land, rights in land, water, and water rights necessary to carry out that law and may authorize that acquisition by DFG. Existing law provides that the State Coastal Conservancy is the repository of lands pursuant to the California Coastal Act of 1976 and authorizes the Conservancy to acquire real property or interests in real property for purposes of that Act. As amended July 7, this bill would authorize the Board and the Conservancy to use funds available to them for the purpose of acquiring the South Spit of Humboldt Bay, as described in the bill. The bill would permit the Conservancy, in consultation with the Department of Parks and Recreation, the Attorney General, the State Lands Commission, and Humboldt County to prepare a management plan for that area and to submit the plan to the legislature on or before June 30, 1997. *[A. Appr]*

SB 55 (Kopp), as amended March 2, would allow domestic ferrets to be imported for, and owned as, pets without a permit from the Department of Health Services if the owner of a ferret maintains, and can produce, documentation showing that the ferret has been vaccinated against rabies with a vaccine approved for use in ferrets by the U.S. Department of Agriculture and administered in accordance with the recommendations of the vaccine manufacturer and if the ferret is spayed or neutered. *[S. NR&W]*

LITIGATION

On June 29, the U.S. Supreme Court issued a 6–3 decision in ***Sweet Home Chapter of Communities for a Great Oregon v. Babbitt***, ___U.S.___, 115 S.Ct. 2407, reversing the D.C. Circuit's invalidation of regulations promulgated by the Secretary of the Interior which interpret significant habitat degradation as falling within the meaning of the term "harm" as used in and prohibited by the federal Endangered Species Act. *[15:1 CRLR 152; 14:4 CRLR 177; 14:2&3 CRLR 192]* The Court found that the text of the ESA provides three reasons for concluding that the Secretary's interpretation was reasonable: (1) the ordinary understanding of the word "harm" includes habitat modification that results in actual injury or death to members of an endangered or threatened species; (2) ESA's broad purpose in providing comprehensive protection for endangered and threatened species supports the Secretary's decision; and (3) a 1982 amendment to 16 U.S.C. section 1539(a)(1)(B) suggests that Congress understood ESA section 9 to prohibit indirect as well as deliberate takings.

On June 9, Judge Jeffery Gunther ruled in favor of plaintiff and against DFG in ***Mills v. California Department of Fish and Game***, No. 529928 (Sacramento County Superior Court). In this matter, plaintiff Mills challenged the validity of Fish and Game Code section 711.4, which established within DFG a program to charge fees for its review of certain environmental documents prepared pursuant to the California Environmental Quality Act (CEQA); section 711.4 was added by AB 3158 (Costa) (Chapter 1706, Statutes of 1990). Mills also challenged section 753.5, Title 14 of the CCR, the regulation DFG adopted to implement the statute. *[11:2 CRLR 156; 10:4 CRLR 155]* Mills alleged that the fees created by AB 3158 are taxes, and that they are unconstitutional because they must be enacted by a two-thirds vote and they were not. After trial, Judge Gunther ruled in Mills' favor, and DFG settled the suit by agreeing to refund certain fees, pay Mills' attorneys' fees and costs, and seek repeal of Fish and Game Code section 711.4 and section 753.5, Title 14 of the CCR.

On June 6, a coalition of thirteen environmental groups filed suit against Governor Wilson and DFG in ***Planning and Conservation League v. Department of Fish and Game***, No. 970119 (San Francisco Superior Court), challenging DFG's adoption of an incidental take permit which effectively suspends the California Endangered Species Act whenever an "emergency" occurs or is declared. Although ostensibly adopted to help farmers recover from severe winter rains, the waiver lasts for five years. *[15:2&3 CRLR 163–64]* The environmentalists claim that the Fish and Game Code does not authorize DFG to exempt emergency activities from CESA; DFG's finding that the permit is not inconsistent with CESA must be the subject of an administrative hearing (which was not held); the five-year term of the permit exceeds any conceivable "emergency"; the permit violates DFG's stewardship responsibilities under the public trust doctrine; and the permit is not exempt from CEQA, thus requiring DFG to prepare an environmental impact report before issuing the permit. At this writing, the case has been argued and is pending before Judge William Cahill.

FGC's appeal of San Francisco Superior Court Judge Thomas J. Mellon's decision in ***Mountain Lion Foundation, et al. v. California Fish and Game Commission, et al.***, No. 953860 (July 19, 1994), is still pending. In this case, Judge Mellon invalidated the Commission's unprecedented delisting of the Mohave ground squirrel from the state's threatened species list under CESA. Judge Mellon found that FGC's action to remove the squirrel from the CESA threatened list is a "project" under CEQA, such that an environmental impact report is required. *[14:4 CRLR 177]*

FUTURE MEETINGS

February 1–2 in Long Beach.
March 7–8 in Redding.
April 4–5 in Sacramento.
May 7 in Sacramento.
June 20–21 in Bridgeport.
August 1–2 in Santa Barbara.
October 3–4 in San Diego.

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: Nicole Clay, Jane M. Dunlap, Robert C. Heald, Bonnie Neely (Vice-Chair), and Richard Rogers.

Forest Products Industry: Thomas C. Nelson, Tharon O'Dell, and William E. Snyder.

Range Livestock Industry: Robert J. Kersteins (Chair).

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

Forest Practice Rules Clean-Up. For the past year, the Board has been engaged in an effort to reevaluate and refine numerous provisions in the Forest Practice Rules in Division 1.5, Title 14 of the CCR. The Board published notice of its intent to adopt numerous proposed changes in February 1995 but, after public hearings at its February and March meetings, decided that the package, as written, was too unwieldy and should be divided into separate sections to facilitate research, amendments, discussion, and agreement on the rule changes. The Board divided the rule changes into three categories: grammar, operations, and planning.

On May 18, the Board released a modified version of all changes classified as "grammar" plus a proposed change to section 1091.3, which is classified as "planning." *[15:2&3 CRLR 170–71]* Specifically, the changes in the May 18 package include the following:

• Section 895.1 would be amended to include new definitions of the terms "commercial timberland," "domestic water use," "equipment exclusion zone," "equipment limitation zone," "logging area," "reconstruction of existing tractor roads," and "saturated soil conditions."

• The term "watercourse" would be substituted for the term "stream" in sections 921.6(c), 961.1(a)(5), 961.1(b)(2), 961.7, and 1052(d); additionally, the amendments would eliminate some redundant language in section 961.7.

• Section 952(c) would be eliminated; that subsection defines the term "commercial timberland," as that definition is now being included in section 895.1 (*see above*).

• Section 1032.10 would be amended to change the information which a THP submitter must provide to landowners within 1,000 feet downstream of the THP; under the amendments, the public notice must refer to "domestic water use" instead of "domestic water supply" since "use" is defined and "supply" is not. The notice should refer to surface water use taken within 1,000 feet of the THP boundary. The amendments also clearly state that a ten-day wait between publication of the notice and submission of the THP is required, and also clarify when publication of the notice in a newspaper of general circulation is required.

• Section 1071 would be amended to clarify that if stocking is required to be met immediately upon completion of timber operations, a stocking report must be filed within six months of the completion of timber operations.

• Sections 1090.7(h), 1090.7(i), and 1090.25 would be amended to reflect changes in the rules that require evaluation of cumulative impacts to listed species.

• Finally, section 1091.3, which defines the term "management unit" for purposes of preparing a sustained yield plan (SYP), would be expanded to allow a SYP to be filed on specified portions of an ownership of timberland, rather than requiring the SYP to cover the entire ownership within a district. Specifically, the term "management unit" means the part or parts of timberland ownership which are analyzed together as part of an SYP and may include areas outside the ownership when addressing watershed and wildlife issues. The management unit is limited to one forest district. The landowner has the option of including within its management unit its entire ownership within the forest district and any ares outside the district that the CDF Director agrees are part of a logical management unit, or it may divide the ownership into management units based on administrative, regulatory and ecological factors with concurrence from the Director. The management unit must include one or more planning watersheds, and may include associated resource assessment areas.

At its June 6 meeting in Redding, the Board decided to adopt all of the foregoing changes, with the exception of the definitions of "commercial timberland" and "saturated soil conditions" in section 895.1. The Office of Administrative Law (OAL) approved these changes on August 7.

On September 19, the Board published a modified version of the remaining rule changes, including a new definition of "saturated soil conditions." The rule changes published on September 19 include the following:

• Section 895.1 would be amended to define the term "saturated soil condition" as "the wetness of the soil within a yarding area such that soil strength is exceeded and displacement from timber operations will occur. It is evidenced by soil moisture conditions that result in (a) reduced traction by equipment as indicated by spinning or churning of wheels or tracks in excess of normal performance, or (b) inadequate traction without blading wet soil, or (c) soil displacement in amounts that cause visible increase in turbidity in a receiving watercourse or lake."

• Section 898.1(d), regarding the public comment period on a submitted THP, would be amended to clarify that if the CDF Director determines, before the public comment period has closed, that a THP cannot be approved without a significant change in the conduct of timber operations, the Director must communicate with the THP preparer, explain the probable causes for the disapproval, and suggest possible mitigation measures. The preparer then has the opportunity to respond and provide appropriate measures prior to the end of the public comment period. Any significant changes, as described in section 1036(b), in the conduct of a timber operation made between the close of the public comment period and the date of the Director's decision will require returning the plan to the review team and reopening the public comment period for ten working days; public members who participated in the review of the THP will be notified of the significant changes in the conduct of timber operations and the reopening of the comment period.

• Section 914.2(d) [934.2(d), 954.2(d)] would be amended to clarify that heavy equipment may not be operated on unstable areas. If such areas are unavoidable, the RPF shall develop site-specific measures to minimize the effect of operations on slope instability; these measures must be explained and justified in the THP, approved by the CDF Director, and must meet the requirements of section 914 [934, 954].

• Section 914.2(f) would be amended to prohibit tractor operations in slope areas steeper than 65%, slopes steeper than 50% where the erosion hazard rating is high or extreme, and slopes over 50% which lead without flattening to sufficiently dissipate water flow and trap sediment before reaching a watercourse or lake. RPFs may propose exceptions to these prohibitions if the exceptions comply with section 914 [934, 954] and the THP clearly explains the proposed exception and why it is necessary.

• Section 914.3(e) [934.3(e), 954.3(e)] would be amended to state that tractors shall not be used in areas designated for cable yarding except to pull trees away from streams, to yard logs in areas where

deflection is low, where swing yarding is advantageous, to construct firebreaks and/or layouts, and to provide tail-holds. Such exceptions must be explained and justified in the THP, and require the CDF Director's approval.

• Section 914.6(d) [934.6(d), 954.6(d)] would be amended to state that cable roads that have exposed mineral soil for more than 100 continuous feet up and down the slope shall have waterbreaks installed at specified spacings; any exceptions must be specified in the plan.

• Section 914.8(e) [934.8(e), 954.8(e)] would be clarified to state that the kind and location of all watercourse crossings, except for temporary crossings of Class III watercourses, shall be designated in the THP. If the watercourse crossing involves a culvert, the minimum diameter shall be stated in the THP and the culvert shall be of a sufficient length to extent beyond the fill material.

• Section 916.3(c) [936.3(c), 956.3(c)] would be amended to exempt prepared crossings from the existing requirement that the timber operator shall not construct or reconstruct roads, construct or use tractor roads or landings in Class I, II, III, and IV watercourses, watercourse lake protection zones (WLPZs), marshes, wet meadows, and other wet areas unless explained and justified in the THP by the RPF and approved by the CDF Director.

• Section 916.4(d) [936.4(d), 956.4(d)] would be amended to similarly exempt work at prepared crossings from the existing prohibition on the use of heavy equipment in timber falling, yarding, or site preparation within WLPZs.

• Section 923.1(e) [943.1(e), 963.1(e)] would be amended to state that no new logging roads shall exceed a grade of 15%, except that pitches of up to 20% shall be allowed so long as no continuous road segment greater than 500 feet, which contains more than 400 feet of grade over 15%, averages over 15%. These percentages and distances may be exceeded only where it can be explained and justified in the THP that there is no other feasible access for harvesting of timber or where in the Northern or Southern Districts, use of a gradient in excess of 20% will serve to reduce soil disturbance. The erosion controls to be used on the new or reconstructed road segment(s) which exceed 15% for over 200 feet shall be specified in the THP.

• Section 1032.7(d)(10) would be adopted to require THPs to include a statement of whether there is a known overhead electric power line on the proposed plan area (except lines from transformers to service panels).

• Numerous subsections of section 1034 would be amended to clarify mapping requirements

• Section 1052(g) would be amended to allow timber operations conducted under an emergency notice to continue for 120 days (rather than the existing 60 days) after the emergency notice is accepted by the CDF Director; this amendment was proposed because RPFs complained that a 60-day timeframe to prepare a THP for continuance of timber operations under an emergency notice is impractical. Additionally, this amendment permits timber operations to commence five days (rather than ten days) from the day the Director receives the emergency notice.

• Sections 1052.1 and 1052.2 would be amended to conform with the proposed changes to section 1052(g) (*see above*).

On October 4, the Board held a public hearing on the September 19 changes proposed above. Following the hearing, the Board voted to adopt the proposed changes, subject to a few modifications which were circulated for a 15-day comment period on October 19 and reheard on November 7. Among other sections, section 895.1's definition of "saturated soil conditions" was modified to read "the wetness of the soil within a yarding area such that soil strength is exceeded and displacement from timber operations will occur. It is evidenced by soil moisture conditions that result in (a) reduced traction by equipment as indicated by spinning or churning of wheels or tracks in excess of normal performance, or (b) inadequate traction without blading wet soil, or (c) soil displacement in amounts that cause visible increase in turbidity in a receiving *Class I or II* watercourse or lake." Additionally, the amendments to section 898.1 regarding significant changes to a THP during the comment period were modified.

At the November 7 hearing, the Planning and Conservation League objected to section 895.1's definition of "saturated soil conditions," on grounds it ignores protection for Class III streams by expressly applying only to Class I or II watercourses or lakes. After additional comment by CDF and industry representatives, the Board took the following actions: It adopted the "saturated soil conditions" definition as modified on October 19; adopted section 898.1 as proposed on September 19 and without the October 19 modification; adopted the changes to sections 914.2(d) [934.2(d), 954.2(d)], 914.2(f) [934.2(f), 954.2(f)], 914.3(e) [934.3(e), 954.3(e)], 914.8(e) [934.8(e), 954.8(e)], 1032.7(d)(10), 1034, 1052(g), 1052.1, and 1052.2 as noticed; adopted sections 916.3(c) [936.3(c), 956.3(c)] and 916.4(d) [936.4(d), 956.4(d)] as modified on October 19; and rejected the amendments to sections 914.6(d) [934.6(d), 954.6(d)] and 923.1(e) [943.1(e), 963.1(e)]. These rule changes were approved by OAL on December 8.

Exemption to THP Requirement For Harvest of Diseased and Dying Trees in Lake Tahoe Basin. On August 18, the Board published notice of its intent to adopt section 1038(e), to establish an exemption from the THP requirement in the Lake Tahoe Basin under specified circumstances to facilitate the harvest of dead and dying timber.

According to the Board, the prolonged drought that preceded the winter of 1994–95 contributed to increased levels of forest insects and disease and caused severe tree mortality in the Lake Tahoe Basin. Conditions are ripe for a catastrophic fire. The Board proposed to adopt section 1038(e) to give landowners of parcels not exceeding 20 acres greater flexibility to remove insect- and disease-damaged timber while the drought effects linger. New section 1038(e) would describe the criteria for the exemption, including the 20-acre limit, and establish a December 31, 1000 "sunset" date for the regulation. Trees to be removed under the exemption must be designated as dead, dying, or diseased by a RPF, and the section 1038(e) removal permit is valid for only 60 days.

The Board first received public comment on the proposal at its September 13 meeting in Tahoe City. Tom Suk, Program Manager for the Lahontan Regional Water Quality Control Board (RWQCB), which is part of the state Water Resources Control Board, testified in opposition to the proposed amendments on grounds they establish no mechanism to prevent large landowners from "piecemealing" numerous 20-acre exemptions together to permit the harvesting of large land areas without a THP. Suk also noted that the proposed

section fails to require that the FPR relating to water quality protection be followed, and fails to include a mechanism to alert landowners of water quality control measures contained in the RWQCB's basin plan for the Lahontan Region. Finally, he stated that the exemption application information requirements are insufficient to allow Lahontan RWQCB staff to evaluate the potential impacts associated with individual timber harvest operations, and noted that the proposed amendments contain no expiration date for exempt activities other than the year 2000. Suk suggested that the Board adopt language terminating the THP exemption for individual landowners within one year of issuing the notice of exemption.

After hearing additional comments, the Board tabled the matter and directed representatives of CDF, the Lahontan RWQCB, and other interested parties to meet and attempt to draft language to address the concerns raised during the September 13 hearing.

On October 19, the Board released modified language of the proposal, which had been developed at a September 19 meeting of interested parties and was originally discussed at a Board hearing on October 4. The October 19 language permits an exemption from the THP requirement in the Lake Tahoe Basin on parcels of 20 acres or less in size that are not part of a larger parcel of land in the same ownership. Under the exemption, a landowner may remove dead or dying trees marked by a RPF and for which a Tahoe Basin Tree Removal Permit has been issued, under specified conditions. The language includes provisions to protect water quality by limiting tree removal methods in areas of high erosion hazard; limiting heavy equipment and timber salvage operations in WLPZs; limiting most watercourse crossings to existing crossings; prohibiting the disturbance of known sites of rare, threatened, of special concern, or endangered plants or animals; and permitting access to exempt property by RWQCB staff for inspections. Additionally, the language limits the time for conducting exempt timber operations to one year from the date of receipt by CDF; and sunsets the provision on December 31, 2000.

Following a November 7 hearing on the October 19 language, the Board adopted it; OAL approved the regulatory changes on December 28.

Public Hearing Rules for Counties with Special Rules. On October 6, the Board published notice of its intent to amend sections 1115, 1115.1, 1115.2, and 1115.3, and to repeal section 1115.4, Title 14 of the CCR, its rules under which counties may request a public hearing on a THP if special county rules have been adopted pursuant to PRC section 4516.5. According to the notice, these amendments are necessary to address difficulties in scheduling hearings, conducting hearings, and responding to public comments.

Specifically, the Board proposed to amend section 1115 to include nonindustrial timber management plans (NTMPs) as plans upon which counties may request public hearings. This amendment was justified on grounds that NTMPs are equivalent to THPs and should also be subject to public hearings. The amendments also extend the deadline for requesting a public hearing until one calendar day after the preharvest inspection; the request must be made in writing, by phone, or by facsimile, and the request must be for a specific plan which has been accepted for filing by CDF.

Section 1115.1 would be amended so that a hearing could not be scheduled any sooner than five days from the date of the hearing request. Section 1115.2 would be amended to require public notice of a hearing at least five days before the actual hearing date; CDF is required to publish notice of the hearing in a local newspaper of general circulation.

Finally, section 1115.3 would be amended so that hearings could be conducted prior to preharvest inspections and to clarify that CDF need not respond to every issue raised at county hearings. Under the amendments, CDF will address issues raised at local hearings in its official response to issues raised during the actual review of the THP or NTMP by CDF staff at the end of the public comment period.

On November 27, the Board held a public hearing on these proposed regulatory changes, and adopted them. OAL approved the changes on December 28.

Protection of Archaeological and Historical Sites During Timber Operations. On September 22, the Board published notice of its intent to amend sections 895.1, 913.4(a), 929, 929.1, 929.2, 929.3, 929.4, 929.5, 929.6, 929.7, 1034(x)(14), 1035.2, 1035.3(c), 1038(b)(10), and 1104.1(a)(3), and adopt new sections 1035(g), 1035.3(e), and 1052(h), Title 14 of the CCR. This rulemaking package is intended to increase the effectiveness of current archaeological and historical site protections by providing better documentation of archaeological surveys and site records, while simultaneously reducing THP preparation and review delays. Among other things, the rule changes define terms which are currently in the FPR but are not defined, including "archaeological and historical site," "current archaeological records check," "professional archaeologist," and "substantial adverse change."

On November 8, the Board held a public hearing on the proposed regulatory changes. After hearing numerous comments from industry representatives in opposition to the language, the Board postponed a decision until its January 1996 meeting.

Other Board Rulemaking. The following is a status update on other rulemaking proceedings conducted by the Board in recent months and covered in detail in previous issues of the *Reporter*:

• ***Checklist THP Rules***. At its August 9 meeting, the Board finally approved findings relating to its January 1995 adoption of new section 1051.5, Title 14 of the CCR, which would implement a "Checklist Timber Harvest Plan" (CTHP) for those timber harvesting operations that, with incorporated mitigations, are not likely to result in significant adverse effects on the environment. According to the Board, the proposed rules are designed to lessen some of the informational requirements and related costs to landowners resulting from full THP preparation and impact analysis, while ensuring that significant adverse impacts on the environment are avoided. The Board adopted the new rule despite public comment from the Department of Fish and Game and the Water Resources Control Board that the rule may permit a greater degree of adverse environmental impact than does the California Environmental Quality Act (CEQA) or the Forest Practice Act. *[15:2&3 CRLR 171; 15:1 CRLR 152–53]*

On September 29, OAL disapproved the CTHP rulemaking package because of inconsistencies with other provisions of law (including CEQA) and because of lack of clarity. Additionally, OAL found the rulemaking package deficient because the Board failed to summarize and respond to all comments made during the public comment period.

At this writing, the Board is contemplating how to proceed with the CTHP rules in light of OAL's rejection.

• ***AB 49 Fire-Safe THP Exemption***. At its June meeting, the Board considered proposed permanent amendments to implement AB 49 (Sher) (Chapter 746, Statutes of 1994). AB 49 exempts from the several requirements of the FPA (specifically, the THP preparation and submission requirement of PRC section 4581 and the completion and stocking report requirements of PRC sections 4585 and 4587) the cutting or removal of trees near structures to reduce fire hazards, and requires the Board to adopt regulations—initially as emergency regulations—to obtain compliance with that provision. At its October 1994 meeting, the Board adopted emer-

gency amendments to section 1038, Title 14 of the CCR, to implement AB 49; those emergency rules expired by operation of law on June 15. *[15:2&3 CRLR 171; 15:1 CRLR 153; 14:4 CRLR 182]*

At the June meeting, the Board considered the May 18 modifications to its proposed permanent regulations originally published in December 1994. The May 18 modified version would adopt new sections 1038(d) and 1038.2, and amend sections 1038, 1038(b)(3), 1038.1, and 1038.2, Title 14 of the CCR. Collectively, these changes will authorize landowners to cut or remove trees in compliance with PRC sections 4290 and 4291 within 150 feet on each side of a structure as specified in PRC section 4584(j). The following silviculture methods may not be used: clearcutting, seed tree removal step, or shelterwood removal step. Surface fuels created by timber operations must be chipped, burned, or otherwise removed within 45 days from the date of the start of timber operations. Timber operations must conform to applicable city or county general plans, implementing ordinances, and city or county zoning ordinances. The proposed rules require the timber operator to provide the CDF Director with a notice of commencement of timber operations five days prior to commencement; the Board believes this reduced processing period (from ten days previously) will increase the utilization of section 1038(d) exemptions by homeowners.

Following discussion at its June meeting, the Board adopted the May 18 version of the AB 49 regulations. OAL approved these changes on July 31.

• ***Modified Timber Harvest Plan***. In April 1995, OAL approved the Board's readoption of sections 1051, 1051.1, 1051.2, and 1052.3, Title 14 of the CCR, to reimplement the modified timber harvest plan (MTHP) for nonindustrial owners. These regulations provide forestland owners with an entire ownership of 100 acres or less with a cost-effective alternative to filing a regular THP. Section 1051 sets forth the conditions and mitigation measures with which MTHP submitters must comply; section 1051.1 sets forth the required contents of the MTHP; section 1051.2 addresses the review of a MTHP by CDF; and section 1051.3, as modified, imposes a one-year sunset date on the MTHP program. *[15:2&3 CRLR 172; 15:1 CRLR 156; 14:4 CRLR 180]*

On September 22, the Board published notice of proposed amendments to section 1051.3, to extend the existing expiration date of the MTHP rules until December 31, 1997 or, alternatively, delete the sunset language entirely from the MTHP regulations. Following a November 8 public hearing, the Board voted to extend the current expiration date of the MTHP regulations until December 31, 1997. OAL approved this change on December 21.

LEGISLATION

AB 1937 (Olberg). Existing Board regulations provide for the preparation of SYPs that have a duration of three years, with two one-year extensions allowed. As amended September 12, this bill prohibits SYPs from being effective for a period of more than ten years. The bill requires CDF to hold a public hearing to determine if a SYP is potentially not in compliance with the terms and conditions of the plan, any applicable rules or regulations adopted by the Board, as specified, or any other requirement imposed by law, if an interested party submits a request and CDF makes a specified determination. The bill requires the plan to be effective for the remainder of its term unless the CDF Director makes a specified finding. This bill was signed by the Governor on October 4 (Chapter 601, Statutes of 1995).

SB 220 (Haynes), as amended May 18, provides that, notwithstanding a specified provision of the Administrative Procedure Act, regulations adopted or revised by the Board pursuant to the FPA shall become effective on the next January 1 that is not less than thirty days from the date of approval of those rules or regulations by OAL. *[14:4 CRLR 178]* The bill provides that, if the Board adopts emergency regulations and subsequently adopts those emergency regulations as nonemergency rules or regulations pursuant to the Act, the rules or regulations shall become effective thirty days from the date of approval of the rules or regulations by OAL. This bill was signed by the Governor on August 10 (Chapter 425, Statutes of 1995).

AB 996 (Sher, Bordonaro), as amended April 5, appropriates the sum of $33 million from the general fund to CDF solely for emergency fire suppression costs and related emergency revegetation costs, and authorizes the Director of Finance to withhold authorization for the expenditure of those funds until, and to the extent that, preliminary estimates of potential deficiencies are verified. This bill was signed by the Governor on May 24 (Chapter 10, Statutes of 1995).

SB 1283 (Leslie). CEQA requires a lead agency to prepare an environmental impact report (EIR) on projects which may significantly affect the environment, or adopt a negative declaration for projects determined not to have significant effects. As amended August 29, this bill requires lead agencies and the Department of Fish and Game (DFG) to provide comments, recommendations, or both on any significant environmental issues and proposed mitigation measures raised by THPs, and specifies related procedures. It also requires the lead agency and DFG to cite its statutory authority for any requested mitigation measures. The bill further specifies that if the agency fails to respond within the public comment period, it is presumed that the agency has no comments; requires each agency to maintain a list of written information which it disseminates on THPs under review; and requires, upon the request of a lead agency, the CDF Director to consult with the lead agency, but provides that the Director has sole authority to determine whether a THP conforms to the FPA and the FPR. This bill was signed by the Governor on October 4 (Chapter 612, Statutes of 1995).

SB 1282 (Leslie). AB 49 (Sher) (Chapter 746, Statutes of 1994) authorizes the Board to exempt specified forest management activities from the Act if the Board determines that the exemption is consistent with the purposes of the Act, including the cutting or removal of trees, in compliance with specified provisions of the Act, that eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuelbreak for a distance of not more than 150 feet on each side from an approved and permitted Group R occupancy, as defined, when that cutting or removal is conducted as prescribed (*see* MAJOR PROJECTS). As amended March 30, this bill would delete that exemption and instead authorize the Board to exempt the harvest of solid wood forest products pursuant to specified provisions of the Act, or other activities to create defensible space from wildfires for structures. The bill would require those exempted activities to comply with specified environmental standards and would require a violation of those standards to be subject to the penalty and enforcement provisions of the Act. The bill would authorize the Board to adopt regulations that it determines to be necessary to implement that exemption. The bill would provide that the exemption shall become inoperative on January 1, 2000, unless a later enacted statute deletes or extends that date.

Under CEQA, a lead agency, as defined, is required to prepare (or cause to be prepared) and certify the completion of an EIR on a project which it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect, unless

the project is exempt. This bill would exempt from CEQA a project that provides fire-safe conditions, defensible space, or fuel breaks, if the project is in compliance with provisions regarding the protection of forest resources from fire and any regulations adopted by the Board pursuant to those provisions. The bill would require the Board to adopt regulations that it determines to be necessary to implement, and to obtain compliance with, that exemption. *[S. NR&W]*

AB 938 (Sher), as amended August 22, would require the Board to adopt regulations, initially as emergency regulations, governing the conduct of timber operations for the protection of WLPZs that are adjacent to Class I fish-bearing streams supporting major runs of coho salmon and for the purpose of preventing violations of the federal Endangered Species Act. These provisions would become operative on or before the effective date that the U.S. Department of Commerce lists state stocks of coho salmon as either threatened or endangered under the federal Endangered Species Act. *[S. Inactive File]*

AB 1385 (Woods). Under CEQA, the CDF Director is authorized to require a person submitting a THP for review and approval to submit data and information, in addition to that required pursuant to the FPA, that is necessary to enable the Director to determine whether the proposed plan may have a significant effect on the environment. As introduced February 24, this bill would remove the Director's authority, pursuant to CEQA, to require additional data and information from a person submitting a THP for review unless the Board adopts regulations in implementation of CEQA to require that person to include all data and information that may be necessary to enable the Director to determine whether the proposed plan may have a significant effect on the environment. The bill would make clarifying changes in the FPA. *[A. NatRes]*

AB 137 (Olberg). The California Endangered Species Act provides for listing of endangered species and threatened species by the Fish and Game Commission (FGC), and provides procedures by which interested persons may petition the Commission, to list, or remove from a list, any species that meets specified criteria. As introduced January 13, this bill would define the terms "interested person" and "interested party" for purposes of these provisions. The bill would provide that after January 1, 1996, species may not be added to the list of endangered or threatened species except by statute enacted by the legislature, and unless a economic assessment report required by the bill shows that the benefits to be derived from the action exceed the estimated costs associated with protecting the species.

The bill would also provide that no EIR is required to be prepared to remove a species from the list of endangered or threatened species list unless an EIR was prepared when the species was listed on the list. The bill would require FGC to appoint a panel of scientific experts knowledgeable about the species to review DFG's report to FGC on the petition. This bill would require FGC to annually prepare and submit to the Governor and the legislature a list of species that FGC recommends be added to the list of endangered or threatened species, and would require the report to include specified documents. The bill would also provide that just compensation shall be paid for the taking of private or public property, and would, for that purpose, define the term "taking." *[S. NR&W]*

AB 427 (Olberg), as introduced February 15, would rename the California Endangered Species Act as the California Threatened and Endangered Species Act. *[A. WP&W]*

AB 428 (Olberg). The California Endangered Species Act requires FGC to notify owners of land which may provide habitat essential to the continued existence of a species for which FGC has accepted a petition for consideration of the species as a threatened or endangered species, with specified exceptions. Existing law also requires DFG to promptly commence a review of the status of a species listed in the petition and to provide a written report within twelve months to FGC that includes, among other things, a preliminary identification of the habitat that may be essential to the continued existence of the species. DFG is also required to review listed species, including the habitat that may be essential to the continued existence of the species. As introduced February 15, this bill would exclude land that may provide habitat of a type necessary for the continuing existence of a candidate species, threatened species, or endangered species from any requirement that it be managed as habitat for that species unless individuals of that species have been observed inhabiting that property during the period of review of the petition. The bill would define the terms "land which is identified as habitat for endangered species and threatened species," "kind of habitat necessary for species survival," "land which may provide habitat essential to the continued existence of the species," "habitat that may be essential to the continued existence of the species," and "habitat essential to the continued existence of the species" to exclude habitat areas on which the species has not been directly observed by a DFG employee to be present during the period of DFG's review of the petition. The bill would provide that habitat management activities are not required to be conducted on any such property on which the species has not been directly observed by a DFG employee to be present during the period of DFG's review of the petition. *[A. WP&W]*

AB 931 (Richter), as amended April 6, would exempt six new types of timber operations from CEQA and the Board's THP requirement. On April 17, this bill was rejected by the Assembly Natural Resources Committee, but was granted reconsideration. *[A. NatRes]*

AB 711 (Richter), as amended April 6, would lift the 2,500-acre ownership limit on the use of a long-term timber management plan of unlimited duration and repeal the existing restriction on the use of clear-cutting harvest methods under such plans. On April 17, this bill was rejected by the Assembly Natural Resources Committee, but was granted reconsideration. *[A. NatRes]*

AB 169 (Richter), as amended April 6, would—among other things—extend the effective period under which timber operations may be conducted pursuant to an approved THP from three years to ten years, with up to two additional one-year extensions if specified conditions are met. *[A. NatRes]*

AB 1357 (Knowles), as amended March 27, would generally exempt timber operations involving "green" trees from the Board's THP requirement if the logging is done via "thinning" and conducted for the purpose of reducing the spread, duration, and intensity of wildfires. *[A. NatRes]*

SB 1104 (Hayden), as amended May 17, would extend the public comment period on THPs from 15 to 30 days. On July 10, this bill was rejected by the Assembly Natural Resources Committee, but was granted reconsideration. *[A. NatRes]*

LITIGATION

On June 29, the U.S. Supreme Court issued a 6–3 decision in ***Sweet Home Chapter of Communities for a Great Oregon v. Babbitt***, ___U.S.___, 115 S.Ct. 2407, reversing the D.C. Circuit's invalidation of regulations promulgated by the Secretary of the Interior which interpret significant habitat degradation as falling within the meaning of the term "harm" as used in and prohibited by the federal Endangered Species Act (ESA). *[15:2&3 CRLR 174; 14:4 CRLR 184; 14:2&3 CRLR 198–99]* The Court found that the text of the ESA provides three reasons for concluding that the Secretary's interpretation was reasonable: (1) the ordinary under-

standing of the word "harm" includes habitat modification that results in actual injury or death to members of an endangered or threatened species; (2) ESA's broad purpose in providing comprehensive protection for endangered and threatened species supports the Secretary's decision; and (3) a 1982 amendment to 16 U.S.C. section 1539(a)(1)(B) suggests that Congress understood ESA section 9 to prohibit indirect as well as deliberate takings.

FUTURE MEETINGS

January 9–10 in Sacramento.
February 5–6 in Sacramento.
March 4–6 in Sacramento.
April 2 in Sacramento.
May 6–8 in Sacramento.
June 4 in Sacramento.
July 10 in Sacramento.
August 7 in Santa Cruz.

INDEPENDENTS

BOARD OF CHIROPRACTIC EXAMINERS

Executive Director:
Vivian R. Davis
(916) 227-2790

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 Board licenses chiropractors and enforces professional standards. It also approves chiropractic schools, colleges, and continuing education courses.

The Board consists of seven members—five chiropractors and two public members.

MAJOR PROJECTS

Animal Chiropractic Therapy. On June 17, BCE officials met for a third time with representatives of the Veterinary Medical Board (VMB); the boards are attempting to establish legal protocols enabling chiropractors and veterinarians to work in concert and be held accountable for practicing alternative medicine on animals, while also making access to alternative practice safe and easy for the consumer, and to establish protocols for dealing with people not licensed by either board who are practicing chiropractic on animals. At the June meeting, board officials discussed draft regulatory language which would set forth the conditions under which animal chiropractic may be performed; the draft language under consideration would permit animal chiropractic to be performed by a licensed veterinarian or by a licensed chiropractor who is working under the supervision of a veterinarian (*see* agency report on VMB for related discussion). *[15:2&3 CRLR 174; 15:1 CRLR 97; 14:4 CRLR 104]* At this writing, neither board has published notice of the proposed regulatory change in the *California Regulatory Notice Register.*

BCE Considers New Rulemaking Proposals. At its August 31 meeting, BCE considered two draft proposals for regulatory changes. First, BCE agreed to pursue amendments to section 359, Title 16 of the CCR, which currently states that any person making application for reinstatement or restoration of a license which has been revoked or suspended may be required, as a part of the relief granted, to complete an approved course of continuing education, or to complete such study or training as BCE may require. The Board's draft changes would provide that any person making application for reinstatement of a license forfeited for the failure to renew the license in a timely manner, for a period of five calendar years or more, shall be required to complete a training program and/or continuing education hours as designated by BCE or its representative; this requirement may be waived for individuals who are able to provide proof of continuous current and valid licensure, without disciplinary action, in another state.

BCE also agreed to pursue the adoption of new section 311.5, regarding the advertising of a specialty, subspecialty, or certification. Among other things, the draft language would provide that if a chiropractor advertises that he/she specializes or is certified by a specialty board in a specialty or subspecialty area of chiropractic, the specialty board shall be approved by BCE and shall comply with specified requirements. *[15:2&3 CRLR 175]*

At this writing, BCE has not published notice of its intent to pursue either of these proposals in the *California Regulatory Notice Register.*

Reciprocity Requirements. On June 16, BCE published notice of its intent to amend section 323, Title 16 of the CCR, to require license reciprocity candidates to show documentation of five years of chiropractic experience. *[15:2&3 CRLR 174; 15:1 CRLR 158]* On August 3, BCE held a public hearing on the proposed change; on October 12, the Board adopted the amendment, which awaits review and approval by the Office of Administrative Law (OAL).

Unprofessional Conduct. On June 16, BCE published notice of its intent to amend section 317, Title 16 of the CCR. Among other things, section 317 currently provides that, when a licensee has been convicted of any offense involving moral turpitude, dishonesty, or corruption, BCE may order the license to be suspended or revoked, or may decline to issue a license when the time for appeal has elapsed, or when the judgment of conviction has been affirmed on appeal. BCE's proposed amendment would provide that under such circumstances the Board may order the license to be suspended or revoked, or may decline to issue a license upon the entering of a conviction or judgment in a criminal matter. *[15:2&3 CRLR 175]* On August 3, BCE held a public hearing on the proposed change; on October 12, the Board adopted the amendment, which awaits review and approval by OAL.

Conduct on Licensee Premises. On June 16, BCE published notice of its intent to amend section 316, Title 16 of the CCR, regarding responsibility for conduct on the premises of a licensee. Specifically, BCE's changes would provide that a chiropractor's commission of any act of sexual abuse, sexual misconduct, or sexual relations with a patient, client, customer, or employee is unprofessional conduct which is substantially related to the qualifications, functions, or duties of a chiropractic license. The changes would also provide that this provision does not apply to sexual contact between a licensed chiropractor and his/her spouse or person in an equivalent domestic relationship when that chiropractor provides professional treatment. *[15:2&3 CRLR 175]* On