



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Habitat Conservation Planning Branch
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EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



November 22, 2017

Mr. Matt Dias, Executive Officer
California Board of Forestry and Fire Protection
1416 Ninth Street
PO Box 944246
Sacramento, CA 95616

Dear Mr. Dias:

2017 Board of Forestry and Fire Protection Call for Regulation and Priorities Review

The California Department of Fish and Wildlife (CDFW) staff has considered potential changes to the Forest Practice Rules (FPRs) in response to the Board of Forestry and Fire Protection (Board) announcement, *Hearing Announcement and Agenda, Board 2017 Regulation and Priorities Review, October 4, 2017*. CDFW is providing the following recommendations.

In 2016, CDFW submitted regulatory change recommendations relating to Northern Spotted Owl and Less than Three Acre Conversions (see attached). CDFW staff looks forward to continuing to work with you on these two very important and ongoing issues.

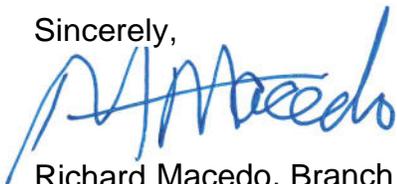
In addition, CDFW respectfully requests that language contained in FPR Section 1090.5(w)(4)(C) requiring the mapping of roads that provide access to rock pits and water drafting sites, and the location of water drafting sites, be included under FPR Section 1090.7(n). As currently written, FPR Section 1090.7, Notice of Timber Operations Content, lacks the requirement to map water drafting locations intended for use during timber operations. Given the permanent nature of a Non-industrial Timber Management Plan (NTMP), together with fluctuating environmental conditions, comprehensive mapping requirements are necessary to ensure that timber operations as defined by Public Resources Code (PRC) Section 4527(a) do not result in significant adverse impacts to watershed resources, fisheries, and wildlife. Most concerning is when an active NTMP lacks information pertaining to existing and planned water drafting locations and/or activities. In these cases all water drafting locations and activities associated with timber operations should be included in each Notice of Timber Operations submitted in conjunction with the NTMP. It is difficult for CDFW to estimate potential impacts to streamflow, instream habitat features, and sensitive biological resources when referencing active NTMP documents that do not disclose water drafting locations and activities.

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Dust abatement requirements during timber operations, per FPR Section 963.7(c), are an example of where additional mapping requirements would be beneficial. CDFW acknowledges and appreciates the necessity to require dust abatement during timber operations. Compliance with this FPR is most often accomplished through the diversion and application of surface water to road surfaces. Dust abatement activities conducted to achieve compliance with FPR requirements have the potential to result in significant adverse impacts to the beneficial uses of waters of the State, including direct and/or indirect impacts to aquatic and terrestrial wildlife.

CDFW appreciates the opportunity to provide comments and recommendations to the Board as part of a process to maintain the clarity, efficiency and effectiveness of the FPRs. Should you have any questions and/or would like to discuss CDFW's input, please contact me by phone at (916) 653-3861 or via email at richard.macedo@wildlife.ca.gov.

Sincerely,



Richard Macedo, Branch Chief
Habitat Conservation Planning Branch

Attachment

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**State of California
Department of Fish and Wildlife**

M e m o r a n d u m

Date: October 26, 2016

To: Mr. Matt Dias
Executive Officer
California Board of Forestry and Fire Protection

From: Richard Macedo 
Branch Chief
Habitat Conservation Planning Branch

Subject: 2017 Prioritization of Forest Practice Rules for Northern Spotted Owl

The California Department of Fish and Wildlife (CDFW) requests that the California Board of Forestry and Fire Protection (Board) consider rule changes to the California Forest Practice Rules (FPRs) that address the forthcoming listing of northern spotted owl (*Strix occidentalis caurina*) (NSO) pursuant to the California Endangered Species Act (CESA).

On August 25, 2016, the California Fish and Game Commission (Commission) voted to designate NSO as threatened pursuant to CESA [Fish and Game Code Section 2050 et seq.]. NSO will be added to the threatened species list as soon as findings are published in the California Regulatory Notice Register (Register) and the Administrative Procedure Act processes are complete. In the interim, CESA candidacy protections for NSO will continue.

In 2013, the Board briefly considered three rule plead change options within the FPRs for NSO. Proposed options ranged from text removal to a more thorough update of multiple FPR sections. The Board decided to suspend its deliberations on these rule pleads pending the Commission's decision to list NSO pursuant to CESA. In response to the Commission's August 25th decision that listing pursuant to CESA is warranted, CDFW recommends that the Board revisit the three rule pleads in addition to considering other proposals.

As the Board will be considering 2017 Board Committee Priorities during the upcoming December meeting, CDFW requests the Board include consideration of rule packages pertaining to reforms to the NSO rules (Title 14 California Code of Regulations § 895.1, 919.9 [939.9] and 919.10 [939.10].).

CDFW staff looks forward to working with the Board and the United States Fish and Wildlife Service to develop changes to the FPRs specific to NSO.

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If you have questions or need additional information regarding this matter, please contact Mr. William Condon, Environmental Program Manager, at (916) 651-3110, or by email at william.condon@wildlife.ca.gov.

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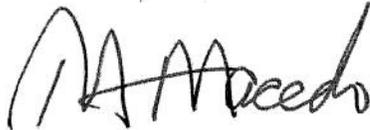
State of California
Department of Fish and Wildlife

M e m o r a n d u m

Date: November 30, 2016

To: Mr. Matt Dias
Executive Officer
California Board of Forestry and Fire Protection

From: Richard Macedo
Branch Chief
Habitat Conservation Planning Branch



Subject: 2017 Prioritization of Forest Practice Rules for Less Than Three Acre Conversions

On September 28, 2016, the California Board of Forestry and Fire Protection (Board) convened a "Workshop on Less than 3 Acre Conversions and Marijuana Cultivation" (Workshop). The purpose of the Workshop was to solicit information pertaining to environmental and regulatory issues surrounding the cultivation of marijuana on "timberlands", including the use of less than three acre conversion exemptions (Title 14, California Code of Regulations, California Forest Practice Rules [FPRs] Section 1104:T). The Board intended to use the information it received to develop a Problem Statement, should a problem within the Board's jurisdiction be identified. The following is intended to: a) affirm that issues related to less than three acre conversions are indeed within the Board's jurisdiction, b) assist the Board in formulating its problem statement and c) request the Board place this topic on its list of 2017 Prioritization of FPRs.

Significant cumulative effects caused by forest conversion, Board jurisdiction

Before the recent Workshop, the Board received presentations on issues related to marijuana cultivation and its effect on the environment. These include the October 8, 2013 "Symposium on Marijuana", which included presentations by the Hoopa Tribe, the California Department of Fish and Wildlife (CDFW), the California Department of Forestry and Fire Protection (CAL FIRE), the North Coast Regional Water Quality Control Board (NCRWQCB), landowners and researchers. During that symposium, CDFW presented "Resource Impacts from Marijuana Cultivation in Northern California," which included information that was ultimately in a published paper (Bauer et al. 2015). NCRWQCB presented "Strategy Regulation and Enforcement of Unauthorized Diversions; Discharges of Waste to Surface and Groundwater Caused by Marijuana Cultivation" (State Water Resources Control Board, RWQCBs and CDFW 2013). A year later, the Yurok Tribe presented to the Board on October 1, 2014, "Operation Yurok: Monitoring the Theft of Water". The presentation included a series of photographs describing the impacts of marijuana cultivations and the Yurok Tribe's work in eradicating them. More recently, Assemblyman Jim Wood presented to the Board on June 15, 2016. Although Assemblyman Wood's main topic was

Assembly Bill 1958 (2016) and oak woodland restoration, he took the opportunity to speak about the effects of marijuana cultivation in Trinity County. Finally, on more than one occasion, the Board received comments on the effects of forest clearing and marijuana cultivation that included a citation of a paper by Van Butsic and Brenner (2016).

Various presenters at the recent Workshop added to information the Board had already received about the on-going effects of timber operations conducted in conjunction with less than three acre conversions as well as the effects of subsequent activities where conversions occur. Although examples of acute impacts to the environment precipitated by individual conversions and subsequent marijuana cultivation-related activities were presented during the Workshop and in previous presentations to the Board, many impacts appeared to originate from significant cumulative effects of numerous less than three acre conversions and subsequent activities within specific areas or watersheds.

CDFW joins others in concluding that, in certain locations, the effects of relatively high density less than three acre conversions on private timberlands are cumulatively significant. Although state-wide, total acres of forest converted under less than three acre conversions is limited (i.e. fewer than 3,500 acres from 2011 to June, 2016 [CalFire 2016]), these conversions not only remove functional forest wildlife habitat outright, the function of forest wildlife habitat in remaining, non-converted forest is significantly reduced through its fragmentation. This is particularly true for interior forest species and their habitats through "depth-of-edge effects" (Chen et al. 1999). These effects caused by forest conversion often precede and are in addition to well-documented post-conversion impacts related to stream diversions, water pollution and continuing presence and activities of people engaged in cultivation. Arguably, these effects differ from those that occur on managed timberlands. In contrast to stands subject to forest clearing through group selection or even-aged regeneration methods (e.g. clearcutting) where restocking is required to reestablish forest stands, the less than three acre conversions result in permanent elimination of forest and forest habitat values.

As such, addressing these cumulatively significant effects of less than three acre conversions are within the Board's jurisdiction as they are occurring on private timberlands and in part caused and enabled by timber operations conducted under less than three acre conversions. To address this problem, the Board could employ the same authority pursuant to Public Resources Code (PRC) Section 4584 (g) under the California Z'berg-Nejedly Forest Practice Act (FPA) that it used to establish Section 1104.1 (Conversion Exemptions) of the FPRs. Furthermore, per PRC Section 4584, the Board must determine that a type of exemption is consistent with the purposes of "this chapter" (FPA). Evidence that the effects of less than three acre conversions are under certain circumstances cumulatively significant suggests less than three acre conversion exemptions are not consistent with the purposes of FPA, which include, "encourag[ing] prudent and responsible forest resource management calculated to serve the public's need for watershed protection, fisheries and wildlife, sequestration of carbon monoxide, and recreational opportunities alike for this and future generations"(PRC Section 4512 (c)).

The need for less than three acre conversion "exceptions" aligned with the California Environmental Quality Act (CEQA) Guidelines

Regulation of timber harvesting under the FPA and the FPRs constitutes a certified regulatory program per Article 17 of the CEQA Guidelines. As described below, there is an important difference, however, between the FPRs and CEQA Guidelines.

CEQA Guidelines Section 15130 requires that the lead agency conduct an analysis of cumulative impacts on the environment in an Environmental Impact Report (EIR) or Negative Declaration (ND). Similarly, the FPRs (Sections 898) require that cumulative effects are assessed based on the methodology described in Board Technical Rule Addendum Number 2. In addition to the types of projects analyzed under EIRs and NDs, Section 15300 *etseq.* of CEQA Guidelines identifies classes of projects that have been determined to not have a significant effect on the environment ("categorical exemptions") and are exempt from CEQA requirements to prepare environmental documents. CEQA Guidelines Section 15300.2 "Exceptions," however, identifies circumstances under which projects that are normally categorically exempt are nevertheless subject to the environmental documents preparation provisions of CEQA. One of those exceptions pertains to when cumulative impacts of successive projects of the same type in the same place over time is deemed significant.

Similar to CEQA Guidelines Section 15300 *etseq.*, the FPRs under sections 1038 (Exemptions) and 1104.1 identify types of timber operations that are exempt from timber harvest plan (THP) preparation and other requirements. These THP exemptions are available only when projects meet certain conditions or avoid certain circumstances (e.g. take of listed species, impacts to archeological resources). Unlike CEQA Guidelines Section 15300.2, however, the FPRs do not provide an "exception" for when there is a finding of significant cumulative effects. As such, CAL FIRE as lead agency cannot decline to process notices for less than three acre conversions and other types of exemptions on the basis of a finding of significant cumulative impacts.

The Board, under its existing authorities, can and should resolve this discrepancy between CEQA Guidelines and FPRs by establishing a finding of cumulatively significant effects as a basis for not processing less than three acre exemption notices.

Request for Board action

CDFW asks the Board to include among its 2017 Prioritization of FPRs the following: a) revise FPR Section 1104.1 to include significant cumulative effects as a basis for prohibiting submission or processing of less than three acre conversion notices, b) develop specific procedures and criteria for CAL FIRE as lead agency to determine whether significant adverse cumulative effects exist as a result of the conversion of forest to non-forest through less than three acre conversions, and c) a grant CAL FIRE the authority to not process (i.e., "return") less than three acre conversion notices based on a finding that such conversions are causing or exacerbating significant cumulative effects.

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CDFW staff looks forward to working with the Board to develop the requested changes to the FPRs.

If you have questions or need additional information regarding this matter, please contact Mr. William Condon, Environmental Program Manager, at (916) 651-3110, or by email at william.condon@wildlife.ca.gov.

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References

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