

Memorandum

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Protection (CAL FIRE)**

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From: Toby A. McCartt, Staff Counsel
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Subject: Exemptions Overlapping NTMPs

This memorandum is intended to harmonize several provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (Act) (Pub. Resources Code §§ 4511, *et seq.*) and Forest Practice Rules (Rules) (Cal. Code Regs., tit. 14, §§ 895, *et seq.*) as they relate to timber operations on lands included within an approved nonindustrial timber harvest plan (NTMP). Specifically, the question was posed whether activities exempted pursuant to sections 4584 of the Public Resources Code (PRC) and its implementing regulations, including section 1038.1 of the Rules, may be conducted pursuant to a Notice of Exemption (Exemption) on timberland within the boundaries of an approved NTMP. CAL FIRE cannot accept an Exemption for land that is included within the boundaries of an approved NTMP.

The conclusion that an Exemption cannot be accepted by CAL FIRE for land covered by an approved NTMP is compelled by the terms of the statutes and Rules governing NTMPs. Section 4594 of the Public Resources Code states that a nonindustrial tree farmer who owns or otherwise controls “all or *any portion of any timberland* within the boundaries of an approved nonindustrial timber management plan, and who plans to harvest *any of the timber thereon* during a given year, shall file a nonindustrial timber harvest notice with the department in writing.” (Pub. Resources Code § 4594.) This language is unambiguous and clearly provides that the only vehicle for harvesting any timber on any timberland subject to an NTMP is through a “nonindustrial timber harvest notice,” otherwise known as a Notice of Timber Operations (NTO). There is nothing in the Rules that would conflict with this conclusion. It must be assumed that the Legislature and the Board of Forestry were aware of existing law when they approved the statutes and Rules, respectively, implementing the NTMP. Given that the NTMP was created by the Legislature in 1989 and implemented by Board Rules thereafter, and that the Act & Rules have contained provisions for exempt activities since their inception, it must be assumed that the Legislature and the Board were aware that there were exemptions otherwise available to the nonindustrial tree farmer. That the Legislature spoke so clearly without admitting of deviation, and that the Board did not specifically provide that the filing of an Exemption exempted the submitter from compliance with the command to file an NTO, is telling.

This interpretation is also supported by section 4593.8 of the Public Resources Code, which states that a nonindustrial tree farmer may amend the NTMP, but also that the nonindustrial tree farmer “may not take *any action* which substantially deviates, as defined by the board, from the approved plan *until* the amendment has been filed with the director and the director has determined that the amendment is in compliance . . .” (Pub. Resources Code § 4593.8 [emphasis added].) Thus, any substantial deviation from the approved NTMP must be effected through an amendment to the NTMP rather than through a separate Exemption document. The definition of “substantial deviation” includes many actions that would seem to be of the sort that an Exemption may allow, including changes in the location of harvest or expansion of the harvest area, changes in silviculture, or changes in the logging and yarding methods. (Cal. Code Regs., tit. 14, § 1090.14.) Section 4593.9 provides that non-substantial deviations from the approved NTMP may be undertaken immediately but must be reported to the Department after the fact. These provisions support the interpretation that where timberland is subject to an NTMP, the proper vehicle for the types of operations allowed under an Exemption would be through an NTO. Where the operations contemplated conflict with the NTMP in a substantial way, such operations may not commence unless and until the Department approves an amendment to the NTMP, and the nonindustrial tree farmer subsequently files an NTO that is consistent with the amended NTMP. Where the change in operations is not substantial, the operations may commence pursuant to an NTO but the deviations must subsequently be reported to the Department.