5.

In recognition of this certification and PRC § 4582.75, these rules are intended to provide the exclusive criteria for reviewing THPs. If the Director believes that there are significant adverse environmental impacts not covered in existing rules, matters should be referred to the Board as otherwise specified in these rules.

Following are sections of the Forest Practice Rules and a discussion of the process designed to prevent significant adverse environmental impacts.

Pursuant to 14 CCR § 896(a) …..It is the Board's intent that no THP shall be approved which fails to adopt feasible mitigation measures or alternatives from the range of measures set out or provided for in these rules which would substantially lessen or avoid significant adverse impacts which the activity may have on the environment.

Pursuant to § 897(a), RPFs who prepare plans shall consider the range of feasible silvicultural systems, operating methods and procedures provided in these rules in seeking to avoid or substantially lessen significant adverse effects on the environment from timber harvesting. RPFs shall use these rules for guidance as to which are the most appropriate feasible silvicultural systems, operating methods and procedures which will carry out the intent of the Act.

WFMPs submitted to the Department will be subject to discretionary review by a

multidisciplinary review team. If, during this review, it is determined that a significant adverse impact may result, pursuant to 898.1(c), the Director shall disapprove all plans which:

(1) Do not incorporate feasible silvicultural systems, operating methods and procedures that will substantially lessen significant adverse impacts on the environment.
(2) Would not meet the requirements of individual rules which provide a range of feasible alternatives through which to carry out the intent of the Act.
(3) Meet the special conditions for disapproval set by the Board in 14 CCR 898.2.

The adopted regulations, when combined with the existing Forest Practice Rules as a whole, provide adequate standards to evaluate impacts on the environment as proven by decades of THP and NTMP implementation. Standards for mitigation and/or minimization of adverse impacts are found throughout the Forest Practice Rules. Each WFMP shall be required to minimize/mitigate potential adverse impacts to the environment. The rules are designed to prevent significant adverse or cumulative impacts from timber harvesting operations and provide detailed and explicit instructions for permissible and prohibited actions that govern the conduct of on-the-ground timber operations. The major categories covered by the Rules include:

- Cumulative Impacts Assessment (14 CCR § 912.9 [932.9, 952.9]).
- Silvicultural Methods (14 CCR § 913 [933, 953] et seq.).
- Harvesting Practices and Erosion Control (14 CCR § 914 [934, 954] et seq.).
- Site Preparation (14 CCR § 915 [935, 955] et seq.).
- Watercourse and Lake Protection (14 CCR § 916 [936, 956] et seq.).
- Hazard Reduction (14 CCR § 917 [937, 957] et seq.).
- Fire Protection (14 CCR § 918 [938, 958] et seq.).
- Forest Insect and Disease Protection Practices (14CCR § 917.9 [937.9, 957.9] and 14CCR § 917.10 [937.10, 957.10]).
- Wildlife Protection Practices (14 CCR § 919 [939, 959] et seq.).
- Logging Roads and Landings (14 CCR § 923 [943, 963] et seq.).

When a Plan is submitted to the California Department of Forestry and Fire Protection (CAL FIRE) a multidisciplinary review team conducts the first review team meeting to assess the Plan. The review team normally consists of, but is not necessarily limited to, representatives of CAL FIRE, the Department of Fish and Wildlife (DFW), and the Regional Water Quality Control Board (WQ). The California Geological Survey (CGS) reviews plans for indications of potential slope instability and the State Archaeologist reviews plans for potential for adverse impacts to archaeological resources. The purpose of the first review team meeting is to assess the Plan and determine on a preliminary basis whether it conforms to the rules of the Board of Forestry. Additionally, questions are formulated which are to be answered by a field inspection team.

Next, a preharvest inspection (PHI) is normally conducted to examine the Plan area and associated activities. All review team members may attend, as well as other experts and agency personnel whom CAL FIRE may request. As a result of the PHI, additional recommendations may be formulated to provide greater environmental protection.

After a PHI, a second review team meeting is conducted to examine the field inspection reports and to finalize any additional recommendations or changes in the Plan. The review team transmits these recommendations to the RPF, who must respond to each one. The Director's representative considers public comment, the adequacy of the

registered professional forester's (RPF's) response, and the recommendations of the review team chair before reaching a decision to approve or deny a Plan. If a Plan is approved, logging may commence, pending submission of a Working Forest Harvest Notice. The WFMP has no expiration date, but may be cancelled. The Working Forest Harvest Notice has an effective period of one (1) year.

During operations, CAL FIRE periodically inspects the logging area for Plan and rule compliance. The number of the inspections will depend upon the plan size, duration, complexity, regeneration method, and the potential for impacts. The contents of the Plan and the rules provide the criteria CAL FIRE inspectors use to determine compliance. While CAL FIRE cannot guarantee that a violation will not occur, it is CAL FIRE's policy to pursue vigorously the prompt and positive enforcement of the Forest Practice Act, the forest practice rules, related laws and regulations, and environmental protection measures applying to timber operations on the non-Federally owned lands of the State. This enforcement policy is directed primarily at preventing and deterring forest practice violations, and secondarily at prompt and adequate correction of violations when they occur.

The general means of enforcement of the Forest Practice Act, forest practice rules, and the other related regulations range from the use of violation notices which require corrective actions, to criminal proceedings through the court system. Timber operator and RPF licensing actions can also be taken.

Plan review and assessment is based on the assumption that there will be no violations that will adversely affect water quality or watershed values significantly. Most forest practice violations are correctable and CAL FIRE's enforcement program assures correction. Where non-correctable violations occur, criminal action is usually taken against the offender. Depending on the outcome of the case and the court in which the case is heard, some sort of environmental corrective work is usually done. This is intended to offset non-correctable adverse impacts. Once a Working Forest Harvest Notice is completed, a completion report must be submitted certifying that the area meets the requirements of the Plan and rules. CAL FIRE inspects the completed area to verify that all provisions of the Plan and the rules have been followed including erosion control work.

Depending on the silvicultural system used, the stocking standards of the rules must be met immediately or in certain cases within five years. A stocking report must be filed to certify that the requirements have been met. If the stocking standards have not been met, the area must be planted annually until it is restored. If the landowner fails to restock the land, CAL FIRE may hire a contractor to complete the work and seek recovery of the cost from the landowner.

Rule Text Edit: No.

W15-8: Rob DiPerna, EPIC (dated June 15, 2015)

In addition, the APA requires the agency to consider all relevant matters presented to it before adopting regulations. (Gov't Code § 11346.8). Despite this clear obligation, the Board's Notice of Proposed Action advises that the Board will not consider any oral comments presented at the scheduled June 17 hearing. The notice advises that "[a]t the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. The Board requests, *but does not require,* that persons who make oral comments at the hearing also submit a summary of their statements."(Notice, at p. 1). (Emphasis added). The Notice then states that the "Board *will consider only written comments* received at the Board office by that time and those written comments received at the public hearing, including written comments submitted in connection with oral testimony at the public hearing." (Notice, at p. 2). (Emphasis added). In this way, the Notice advises that oral statements given at the public hearing will not be considered by the Board. This violates the APA and eviscerates the fundamental purpose and function of the public hearing for rule making.

Board Response: Pursuant to the 45-Day Notice:

> **PUBLIC HEARING**
>
> The Board will hold a public hearing on Wednesday, June 17, 2015, at its regularly scheduled meeting commencing 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.** The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements…..
>
> …....
>
> **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, June 15, 2015.
>
> **The Board will consider only written comments received at the Board office by that time and those written comments received at the public hearing, including written comments submitted 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.**

The first text (in bold) notifies that at the hearing, any person, may present statements or arguments, orally or in writing, relevant to the proposed action. Nowhere in the Notice is it stated that oral statements given at the public hearing will not be considered, nor is it implied. The Board considered statements that were exclusively delivered orally and has responded to them in this FSOR (see response to speaker comments). The second text (in bold) simply provides the parameters for the written comments and makes it clear that ALL timely written comments will be considered by the Board.

Rule Text Edit: No.

W15-9: Rob DiPerna, EPIC (dated June 15, 2015)
AB 904 expressly declares that the "working forest management plan shall comply with rigorous timber inventory standards." (PRC § 4597(a)(5)). These standards are needed to ensure the long term benefits outlined in the statute, including "added carbon sequestration," "sustainable production of timber and other forest products," and "the maintenance of ecosystems processes and services." Yet, the proposed regulations fail to identify any "rigorous timber inventory standards." In fact, the proposed regulations do not provide any clearly stated timber inventory standards. While proposed rule 1094.6 requires "description" of "inventory design and standards," including types of projections or models used to make projections of growth and yield, (subsection (g)), or "inventory design and timber stratification criteria" to support growth and yield calculations used to determine LTSY, (subsection (h)), these provisions do not provide any actual standard, much less "rigorous" timber inventory standards, that must be satisfied. In doing a search of the entire proposed rule package, there is not one reference to "inventory standard," or "timber inventory." The rules fail to meet the required APA necessity and consistency standards because they do not include "rigorous timber inventory standards."

Board Response: See responses to comments W1-4, W6-2, W6-3, W6-8 and W15-6, which provide the relevant information to constitute a response.

Rule Text Edit: No.

W15-10: Rob DiPerna, EPIC (dated June 15, 2015)
The proposed rules fail to provide clear definitions for the "long-term benefits" the rigorous timber inventory standards are intended to ensure. For example, the proposed rule package fails to define or give interpretation to the terms such as "added carbon sequestration," "sustained production of timber and other forest products," or "maintenance of ecosystems processes and services." (PRC §4597(a)(5)). This failure contributes to the legal deficiency of the rule package, by not providing necessary interpretation of core statutory provisions.

Board Response: The Board made specific rigorous timber inventory standards as described in W15-6, the Board decided not to make more specific than is provided in statute the definition for the "long-term benefits" and the Board decided not to make more specific than is provided by the plain meaning of the phrases "added carbon sequestration," "sustained production of timber and other forest products," and "maintenance of ecosystems processes and services." The Board determined, based on the words of the legislature in PRC §4597(a)(5), that compliance with existing law, and the provisions of the WFMP Program, including the rigorous timber inventory standards developed by the Board would ensure that long-term benefits would be achieved.

The primary means to ensure and determine long-term benefits such as "added carbon sequestration," "sustained production of timber and other forest products," and "maintenance of ecosystems processes and services." is through the rigorous timber inventory as described in W15-6 and the five (5) year review. The definitions of these phrases, beyond their plain meaning, is qualitative and to be contextualized by the project proponent and reviewed for merit by the multidisciplinary review. Additionally, there is a feedback loop in the 5 year review to determine if the implementation of the WFMP is achieving long-term benefits such as "added carbon sequestration," "sustained production

of timber and other forest products," and "maintenance of ecosystems processes and services."

See responses to comments W1-3 and W15-6, which provide additional relevant information.

Rule Text Edit: No.

W15-11: Rob DiPerna, EPIC (dated June 15, 2015)
AB 904 expressly requires that a WFMP include the objective of "maintaining, restoring or creating uneven aged managed timber stand conditions," PRC § 4597.1(j), and that a WFMP may be submitted only by a landowner "with the long-term objective of an uneven aged timber stand ... through the implementation of the [WFMP]." (PRC § 4597.2). Yet, the proposed rules do not include any requirement that the landowner state or commit to the objective of uneven aged management. Nor does the proposed rule package require an express statement and identification for uneven aged management. Instead, proposed rule 1094.6 states that a "function" of the WFMP is to "provide information and direction for timber management so it complies with *....management objectives of the landowner(s)."* (Emphasis added). AB 904 says nothing about undefined landowner management objectives. Introducing this ambiguous provision to guide the WFMP, while failing to provide the statutory "rigorous timber inventory standards," and regulations to require implementation of the stated objective of uneven aged management, is contrary to the statute and not authorized. As such, it violates the APA. The proposed regulations place no limits on or definition of what may constitute landowner's "management objectives." There is nothing "rigorous" about allowing a landowner's unbridled management objectives to define timber management as contemplated by AB 904. This too violates the APA due to a lack of authority and consistency.

Board Response: The Board deemed that the following provisions of the adopted regulation provide adequate direction and compliance mechanisms for a Working Forest Landowner(s) to meet the mandatory objectives of Unevenaged Management and Sustained Yield.

> Pursuant to PRC § 1094.2(i) "Unevenaged Management", pursuant to PRC § 4597.1(g), means forest management with the goal of establishing a well-stocked stand of various age classes, which permits the periodic harvest of individual or small groups of trees to achieve Sustained Yield objectives of the WFMP, and provide for regeneration of trees and maintenance of age class structure.
>
> Pursuant to PRC § 1094.2(l), a "Working Forest Management Plan (WFMP)" , pursuant to PRC § 4597.1(j), means a management plan for Working Forest Timberlands, with objectives of maintaining, restoring, or creating Unevenaged Managed timber stand conditions, achieving Sustained Yield, …..
>
> Further, pursuant to PRC § 1094.3, a WFMP may be submitted to the Department in writing by a person who intends to become a Working Forest Landowner(s) with the long-term objectives of promoting forestland stewardship, uneven aged timber stand(s) and sustained yield through the implementation of a WFMP. The WFMP shall be prepared by a RPF, shall be public record, shall include all of the specified information pursuant to 14 CCR §1094.6 and the following conditions shall be met:…

Pursuant to § 1094.6(i), the silvicultural methods to be applied to each Strata must be disclosed.

Pursuant to § 1094.23(c)(4), a change in this identified silviculture is considered a substantial deviation of the WFMP and would trigger a multidisciplinary review and public comment period for the proposed changes.

Finally, pursuant to § 1094.31(b), the adopted regulations contain provisions requiring the Department to cancel a WFMP that is not meeting the objectives of Unevenaged Management and Sustained Yield.

The regeneration methods used in uneven aged management, pursuant to 14 CCR § 913.2 [933.2, 953.2], are Selection, Group Selection, Transition. Other methods may be used in very specific situations to meet the long-term objectives of an uneven aged timber stand(s). For example, Rehabilitation may be used in Understocked Area to meet the long-term objectives of an uneven aged timber stand(s). For example, a landowner has timberland that is currently understocked and utilizes the Rehabilitation treatment to harvest, treat and reforest the stand to increase productivity, ultimately using uneven aged management treatments to maintain a regular harvest schedule in perpetuity.

Finally, the use of “the management objectives of the landowner(s)” in § 1094.6 does not in any way abrogate the landowner of the responsibility of the aforementioned provisions, it simply recognizes the many objectives of the landowner.

See responses to comments W1-3, W1-4, W6-8 and W15-6, which provide additional relevant information.

Rule Text Edit: No.

W15-12: Rob DiPerna, EPIC (dated June 15, 2015)

The proposed rules, and specifically rule 1094.6, do not require an express statement and identification of "long term sustained yield." While there are provisions that require submission of information as to how the plan submitter estimates LTSY, there is no plain requirement for the WFMP submitter to *state* the LTSY. As noted above, there is no provision which stipulates that the WFMP submitter must conduct uneven aged management to reach LTSY, or to maintain LTSY. The ISOR advises that this rule package is intended to "incentivize" uneven aged management, (ISOR at p. 5), yet the rules themselves do not require uneven aged management over time, into the future, or upon realization of the (unstated) LTSY, much less incentives to use uneven aged management. As such they do not satisfy the intent and purpose of AB 904, e.g., to provide "increased productivity of timberland" and to be a .plan to achieve the long-term objective of an "uneven aged timber stand and sustained yield through implementation of a working forest management plan."(PRC §§ 4597(a)(3), 4597.2).

Board Response: See responses to comments W15-11 and W15-25.

Rule Text Edit: No.

W15-13: Rob DiPerna, EPIC (dated June 15, 2015)
Additionally, the rules lack any metric to evaluate, consistently over time, whether statutory goals for "sustained production of timber" and "sustained yield" are being achieved. (PRC §§ 4597, 4597.2). Specifically, the rules fail to require regular and ongoing reporting of volume harvested and volume remaining, at least for tree size, species, and stands. In order to achieve sustainability, the volume removed-such as Scribner volume, cubic or board feet -must be recorded to determine whether estimates for removal are being followed. It is also necessary to provide regular reporting of emerging growth, in order to evaluate whether growth projections for the LTSY are accurate or need adjustment. This is needed entirely independent of any Five Year Review for compliance; it is needed to ensure that the purposes of the WFMP are being fulfilled over time.

Board Response: The Board deemed the provisions discussed in W6-2 will ensure that the purposes of the WFMP are being fulfilled over time.

See response to comment W15-28, which provides additional relevant information.

Rule Text Edit: No.

W15-14: Rob DiPerna, EPIC (dated June 15, 2015)
The failure to provide these key provisions in the proposed rules means that not only has the APA not been followed, but equally CEQA requirements have not been met. The ISOR summarily concludes that the proposed rule package will not result in significant adverse environmental effects. (ISOR at p. 121). This conclusion is insufficient because it is not based on substantial evidence. There is the potential for actual harm due to the lack of "rigorous timber inventory standards," express articulation of landowner objectives, clear statement of LTSY, stated measures and commitment to use of uneven aged management over time, and adequate recording and monitoring of volumes harvested and growth occurring. The lack of these measures means, simply, that WFMPs and their implementation, have the very real potential to cause significant adverse effects on the environment, and particularly timberland productivity and inventories over time, which in turn can adversely impact many natural resources. The ISOR fails to consider or evaluate this potential under CEQA.

Board Response: See responses to comments W15-6 and W15-7 which provide the relevant information to constitute a response.

Rule Text Edit: No.

W15-15: Rob DiPerna, EPIC (dated June 15, 2015)
The proposed rules and the ISOR do not include real consideration of baseline conditions with regard to the status and plight of threatened and endangered species, nor do the proposed rules or the ISOR adequately evaluate how forest management under the guise of a WFMP may affect these conditions and trends. There is an inherent presumption that the proposed rules will not have a significant adverse impact on the environment. *(See* ISOR at p. 121). As described in more detail below, the proposed rules do not contain adequate standards or safeguards regarding the identification and protection of threatened or endangered species within the WFMP assessment area.

There are numerous examples of forest-associated species currently listed as threatened or endangered that are well-known to be in decline based on the best available science and research. Based on this evidence, there species may be significantly adversely affected by the lack of adequate standards and mitigations in the proposed rules. Yet the ISOR fails to consider and evaluate the potential for significant adverse impact on these species.

Board Response: The Board deemed the requirements of the adopted rules will prevent a significant adverse environmental impact on state or federally listed threatened, candidate, and endangered species; rare plants; Sensitive Species pursuant to 14 CCR § 895.1; and species that meet the criteria under 14 CCR § 15380(d). Contrary to the commenter's suggestions of inadequate standards and safeguards regarding the identification and protection of threatened or endangered species within the WFMP assessment area, the adopted rules and the existing rules and statute on which the adopted rules rely provide a comprehensive set of adequate standards and safeguards. Following are provisions in the adopted rules, existing rules and statute that support this conclusion.

Adopted Rules

§1094.6(e)(14) requires that the known locations of state or federally listed threatened, candidate, and endangered species; rare plants; Sensitive Species pursuant to 14 CCR § 895.1; and species that meet the criteria under 14 CCR § 15380(d) be mapped.

§1094.6(m) requires disclosure of (1) State or federally listed threatened, candidate, endangered, or rare plant or animal species known locations within the biological assessment area and the WFMP, their status and habitats, take avoidance methodologies, enforceable protection measures for species within or adjacent to the WFMP and habitats within the WFMP area, and how forest management will maintain species and habitats over time; (2) Any known locations of plant or animal species pursuant to 14 CCR § 15380(d) within the biological assessment area and the WFMP; and (3) Information on the presence and known locations of key habitats within the WFMP or individual Sensitive Species pursuant to 14 CCR § 895.1 adjacent to or within the WFMP.

§1094.6(o) requires that an additional assessment be included if LTSY projections project a reduction in quadratic mean diameter, of trees greater than 12 inches in diameter, or a reduced level of inventory.

§1094.8(h) requires the RPF to provide a statement that state or federally listed threatened, candidate, and endangered species; rare plants; Sensitive Species pursuant to 14 CCR § 895.1; and species that meet the criteria under 14 CCR § 15380(d), have not been discovered, or are publically known, within and adjacent to the logging area, since the approval of the WFMP, unless the approved WFMP is amended. This provision also requires that after the initial year the plan is approved, prior to submitting the Working Forest Harvest Notice, a review shall be conducted of the California Natural Diversity Database or another public database approved by the Director after consultation with the Department of Fish and Wildlife for any species listed as state or federally listed threatened, candidate, and endangered species; rare plants; Sensitive Species pursuant to 14 CCR § 895.1; and species that meet the criteria under 14 CCR § 15380(d). Finally, the provision

mandates, when a Working Forest Harvest Notice is filed, and after the initial year the plan is approved, it shall comply with the following: (1) Documented occurrences obtained from a review of public and readily available sources of species that are state or federally listed threatened, candidate, and endangered species; rare plants; Sensitive Species pursuant to 14 CCR § 895.1; and species that meet the criteria under 14 CCR § 15380(d) within the biological assessment area, and outside the area of timber operations, identified in the Working Forest Harvest Notice, and not addressed in the approved plan shall be submitted to the Director as a minor deviation concurrently with the filing of a Working Forest Harvest Notice. (2) Documented occurrences of species that are state or federally listed threatened, candidate, and endangered species; rare plants; Sensitive Species pursuant to 14 CCR § 895.1; and species that meet the criteria under 14 CCR § 15380(d) and discovered inside or adjacent to the area of timber operations, identified in the Working Forest Harvest Notice, and not addressed in the approved plan shall be submitted to the Director as a deviation to the WFMP, prior to filing a Working Forest Harvest Notice. The deviation shall contain take avoidance and other mitigation measures developed in consultation with the Department and the appropriate listing agency(s), if no such information is currently contained within the approved plan or incidental take authorization is provided by the appropriate listing agency(s).

§1094.8(j) requires certification by the RPF that (1) The Working Forest Harvest Notice as carried out will protect wildlife as provided by the Board rules and regulations and other applicable provisions of law. Or 2) Compliance with the Board rules and regulations and the provisions of this article that were in effect at the time the WFMP was approved will not result in any significant degradation to wildlife and shall protect all listed species.

<u>Existing Rules</u>
In 14 CCR § 895.1, several definitions including Functional Wildlife Habitat, Listed species, Nest Site, Nest Tree, Perch Tree, Properly Functioning Salmonid Habitat, Replacement Tree, Sensitive Species, Take for Federally Listed Species and the definition of Take for State Listed Species and Watersheds with Listed Anadromous Salmonids inform the evaluation of significant adverse impact on state or federally listed threatened, candidate, and endangered species; rare plants; Sensitive Species pursuant to 14 CCR § 895.1; and species that meet the criteria under 14 CCR § 15380(d).

In 14 CCR § 896(a) the purpose of the Forest Practice Rules, to implement the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 in a manner consistent with other laws, including the California Endangered Species Act, is identified. This provision requires that these other laws be followed by RPFs in preparing Timber Harvesting Plans, and by the Director in reviewing such plans to achieve the policies described in statute.

In addition to the operational rules, 14 CCR § 898.2(d), (e) and (f) require a plan be disapproved if any one of the following conditions exist:…(d) Implementation of the plan as proposed would result in a ‘taking’ or finding of jeopardy of wildlife species listed as rare, threatened or endangered by the Fish and Game Commission, the National Marine Fisheries Service, or Fish and Wildlife Service, or which would cause significant long-term damage to a listed species.” (unless there is an

Incidental Take Permit) (e) Implementation of the plan would irreparably damage plant species listed as rare or endangered by the Department of Fish and Game …. (f) Implementation of the plan as proposed would result in the taking of an individual Northern Spotted Owl prohibited by the Federal Endangered Species Act."

Technical Rule Addendum No. 2 requires a cumulative impacts analysis with regard to biological resources.

14 CCR § 916 [936, 956] et seq. contain rules that require the protection of watercourses and lakes, the protection of the beneficial uses of water and riparian functions, specifies limitations near watercourses, lakes, marshes, meadows and other wet areas, requires measures to reduce soil loss, require the protection and restoration of the beneficial functions of the riparian zone in watersheds with listed anadromous salmonids and may require monitoring of effectiveness and implementation and monitoring for adaptive management in watersheds with coho salmon.

14 CCR § 919 [939, 959] et seq. contain wildlife protection practices, including snag retention, general protection of nest sites, specific requirements for protection of nest sites, treatment of non-listed species, provision to develop alternatives, Northern Spotted Owl procedures, Marbled Murrelet protective measures for the Coast, procedures to classify Sensitive Species and protection of wildlife habitat specific to the Southern District.

Pursuant to 14 CCR § 923 [943, 963] (b)planning, construction, reconstruction, use, maintenance, removal, abandonment, and deactivation of all logging roads, landings, and logging road watercourse crossings in the logging area shall occur in a manner that avoids or substantially lessens significant adverse impacts to, among other things, fish and wildlife habitat and listed species of fish and wildlife.

Another condition of use for the WFMP is that it be prepared, signed, and submitted to the Department by a RPF, who, by reason of his or her knowledge is qualified to consult, investigate, evaluate, plan, and supervise forestry activities to prevent significant adverse environmental effects. Additionally, the Department has the authority to inspect timber operations on timberland. Where Forest Practice Rule standards have been violated, specified corrective and/or punitive enforcement measures including, but not limited to, financial penalties, are imposed upon the identified offender(s).

Generally, consideration of baseline conditions with regard to threatened and endangered species is an aspect of the plan review, which includes evaluation by professionals with expertise in wildlife biology. Written regulations alone do not accomplish the real consideration of baseline conditions, instead it is the combination of the adherence of Professionals to the rules with the guidance and administration of the Responsible Agencies with the participation of the public that ensures the actions undertaken under a plan will not have a significant adverse effect on the environment. Typically, site-specific mitigations are developed through and during the plan review process to account for the variations in local conditions between plans.

The commenter stresses evaluation of “how forest management under the guise of a WFMP may affect these conditions and trends”. Conditions and trends are often the subject of research, which is not mandated, although many project proponents conduct their own research to establish conditions and trends. The Board, the Department and the project proponent, to prevent significant adverse environmental effects, often rely on research.

Given that the WFMP Program is based on the NTMP and a similar requirement exists in the NTMP Program (14 CCR §§ 1090.5(n) and 1090.7(h)), and NTMPs, for all the years they have been used, are demonstrating avoidance of significant adverse environmental impacts, the Board determined adopting similar provisions into the WFMP program was congruent with avoidance of significant adverse environmental impacts as a result of implementation of the WFMP Program.

Similar requirements also exist for the PTHP (1092.09(g)), and which are demonstrating avoidance of significant adverse environmental impacts regarding this resource.

The adopted rules would become an added element 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 oversight of rule compliance function expressly to prevent adverse environmental effects.

See response to comments W15-33 and W15-35, which provide additional relevant information.

Rule Text Edit: No.

W15-16: Rob DiPerna, EPIC (dated June 15, 2015)

One well-known species that is experiencing well-documented declines in vital demographic statistics is the Northern Spotted Owl ("NSO"). The latest range-wide demographic study for the NSO documents declines in reproduction, apparent survival, and overall populations in most study areas. (Forsman et al. 2011, "Population Demography of the northern spotted owls: 1985-2008" ("Forsman et al. 2011"). (Attachment C). This study concludes that past and ongoing habitat loss, combined with increased competition from non-native invasive barred owls are partially responsible for these declines. (Forsman et al. 2011; Abstract). Yet the proposed rule package, in the absence of necessary standards, would permit logging in ways that are harmful to this species.

EPIC specifically objects to the use of existing Rule 919.9(g) [939.9(g)] within a WFMP. CAL FIRE admits that so-called "Option-(g)" under Rule 919.9 [939.9] is inadequate to protect the NSO. At the March 6, 2013 Board hearing, CAL FIRE Deputy Director Duane Shintaku declared the insufficiency of Rule 919.9 (g) to prevent "take" of the NSO:

> "[F]rankly, the Department recognizes that frankly Ken knows we have been working with him prior to retirement in the Service and we have recognized the problems with option-g for quite some time and even before we were handed the full brunt of the responsibility back in 2008 we had heard from the service that option-g was really not adequate. So where did that leave the

Department?...there were really just two options....We were really just relying on option-e, the other option that allowed people to avoid take through an HCP and the third was option-g so for quite some time the board s rules with respect 919 and NSO have been outdated, and if you think about it they have been around for 20 years and it's no big mystery that the science has informed what owls need across the landscape.... so first of all CAL FIRE agrees with EPIC in terms of the obsolete nature of option-(g).... so really where we are today is what we are call g+.... what that means is we recognize g is not going to get it done, but the rules specifically say an RPF only has the choices (a)-(g) in order to address a spotted owl in a THP, so because the RPF has to say I am using option-(g)-coupled with the fact that we know option-g is obsolete-that forces the Department into what I would consider a full-blown CEQA analysis. We have to make sure that significant impacts, cumulative impacts and take are all addressed in the plan, and we just use the (g) vehicle to get that done. What does that mean? It means that most of the plans... in which the RPF says I am using option-(g), do not rely on the minimums in the rule today. What that generally means is that they look at the most recent Fish and Wildlife Service guidance and take that high quality nesting/roosting/foraging and the parameters, distances, operating periods incorporated into the plan ....if the only remaining option is option-e.... that creates a huge problem for the plan preparing RPF as well as the Department." (Shintaku 2013, Testimony before Board of Forestry, March 2013). (Attachment D).

Extending the use of a regulation which is ineffective to prevent illegal take of the NSO is contrary to the statutory function of the WFMP to promote forestland stewardship that protects wildlife habitats.

Board Response: The regulations, specific to the Northern Spotted Owl, referenced in the comment are not the subject of the present rulemaking. However, at the discretion of the Board, the following information is provided.

Regarding the Forsman paper referenced in this comment:
The abstract in Forsman et al. (2011) includes a caution with regard to assuming that increases in habitat are consistently beneficial for northern spotted owl reproduction, and noted that some of the conclusions reached may not be applicable to California because of limits to modeling (underlining added for emphasis):

> "The percent cover of suitable owl habitat was in the top fecundity model for all study areas in Oregon, and in competitive models for two of the three study areas in Washington. In Oregon, all 95% confidence intervals on beta coefficients for the habitat covariate excluded zero, and on four of the five areas the relationship between the percent cover of suitable owl habitat and fecundity was positive, as predicted. However, contrary to our predictions, fecundity on one of the Oregon study areas (KLA) declined with increases in suitable habitat. On all three study areas in Washington, the beta estimates for the effects of habitat on fecundity had 95% confidence intervals that broadly overlapped zero, suggesting there was less evidence of a habitat effect on fecundity on those study areas. Habitat effects were not included in models for study areas in California, because we did not have a comparable habitat map for those areas."

The concern implied that Forsman et al. (2011) found that increasing numbers of barred owls and loss of habitat were partially responsible for northern spotted owl population declines. However, Forsman et al. (2011) stated in the abstract (underlining added for emphasis): "We concluded that fecundity, apparent survival, and/or populations were declining on most study areas, and that there was evidence that increasing numbers of Barred Owls and loss of habitat were at least partly the cause for these declines. <u>However, there was considerable annual variation in fecundity and survival on all study areas, little of which was explained by the covariates that we used</u>." The abstract of Forsman et al. (2011) expanded on the uncertainty found with respect to barred owl effects: "Evidence for a Barred Owl effect on fecundity on individual study areas was somewhat mixed. The Barred Owl covariate was included in the best model or a competitive model for five study areas, but the relationship was negative for four areas and positive for one area. At the other six study areas the association between fecundity and the proportion of Spotted Owl territories in which Barred Owls were detected was weak or absent."

Finally, it is important to note that the 'habitat loss' referred to in Forsman et al. (2011) refers to conversion of timberland to other non-forest uses. Forest management for timber products constitutes habitat alteration, as opposed to habitat loss.

<u>Regarding 14 CCR § 919.9 [939.9] (g)</u>
EPIC's objections to the use of the existing Rule 14 CCR § 919.9 [939.9] (g) is documented in their Petition submitted to the Board. Action by the Board considering the petition has occurred. A hearing was conducted in March of 2013 and the Petition was accepted by the Board. In subsequent meetings, the Board took action upon the Petition by authorizing a 45 Day Notice for the repeal of Option g. To date that 45-Day Notice has not yet been published due to the fact that the Status Review by the California Department of Fish and Wildlife (CDFW) staff and final action by the Fish and Game Commission on the pending state listing of NSO has not yet been completed. This delay in publication of the 45-Day Notice came at direction of the Board. The timeline for completion of the Status Review and for the Commission to consider the listing at this time is unknown.

Pursuant to § 1094, 14 CCR § 919.9 [939.9] applies to the WFMP.

Pursuant to 14 CCR § 919.9 [939.9], every proposed timber harvesting plan, NTMP, conversion permit, Spotted Owl Resource Plan, or major amendment located in the Northern Spotted Owl Evaluation Area or within 1.3 miles of a known northern spotted owl activity center outside of the Northern Spotted Owl Evaluation Area shall follow one of the procedures required in subsections (a)-(g) below for the area within the THP boundary as shown on the THP map and also for adjacent areas as specified within this section. The submitter may choose any alternative (a)-(g) that meets the on-the-ground circumstances. The required information shall be used by the Director to evaluate whether or not the proposed activity would result in the "take" of an individual northern spotted owl.

If the project proponent chooses (g), USFWS concerns regarding 'option g' have been addressed through the review process during which project proponents have been required to go above and beyond 'option g' (otherwise known as g-plus) by either meeting the (then-current) USFWS-recommended measures for Activity Center (AC) protection and post-harvest habitat retention levels around known ACs. When the USFWS-recommended protection measures and/or habitat retention levels are not met, an analysis by a qualified person, which clearly and substantively demonstrates why the proposed, site-specific protection measures and level and configuration of post-harvest habitat

retention will avoid take of NSO is required. This analysis must address how the proposal will not significantly impair or disrupt feeding, breeding, nesting, and sheltering of NSO (see 14 CCR § 919.10 [919.30]).

The USFWS NSO Take Avoidance Guidance states: “The [USFWS guidelines] are recommended tools to avoid take, but are not required approaches imposed by the Fish and Wildlife Service.” Clarifying the use of take avoidance scenarios, the USFWS notes: “The guidelines describe how the U.S. Fish and Wildlife service (Service) determines when take is likely at a course *[sic]* scale. That is, without any site-specific information, the guidelines outline the general methods that the Service employs to determine if take is likely. As stated in the guidelines, “while we believe [the guidelines are] the most effective manner in avoiding take, it is likely not the only manner in which take can be avoided.”

For those THP submitters that propose something different than the USFWS guidelines, CAL FIRE requires them to meet or exceed the minimum standards contained in 14 CCR § 919.9(g) [939.9(g)] and provide a site-specific analysis explaining how deviation from the USFWS Guidelines will still ensure take avoidance.

The Office of Administrative Law, on May 21, 2015, declined to accept the most recent petition filed by EPIC, which alleges the Department of Forestry and Fire protection has issued, used, enforced or attempted to enforce underground regulation concerning g-plus.

In conclusion, pursuant to 14 CCR § 898.2, the Director shall disapprove a plan as not conforming to the rules of the Board if any one of the following conditions exist:

> (d) Implementation of the plan as proposed would result in either a "taking" or finding of jeopardy of wildlife species listed as rare, threatened or endangered by the Fish and Game Commission, the National Marine Fisheries Service, or Fish and Wildlife Service, or would cause significant, long-term damage to listed species. The Director is not required to disapprove a plan which would result in a "taking" if the "taking" is incidental and is authorized by a wildlife agency acting within its authority under state or federal endangered species acts.
> (f) Implementation of the plan as proposed would result in the taking of an individual Northern Spotted Owl prohibited by the Federal Endangered Species Act.

Therefore, the existing rules, on which the WFMP relies, are adequate to prevent "take" of the NSO.

See response to comment W15-15, which provides additional relevant information.

Rule Text Edit: No.

<u>W15-17: Rob DiPerna, EPIC (dated June 15, 2015)</u>

Anadromous salmonid species in California, particularly in coastal watersheds, are similarly in peril. For example, the National Marine Fisheries Service's ("NMFS") has documented that of the literally thousands of Coho, which once returned to Northern California and Southern Oregon rivers and streams, today have over three quarters of SONCC Coho salmon independent populations at high risk of extinction. ("Final Recovery Plan for the Southern Oregon/Northern California ("SONCC") Evolutionary Significant Unit ("ESU") of Coho Salmon" ("NMFS 2014" or "Recovery Plan"), at p. E-2). (Attachment E). This Recovery Plan includes an assessment of the 2010 Anadromous Salmonid Protection Rules ("ASP") which currently regulate timber

harvest activities on private ownerships within the range of the SONCC Coho. NMFS staff actively engaged and participated in Board meetings and expressed concern to the Board that the ASP rules, while resulting in some improvements to riparian protections, would not adequately protect anadromous salmonids until several inadequacies in the Forest Practice Rules were remedied. The NOAA Fisheries Service expressed this to the Board in a letter dated September 8, 2009:

> *"For the last 10 years, NMFS representatives have been recommending to the BOF develop either no-take rules (e.g., similar to those for federally listed northern spotted owl and marbled murrelet) or move forward on the development of a section 10(a)(1)(B) statewide permit (e.g. Habitat Conservation Plan [HCP]) that authorizes incidental take of listed salmonid species...However, NMFS finds that the proposed Anadramous Salmonid Protection Rules are not no-take rules, and are unlikely to meet the intent of the rules themselves and are not likely to abate the risk of extinction for listed salmonids where these Rules are implemented.* "(NOAA Fisheries letter to Stan Dixon, California Board of Forestry 9/8/09). (Attachment F).

While the proposed rules implicitly indicate the WFMP must comply with Technical Rule Addendum No. 2 for evaluation of cumulative impacts, this is insufficient because the existing Addendum No. 2 fails to adequately evaluate cumulative impacts to anadromous salmonids. While the Board continues to fumble around with its feeble attempts to tweak the language contained in Technical Rule Addendum No. 2 (cumulative impacts assessment), the Board is missing the larger picture related to the causes of, and the need to further regulate, the cumulative impacts of timber harvest activities on properly functioning habitat conditions for Coho and other listed salmonids. The ISOR should have discussed the Board's related rulemaking project to amend Technical Rule Addendum No. 2 and what effects it could have on the WFMP requirement for cumulative impacts assessment.

Board Response: The regulations specific to anadromous salmonid species in California referenced in the comment are not the subject of the present rulemaking. However, at the discretion of the Board, see responses to comments W15-7 and W15-15, which provide relevant information.

Rule Text Edit: No.

W15-18: Rob DiPerna, EPIC (dated June 15, 2015)

More recently, another forest-associated species has been proposed for listing under the federal Endangered Species Act ("ESA") by the U.S. Fish and Wildlife Service ("USFWS"). The USFWS has proposed listing of the Pacific Fisher as a "threatened" species under the ESA. In its Draft Species Assessment Report for the Pacific Fisher, the USFWS cites large-scale loss of important habitat components for the fisher clue to past 'vegetation management' and timber harvest, and current 'vegetation management' activities. (U.S. Fish and Wildlife Service, 2014b, "Draft Species Report Fisher (Pekania pennant), West Coast Population, January 13, 2014,"at p. 55). (**Attachment G**). The proposed WFMP rules do not attend to the need to prevent loss important habitat components for this species, and the ISOR fails to discuss this as a potential significant adverse environmental effect.

Board Response: The regulations specific to the Pacific Fisher referenced in the comment are not the subject of the present rulemaking. However, at the discretion of the Board, see responses to comments W15-7 and W15-15, which provide relevant information.

Rule Text Edit: No.

W15-19: Rob DiPerna, EPIC (dated June 15, 2015)

Finally, past and contemporary forest management has had a devastating impact on the federal threatened and state-endangered Marbled Murrelet. The most recent science indicates that there is an estimated 13 percent loss of the higher suitability habitat over baseline during the period from 1994 to 2008. (Raphael et al. (201 1). "Northwest Forest Plan-the first 15 years (1994- 2008): status and trend of nesting habitat for the marbled murrelet"("Raphael et al. 2011)). **(Attachment H).** Fire has been the major cause of loss of nesting habitat on federal land since the Northwest Forest Plan was implemented; timber harvest is the primary cause ofloss on non federal lands. (Raphael et al. 201 1, at abstract).The Marbled Murrelet is well-known to primarily rely on old growth and late successional forest types for its survival. Raphael et al. (201 1) shows that habitat for the Marbled Murrelet continues to decline, and that this species continues to be in great peril.

Board Response: The regulations specific to the Marbled Murrelet referenced in the comment are not the subject of the present rulemaking. However, at the discretion of the Board, see responses to comments W15-7 and W15-15, which provide relevant information.

The concern provided by the commenter is merely a statement of information from the literature, which is in no way disputed within any portion of the WFMP regulations. This concern seems to be for MAMU rather than anything about the WFMP regulations. The Board shares these concerns about MAMU. The WFMP regulations address Late Succession Forest Stands, on which MAMU depend, in 1094.2(b), 1094.6(e)(13) and 1094.6(l). Also, the WFMP regulations rely on portions of the existing FPRs, that are particular to MAMU, specifically 14 CCR § 919.11.

Rule Text Edit: No.

W15-20: Rob DiPerna, EPIC (dated June 15, 2015)

Neither the proposed rules themselves, nor the ISOR describing the rules, actually require consideration of the potentially significant adverse individual or cumulative effects of forest management activities to be permitted in perpetuity under the WFMP regulations on these species, and fail to describe reasonable alternatives that would minimize or substantially lessen such impacts in violation of CEQA.

Board Response: The Board disagrees with the commenter's assertion. A cumulative impacts assessment of watershed effects and biological resources is required pursuant to Technical Rule Addendum No. 2 (14 CCR § 912.9 [932.9, and 952.9]) and pursuant to case law (*Friends of the Old Trees v. California Department of Forestry and Fire Protection, 1997*), the project proponent must include an analysis of alternatives.

See response to comments W15-7 and W15-15, which provide additional relevant information.

Rule Text Edit: No.

W15-21: Rob DiPerna, EPIC (dated June 15, 2015)

The proposed rules also do not contain adequate safeguards or standards to ensure the "maintenance of ecological processes and services" as required by the enacted statute. In particular, there is a lack of adequate standards to require adequate description and evaluation of pre-existing conditions, most notably watercourse conditions. 14 CCR 916.4 articulates a detailed information-gathering requirement for RPFs to utilize in describing and evaluating preexisting conditions. However, the proposed regulations fail to articulate meaningful standards for disclosure of the information gathered pursuant to the evaluation conducted under 14 CCR 916.4, and fail to articulate measures to be taken to address pre-existing and legacy conditions identified as a result of the analysis. The WFMP is an "in-perpetuity" plan, and as such, the implementing regulations must contain adequate requirements not only for evaluating, but also for addressing pre-existing, legacy, and ongoing impacts. Lacking these safeguards, these regulations have the potential to result in a significant adverse impact on the environment. Moreover, the ISOR fails to evaluate the potential for significant adverse impact to ecological processes and services due to the lack of adequate standards, as required by CEQA for Board rulemaking.

Board Response: The WFMP regulations proposed are not stand-alone regulations. The WFMP must be in compliance with existing law pursuant to 14 CCR § 1094. Essentially all of the Forest Practice Rules apply, except 14 CCR §§ 1032.7 through 1042. Therefore, the requirements for Watercourse and Lake Protection in 14 CCR § 916.4 [936.4, 956.4] that the commenter suggest should apply, do apply. The rules as a whole provide for maintenance of ecological processes and services. For example, watercourse condition descriptions, including gravel embeddedness, pools filled, aggrading, bank cutting, bank mass wasting, scouring, organic debris, streamside vegetation, recent floods, sediment, temperature, chemical contamination, peak flow must be considered pursuant to the Cumulative Impacts Assessment (14 CCR § 912. [932.9, 952.9]). Additionally, the new road rules require disclosure of existing and potential erosion sites on all roads and landings and disclosure is further specified in the adopted regulation in § 1094.6(e)(4)(E).

See W15-7 for a discussion of CEQA and Board rulemaking.

Rule Text Edit: No.

W15-22: Rob DiPerna, EPIC (dated June 15, 2015)

The proposed regulations lack clarity and consistency because they fail to define essential terms. These include those terms identified above-added carbon sequestration, sustainable production of timber and other forest products, maintenance of ecosystem processes and services, and rigorous timber inventory standards. (PRC § 4597(a)).

In addition, terms used in the proposed rules which have not been defined, and are not clear in their use, include:

- "forestland stewardship" (1094.2(l), 1094.3);
- "management objectives of the landowner(s)" (1094.6);
- "baseline conditions" (1094.6(g)(1));
- "timber volumes" (1094.6(i));
- "similar requirements" (1094.6(j) OPTION 2);
- "LTSY plan" (1094.6 (n)(1));
- "addresses" (1094.6(o));
- "necessary deviations" (1094.8);
- "physical environmental changes" (1094.8(i));
- "significant changes" (1094.16(d)(1)); and
- "proprietary information" (1094.29(g)).

All of these terms require definition to understand their specific meaning, as well as the rule or rule provision which uses these terms. Without definition, the rules which use these terms do not satisfy the APA standard of clarity. Moreover, as ambiguous terms, they may not protect the environment, because to the extent any one or all of them are intended to act as a requirement, that requirement is not readily defined or determined. The ISOR fails to identify or evaluate the potential significant adverse impact from these undefined terms. The lack of definition contributes to the failure to adequately evaluate potential significant adverse environmental effects, define mitigation, and evaluate feasible alternatives -all in violation of CEQA.

Board Response: "LTSY plan" (1094.6 (n)(1)), Long Term Sustained Yield (LTSY) is defined, pursuant to § 1094.2(c). Pursuant to § 1094.6 (n)(1)), plan, to qualify LTSY, is used once in the adopted rule text and retains its plain meaning. Merriam-Webster defines plan as a method for achieving an end.

Regarding the term “forestland stewardship”, terms not specifically defined in the rules retain their plain meaning. Merriam-Webster defines “stewardship” as the activity or job of protecting and being responsible for something. Therefore,” forestland stewardship” means the activity or job of protecting and being responsible for forestland.

Regarding the term "baseline conditions", terms not specifically defined in the rules retain their plain meaning. Merriam-Webster defines "baseline conditions" as a usually initial set of critical observations or data used for comparison or a control. Therefore in the context of § 1094.6(g)(1), "baseline conditions" means the initial set of critical observations or data to be used for comparison with actual future conditions.

In the context of § 1094.16(d)(1) and (2) "significant changes" has the same meaning as significant new information, as defined in 14 CCR § 895.1.

See responses to the following comments, which provide additional relevant information that constitute responses:
W2-7 for “similar requirements”
W15-11 for "management objectives of the landowner(s)"
W15-13 and W15-26 for “timber volumes”
W15-34 for “address”
W15-40 for “necessary deviations”
W15-44 for "physical environmental changes"
W15-57 for “proprietary information”

Rule Text Edit: No.

W15-23: Rob DiPerna, EPIC (dated June 15, 2015)
In reviewing the proposed WFMP content rule 1094.6, EPIC identified six substantive areas which require changes in order to satisfy the APA and CEQA standards articulated above. These are: (1) LTSY, (2) water quality, (3) wildlife and protected species, (4) cultural and historic sites, (5) cumulative impacts analysis, and (6) use of exceptions to standard rule requirements. For these provisions as identified below, the ISOR failed to provide a reasonable and adequate discussion of potential significant adverse impacts, or necessary mitigation, or considered alternatives that could have eliminated or substantially reduced these potential effects, in violation of CEQA.

Board Response: This is a nonspecific summation of comments that are provided in detail below after which Board response follows.

See response to comment W15-3, which provides additional relevant information.

Rule Text Edit: No.

W15-24: Rob DiPerna, EPIC (dated June 15, 2015)
To reiterate, a major flaw in the proposed rules is the failure to require an express statement from the landowner, in the WFMP or otherwise, of the objective commitment to long term sustained yield and uneven aged management. The failure to require an express statement to show how uneven aged management over time will be used and implemented is a flaw. In addition, the following subsections are insufficient and require changes, as recommended here.

Board Response: See response to comment W15-11, W15-12, and W15-25 which provides the relevant information to constitute a response.

Rule Text Edit: No.

W15-25: Rob DiPerna, EPIC (dated June 15, 2015)
Subsection (g) requires a description of the "planning horizon associated with the estimate of LTSY," and "the period of time necessary to estimate achievement of LTSY." As worded, neither of these provisions are clear as to what is meant by the "estimate" for "achievement" of LTSY. It is unclear whether the determination of LTSY depends on merely an estimate, unknown at the time of WFMP approval, or something more. The regulations need to identify the controls in place to ensure the WFMP commitment toward sustainability and uneven aged management will be achieved. We could find no requirement that the WFMP plainly state the time needed

to achieve actual LTSY or to require a stated commitment to uneven aged management over time. This subsection must be clarified to have meaning, and provide better standards to specify LTSY and uneven aged management. In the absence of controls, this provision leaves room for unrealistic estimates for achievement of LTSY, and does not provide for increased productivity of timberlands, sustainability, or protection of resources – in violation of the APA as well as the Forest Practice Act. The ISOR fails to discuss or evaluate the potential for significant adverse impacts to resources from this lack of definition and controls.

Board Response: The Board believes the adopted regulation is clear and provides the controls to, where feasible, restore, enhance, and maintain the productivity of timberlands and facilitate evaluation of the potential for significant adverse impacts to resources.

Pursuant to § 1094.2(c) "Long Term Sustained Yield (LTSY)" means the average annual growth sustainable by the inventory predicted at the end of a 100-year planning horizon, or a shorter planning horizon if the forest encompassed by the WFMP has reached a balance between growth and yield.

Regarding the use of "estimate of LTSY" in the adopted regulation, it would be unreasonable to expect anything more specific than an estimate of LTSY, given the variables. However, the Board made specific LTSY estimates in 1094.6(h)(3): LTSY estimates shall reasonably reflect constraints applicable to the Working Forest Timberlands on forest management activities. Reasonable constraints shall include biologic and economic factors, while accounting for limits on productivity due to constraints imposed from consideration of other forest values, including but not limited to, recreation, watershed, wildlife, range and forage, fisheries, regional economic activity, employment and aesthetic enjoyment. These represent controls as do the minimum standard errors specified for the inventory estimate.

Pursuant to § 1094.6(g)(1), a description by the RPF of the inventory design and standards shall, at a minimum, include the baseline conditions found on the WFMP including the future conditions and planning horizon associated with the estimate of LTSY.

The planning horizon associated with the estimate of LTSY is determined by the parameters of the forest condition and the proposed management, at most it can be 100 years, but may be shorter if the forest encompassed by the WFMP has reached a balance between growth and yield. The period of time to reach LTSY (growth and yield needed to achieve LTSY) will necessarily depend on the condition of the stand at present and the potential of the site.

The meaning of "Achievement" of LTSY is informed by the definition of LTSY and the plain meaning of achieve. "Achievement" of LTSY means to attain a balance between growth and yield predicted at the end of a 100-year planning horizon, or a shorter planning horizon.

Specification of LTSY, or expressly stating LTSY, is implicit in 1094.6(g), (h) and (i). Logically, LTSY must be expressly stated to enable WFMP review.

Regarding, commitment toward sustainability and uneven aged management, see W1-4 and W15-11 for a discussion.

Rule Text Edit: No.

W15-26: Rob DiPerna, EPIC (dated June 15, 2015)
Subsection (h) requires a description of inventory design and timber stand stratification criteria which show that the projected inventory supports the growth and yield calculations used to determine "LTSY by volume." Because "volume" is never defined, the term "LTSY by volume" lacks necessary clarity. Volume can be Scribner volume, board foot or cubic volume, or basal area volume. The volume measurement must be clarified to provide uniformity in determining LTSY.

Subsection (h) also provides three "minimum standards" which must be satisfied in the required description of inventory criteria. Subsection (3) requires projections of LTSY "and volumes available for harvest," without defining what kind of volume (e.g., Scribner, board or cubic foot, or basal area) is being projected.

Board Response: The Board chose not to define the units of volume to be provided because they wanted to give the RPF flexibility to report in the units of volume they choose, which may provide, for example, a wider selection of modelling options. There are generally accepted conversions to enable review.

See response to comments W15-13 and W15-22 which provide additional relevant information.

Rule Text Edit: No.

W15-27: Rob DiPerna, EPIC (dated June 15, 2015)
It also requires that the LTSY projections and volumes available for harvest by Stand or Strata shall be "aggregated for the area covered by the WFMP to develop the LTSY estimate." This is unclear. Stands grow at different rates, density, with different competition and site qualities. All may be different from one stand to the next, from one strata to the next, all within the area covered by one WFMP. "Aggregating" does not take these differences into account and may result in skewed LTSY projections. This could result in failing to meet the statutory WFMP objectives, accompanied by adverse environmental impacts on resources such as timber, water quality, and protected species. Yet potential impacts of this language have not been analyzed as required by CEQA. These provisions must be fully defined and interpreted so as to protect timber and natural resources, and provision must be made to evaluate the potential impacts from such aggregating of areas.

Board Response: § 1094.6(h)(3) requires first that inventory estimates and growth and yield be projected for the purposes of determining LTSY and volumes available for harvest by Stand or Strata and then second aggregated for the area covered by the WFMP to develop the LTSY estimate. This provision yields effect the commenter requests. Through first estimating inventory and projecting growth and yield and volumes available for harvest by Stand or Strata the differences such as rates, density, with different competition and site qualities, between stands or strata are captured. To develop the LTSY estimate for the area covered by the WFMP, this information is aggregated.

The Board deemed this requirement, combined with the other forest practice rules, will prevent a significant adverse environmental impact on resources such as timber, water quality, and protected species. Once again, it is the forest practice rules as a whole that

provide a comprehensive set of standards.

Rule Text Edit: No.

W15-28: Rob DiPerna, EPIC (dated June 15, 2015)
Subsection (i) lacks clarity because, while it requires a description of the property and planned activities, it does not provide a time frame for those projections. Thus, for example, while requiring information about the "projected timber volumes and tree sizes to be available for harvest," there is no requirement to identify the time frame for these expected harvest potentials. Is this on an annual basis? For how many years? This is necessary information to understand the accuracy and effectiveness of projected LTSY. Subsection (i) does not define a time frame for projected volumes and tree sizes. The WFMP is permitted to extend into perpetuity; if perpetuity is the time frame then a statement that identifies reliable projected volumes into perpetuity is required. To be clear and consistent with the objectives of the statute, a defined metric is needed to monitor the volume and tree size projections over time. A realistic time frame must be established for these projections, at the end of which the WFMP must be reviewed for conformance to those projections.

Board Response: In 1094.6(i) the projected frequencies of harvest is required to be provided. The Board decided not to make this provision more specific to give the project proponent flexibility. It does not make sense to specify a reentry schedule because it will depend on the productivity and harvest intensity; a typical reentry time frame is between 10 years for higher productivity sites and 20 years for lower productivity sites. Ultimately, it behooves the project proponent to provide adequate information to facilitate evaluation of their project.

Rule Text Edit: No.

W15-29: Rob DiPerna, EPIC (dated June 15, 2015)
Subsection (i) also places no limits on the type of silvicultural method to be applied, even though the statute is clear that the WFMP is intended to achieve "uneven aged timber stand andsustained yield."PRC § 4597.2. Indeed, nowhere do the regulations actually limit or restrict silvicultural methods to uneven-aged management. This is contrary to the plain language of the statute to achieve uneven aged management.

Board Response: See response to comment W15-11, which provides the relevant information to constitute a response.

Rule Text Edit: No.

W15-30: Rob DiPerna, EPIC (dated June 15, 2015)
Subsection (n) requires information for management units, including identification of the acres and estimated growth and yield for each planned harvest entry covering the period of time necessary to meet growth and yield objectives. The regulations do not require the WFMP to plainly state the LTSY or the period of time necessary to achieve growth and yield. This can have adverse environmental impacts because the WFMP is a perpetual plan, and without required time frames, adherence to the policies to ensure protection of the environment, such as sustained production of timber and other forest resources, may be forestalled.

Board Response: See response to comments W15-3, W15-12, and W15-25, which provide the relevant information to constitute a response.

Rule Text Edit: No.

W15-31: Rob DiPerna, EPIC (dated June 15, 2015)

To further illustrate the lack of clarity for LTSY, subsection (q) requires the WFMP to describe "a future schedule of inventory sampling and analysis of LTSY." It appears – though not specifically stated -that this is intended to provide a schedule to update inventory sampling and LTSY analysis. There is no requirement here, or elsewhere, that specifies the *timeframe* for a future schedule of inventory sampling and analysis of LTSY. In the absence of any meaningful time frame, this measure fails to provide the necessary structure to ensure that LTSY and sustained yield is being monitored and achieved. There is no provision here or elsewhere which requires disclosure of volumes actually harvested, as opposed to "projections" of yield. This information is necessary to ensure that LTSY - and the required objective for uneven aged management and sustainability - is being achieved. Absent this, the subsection undermines and obfuscates the legislative directive and threatens ecological processes.

Board Response: §1094.6(q) requires a description of a future schedule of inventory sampling and analysis of LTSY, which shall consider site class, projected growth and yield and harvest(s), original projections or model calibration and accuracy and episodic events including disease and drought caused tree mortality, windthrow, fire and reforestation, be provided.

The Board decided not to make this provision more specific to give the project proponent flexibility. It does not make sense for the Board to specify the future schedule of inventory sampling and analysis of LTSY because it will depend on the initial sampling intensity, the parameters of the model, the potential harvest schedule and efficiency. For example, the project proponent may want to regularly inventory 5 years after harvest to enable capture of tree response to the harvest. Ultimately, it behooves the project proponent to provide adequate information to facilitate evaluation of their project.

The commenter is incorrect that there is no provision here or elsewhere which requires disclosure of volumes actually harvested, as opposed to "projections" of yield. Pursuant to, §1094.29(c), for the purposes of 14 CCR § 1094.29(b), each five (5) year review shall allow the review team to analyze information including the volume harvested in relation to projections of harvest in the WFMP …

See response to comments W15-1 and W15-13, which provide additional relevant information.

Rule Text Edit: No.

W15-32: Rob DiPerna, EPIC (dated June 15, 2015)

Subsection (j) provides two options – one which requires submission of an erosion control implementation plan with "information" as required by 14 CCR § 923.1 (e) – and a second option which requires description of "methods" to be used to avoid significant sediment discharge to watercourses from timber operations. Option 1 is insufficient to ensure protection of

potential erosion sites, as section 923.1 (e) sets forth only operation standards for roads and landings, rather than identifying measures to be implemented to ensure erosion control for all operations. Option 2 does provide more disclosure as to what shall be done to avoid erosion from all timber operations (rather than just roads and landings), but authorizes reliance on so called "similar requirements of other applicable provisions of law" in lieu of providing the required description of methods used to avoid significant sediment discharge to watercourses. In the absence of a definition for "similar requirements," this exemption renders the provision unclear and ambiguous, and may result in significant adverse impacts to the environment which are not analyzed in the ISOR.

Board Response: See responses to comments W1-12, W1-15, W2-7 and W4-3, which provide the relevant information to constitute a response.

Rule Text Edit: No.

W15-33: Rob DiPerna, EPIC (dated June 15, 2015)

The proposed rules fail to require documentation that the WFMP landowner has conducted surveys or searches for protected wildlife, plant and other vulnerable species. Subsection (m) requires disclosure only of "known locations" of listed or protected plant and animal species and their key habitats. This is insufficient, and fails to meet the statutory objective to maintain ecosystem processes, (PRC § 4597(a)(5)), and protect fisheries and wild life habitats. (PRC § 4597.1(j)). An actual investigation using applicable protocol surveys to determine the *presence* of protected and listed species or their habitat is necessary to ensure that the WFMP satisfies the legislative intent to not cause adverse impacts to protected and listed species.

Board Response: The Board deemed the requirements of the adopted rules will not cause adverse impacts to protected and listed species, specifically on state or federally listed threatened, candidate, and endangered species; rare plants; Sensitive Species pursuant to 14 CCR § 895.1; and species that meet the criteria under 14 CCR § 15380(d). Following are provisions in the adopted rules, existing rules and statute that support this conclusion:

> §1094.6(m) requires disclosure of (1) State or federally listed threatened, candidate, endangered, or rare plant or animal species known locations within the biological assessment area and the WFMP, their status and habitats, take avoidance methodologies, enforceable protection measures for species within or adjacent to the WFMP and habitats within the WFMP area, and how forest management will maintain species and habitats over time; (2) Any known locations of plant or animal species pursuant to 14 CCR § 15380(d) within the biological assessment area and the WFMP; and (3) Information on the presence and known locations of key habitats within the WFMP or individual Sensitive Species pursuant to 14 CCR § 895.1 adjacent to or within the WFMP.
>
> §1094.8(h) requires the RPF to provide a statement that state or federally listed threatened, candidate, and endangered species; rare plants; Sensitive Species pursuant to 14 CCR § 895.1; and species that meet the criteria under 14 CCR § 15380(d), have not been discovered, or are publically known, within and adjacent to

the logging area, since the approval of the WFMP, unless the approved WFMP is amended. This provision also requires that after the initial year the plan is approved, prior to submitting the Working Forest Harvest Notice, a review shall be conducted of the California Natural Diversity Database or another public database approved by the Director after consultation with the Department of Fish and Wildlife for any species listed as state or federally listed threatened, candidate, and endangered species; rare plants; Sensitive Species pursuant to 14 CCR § 895.1; and species that meet the criteria under 14 CCR § 15380(d). Finally, the provision mandates, when a Working Forest Harvest Notice is filed, and after the initial year the plan is approved, documented occurrences shall be submitted.

§1094.8(j) requires certification by the RPF that (1) The Working Forest Harvest Notice as carried out will protect wildlife as provided by the Board rules and regulations and other applicable provisions of law. Or 2) Compliance with the Board rules and regulations and the provisions of this article that were in effect at the time the WFMP was approved will not result in any significant degradation to wildlife and shall protect all listed species.

Locations and documented occurrences are based on field observations and surveys, which may be protocol surveys depending on the species and the habitat. Although, the requirement of surveys, in adopted regulation, is not explicit, it is implied. Once again, it is the forest practice rules as a whole that provide a comprehensive set of standards, which pursuant to 14 CCR § 896(a) requires compliance with other laws, such as the California Endangered Species Act. These standards may explicitly require surveys, such as in 14 CCR § 919.9 and 919.10 for the NSO, within their range or surveys may be implicitly required to avoid take, or a significant adverse impact on the species.

Additionally, surveys may be precipitated through the review process. Disclosure, in combination with the review and knowledge of the interdisciplinary review team, allows the review team to assess the plan for adequacy of stated protection measures. Typically, the review team member with wildlife expertise will provide questions to the project proponent to address any inadequacies detected in the disclosure of species habitat presence on the plan. When the review team member with wildlife expertise believes that protocol surveys for presence of species should be conducted, they make commensurate recommendations.

Regarding the second sentence of the comment, two phrases from statute are combined: PRC § 4597(a)(5), which doesn't mention fisheries and wildlife habitats and PRC § 4597.1(j), which doesn't mention ecosystem processes. It is unclear why the commenter took these two phrases out of context. PRC § 4597(a)(5) requires that the Working Forest Management Plan comply with rigorous timber inventory standards that are subject to periodic review and verification to the maintenance of ecosystem processes and services, among numerous other values, which are discussed in W15-6. PRC § 4597.1 (j) is the definition of a WFMP which means a management plan for working forest timberlands, with objectives of promoting forestland stewardship that protects watersheds, fisheries and wildlife habitats, among a number of other objectives including maintaining, restoring, or creating uneven aged managed timber stand conditions, achieving sustained yield.

See response to comment W15-15, which provides additional relevant information.

Rule Text Edit: No.

W15-34: Rob DiPerna, EPIC (dated June 15, 2015)
Subsection (o) requires an assessment for LTSY projections projecting a reduction in trees greater than 12 inches dbh or reduced inventories of Major Stand Types or for a percentage of Stands or Strata, which "addresses" listed and protected species and their habitat needs. It is entirely unclear what it means to "address" these resources. If the intent is to ensure that these vulnerable species are protected when tree size and quantity are reduced as described, then the regulation must provide standards to ensure protection. In the absence of having to actually look for species, merely "addressing" these vulnerable species is not sufficient. To satisfy legislative intent, the proposed rules need a standard to credibly evaluate potential impacts from reduced tree and stand size; otherwise, this provision poses threats to protected and listed species and their habitat needs which constitutes a potential significant environmental effect which has not been analyzed or mitigated as required by CEQA and Board rules.

Board Response: The assessment constitutes § 1094.6 (o)(1)-(4). Terms not specifically defined in the rules retain their plain meaning. Dictionary.com defines "address" as "discuss." Therefore, the project proponent must (1) discuss the species that timber operations could adversely impact by potential changes to habitat, (2) discuss species habitat needs utilizing the "WHR system", (3) discuss constraints to timber management, the impact of the availability and distribution of habitats on the ownership and within the cumulative impacts assessment area identified in the plan in relation to the harvest schedule, and the impacts of the planned management activities utilizing the existing habitat as the baseline for comparison and (4) discuss and include feasible measures planned to avoid or mitigate potentially significant adverse impacts on fish or wildlife. If the project proponent provides inadequate information for the Director to make a determination regarding whether a significant adverse impact will occur, the Director has broad discretion to ask for more information to ensure that the project will not cause a significant adverse impact.

It is commonly understood that to "address" a species means to provide literature-supported information describing the natural history, general habitat requirements, and ecology within geographic ranges that include all or part of the plan.

The Board deemed that the requirements in these provisions were adequate to prevent an adverse impact on the identified categories of species when LTSY projections project a reduction in quadratic mean diameter of trees, greater than 12 inches in diameter, or a reduced level of inventory.

In response to the third sentence of the comment, a discussion of survey requirements is provided in W15-33. CEQA and the Board's rules are discussed in W15-7.

See response to comments W15-7, W15-15, W15-22 and W15-33, which provide additional relevant information.

Rule Text Edit: No.

W15-35: Rob DiPerna, EPIC (dated June 15, 2015)
It is well established that past and contemporary forest management are important factors contributing to the decline of many threatened and endangered fish and wildlife species. The lack of clarity and adequate standards in the proposed rules has the potential to result in significant adverse individual and cumulative effects to these species and their habitats. The proposed rules and the ISOR describing the rules fail to provide a mechanism for analysis of, disclosure of, and mitigation to insignificance of potentially significant adverse impacts to threatened and endangered species and thus violate CEQA.

Board Response: The Board disagrees with this comment.

See responses to comments W15-7, W15-15 through W15-20 and W15-33, which provide the relevant information to constitute a response.

Rule Text Edit: No.

W15-36: Rob DiPerna, EPIC (dated June 15, 2015)
Subsection (r) suffers from the same inadequacy as the subsection for protected species. By only requiring description of "known" cultural or historical resources, the WFMP fails to ensure protection for these resources. Surveys and field investigations should be required, and the ISOR should evaluate the potential for significant adverse impact on the environment if this information is not required.

Board Response: The WFMP regulations proposed are not stand-alone regulations. The WFMP must be in compliance with existing law pursuant to 14 CCR § 1094. Essentially all of the Forest Practice Rules apply, except 14 CCR §§ 1032.7 through 1042. Therefore, the requirements for Archaeological and Historical Resource Protection in 14 CCR § 929 [949, 969], which includes the requirement to survey, that the commenter suggests should apply,do apply.

Rule Text Edit: No.

W15-37: Rob DiPerna, EPIC (dated June 15, 2015)
Subsection (x) is confusing because it simply requires the WFMP to include a "description of the cumulative impacts analysis, whereas section 898 requires that a plan include a cumulative impacts assessment using Technical Rule Addendum No. 2 methodology. (14 CCR §§ 898, 912.9). A full cumulative impacts assessment must be included in the WFMP, as required by the Forest Practice Rules and CEQA; any requirement less than that violates the Forest Practice Act and CEQA.

Board Response: The WFMP regulations proposed are not stand-alone regulations. The WFMP must be in compliance with existing law pursuant to 14 CCR § 1094, which essentially means all of the Forest Practice Rules, except 14 CCR §§ 1032.7 through 1042, apply. Consequently, the cumulative impacts assessment is required pursuant to 14 CCR § 912.9 [932.9, and 952.9]), contrary to the commenter's suggestions.

Rule Text Edit: No.

W15-38: Rob DiPerna, EPIC (dated June 15, 2015)

Subsections (z), (aa), and (cc) through (ft) authorize exceptions to standard FPA rule provisions in certain circumstances. These subsections are unclear as to whether they are intended to apply to the entire area covered by the WFMP, identified Management Units, or only to specified location(s) stated in the WFMP. Such exceptions appear contrary to the Legislative intent and purpose of the WFMP; authorizing the WFMP to utilize exceptions and alternative practices in perpetuity poses a real -and unanalyzed – threat to the environment. Moreover, permitting exceptions for all time is contrary to the Legislative intent to encourage prudent and responsible forest management -with increased productivity of timberland. (PRC § 4597(a)(1), (3), (5)). These exceptions are contrary to the APA standards for necessity, consistency and clarity, and have not been properly evaluated in the ISOR or within the WFMP, as required by CEQA. They pose the risk, over time, of causing significant adverse environmental effects. As permanent standards, they must be assessed in the context of the best science detailing what our forests can expect in 10, 20, 30 and 50 years from now due to climate change and other conditions.

Subsection (ii) authorizes development of so-called "standard operating practice(s)" for two of these exceptions: for tractor operations on steep and unstable slopes and lands, and for use of landings, logging roads, and skid trails in protected watercourse zones. This standardized 'permission' has not been properly analyzed under CEQA for the potential for significant impacts. It permits use of an undefined "deviation," with alternative mitigation to be incorporated into the WFMP-without any mention of public review and comment. CEQA requires mitigation to remedy significant environmental impacts. If there is a need for mitigation, there is a need for CEQA review. This process is contrary to the APA, Forest Practice Act, and CEQA.

Board Response:

Exceptions, In Lieu or Alternatives to the Standard Rules and Standard Operating Practice(s)

Pursuant to the introduction in 1094.6, subsections (z), (aa) and (cc) through (ff) may be proposed in the entire area covered by the WFMP, given that no smaller area, such as a management unit, is identified.

Given that the WFMP Program is based on the NTMP and these exceptions, in lieu or alternatives to the standard rules exist in the NTMP Program, and can last in perpetuity, the Board determined allowing exceptions, in lieu or alternatives to the standard rules was congruent with statute. However, exceptions, in lieu or alternatives to the standard rules require additional information. Following is a crosswalk to the additional information that is required and which the Board deemed necessary to facilitate the evaluation by the project proponent and the Department of the exception, in lieu or alternative in terms of whether it will result in a significant adverse environmental impact.

- (z) Explanation and justification for, and specific measures to be used for, tractor operations on unstable areas, on slopes over 65%, and in areas where slopes average over 50% where the EHR is high or extreme. The project proponent must comply with 14 CCR § 914.2 [934.2,954.2](f)(3).
- (aa) Explanation and justification for tractor operations in areas designated for cable yarding. The project proponent must comply with 14 CCR § 914.3 [934.3, 954.3](e).
- (cc) Explanation and justification for use of landings, logging roads and skid trails in the protection zones of Watercourses, Lakes, Wet Meadows, or Other Wet Areas. The project proponent must comply with 14 CCR § 923 [943, 963](c) and

(1094.6(e)(4)(B).

- (dd) Explanation and justification of any in-lieu or alternative practices for Watercourse and Lake protection. The project proponent must comply with 14 CCR §§ 916.1 [936.1, 956.1] and 916.6 [936.6,956.6].
- (ee) Explanation of alternatives to standard rules for harvesting and erosion control. The project proponent must comply with 14 CCR § 914.9 [934.9, 954.9].
- (ff) Explanation and justification for landings that exceed the maximum size specified in the rules.
  The project proponent must comply with 14 CCR § 1094.6(e)(5).

In general, the Forest Practice Rules provide for the RPF to propose, and gives the Director discretion to approve, exceptions, in lieu or alternatives to the standard rules when site specific conditions in the field require it and can be shown to substantially lessen significant adverse impacts on the environment from timber harvesting. However, the Director has broad discretion to ask for more information to ensure that the project will not cause a significant adverse impact. Usually, at a minimum, the project proponent will need to evaluate the exception as compared to the standard rule through the prism of substantially lessening significant adverse impacts.

Other examples of exceptions, in lieu or alternatives to the standard rules include 14 CCR § 923 [943, 963](c) which provides this flexibility specific to Logging Roads and landings, 14 CCR § 916.3 [936.3, 956.3](c) which provides this flexibility for skid trail use in the WLPZ, 14 CCR § 923.9 [943.9, 963.9](e)(1) which provides this flexibility with regard to flagging logging road water course crossings, 14 CCR § 923.6 [943.6, 963.6](g) which provides this flexibility for log hauling or other heavy equipment use during the winter period and 14 CCR § 923.1 [943.1, 963.1](d) which provides this flexibility for the planning and siting of logging roads and landings to avoid unstable areas and connected headwater swales.

Pursuant to § 1094.6(jj), a RPF may propose, and the Director may approve, a standard operating practice(s) in a WFMP that could be utilized in site-specific locations identified in the WFHN during future operations under an approved WFMP. Specifically, § 1094.8(t) requires that the project proponent describe the standard operating practice(s) to be implemented within the area covered under the Working Forest Harvest Notice and § 1094.8(u)(12)requires that the project proponent map the location(s) of standard operating practice(s) to be implemented within the area covered under the Working Forest Harvest Notice.

Standard operating practices are limited to contents pursuant to 14 CCR §§ 1094.6(z) and 1094.6(cc):

- specific measures to be used for, tractor operations on unstable areas, on slopes over 65%, and in areas where slopes average over 50% where the EHR is high or extreme.
- use of landings, logging roads and skid trails in the protection zones of Watercourses, Lakes, Wet Meadows, or Other Wet Areas.

However, the project proponent is required to provide, pursuant to § 1094.6 (jj)(1) and (2), the following:

(1) A representative sample of each type of proposed standard operating practice(s) shall be flagged in the field by the RPF, or Supervised Designee, and available for field review by the interdisciplinary review team.

(2) For locations where the prescribed standard operating practice(s) will not adequately address the site specific conditions, the RPF, through consultation with the multi-disciplinary review team, may develop alternative mitigations that shall be incorporated into the WFMP through a deviation prior to submittal of a Working Forest Harvest Notice for the area in which the developed mitigation measure(s) applies to is located.

The Board deemed that the effects of these exceptions, in lieu or alternatives to the standard rules (§ 1094.6, subsections (z), (aa) and (cc) through (ff)) and standard operating practice(s) (§ 1094.6 (jj)) will be adequately mitigated during plan review. The contents of the WFMP will be analyzed through a CEQA equivalent process when the WFMP is reviewed, which includes review by the interdisciplinary review team and public and receipt of public comment prior to plan approval.

Deviation

The commenter's statement that the adopted rules permit use of an undefined "deviation," with alternative mitigation, to be incorporated into the WFMP without any mention of public review and comment is not true. Pursuant to § 1094.23(c), changes are presumed to be substantial deviations if they could have a significant effect on the conduct of timber operations and potentially could have a significant adverse effect on timber productivity or values relating to soil, water quality, watershed, wildlife, fisheries, range and forage, recreation, and aesthetic enjoyment. Examples of actions that would be considered substantial deviations are provided in § 1094.23(c)(1-(14). Pursuant to § 1094.23(b), the review timelines for substantial deviations of WFMPs shall conform to the direction provided in PRC § 4582.7, which includes the opportunity for the public to comment. Pursuant to § 1094.24 (a) "Minor deviations" means any change, minor in scope, in a plan which can reasonably be presumed not to make a significant change in the conduct of timber operations and which can reasonably be expected not to significantly adversely affect timberland productivity or values relating to soil, water quality, watershed, wildlife, fisheries, range and forage, recreation, and aesthetic enjoyment or to result in a violation of the applicable water quality control plan. Further, the review of minor deviations is defined in the balance of § 1094.24. In summary, the Board adequately made specific the definition of deviation and the process by which they are reviewed.

See responses to comments W1-24 and S4-1, which provide additional relevant information.

Rule Text Edit: No.

W15-39: Rob DiPerna, EPIC (dated June 15, 2015)

The proposed annual Notice also does not include a requirement for information documenting what operations have already occurred under the WFMP, or identifying new conditions or potential impacts. In this way, the Notice does not provide a clear statement of the information needed to ensure that the Legislative intent to encourage increased productivity of timberlands, (PRC § 4597(a)(3)), and to establish uneven aged management and sustained yield through the implementation of the WFMP. (PRC § 4597.2).

Board Response: The operations that have already occurred under the WFMP and identifying new conditions or potential impacts is captured in the WFHN and completion reports and which are evaluated during the five (5) year review.

Rule Text Edit: No.

W15-40: Rob DiPerna, EPIC (dated June 15, 2015)
At the outset, the proposed Notice rule directs that "[a]ll necessary deviations shall be approved by the Director prior to submission" of the Notice. The proposed rule does not define what constitutes a "necessary" deviation, and whether a "necessary" deviation is a substantial, minor or some other kind of deviation. The proposed rule also does not define who decides what a "necessary" deviation is or what process the Director must use to approve a "necessary" deviation. This provision lacks clarity.

Board Response: Terms not specifically defined in the rules retain their plain meaning. Merriam Webster defines Necessary as follows: Absolutely needed; required. Identification of a change relative to the approved WFMP may be determined by anyone, including the Plan Submitter, RPF, Designated Agent or LTO, that is involved in the implementation. The threshold of necessity is in the definition of substantial and minor deviations as described in §§ 1094.23 and 1094.24. A deviation is generally prepared by the RPF and submitted to the Department on behalf of the plan submitter.

See response to comment W15-38, which provides relevant information.

Rule Text Edit: No.

W15-41: Rob DiPerna, EPIC (dated June 15, 2015)
For LTSY and sustained yield, the proposed Notice rule lacks any disclosure of volumes and tree sizes scheduled for harvest. This information is necessary to document what timber operations have been or are proposed to be conducted to achieve the long-term objective of uneven aged management and LTSY. The WFMP requires a one-time description of projected timber volumes and tree sizes to be available for harvest and frequencies of harvest. (PRC § 4597.6(h)). The annual Notice, to be meaningful, needs to provide an annual record toward and update to those projections, to evaluate WFMP compliance. While proposed subsection (m) requires a statement that the Notice conforms to the provisions of the WFMP, it does not require data to support this conclusion. That statement must be based upon actual substantial evidence. At a minimum, the Notice should include a statement identifying what volumes and tree sizes are scheduled for harvest, in relation to the WFMP projections, and evidence documenting efforts to achieve the LTSY.

Board Response: The Board did not deem inclusion of a statement identifying what volumes and tree sizes are scheduled for harvest, in relation to the WFMP projections, and evidence documenting efforts in the WFHN was necessary to achieve LTSY.

See responses to comments W6-2, W15-13, W15-27, W15-28, W15-31 and W15-39 which provide additional relevant information.

Rule Text Edit: No.

W15-42: Rob DiPerna, EPIC (dated June 15, 2015)
For wildlife and protected species, subsection (h) requires review of only public sources and databases to report whether there are any "known" occurrences of these species. There is no obligation to conduct protocol surveys or other investigation to look for these protected wildlife and plant species. This is necessary to fulfill the legislative intent to promote forestland stewardship which protects fisheries and wildlife habitats. (PRC § 4597.1(j)).

Board Response: See response to comment W15-33, which provides the relevant information to constitute a response.

Rule Text Edit: No.

W15-43: Rob DiPerna, EPIC (dated June 15, 2015)
Similarly, subsection (g) permits a statement that no archaeological sites have been discovered, without a corresponding duty to conduct some kind of survey to determine if such sites do exist.

Board Response: See response to comment W15-36, which provides the relevant information to constitute a response.

Rule Text Edit: No.

W15-44: Rob DiPerna, EPIC (dated June 15, 2015)
Subsection (i) requires a statement, based on a field evaluation, that "there are no physical environmental changes" in the Notice area "that are so significant as to require any deviation of the WFMP." The proposed rule does not define what is meant by "physical environmental changes" and what that phrase may encompass. The lack of definition makes this subsection confusing and without clarity, as no thresholds are provided. The provision is also unclear because earlier in the proposed rule it is clear that there can be no outstanding "necessary deviations" once the Notice is submitted. Whether "necessary deviations" means the same as or something different from "physical environmental changes" is not known, adding to the confusion. Since the submission of the Notice permits operations to commence immediately, in the absence of clear standards or thresholds, there is no ability to evaluate whether the statement is accurate. As with other provisions, evidence must be provided which documents that a field evaluation was conducted of the entire area covered by the Notice, and documents the conditions observed during the field evaluation. The failure to require this kind of investigation leaves the real potential for significant adverse impact on protected species or archaeological and cultural sites, an eventuality that is not mentioned or evaluated in the ISOR.

Board Response: The Board disagrees with the commenter; the Board believes that this part of the process is clear.

Terms not specifically defined in the rules retain their plain meaning. Oxford defines Physical as follows: Relating to things perceived through the senses as opposed to the mind; tangible or concrete. Oxford defines environmental as follows: Relating to the

natural world and the impact of human activity on its condition. Oxford defines changes as follows: Make or become different. Therefore, the plain meaning of the term is differences that are tangible relating to the natural world and the impact of human activity on its condition. This may be as trivial the death of a single tree, which would not warrant a deviation, to the death of many trees leading to a change in silviculture, which would warrant a deviation as discussed in w15-38.

The requirement in § 1094.8 (i) that the RPF provide a statement that based on a field evaluation, there are no physical environmental changes in the Working Forest Harvest Notice area that are so significant as to require any deviation of the WFMP is congruent with § 1094.8 which requires all necessary deviations be approved by the Director prior to submission of a Working Forest Harvest Notice.

The project proponent must comply with both provisions. Any deviation of the WFMP regarding physical environmental changes in the Working Forest Harvest Notice area that are so significant as to require any deviation must be approved by the Director prior to submission of a Working Forest Harvest Notice. The term "necessary deviations" is discussed in W15-40.

The Board deemed that a statement provided by the RPF was adequate to verify the field evaluation was conducted and that additional verification, through the delivery of something like field notes, was not needed to prevent a significant adverse impact.

Ultimately, this provision makes specific statute PRC § 4597(g).

Additionally, similar requirements exist for the NTMP (14 CCR 1090.7(i)) and the PTHP (1092.09(h)). To a RPF the meaning is clear – insect outbreak with significant mortality, landslide, stand replacement fire… changes to the physical environment (the trees, the ground). The provisions for the NTMP and PTHP do not appear to have been confusing or unclear for all the years they have been used.

See responses to comments W1-24, W15-22, W15-38, W15-40 and S4-1, which provide additional relevant information.

Rule Text Edit: No.

W15-45: Rob DiPerna, EPIC (dated June 15, 2015)

For water quality protection, subsection (n), like other provisions, does not require any actual evidence upon which conclusions as to *current* conditions are based. The mapping requirement under proposed subsection (u)(10) perpetuates the deficiency in the WFMP - to require mapping only of "known" unstable areas or slides, rather than also documenting locations which are potentially unstable or at risk. This must be expanded to require identification of "potential" unstable areas.

Board Response: The Board deemed that the requirements mandated in the provisions discussed in W1-15 and W4-3 are adequate to protect water quality in combination with the adopted rules, and the existing rules and statute, on which the adopted rules rely.

Rule Text Edit: No.

W15-46: Rob DiPerna, EPIC (dated June 15, 2015)
Subsection (t) requires description of the WFMP exceptions which have "standard operating practices," but fails to require identification of the site-specific locations for which these standard operating practices may occur. This means the potential for significant adverse environmental impact is never evaluated as required by the FPA and CEQA.

Board Response: See response to comment W15-38, which provides the relevant information to constitute a response.

Rule Text Edit: No.

W15-47: Rob DiPerna, EPIC (dated June 15, 2015)
The proposed Notice regulation does not require a statement disclosing whether there are any ongoing operations in the WFMP area, even though the proposed rules permit operations to occur beyond a one-year time frame. *(See* Proposed rule 1094.25(b) (report may be filed annually for work not completed)). It is unclear to what extent more than one, or several, areas within the WFMP may be under operation in any given year. This poses the potential for significant cumulative impacts which would need to be evaluated, yet there is no requirement for the disclosure or evaluation of multiple operations. The ISOR does not mention or evaluate the potential for significant adverse environmental impacts which may occur due to the multiple year operations.

Board Response: Pursuant to § 1094.7, a Working Forest Harvest Notice shall be effective for a maximum of one (1) year from the date of filing. Pursuant to § 1094.25, (a) Within one (1) month after completion of the work described in the Working Forest Harvest Notice, excluding work for stocking, site preparation, or maintenance of drainage facilities and soil stabilization treatments on skid trails, roads, and landings after the plan period, a report shall be filed that all work, except stocking, site preparation, or maintenance of drainage facilities and soil stabilization treatments, has been completed. (b) If all of the work described in the plan has not been completed, a report may be filed annually with respect to a portion of the area covered by the plan which has been completed. The portion completed shall be adequately identified on a map submitted with the report.

The Board deemed that the information required to be provided by these provisions adequately discloses if there are any ongoing operations in the WFMP area. The proposed rules do not permit operations to occur beyond a one-year time frame as the commenter suggests except for stocking, site preparation, or maintenance of drainage facilities and soil stabilization treatments.

The annual report is relevant to the areas that have not been harvested and have not had associated work completed. Another WFHN would need to be submitted at another time, prior to operations, to work in the area. In addition, pursuant to §1094.14, for each Working Forest Harvest Notice submitted, within fifteen (15) days before, and not later than the day of the start of timber operations, the Designated Agent shall notify the Department of the start of timber operations.

The Board deemed the five year review, pursuant to 1094.29(c), afforded adequate opportunity to evaluate the potental for significant cumulative impacts as a result of operations.

Rule Text Edit: No.

W15-48: Rob DiPerna, EPIC (dated June 15, 2015)
Proposed rule 1094.23 specifies a number of circumstances which are "presumed to be "substantial deviations"" of the WFMP. However, subsection (c)(14) then states that changes to an erosion control implementation plan as a result of operations to implement the provisions of an approved erosion control plan "shall not be considered a substantial deviation." This makes no sense and does not belong.

Board Response: Pursuant to the ISOR, this provision was developed within input from landowner representatives and the Department and is intended to support a process where upgrading of infrastructure as described in the erosion control implementation plan located within an approved WFMP can be documented. Updating the erosion control implementation plan with already approved upgrades is appropriate as a minor deviation with minimal effort from the RPF and minimal cost to the Working Forest Landowner(s).

Rule Text Edit: No.

W15-49: Rob DiPerna, EPIC (dated June 15, 2015)
The Legislature authorized the WFMP as a tool to achieve "increased productivity of timberland." (PRC § 4597(a)(3)). Proposed rule 1094.27(a) is inconsistent with this intent because it permits stocking to be satisfied using minimum stocking standards as set forth in 14 CCR section 1071, rather than require an increase in productivity over time. To "increase productivity" means to require a standard higher than merely "maintaining" minimum stocking standards. Use of minimum stocking does not effectuate the legislative purpose of the WFMP. Moreover, the proposed rules permit stocking reports to be filed within 5 years, in which case that information will not be subject to the proposed 5-Year Review. This will not "benefit" the environment, and has the potential to degrade the environment by not doing as contemplated by the Legislature -to increase timberland productivity and utilized uneven aged management.

Board Response: As described in statute, the WFMP is designed to build on the success of the NTMP. NTMPs have been successful by encouraging prudent and responsible forest management and discouraging accelerated timberland conversion by private nonindustrial forest landowners. Building upon the NTMP model, it is the policy of the state to encourage long-term planning, increased productivity of timberland, and the conservation of open space on a greater number of nonindustrial working forest ownerships and acreages. Increased productivity of timberland and benefits to the environment are not exclusively achieved by stocking standards. Making the NTMP model, with additional environmental protection measures, available to more landowners through the use of the WFMP will increase overall productivity of timberland and benefit the environment.

Also, pursuant to PRC § 4597(a)(3), it is the policy of the state to encourage increased productivity of timberland. This policy is supported by the following provisions of the Board's rules:

> Pursuant to § 1094.27(a), the minimum acceptable stocking standards on logged areas which were acceptably stocked prior to harvest are those specified in the

Coast, Northern, and Southern Forest District rules. If not otherwise specified, the following minimum standards apply:

(1) On Site I timberlands as defined by the Board, the average residual basal area, measured in stems one inch or larger in diameter shall be at least 85 square feet per acre; or on Site II or lower shall be at least 50 sq. ft. per acre; or

(2) The area contains an average point count of 300 per acre on Site I, II, and III lands or 150 on Site IV and V lands as specified in PRC § 4561. See 14 CCR §§ 912.7, 932.7 and 952.7 for information for the point count values of various size trees and for determining how sprouts will be counted toward meeting stocking requirements.

This provision defines the low end of stocking, but timberland owners may and often do retain higher stocking. Beyond the minimum acceptable stocking standards, the actual stocking is the discretion of the timberland owners. However, this discretion does not exist in a vacuum, the stocking must be congruent with other provisions of the WFMP Program, such as § 1094.6(i)(1), which requires the project proponent provide the silvicultural method(s) to be applied during the initial harvest(s), projected future harvest(s) and method(s) used in the projected growth and yield to achieve LTSY.

Although, pursuant to § 1094.27(a), the proposed rules permit stocking reports to be filed within 5 years, when stocking is not required to be met upon completion of timber operations, the following provisions afford the collection of information to facilitate the five (5) year review. Note: When stocking is required to be met upon completion of timber operations, the stocking report shall be submitted within six (6) months of the completion of operations.

Pursuant to § 1094.29(b), if at this meeting a member of the review team determines that a field inspection is necessary to verify that operations have been conducted in accordance with the plan and applicable laws and regulations, then a field inspection may be conducted within sixty (60) days of each five (5) year anniversary date of WFMP approval.

Pursuant to § 1094.29(c), if the Department or a review team agency does not have direct access to information needed for the five (5) year summary, the Department may require the Working Forest Landowner(s) to provide this information.

Rule Text Edit: No.

W15-50: Rob DiPerna, EPIC (dated June 15, 2015)

Furthermore, the proposed rules do not include an affirmative obligation to conduct effective annual monitoring to keep track of what timber operations occur each year, what volumes were removed and what volumes may be cut going forward, and to determine whether the growth and yield projections are accurate or need adjusting to maintain LTSY. The ISOR fails to mention or evaluate the potential for significant adverse impacts from not requiring heightened stocking standards to ensure increased productivity over time.

Board Response: The Board considered this comment, but decided not to incorporate this level of specificity into its rules. However, the following provisions facilitate effective

annual monitoring to keep track of what timber operations occur each year.

Pursuant to § 1094.25 Report of Completion of Work Described in WFMP; Partial Completion Report

(a) Within one (1) month after completion of the work described in the Working Forest Harvest Notice, excluding work for stocking, site preparation, or maintenance of drainage facilities and soil stabilization treatments on skid trails, roads, and landings after the plan period, a report shall be filed by the timber owner(s) or the Designated Agent with the Department that all work, except stocking, site preparation, or maintenance of drainage facilities and soil stabilization treatments, has been completed.

(b) If all of the work described in the plan has not been completed, a report may be filed annually with respect to a portion of the area covered by the plan which has been completed. The portion completed shall be adequately identified on a map submitted with the report.

The Department has the authority to inspect timber operations on timberland. Pursuant to PRC § 4119, the Department, or its duly authorized agent, shall enforce the state forest and fire laws. The Department may inspect all properties, except the interior of dwellings, subject to the state forest and fire laws, for the purpose of ascertaining compliance with such laws.

Further, pursuant to CAL FIRE Resource Management Policy 5501: “The Director has determined that it is the department's policy to pursue vigorously the prompt and positive enforcement of the FPA, the forest practice rules, related laws and regulations, and environmental protection measures applying to timber operations on the non-federally owned lands of the state. This enforcement policy is directed primarily at preventing and deterring forest practice violations, and secondarily at prompt and adequate correction of violations when they occur.”

Finally, pursuant to CAL FIRE Resource Management Policy 5501.1, the Primary Enforcement Objectives are set forth:

- Conserve and maintain the productivity of the timberlands while preventing or mitigating damage to associated resources.
- Administer enforcement so as to achieve the best possible compliance, using available department resources and making full use of the applicable laws and regulations. Aggressive and prompt enforcement action is expected to prevent proliferated and aggravated problems and to develop public confidence in the forest laws and the department's administration of them. When substantial violations are found, positive enforcement measures will be initiated promptly and penalties sought.

Rule Text Edit: No.

W15-51: Rob DiPerna, EPIC (dated June 15, 2015)

Proposed rule 1094.29 sets forth provisions for what is called a "Five (5) Year Review of the WFMP" ("5-Year Review"). This section is not clear, particularly as to the contents of the summary and what constitutes the "5-Year Review." The Legislature directed the board to adopt regulations to implement the statute section 4597.12, and the proposed regulation fails to meet this duty, satisfy APA standards of clarity, or ensure CEQA compliance.

Board Response: § 1094.29(c) states for the purposes of 14 CCR § 1094.29(b), which requires the Director to prepare a five (5) year summary, each five (5) year review shall allow the review team to analyze information including:

1. the number of Working Forest Harvest Notices,
2. the acreage operated under each Working Forest Harvest Notice,
3. the violations received,
4. the volume harvested in relation to projections of harvest in the WFMP and to determine if operations under Working Forest Harvest Notice(s) were conducted in compliance with the content and procedures in the WFMP.

Therefore, the regulated public may ascertain that the five (5) year summary shall include, but not be limited to the information listed above. The five (5) year summary is equivalent to the plan summary.

Pursuant to the provisions of § 1094.29 the five (5) year review constitutes the following:

1. Public notice that the five (5) year review of the WFMP shall commence at least thirty (30) days prior to each five (5) year anniversary date of the WFMP approval.
2. Public comment, on the five (5) year review, shall be accepted during the thirty (30) day period.
3. The public may submit to the review team additional information relevant to the purpose of the five (5) year review and the review team may consider this information when conducting its review.
4. Preparation of a five (5) year summary, which the Department shall provide the public, in writing or on a publically available internet database.
5. Meeting with the interdisciplinary review team within thirty (30) days of each five (5) year anniversary of a WFMP approval to review the plan's administrative record, information obtained pursuant to 14 CCR § 1094.29(c), and any other information relevant to verify that completed or current operation(s) have been conducted in accordance with the plan and applicable laws and regulations. Information obtained pursuant to 14 CCR § 1094.29(c) includes the number of Working Forest Harvest Notices, the acreage operated under each Working Forest Harvest Notice, the violations received, the volume harvested in relation to projections of harvest in the WFMP and to determine if operations under Working Forest Harvest Notice(s) were conducted in compliance with the content and procedures in the WFMP, any significant episodic events occurring during the previous five (5) years including disease and drought caused tree mortality, windthrow, wildfire and landslides.
6. Field inspection, if the review team deems it necessary to verify that operations have been conducted in accordance with the plan and applicable laws and regulations may be conducted within sixty (60) days of each five (5) year anniversary date of WFMP approval.
7. Provision for the collection of information, if the Department or a review team agency does not have direct access to information needed for the five (5) year summary, the Department may require the Working Forest Landowner(s) to provide this information.
8. Findings of the five (5) year review of which the Working Forest Landowner(s) shall be notified and distributed on a publically available internet database.
9. Findings of the five (5) year review shall be completed by the Department within sixty (60) days of each five (5) year anniversary date of the WFMP approval, or within one hundred and five (105) days of each five (5) year anniversary date of the WFMP approval if a field inspection is completed.
10. Provision if notices of violation have been issued, or the five (5) year review

indicates potentially significant adverse impacts to the environment may occur from continuance of the WFMP, or if the Department is presented with a fair argument that a project may have a significant adverse effect on the environment.

Rule Text Edit: No.

W15-52: Rob DiPerna, EPIC (dated June 15, 2015)

The proposed rule is not consistent with the statute, Public Resources Code section 4597.12. By statute, the Department is to first develop a summary, and then conduct the 5-Year Review. (PRC § 4597.2(b) ("develop a plan summary *before each five-year review*")). (Emphasis added). In addition, the statute requires the Department to provide notice of the review and copy of the 5-Year Summary to the public so that the "public may submit additional information relevant to the purpose of the five-year review and the review team may consider this information when conducting its review."(PRC § 4597.12(c)). Proposed rule 1094.29 makes a mismash of this clear process, obfuscating when the 5-year Summary is done in relation to the 5-Year Review, as well as the public's right of review and comment. As such, it is fails to meet the APA standards for clarity and is contrary to the authorizing legislation.

Board Response: Pursuant to PRC § 4597.12(b),…the board… shall adopt regulations that require the department to develop a plan summary before each five-year review that allows the review team to analyze information …

The Board made specific "require the department to develop a plan summary before each five-year review". The Board deemed that the five (5) year summary was part of the five (5) year review. As provided in response to W15-51, the five (5) year review commences with the Public notice because, the Board reasoned, it triggers the collection of information for the interdisciplinary review team to use in its analysis. Therefore, although the plan summary will be developed before the meeting, it will not be developed prior to the five (5) year review because it is part of the five (5) year review.

Pursuant to PRC § 4597.12(c), for the purpose of allowing the public to monitor a working forest management plan, the department shall provide the public, in writing or on its Internet Web site, notice of each five-year review and a copy of the plan summary. The public may submit to the review team additional information relevant to the purpose of the five-year review and the review team may consider this information when conducting its review.

Pursuant to §1094.29(a), the published notice shall indicate that public comment on the five (5) year review shall be accepted during the thirty (30) day period. The public may submit to the review team additional information relevant to the purpose of the five (5) year review and the review team may consider this information when conducting its review.

Pursuant to §1094.29(b), the Department shall provide the public, in writing or on a publically available internet database, a copy of the plan summary.

The Board made specific the process by which the public may provide comment and additional information, but did not deem it necessary for the public to comment on the five (5) year summary, which is why the provision for notice (§1094.29(a)) does not mention the plan summary.

The authority on which the Board relied to make PRC § 4597.12 specific is found in PRC §§ 4551, 4551.5, 4552 and 4553.

Rule Text Edit: No.

W15-53: Rob DiPerna, EPIC (dated June 15, 2015)

The proposed rule places the public notice and comment period before issuance or completion of the 5-Year Summary and 5-Year Review, by requiring the public notice *"at least 30 days prior to* each five (5) year anniversary date of the WFMP approval" and public notice to be submitted "during the thirty (30) day period." (Proposed rule 1094.29(a)). (Emphasis added). Subsection (b) only requires preparation of the 5-Year Summary *"within thirty (30) days* of each five year anniversary of a WFMP approval. (Emphasis added). By allowing the 5-Year Summary to be prepared "within 30 days" of the anniversary date, the Department can prepare the 5-Year Summary (and convene the review meeting) within 30 days *before* or 30 days *after* the anniversary date. This deprives the public of its right of review as provided in the statute, forcing the public to comment in a vacuum before the Summary or Review may even conducted. The public must be given an adequate period of review for the 5-Year Summary, to provide input into what information the review team agencies and the Department need to consider in conducting the 5-Year Review. In addition to AB 904, both the FPA and CEQA require that the public is entitled to review and comment on whatever document encompasses the 5-Year Review.

Board Response: See response to comments W1-29, W1-30 and W15-52, which provides the relevant information to constitute a response. The last sentence of this comment is not specific; it is not clear in what way the Board's adopted rules do meet the requirements of AB 904, FPA and CEQA.

Rule Text Edit: No.

W15-54: Rob DiPerna, EPIC (dated June 15, 2015)

The rules are not clear as to what is to be included in the "summary" preceding the 5-Year Review, or what constitutes and shall be included in the 5-Year Review. If the 5-Year Summary is the document from which the 5-Year Review is to be conducted, a clear statement is necessary in order for the public to exercise its role to present "additional information relevant to the purpose of the five (5) year review," as stated in subsection (a). This is also needed for the public agency review process.

Board Response: See response to comments W15-51 and W15-52, which provide the relevant information to constitute a response.

Rule Text Edit: No.

W15-55: Rob DiPerna, EPIC (dated June 15, 2015)

It is unclear what information is required to be included in either the 5-Year Summary or the 5- Year Review. It is not clear whether a 5-Year Summary or 5-Year Review will include the information outlined in subsections (b) or (c) , i.e., number of WFMP Notices, the acreage operated under each WFMP Notice, the violations

received, the volume harvested in relation to projections of harvest in the WFMP. The only information that the review team is actually required to analyze is "significant episodic events occurring during the previous 5 years." (Proposed rule 1094.29(c)). The proposed rule needs to identify what is to be included in the 5-Year Summary and 5-Year Review. The proposed rule needs to specifically identify what information must be reviewed by the review team and be made equally available for public review and comment.

Board Response: See response to comments W15-51 and W15-52, which provide the relevant information to constitute a response.

Rule Text Edit: No.

W15-56: Rob DiPerna, EPIC (dated June 15, 2015)

Subsection (d) provides three distinct and valid reasons why the Department "shall provide written comments that a review of the WFMP content and procedures may be necessary":(1) notices of violation have been issued; (2) the 5-Year Review indicates potentially significant adverse impacts to the environment may occur from continuance of the WFMP; or (3) the Department is presented with a fair argument that a project may have a significant adverse impact on the environment. However, the subsection provides no standards or process for the "review of the WFMP content and procedures." This is needed to make the provision meaningful. And as discussed above, because the public is effectively denied a right of review and comment, it is given no meaningful way to provide a "fair argument" as to potential impacts. Moreover, the proposed rule is also not clear as what process the Department uses to "confer" with the Designated Agent. This provision must be clarified, and the process must be transparent and subject to meaningful public review and comment.

Board Response: The commenter repeats fragments of §1094.29(d) out of order. The contents of §1094.29(d) follow:

> If notices of violation have been issued, or the five (5) year review indicates potentially significant adverse impacts to the environment may occur from continuance of the WFMP, or if the Department is presented with a fair argument that a project may have a significant adverse effect on the environment, the Department shall provide written comments that a review of the WFMP content and procedures may be necessary. The Director shall state any changes and reasonable conditions in the Director's professional judgment that are needed to bring operations into compliance with the applicable Board rules and regulations and offer to confer with the Designated Agent in order to reach agreement on the conditions necessary to bring the operations into compliance and to mitigate significant adverse effects on the environment identified during the five (5) year review. Failure to implement the changes or reasonable conditions provided by the Director or developed in conference with the Designated Agent may result in cancellation of the WFMP pursuant to 14 CCR §1094.31(b).

If one of the three grounds as described in the first part of this provision manifests, the Department shall provide written comments that a review of the WFMP content and procedures may be necessary. The Board developed this process to be

between the Department and the Plan Submitter/ Designated Agent to reconcile the deficiencies that the Director states. The first step is deficiencies are identified during the five (5) year review, which includes a public comment period. The second step is for the Director to communicate the changes and reasonable conditions that are needed to bring operations into compliance with the applicable Board rules and regulations and offer to confer with the Designated Agent in order to reach agreement on the conditions necessary to bring the operations into compliance and to mitigate significant adverse effects on the environment. The third and final step may be, if in the event of failure to implement the changes or reasonable conditions provided by the Director or developed in conference with the Designated Agent, cancellation of the WFMP.

The public may provide a fair argument, if, for example, a significant adverse effect on the environment is identified through, for example, their site specific knowledge. However, it was not the intent of the Board to provide public review in addition to the 30 days described in § 1094.29(a).

Regarding the Department conferring with the Designated Agent, this is made clear by the definitions of confer and Designated Agent. Confer, pursuant to the definition provided by Merriam-Webster, is “to discuss something important in order to make a decision. Designated Agent, pursuant to § 1094.2(a), means “a person granted sole authority through written certification of all the Working Forest Landowner(s) designated in a submitted or approved WFMP, to conduct those activities specifically assigned to a Designated Agent by Board Rules and Regulations.”

Rule Text Edit: No.

W15-57: Rob DiPerna, EPIC (dated June 15, 2015)

Subsection (g) is a restatement of the subsection (d) of the statute. (PRC § 4597.12 (d)). However, it conflicts with other provisions of the statutory scheme and proposed rules. The WFMP "shall be a public record." (PRC § 4597.2; proposed rule 1094.3). That means all the information identified in proposed rule 1094.6 is a public record. Similarly, the WFMP Notice is a public record. (PRC § 4597.11, proposed rule 1094.8). The 5-Year Review is based upon a review of this public information. Yet, proposed subsection (g) authorizes a WFMP landowner to withhold "proprietary information." Permitting a landowner to not disclose *undefined* information of its choosing, in the face of a public record and which is completely relevant to a determination of WFMP compliance, is contrary to the fundamental premise of the Forest Practice Act and CEQA to require public access and review.

Board Response: Pursuant to PRC §§ 4597.2 and 4597.11, a WFMP and WFHN shall be public record, which is qualified by PRC § 4597(b), which requires Article 6.95 be implemented in a manner that complies with the applicable provisions of this chapter and other law, which includes PRC § 4597.12 (d), PRC § 21160 and GOV § 6254.7 (see excerpts below).

Pursuant to PRC § 21160, whenever any person applies to any public agency for a lease, permit, license, certificate, or other entitlement for use, the public agency may require that person to submit data and information which may be necessary to enable the public agency to determine whether the proposed project may have a significant

effect on the environment or to prepare an environmental impact report.

If any or all of the information so submitted is a “trade secret” as defined in Section 6254.7 of the Government Code by those submitting that information, it shall not be included in the impact report or otherwise disclosed by any public agency. This section shall not be construed to prohibit the exchange of properly designated trade secrets between public agencies who have lawful jurisdiction over the preparation of the impact report.

“Trade secrets,” as used in PRC § 6254.7, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

Pursuant to the definition of “trade secrets”, current volume, projected volumes, volume harvested, and projected growth may be considered proprietary. However, this may be evaluated by the Department through the lens of PRC § 21160 and GOV § 6254.7, on a case-by-case basis, taking into account what the project proponent deems proprietary.

The Board made specific the definition of proprietary information in §§ 1094.6(kk), 1094.8(w) and 1094.29(g) by requiring that proprietary information be treated consistent with PRC § 21160 and GOV § 6254.7. Therefore, the comment is misleading by stating that the adopted regulations permit a landowner to not disclose undefined information of its choosing. The Board, in compliance with statue, made the treatment of proprietary information specific, the only information that is to be specifically excluded from the public record is that which is considered proprietary and which shall be treated consistent with PRC § 21160 and GOV § 6254.7.

See response to comment W15-22.

Rule Text Edit: No.

W15-58: Rob DiPerna, EPIC (dated June 15, 2015)

The proposed WFMP rules are inconsistent with the enacting statute by failing to provide "rigorous timber inventory standards," and fail to comply with basic CEQA and APA requirements. The proposed rules are inadequate to ensure a commitment to uneven aged management, LTSY, sustainability, and are inadequate to provide for wildlife and water quality protection and enhancement. The ISOR fails to satisfy CEQA and the Board rules governing its CEQA duties for rulemaking, because it fails to identify or evaluate the potential for significant adverse impacts arising from the many issues identified above. EPIC therefore recommends that the proposed WFMP implementing rules be remanded back to the Management Committee for additional work to correct the deficiencies identified.

Board Response: This is a nonspecific summation of comments that are provided in detail above, after which Board response follows.

Rule Text Edit: No.

W16-1: Rob DiPerna, EPIC (dated March 2, 2015)

One of EPIC's primary concerns was the Board's failure in previous draft to provide actual interpretation and clarity of the statutes enacted pursuant to AB 904, and instead to simply restate much of the statutory language. EPIC strongly disagrees with this approach, as we believe AB 904 requires interpretation and guidance for effective implementation. EPIC identified many examples of this and refer the reader to our earlier comments. The Board's Initial Statement of Reasons ("ISOR") now tries to justify this practice under a theory that "duplication of statute" was necessary for "consistency" and "to satisfy the clarity standard." (ISOR, at p. 7). EPIC disagrees. Because the draft regulations now duplicate language, or in some cases introduce new language which further confuses the statutory standards, many of the regulations do not satisfy the Administrative Procedures Act standards for clarity and consistency.

Board Response: See response to comment W15-1.

Rule Text Edit: No.

W16-2: Rob DiPerna, EPIC (dated March 2, 2015)

The regulations as drafted do not provide the basic information required by, or offer interpretation of, governing statutes in a manner that will achieve the California's stated goals and objectives in authorizing WFMPs.

Board Response: See response to comment W15-1.

Rule Text Edit: No.

W16-3: Rob DiPerna, EPIC (dated March 2, 2015)

These comments focus on core issues which must be addressed through changes in the proposed regulations, before the Board may act to approve a set of regulations for the WFMP. The regulations fail to satisfy the statutory duty embodied by AB 904. They lack necessary definitions. They fail to require content to ensure that long term sustained yield ("LTSY") is plainly stated, and achieved through implementation of unevenaged management and monitoring. The regulations fail to provide adequate measures to protect water quality, protected and listed species, and cultural and historic sites. They fail to ensure that cumulative impacts are properly evaluated and mitigated. The regulations fail to meet governing statutory requirements by permitting exceptions to standard rule provisions, and authorizing stocking standards which do not achieve increased timberland productivity. The regulations also fail to meet the statutory requirement for a Five Year Review process. Because of these failures, the Board's proposed rules do not satisfy CEQA requirements.

Board Response: See response to comment W15-3.

Rule Text Edit: No.

W16-4: Rob DiPerna, EPIC (dated March 2, 2015)
the proposed regulations fail to provide for adequate standards to address significant adverse individual cumulative impacts on the environment, fail to provide standards for mitigation and/or minimization of significant adverse individual or cumulative impacts, and fail to identify or describe reasonable alternatives to the proposed regulations that could potentially minimize or mitigate to insignificance any potential significant adverse individual or cumulative impacts to the environment.

Board Response: See response to comment W15-7.

Rule Text Edit: No.

W16-5: Rob DiPerna, EPIC (dated March 2, 2015)
AB 904 expressly declares that the "working forest management plan shall comply with rigorous timber inventory standards." (PRC § 4597(a)(5)). These standards are needed to ensure the long- term benefits outlined in the statute, including "added carbon sequestration," "sustainable production of timber and other forest products," and "the maintenance of ecosystems processes and services." Yet, the proposed regulations fail to identify any "rigorous timber inventory standards." In fact, the proposed regulations do not provide any clearly stated timber inventory standards. While proposed rule 1094.6 requires "description" of "inventory design and standards," including types of projections or models used to make projections of growth and yield, (subsection (f)), or "inventory design and timber stratification criteria" to support growth and yield calculations used to determine LTSY, (subsection (g)), these provisions do not provide any actual standard, much less a "rigorous" timber inventory standard, that must be satisfied. In fact, in doing a search of the entire proposed rule package, there is not one reference to "inventory standard," or "timber inventory." Thus, the rules fails to meet the required APA standards, and in the absence of clear statement of the required "rigorous inventory standards," there is a serious question as to whether these rules, as currently drafted, can even satisfy the APA authority, necessity and consistency standards.

Board Response: See response to comments W15-6 and W15-9.

Rule Text Edit: No.

W16-6: Rob DiPerna, EPIC (dated March 2, 2015)
The proposed rules also fail to provide clear definitions for the "long-term benefits" the rigorous timber inventory standards are intended to ensure. For example, the proposed rule package fails to define or give interpretation to the terms such as "added carbon sequestration," "sustained production of timber and other forest products," or "maintenance of ecosystems processes and services." (PRC §4597(a)(5)). This failure contributes to the legal deficiency of the rule package, by not providing necessary interpretation of core statutory provisions.

Board Response: See response to comments W15-6 and W15-10.

Rule Text Edit: No.

W16-7: Rob DiPerna, EPIC (dated March 2, 2015)
Proposed rule 1094.6 states that a "function" of the WFMP is to "provide information and direction for timber management so it complies with ....*management objectives of the landowner(s)*." (Emphasis added). AB 904 says nothing about landowner management objectives. Introducing this provision to guide the WFMP, while failing to provide the statutory "rigorous timber inventory standards," or definition of stated objectives, is contrary to the statute and not authorized. As such, it violates the APA. Moreover, the proposed regulations place no definition on what may constitute landowner's "management objectives." There is nothing "rigorous" about allowing a landowner's unbridled management objectives to define timber management as contemplated by AB 904. This too violates the APA due to a lack of authority and consistency.

Board Response: See response to comment W15-11.

Rule Text Edit: No.

W16-8: Rob DiPerna, EPIC (dated March 2, 2015)
The proposed rules, and specifically rule 1094.6, do not require an express statement and identification of "long term sustained yield." While there are provisions that require submission of information as to how the plan submitter estimates LTSY, there is no plain requirement for the WFMP submitter to *state* the LTSY.

Board Response: See response to comment W15-12.

Rule Text Edit: No.

W16-9: Rob DiPerna, EPIC (dated March 2, 2015)
Nor is there any provision which stipulates that the WFMP submitter must conduct uneven aged management to reach LTSY, or to maintain LTSY. The ISOR advises that this rule package is intended to "incentivize" uneven aged management (ISOR at p. 4), yet the rules themselves do not provide any clear incentive much less a requirement to conduct uneven aged management over time, into the future, or upon realization of the (unstated) LTSY.

Board Response: See response to comment W15-12.

Rule Text Edit: No.

W16-10: Rob DiPerna, EPIC (dated March 2, 2015)
This is yet another reason why the proposed rules are not authorized by statute, and do not satisfy the intent and purpose of AB 904, e.g., to provide "increased productivity of timberland" and achieve the long-term objective of an "uneven aged timber stand and sustained yield through implementation of a working forest management plan." (PRC §§ 4597(a)(3), 4597.2).

Board Response: See response to comment W15-12.

Rule Text Edit: No.

W16-11: Rob DiPerna, EPIC (dated March 2, 2015)
Additionally, the rules lack any metric to evaluate, consistently over time, whether statutory goals for "sustained production of timber" and "sustained yield" are being achieved. (PRC §§ 4597, 4597.2). Specifically, the rules fail to require regular and ongoing reporting of volume harvested and volume remaining, for at least tree size, species, and stands. In order to achieve sustainability, the volume removed—such as Scribner volume, cubic or board feet – must be recorded to determine whether estimates for removal are being followed. It is also necessary to provide regular reporting of emerging growth, in order to evaluate whether growth projections for the LTSY are accurate or need adjustment. This is needed entirely independent of any Five Year Review for compliance; it is needed to ensure that the purposes of the WFMP are being fulfilled over time.

Board Response: See response to comment W15-13.

Rule Text Edit: No.

W16-12: Rob DiPerna, EPIC (dated March 2, 2015)
The failure to provide these key provisions in the proposed rules mean that not only has the APA not been followed, but equally CEQA requirements have not been met. The ISOR summarily concludes that the proposed rule package will not result in significant adverse environmental effects. (ISOR at p. 106). This is insufficient based on the potential for real harm due to the lack of "rigorous timber inventory standards," clear statement of LTSY, measures to ensure use of uneven aged management over time, and adequate recording and monitoring of volumes harvested and growth occurring. The lack of these measures means, simply, that WFMPs and their implementation, have the very real potential to cause significant adverse effects on the environment, and particularly timberland productivity and inventories over time, which in turn can adversely impact many natural resources.

Board Response: See response to comment W15-14.

Rule Text Edit: No.

W16-13: Rob DiPerna, EPIC (dated March 2, 2015)
The proposed rules and the ISOR do not appear to encompass real consideration of baseline conditions with regard to the status and plight of threatened and endangered species, nor do the proposed rules or the ISOR adequately address how forest management under the guise of a WFMP may affect these conditions and trends. There is an inherent presumption that the proposed rules will not have a significant adverse impact on the environment (*See* ISOR at p. 106). Furthermore, as described in more detail below, the proposed rules do not contain adequate standards or safeguards regarding the identification and protection of threatened or endangered species within the WFMP assessment area.

There are numerous examples of forest-associated species that are currently listed as threatened or endangered and that are well-known to be in decline based on the best available science and research that may be adversely affected by the lack of adequate standards and mitigations in the proposed rules

Board Response: See response to comment W15-15.

Rule Text Edit: No.

W16-14: Rob DiPerna, EPIC (dated March 2, 2015)
Neither the proposed rules themselves, nor the ISOR describing the rules appear to consider the potentially significant adverse individual or cumulative effects of forest management activities to be permitted under the WFMP regulations on these species, and fail to describe reasonable alternatives that would minimize or substantially lessen such impacts in violation of CEQA. EPIC proposes that the Board return to the committee to draft regulations which include provisions needed, as outlined herein.

Board Response: See response to comment W15-16 through W15-20.

Rule Text Edit: No.

W16-15: Rob DiPerna, EPIC (dated March 2, 2015)
The proposed regulations lack clarity and consistency because of the failure to define essential terms. These include those terms identified above – added carbon sequestration, sustainable production of timber and other forest products, maintenance of ecosystem processes and services, and rigorous timber inventory standards. (PRC § 4597(a)).

In addition, there are terms used in the proposed rules which have not been defined, and are not clear in their use. These include:

- "forestland stewardship" (1094.3);
- "management objectives of the landowner(s)" (1094.6);
- "baseline conditions" (1094.6(f)(1));
- "timber volume" (1094.6(g));
- "similar requirements" (1094.6(i));
- "LTSY plan" (1094.6 (m)(1));
- "address" (1094.6(n));
- "necessary deviation" (1094.8);
- "physical environmental changes" (1094.8(h));
- "significant changes" (1094.16(d)(1)); and
- "proprietary information" (1094.29(e)).

All of these terms require definition in order to understand their specific meaning, as well as the rule or rule provision which uses these terms. Without definition, the rules which use these terms do not satisfy the APA standard of clarity. Moreover, as ambiguous terms, they may not protect the environment, because to the extent any one or all of them are intended to act as a requirement, that requirement cannot be satisfied without a definition. Thus, the lack of definition contributes to the failure to adequately evaluate potential significant adverse environmental effects, define mitigation, and evaluate feasible alternatives – all in violation of CEQA.

Board Response: See responses to comments W15-13 and W15-22.

Rule Text Edit: No.

W16-16: Rob DiPerna, EPIC (dated March 2, 2015)
In reviewing the proposed WFMP content rule, 1094.6, EPIC identified six substantive areas which we believe require changes in order to satisfy the APA and CEQA standards articulated above. These are: (1) LTSY, (2) water quality, (3) wildlife and protected species, (4) cultural and historic sites, (5) cumulative impacts analysis, and (6) use of exceptions to standard rule requirements. For all of the provisions identified below, the ISOR failed to provide a reasonable and adequate discussion of potential significant adverse impacts, or necessary mitigation, or considered alternatives that could have eliminated or substantially reduced these potential effects, in violation of CEQA.

Board Response: See response to comment W15-23.

Rule Text Edit: No.

W16-17: Rob DiPerna, EPIC (dated March 2, 2015)
To begin, EPIC reiterates that a major flaw in the proposed rules is the failure to require an express statement of long term sustained yield. This is compounded by the failure to require an express statement to show how uneven aged management over time will be used and implemented. In addition, the following subsections are insufficient and require changes, as recommended here.

Board Response: See responses to comments W15-24 and W15-11.

Rule Text Edit: No.

W16-18: Rob DiPerna, EPIC (dated March 2, 2015)
Subsection (f) requires a description of the "planning horizon associated with the estimate of LTSY," and "the period of time necessary to estimate achievement of LTSY." As worded, neither of these provisions are clear as to what is meant by the "estimate" for "achievement" of LTSY. Does determination of LTSY depend on merely an estimate, unknown at the time of WFMP approval? If that is so, the regulations need to identify the controls in place to ensure the WFMP objectives toward sustainability and uneven aged management will be achieved. We could find no requirement that the WFMP plainly state the time needed to achieve actual LTSY. This subsection must be clarified to have meaning, and provide better standards to specify LTSY. In the absence of controls, this provision leaves room for unrealistic estimates for achievement of LTSY, and does not provide for increased productivity of timberlands, or protection of resources – in violation of the APA. And the ISOR fails to evaluate the potential for significant adverse impacts to resources from the lack of definition and controls.

Board Response: See response to comment W15-12 and W15-25.

Rule Text Edit: No.

W16-19: Rob DiPerna, EPIC (dated March 2, 2015)
Subsection (g) requires a description of inventory design and timber stand stratification criteria which show that the projected inventory supports the growth and yield calculations used to determine LTSY "by volume." "Volume" is never defined, so there is no clarity to the term "LTSY by volume." Volume can be Scribner volume, board foot or cubic volume, or basal area volume. This must be clarified to provide uniformity in determining LTSY. Subsection (g) also provides three "minimum standards" which must be satisfied in the

required description of inventory criteria. While (1) and (2) appear relatively straightforward, subsection (3) introduces further ambiguity, as it requires projections of LTSY "and volumes available for harvest," without defining what kind of volume (e.g., Scribner, board or cubic foot, or basal area) is being projected.

Board Response: See response to comment W15-26.

Rule Text Edit: No.

W16-20: Rob DiPerna, EPIC (dated March 2, 2015)
It also provides that the projections for LTSY and volumes available for harvest by Stand or Strata shall be "aggregated for the area covered by the WFMP to develop the LTSY estimate." This is unclear. Stands grow at different rates, density, with different competition and site qualities. All may be different from one stand to the next, from one strata to the next, all within the area covered by one WFMP. "Aggregating" does not take these differences into account and may result in skewed LTSY projections. This could result in failing to meet the statutory WFMP objectives, accompanied by adverse environmental impacts on resources such as timber, water quality, and protected species. Yet potential impacts of this language have not been analyzed are required by CEQA. These provisions must be fully defined and interpreted so as to protect timber and natural resources.

Board Response: See response to comment W15-27.

Rule Text Edit: No.

W16-21: Rob DiPerna, EPIC (dated March 2, 2015)
Subsection (h) lacks clarity because, while it requires a description of the property and planned activities, it does not provide a time frame for those projections. Thus, for example, while requiring information about the "projected timber volumes and tree sizes to be available for harvest," there is no requirement to identify the time frame for these expected harvest potentials. Is this on an annual basis? For how many years? This is necessary information to understand the accuracy and effectiveness of projected LTSY. Subsection (h) does not define a time frame for projected volumes and tree sizes. The WFMP is permitted to extend into perpetuity; if perpetuity is the time frame then a statement that identifies reliable projected volumes into perpetuity is required. To be clear and consistent with the objectives of the statute, a defined metric should be articulated to monitor the volume and tree size projections over time. If projections into perpetuity are not the metric, then a realistic time frame must be established, at the end of which the WFMP must be reviewed for conformance to the projections.

Board Response: See response to comment W15-28.

Rule Text Edit: No.

W16-22: Rob DiPerna, EPIC (dated March 2, 2015)
Subsection (h) also places no limits on the type of silvicultural method to be applied, even though the statute is clear that the WFMP is intended to achieve "uneven aged timber stand and sustained yield." PRC § 4597.2. Indeed, nowhere do the regulations actually limit or restrict silvicultural methods to uneven-aged management. This is contrary to the plain language of the statute to achieve uneven aged management.

Board Response: See response to comment W15-29.

Rule Text Edit: No.

W16-23: Rob DiPerna, EPIC (dated March 2, 2015)
Subsection (m) requires information for management units, including identification of the acres and estimated growth and yield for each planned harvest entry covering the period of time necessary to meet growth and yield objectives. The regulations do not require the WFMP to plainly state the period of time necessary to achieve growth and yield. This can have adverse environmental impacts because the WFMP is a perpetual plan, and without required time frames, adherence to the policies to ensure protection of the environment, such as sustained production of timber and other forest resources, may be forestalled.

Board Response: See response to comment W15-30.

Rule Text Edit: No.

W16-24: Rob DiPerna, EPIC (dated March 2, 2015)
To further illustrate the lack of clarity for LTSY, subsection (p) requires the WFMP to describe "a future schedule of inventory sampling and analysis of LTSY." We interpret this provision to provide some kind of monitoring measure to evaluate the LTSY projections as the WFMP is implemented. However, there is no requirement here, or elsewhere, that specifies the *time frame* for such a schedule of inventory sampling and analysis of LTSY. In the absence of any meaningful time frame, this measure fails to provide the necessary structure to ensure that LTSY and sustained yield is being achieved. Moreover, there is no provision here or elsewhere which requires disclosure of volumes actually harvested, as opposed to "projections" of yield. This information is necessary to ensure that LTSY - and thus the WFMP objective for sustainability - is being achieved. Absent this, the subsection undermines and obfuscates the legislative directive and threatens ecological processes.

Board Response: See response to comment W15-31.

Rule Text Edit: No.

W16-25: Rob DiPerna, EPIC (dated March 2, 2015)
Subsection (h) fails to require information about *potential* erosion sites, even though such disclosure and analysis should be readily available upon an adequate field inspection. This failure leaves the proposed rules in direct conflict with requirements of the recently-adopted "Road Rules" package. This oversight raises the potential for significant adverse environmental effects from this regulation which has not been evaluated in the ISOR as required.

Board Response: See response to comment W15-32.

Rule Text Edit: No.

W16-26: Rob DiPerna, EPIC (dated March 2, 2015)
Subsection (h) authorizes reliance on so-called "similar requirements of other applicable provisions of law" in lieu of providing the required description of methods used to avoid significant sediment discharge to watercourses. However, in the absence of a definition

for “similar requirements,” this exemption renders the provision unclear and ambiguous, and may result in significant adverse impacts to the environment which are not analyzed in the ISOR.
Board Response: See response to comment W15-32.

Rule Text Edit: No.

W16-27: Rob DiPerna, EPIC (dated March 2, 2015)
Subsection (l) requires disclosure only of “known locations” of listed or protected plant and animal species and their key habitats. This is insufficient, and fails to meet the statutory objective to maintain ecosystem processes (PRC § 4597(a)(5)), and protect fisheries and wildlife habitats (PRC § 4597.1(j)). There is no requirement to conduct an investigation or protocol surveys to determine the *presence* of protected and listed species or their habitat. This is an omission that must be corrected to ensure that the WFMP satisfies the legislative intent and does not cause adverse impacts to protected and listed species.

Board Response: See response to comment W15-33.

Rule Text Edit: No.

W16-28: Rob DiPerna, EPIC (dated March 2, 2015)
Subsection (n) provides standards for LTSY projections which project a reduction in trees greater than 12 inches dbh or reduced inventories of Major Stand Types or for a percentage of Stands or Strata. In those circumstances, the WFMP must provide an “assessment” which “addresses” listed and protected species and their habitat needs. It is entirely unclear what it means to “address” these resources. If the intent is to ensure that these vulnerable species are protected when tree size and quantity are significantly reduced, then the regulation must provide standards to ensure protection. In the absence of having to actually look for species subsection (l), merely “addressing” these vulnerable species is not sufficient. Absent some standard to credibly evaluate potential impacts from reduced tree and stand size, this provision poses threats to protected and listed species and their habitat needs which constitutes a potential significant environmental effect which has not been analyzed or mitigated as required by CEQA and Board rules.

Board Response: See response to comment W15-34.

Rule Text Edit: No.

W16-29: Rob DiPerna, EPIC (dated March 2, 2015)
As described above, both past and contemporary forest management are important factors contributing to the decline of many threatened and endangered fish and wildlife species. The lack of clarity and adequate standards in the proposed rules has the potential to result in significant adverse individual and cumulative effects to these species and their habitats. The proposed rules and the ISOR describing the rules fail to provide a mechanism for analysis of, disclosure of, and mitigation to insignificance of potentially significant adverse impacts to threatened and endangered species and thus violate CEQA.

Board Response: See response to comment W15-35.

Rule Text Edit: No.

W16-30: Rob DiPerna, EPIC (dated March 2, 2015)
Subsection (q) suffers from the same inadequacy as for protected species. By only requiring description of "known" cultural or historical resources, the WFMP fails to ensure protection for these resources. Surveys and field investigations should be required.

Board Response: See response to comment W15-36.

Rule Text Edit: No.

W16-31: Rob DiPerna, EPIC (dated March 2, 2015)
Subsection (w) is confusing because it simply requires the WFMP to include a "description of the cumulative impacts analysis." The WFMP must provide a cumulative impacts assessment pursuant to Technical Rule Addendum No. 2. (14 CCR § 898; 14 CCR 912.9). Yet the proposed subsection permits the WFMP to include only a description of that analysis. The full analysis as required by the Forest Practice Rules and CEQA must be included in the WFMP, and any requirement less than that violates the Forest Practice Act and CEQA.

Board Response: See response to comment W15-37.

Rule Text Edit: No.

W16-32: Rob DiPerna, EPIC (dated March 2, 2015)
Subsections (y) through (z), (bb) through (ee), and (ii) are provisions to authorize exceptions to standard FPA rule provisions in certain circumstances. These subsections are unclear as to whether they are intended to apply to the entire area covered by the WFMP, identified Management Units, or only to specified location stated in the WFMP. Such exceptions appear contrary to the Legislative intent and purpose of the WFMP; authorizing the WFMP to utilize exceptions and alternative practices for all time poses a real – and unanalyzed – threat to the environment. Moreover, permitting exceptions for all time is contrary to the Legislative intent to encourage prudent and responsible forest management – with increased productivity of timberland. (PRC § 4597(a)(1), (3), (5)). These subsections are contrary to the APA standards for necessity, consistency and clarity, and have not been properly evaluated pursuant to CEQA. They pose the risk, over time, of causing significant adverse environmental effects. These exceptions, for example, if they are to be allowed as permanent standards, must be assessed in the context of the best science detailing what our forests can expect in 10, 20, 30 and 50 years from now due to climate change and other conditions.
Subsection (ii) authorizes certain exceptions, for tractor operations on steep and unstable slopes and lands, roads and skid trails to be located in watercourse zones, to be approved as "standard operating practices." This standardized 'permission' has not been properly analyzed under CEQA for the potential for significant impacts. It permits use of an undefined "deviation," with alternative mitigation to be incorporated into the WFMP—without any mention of public review and comment. Mitigation is required to remedy significant environmental impacts. If there is a need for mitigation, there is a need for CEQA review. This provision ignores that requirement, and its process is contrary to the APA and CEQA.

Board Response: See response to comment W15-38.

Rule Text Edit: No.

W16-33: Rob DiPerna, EPIC (dated March 2, 2015)
The proposed annual Notice requirement also does not require information to document what has already occurred to implement the WFMP or to identify new conditions or potential impacts. In this way, the Notice does not provide a clear statement of the information needed to ensure that the Legislative intent to encourage increased productivity of timberlands (PRC § 4597(a)(3)), and to establish uneven aged management and sustained yield through the implementation of the WFMP. (PRC § 4597.2).

Board Response: See response to comment W15-39.

Rule Text Edit: No.

W16-34: Rob DiPerna, EPIC (dated March 2, 2015)
At the outset, the proposed Notice rule directs that "[a]l necessary deviations shall be approved by the Director prior to submission" of the Notice. The proposed rule does not define what constitutes a "necessary" deviation, and whether a "necessary" deviation is a substantial, minor or some other kind of deviation. The proposed rule also does not define who decides what a necessary deviation is or what process the Director must use to approve a "necessary" deviation. This provision lacks clarity.

Board Response: See response to comment W15-40.

Rule Text Edit: No.

W16-35: Rob DiPerna, EPIC (dated March 2, 2015)
The proposed Notice provisions suffer from many of the same defects as in the proposed WFMP content rule. For LTSY and sustained yield, the proposed Notice rule lacks any disclosure of volumes and tree sizes available for harvest. This information is necessary to document what has occurred, and what timber operations have been or are proposed to be conducted to achieve the long-term objective of uneven aged management and LTSY. The WFMP requires a one-time description of projected timber volumes and tree sizes to be available for harvest and frequencies of harvest. (PRC § 4597.6(h)). The annual Notice, to be meaningful, needs to provide an annual record toward and update to those projections, to evaluate WFMP compliance. While subsection (l) requires a statement that the Notice conforms to the provisions of the WFMP, it does not require data to support this conclusion. That statement must be based upon actual substantial evidence. At a minimum, the Notice should include a statement identifying what volumes and tree sizes are available for harvest, in relation to the WFMP projections, and evidence documenting efforts to achieve the LTSY.

Board Response: See response to comment W15-41.

Rule Text Edit: No.

W16-36: Rob DiPerna, EPIC (dated March 2, 2015)
For wildlife and protected species, subsection (g) requires only review of public sources and databases to report whether there are any "known" occurrences of these species. While this subsection does refer to a species which has or has not been "discovered" there is no affirmative duty to conduct a protocol survey or other investigation to look for these

protected species. This is necessary to fulfill the legislative intent to promote forestland stewardship which protects fisheries and wildlife habitats. (PRC § 4597.1(j)).

Board Response: See response to comment W15-42.

Rule Text Edit: No.

W16-37: Rob DiPerna, EPIC (dated March 2, 2015)
Similarly, subsection (f) permits a statement that no archaeological sites have been discovered, without a corresponding duty to conduct some kind of survey to determine if such sites do exist.

Board Response: See response to comment W15-43.

Rule Text Edit: No.

W16-38: Rob DiPerna, EPIC (dated March 2, 2015)
Subsection (h) requires a statement, based on a field evaluation, that "there are no physical environmental changes" in the Notice area "that are so significant as to require any deviation of the WFMP." The proposed rule do not define what is meant by "physical environmental changes" and what that term may encompass. The lack of definition makes this subsection confusing and without clarity, as no thresholds are provided. The provision is also unclear because earlier in the proposed rule it is clear that there can be no outstanding "necessary deviations" once the Notice is submitted. Whether "necessary deviations" means the same as or something different from "physical environmental changes" is not known, adding to the confusion. Since the submission of the Notice permits operations to commence immediately, in the absence of clear standards or thresholds, there is no ability to evaluate whether the statement is accurate. As with other provisions, evidence must be provided which documents that a field evaluation was conducted of the entire area covered by the Notice, and documents the conditions observed during the field evaluation.

Board Response: See response to comment W15-44.

Rule Text Edit: No.

W16-39: Rob DiPerna, EPIC (dated March 2, 2015)
For water quality protection, subsection (m) is good because it, unlike so much else, requires an "updated" erosion control implementation plan. However, it too does not require any actual evidence upon which conclusions as to *current* conditions are based.

Board Response: See response to comment W15-45.

Rule Text Edit: No.

W16-40: Rob DiPerna, EPIC (dated March 2, 2015)
The mapping requirement under subsection (s)(10) perpetuates the deficiency in the WFMP - to require mapping only of "known" unstable areas or slides, rather than also documenting locations which are potentially unstable or at risk. This must be expanded to require identification of "potential" unstable areas.

Board Response: See response to comment W15-45.

Rule Text Edit: No.

W16-41: Rob DiPerna, EPIC (dated March 2, 2015)
Subsection (r) requires description of the WFMP exceptions which have "standard operating practices," without requiring evidence or data that documents the continued justification for such exceptions. The Notice rule should include a requirement for some evidence to justify the continued need for the exceptions.

Board Response: See response to comment W15-46.

Rule Text Edit: No.

W16-42: Rob DiPerna, EPIC (dated March 2, 2015)
The proposed Notice regulation does not require a statement disclosing whether there are any ongoing operations in the WFMP area. As a result, it is unclear to what extent more than one, or several, areas within the WFMP may be under operation in any given year. This poses the potential for significant cumulative impacts which would need to be evaluated, yet there is no requirement for the disclosure or evaluation of multiple operations.

Board Response: See response to comment W15-47.

Rule Text Edit: No.

W16-43: Rob DiPerna, EPIC (dated March 2, 2015)
Proposed rule 1094.23 outlines the circumstances under which a change to the WFMP shall be deemed a "substantial deviation." Subsection (c) provides examples of such deviations, including "[c]hange in location of timber harvesting operations or enlargement of the area or *volume planned to be cut*." (Emphasis added). However, no threshold for a change in the "volume planned to be cut" is included. A threshold must be established, such as the 10% standard used for a Sustained Yield Plan in section 1091.13(a).

Board Response: See response to comments W6-8, W15-38 and W15-48.

Rule Text Edit: No.

W16-44: Rob DiPerna, EPIC (dated March 2, 2015)
In addition, this subsection also reveals the lack of an effective annual monitoring component that documents the volume cut in any given year. This reporting is necessary to keep track of what volumes may be cut going forward, and to determine whether the growth and yield projections are accurate or need adjusting to maintain LTSY.

Board Response: See response to comments W15-13, W15-39 and W15-50.

Rule Text Edit: No.

W16-45: Rob DiPerna, EPIC (dated March 2, 2015)
The Legislature authorized the WFMP as a tool to achieve "increased productivity of timberland." (PRC § 4597(a)(3)). Proposed rule 1094.27 (a) is inconsistent with this intent

because it permits stocking to be satisfied using minimum stocking standards, rather than require an increase in productivity over time. To "increase productivity" means to require a standard higher than just "maintaining" minimum stocking standards, which is what subsection (a) authorizes. This is not authorized by the WFMP statutes, and was not analyzed in the ISOR for its potential to cause significant adverse environmental impact to the environment. This will not "benefit" the environment, and as the potential to degrade the environment by not doing as contemplated by the Legislature – to increase timberland productivity and utilized uneven aged management.

Board Response: See response to comment W15-49.

Rule Text Edit: No.

W16-46: Rob DiPerna, EPIC (dated March 2, 2015)
Proposed rule 1094.29 sets forth provisions for what is called a "Five (5) Year Review of the WFMP" ("5-Year Review"). This section is not clear, particularly as to the contents of the summary and 5-Year Review. The Legislature directed the board to adopt regulations for this specific section, and the proposed regulation fails to meet this duty, satisfy APA standards of clarity, or ensure CEQA compliance.First, the proposed rule is not consistent with the statute, Public Resources Code section 4597.12. By statute, the Department is to first develop a summary, and then conduct the 5-Year Review. (PRC § 4597.12(b) ["develop a plan summary *before each five-year review*"]). (Emphasis Added). Proposed rule 1094.29 (a) and (b) make a mismash of this clear process, obfuscating when the summary is done in relation to the 5-Year Review.

Board Response: See response to comment W15-51 and W15-52.

Rule Text Edit: No.

W16-47: Rob DiPerna, EPIC (dated March 2, 2015)
Second, the proposed rule fails to be clear as to the public's right of review. The statute provides that the public shall have a right to review the summary and provide comment for the 5-Year Review. (PRC § 4597.12(c)). However, joining in subsection (b) the "summary" and development of the 5-Year Review, the proposed rules deprive the public of its 30-day right of review as contemplated in subsection (a). The public must be given an adequate period of review for the summary, to provide input into what information the review team agencies and the Department need to consider in conducting the 5-Year Review. And, the public should be given a right to comment upon whatever document encompasses the 5-Year Review.

Board Response: See response to comment W15-53.

Rule Text Edit: No.

W16-48: Rob DiPerna, EPIC (dated March 2, 2015)
Third, the rules are not clear as to what is to be included in the "summary" preceding the 5-Year Review, or what shall be included in the 5-Year Review. If the summary is the document from which the 5-Year Review is to be conducted, a clear statement is necessary in order for the public to exercise its role to present "additional information relevant to the purpose of the five (5) year review," as stated in subsection (a). And the required contents for a 5-Year Review must be delineated.

Board Response: See response to comment W15-54.

Rule Text Edit: No.

W16-49: Rob DiPerna, EPIC (dated March 2, 2015)
It is unclear whether a 5-Year Review will include the information outlined in subsections (b) or , i.e., number of WFMP Notices, the acreage operated under each WFMP Notice, the violations received, the volume harvested in relation to projections of harvest in the WFMP. The only information that the review team is actually required to analyze is "significant episodic events occurring during the previous 5 years." (1094.29(c)). The proposed rule needs to be clear as to what is to be included in the 5-Year Review and whether it is only a "summary" or something more. The proposed rule needs to specifically identify what information must be reviewed by the review team and be made equally available for public review.

Board Response: See response to comment W15-55.

Rule Text Edit: No.

W16-50: Rob DiPerna, EPIC (dated March 2, 2015)
Subsection (d) provides three distinct and valid reasons why the Department "shall provide written comments that a review of the WFMP content and procedures may be necessary": (1) notices of violation have been issued; (2) the 5-Year Review indicates potentially significant adverse impacts to the environment may occur from continuance of the WFMP; or (3) the Department is presented with a fair argument that a project may have a significant adverse impact on the environment. However, the subsection provides no standards or process for the "review of the WFMP content and procedures." These are required, to make the proposed rule meaningful and clear. It is unclear if this subsection is referring to the "5-Year Review," or something else. The proposed rule is also not clear as what process the Department uses to "confer" with the Designated Agent. This provision must be clarified, and the process must be transparent and subject to public review.

Board Response: See response to comment W15-56.

Rule Text Edit: No.

W16-51: Rob DiPerna, EPIC (dated March 2, 2015)
Subsection (e) is a restatement of the subsection (d) of the statute. (PRC § 4597.12 (d)). However, it conflicts with other provisions of the statutory scheme and proposed rules. The WFMP "shall be a public record."(PRC § 4597.2; proposed rule1094.3). That means all the information identified in proposed rule 1094.6 is a public record. Similarly, the WFMP Notice is a public record. (PRC § 4597.11, proposed rule 1094.8). The 5-Year Review is based upon a review of this public information. Subsection (e) authorizes a WFMP landowner to prevent public disclosure of "proprietary information." Permitting a landowner to not disclose *undefined* information, which is completely relevant to a determination of WFMP compliance, is contrary to the fundamental premise of the Forest Practice Act and CEQA to require public access and review.

Board Response: See response to comment W15-57.

Rule Text Edit: No.

W16-52: Rob DiPerna, EPIC (dated March 2, 2015)
The proposed WFMP rules are inconsistent with the enacting statute by failing to provide "rigorous timber inventory standards," and fail to comply with basic CEQA and APA requirements. The proposed rules are inadequate to ensure LTSY, and are inadequate to provide for wildlife and water quality protection and enhancement. EPIC therefore recommends that the proposed WFMP implementing rules be remanded back to the Management Committee for additional work to address the deficiencies identified.

Board Response: See response to comment W15-58.

Rule Text Edit: No.

W17-1: Rob DiPerna, EPIC (dated April 7, 2014)
The statute provides that to "ensure long-term benefits," such as "added carbon sequestration," "sustainable production of timber and other forest products," and the "maintenance of ecosystem processes and services," the working forest management landowner "shall comply with rigorous timber inventory standards that are subject to periodic review and certification."

Board Response: This comment is from a May 2014 draft of these regulations while they were under development in the Board's Management Committee. The Board has made significant changes to § 1094.6 since this time. Specific to timber inventory standards, § 1094.6(q) was added to periodically re-sample the original estimates of inventory and LTSY.

See responses to comments W15-6, W15-9 and W15-10.

Rule Text Edit: No.

W17-2: Rob DiPerna, EPIC (dated April 7, 2014)
Regulation is needed to identify and/or provide these "rigorous standards." While some of the content of the statute (i.e., § 4597.2(c))may be viewed as providing standards, even if fully adopted as regulation, they do not provide sufficient guidance and interpretation.

Board Response: See response to comments W15-9 and W17-1.

Rule Text Edit: No.

W17-3: Rob DiPerna, EPIC (dated April 7, 2014)
It is not clear whether Draft Regulations section 1094.6 subsection (d) is intended to provide these "rigorous standards." As an initial matter, the Draft Regulations are unclear and/or wrongly formatted, as there is a subsection (d) on page 5 and another on page 6. The subsection on page 6 appears to be the intended version. This version suffers from ambiguity, in that while it requires a "description of the plan area within which timber operations are to be conducted," it then lists numerous items that go beyond a description of the plan area, requiring information as to what activities, operations, and measures are proposed, rather than the required description of the plan area. It would make better

sense to require first a description of the plan area, and then separately provide the requirements to identify the proposed activities, operations, methods, etc.

Board Response: This comment is from a May 2014 draft of these regulations while they were under development in the Board's Management Committee. The subsections for § 1094.6 were reformatted to incorporate comments from agencies and the public while in committee. The regulatory language contained in the ISOR noticed May 1, 2015 contains substantial changes from this draft.

See response to comments W1-4, W3-4, W6-2, W6-3, and W15-6.

Rule Text Edit: No.

W17-4: Rob DiPerna, EPIC (dated April 7, 2014)
Separate from these concerns, however, is the failure to adequately bring forward the intent of Public Resources Code Section 4597. The "rigorous timber inventory standards" need to be defined and identified as such, and provisions must be included to ensure their "periodic review and certification." PRC § 4597(a)(5). The Legislature provided some guidance as to what are relevant standards. PRC § 4597.2(c). These too require interpretation and effective regulation. We believe the Draft Regulations need to establish rigorous and enforceable standards.

Board Response: See response to comments W15-9 and W17-1.

Rule Text Edit: No.

W17-5: Rob DiPerna, EPIC (dated April 7, 2014)
In providing this guidance, it is important that the maintenance of ecosystem processes and services includes provisions that adequately describe those processes and services and
their maintenance in the context of the 14 CCR 916(b) , as well as the Porter-Cologne definition of Water Quality Control: ". . . protection and correction of water pollution and nuisance." A comprehensive description of the plan area is key. Mandatory compliance with 14 CCR 916.4 is necessary.

Board Response: See responses to comments W15-10, W15-21 and W15-22.

Rule Text Edit: No.

W17-6: Rob DiPerna, EPIC (dated April 7, 2014)
AB 904 did not define what it meant by "long-term benefits" such as "sustained production of timber and other forest products," "added carbon sequestration," "ecosystem processes," and "ecosystem services." The Board needs to give definition to and provide parameters for these terms if the objectives are to be satisfied, as they are at the heart of the WFMP.

Board Response: See response to comment W15-10.

Rule Text Edit: No.

W17-7: Rob DiPerna, EPIC (dated April 7, 2014)
In addition, the definition of "sustained yield" provided in the Draft Regulations section 1094.3 should be amended to address the use of the word "commercial." It is unclear what that term means; it is clear that the WFMP is limited to non-industrial timberlands. At a minimum, the definition should refer to "non-industrial commercial timberland." We note that the definition of "sustained yield" is not a substitute for a definition of "sustained production of timber and other forest products.**

Board Response: The term commercial in the definition of Sustained Yield is a reference to Commercial Species, which is defined in 14 CCR § 895.1 for each forest district.

Sustained Yield is defined in § 1094.2(c). The Board has found it appropriate to defer to statute in adopting the definitions included in § 1094.2. § 1094.3 is very specific and does limit use of a WFMP to uneven aged management and the rigorous sustained yield assessment that begins in sub-section § 1094.6(g). The Board has found that the definition and terminology used will achieve the desired objective of balancing growth and harvest over time in a WFMP.

Rule Text Edit: No.

W17-8: Rob DiPerna, EPIC (dated April 7, 2014)
Overall, the format and accessibility of a WFMP is key. It should include a table of contents, and be readily accessible through internet

Board Response: CAL FIRE publishes the Forest Practice Rules (FPRs) each year which contains a table of contents. The regulations for the WFMP will be housed in the FPRs. An additional table of contents in the regulation was deemed redundant. The FPRs are readily available on the CAL FIRE website.

The Board made several changes during early rule development in Committee in response to public comment under § 1094.4(e), § 1094.16(a) and § 1094.29(f). See response to comments W1-30 and W5-2 for a description of the contents of a WFMP that will be available on a publically accessible internet database.

Rule Text Edit: No.

W17-9: Rob DiPerna, EPIC (dated April 7, 2014)
The statute requires information used to "determine long-term sustained yield" (subsection (c), (c)(3)), and refers to (1) "long-term sustained yield estimates" (subsection (c)(3)), (2) "long-term sustained yield projections" (subsection (i)(2)(A)), and (3) a "long-term sustained yield plan" (subsection (i)(1)(A)). While the statute does not then expressly require a "long-term sustained yield estimate" or "long-term sustained yield plan," it surely is implied that a proposed "long-term sustained yield" will be provided, and that the WFMP will include a "long-term sustained yield plan." The Draft Regulations do not provide this, and perpetuate the confusion by simply repeating the language of the statute. *Compare* PRC § 4597.2(c), (f), (i)(A) with Draft Regulations § 1094.6(d)(6), (9), (13). We do not find in the Draft Regulations, for example, an express requirement in section 1094.6 to even identify the "long term sustained yield." This must be required, and based on the language in AB 904 Section 4597.2 a WFMP must include a "long term sustained yield plan." The Board needs to adopt regulations to implement this requirement. Absent this, there is no

real way to verify compliance over time.

Board Response: This comment is from a May 2014 draft of these regulations while they were under development in the Board's Management Committee. The Board made substantial changes to § 1094.6 during early rule development in Committee to clarify that a WFMP requires development of an LTSY estimate as described in § 1094.6(h) and § 1094.6(i).

See responses to comments W15-12 and W16-44.

Rule Text Edit: No.

W17-10: Rob DiPerna, EPIC (dated April 7, 2014)
The statute requires the WFMP's "long-term sustained yield projections" to include an "assessment" which "addresses" listed and other species that could be adversely impacted by potential changes to habitat (subsection (i)(2)(C)(i)), species habitat needs (subsection (i)(2)(C)(ii)), and constraints to timber management etc. (subsection (i)(2)(C)(iii)). Regulations are needed to interpret what is meant by an "assessment" and "address[ing]" these resources and potential impacts. For example, how is the WFMP to "address" these resources; what standards are to be applied; what criteria? Unfortunately, the Draft Regulations provide no insight or interpretation, as they merely adopt the statute's language. *Compare* PRC § 4597.2(i)(2)(A) with Draft Regulations § 1094.6(d)(15). Regulations are needed to make clear what is required and what standards will apply to the assessment.

Board Response: See response to comments W15-15, W15-22 and W15-34, and W17-1.

Rule Text Edit: No.

W17-11: Rob DiPerna, EPIC (dated April 7, 2014)
Similarly, subsection (i)(2)(C)(iii) refers to the "cumulative impacts assessment," yet it is not specifically required by the statute and the Draft Regulations simply adopt the statute's language. A cumulative impacts assessment should be and needs to be expressly required – with its measurable required contents . Mere reference to the term "plan" at the outset of the Draft Regulations is insufficient to impose this requirement. e cumulative impacts assessment is required because the language in Draft Regulations section 1094.6(d)(12) requires disclosure of state or federally listed threatened, candidate, endangered, or rare plant or animal species located within the "biological assessment area." Presumably, that is intended to refer to a biological assessment area within a cumulative impacts analysis, but absent an express requirement for such an analysis, that term is unclear.

Board Response: See response to comment W15-37.

Rule Text Edit: No.

W17-12: Rob DiPerna, EPIC (dated April 7, 2014)
Subsection (b)(2), while somewhat in-artfully written, does require an initial inspection. The Draft Regulations simply adopt its language, § 1094.18(d)(2), without providing any guidance as to the scheduling of the initial inspection in a manner that involves all public agencies who have expressed a desire to participate in the inspection. This is needed to ensure that adequate review team agency participation and review occurs.

Board Response: This comment is from a May 2014 draft of these regulations while they were under development in the Board's Management Committee. The Board made changes to this provision during rule development in Committee to address this concern under 1094.17(b)(2) and 1094.17(e).

14 CCR § 1037.5 establishes the composition and function of the interdisciplinary review team. § 1094.18 points to this provision to establish the interdisciplinary review team to assist the Director in the evaluation of proposed WFMP(s) and its impact on the environment.

§ 1094.17 (b)(2) provides for 10 days to complete initial inspection, which the Board believes is sufficient time for each agency participating on the interagency agency team to complete the initial inspection. As an additional safeguard to ensure the initial inspection will occur as part of the evaluation of a WFMP, 1094.17(d) states that if the Director is unable to meet timelines pursuant to 1094.17(b) that a mutually agreeable longer time period be negotiated between the Director and the Working Forest Landowner, or that the WFMP is deemed denied.

Rule Text Edit: No.

W17-13: Rob DiPerna, EPIC (dated April 7, 2014)
Subsection (e)(1) refers to the ability of the working forest landowner to request, and the Board to conduct, a public hearing when the WFMP has been denied. Subsection (e)(4) then refers to an "appeal to the board."

The Draft Regulations use this same language. §§ 1094.18(e)(1)-(h). These provisions are confusing at best. Does the landowner have a right of appeal, or merely a right to request a hearing? This is clearly an area where the Legislature needs the Board's assistance to interpret the statute and make it clear, to clarify and make consistent that the landowner's right to a hearing is a right of "appeal" which includes the public hearing.

Board Response: The leading language for the referenced provision, § 1094.17(e), states "The following provisions apply to the appeal of a denied WFMP". The Board has deemed this sufficient to clarify that subsections 1094.17(e)(1 – 4), including a public hearing, are all pertinent to the appeal of a denied WFMP.

Rule Text Edit: No.

W17-14: Rob DiPerna, EPIC (dated April 7, 2014)
Subsection (c) also provides that if the director denies the WFMP, s/he shall "state the reasons" for the denial. Subsection (e)(3) provides that if the Board overturns the director's denial, it shall prepare "findings and its rationale" for overturning the decision. Again, the Draft Regulations simply adopt this language, failing to provide consistency and transparency for these decisions, by requiring that the director adopt "findings and

rationale." Draft Regulations § 1094.18(e), (g). In addition, EPIC believes it is necessary that both the director's findings and the Board's findings are issued publicly and made available in the same manner that all the other notices are posted.

Board Response: This comment is from a May 2014 draft of these regulations while they were under development in the Board's Management Committee. In response to agency and public comment, the Board made changes to § 1094.17 in Committee to expand the review and public comment periods, and make the WFMP publically available through § 1094.16(a) and (d)(3)(F), § 1094.21, and § 1094.22.

The notice of conformance, or the letter of return for plans found to be not in conformance, is included in CAL FIRES online THP library, a publically available online database. The letter of return identifies the deficiencies in the plan being returned. It would be expected that the Board's findings and rationale would be included with the notice of conformance should the Board overturn the Director's decision to deny a plan. Regardless, the findings and rationale would be publically available through the Board should this situation occur.

Rule Text Edit: No.

W17-15: Rob DiPerna, EPIC (dated April 7, 2014)

Subsection (e)(4) provides that if the WFMP denial is upheld, then the director shall notify the landowner as to what changes are needed. The Draft Regulations provide nothing further. § 1094.18(h). Regulation is needed to require findings by the Board of Forestry to identify any reasons it may have, in addition to or different from those provided by the director's statement of reasons (findings and rationale) that may become clear as a result of the appeal and public hearing process.

Board Response: This comment is from a May 2014 draft of these regulations while they were under development in the Board's Management Committee. In response to agency and public comment, the Board made changes to § 1094.17(e)(2) and (e)(3) to address this concern in Committee.

If the Board determines that the WFMP is not in conformance and the Director acted correctly in denying the WFMP, the Board would likely defer to and accept the findings of the Director in denying the WFMP given that the focus of the appeal would be the Director's stated reasons for denying the WFMP. Board findings and rationale would be required if the Board approves a WFMP that has been denied by the Director, because then the Board disagrees with, and denies, the Directors findings. Regardless, any findings and rationale developed by the Board that diverges from the reasons stated by the Director would be publically available through the Board.

Rule Text Edit: No.

W17-16: Rob DiPerna, EPIC (dated April 7, 2014)

Regulation is also needed to clarify the process for a post-appeal review including provisions for a post-appeal inspection should it become necessary and for inter-agency review.

Board Response: This comment is from a May 2014 draft of these regulations while they were under development in the Board's Management Committee. In response to agency and public comment, the Board made changes to § 1094.17(e)(4) in Committee to address

this concern.

The Board finds that the required review and inspection (§ 1094.15 – 1094.17) prior to the potential approval via appeal is sufficient and that additional review and inspections at this juncture would be overly burdensome.

Rule Text Edit: No.

W17-17: Rob DiPerna, EPIC (dated April 7, 2014)
This section specifically requires the Board to define actions that would be considered to "substantially deviate[]" from the approved WFMP. Draft Regulations section 1094.15(b) provides the same definition of "substantial deviation" as in 14 CCR § 895.1. EPIC believes that more thought needs to be given to this section, to include criteria to identify substantial changes to the core provisions of AB 904 such as the rigorous timber inventory standards and LTSY, as well as the need for increased carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, and the maintenance of ecosystem processes and services.

Board Response: This comment is from a May 2014 draft of these regulations while they were under development in the Board's Management Committee. The regulatory language contained in the ISOR noticed May 1, 2015 contains substantial changes from this draft. The Board specifically made changes to § 1094.23(c) in Committee to address this comment. The Substantial Deviations included in § 1094.23 exceed the standards set forth in both 14 CCR §§ 895.1 and 1090.14 (NTMP Deviations). Specifically addressing the timber inventory standards and LTSY is § 1094.23(c)(3): An increase in volume to be harvested exceeding ten (10) percent as projected by the LTSY.

Rule Text Edit: No.

W17-18: Rob DiPerna, EPIC (dated April 7, 2014)
This section specifically requires the Board to "specify, by regulation, those nonsubstantial deviations that may be taken." The Draft Regulation section 1094.15(a) appears to be nothing more than what already exists in the NTMP regulation 1090.14(a). This is insufficient, as the WFMP is intended to be much more rigorous than the NTMP, particularly given its very large acreage of up to 15,000 acres. A clear standard must be used to define what is insignificant, so as to not seriously affect the key objectives of a WFMP. Section 1094.15(a) is unclear as well, failing to define or provide standards for what may be "minor in scope" and what may be presumed to be "reasonable." Better regulation is needed to limit the potential for abuse of so-called "minor" deviations.

Board Response: As described in W17-17, the Board has included further specificity to the list of substantial deviations included in §1094.23(c) than those included in the NTMP. The legislative intent of the WFMP was to build upon the model provided by the NTMP [PRC §4597(a)(3)]. The Board found that aligning the definition of minor deviations with that provided in the NTMP was appropriate and consistent with the intent of the legislature.

See response to comments W6-8 and W15-38 for further discussion of minor and substantial deviations.

Rule Text Edit: No.

W17-19: Rob DiPerna, EPIC (dated April 7, 2014)
This section authorizes the landowner to cancel the WFMP, but provides no process by which that is to occur, other than through a written notice. Draft Regulations section 1094.28 adopts this language, without providing interpretation or guidance as to what kind of notice is provided, whether it must be circulated by the Department for review, whether other agencies and/or the public are entitled to receive this notice for the purpose of ensuring compliance with "rigorous timber inventory standards," adopted commitments for sustainability, ecosystem maintenance, added carbon sequestration, wildlife protection, etc. Since the overall legislative intent is to ensure long-term benefits and verification of WFMP provisions, a regulatory process must be adopted to provide this in the event a landowner wants to cancel the WFMP. It is insufficient to simply allow for satisfactory completion of any given notice of operations.

Board Response: This comment is from a May 2014 draft of these regulations while they were under development in the Board's Management Committee. The provision subject to this comment is now § 1094.31.

§ 1094.31(a) stipulates that once timber operations have commenced pursuant to a Working Forest Harvest Notice, cancellation is not effective on land covered by the Working Forest Harvest Notice until a report of satisfactory completion has been issued. § 1094.26 authorizes the Director to take corrective actions as appropriate if work was not completed in accordance with the Board's rules and regulations or the provisions of the approved WFMP as determined by the completion inspection for a Working Forest Harvest Notice. These two provisions prevent the WFMP being cancelled while there are any outstanding obligations held by the Working Forest Landowner. The Board determined that no further notification or regulatory standards were necessary, other than written notice to the Department, to cancel participation in a voluntary regulatory program.

Rule Text Edit: No.

W17-20: Rob DiPerna, EPIC (dated April 7, 2014)
Subsection (a) of section 1094.28 adopts the language of AB 904 Section 4597.16. Just as regulations are needed to define a process for landowner cancellation, so too regulations are needed to define what standards and process CalFire may use to cancel a WFMP. This process must include criteria to evaluate the WFMP in conjunction with the rigorous inventory standards and other objectives which the WFMP is intended to meet. Regulation is needed to provide standards to evaluate for satisfying these objectives, and to also ensure that if a WFMP is cancelled, whatever mitigation and protection measures required by the WFMP are fully satisfied, so that a landowner may not simply walk away from commitments which were incorporated to ensure the long-term benefits identified by the legislature.

Board Response: See response to comment W17-19.

The Board determined that the process provided for in 1094.29 (5 year review) are sufficient to determine if the landowner(s) are in compliance with the WFMP. Also, active inspections and completion inspections provide the Department, as well as other reviewing agencies, the ability to review operations under the WFMP.

Rule Text Edit: No.

W17-21: Rob DiPerna, EPIC (dated April 7, 2014)
Subsection (e) provides for a "statement" that no archaeological sites have been discovered in the harvest area since the approval of the WFMP. However, the WFMP contents outlined in Draft Regulation section 1094.6 make no reference to "archaeological sites," referring only to "cultural or historical resources." The current regulations do not define any of these three terms. Regulations are needed to clarify that the results of a search for "archaeological sites" must be documented in the WFMP.

Board Response: See response to comments W15-36 and S2-2, these comments provide some of the relevant information to constitute a response.

Cultural resources can be defined as physical evidence or place of past human activity: site, object, landscape, structure; or a site, structure, landscape, object or natural feature of significance to a group of people traditionally associated with it. This term is broader than, and encompasses, archaeological resources.

The legislative intent of the WFMP was to build upon the model provided by the NTMP [PRC §4597(a)(3)]. The Board found that aligning this provision with the language already included in 14 CCR § 1090.5(k) in the NTMP was appropriate and consistent with the intent of the legislature.

§ 1094.6(r) requires disclosure of cultural and historical resources and the protection methods to be used during timber operations to the multidisciplinary review team for evaluation during plan approval. § 1094.8(g) ensures that any new sites found since WFMP approval have been added to the WFMP through the minor deviation process identified by 14 CCR § 929.3 (949.3, 969.3). The Board has determined that in the context of all the FPRs pertaining to archaeological and historical resources, the provisions included in the WFMP will adequately prevent impacts to these resources during implementation of the WFMP.

Rule Text Edit: No.

W17-22: Rob DiPerna, EPIC (dated April 7, 2014)
Subsection (f) also provides for a "statement" that protected and listed species "have not been discovered," and specifies requirements for disclosure of documented occurrences of these species and development of take avoidance and mitigation measures if this information is not provided in the approved WFMP. It goes on to specify a requirement to report "documented occurrences of the species" as obtained from publically available sources, but does not require an actual search for these protected species within the WFMP area or the area proposed for operations.

Board Response: See response to comment W17-42.

Rule Text Edit: No.

W17-23: Rob DiPerna, EPIC (dated April 7, 2014)
These two subsections do not expressly require a plan area "search" or "survey," yet it is obvious that to make the required "statements" some search must have been done. Regulation is needed to clarify that an actual on-the-ground search for archaeological sites and these protected plant and animal species must be conducted and documented in the Notice. This search should be done within the proposed area of operations as well as

through the review of public and readily available sources of information, including management area review. Otherwise, the landowner may make the statement that the sites and/or species have not been discovered, without any search.

Board Response: See responses to comments W17-36 and W17-42.

Rule Text Edit: No.

W17-24: Rob DiPerna, EPIC (dated April 7, 2014)
Similarly, subsection (g) provides for a statement that "no physical environmental changes in the harvest area [ ] are so significant as to require any amendment" of the WFMP. Regulation is needed to clarify that an assessment and review of the land covered by the WFMP and proposed area of operation under the notice has been conducted to determine whether there are significant physical environmental changes which require a WFMP amendment.

Board Response: See response to comment W15-44.

Rule Text Edit: No.

W17-25: Rob DiPerna, EPIC (dated April 7, 2014)
Subsection (j) requires statement of "special provisions to protect unique areas within the area of timber operations," but as with previously noted subsections, fails to require the elemental step to actually determine if any "unique areas" are within the area of timber operations. A requirement to determine if unique areas exist must be included.

Board Response: The legislative intent of the WFMP was to build upon the model provided by the NTMP [PRC §4597(a)(3)]. The Board found that aligning this provision with the language already included in 14 CCR § 1090.5(w)(13) in the NTMP was appropriate and consistent with the intent of the legislature.

Development of a WFMP requires a thorough evaluation of the timberlands being considered for inclusion in the WFMP as well as consultation of numerous individuals, organizations and records to 1) provide information the Director needs to determine whether the proposed WFMP conforms to the Board rules and regulations; 2) to provide information and direction for timber management so it complies with the Board rules and regulations and the management objectives of the landowner(s); and 3) to disclose the potential effects of timber management to the public. Identification of unique areas, as defined in 14 CCR § 895.1 and required by § 1094.6(e)(14) and § 1094.8(k), requires the same level of effort by the RPF to fully provide the other information required to be in the WFMP.

It is incumbent upon the RPF to perform the necessary research and surveys to identify unique areas, as well as other resources that may be impacted, within the WFMP. Failure to do so may lead to denial of the WFMP application, cancellation of the WFMP if discovered after approval, or licensing action upon the RPF in accordance with the Professional Foresters Law (PRC § 750, et. seq.). Per PRC § 778(b), disciplinary action may be taken against a RPF that has been found guilty by the Board of any deceit, misrepresentation, fraud, material misstatement of fact, incompetence, or gross negligence in his or her practice.

Rule Text Edit: No.

W17-26: Rob DiPerna, EPIC (dated April 7, 2014)
Subsection (m) requires an update on erosion control mitigation measures "if conditions have changed." Regulation is needed to interpret and provide standards for what constitutes "changed" conditions.

Board Response: This comment is from a May 2014 draft of these regulations while they were under development in the Board's Management Committee. The provision subject to this comment is now § 1094.8(n).

Because the WFMP is a long term document, the Board included this provision allow for sites that have been treated since WFMP approval to be removed from the ECIP, and for newly discovered sites to be added to the ECIP. These changes can reflect management actions, natural events, or more focused surveys of the WFMP area prior to development of a WFHN. The Board further clarified this process with the inclusion of § 1094.23(e)(14), which states that changes to the erosion control implementation plan as a result of operations to implement the provisions of the approved erosion control implementation plan shall not be considered a substantial deviation. Updating, as required by § 1094.8(n), is the process by which new sites will be added to the ECIP for future monitoring. The WFHN and any amendments to the WFMP are public documents submitted to CAL FIRE, this process will also disclose the presence of any additional sites to the interagency review team and the public.

Also see response to comment W4-9.

Rule Text Edit: No.

W17-27: Rob DiPerna, EPIC (dated April 7, 2014)
Draft Regulation subsection 1094.8(n) appears to be simply repeating what is in the statute, requiring any other information the Board may require by regulation. This appears unnecessary.

Board Response: This comment is from a May 2014 draft of these regulations while they were under development in the Board's Management Committee. The regulatory language contained in the ISOR noticed May 1, 2015 does not contain the referenced provision. This provision was deleted based on public comment in Committee.

Rule Text Edit: No.

W17-28: Rob DiPerna, EPIC (dated April 7, 2014)
There is a second subsection "m" to Draft Regulation section 1094.8, on page 17, which appears to include some of the same requirements as for an NTMP. It is unclear, in the absence of effective regulation to ensure that the objectives of AB 904 will be implemented, to know whether some of these provisions and what they may allow in terms of operations are appropriate. We note that in the version we have reviewed, for subsection (m)(3)(2) there is a comment which reads "Delete regeneration methods to alleviate need to map unevenaged silviculture." We do not understand why such a deletion would be appropriate, as a prime objective of the WFMP is to achieve uneven aged timber stands, and thus mapping those stands would seem advantageous toward documenting compliance.

Board Response: This comment is from a May 2014 draft of these regulations while they were under development in the Board's Management Committee. The regulatory language contained in the ISOR noticed May 1, 2015 does not delete any regeneration methods and includes the same provisions required by the NTMP. The Board found that aligning this provision with the language already included in 14 CCR § 1090.7(n)(2) in the NTMP was appropriate and consistent with the intent of the legislature.

Rule Text Edit: No.

W17-29: Rob DiPerna, EPIC (dated April 7, 2014)

Subsection (a) provides that the director shall convene a "meeting with the interdisciplinary review team" to "review" the administrative record and other information to "verify" that operations have been conducted in accordance with the WFMP. A field inspection "may" be conducted if a review team member requests one. As with other provisions, this language contemplates, yet does not expressly state, that an actual review must be done to "determine" if the Director can "verify" compliance. Regulation is needed to clarify this.

Board Response: This comment is from a May 2014 draft of these regulations while they were under development in the Board's Management Committee. The regulatory language contained in the ISOR noticed May 1, 2015 contains substantial changes from this draft. The Board has found that the current language contained in § 1094.29 will ensure a five year review of the WFMP will occur and be an adequate safeguard against continued operations that may have a significant adverse effect on the environment.

Rule Text Edit: No.

W17-30: Rob DiPerna, EPIC (dated April 7, 2014)

Subsection (b) provides that the Board shall adopt regulations for the development of a "plan summary" before each five-year review, for the purpose of allowing the review team to analyze information, including the number of notices of timber operations, the acreage operated under each notice, the violations received, and the volume harvested in relation to the projections of harvest in the plan.

The Draft Regulations section 1094.26(b) adopt these provisions. Subsection (b)(1)-(4) provides additional information, but it poorly worded so that it is unclear under what circumstances this information is required. It is also unclear whether this information constitutes the "plan summary" required by AB 904 Section 4597.12. If for example subsection (b)(1) is information to be provided in all instances, it requires an RPF for the WFMP owner to certify compliance. How then is that to occur? There are no provisions outlining the timing and manner in which that is to occur. Subsection (b)(3) is similarly unclear and objectionable. How are violations "received?" Either they are a part of the record or not. What standards are to apply to determine whether "potentially significant impact to public trust resources may occur from continuance of the WFMP?" And what is the process by which Cal Fire may be presented with "a fair argument that a project may have a significant effect on the environment?**

Board Response: This comment is from a May 2014 draft of these regulations while they were under development in the Board's Management Committee. The regulatory language contained in the ISOR noticed May 1, 2015 contains substantial changes from this draft. The Board has found that the current language contained in § 1094.29 will ensure a five

year review of the WFMP will occur and be an adequate safeguard against continued operations that may have a significant adverse effect on the environment.

See response to comments W1-29, W1-30, W15-51 and W15-56.

Rule Text Edit: No.

W17-31: Rob DiPerna, EPIC (dated April 7, 2014)
AB 904 section 4597.12 subsection (c) provides for public notice of the five-year review and a copy of the plan summary, with the ability to provide additional information to the review team for the five-year review. Draft Regulations section 1094.26(c) adopts this language, without providing the necessary guidance as to how the public review can occur. The public is entitled to not only notice, but a defined period of time in which to review the plan summary and five-year review, particularly if the public wants to provide "a fair argument" as to significant effects on the environment and to public trust resources.

Board Response: See response to comments W1-29, W1-30 and W15-52.

Rule Text Edit: No.

W17-32: Rob DiPerna, EPIC (dated April 7, 2014)
The Board needs to develop clear provisions for the five-year review to adequately implement the statute, to provide (1) a defined process and content for the "plan summary", (2) a defined process for the five year review, which includes notice, scheduling, and agency and public access, (3) the standards which will be used to evaluate compliance with the WFMP as well as the legislative objectives such as uneven-aged management, added carbon sequestration, sustained production of timber and other forest products, aesthetics, maintenance of ecological systems and processes, etc., and (4) findings that are necessary to document the required "verification" required in Section 4597.

Board Response: This comment is from a May 2014 draft of these regulations while they were under development in the Board's Management Committee. The regulatory language contained in the ISOR noticed May 1, 2015 contains substantial changes from this draft. The Board has found that the current language contained in § 1094.29 will ensure a five year review of the WFMP will occur and be an adequate safeguard against continued operations that may have a significant adverse effect on the environment.

See response to comments W1-29, W1-30, and W15-51 through W15-56.

Rule Text Edit: No.

W17-33: Rob DiPerna, EPIC (dated April 7, 2014)
This section provides that if the RPF certifies that the written notice conforms to and meets the requirements of the WFMP, then operations may immediately commence. While Section 4597.14 provides for disciplinary action against an RPF who makes any material misstatement, we find no provision in AB 904 which prevents and remedies impacts from immediate operations which are inconsistent with the approved WFMP. Regulation is needed to specify that should it be determined that a notice is materially misleading, the director has the right to and must immediately stop operations and

proceed with Notice of Violation as provided in the FPR. The landowner as well as the RPF must be subject to discipline and held accountable.

Board Response: The Board determined that the provisions of the Registration of Professional Forester Rules (14 CCR § 1612.1), provisions of PRC § 4597.14, the potential for plan cancellation (§ 1094.31), and process for the Director to take corrective action (§ 1094.26) provide adequate safeguards against operations that are in violation of the approved WFMP or the FPRs.

See also response to comment W17-25.

Rule Text Edit: No.

W17-34: Rob DiPerna, EPIC (dated April 7, 2014)
This statute provides for a NTMP landowner to transition to a WFMP and requires the Board to adopt regulations to establish this amendment process. The Draft Regulations section 1094.29 appear to have not yet addressed this need. At this point, EPIC encourages the Board to draft regulation which clearly identifies how such a transition may occur, in a manner that ensures that the underlying NTMP provisions have been fully satisfied, and the rigorous standards imposed by the WFMP shall be incorporated.

Board Response: This comment is from a May 2014 draft of these regulations while they were under development in the Board's Management Committee. The Committee had not yet addressed the referenced provisions of statute. The regulatory language contained in the ISOR noticed May 1, 2015 contains substantial changes from this Committee draft. The regulations pertaining to the transition from an NTMP to a WFMP is provided in § 1094.32.

Rule Text Edit: No.

W17-35: Rob DiPerna, EPIC (dated April 7, 2014)
This provision allows a landowner submitting a WFMP to simultaneously seek a safe harbor agreement from the Department of Fish and Wildlife pursuant to the Fish and Game Code. The Draft Regulations adopt the statute's language. The Draft Regulations simply adopts the statutory language. In doing so, they fail to address how the review process for the WFMP shall proceed in conjunction with, or independent from, the application for a safe harbor agreement. Clarity as to how these two application processes may proceed, and/or coincide, should be provided.

Board Response: The Board does not control the review process for permits under other agencies jurisdiction. Similar to the review process for California Department of Fish and Wildlife (DFW) 1600 permits, the WFMP may be used at DFW's discretion to meet the CEQA review requirements for a safe harbor agreement. This will not impact the review process for the WFMP.

Rule Text Edit: No.

W17-36: Rob DiPerna, EPIC (dated April 7, 2014)
This section specifies that a state restoration grant application may not be summarily denied on the basis that the proposed restoration project is a condition of the harvesting plan. The Draft Regulations simply adopt the statute's language, failing to deal with some ambiguity. The term "harvesting plan" is not used in any other section of the Draft Regulations, so it is unclear what this references.

Board Response: The Board considered public comment on this issue and deferred to the legislative statute. The comment fails to mention the introduction of this sentence which states: Notwithstanding any other law, if a person with a WFMP applies for state restoration grant funding… The Board found this makes clear that the reference to harvesting plan pertains to an approved WFMP.

Rule Text Edit: No.

W17-37: Rob DiPerna, EPIC (dated April 7, 2014)
The introduction which provides for equivalency of the term THP, timber harvesting plan, or word plan to the WFMP does not ensure that key information requirements and particularly the obligation to provide a cumulative effects assessment will be satisfied. Refinement is needed to ensure that at a minimum, key information requirements that are necessary to evaluate the WFMP are included. This can occur here or in the WFMP Contents regulation, at § 1094.6.

Board Response: Pursuant to § 1094, where the abbreviation THP, the term Timber Harvesting Plan, or the word "plan" is used in Chapter 4, Subchapters 1 through 6 and Chapter 4.5 it shall also mean Working Forest Management Plan as specified in PRC § 4597 et seq. In Subchapter 7 this equivalency will occur for all sections except 1032.7 through 1042 that are not referenced in this Article, or as otherwise specified. This provision does ensure that key information requirements and particularly the obligation to provide the cumulative effects assessment will be satisfied.

Rule Text Edit: No.

W17-38: Rob DiPerna, EPIC (dated April 7, 2014)
The statute defines "late succession forest stand" as "stands of dominant and predominant trees that meet the criteria of the California Wildlife Habitat Relationships System class 5D, 5M, or 6 with an open, moderate, or dense canopy closure classification, often with multiple canopy layers, and are at least 10 acres in size. Functional characteristics of late succession forest stands include large decadent trees, snags, and large down logs." AB 904, § 4597.2(g)(3). In addition, AB 904 provides that "[n]othing in this requirement shall be interpreted to preclude active management on any given acre of an approved plan if the management is conducted in a manner that maintains or enhances the overall acreage of late succession forest stands that existed in the plan area upon initial plan approval ." AB 904, §4597.(g)(1). EPIC recommends that the Board take notice of the Legislature's recognition that late succession forest stands can be much smaller than the current 20-acre limitation, to as little as one acre. Given this recognition by the Legislature that acreage of at least 10 acres--- or as small as 1 acre – qualify as late succession forest stands, EPIC recommends that the Board adopt a definition which permits late succession forest stands one acre or larger, This is consistent with current Department Policy.

Board Response: It is not clear from the comment where the suggested one acre size constraint for Late Succession Forest Stands comes from or why it would be more appropriate than the adopted 10 acre definition provided in PRC § 4597.2(g)(3) and adopted by the Board. The Board considered the public comment and declined to adopt additional definitions, but rather included all legislative statute related to late succession forest stands in § 1094.2(b), § 1094.6(e)(13), and § 1094.6(l).

Rule Text Edit: No.

W17-39: Rob DiPerna, EPIC (dated April 7, 2014)
In addition, EPIC suggests that the Board apply the new definition of "late successional forest stands" across the board by amending the definition of "late sucessional forest" currently contained in 14 CCR 895.1 to reflect a change from the minimum 20 acres down to the one acre or more in order to ensure consistency of identification, and application of this definition across all ownerships and as a part of all timber harvest planning documents.

Board Response: This comment is irrelevant.

Rule Text Edit: No.

W17-40: Rob DiPerna, EPIC (dated April 7, 2014)
"Long-term sustained yield" for the WFMP should incorporate the objective and standard of "uneven-aged management" such that the planning horizon for an "un-evenaged forest encompassed by the WFMP has reached a balance between growth and yield.

Board Response: This comment is from a May 2014 draft of these regulations while they were under development in the Board's Management Committee. The regulatory language contained in the ISOR noticed May 1, 2015 contains substantial changes from this cCommittee draft.

See response to comments W15-11, W15-25, and W16-43.

Rule Text Edit: No.

W17-41: Rob DiPerna, EPIC (dated April 7, 2014)
The intent language provided in this section needs to be expanded to reference that the WFMP is for non-industrial landowners, and it should include the objectives set forth in Public Resources Code Section 4597(a)(5).

Board Response: See response to comment W15-6 and W15-10.

The Definition of Working Forest Landowner includes a clause that the timberland owner is not primarily engaged in the manufacture of forest products. The Board finds that this provision will limit WFMP participation to non-industrial landowners, similar to how PRC § 4593.2(b) limits participation in the NTMP to non-industrial landowners.

Rule Text Edit: No.

W17-42: Rob DiPerna, EPIC (dated April 7, 2014)
In addition to comments concerning subsections of 1094.6 addressed above, EPIC suggests that the preliminary statement, which is patterned after the NTMP regulation at 14 CCR 1090.5, is too limiting. The WFMP should serve not only the functions as outlined, but the express function of developing an uneven-aged forest which ensures long-term benefits such as added carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, and the maintenance of ecosystem processes and services.

Board Response: The WFMP is designed to build on the success of the NTMP. NTMPs have been successful by encouraging prudent and responsible forest management and discouraging accelerated timberland conversion by private nonindustrial forest landowners. Building upon the NTMP model, it is the policy of the state to encourage long-term planning, increased productivity of timberland, and the conservation of open space on a greater number of nonindustrial working forest ownerships and acreages. Increased productivity of timberland and benefits to the environment are not exclusively achieved by stocking standards. Making the NTMP model, with additional environmental protection measures, available to more landowners through the use of the WFMP will increase carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, and the maintenance of ecosystem processes and services.

These benefits accrue not from the WFMP itself, but by implementation of an approved WFMP over time. The Board considered the public comment and declined to adopt additional comments into the preliminary statement of § 1094.6.

Rule Text Edit: No.

W17-43: Rob DiPerna, EPIC (dated April 7, 2014)
This section needs better definition and precision, particularly as to the phrase in the last sentence which permits “compliance with similar requirements of other applicable provisions of law.” This is very vague and ambiguous, and needs specificity.

Board Response: See response to comment W15-32.

Rule Text Edit: No.

W17-44: Rob DiPerna, EPIC (dated April 7, 2014)
This section uses an undefined phrase – “a constraint of no net loss.” This needs definition so that it can be an enforceable standard.

Board Response: Terms not specifically defined in the rules retain their plain meaning. Constraint means a limitation or restriction, and net refers to the amount of something after all deductions are made. Taken as a whole, this statement is interpreted to mean that management of Late Succession Forest Stands will not cause a reduction in the total acreage of Late Succession Forest Stands within the WFMP, rather management activities must maintain constant acreage, or increase the acreage of these stands. This public comment was discussed, it was determined by the Board that the existing text was clear enough for landowners to implement, the Department to enforce, and the public to understand.

Rule Text Edit: No.

W17-45: Rob DiPerna, EPIC (dated April 7, 2014)
This subsection illustrates well the issue concerning the need for a "LTSY plan," as it expressly refers to the "LTSY plan," yet as discussed above, the regulations do not require a "LTSY plan." The regulations should require an LTSY plan.

Board Response: See response comments to W15-11, W15-15, and W17-9.

Rule Text Edit: No.

W17-46: Rob DiPerna, EPIC (dated April 7, 2014)
This subsection appears to permit a reduction in LTSY, provided certain resources (protected species, species habitat, and constraints no timber management) are "addressed." EPIC objects to this provision, as written, as it appears to permit reduction in overall canopy and age classes. The subsections (A), (B) and (c) are also all unclear to the extent they require the WFMP to "address" the identified resources and issue, as it the term "address" is too vague and without criteria to gauge whether the information to be presented may be adequate. Stricter standards are required to ensure that any such reduction in LTSY must be limited, so as to prevent disregard for the core objectives of a WFMP.

Board Response: See response to comment W15-34.

Rule Text Edit: No.

W17-47: Rob DiPerna, EPIC (dated April 7, 2014)
One of the ongoing concerns in private land forestry is the lack of disclosure and inspection of the entirety of a plan area. This subsection should be amended to require that the certification attests to personal inspection of "all of the plan area.**

Board Response: This comment is from a May 2014 draft of these regulations while they were under development in the Board's Management Committee. This provision is currently in § 1094.6(p).

The WFMP would be added to the definition of Plan in 14 CCR § 895.1 in this regulation. The referenced plan area is then inclusive of the entire WFMP. The Board considered this public comment and determined that the suggested language would be redundant.

See response to comment W17-25.

Rule Text Edit: No.

W17-48: Rob DiPerna, EPIC (dated April 7, 2014)
This subsection appears unnecessary.

Board Response: This comment is from a May 2014 draft of these regulations while they were under development in the Board's Management Committee. This provision is currently in § 1094.6(s). This provision is also contained within the NTMP in 14 CCR § 1090.5(l). The Board found that aligning this disclosure with that provided in the NTMP was appropriate and consistent with the intent of the legislature.

Rule Text Edit: No.

W17-49: Rob DiPerna, EPIC (dated April 7, 2014)
As referenced above, the Draft Regulations need to include an express required that a cumulative impacts analysis is required.

Board Response: See response to comment W15-37, this comment is or contains substantially the same comment and provides the relevant information to constitute a response.

Rule Text Edit: No.

W17-50: Rob DiPerna, EPIC (dated April 7, 2014)
It is unclear to EPIC why a provision would be included to exempt corporations from the duty to file a notification of change in responsibilities or substitution of an RPF "because the RPF of record on each document is the responsible person." This makes no sense, as the RPF of record is always a responsible person, subject to significant license requirements. A corporation is no different than a person under the code, Public Resources Code Section 4525, and should be treated no differently when it comes to notifying the Department of changes of the RPF for WFMP implementation.

Board Response: This comment is from a May 2014 draft of these regulations while they were under development in the Board's Management Committee. The Board considered this comment and made appropriate changes to § 1094.10 in Committee. The regulatory language contained in the ISOR noticed May 1, 2015 does not contain the provision referenced in this comment.

Rule Text Edit: No.

W17-51: Rob DiPerna, EPIC (dated April 7, 2014)
This subsection refers to "attainment of the resource conservation standards of the WFMP." As discussed above, the Draft Regulations do not identify requirements for or specifics of "resource conservation standards" for any given WFMP. Thus, this terminology is meaningless. Draft Regulation section 1094.6 must include express resource conservation standards.

Board Response: Resource Conservation Standards is a defined term in 14 CCR § 895.1 meaning the minimum acceptable condition resulting from timber operations. This is then further clarified in 14 CCR § 912.7 (932.7, 952.7) and by silvicultural system in 913 (933, 953 et. seq.). These provisions of the FPRs are applicable to the WFMP.

The WFMP discloses the: location of boundaries of timber-site classes needed for determination of stocking standards to be applied [§ 1094.6(e)(10)]; silvicultural methods to be applied [§ 1094.6(i)]; and a description of how the site preparation standards and stocking standards will be met [1094.6(v)]. This information is sufficient to determine the stocking standards that will be applied to operations under the WFMP. The exact locations these standards will be applied is further clarified in the WFHN by provision § 1094.8(u)(2), which requires mapping of the boundaries of area(s) for specified regeneration methods, intermediate treatments, special harvesting methods, and alternative prescriptions to be applied.

Rule Text Edit: No.

W17-52: Rob DiPerna, EPIC (dated April 7, 2014)
To illustrate this need, we note that while section 1094.17 provides for posting of the WFMP, and circulation to other public agencies, it says nothing about a review process for the general public. That is found in section 1094.18(a)-(c). These provisions should be in the same regulation.

Board Response: See response to W17-58.

Rule Text Edit: No.

W17-53: Rob DiPerna, EPIC (dated April 7, 2014)
With respect to introduction to section 1094.17, the placement of the proposed plan is provided as either in a location OR on an internet Web site. The proposed plan should be available BOTH in a location and on an internet Web site.

Board Response: During early rule development the Board considered the comment and did not change make any changes. The notice of WFMP filing will be posted both in the office of the County Clerk in which operations are proposed and on a publically available internet database [§ 1094.15(b)]. The notice of filing contains basic information about the WFMP and where a copy of the WFMP may be reviewed [§ 1094.3(d)]. The Board found that providing the Department the option to post the WFMP either in the county in which operations were proposed or on a publically available internet database offered adequate opportunity for the public to view or obtain a copy of the WFMP. Also see response to comment W17-54.

Rule Text Edit: No.

W17-54: Rob DiPerna, EPIC (dated April 7, 2014)
Section 1094.17(a) permits the Department to "bill such persons," but it is entirely unclear what "persons" are referenced here. This appears to be a consequence of cutting and pasting from the NTMP regulations, and the deletion in the Draft Regulations of the provision that the Department shall transmit a copy of any specific plan to any person who has made a written request for it. EPIC believes that this subsection needs to be reinserted.

Board Response: This comment is from a May 2014 draft of these regulations while they were under development in the Board's Management Committee. During early rule development the Board reviewed this comment and inserted appropriate changes in Committee. The regulatory language contained in the ISOR noticed May 1, 2015 includes the referenced provision as § 1094.16(b).

Rule Text Edit: No.

W17-55: Rob DiPerna, EPIC (dated April 7, 2014)
The provisions of section 1094.18(a)-(c) should be placed in section 1094.17, as provisions identifying "agency and public review for the WFMP." Additional language is needed to identify the manner and format in which the public may provide comments.

Board Response: See response to comment W17-58.

Rule Text Edit: No.

W17-56: Rob DiPerna, EPIC (dated April 7, 2014)
The Draft Regulations adopt AB 904 Section 4587.6(a) process for public review. Section 1094.18 (d) identifies what is needed for approval. While technically this is part of the Director's determination, it is clearly part of the review process. It is unfortunate that the Draft Regulations simply adopt the structure of AB 904 Section 4587.6, rather than organize the regulations to deal first with the review process, and second with the decision process. Additionally, Section 4587.6(a) does not provide a provision to determine "completion of final interagency review of the plan." This provision is adopted in Draft Regulations subsection 1094.18(d)(4). A provision is needed to define what constitutes "completion of final interagency review of the plan." The Board should address this through regulation.

Board Response: See response to comment W17-58.

Rule Text Edit: No.

W17-57: Rob DiPerna, EPIC (dated April 7, 2014)
Draft Regulations section 1094.18(e) - (h) effectively provides a right of appeal to a landowner in the event the Director finds the WFMP is not in conformance with the rules. As discussed above, the Draft Regulations need to clarify the process as an "appeal" process, and provide appropriate procedures to document decision-making.

Board Response: See response to comment W17-58.

Rule Text Edit: No.

W17-58: Rob DiPerna, EPIC (dated April 7, 2014)
This section appears to be a copy of the NTMP regulation 14 CCR 1090.20, and by reference to 14 CCR § 1054, appears to introduce conflicting provisions from those set forth in Draft Regulations section 1094.18. Careful review is needed to determine whether this section should be included.

Board Response: This comment is from a May 2014 draft of these regulations while they were under development in the Board's Management Committee. The regulatory language contained in the ISOR noticed May 1, 2015 contains substantial changes from this draft.

During early rule development, based on public comment, significant revisions were made to § 1094.16, § 1094.17 and § 1094.18 in Committee to address public and agency comments, including this comment. Revisions were made to agency review periods, public review periods, the conduct of review, review teams and the appeal process.

Rule Text Edit: No.

SPEAKER COMMENTS AND RESPONSES RESULTING FROM PUBLIC HEARING CONDUCTED JUNE 17, 2015

S1-1: Bill Solinsky, CAL FIRE
Re-iterate and support comments provided in letter.

Board Response: See response to comments W6-1 through W6-9 above.

Rule Text Edit: No.

S1-2: Bill Solinsky, CAL FIRE
Expressed support for § 1094.6(j) Option 1.

Board Response: See response to comment W1-15.

Rule Text Edit: No.

S1-3: Bill Solinsky, CAL FIRE
The Department has experienced some difficulty regarding the sale or transfer of property within an NTMP. The intent of the suggested changes in comment #3 is to prevent the sale or transfer of an entire stand or strata to another party.

Board Response: This issue is already addressed in the proposed regulations. § 1094.6(e)(1) requires the boundaries of a WFMP Management Unit to not exceed a single ownership. §1094.6(n)(1) requires growth and yield estimates be provided for each Management Unit. Also see response to comment W6-3.

Rule Text Edit: No.

S2-1: Bill Short, California Geological Survey
Re-iterate and support comments provided in letter.

Board Response: See response to comments W12-1 through W12-3.

Rule Text Edit: No.

S2-2: Bill Short, California Geological Survey
March 2 letter concerned that draft did not incorporate all the provisions of the 2015 road rule package. Current letter echoes that concern and provides some additional detail. Incorporation of road rules is not explicitly stated but may be included based on interpretation.

Board Response: The road rules (14 CCR § 923, 943, 963, et. seq.) do apply to the WFMP. The road rule package included the addition of 14 CCR § 1090.5(w)(4)(A-E) to the NTMP. These same requirements were also adopted in the WFMP as § 1094.6(e)(4)(A-E). The addition of the WFMP to the definition of Plan in 14 CCR § 895.1 and inclusion of the statement of rule application in § 1094 plainly states that regulations applicable to Plans are also applicable to the WFMP. An explicit statement of road rule

application was considered in the Committee meetings and workshops during development of the WFMP. It was decided to exclude this language as it would not provide clarity to which rules applied to the WFMP.

The Forest Practice Rules have a high level of interconnectedness and no single regulation by itself can fully address the complex set of resources that may be impacted by timber operations. Each regulation needs to be looked at in the context of the other rule sections that apply. Just as the rules pertaining to archaeological resources, watercourse and lake protection zones, and cumulative impacts apply to the WFMP even though they are not explicitly identified in the WFMP regulations, so too do the road rules.

Rule Text Edit: No.

S2-3: Bill Short, California Geological Survey
Page 10. line 17 – 19, only the provisions that apply are listed subsequently under the WFMP. This introduces confusion or it excludes requirements not explicitly stated from the WFMP.

Board Response: See response to comment W12-1.

Rule Text Edit: No.

S3-1: Dave Fowler, North Coast Regional Water Quality Control Board
Re-iterate and support comments provided in letter.

Board Response: See response to comments W9-1 through W9-10.

Rule Text Edit: No.

S3-2: Dave Fowler, North Coast Regional Water Quality Control Board
Oppose Option 1 – already there, does not add anything to the rule package. Road inventories address only roads and landings and not other items included in AB 904.

Board Response: See response to comment W1-26.

Rule Text Edit: No.

S3-3: Dave Fowler, North Coast Regional Water Quality Control Board
Conditionally support Option 2.

a. The intent of AB 904 included in 4597(e) states that this article shall be implemented in manner that complies with applicable laws … including Porter Cologne, which recognize threatened and potential discharges as being equivalent to current and active discharges. Significant sediment discharge is defined and includes potential discharges. The Board introduces the term active erosion sites, which is not defined and does not include the limitations of the closely related defined term active and potential erosion sites.
b. I have been asked what the statement in compliance with similar requirements of other applicable provisions of the law means. It appears to mean that if you are doing an Erosion Control Plan for another entity it

applies here too. This would be clearer if it stated what it means more directly.

Board Response: See response to comments W1-1, W1-15, and W2-7.

Rule Text Edit: No.

S3-4: Dave Fowler, North Coast Regional Water Quality Control Board
We support the items that CGS brought forward. The list of items from NTMP section does not include the newest and best list that has been incorporated in the road rules.

Board Response: See response to comments W12-1 and S2-2.

Rule Text Edit: No.

S4-1: Bill Condon, California Department of Fish and Wildlife
Within 1094.23(c)(9) substantial deviations – Logging was inserted before roads during committee. It would be more appropriate for logging to be struck from this provision. Logging roads do not include public roads as defined in 895.1, use of a different public road than that included in the plan could have a bearing on the species that may be impacted. This change could also have implications in terms of public safety, traffic, noise, etc.

Board Response: The word logging was inserted prior to roads in this provision to harmonize this with the road rules (14 CCR § 923 [943, 963] et. seq.), which apply to Logging Roads, a defined term in 14 CCR § 895.1. The Public Roads proposed for use in the WFMP are considered in the cumulative impacts analysis when studying the vehicular traffic impacts within the cumulative impact analysis (See Technical Rule Addendum #2, Item F). Santa Clara County [14 CCR § 925.4(d)], Marin County [14 CCR § 927.2(d)], and Monterey County (14 CCR § 965.1) establish a presumption that changing the haul route on Public Roads is a substantial deviation in those counties. The Board has not found that a change in Public Roads to be used arises to the level of a substantial deviation in other areas of the state. WFMPs would be subject to any specific county rules contained within the Forest Practice Rules.

The Board made specific the definitions for substantial and minor deviations for the WFMP Program relative to the definitions provided in the existing Forest Practice Rules in 14 CCR § 895.1, the definitions for minor and substantial deviations as provided in §§ 1094.23 and 1094.24 supersede the definitions for minor and substantial deviations as provided in 14 CCR § 895.1. The Board deemed that limiting roads, relative to the definition in 14 CCR § 895.1, to logging roads was commensurate with the increased specificity, relative to the definition in 14 CCR § 895.1, for the key habitat (state or federally listed threatened, candidate, and endangered species; rare plants; Sensitive Species pursuant to 14 CCR § 895.1; and species that meet the criteria under 14 CCR § 15380(d)). The Board, in making this specific, balanced resource protection with the burden to the project proponent.

This comment does not include any specific information on the impacts that may occur by using alternate Public Roads than those proposed in the WFMP that would indicate this action should be considered a substantial deviation from the approved plan.

Rule Text Edit: No.

S5-1: Matt Greene
Would like the Effectiveness Monitoring Committee or the Full Board to evaluate the use of the WFMP in 5 years to see if this has become overly burdened with costs and is not used. Also evaluate the re-inclusion of the Southern Subdistrict of the Coast Forest District at that time.

Board Response: This comment is outside the scope of this current rulemaking. The Board has considered this comment and will consider the request action in the future.

Rule Text Edit: No.

S5-2: Matt Greene
Option 2 is consistent with the legislative intent.

Board Response: The Board has adopted §1094.6(j) Option 2 in the final regulatory language.

Rule Text Edit: No.

S6-1: Ed Struffenegger, California Forestry Association
Support with inclusion of Option #2, which meets the intent behind the statute.

Board Response: The Board has adopted §1094.6(j) Option 2 in the final regulatory language.

Rule Text Edit: No.

S7-1: Rob DiPerna, Environmental Protection Information Center
Rule package not ready for prime time. There are still APA and CEQA issues that are not adequately addressed. Government regulations need to be right prior to being sent out.

Board Response: This comment does not identify specific APA or CEQA issues that are inadequately addressed. The Board is not aware of any regulations or statutes that are in conflict or are inconsistent with the WFMP.

The Environmental Protection Information Center has also submitted four comment letters in response to 45-Day and 15-Day Notices. Please see response to comments W15-1 through W17-58 and W18-1 through W18-13.

Rule Text Edit: No.

S7-2: Rob DiPerna, Environmental Protection Information Center
CAL FIRE has identified 81 landowners that may enroll in a WFMP, that is a lot of acres. Need to make sure that environmental impacts are adequately mitigated. We don't think they are.

Board Response: This comment is not specific, it is not clear what the specific environmental impacts are not adequately mitigated. The Board is not aware of any regulations or statutes that are in conflict or are inconsistent with the WFMP. See response to comment W15-2.

Rule Text Edit: No.

S8-1: Mike Tadlock, Campbell Global
Support the WFMP, it will support the infrastructure of the state to manage timberlands.

Board Response: Thank you, your support has been noted.

Rule Text Edit: No.

S9-1: Richard Gienger
Implementation of 916.4 is uneven and often inadequate in THPs, WFMP should identify how 916.4 will be implemented in this Plan. Need more specific information on what this Plan is going to look like.

Board Response: This comment is not specific in how the implementation of 14 CCR § 916.4 is uneven or inadequate. The Board is not aware of any deficiencies in the implementation of 14 CCR § 916.4. This regulation would apply to the WFMP and all operations that are conducted pursuant to an approved WFMP.

Rule Text Edit: No.

S9-2: Richard Gienger
The WFMP should have higher basal area leave requirements by 3rd entry (suggest 150 sq. ft.) in exchange for a forever permit.

Board Response: The legislative intent of the WFMP was to build upon the model provided by the NTMP [PRC §4597(a)(3)]. In deference to this intent, the Board has adopted the stocking standards and requirements for the objective of uneven aged management into the WFMP.

See response to comments W1-4, W6-2, and W15-6 for further discussion on the inventory requirements in the WFMP, and response to comment W10-1 for a discussion of the management of Late Successional Forest Stands.

Rule Text Edit: No.

S10-1: Clayton Code, California Licensed Foresters Association
Support option 2.

Board Response: The Board has adopted §1094.6(j) Option 2 in the final regulatory language.

Rule Text Edit: No.

S11-1: Larry Camp, Forest Landowners of California
Support rule package as is with option 2 as it is written. Legislative history of this provision specifically restricted Option 2 from containing all the provisions of the road rules.

Board Response: The Board has adopted §1094.6(j) Option 2 in the final regulatory language.

Rule Text Edit: No.

S11-2: Larry Camp, Forest Landowners of California
CAL FIRE and CGS proposed changes, specifically the growth and yield data, would impose real costs to landowners. CAL FIRE has the authority to cancel a WFMP that does not meet growth and yield standards.

Board Response: The Board hopes that it has struck an appropriate balance between providing adequate information to the review team and public to review the WFMP and ensure that LTSY and the objectives of unevenaged management are being met, while not unduly burdening landowners with unnecessary costs to prove they are compliant with the growth and yield provisions of these regulations.

Rule Text Edit: No.

S11-3: Larry Camp, Forest Landowners of California
Statute requires regulations to be adopted by January 1, 2016, you are up against the wire.

Board Response: The Board is aware of the statutory deadline and has held a number of committee meetings and focused workshops to develop these regulations with input from effected agencies, the regulated community, and members of the public to be able to notice and adopt these regulations in a timely manner.

Rule Text Edit: No.

W18-1: Rob DiPerna, Environmental Protection Information Center (EPIC), and Alan Levine, Coast Action Group (CAG)

EPIC and CAG believe the legal process now being undertaken by the Board staff to add documentation and information to the rulemaking file is not authorized by law. The rulemaking record needed to be in place and intact at the time the Board adopted the WFMP regulations on June 17, 2015. Accordingly, EPIC and CAG see this maneuver by Board staff as an attempt to introduce after-the-fact information to support the Board's June 17, 2015. This is not allowed, and the attempt now by Board staff to "provide corrected, more complete, and additional information to the WFMP Initial Statement of Reasons (ISOR)" is illegitimate. The law is clear that a state agency may not add material to the record of the rulemaking proceeding after close of the public hearing or comment period unless the agency complies with Government Code section

Gov't Code § 11346.8 (d). Section 11347.1, by its very terms, contemplates that any effort to add documents to the rulemaking file occurs prior to adoption of the proposed regulations. The WFMP regulations were adopted on June 17, 2015, and this post-adoption attempt by staff to bolster the rulemaking file with additional documents and rationale violates these provisions, as well as the Board's rulemaking procedures and the California Environmental Quality Act (CEQA).

Board Response: The necessity for each provision of the WFMP, number of timberland owners eligible to apply for a WFMP, additional document relied upon, and the evidence relied upon to support the initial determination that the proposed action will not have a significant adverse impact on business is not new and was not unknown to the Board or the general public prior to inclusion in the Supplemental Statement of Reasons (SSOR). These documents and information were discussed in a public format during Management Committee meetings during the development of the regulatory language that the Board noticed on May 1, 2015. Inclusion of this information in the SSOR corrects the rulemaking record to reflect that this information was considered and more fully describes to the public the necessity of each regulation that was included in the final rulemaking language.

Furthermore, the Board discussed the SSOR and comments received in response to the SSOR in a public venue, including a public comment period, at their regularly scheduled Board meeting on October 1, 2015 and determined that no further action was needed.

Rule Text Edit: No.

W18-2: Rob DiPerna, EPIC, and Alan Levine, CAG

Government Code section 11346.2 (b)(1) requires that the specific statement of purpose and reasonable necessity be included in the ISOR. "Necessity" is defined to mean that the rulemaking record "demonstrates by substantial evidence the need for the regulation to effectuate the purpose of the statute ... or other provision of law that the regulation implements, interprets or makes specific, taking into account the totality of the record." Gov't Code §11349 (a). The ISOR did not provide adequate statements of necessity and purpose, and the rulemaking file in place on June 17, 2015 does not satisfy the substantial evidence standard to support the regulations. The attempt to bolster the record by "augment[ing]" the necessity statements does not overcome this failure. Moreover, the SSOR statements of necessity – or "specific purpose" – for each regulation lack

substantial evidence, and in many instances, are not supported by the actual language of the provision they are intended to support. Our comments on specific provisions are detailed in Attachment A, which is included with this letter and incorporated by reference herein.

Board Response: The Board became aware that the necessity statements included in the ISOR documented the specific purpose of each provision but inadequately document their necessity. The augmentation of the necessity statements included in the SSOR addressed this issue. This change was deemed to be sufficiently related to the original proposal and was put out to the public for a 15-day comment period.

This information was not unknown to the Board prior to their June 17 adoption of these regulations and no changes to the regulations were deemed necessary in response to comment from this SSOR. See response to comment W18-1.

The comments included in Attachment A are addressed below.

Rule Text Edit: No.

W18-3: Rob DiPerna, EPIC, and Alan Levine, CAG

It is critical to know the number of timberland owners that may be eligible for the benefits of a WFMP, as the number of private timberlands owners who may then reap the benefit of these perpetual logging management plans can have multiple and varying impacts which remain unexamined. It is not sufficient to "assume" the estimated number of timberland owners that may benefit from the WFMP. Yet that is exactly what the Board did before it adopted the WFMP regulations in June 2015. At that time, the estimated number of landowners was 81, which was based on a "preliminary report" from January 2013. That report does not constitute substantial evidence, as it is devoid of any actual data. EPIC attempted to secure the supporting data so that it could be reviewed in advance of the Board's adoption in June 2015. EPIC was denied that information and was advised that the information was not even available to the Board. While EPIC later secured this information, it was not provided to EPIC until after the Board's adoption of the regulations. Moreover, the January 2013 report focused only on landowners with ownerships between 2,500 acres and 15,000 acres, thereby ignoring a number of landowners with less than 2,500 acres who would be eligible to file a WFMP. And, reliance on the preliminary report did not provide a sufficient methodology by which to "estimate" the number of landowners. In addition to lacking actual evidence, the preliminary report as well as the ISOR failed to consider the number of landowners which could combine to file a joint WFMP.

Now the SSOR revises staff's estimate of forestland owners with ownerships between 2,500 and 15,000 acres that are eligible for a WFMP to 67, to eliminate ownerships which exist within the Southern Subdistrict of the Coast Forest District, which are specifically excluded by statute from WFMP eligibility.

Board Response: This information was used as the best available data on which to estimate the number of WFMPs that may be filed to perform an economic analysis of the proposed regulations. This data was not used to evaluate the ecological impacts of the WFMP.

Individual properties will be evaluated once a WFMP is applied for. The regulation is assumed to be available to every acre in California besides the Southern Subdistrict of the

Coast Forest District.

See response to comments W5-9 and W15-2.

Rule Text Edit: No.

W18-4: Rob DiPerna, EPIC, and Alan Levine, CAG
However, the SSOR does not effectively address the other scenarios – which include ownerships of less than 2,500 acres and the number of ownerships which could combine to file a joint WFMP. The ISOR having ignored this issue, the SSOR now concedes, "[t]his would add an unknown number of landowners that would be eligible to apply for a WFMP." The SSOR fails to then provide any information as to what might be the number of landowners, and instead is silent on this very significant issue.

Board Response: This scenario was discussed extensively during rule development and is now disclosed in the SSOR. No data exists to determine the number of property owners that would voluntarily file a joint WFMP. The comment does not identify any sources that would provide a reasonable estimate of this number. As indicated in response to comment S18-3, the regulation is assumed to be available to every acre in California besides the Southern Subdistrict of the Coast Forest District.

See response to comments W5-9 and W15-2 for more information on this issue.

Rule Text Edit: No.

W18-5: Rob DiPerna, EPIC, and Alan Levine, CAG
There is nothing in the adopted WFMP regulations which limits multiple landowners to submission of only one annual joint WFHN. This means, at a minimum, that there can be as many WFHN's in any "given year" as there are working forest landowners. Moreover, the adopted regulations do not define what is meant by "any given year," so multiple notices could be staggered throughout a calendar year.

The ISOR and the SSOR fail to address these scenarios, which carry potentially significant adverse impacts on the environment, timberland productivity, and business.

Board Response: This comment is on the text of the regulation and not relevant to the material subject to comment in the SSOR.

See response to comment W15-47 for a discussion of this issue.

Rule Text Edit: No.

W18-6: Rob DiPerna, EPIC, and Alan Levine, CAG
With the various different scenarios which may unfold in light of the lack of clarity and standards in the regulations – e.g., different landowners, different land histories and conditions, different management objectives, possibly different Registered Professional Foresters and/or Licensed Timber Operators, multiple WFHN's – it is inconceivable that, based on the regulations adopted by the Board in June, 2015, the Department will be able to assess compliance with the WFMP and satisfaction of unevenaged management and sustained yield objectives. It cannot be done, and any attempt now to bolster the record to address information deficiencies must fail.

EPIC and CAG contend that the Legislature specifically intended that a WFMP would be for one ownership, not multiple ownerships. The adopted regulations, as well as this SSOR, are contrary to this intent.

Board Response: This comment is on the text of the regulation and not relevant to the material subject to comment in the SSOR.

Each of these issues has been discussed above in response to comments contained in letters submitted by EPIC and CAG independently on the ISOR.

Rule Text Edit: No.

W18-7: Rob DiPerna, EPIC, and Alan Levine, CAG
Government Code section 11346.2(b)(2) requires the ISOR to identify each technical document, study, report, etc. which the agency relies upon in "proposing" the regulations. As noted at the outset, any additional documents must be subject to review prior to adoption of the regulations. While the staff has provided a 15-Day Notice through issuance of the Supplemental Statement of Reasons, it does so long after-the-fact and without legitimate authority. There is no evidence that when the Board adopted the WFMP regulations on June 17, 2015, it considered the NTMP Expansion Study. There also is no evidence that the Board even considered the Davis treatise, which the SSOR now "strike[s]" as a document relied upon, as it was not in the rulemaking file at the time of adoption. The Board's action on June 17, 2015 was not supported by the evidence cited in the ISOR and was not supported by substantial evidence.

Board Response: See response to comment W18-1.

Rule Text Edit: No.

W18-8: Rob DiPerna, EPIC, and Alan Levine, CAG
Government Code section 11346.2(b)(5) requires the ISOR to provide the "facts, evidence, documents, testimony, or other evidence which the agency relies upon in making the initial determination that the proposed regulations will not have a significant adverse impact on business." See also Gov't Code § 11346.5(a)(8). The ISOR included a summary statement of the Board's reasoning as to why it concluded there would be no significant adverse economic impact on business. It was clearly inadequate as it failed to cite any evidence.

Board Response: This is a voluntary permit that will only impact businesses that choose, of their own volition, to enter into a WFMP. Because the permit is not in place, there is no evidence on which to base the Board's initial determination that the proposed action will not have a significant impact on business. Staff, and a number of Board members, do however have extensive experience interacting with the various timber harvesting permits that are currently available under the Forest Practice Rules and applied that experience to this determination. Additionally, the relative costs versus benefit of individual provisions was continually brought up by landowners and forest managers during the development of the WFMP. The Board made its initial determination based on this background that the proposed action will not have a significant impact on business.

Rule Text Edit: No.

W18-9: Rob DiPerna, EPIC, and Alan Levine, CAG
On June 26, 2015, Board staff solicited information from the general and regulated public "relat[ing] to the impacts to business and/or employees, the impacts to small businesses, the impacts related to jobs or occupations, and the impacts on individuals" from the WFMP regulations. A copy of this request is attached hereto as Attachment B and is incorporated by reference herein. As is obvious from this request, Board staff attempted to secure the evidence required to make the determination of no economic impact – evidence which the Board should have had in advance of the June 17, 2015 adoption. This too is an attempt to bolster the record after the fact, in violation of the Government Code and CEQA, as well as the Board's own regulations governing rulemaking.

Board Response: The referenced solicitation for information was distributed to the general and regulated public in an attempt to gather further information to complete the required Economic and Fiscal Impact Statement (STD 399) to be included in the rulemaking file. The Economic and Fiscal Impact Statement was not relied upon by the Board to make their initial determination that the proposed action will not have a significant impact on business as the commenter suggests. Nevertheless, the results of this outreach were presented to the Board in a public venue, including a public comment period, at their regularly scheduled Board meeting on October 1, 2015 and the Board determined that no further action was needed.

Rule Text Edit: No.

W18-10: Rob DiPerna, EPIC, and Alan Levine, CAG
Staff's attempt at this post-hoc rationalization must fail. It is not only untimely, but it is dramatically insufficient. Rather than identify actual evidence, the SSOR simply states that the opinion in the ISOR "was based on contemplation, by Board staff, of the economic impact of each provision of the proposed action and relies on decades of experience that Board staff has practicing forestry in California." This is not evidence. The so-called "decades of experience" has not been disclosed and circulated in a manner by which the public and other agencies could review and provide comment. This attempt is clearly designed to give credence to claimed expertise of the Board staff, without any substantial or other evidence to justify it.

Board Response: See response to comments W18-8 and W18-9.

Rule Text Edit: No.

W18-11: Rob DiPerna, EPIC, and Alan Levine, CAG
Moreover, Board staff did receive responses to its June 26, 2015 request for economic data, which it apparently has chosen to ignore. Both EPIC and CAG submitted comments. Presumably others did as well. Staff apparently made the decision to simply ignore and not disclose the information it specifically requested for the purpose of understanding the potential economic impact associated with the WFMP regulations as adopted by the Board on June 17, 2015.

Board Response: Comments from EPIC and CAG were received in response to the referenced solicitation for information. These comments have been considered by the Board in the development of the Economic and Fiscal Impact Statement (STD 399). These comments are not however relevant to the material subject to comment in the

SSOR.

See response to comments W18-8 and W18-9.

Rule Text Edit: No.

W18-12: Rob DiPerna, EPIC, and Alan Levine, CAG
The ISOR and SSOR do not comply with the governing statutes which require disclosure of evidence in support of a determination that the WFMP regulations will not have a substantial adverse economic impact on business.

Board Response: See response to comments W18-1, W18-8, and W18-9.

Rule Text Edit: No.

The comments below are in response to the comments provided in Attachment A of this letter.

W18-13: Rob DiPerna, EPIC, and Alan Levine, CAG
The comments in Attachment A address the necessity statements provided in the SSOR for the following rule sections: 895.1, 913.11, 916.5, 919.9, 923, 1094, 1094.2, 1094.3(a), 1094.6, 1094.6(g-i), 1094.6(j)(option 1 & 2), 1094.6(k), 1094.6(m), 1094.6(n), 1094.6(o), 1094.6(p), 1094.6(q), 1094.6(r), 1094.6(s), 1094.6(t), 1094.6(u), 1094.6(v), 1094.6(x), 1094.6(y), 1094.6(z & aa), 1094.6(bb), 1094.6(cc), 1094.6(dd-ff), 1094.6(gg), 1094.6(ii), 1094.6(jj), 1094.6(kk), 1094.8, 1094.8(g), 1094.8(h), 1094.8(k), 1094.8(l) 1094.8(m), 1094.8(s), 1094.8(t), 1094.8(u), 1094.8(w), 1094.9, 1094.10(a), 1094.17(a), 1094.17(e), 1094.18, 1094.19, 1094.21, 1094.23(a), 1094.27(a), 1094.29(a), 1094.29(b), 1094.29(c), 1094.29(f), 1094.29(g), 1094.30(a-c), 1094.30(d), and 1094.31(b).

Board Response: The commenter either comments upon the performance of the provision, disagrees with the Board's stated necessity for the provision, or both. Due to the similar nature of each of these comments, they are responded to in the aggregate below.

The comments on the performance of the regulations themselves are not relevant to the material that is subject to comment that is contained in the SSOR. The concerns brought up in these comments have been previously submitted in response to the 45-Day Notice published May 1, 2015, considered by the Board, and are responded to above in this FSOR.

The comments on the necessity statements themselves simply refute the necessity statements made by the Board without offering any evidence to the contrary that would change the Board's action. The Board has considered these comments and found that the necessity statements provided in the ISOR as augmented by the SSOR accurately reflect the necessity of each regulation.

Furthermore, the Board discussed the SSOR and comments received in response to the SSOR in a public venue at their regularly scheduled Board meeting on October 1, 2015 and determined that no further action was needed.

The Board is proceeding with the adopted action based on the reasons provided in the

ISOR, SSOR and this FSOR.

Rule Text Edit: No.

SPEAKER COMMENTS AND RESPONSES RESULTING FROM THE REGULARLY SCHEDULED BOARD MEETING ON OCTOBER 1, 2015

S12-1: Alan Levine, Coast Action Group
Suggested that the WFMP adopted regulation needed further work and recommended the Board move it back into Committee to do that work.

Board Response: By taking no action at the October 1, 2015 Board meeting the Board generally disagrees with this comment.

This comment is general and does not identify the specific further work needed. The Coast Action Group has also submitted six comment letters in response to the 45-Day and 15-Day Notices. Please see response to comments W1-1 through W5-14 and W18-1 through W18-13.

Rule Text Edit: No.