

Memorandum

To: Region Chiefs
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From: 
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Subject: CDF Policy Regarding the Applicability of Intermediate Treatments for NTMPs That Demonstrate MSP by Option C [(14 CCR 913.11-, 933.11-, 953.11-(c)).

As per PRC 4513, one intent of the Forest Practice Act is to create and maintain an effective and comprehensive system of regulation and use of all timberlands so as to *assure that the goal of maximum sustained production of high-quality timber products (MSP) is achieved* while giving consideration to values relating to recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment, and aesthetic enjoyment.

To implement the intent of the act with respect to MSP, and in the face of intense scrutiny from the public demanding such a demonstration, the Board of Forestry and Fire Protection passed a set of regulations identifying the acceptable methodologies to be used in demonstrating MSP. These regulations are provided pursuant to Title 14, sections 913.11 [933.11 & 953.11].

Recently, CDF has been questioned regarding the implementation and relationship between the "MSP Requirements" prescribed pursuant to 14 CCR 913.11 [933.11 & 953.11] and non-industrial timber management plans (NTMP). Therefore, this communication serves to define CDF's policy respective to use of intermediate treatments in a NTMP that utilizes an Option C demonstration of MSP.

CDF Policy

A NTMP is limited to the long-term objective of unevenaged management pursuant to PRC 4593.3. As such, an intermediate treatment that proposes to utilize 14 CCR 913.11 [933.11 & 953.11] (c) {"Option C"} to demonstrate MSP, must comply with the Seed Tree Retention Standards pursuant to 14 CCR 913.1 [933.1 & 953.1](c)(1)(A). Alternatively, an intermediate treatment is not constrained to comply with the Seed Tree Retention standards when a demonstration of MSP has been approved utilizing 913.11 [933.11 & 953.11] (b) {"Option B"} analysis.

Discussion

The following discussion forms the basis for this determination, as well as provides rebuttals to pertinent criticisms of this policy.

1. Respective to the Forest Practice Act, the following is referenced (underline added for emphasis):
 - (A) PRC 4593.2 defines the following terms:
 - 1) *"Nonindustrial timber management plan" means a management plan for nonindustrial timberlands with an objective of an uneven aged managed timber stand and sustained yield for each parcel or group of contiguous parcels meeting the requirements of Section 4593.3.*
 - 2) *"Uneven aged management" means the management of a specific forest, with the goal of establishing a well stocked stand of various age classes and which permits the periodic harvest of individual or small groups of trees to realize the yield and continually establish a new crop.*
 - (B) And PRC 4593.3 states, *"A non-industrial timber management plan may be filed with the department in writing by a person who intends to become a nonindustrial tree farmer with the long-term objective of an unevenaged timber stand and sustained yield through the implementation of a nonindustrial timber management plan."*
2. Respective to the Forest Practice Rules the following is referenced:
 - (A) The goal of 14 CCR 913.11 [933.11 & 953.11] is the achievement of Maximum Sustained Production of High Quality Timber Products (MSP). MSP is demonstrated for a NTMP by meeting the requirements of either Option B or C. Since the objective for a NTMP is uneven-aged management, an Option C demonstration of MSP is achieved by meeting 913.11 [933.11 & 953.11] (c)(2), excerpted below:

For unevenaged management, complying with the seed tree retention standards pursuant to 913.11 [933.11 & 953.11] (c)(1)(A), meeting minimum stocking and basal area standards for the selected silvicultural methods as contained in these rules only with group A species,...

- (B) Demonstration of MSP in an Option B involves an analysis of growth and yield over a one-hundred year horizon to determine LTSY as established by 913.11 [933.11 & 953.11] (b)(4) excerpted below:

Where a SYP or NTMP is submitted for an ownership, an approved SYP or NTMP achieves MSP by providing sustainable harvest yields established by the landowner which will support the production level of those high quality timber products the landowner selects while at the same time:

(4) balancing growth and harvest over time. The projected inventory resulting from harvesting over time shall be capable of sustaining the average annual yield achieved during the last decade of the planning horizon. The average annual projected yield over any rolling 10-year period, or over appropriately longer time periods for ownerships which project harvesting at intervals less frequently than once every ten years, shall not exceed the projected long-term sustained yield. A THP which relies upon and is found to be consistent with an approved SYP shall be deemed adequate to achieve MSP.*

*14 CCR 895.1 defines Long Term Sustained Yield as the average annual growth sustainable by the inventory predicted at the end of a 100 year planning period.

It is important to emphasize that intermediate treatments **are not** precluded from the NTMP process as these prescriptions are *inherently valuable* to the forestland manager and assist in achieving the goal of uneven-aged management. However, use of these prescriptions do not alleviate the requirement of demonstrating MSP pursuant to 14 CCR 913.11 [933.11 & 953.11].

Plan proponents have indicated that the interpretation of these rules, as presented above, is flawed based on the following points; however, these points are in themselves flawed for the following respective reasons:

Proponents assertion #1: The NTMP was intended to have sufficient flexibility to make it worthwhile for the landowners to operate over time and the rules were supposed to be locked in place.

CDF Response #1: As per PRC 4593, the following are the legislative findings and declarations pertaining to NTMPs (underline added for emphasis):

- (a) *The Legislature finds and declares that a substantial acreage of timberlands of the state are held by private nonindustrial owners and that it is the policy of the state to increase the productivity of these timberlands under prudent management plans to serve the public's need for timber and other forest products.*
- (b) *The Legislature further finds and declares that minimal environmental harm is caused by prudent management of nonindustrial timberlands because low volume production and dispersion around the state of these small tracts reduces damage to aesthetics, air quality, watersheds, and wildlife.*
- (c) *The Legislature further finds and declares that it is the policy of the state to encourage prudent and responsible forest resource management of nonindustrial timberlands by approving nonindustrial timber management plans in advance and withdrawing governmental discretion to disapprove nonindustrial timber harvest notices submitted pursuant to the approved nonindustrial timber management plans.*
- (d) *It is not the intent of the Legislature by the enactment of this article to limit the penalties and the enforcement provisions of this chapter.*

It is important to note that flexibility within the plan is not specified pursuant to this code section, nor should it be applied given the terms **management** and **plan**.

Webster's New World Dictionary, Third College Edition (1988) defines the following terms:

Management – *The act, art, or manner of managing, or handling, controlling, directing, etc.*

Plan – *A scheme, or program for making, doing, or arranging something; project, design, schedule, etc.*

Furthermore, The Dictionary of Forestry (Society of American Foresters, 1998) defines a **management plan** as a *predetermined course of action and direction to achieve a set of results, usually specified as **goals**, **objectives**, and **policies**—note a management plan is a working instrument that guides actions and that changes in response to feedback and changed conditions, goals, objectives, and policies.*

Thus, the NTMP must demonstrate and provide a clear program for managing the timber stands that meets the objectives specific to the individual non industrial tree farmer. This is further evidenced by PRC 4593.3(f) that states, "*a description of the existing stand, its current projected growth, alterations required to achieve the management objectives, the projected timber volumes and tree sizes to be available for harvest, and projected frequencies of harvest shall be part of the public record.*"

What makes the NTMP "worthwhile" to the non industrial tree farmer is the resulting sheltering affect from new rules, economic relief of future THP preparation and the approval of plans in advance. The pre-approval of plans and subsequent submittal of non-discretionary harvest notices is what provides the greatest flexibility for the tree farmer as it pertains to scheduling of the harvests and ability to take advantage of market conditions. This is extended to the plan proponent in exchange for a clear program for managing the timber stands and a certification by an RPF that operations will (1) implement "Best Management Practices" for the protection of water, soil stability, forest productivity, and wildlife, or (2) is consistent with the plan and will not result in significant degradation to the beneficial uses of water, soil stability, forest productivity or wildlife.

Flexibility within the provisions of the NTMP itself would result in a decreased level of enforceability and would therefore be contradictory to the legislative intent which states, "*It is not the intent of the Legislature ...to limit...the enforcement provisions of this chapter*" (PRC 4593(d)).

Proponents assertion #2: The *goals and objectives* of forest management under an NTMP should be to *create* an uneven-aged forest and based on this, the legislature did not specify what regeneration methods or silvicultural treatments should be used to meet the goals/objectives. 913.11 [933.11 & 953.11] (c)(1) and 913.11 [933.11 & 953.11] (c)(2) are referring to "Regeneration Methods" for evenaged and unevenaged management. This is different than the definition of "uneven aged management" provided in PRC 4593.2(c) which described the "goal of establishing a well stocked stand of various age classes."

CDF Response #2: CDF agrees that the legislature did not specify what regeneration methods or silvicultural treatments should be used to meet the goals/objectives of unevenaged management. This is precisely why intermediate treatments and unevenaged regeneration methods are equally acceptable within an NTMP. However, the statements that 913.11 [933.11 & 953.11] (c)(1) and 913.11 [933.11 & 953.11] (c)(2) are referring to "Regeneration Methods" for evenaged and

unevenaged management, which is different than the definition of "uneven aged management" provided in PRC 4593.2(c), is flawed.

No reference is given to regeneration methods within 14 CCR 913.11 [933.11 & 953.11] including all subsections. What 913.11 [933.11 & 953.11] (c)(2) states is that, "*For unevenaged management [MSP is achieved by], complying with the seed tree retention standards pursuant to 913.1 [933.1 & 953.1](c)(1)(A), meeting minimum stocking and basal area standards for the selected silvicultural methods as contained in these rules only with group A species, and protecting the soil, air, fish and wildlife, water resources and other public trust resources through the application of these rules.*" Additionally, the definition of "unevenaged management" and "uneven aged management" are identical between 14 CCR 895.1 and PRC 4593.2(c) as evidenced by the following:

Unevenaged Management means management of a specific forest, with the goal of establishing a well stocked stand of various age classes and permits the periodic harvest of individual or small groups of trees to realize the yield and continually establish a new crop (14 CCR 895.1).

"Uneven aged management" means the management of a specific forest, with the goal of establishing a well stocked stand of various age classes and which permits the periodic harvest of individual or small groups of trees to realize the yield and continually establish a new crop (PRC 4593.2(c)).

Proponents assertion #3: 14 CCR 913.11 [933.11 & 953.11] (c)(3) does not specify that meeting the seed tree retention requirements for intermediate treatments is necessary.

CDF Response #3: Neither 14 CCR 913.11 [933.11 & 953.11] (c)(1) nor 913.11 [933.11 & 953.11] (c)(3-6) applies to NTMPs. It is a correct statement that meeting the seed tree retention requirements for intermediate treatments is not necessary *provided that* the use of the intermediate treatment is proposed within a THP. As indicated above, the NTMP is limited to unevenaged management and therefore only 913.11 [933.11 & 953.11] (c)(2) applies.

Proponents assertion #4: It's hard to believe that when the Board of Forestry passed the MSP regulations, they intended that unencumbered intermediate treatments could only be used under option (b) as evidenced by the Board not including the seed tree retention standards in 913.11 [933.11 & 953.11] (c)(3).

CDF Response #4: As stated previously, neither 14 CCR 913.11 [933.11 & 953.11] (c)(1) nor 913.11 [933.11 & 953.11] (c)(3-6) applies to NTMPs. Also, 913.11 [933.11 & 953.11] (c)(2) does not preclude the use of intermediate treatments so long as the prescription will retain the seed tree retention standard.

It is also inappropriate to imply that intermediate treatments are unencumbered with regard to demonstrating MSP. 14 CCR 913.11 [933.11 & 953.11] (c)(3) states that MSP is achieved by, "...complying with the stocking requirements of the individual treatment or prescription." Additionally, for timberland ownership greater than 50,000 acres, a demonstration of MSP is required pursuant to 14 CCR 913.11 [933.11 & 953.11] (a) or (b). Therefore, intermediate treatments are indeed encumbered, if such a term applies, with demonstrating MSP pursuant to the Forest Practice Rules and the Act.

Conclusion

NTMPs must either demonstrate MSP pursuant to 14 CCR 913.11 [933.11 & 953.11] (b) or 913.11 [933.11 & 953.11] (c)(2), regardless of initial prescription or treatment, due in part to the review of MSP only occurring once during the life of the NTMP (upon submission) and based on the information and reasoning presented above. While argumentative perspectives can be presented, the code and definitions, albeit complicated, provide a basis for this position. NTMPs will not be approved unless one or the other demonstrations of MSP are utilized, as the demonstration is necessary to insure compliance with the intent of the Act and the provisions of the Rules. Additionally, it is anticipated that NTMPs will be rejected for filing and returned to the proponents on the basis of 14 CCR 1037 if MSP is not demonstrated pursuant to 14 CCR 913.11 [933.11 & 953.11] (b) or 913.11 [933.11 & 953.11] (c)(2).