Guide to the California Forest Practice Act and Related Laws
## Chapters at a Glance

1. History and Purpose of the 1973 Forest Practice Act ........................................ 1
2. The Players ........................................................................................................ 19
3. Timber Harvest Review Process ...................................................................... 73
4. Substantive Standards for Timber Harvest Plans .................................................. 149
5. Standards Specific to the Protection of Animals and Plants .................................. 253
6. Rules Governing Protection of Archaeological and Historical Resources .......... 319
7. Timber Harvesting Under Authority Other Than THPs ........................................ 339
8. Sustained Yield Plan Process ............................................................................. 377
9. Local Government Regulation of Timber Harvesting .......................................... 391
10. Timberland Productivity Act ........................................................................... 407
11. Timberland Conversions ................................................................................... 417
12. California Environmental Quality Act ................................................................. 435
13. Federal and State Laws Protecting Endangered Species ...................................... 471
14. Requirements for Protection of Water Quality ................................................... 581
15. Regulation of Timber Harvesting in the Coastal Zone ......................................... 699
16. Additional Laws Affecting Private Forest Lands ................................................ 719
18. Enforcement of the Forest Practice Act and Other State Statutes ....................... 775
# Contents

<table>
<thead>
<tr>
<th>Chapter 1</th>
<th>History and Purpose of the 1973 Forest Practice Act / 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>History of the Act</td>
<td>1</td>
</tr>
<tr>
<td>Policies and Goals of the FPA</td>
<td>4</td>
</tr>
<tr>
<td>Implementation of the FPA's Policies and Goals</td>
<td>6</td>
</tr>
<tr>
<td>Evaluation of the FPA: Failure to Consider Cumulative and Other Effects of Timber Operations</td>
<td>9</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 2</th>
<th>The Players / 19</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>19</td>
</tr>
<tr>
<td>California Department of Forestry and Fire Protection</td>
<td>19</td>
</tr>
<tr>
<td>Other Programs Administered by CDF</td>
<td>20</td>
</tr>
<tr>
<td>State Forests</td>
<td>20</td>
</tr>
<tr>
<td>Urban Forests</td>
<td>21</td>
</tr>
<tr>
<td>Forestry Incentive Programs</td>
<td>23</td>
</tr>
<tr>
<td>Forest Resources Improvement Program</td>
<td>23</td>
</tr>
<tr>
<td>California Forest Legacy Program</td>
<td>24</td>
</tr>
<tr>
<td>Federal Forestry Incentive Programs</td>
<td>26</td>
</tr>
<tr>
<td>Board of Forestry and Fire Protection</td>
<td>26</td>
</tr>
<tr>
<td>Structure and Function of the Board</td>
<td>27</td>
</tr>
<tr>
<td>Board Membership</td>
<td>27</td>
</tr>
<tr>
<td>Board Committees</td>
<td>29</td>
</tr>
<tr>
<td>Board Duties</td>
<td>30</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 2</th>
<th>The Players / 19</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>19</td>
</tr>
<tr>
<td>California Department of Forestry and Fire Protection</td>
<td>19</td>
</tr>
<tr>
<td>Other Programs Administered by CDF</td>
<td>20</td>
</tr>
<tr>
<td>State Forests</td>
<td>20</td>
</tr>
<tr>
<td>Urban Forests</td>
<td>21</td>
</tr>
<tr>
<td>Forestry Incentive Programs</td>
<td>23</td>
</tr>
<tr>
<td>Forest Resources Improvement Program</td>
<td>23</td>
</tr>
<tr>
<td>California Forest Legacy Program</td>
<td>24</td>
</tr>
<tr>
<td>Federal Forestry Incentive Programs</td>
<td>26</td>
</tr>
<tr>
<td>Board of Forestry and Fire Protection</td>
<td>26</td>
</tr>
<tr>
<td>Structure and Function of the Board</td>
<td>27</td>
</tr>
<tr>
<td>Board Membership</td>
<td>27</td>
</tr>
<tr>
<td>Board Committees</td>
<td>29</td>
</tr>
<tr>
<td>Board Duties</td>
<td>30</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 2</th>
<th>The Players / 19</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>19</td>
</tr>
<tr>
<td>California Department of Forestry and Fire Protection</td>
<td>19</td>
</tr>
<tr>
<td>Other Programs Administered by CDF</td>
<td>20</td>
</tr>
<tr>
<td>State Forests</td>
<td>20</td>
</tr>
<tr>
<td>Urban Forests</td>
<td>21</td>
</tr>
<tr>
<td>Forestry Incentive Programs</td>
<td>23</td>
</tr>
<tr>
<td>Forest Resources Improvement Program</td>
<td>23</td>
</tr>
<tr>
<td>California Forest Legacy Program</td>
<td>24</td>
</tr>
<tr>
<td>Federal Forestry Incentive Programs</td>
<td>26</td>
</tr>
<tr>
<td>Board of Forestry and Fire Protection</td>
<td>26</td>
</tr>
<tr>
<td>Structure and Function of the Board</td>
<td>27</td>
</tr>
<tr>
<td>Board Membership</td>
<td>27</td>
</tr>
<tr>
<td>Board Committees</td>
<td>29</td>
</tr>
<tr>
<td>Board Duties</td>
<td>30</td>
</tr>
</tbody>
</table>

| Conflict of Interest Rules | 32 |
| Board Adoption of FPRs | 33 |
| Subjects of Board Rules | 33 |
| Procedures for Rulemaking Under the APA and FPA | 36 |
| General Overview of APA and FPA Rulemaking Requirements | 36 |
| Board Rulemaking Requirements Under the FPRs | 40 |
| Emergency Regulations | 41 |
| Dissemination and Implementation of Adopted Rules | 42 |

| Other Public Agencies | 43 |
| In General | 43 |
| Restoration Programs Administered by Agencies Other Than CDF | 44 |
| Fisheries and Wildlife | 44 |
| Habitat Restoration Programs | 44 |
| Water Quality Restoration Programs | 45 |
| North Coast Watershed Assessment Program | 46 |
| Other Watershed Assessment Programs | 47 |

| Registered Professional Foresters | 47 |
| Licensing and Registration of Professional Foresters and Certified Specialists | 47 |
| Professional Foresters | 47 |
| Certified Specialists | 49 |
| Application and Examination Process | 50 |
| Term of License or Specialty Certificate | 54 |
| RPF Duties | 55 |
Contents

Registered Professional Foresters continued

Discipline of an RPF or Certified Specialist ............................... 56
Licensed Timber Operators .................................................. 58
Licensing Process ............................................................. 58
Responsibilities of LTOs .................................................... 61
Plan Submitters, Timber Owners, and Timberland Owners .............. 62
The General and Concerned Public ....................................... 64
Public Access to Information ............................................... 67

Inspection and Copies of Public Documents—California Public Records Act
In General ................................................................. 67
Right to Inspect or Obtain Copies of Public Records ................. 68
Agency Response to Request for Copies of Public Records .......... 69
Other Requirements ....................................................... 70
Records Exempt from Public Disclosure .................................. 70
Challenges to Agency Actions Under the PRA ......................... 71

Public Complaints .................................................................. 72

Chapter 3

Timber Harvest Review Process / 73

Overview ............................................................................. 73
Submittal and Filing of a THP ............................................... 79
Notice of Intent to Harvest Timber ........................................ 79
Notice of Filing of a THP ..................................................... 81

Special Notice Rules .......................................................... 82
Domestic Water Supplies ................................................... 82
Local Rules ........................................................................ 83
Southern Subdistrict of the Coast Forest District ....................... 83
Santa Clara County ............................................................ 83
Santa Cruz County ............................................................ 84
Marin County ..................................................................... 85

Contents of the THP ............................................................. 85

General Information ........................................................... 88
Ownership Interest ............................................................. 88
Description of Plan Area .................................................... 88
Pending Permits for the Plan Area ......................................... 89
Dates of Operation ............................................................. 89
Responsibilities of Various Parties ........................................ 90
Notice of Intent ................................................................. 90
Certification ........................................................................ 90

Required Evaluation of Environmental Effects ......................... 90
Alternatives Analysis .......................................................... 90
Analysis of Cumulative Effects ............................................. 91

Description of Proposed Timber Operations ............................ 93
Products to Be Harvested ..................................................... 93
Silvicultural Methods .......................................................... 93
Clearcutting/Evenaged Management ...................................... 94
Selection Method/Unevenaged Management .......................... 94
Intermediate Treatments ...................................................... 95
Special Prescriptions .......................................................... 95
Alternative Prescriptions ..................................................... 95
Logging Methods ............................................................... 96
Erosion Controls ................................................................ 96
Winter Operations Plan ...................................................... 97
Site Preparation .................................................................. 98

Information Relating to Specific and Sensitive Conditions ............ 98
Watercourse Information ...................................................... 98
Watersheds with Threatened or Impaired Values ....................... 100
Watershed Conditions ........................................................ 101
Roads and Landings in Watersheds with Threatened or Impaired Values ......................................................... 102
Roads and Landings in General ............................................ 102
Disease and Pest Control ..................................................... 104
Protection of Species and Habitat .......................................... 105
Protection of Archaeological and Historical Resources .............. 106
Unique Areas ..................................................................... 107
## Contents of the THP continued

### Mapping Requirements
- General Requirements ........................................ 108
- Maps of Other Plans in Planning Watershed ............ 109
- Special Mapping Requirements for Coastal Commission STAs and Counties ...
  - Coastal Commission STAs .................................. 109
  - Santa Clara County ....................................... 109
  - Santa Cruz County ....................................... 110
  - Marin County ............................................ 110
  - San Mateo County ....................................... 110
  - Monterey County ....................................... 110

### Additional Specific Informational Requirements for Coastal Commission STAs and Counties
- Pre-Filing Field Investigations .......................... 111
- Coastal Commission STA Rules ........................ 111
- County Rules ............................................... 111
- Use of Chemicals .......................................... 111
- Logging Truck Loads ...................................... 112
- Public Water Purveyors .................................. 112
- Grading Permit ............................................ 112

### THP Review Process
- CDF Acceptance of THP for Filing ....................... 112

#### Review Team Process
- Composition and Function of Review Team .......... 113
- First Review of THP by Review Team ................. 116
- Pre-Harvest Inspection .................................. 117
- Second Review of THP ................................ 118
- CDF Consideration of Review Team Recommendations .................................................................. 119
- Nonconcurrences ........................................... 120
- Special Requirements Applicable to Regional Board’s Participation in Review Team Process . 121

#### Public Involvement in the THP Review Process
- CDF Decisions on THPs .................................... 128
- Determination of Conformance ......................... 129
- Determination of Nonconformance .................... 130
- Delay of Decision Under Public Resources Code Section 4555 ........................................ 134

### Appeal of a THP Decision
- Appeal If THP Is Approved ................................ 135
  - Head-of-Agency Appeal .................................. 135
  - Appeal by County with Local Rules ................. 138
- Appeal If THP Is Denied .................................... 140

### THP Inspections
- Plan Completion ............................................. 142
- Term of Plan .................................................. 143
- Completion Report .......................................... 143
- Post-Harvest Inspections ................................ 144

### THP Amendments

#### chapter 4

### Substantive Standards for Timber Harvest Plans / 149

#### Introduction
- Rules as Criteria for Plan Review ...................... 149
- Effect of FPA and FPR Exclusivity Provisions ..... 151
- FPRs Adopted After Plan Approval .................... 154

#### Maximum Sustained Production of High-Quality Timber Products
- Overview ....................................................... 158
- Options for Achieving MSP Under the FPRs ..... 160
  - Option A ...................................................... 161
  - Option B—SYP or NTMP ................................. 162
  - Option C—THPs and NTMPs ......................... 163

#### Protection of Late Succession Forest Stands
- Silvicultural Methods ..................................... 166
- Evenaged Management .................................... 168
  - In General .................................................. 168
  - Clearcutting Method .................................... 169
  - Seed Tree Method ....................................... 169
  - Shelterwood Method .................................... 170

#### Unevenaged Management
- Selection Harvest Method ............................... 171
- Transition Method .......................................... 172
## Contents

**Silvicultural Methods continued**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intermediate Treatments</td>
<td>173</td>
</tr>
<tr>
<td>Commercial Thinning</td>
<td>173</td>
</tr>
<tr>
<td>Sanitation-Salvage</td>
<td>173</td>
</tr>
<tr>
<td><strong>Special Prescriptions</strong></td>
<td></td>
</tr>
<tr>
<td>Special Treatment Areas</td>
<td>174</td>
</tr>
<tr>
<td>Rehabilitation of Understocked Areas</td>
<td>174</td>
</tr>
<tr>
<td>Fuelbreak/Defensible Space</td>
<td>174</td>
</tr>
<tr>
<td>Variable Retention</td>
<td>174</td>
</tr>
<tr>
<td><strong>Alternative Prescriptions</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Resource Conservation and Stocking Standards</strong></td>
<td></td>
</tr>
<tr>
<td><strong>In General</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Methods of Stocking</strong></td>
<td></td>
</tr>
<tr>
<td>Sampling to Determine Stocking</td>
<td>179</td>
</tr>
<tr>
<td>Stocking Report</td>
<td>181</td>
</tr>
<tr>
<td>Stocking of Substantially Damaged Timberlands</td>
<td>185</td>
</tr>
<tr>
<td><strong>Erosion Control Measures and Site Preparation Requirements</strong></td>
<td>187</td>
</tr>
<tr>
<td><strong>In General</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Alternative Prescriptions</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Erosion Hazard Rating</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Felling Practices</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Tractor Operations</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Cable Yarding</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Site Preparation</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Waterbreaks</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Winter Operations</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Erosion Control Maintenance</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Miscellaneous Requirements</strong></td>
<td></td>
</tr>
</tbody>
</table>

**WLPZ Requirements**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Concerns Raised About the Adequacy of the WLPZ Rules</td>
<td>194</td>
</tr>
<tr>
<td><strong>General Requirements for Protection of Beneficial Uses</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Alternative (In Lieu) Practices</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Designation of WLPZs and Development of Protective Measures</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Determination of Salmonid Habitat</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Determination of Additional Measures to Protect Beneficial Uses of Water and Riparian Functions</strong></td>
<td></td>
</tr>
<tr>
<td><strong>General WLPZ Limitations</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Reduction of Soil Loss</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Protection of Domestic Water Supplies</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Evaluation of WLPZ Compliance</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Protection of Watersheds with Threatened and Impaired Values</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Overall Goals and Objectives</strong></td>
<td></td>
</tr>
<tr>
<td><strong>General Requirements</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Special Requirements for Class I Waters</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Special Requirements for 303(d) Listed Water Bodies</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Sensitive Watershed Designation</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Roads and Landings</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Planning for Roads and Landings</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Road Construction</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Landing Construction</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Watercourse Crossings</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Threatened and Impaired Watersheds</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Maintenance of Roads and Landings</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Maintenance of Roads and Landings</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Concerns Raised About the Adequacy of the WLPZ Rules**

**General Requirements for Protection of Beneficial Uses**

**Alternative (In Lieu) Practices**

**Designation of WLPZs and Development of Protective Measures**

**Determination of Salmonid Habitat**

**Determination of Additional Measures to Protect Beneficial Uses of Water and Riparian Functions**

**General WLPZ Limitations**

**Reduction of Soil Loss**

**Protection of Domestic Water Supplies**

**Evaluation of WLPZ Compliance**

**Protection of Watersheds with Threatened and Impaired Values**

**Overall Goals and Objectives**

**General Requirements**

**Special Requirements for Class I Waters**

**Special Requirements for 303(d) Listed Water Bodies**

**Sensitive Watershed Designation**

**Roads and Landings**

**Planning for Roads and Landings**

**Road Construction**

**Landing Construction**

**Watercourse Crossings**

**Threatened and Impaired Watersheds**

**Maintenance of Roads and Landings**
Roads and Landings continued

Conduct of Operations on Roads and Landings ............................ 228
Abandonment of Roads, Watercourse Crossings, and Landings ............... 229
Hazard Reduction ........................................................................ 230
Measures to Reduce Fire and Insect Hazards .................................... 230
Treatment of Slash to Prevent Fire .................................................. 230
Broadcast Burning ....................................................................... 231
Burning of Slash Piles .................................................................. 231
Pest and Disease Control ............................................................... 232
Specific Fire Protection Measures .................................................. 233
Measures to Be Taken During Operations ....................................... 233
Resource Inventory Requirement .................................................... 234
Special Treatment Areas ................................................................. 234
Alternative and In Lieu Practices ..................................................... 235
Cumulative Impact Analysis ............................................................ 236
Background and Overview ............................................................... 236
FPR Requirements for Analysis of Cumulative Impacts ......................... 239
In General ................................................................................. 239
Cumulative Impacts Assessment Checklist ....................................... 241
Technical Rule Addendum No. 2 ..................................................... 242
Appendix to Technical Rule Addendum No. 2 ................................... 243
Watershed Resources .................................................................... 244
Sediment Effects ........................................................................ 244
Water Temperature Effects ............................................................. 245
Organic Debris Effects ................................................................. 245
Effects of Chemical Contamination ............................................... 246
Peak Flow Effects ........................................................................ 246

Appendix to Technical Rule Addendum No. 2 continued

Soil Productivity .......................................................................... 246
Organic Matter ............................................................................ 246
Soil Compaction ......................................................................... 247
Growing Space Loss ..................................................................... 247
Biological Resources .................................................................... 247
Recreational Resources ................................................................. 249
Visual Resources ......................................................................... 249
Vehicular Traffic Impacts ............................................................... 249

Alternatives Analysis ..................................................................... 250

Chapter 5

Standards Specific to the Protection of Animals and Plants / 253

Protections for Animals and Plants Under the FPRs and CEQA ................. 253

General FPR and CEQA Requirements for Protection of Animal and Plant Species and Habitat .............................................................. 255

General Requirement to Analyze Potentially Significant Impacts on Species and Habitat, and to Mitigate Significant Adverse Impacts .......... 255
RPF and CDF Duties to Obtain Adequate Information on Species and Habitat ................................................................. 258

In General: Species Surveys as an Informational Requirement for THPs and Other Plans ................................................................. 258

Special Issues of Concern Regarding Plant Surveys for THPs and Other Plans ................................................................. 263

New Information Obtained After Close of Public Comment Regarding Potentially Significant Impacts to Species ............................................. 266

Mandatory Findings of Significance for Species and Habitat .................... 267

Statements of Overriding Consideration ............................................. 274

Other Requirements for the Protection of Wildlife Under the FPRs ............ 275
Snag Retention Requirements ........................................................... 277
Protection of Unlisted Plant and Animal Species ................................... 279

Other Requirements for the Protection of Wildlife Under the FPRs ............ 275
Snag Retention Requirements ........................................................... 277
Protection of Unlisted Plant and Animal Species ................................... 279
Other Requirements for the Protection of Wildlife Under the FPRs continued

Protection of Nest Sites of Sensitive Species

General Requirements for Protection of Nest Sites of Sensitive Species
Specific Requirements for Protection of Nest Sites of Sensitive Species

- Bald eagle
- Golden eagle
- Peregrine falcon
- Great blue heron and great egret
- Northern goshawk
- Osprey

Specific FPR Requirements for Protection of Species Listed Under the Federal or State ESAs

Requirements Applicable to Listed Animal Species

- Northern Spotted Owl (Coast and Northern Districts)
- Information Regarding Potential Take
- Preliminary review of proposed plan by designated biologist
- Inclusion of information in plan regarding impacts to northern spotted owl
- No take certification of RPF
- Incidental take permit from FWS
- Informal consultation with FWS
- CDF’s and Designated Biologist’s Determination of Take

- Marbled Murrelet (Coast District only)

Listed Fish Species

- FPRs - Joint Policy Statement

Requirements for Denial of a THP or Other Plan

- Take of or jeopardy to Listed Species
- Take of Northern Spotted Owl or Marbled Murrelet
- Significant Long-Term Damage to Listed Species

Protection of Listed Species During Timber Operations, Before Filing Notice of Completion

Requirements Applicable to Listed Plant Species

Requirements for Analysis in a THP or Other Plan

Requirements for Denial of a THP or Other Plan

Designation of Sensitive Species

Protection of Late Succession Forest Stands, Including Old Growth

Other Fish and Game Code Requirements for the Protection of Species and Habitat

DFG’s Trustee Responsibilities

Specially Protected Species Statutes

Marbled Murrelet

Section 2014—Damages for Taking or Destroying Fish and Wildlife Resources

chapter 6

Rules Governing Protection of Archaeological and Historical Resources

Forest Practice Rules

- Requirements Applicable to THPs and Other Plans
- RPF Responsibilities Prior to Submission of THP or Other Plan
- Information Required to Be Included with the THP or Other Plan

Requirements Applicable to Emergency and Exemption Notices

- Emergency Notices for Three Acres or More
- Emergency Notices for Less Than Three Acres
- Exemption Notices

CDF Determination of Significance and Development of Protection and Mitigation Measures
After CDF Approval of THP or Other Plan or Acceptance of Emergency or Exemption Notice 330
Meeting with RPF and LTO 330
Submission of Information to Information Center 331
Post-Review Site Discovery 331
CEQA Requirements for Protection of Historical and Archaeological Resources 332
In General 332
CEQA Requirements for Protection of Historical Resources 334
CEQA Requirements for Protection of Archaeological Resources 335
Discovery of Human Remains 336
Additional Provisions Regarding Preservation of Historical Resources 337

chapter 7
Timber Harvesting Under Authority Other Than THPs / 339
Modified THPs 339
In General 339
Contents and Process for Review of MTHP 341
Nonindustrial Timber Management Plans 343
In General 343
Contents and Purpose of NTMP 343
Procedure for Review of NTMP 344
Notice of Preparation 344
Agency and Public Review of NTMP 345
CDF Decision on NTMP 346
Notice of Timber Operations 347
Amendment of NTMP 348
Cancellation of NTMP 350

Responsibilities of Various Parties 350
Plan Submitter Responsibilities 350
RPF Responsibilities 351
LTO Responsibilities 351
Change in Ownership 351
Program THPs and Program Timber EIRs 352
PTEIR 353
PTHP 354
In General 354
Scope and Term 354
Procedure for Approval of a PTHP 355
Submission of a PTHP 355
Notice of Intent to Harvest 355
Contents of a PTHP 356
Review of a PTHP 356
Review for Completeness 356
Notice of PTHP Filing 356
Agency and Public Review of a PTHP 357
CDF Response to Comments 357
CDF Review of a PTHP 357
Plan Not in Conformance with FPRs 358
Plan Not Within the Scope of the PTEIR 358
Decision on a PTHP 359
Determination of Nonconformance 359
Notice of Conformance 359
Notice of Timber Operations 360
Effective Dates of PTEIR and PTHP 360
Amendment of PTHP 361
Cancellation of PTHP 362
Responsibilities of Various Parties 363
Change in Ownership 363
Exemption and Emergency Timber Harvesting 363
Complete Exemptions from the FPA and FPRs 365
# Contents

**chapter 11**

**Timberland Conversions / 417**

**In General** .................................. 417

**Exemptions from the TCP Requirement**  ........................................ 420

**Public Rights of Way** ........................................ 421

**Subdivision Development Projects on Non-TPZ Land** ..................... 421

**“Less Than Three Acre” Conversion Exemption** .............................. 423

**TCP Application Requirements** ................................................ 425

**CEQA Procedures for TCPs** ...................................................... 426

**CDF Decision on TCP Application** ............................................ 427

**Special Requirements for Conversions in TPZs** .............................. 429

**Requirements for Approval of a TCP** ....................................... 429

**Special Procedures for Conversions Involving Immediate Rezoning of TPZ Land** .................................................. 430

**Special Requirements for Coastal Zone Conversions** ....................... 432

**Renewal, Transfer, Revocation, or Cancellation of a TCP** ............... 433

**chapter 12**

**California Environmental Quality Act / 435**

**Background and Introduction** ................................................. 435

**Certified Regulatory Programs Under CEQA** .................................. 439

**Requirements for Certification of a Regulatory Program** .................. 439

**Scope of the CEQA Exemption for Certified Regulatory Programs** .... 440

**Process for Functionally Equivalent Certification**............................ 445

**chapter 13**

**Federal and State Laws Protecting Endangered Species / 471**

**Background and Introduction** ................................................. 471

**Federal Endangered Species Act** .............................................. 473

**Overview and Purposes** ......................................................... 473

**Section 4: Listing, Critical Habitat Designation, and Recovery Planning** 474

**Listing of Species as Endangered or Threatened** .......................... 474

**In General** ........................................................................ 474

**Factors for Listing** .................................................................. 477

**Listing Procedure** .................................................................... 478

**Critical Habitat Designation** ..................................................... 480

**Substantive Requirements for Critical Habitat Designation** ............... 480

**Procedure for Critical Habitat Designation** .................................. 481

**Exceptions to Requirement to Designate Critical Habitat** ............... 484

**Recovery Plans** ....................................................................... 484

**Procedure for Environmental Review Pursuant to a Functionally Equivalent Certification** .......................... 446

**CDF as Lead Agency** .................................................................. 446

**Role of Responsible and Trustee Agencies** .................................... 447

**Public Participation** .................................................................... 450

**Substantive CEQA Requirements** .............................................. 450

**In General** ............................................................................. 450

**Evaluation of Project Impacts** .................................................... 450

**Evaluation of Cumulative Impacts** ............................................. 450

**Evaluation and Adoption of Alternatives and Mitigation Measures** .... 450

**Adoption of Findings and Statement of Overriding Consideration** .... 459

**Lead Agency Findings** ............................................................... 459

**Responsible Agency Approval and Findings** .................................. 462

**Responses to Comments** ............................................................ 464

**Mitigation Monitoring and Reporting** .......................................... 465
## Section 7: Federal Agency Consultation

**Section 7(a)(1): Duty to Conserve Listed Species** .......................... 485
**Section 7(a)(2): Duties to Ensure No Jeopardy and No Adverse Modification or Destruction of Critical Habitat** .................. 486

### Section 7 Consultation Process

- Federal Agency Actions Subject to Section 7 .................................. 490
- Initial Consultation Procedure .................................................. 493
- Informal Consultation ............................................................... 494
- Biological Assessment ............................................................... 495
- Formal Consultation and Biological Opinion ................................. 495
  - Initiation and Scope of Consultation ....................................... 495
  - Formal Consultation Procedure .............................................. 499
- Section 7(d): Irreversible and Irretrievable Commitments of Resources ................................................................. 500
  - Reinitiation of Consultation ................................................ 505

### Section 9 Prohibitions

- Take Prohibition Applicable to Listed Fish and Wildlife Species .................. 506
- General Application of Take Prohibition ..................................... 507
- Definition of “Take” ............................................................... 509
- Prohibitions Applicable to Listed Plant Species ............................... 515

### Exceptions to the Section 9 Take Prohibition

- Section 10 Incidental Take Permit .............................................. 517
- Criteria for Issuance of an ITP ................................................ 524
- Procedures for Issuance of an ITP .............................................. 524
- Regulatory or Permit Assurances ("No Surprises" Policy) ............... 528
- Permit Revocation, Amendment, and Transfer ............................... 532

### Scientific Research / Enhancement of Survival Permits

- FWS "Safe Harbor" Enhancement of Survival Permits ....................... 533
- FWS Enhancement of Survival Permits for Candidate Species (Candidate Conservation Agreements) .............................. 534

### Remedies for Violations of the ESA

- General Prohibitions on Permit Issuance ................................ 535
- Regulated Take of Threatened Species (Section 4(d) "Special Rules") .... 536

### California Endangered Species Laws

- The California Endangered Species Act ........................................ 541
  - Overview and Purposes ....................................................... 542
  - Listing of Species ............................................................. 543
  - Procedure for Listing ....................................................... 544
    - Initial DFG Review and Evaluation of Petition ......................... 544
    - Commission Determination of Candidate Status ........................ 545
    - DFG One-Year Status Review and Commission Listing Determination .... 546
  - Applicability of CEQA ...................................................... 547
- Critical Habitat Designation and Coho Recovery Planning Under CESA . . . . . 547
- CESA Take Prohibition ........................................................... 550
  - Overall Scope of Prohibition .............................................. 550
  - Definition of Take ............................................................. 550
  - Applicability of CESA’s Take Prohibition to Listed Plant Species ....... 552
  - Exceptions to CESA’s Take Prohibition ................................ 554
  - Scientific, Educational, or Management Purposes Exception: Fish & Game Code § 2081(a) ...................................................... 554
  - Incidental Take Exception: Fish & Game Code § 2081(b) ............... 554
  - Criteria for Issuance of an ITP .............................................. 555
    - Full mitigation for all impacts of take • Funding to implement mitigation • No jeopardy requirement ........................................ 559
  - Procedures for Issuance of an ITP ........................................ 559
- Federal Permit Exception: Fish & Game Code § 2080.1 ......................... 561
chapter 14
Requirements for Protection of Water Quality / 581

Overview of CWA Requirements ................................................. 583
Purpose of the Clean Water Act .............................................. 583
Adoption of State Water Quality Standards ............................... 584
   Designated Uses ................................................. 584
   Water Quality Criteria ........................................ 586
   State Triennial Review of WQS .................................. 586
   EPA Approval of WQS ......................................... 587
Antidegradation Requirements .................................................. 588
   Federal Antidegradation Requirements .............................. 588
      Tier I—Existing Uses (No Water Quality Degradation Is Permitted). 590
      Tier II—High Quality Waters (Some Limited Water Quality Degradation May Be Permitted) 590
      Tier III—Outstanding National Resource Waters (Generally No Water Quality Degradation Is Permitted) 591
      Required Antidegradation Analysis ............................. 591
State Implementation of Federal Antidegradation Requirements .... 593
Application of Antidegradation Requirements to Timber Operations 595

Key Regulatory Mechanisms for Protecting Water Quality Under the Clean Water Act ................................................... 597
Regulation of Pollutant Discharges Under the Clean Water Act .... 597
   Overview ......................................................... 597
   Section 402 Permits: NPDES .................................... 599
      In General .................................................. 599
      Applicability of NPDES Permit System to Silvicultural Activities 602
   Section 404 Dredge and Fill Permits ............................... 610
      Overview ..................................................... 610
   Section 401 State Water Quality Certification Requirements ...... 611
      Basic Section 404 ........................................... 612
      Permit Issuance Criteria .................................... 612
      Exemptions from the Section 404 Permit Requirement ....... 615
      Statutory Exemptions from the Section 404 Permit Requirement...
chapter 15

Regulation of Timber Harvesting in the Coastal Zone / 699

California Coastal Act

Overview of Statutory Requirements

Goals and Policies of the Coastal Act
Preparation and Certification of Local Coastal Programs
Regulation of Development Within the Coastal Zone
Amendment of Local Coastal Programs

Regulation of the Conduct of Timber Operations in the Coastal Zone

Coastal Commission
Special Treatment Areas.
Coastal Commission Recommendations to the Board

Coastal Zone Management Act and Coastal Zone Act Reauthorization Amendments

Overview of Statutory Requirements

chapter 16

Additional Laws Affecting Private Forest Lands / 719

Wild and Scenic River Protection

Federal Wild and Scenic Rivers Act
California Wild and Scenic Rivers Act

Requirement for Streambed Alteration (Section 1600) Agreements

Fish and Game Code Section 1600 et seq.

General Intent of Fish and Game Code Section 1600 et seq.
Actions Prohibited by Fish and Game Code Section 1600 et seq. Without Prior Notice to DFG

Process for Approval of a 1600 Agreement

Application Requirements
DFG Review of Application

Term and Scope of 1600 Agreement
Suspension or Revocation of a 1600 Agreement

Exceptions to / Exemptions from Requirements of Section 1600 et seq.
CEQA Review of 1600 Agreement
Special Notice Provision for THPs
### Contents

**Remedies for Violations of Section 1600 et seq.**  
- Government Remedies  
- Remedies of Private Parties  
- 740

**Fish and Game Code Section 5650:**  
- Prohibitions on Discharges into State Waters  
- Basic Prohibitions  
- Criminal and Civil Remedies  
- Criminal Penalties  
- Civil Remedies  
- Remediation  
- 743

**Pesticide Regulations Applicable to Timber Operations**  
- In General  
- Pesticide Regulatory Program Administered by the DPR  
- Overview  
- Pesticide Registration  
- Regulation of Pesticide Use: Permits for Use of Restricted Pesticides  
- Review of County Commissioner Permit Decision  
- Appeal of County Commissioner Permit Decision  
- General Requirements for Application of Pesticides  
- Relationship of Pesticide Regulatory Scheme to THP Review Process  
- 746

**Common Law Prohibitions Relevant to Forest Practices on Private Land**  
- Introduction  
- California Nuisance Law  
- Overview  
- Remedies for Enforcement of California Nuisance Law  
- 759

**California Nuisance Law continued**  
- Timber Harvesting as a Potential Nuisance  
- 763

**The Public Trust Doctrine**  
- The Public Trust Interest in State Waters  
- The Public Trust Interest in Fish and Wildlife  
- Timber Harvesting and the Public Trust Doctrine  
- 772

**Enforcement of the Forest Practice Act and Other State Statutes**  
- Government Enforcement Under the FPA and FPRs  
  - In General  
  - Criminal and Civil Penalties Under the FPA  
    - Criminal Penalties  
    - Civil Penalties  
    - Civil Penalties Imposed by a Court  
    - Civil Penalties Imposed by CDF  
    - Infractions  
  - Other Government Remedies Under the FPA  
    - Injunctive Relief  
    - Stop Order  
    - Corrective Action  
  - Government Enforcement Actions Under Unfair Competition Act: Business and Professions Code Section 17200 et seq.  
    - Overview of the Unfair Competition Act  
    - Remedies Under the Unfair Competition Act  
      - Injunctive Relief  
      - Restitution and Other Equitable Remedies  
      - Civil Penalties  
    - 785

- 775
Citizen Enforcement ........................................ 790
Administrative Mandamus Challenges to State Agency Decisions Under the FPA, FPRs, and Other State Environmental Laws ........................................ 790
Standard of Review ........................................ 790
   Review of State Agencies’ Discretionary Decisions ........................................ 790
   Injunctive Relief ........................................ 793
   Trial Court Award of Preliminary Injunction ........................................ 793
   Stay of Proceedings in the Appellate Court ........................................ 794
Scope of Review ........................................ 795
Jurisdictional Requirements ........................................ 797
   Standing Requirements for Petition for Writ of Mandate ........................................ 797
   Exhaustion of Administrative Remedies ........................................ 798
   Statutes of Limitations ........................................ 801
   Special CEQA Requirements ........................................ 802
Declaratory Relief Claims ........................................ 803
Private Enforcement Under the Unfair Competition Act: Business and Professions Code Section 17200 ........................................ 806
   Prior Law ........................................ 806
   Proposition 64 Amendments ........................................ 808
   Attorney’s Fees ........................................ 809

Appendices

Appendix A
California Forest Practice Rules ........................................ 813
   Title 14, C.C.R., Chapter 4, Sections 895, 895.1 ........................................ 813
Appendix B
   Technical Rule Addenda ........................................ 831
      TECHNICAL RULE ADDENDUM NO. 1 ........................................ 831
      Procedure for Estimating Surface Soil Erosion Hazard Rating
      TECHNICAL RULE ADDENDUM NO. 2 ........................................ 836
      Cumulative Impact Assessment
      TECHNICAL RULE ADDENDUM NO. 3 ........................................ 844
      Brood Material
      TECHNICAL RULE ADDENDUM NO. 4 ........................................ 845
      Minimum Distances Required by Law — Fire Safe THP Vegetation Treatment
Appendix C
   State Water Resources Control Board/Department of Forestry Management Agency Agreement
      USEPA Memorandum ........................................ 845
      Management Agency Agreement ........................................ 849
Appendix D ........................................ 861
   Agency Contact Information and Web Sites
   Bibliography ........................................ 865
   List of Acronyms ........................................ 869
   Table of Authorities ........................................ 871
   Index ........................................ 905
List of Figures

- Figure 3-1. Explanation of Timber Harvest Plan Information .................................. 77
- Figure 3-2. THP Review Process .................................................................................. 113
- Figure 4-1. Typical Yield and Yield Sacrifice / Length of Rotation ............................... 159
- Figure 4-2. Unacceptable Stocking Results ................................................................. 184
- Figure 7.1. PTEIR and PTHP Process ...................................................................... 353
- Figure 13-1. Formal Consultation Process ................................................................. 493
- Figure 14-1. Antidegradation Flow Chart .................................................................. 592
- Figure 16-1. Fish and Game Code 1600 Agreement Process ................................. 729
- Figure 18-1. CDF Enforcement Policies and Objectives ............................................ 777

List of Tables

- Table 3-1. Commercial Species .................................................................................. 75
- Table 4-1. Relationship of Standard Silvicultural Treatments to Objectives and Stand Conditions ................................................................. 167
- Table 4-2. Timber Site Classification ....................................................................... 182
- Table 4-3. Maximum Distance Between Waterbreaks ........................................... 192
- Table 4-4. Procedures for Determining Watercourse and Lake Protection Zone Widths and Protective Measures ....................................................... 201
- Table 5-1. Forest Species of Concern in California ..................................................... 258
- Table 5-2. FPR Requirements for Protection of Sensitive Species ........................... 281
- Table 5-3. Federal and State Endangered Species Act Status for California Anadromous Salmonids as of 6/21/02 ......................................................... 295
- Table 7-1. Comparison of Other Timber Harvesting Options .................................. 340
- Table 7-2. Emergency and Exemption Harvesting .................................................... 364
- Table 11-1. Rights-of-Way Widths for Single Overhead Facilities ......................... 422
- Table 12-1. Comparison of Certified Regulatory Programs to CEQA .................... 441
- Table 14-1. TMDLs Required for North Coastal California Rivers ........................... 636

List of Tables (continued)

- Table 7-1. Comparison of Other Timber Harvesting Options .................................. 340
- Table 7-2. Emergency and Exemption Harvesting .................................................... 364
- Table 11-1. Rights-of-Way Widths for Single Overhead Facilities ......................... 422
- Table 12-1. Comparison of Certified Regulatory Programs to CEQA .................... 441
- Table 14-1. TMDLs Required for North Coastal California Rivers ........................... 636
This is a comprehensive treatise on the regulation of forest practices on private lands in California. This book provides an in-depth summary and analysis of the myriad state and federal laws that govern forest practices on private lands, including discussion of statutory and regulatory requirements, applicable case law, and agency policies. It also includes a number of useful appendices, sidebar discussions, and charts, graphs and tables to assist users of this book in understanding these complex state and federal regulatory processes and how such processes interrelate.

California has the most extensive body of laws applicable to private land forestry of any state in the country. The primary governing statute is the 1973 Z'Berg Nejedly Forest Practice Act (FPA). The FPA requires an owner of timberland who wishes to harvest timber for commercial purposes to submit one of several types of timber harvest plans, depending upon the nature of the operation and the type of landowner involved, to the California Department of Forestry and Fire Protection (CDF) for its review and approval. This book outlines the detailed procedures and substantive requirements for the preparation, review, approval and implementation of such plans, as set forth in the FPA and its implementing regulations.

California also has enacted the 1976 Timberland Productivity Act (TPA), which establishes a special zoning designation for commercial timberland that restricts the use of such land to timberland production and compatible uses and which offers certain tax advantages. This book outlines the processes for zoning land for timberland production, and for rezoning and converting such specially zoned land to other zoning designations and land uses.

In addition, this book describes the roles and responsibilities of each participant in the process of obtaining approval to harvest timber
on private lands, including the timberland owner or timber owner, plan submitter, registered professional forester (RPF), licensed timber operator (LTO), the public, CDF, the Board of Forestry and Fire Protection (Board), and other public agencies. This book discusses the Board’s rulemaking responsibilities, as well as CDF’s licensing, regulation and discipline of RPFs, LTOs, and other forestry professionals. The text also discusses the roles and responsibilities of other state and local agencies in regulating forest practices on private lands. These agencies include the California Department of Fish and Game, the Regional Water Quality Control Boards and State Water Resources Control Board, California Geological Survey, California Coastal Commission, Department of Pesticide Regulation, and cities and counties. The book outlines how each of these other agencies interfaces with CDF and the Board, both under the FPA and TPA, and in implementing their own responsibilities under other applicable statutes.

The book also provides a detailed discussion of other state and federal laws that impose additional requirements on timber harvesting on private lands. These other laws include the California Environmental Quality Act (CEQA), the state and federal Endangered Species Acts, state and federal water quality laws, the California Coastal Act, the state and federal Wild and Scenic Rivers Acts, laws regulating the use of pesticides, and restrictions on streambed alteration and other miscellaneous provisions of the Fish and Game Code. Additionally, this treatise discusses the law of nuisance and the public trust doctrine, two common laws that are relevant to timber operations on private lands.

This book provides a discussion of the application of these various statutory and common laws to private land forestry in California, including an extensive overview of available enforcement mechanisms under the FPA and other state and federal laws. Finally, the book provides brief summaries of laws concerning urban forestry, regulation of state-owned forests, and state and federal programs for restoration of private forest lands.

Because the focus of this book is on laws and regulations pertaining to commercial timber harvesting on privately-owned forest lands in California, it does not cover the regulation and management of federal forest lands or logging on federal forest lands. Nor does it provide a detailed discussion of California fire regulations for private forest lands.

The book is intended to be a comprehensive guide for the wide variety of actors who are involved or interested in timber harvesting on private lands in California. It is designed to assist timberland owners and timber owners in understanding their rights and responsibilities when pursuing logging proposals. It also is intended to guide forestry
professionals who assist timberland owners and timber owners in preparing and implementing logging plans, including but not limited to plan submitters, RPFs, LTOs, biologists, hydrologists, geologists, and other resource professionals.

Similarly, the book is intended to assist each public agency responsible for regulating timber operations on private lands, and members of the public who are interested in participating in these agency processes, to ensure that the laws are properly applied and enforced. This book likewise provides a useful guide to lawyers, planners, and other consulting professionals involved in timber harvesting on private lands and environmental issues generally, on behalf of landowners, agencies, and the interested public. Finally, this book also can serve as a textbook for a variety of undergraduate, graduate and legal educational institutions.

A note of caution is in order: this book is not intended to provide legal advice, nor can it provide a complete, up-to-date discussion of every applicable area of the law and every possible interpretation of these complex laws and regulations. The law is constantly and rapidly evolving through adoption of new statutes and regulations, court decisions, agency interpretations, and the like. This book is intended only as a general guide. It covers statutes, regulations, policies and guidance documents, case law and studies in effect or proposed as of March 30, 2005, including all relevant laws enacted in 2004 that became effective on January 1, 2005. Readers are advised to consult their own attorneys to obtain legal advice on a particular matter. The authors hope that this book will be a useful and practical tool for all those who wish to understand private land forestry regulation in California.

Sharon E. Duggan
Tara Mueller
October 2005