



BOARD OF FORESTRY

Executive Officer:
Dean Cromwell
(916) 653-8007

The Board of Forestry is a nine-member Board appointed to administer the Z'berg-Nejedly Forest Practice Act (FPA) of 1973, Public Resources Code (PRC) section 4511 *et seq.* The Board, established in PRC section 730 *et seq.*, serves to protect California's timber resources and to promote responsible timber harvesting. The Board adopts the Forest Practice Rules (FPR), codified in Division 1.5, Title 14 of the California Code of Regulations (CCR), and provides the California Department of Forestry and Fire Protection (CDF) with policymaking guidance. Additionally, the Board oversees the administration of California's forest system and wildland fire protection system, sets minimum statewide fire safe standards, and reviews safety elements of county general plans. The Board's current members are:

Public: Terry Barlin Gorton (Chair), Franklin L. "Woody" Barnes (Vice-Chair), Robert Heald, and James W. Culver. At this writing, one public member position is vacant.

Forest Products Industry: Mike A. Anderson, Joseph Russ IV, and Thomas C. Nelson.

Range Livestock Industry: Robert J. Kerstiens.

The FPA requires careful planning of every timber harvesting operation by a registered professional forester (RPF). Before logging operations begin, each logging company must retain an RPF to prepare a timber harvesting plan (THP). Each THP must describe the land upon which work is proposed, silvicultural methods to be applied, erosion controls to be used, and other environmental protections required by the Forest Practice Rules. All THPs must be inspected by a forester on the staff of the Department of Forestry and, where deemed necessary, by experts from the Department of Fish and Game, the regional water quality control boards, other state agencies, and/or local governments as appropriate.

For the purpose of promulgating Forest Practice Rules, the state is divided into three geographic districts—southern, northern, and coastal. In each of these districts, a District Technical Advisory Committee (DTAC) is appointed. The various DTACs consult with the Board in the establishment and revision of district forest practice rules. Each DTAC is in turn required to consult with and evaluate the

recommendations of CDF, federal, state, and local agencies, educational institutions, public interest organizations, and private individuals. DTAC members are appointed by the Board and receive no compensation for their service.

MAJOR PROJECTS

Regulatory Relief for Small, Non-Industrial Timberland Owners. At its January, February, March, and April meetings, the Board held public hearings and continued to consider proposed rules that would provide some relief from the THP submission requirements for small, non-industrial timberland owners. In previous discussions of this issue last year, the Board debated the merits of two alternatives: (1) a categorical exemption from the California Environmental Quality Act for small-acreage landowners, thereby relieving them of the burden of satisfying certain informational requirements and the cumulative impacts assessment of a normal THP; and (2) a general exemption from specified THP requirements for small-acreage timber operations on ownerships of limited size, which could be reviewed by the CDF Director on a case-by-case basis and denied if the plan either does not meet the exemption criteria or may create a reasonable potential for significant individual or cumulative impacts to specified resources or watersheds. [12:4 CRLR 212-13; 12:2&3 CRLR 243-44]

Following consideration of these and numerous other options during the first four months of 1993, the Board finally adopted the language of new sections 1051, 1051.1, 1051.2, and 1051.3, Title 14 of the CCR, at its April 6 meeting. The rules set forth procedures for submitting a modified THP which would apply on ownerships of 100 acres or less. In order to file the modified THP, a submitter must comply with the following conditions, among others:

- No more than 70% of any existing tree canopy layer is to be harvested on parcels of 40 acres or less, and no more than 50% on parcels of 41-100 acres.

- Clearcutting and shelterwood removal shall not be used except under specified circumstances.

- Stocking standards specific to the silvicultural method selected must be met immediately after harvesting operations are completed.

- No heavy equipment operations may be conducted on slopes greater than 50%, or on areas with high or extreme erosion hazard ratings.

- No timber operations may be conducted on slides or unstable areas.

- New road construction is confined to 600 feet and a 1,000 foot limit total of road construction and reconstruction combined.

- No listed species will be directly or indirectly adversely impacted by the proposed timber operations.

When these conditions are met, the timber operation is presumed to be unlikely to cause a significant adverse impact to the environment; therefore, the modified THP submitter is excused from having to prepare certain components of a normal THP. The proposed rules do not change any of the notice provisions or CDF review standards of the THP process for the small landowner.

At this writing, the rulemaking file on this regulatory action is pending at the Office of Administrative Law (OAL).

Protection for the Pacific Yew. At its January meeting, the Board adopted new sections 912.10 (932.10, 952.10), 917.3(f) (937.3(f), 975.3(f)), 1034(kk) and (ll), 1090.5 (jj) and (kk), 1090.7(p), 1038(d), and amended sections 895.1 and 912 (932, 952), Title 14 of the CCR, on an emergency basis. These regulatory changes implement AB 3756 (Sher) (Chapter 756, Statutes of 1992), which requires the Board to adopt regulations to locate and protect Pacific yew trees within the context of timber operations on private and state timberland in California. The bark of the Pacific yew tree contains taxol, a chemical with powerful cancer-fighting qualities. [13:1 CRLR 124; 11:1 CRLR 28-29]

The emergency rules, which were approved by OAL on January 21, prohibit timber operations on Pacific yew trees for a temporary period, except for purposes of research related to taxol and its use as treatment for cancer patients; require THP submitters to notify a pharmaceutical company, federally licensed to produce taxol, about known stands of Pacific yew which are planned for harvest or to be burned during site preparation, and give the company 60 days to purchase and collect the yew before timber operations may commence on the yew; specify that the rules do not intend authorization to utilize Pacific yew within areas where timber operations are prohibited under current law (*e.g.*, watercourse and lake protection zones); make the rules specific to areas of prescribed broadcast burning; require the THP submitter to include within the plan maps and location of Pacific yew stands planned for timber operations; make the Pacific yew informational and protection requirements specific to submitters of non-industrial timber management plans; and provide that timber operations for har-



vesting of Pacific yew solid wood products are exempted from THP preparation and submission requirements, provided that known Pacific yew stands are identified in the exemption notice and all the requirements for exemption are met. The rules also define the term "stand of Pacific yew" for purposes of identification and rule implementation, and add the Pacific yew to the list of Group B commercial species under the Forest Practice Rules.

At its April 6 meeting, following a public hearing on the permanent adoption of the emergency rules, the Board adopted the rules. At this writing, the rulemaking package has not yet been submitted to OAL.

Certified Rangeland Manager Specialty. The Board was scheduled to hold a public hearing at its May 5 meeting on the proposed adoption of section 1651 and amendment of sections 1600, 1602, and 1650, Title 14 of the CCR, which would establish a Certified Rangeland Manager Specialty and outline the specific requirements of that specialty. The Board's new specialty certification is proposed to conform to a certification program sponsored by the private Society for Range Management.

This regulatory action is proposed to implement AB 1903 (Hauser) (Chapter 748, Statutes of 1991), which amended PRC section 772 to authorize the Board to develop specialty certifications other than its existing Registered Professional Forester program. Further, AB 1903 amended PRC section 772(b) to provide that "[a]n alternative to a board-developed specialty, any public agency or professional society may submit for board recognition its independent certification program as full qualification without examination for the board's certificate of specialization. That certification as a specialist shall be granted provided the board determines the program fully protects the public interest in that area of practice encompassed by the program."

Thus, the Board proposes to adopt rules defining the term "range" as "rangeland and forestland grazed by livestock," defining the term "rangeland" as "those lands which are not forestlands and are characterized by a predominance of herbaceous, shrub and hardwood species which are not under cultivation for agricultural crops and are suitable for grazing," establishing a specialty licensing program for "certified rangeland managers" (defined as "a person who provides services...relating to the application of scientific principles to the art and science of managing rangelands and range"), and adopting the standards of the private So-

ciety for Range Management's certification program as its own.

Although the Board was scheduled to hold a public hearing on this matter on May 5, it postponed that hearing until its June 9 meeting. The Board's proposed implementation of AB 1903 (Hauser) appears to have prompted the introduction of several bills (see LEGISLATION).

Other Board Rulemaking. The following is a status update on other rulemaking proceedings conducted by the Board in recent months:

• **Santa Cruz County Timber Operations.** After public hearings at its January and February meetings, the Board adopted new section 926.21, Title 14 of the CCR, in February. Under the new rule, the CDF Director will notify Santa Cruz County of proposed timber operations on County ownerships of less than three acres and give the County an opportunity to determine whether the plan conforms to its local ordinances before issuing a notice of exemption. [13:1 CRLR 124] At this writing, the rulemaking file on this regulatory action is pending at OAL.

• **Biomass Harvesting of Dead Timber on Substantially Damaged Timberland.** After public hearings at its February and March meetings, the Board adopted a modified version of its proposed amendment to section 1038, Title 14 of the CCR, to provide an exemption from the THP requirement for biomass harvesting of dead timber on substantially damaged timberland. [13:1 CRLR 124] Under new subsection 1038(e), timberland owners are not restricted to subsection 1038(b)'s limit of 10% of the volume per acre when harvesting dead trees which are unmerchantable as sawlog-size timber from substantially damaged timberlands. Timber harvesting operations conducted under this exemption may not commence for ten working days after the CDF Director receives the notice of exemption. Further, either an RPF or the CDF Director must certify that the lands are substantially damaged timberland, and that no conditions were identified where operations conducted in compliance with the rules of the Board would reasonably result in significant adverse effects. OAL approved this proposed regulatory change on April 5.

• **Restrictions on Firearm Use in Certain Forests.** At its January and February meetings, the Board received public comment on its proposal to amend section 1437, Title 14 of the CCR, to prohibit firearm discharge (except for wildlife management purposes) at Boggs Mountain Demonstration State Forest in Lake County and Soquel Demonstration State

Forest in Santa Cruz County. [13:1 CRLR 124] Due to strong opposition from representatives of the National Rifle Association, the Sportsman Council of Northern California, and Gun Owners of California, the Board tabled the proposal at its February meeting, stating that it may hold additional public hearings on the issue in the future.

• **Silvicultural Methods with a Sustained Yield Objective.** At its October 1992 meeting, the Board finally adopted new silvicultural guidelines which include—among other things—a definition of the statutory term "maximum sustained production of high quality timber products," which—although the purported basis of the Board's regulation of timbercutting—has never been defined in the FPR. [13:1 CRLR 122] At this writing, the rulemaking record on these rules has not yet been submitted to OAL for review and approval.

• **Sensitive Watersheds.** Also in October 1992, the Board also adopted new sections 916.8 (936.8, 956.8), 916.9 (936.9, 956.9), 916.10 (936.10, 956.10), and 1032.10, Title 14 of the CCR, creating a public process to assess watersheds and identify and classify those which warrant classification as "sensitive." [13:1 CRLR 123] At this writing, the rulemaking record on these rules has not yet been submitted to OAL for review and approval.

• **Old-Growth Forest, Late-Seral Stage Forest, and Wildlife Protection Regulations.** Also in October 1992, the Board finally reached agreement on new section 919.16(a) (939.16(a), 959.16(a)), to enable identification and protection of "late successional" forest stands and the wildlife which resides in these stands. [13:1 CRLR 123] At this writing, the rulemaking record on these rules has not yet been submitted to OAL for review and approval.

LEGISLATION

SB 122 (McCorquodale), as amended May 4, would specify special conflict-of-interest rules for members of the Board of Forestry. Specifically, SB 122 would prohibit a Board member from participating in any Board action or attempting to influence any decision involving the member or specified other people, and further prohibits a Board member from participating in a Board decision in which the member has a direct personal financial interest. The bill would also prohibit a Board member or any person, with specified exceptions, who intends to influence the decision of a Board member on a matter before the Board, from conducting an ex parte communication, as defined, unless the



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member notifies the person that a full disclosure of the ex parte communication will be entered into the Board's record. [*S. Appr*]

AB 49 (Sher), as amended May 5, would require the Board to prepare a report to the Governor and the legislature by March 1, 1994, on recommendations for legislation or regulations to modify the requirements of the Forest Practice Act to simplify and reduce implementation costs. The bill would prohibit the Board from adopting new or revised Forest Practice Rules prior to January 1, 1995, except as specified.

Under existing law effective until January 1, 1994, an approved THP is effective for three years; the CDF Director may approve up to two one-year extensions, if specified conditions are met. Other provisions effective until January 1, 1994, allow THP submitters to submit annual partial work completion reports covering the portion of the area where timber operations have been partially completed. This bill would extend the operation of these provisions to January 1, 1998. [*A. Floor*]

SB 891 (Leslie), as introduced March 4, would authorize a THP submitter to address issues of sustained timber production and wildlife and watershed impacts by preparing a sustained yield plan (SYP) for a management unit. The SYP would be effective for ten years, with two one-year extensions permitted. The bill would provide that, to the extent that these issues are addressed in a SYP approved by the CDF Director, they need not be addressed in the THP.

Among other things, SB 891 would specify the contents of a SYP; require that a SYP be prepared by a RPF; permit CDF to conduct periodic confidential audits of an owner's inventory, growth, and harvest projections as related to the plan for sustained timber production; require the CDF Director to review and approve or reject the SYP, with that decision based on whether the SYP meets the requirements of the law and, in the case of watershed and wildlife issues, whether the SYP identifies potentially significant adverse impacts and adopts feasible measures to mitigate or avoid those effects; and permit the CDF Director to approve a SYP even when significant adverse impacts are not substantially mitigated, if its benefits outweigh its unavoidable adverse environmental effects. [*S. NR&W*]

AB 325 (Sher). Under existing law, a timber yield tax is imposed on every timber owner who harvests timber, and certain other persons, at the rate of 6% of the total immediate harvest value of the timber or at an adjusted rate as prescribed. As

introduced February 4, this bill would impose a timber yield tax surcharge at an unspecified rate on any person or entity who harvests timber or owns felled or downed timber, as specified, to be deposited in the Forest Practice Regulatory Fund, which the bill would create. [*A. W&M*]

AB 1185 (Cortese). AB 1903 (Hauser) (Chapter 748, Statutes of 1991) permits a person to be registered as a certified specialist in one or more fields of forestry instead of being registered as a professional forester; existing law also requires the State Board of Forestry to develop specialties and establish the scope of practice (*see* MAJOR PROJECTS). As amended April 22, this bill would delete the provision authorizing certification as a specialist as an alternative to registration as a professional forester, and delete the requirement that the Board develop specialties and the scope of practice. The Board opposes this bill. [*A. W&M*]

SB 1094 (Killea), as amended May 17, would specify that a person shall not be required to obtain certification as a professional forester, certified specialist, or qualified but exempt certificant unless that person works on a forested landscape, as defined, and undertakes activities which are directly governed by specified provisions pertaining to forestry and forest practices or, for compensation, conducts specified activities. The Board opposes this bill. [*S. Appr*]

SB 1121 (Thompson). Existing law, in effect until January 1, 1994, authorizes the effective period of a THP on which work has been commenced but not completed to be extended, as specified. The Act requires a timber owner or owner's agent to file a report, as specified, with the Department, within one month after completion of the work described in the THP or nonindustrial timber harvest notice, excluding specified work, and provides, until January 1, 1994, that a report on a portion of the area covered by the plan which has been completed may be filed annually, if all the work described in the plan has not been completed. Until January 1, 1994, the CDF Director is required, within six months of the receipt of the work completion report, to determine by inspection whether the work described in the report, excluding specified work, has been properly completed, as prescribed, and requires that a timber owner or owner's agent file a stocking report within five years after completion of timber operations on an area identified in a work completion report. As introduced March 5, this bill would extend those provisions indefinitely and would make clarifying and

technical changes in those provisions. [*S. Appr*]

AB 48 (Sher). Under existing law, CDF is authorized to provide fire prevention and firefighting implements and apparatus. As amended April 21, this bill would authorize the Department to acquire from the federal government, with the approval of the Department of General Services, fixed-wing military aircraft for the purpose of suppressing forest fires. The bill would require the Department to enter into contracts for the operation and maintenance of the aircraft. [*S. NR&W*]

AB 790 (Sher). Under existing law, timber from state forests may not be sold to any primary manufacturer, or to any person for resale to a primary manufacturer, who makes use of the timber at any plant not located within the United States, unless it is sawn on four sides to dimensions not greater than four inches by twelve inches. As amended March 31, this bill would also prohibit such a sale to a primary manufacturer who, within one year prior to the bid date and one year after the termination of the contract, sells unprocessed timber which is harvested from private timberlands and is exported into foreign commerce from this state.

The bill would also impose similar restrictions on the sale by the State Lands Commission of timber harvested from lands under the jurisdiction of the Commission pursuant to the Commission's authority to harvest timber at the same time as the orderly harvesting of surrounding or adjacent federal-owned or state-owned timber. [*S. NR&W*]

AB 118 (Sher). Under existing law, CDF is authorized to pay a reward of up to \$5,000 for information leading to the arrest and conviction or commitment of any person who willfully and maliciously sets, or attempts to set, fire to any property within any established state responsibility area, and up to \$10,000 if the fire or the attempt results in death or great bodily injury to anyone, including fire protection personnel, or if the fire causes substantial structural damage. As amended April 20, this bill would increase the maximum amount of those rewards to \$10,000 and \$25,000, respectively. [*S. B&FR*]

■ LITIGATION

On March 17, Attorney General Dan Lungren issued *Attorney General's Opinion No. 92-807*, finding that the fire safety standards adopted by the Board for development on state responsibility lands apply to the perimeters and access to buildings constructed after January 1, 1991, on parcels created by parcel or tentative maps approved prior to January 1, 1991, to the



extent that conditions relating to the perimeters and access to the buildings were not imposed as part of the approval of the parcel or tentative maps.

Redwood Coast Watershed Alliance v. California State Board of Forestry, No. 932123 (San Francisco Superior Court), is still under submission. RCWA alleges that the Board and CDF's regulation of timber operations on private land violates certain provisions of the California Environmental Quality Act (CEQA), and that the THP process administered by CDF and the Board is not functionally equivalent to the environmental impact report process required by CEQA. [12:4 CRLR 214; 12:1 CRLR 176] As the Board has recently revamped its regulations to define the term "sustained yield" and provide for THP review in the context of that definition (*see* MAJOR PROJECTS), the court is waiting for the Board's implementation of those new rules.

■ FUTURE MEETINGS

September 7-9 in Sacramento.
October 5-6 in Sacramento.
November 9-10 in Sacramento.
December 7-8 in Sacramento.



INDEPENDENTS

AUCTIONEER COMMISSION

The Auctioneer and Auction Licensing Act, Business and Professions Code section 5700 *et seq.*, was enacted in 1982 and establishes the California Auctioneer Commission to regulate auctioneers and auction businesses in California.

The Act is designed to protect the public from various forms of deceptive and fraudulent sales practices by establishing minimal requirements for the licensure of auctioneers and auction businesses and prohibiting certain types of conduct.

Section 5715 of the Act provides for the appointment of a seven-member Board of Governors, which is authorized to adopt and enforce regulations to carry out the provisions of the Act. The Board's regulations are codified in Division 35, Title 16 of the California Code of Regulations (CCR).

During the summer of 1992, the California legislature defunded the Auctioneer Commission and its Board of Governors in retaliation for the Commission's filing of *California Auctioneer Commission v. Hayes*, No. 370773 (Sacramento County Superior Court). The petition for writ of mandate sought a court order prohibiting state budget officers from carrying out a June 30, 1992 transfer to the general fund of all but three months' worth of operating expenses from the Commission's reserve fund, in compliance with a legislative directive in the Budget Act of 1991. The Commission was attempting to prevent a loss of \$127,000 in auctioneers' licensing fees to the general fund. [12:4 CRLR 1, 214-15; 12:2&3 CRLR 248; 12:1 CRLR 177] The legislature did not repeal the Auctioneer and Auction Licensing Act, the provisions of law which establish the Commission and its Board of Governors and set forth their respective jurisdiction, or any other provision affecting the licensing of auctioneers or the conduct of auctions in California. It simply eliminated all funding for the Commission, preventing it from paying the attorneys handling its lawsuit and from functioning in any other way.

■ LEGISLATION

SB 514 (Alquist), as amended May 19, would repeal existing law establishing the California Auctioneer Commission and delegating it the responsibility for licens-

ing and disciplining auctioneers, and enact similar provisions to be administered by the Secretary of State. However, the Secretary of State would have no disciplinary duties, and the bill would authorize courts in criminal actions to revoke an auctioneer's license. The bill would also revise existing bonding provisions to, among other things, increase the amount of the required auctioneers' bond to \$15,000. [*S. Appr*]

SB 685 (Wright), as amended May 12, would suspend the licensing requirements for auctioneers and auction companies under the Auctioneer and Auction Licensing Act until January 1, 1994. [*A. CPGE&ED*]

AB 259 (Hannigan), as amended April 27, would repeal the Auctioneer and Auction Licensing Act, require every auctioneer and auction company to maintain a surety bond in the amount of \$30,000 with the Secretary of State, and enact related provisions regulating that bond.

Under existing law, it is a crime for any person to obtain any money or property from another, or to obtain the signature of another to any written instrument, the false making of which is forgery, by means of any false or fraudulent sale of property or pretended property, by auction, or by any of the practices known as mock auctions. Under existing law, a person who violates this provision shall also forfeit any license he/she may hold as an auctioneer and is permanently disqualified from receiving a license to act as an auctioneer in this state. This bill would delete this latter provision. [*A. Floor*]

BOARD OF CHIROPRACTIC EXAMINERS

Executive Director:
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In 1922, California voters approved an initiative which created the Board of Chiropractic Examiners (BCE). Today, the Board's enabling legislation is codified at Business and Professions Code section 1000 *et seq.*; BCE's regulations are located in Division 4, Title 16 of the California Code of Regulations (CCR). The