

**Bay Area Air Quality Management District
939 Ellis Street
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**Proposed Amendments To
BAAQMD Regulation 3: Fees and
Regulation 5: Open Burning**

Staff Report

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STAFF REPORT

PROPOSED AMENDMENTS TO BAAQMD REGULATION 3: FEES AND REGULATION 5: OPEN BURNING

EXECUTIVE SUMMARY

Regulation 5 regulates open burning in the Bay Area. The regulation is the successor to Regulation 1, which was the first regulation ever adopted by the BAAQMD. Regulation 1 was adopted in 1957 primarily to regulate open burning of trash, a common practice at the time. The regulation was subsequently amended several times and, in 1980, was recodified as Regulation 5. The proposed amendments to District Regulation 5 would add new requirements that primarily affect prescribed burning activities in the Bay Area. Prescribed burning is controlled burning to achieve planned natural resource objectives. Many public and private land managers responsible for undeveloped Bay Area open space have now adopted prescribed burning as one of the most appropriate means to manage the ecosystems found on that land. Prescribed burning is a substitute for the seasonal fires that typically affected this land before the modern era. However, because much of the area that surrounds undeveloped land is now heavily populated, the smoke from increased prescribed burning must be carefully regulated in order to protect public health and air quality. Because of the increased reliance on prescribed burning as a land management tool throughout California, the California Air Resources Board updated its smoke management guidelines on March 23, 2000. These guidelines are now called the "Smoke Management Guidelines for Agricultural and Prescribed Burning," though agricultural burning is defined to cover a much broader range of open burning. These amendments to Regulation 5 are necessary to implement a new smoke management program for prescribed burning in the Bay Area. The proposed amendments follow much of what is included in the ARB Guidelines for prescribed burning.

Open burning in the Bay Area includes burning of marshland to manage the acreage for wildlife habitat. A number of these burns, called Marsh Management fires in the proposed amendments, are conducted yearly in the District, primarily in southern Solano and Napa Counties. The proposed amendments would, effective June 1, 2002, require persons conducting these burns to: (1) submit a smoke management plan at least 30 days prior to a proposed burn and receive APCO approval of the plan before burning; (2) also at least 30 days prior to a proposed burn, submit a written determination of the necessity of each burn from the California Department of Fish & Game (DFG) to the APCO for verification; and (3) report the acreage and tonnage actually burned to the APCO no later than 12:00 p.m. the day after burning occurs. In addition, the burner must receive an acreage burning allocation from the APCO prior to burning.

The proposed amendments to Regulation 3 would add a new fee schedule, Schedule R, for certain open burning activities. The Schedule R fees are intended to recover about 22%, or \$126,000, of the District's budgeted \$582,000/year cost to develop, implement and administer the District's new smoke management program for prescribed burning.

The proposed burning fees would primarily apply to Marsh Management and Wildland Vegetation Management fires (i.e., marsh burning and prescribed burning activities). Four other fire types defined as prescribed burning would also be subjected to the new open burning fees if the fire is expected to exceed 10 acres in size or burn piled vegetation cleared or generated from more than 10 acres of land. These fire types include Forest Management fires, Range Management fires, certain Hazardous Material fires, and Crop Replacement fires for the purpose of establishing an agricultural crop on previously uncultivated land.

Other proposed amendments would: (1) modify the compliance standards to include certain existing requirements found in other provisions of the regulation; (2) restrict and clarify existing burn hours for all allowable fires; (3) require a person to attempt to cease burning upon District staff notification of three confirmed complaints; (4) require tree trunks and stumps to be cut or split before burning to prevent overnight smoldering; and (5) with conditions, allow fire training burns at night and public exhibition burns on no-burn days. These amendments would improve the clarity and enforceability of Regulation 5, and address open burning issues identified since 1994 when the regulation was last revised. These measures are also intended to minimize the potential adverse smoke impacts from open burning allowed in the District and reduce variance costs.

The proposed amendments will improve management of smoke and reduce population exposure to emissions of particulate matter (including PM₁₀ and PM_{2.5}), carbon monoxide, and volatile organic compounds (VOC's). However, because the proposed amendments do not restrict the total acreage or allowable types of material to be burned and because increases in the amount of prescribed burning are projected, no overall emissions reduction is expected from the proposed amendments. The amendments are expected to provide improved burn acreage data, which should improve the District's ability to estimate emissions and quantify any reductions.

Pursuant to the California Environmental Quality Act (CEQA), the District prepared an initial study to determine the potential environmental impacts of the proposed amendments. The study concluded that the proposed amendments to Regulations 3 and 5 would not result in any significant environmental impacts. Therefore, District staff have prepared a Negative Declaration for this proposed rule amendment project.

Implementation of the proposed amendments will have a significant impact on the District's resources. However, these changes are essential and necessary in order to satisfy the prescribed burning provisions of the Guidelines.

District staff conducted two scoping workshops on April 17, 2000 and May 4, 2000 to discuss an initial draft of the open burning fee proposal. The proposed amendments to Regulation 5 and proposed Schedule R were discussed during two additional workshops held on August 9, 2001 in Fairfield, CA and August 10, 2001 at the District office. The primary issue raised during the workshops was the cost impacts of the fee proposal.

BACKGROUND

Current BAAQMD Requirements

The District first regulated open burning in 1957 under Regulation 1 because of its considerable contribution to Bay Area air pollution. In 1980, after several revisions and as the number of other District regulations increased, Regulation 1 was recodified as Regulation 5. The last revisions to Regulation 5 were adopted in 1994.

Currently, Regulation 5 generally prohibits open burning within the District except for specific exceptions that conditionally allow fires on permissive burn days at certain times of the year. The exceptions or allowable fire types include both agricultural and non-agricultural fires.

For each day of the year, the District issues either a permissive burn day or no-burn day notice. District staff in the Meteorology and Data Analysis Section of the Technical Services Division makes this determination based on the meteorological conditions forecasted and criteria for the San Francisco Bay Area Air Basin. The criteria are based on the ability of smoke to rise and dissipate without causing ground level impacts. The burn day forecast is usually available by 3:00 p.m. for the following day. However, if conditions are warranted for a delayed burn decision, the forecast is made by 7:30 a.m. the following day. A permissive burn or no-burn day notice is issued for three forecast zones in the District, the North, South and Coastal Sections. In addition, for burns above elevations of 2000 feet in a section with a no-burn decision, a permissive burn day will be declared if specific meteorological criteria are met.

Purpose

Assembly Bill (AB) 16 (Ketchum), Chapter 1579 of the Statutes of 1970, directed the California Air Resource Board (ARB) to establish guidelines for the control and regulation of agricultural burning by the air districts in California (see California Health & Safety Code Sections 41850 *et seq.*). Originally, agricultural burning was defined as open outdoor fires used in agricultural operation in the growing of crops or the raising of fowl or animals. In 1971, pursuant to AB16, the ARB established Agricultural Burning Guidelines for the burning of waste produced during agricultural operations (these Agricultural Guidelines can be found in sections 80100 *et seq.* of Title 17 of the California Code of Regulations). The Agricultural Burning Guidelines have been modified many times since 1971. Major changes include amending the definition of agricultural burning to include open burning for the improvement of wildlife and game habitat and again for wildland vegetation management. The Agricultural Burning Guidelines were also amended to improve the quality of data reported by air districts and to improve the management of smoke from rice straw burning in the Sacramento Valley (the Sacramento Valley Basinwide Agricultural Burning Plan).

State law prohibits agricultural burning without a permit issued by agency designated by the ARB to issue permits for the area in which the burning is to take place.

On March 23, 2000, ARB adopted amendments to the State's Agricultural Burning Guidelines. The new Guidelines, which are now titled "Smoke Management Guidelines for Agricultural and Prescribed Burning," were developed by ARB staff to improve California's smoke management program for several reasons:

- Increases of prescribed burning are planned by land management agencies on public and private lands throughout California over the next two decades. Though significant increases may occur in many areas in California, only minor increases above current levels are expected in the Bay Area. The planned increases are intended to correct unhealthy wildland ecosystems and reduce the risk of catastrophic wildfires in areas with excessive vegetative fuel loads, which are the unintentional result of past fire suppression policies and strategies. More effective smoke management is needed to minimize or prevent the potential public health and air quality impacts posed by these increases.
- Smoke emissions from wildfires and increased prescribed burning threaten California's ability to meet requirements for health-based air quality standards for fine particulate matter (PM_{2.5}), coarser particles (PM₁₀) and new federal regional haze requirements that call for improvements in visibility in designated Class 1 Areas (national parks, monuments, wilderness areas, etc.).
- Closer communication and collaboration between prescribed burners, ARB and local air districts is needed to prevent short-term, high-impact smoke episodes caused by prescribed burning activities.
- Population growth and increased urbanization of rural areas and agricultural lands have increased the potential for smoke impacts from prescribed burning and agricultural burning. Combined with the expected increases in prescribed burning on neighboring public lands and in urban-wildland interface areas, more intensive management of these fires is needed to reduce the potential for smoke impacts.

The effective date of the amended Guidelines is March 14, 2001. One of the major changes requires local air districts to develop and implement a smoke management program that meets specific requirements of the Guidelines. This new program is also expected to be consistent with federal EPA's *Interim Air Quality Policy on Wildlands and Prescribed Fire*. The policy is designed to prevent or minimize smoke impacts from prescribed burning activities, and help the State meet federal requirements associated with EPA's national air quality standards for particulate matter and regional haze program, while at the same improving the quality of wildland ecosystems through the use of prescribed burning.

These Amendments

The District is exempt from the state smoke management guidelines because the legislation governing the state guidelines grandfathered existing open burning programs

through California Health and Safety Code section 41864. That section grandfathers any program, such as the BAAQMD program, “in effect for five or more years prior to September 19, 1970.” However, the District committed to satisfying the prescribed burning provisions of the new Guidelines to ensure statewide consistency, to ensure consistency with federal requirements and policy, to address within the Bay Area the same concerns that prompted revision of the state guidelines, and to address compliance and enforcement issues identified since 1994, when Regulation 5 was last amended.

The proposed Regulation 5 amendments include revisions that are an essential component of the District’s new smoke management program for prescribed burning, including marsh burning. The intent of these revisions is to incorporate the prescribed burning provisions of the amended Guidelines necessary to ensure successful implementation of this new District program. In addition, several amendments are proposed to address open burning issues identified since 1994 when Regulation 5 was previously amended. Other proposed amendments to Regulation 5 would improve the enforceability of the Regulation by clarifying existing and eliminating obsolete regulatory language.

The new open burning fees proposed in Regulation 3, Schedule R are intended to recover a portion (about 22%) of the District’s cost of approximately \$582,000/year to develop, implement, and administer the proposed smoke management program for prescribed burning. This cost is based on the minimum level of District resources necessary for the program. These amendments to Regulation 3 are consistent with California Health & Safety Code Section 42311.2, which governs the establishment of fees for these burning operations.

The District and members of the California Air Pollution Control Officers Association have explored other program funding options to offset the cost of new fees. However, to date, these efforts have not yielded any immediately available revenue sources to fund the program beyond this fiscal year. As a result, the remaining cost of this new District program (about 78%) will have to be funded through General Fund expenditures until other revenue sources are secured. District staff will continue to explore all options in this regard, including State Subvention funding, federal EPA grants, possible legislation, and potential burning fee increases.

PROCESS DESCRIPTION

Open burning generally refers to the combustion of a substance or fuel outdoors in the ambient air. Under conditions when the combustion process is incomplete, smoke is produced as an undesirable by-product of the burning event. The amount of smoke produced in open fires varies as the fuel goes through the four phases of burning described below.

Pre-ignition Phase. In this phase, the fuel is heated and any water vapor moves to the surface and escapes. Pyrolysis (chemical decomposition) begins as the fuel dries and

its internal temperature rises, releasing a stream of unburned combustible organic gases. Moderate smoke is produced when water vapor and unburned organic gases condense.

Flaming Phase. In this phase, the fuel temperature rises rapidly and pyrolysis accelerates to a point where combustion occurs. Combustion is the result of a chemical process called oxidation where hot unburned organic gases rapidly react with available atmospheric oxygen, producing light (as flames), heat, carbon dioxide, and water vapor. Temperatures in this phase range from 600 to 2500°F. Some smoke is also produced as some of the pyrolyzed substances cool and condense without passing through the flame zone or from being partially oxidized in the flaming zone. However, more smoke is produced as the efficiency of combustion decreases.

Smoldering Phase. In the smoldering fire phase, the reaction rate of the fire has slowed such that the concentration of gases above the fuel is too low to sustain a flame. Consequently, the temperature drops and the evolving unburned organic gases condense into tar droplets that appear as smoke. In this phase, smoke emissions are twice those of the flaming phase and most of the smoke consists of PM₁₀ emissions.

Glowing Phase. In this final phase, all of the flammable organic gases have been driven off and more oxygen in the air can reach the fuel surface. The fuel, now a solid black charcoal, begins to burn with a characteristic yellow glow and no visible smoke. Carbon monoxide is the principal pollutant emitted until the temperature drops or until only noncombustible gray ash remains.

In essence, the conditions that determine complete combustion during open burning include the combustion temperature, the residence time of the reactants at the combustion temperature, and the amount of oxygen available. Less smoke is produced when a higher temperature is achieved and maintained. Significant factors affecting the combustion temperature are the fuel moisture content and the nature of the fuel.

Smoke is, therefore, a complex mixture of two types of air pollutants: particulate matter and gases. Particulate matter emitted during open burning consists of solid or liquid microscopic particles of widely ranging size. The particles produced by incomplete combustion include soot or unburned carbon, ash (which results from burning unburnable minerals in the fuel), and a variety of condensed organic vapors. Most smoke particles (>90%) are very small, with an aerodynamic diameter less than 10 microns (10⁻⁶ meter). Known as PM₁₀, these particles are a cause for concern because they are small enough to be inhaled and can remain airborne for long periods of time affecting human health and visibility. PM₁₀ includes a fraction of fine particles with a diameter less than 2.5 microns called PM_{2.5}. These smaller particles can cause more significant health effects because they can be inhaled more deeply into the lungs.

Some PM₁₀ particles in smoke are formed from the gaseous products of combustion as a result of condensation, absorption and other chemical processes. These particles include some nitrates and sulfates, and complex organic compounds that contain known or suspected human carcinogens.

The primary gaseous or vapor-phase pollutants produced by incomplete combustion during open burning include carbon monoxide, sulfur dioxide, nitrogen dioxide, and numerous organic compounds. Some of the organic vapors released are precursors to the formation of ozone, the main constituent of ground level smog.

Wildland Vegetation Management Fires

Prescribed burning is the controlled application of fire to wildland fuels that allow the fire to be confined to a predetermined area and achieve planned natural resource objectives. As a land treatment option, its use reduces the hazards of and potential for destructive wildfires, controls insects and disease, improves wildlife habitat and forage production, increases water yield, maintains natural succession of plant communities, and reduces the need for pesticides and herbicides in certain applications. A written prescribed burn plan includes a prescription that describes both the acceptable range of weather, moisture, fuel, and fire behavior parameters, and the ignition method to achieve the desired effects. All Wildland Vegetation Management fires are conducted as prescribed burns.

In the Bay Area, prescribed burning occurs in almost every county within the District's boundaries (the exception being the city and county of San Francisco). Over the last three years, the majority of prescribed burns occurred in Marin and Contra Costa counties, followed by Santa Clara, Alameda, San Mateo, Napa, Sonoma and Solano counties. These fires were primarily conducted on public lands during the summer months from June through September, although several burns in Marin County also occurred during April, October, November and December.

The primary fire agencies or land management agencies that conduct prescribed burning in the District include the California Department of Forestry & Fire Protection (CDF), California Department of Parks & Recreation, Marin County Fire Department, U.S. Fish & Wildlife Service, and the National Park Service. Other notable burners that are allowed to conduct prescribed burns through a cooperative agreement or contract involving a state or federal agency include the East Bay Regional Park District and the Marin Municipal Water District.

Prescribed burning acreage in the District is not currently allocated nor is there a standard that specifically limits burnable acreage. However, District staff reviews each prescribed burn plan and limitations may be imposed as a condition of approval. In this context, it is accurate to say that burning acreage limits are in effect already being used by District staff as a smoke management tool for prescribed burning.

Marsh or Tule Burning

Historically, marsh or tule burning in the Bay Area has been conducted to enhance wildlife and game habitat in the Sacramento-San Joaquin River estuary region of southwestern Solano County and southern Napa County. This region, also called the

west "Delta", includes low-lying land areas and islands positioned in and around the waterway, and a variety of natural tidal marshes and man-made seasonal wetlands partitioned by levees or dikes. Characterized by very moist soils and unique plant communities, these marshlands provide critical habitat for a variety of birds, fish, invertebrates, reptiles, amphibians and mammals.

In the Delta, most marsh burning occurs within the boundaries of the Suisun Resource Conservation District (SRCD) by landowners, leaseholders or property caretakers. The burns are set on private farmlands or on lands managed as private, commercial hunting clubs, where members are permitted to shoot wildlife and waterfowl such as elk, duck and pheasant for a fee. The fee to lease a duck "blind" on a private club ranges from \$1,000 to \$1,600/year. California Department of Fish and Game (DFG) staff also conducts marsh burning to manage wildlife and game habitat on public lands that the State owns in the SRCD and Napa County. DFG also charges a fee to hunt on the public lands they manage.

Marsh burning acreage in the SRCD is currently allocated by the Solano County Sheriffs' dispatch in coordination with District staff and is subject to the current burn acreage limitations in Regulation 5, Section 401.13. Three local fire districts (Suisun, Montezuma, and Cordelia) and the DFG are also involved in authorizing these fires. Marsh burning acreage outside of the SRCD is not allocated but such burning is currently limited to 100 acres/day for each property, on permissive burn days only, and with prior DFG authorization.

Marsh fires are often characterized by very heavy black smoke. The high fuel moisture and oil content inherent in marshland vegetation, especially tules, is thought to be the main factor affecting smoke generation. A primary objective of marsh burning is to set back the expansive and rapid growth of unwanted vegetation, especially tules. As a result of burning, the dominant tule community is changed in a way to encourage a succession of plant communities that supply essential habitat with food and cover for many different wildlife species.

Recently, several land management agencies with jurisdiction over marshlands in the Bay Area have contacted District staff about conducting marsh burns outside of the west "Delta" region, such as the along the southeastern shoreline of San Francisco Bay, and along the Petaluma and Napa Rivers. Potential smoke impacts from this additional burning are a cause for concern because many of these areas are near or adjacent to densely populated areas. The District expects this interest in "non-traditional" marsh burning to increase because of an environmental campaign recently initiated by watershed groups and government entities to restore the ancient tidal marshes surrounding San Francisco Bay. Numerous wetland restoration projects are in the works and these efforts may include burning as a land management option and tool to achieve their restoration goals.

PROPOSED AMENDMENTS

This section provides a description of the proposed amendments to Regulation 5 and Regulation 3. The full text of these draft proposals can be found as Attachments 1 and 2 to this report.

Amendments to General Provisions of Regulation 5

Section 100 provides a general description of the Regulation, specifies the conditions each allowable fire type in Section 5-401 must satisfy, and describes the types of open burning or fires that are exempt from the requirements of the Regulation.

Exemptions (Section 110)

Staff are proposing a minor revision in subsection 5-110.3 to clarify that the use of flame cultivation to kill live seedling grass and weeds is not limited to orchards, vineyards and field crops.

Conditional Exemptions (Section 111)

The conditional exemptions in this section exempt certain fires conducted in accordance with a set of conditions from the general prohibition on open burning. The proposed amendments include new language to clarify that a condition, requirement or parameter stated in or imposed by a prescribed burn plan approved by the APCO may supersede any condition in this section. This language is intended to address concerns that the proposed morning burn hour limit would adversely prescribed burning.

Subsection 5-111.1

Amendments to this subsection would restrict the morning burn hours for all allowable fires by prohibiting burning before 10:00 a.m. Currently this restriction only applies to marsh burning, stubble burning and double cropping stubble fires. This measure will provide for good smoke dispersion even on permissive burn days by preventing burning when weak inversions persist until late morning. Restricting morning burn hours also reduces the fuel moisture content by allowing the sun to evaporate morning dew from the fuel surface. Low moisture content increases the combustion temperature, which optimizes combustion and decreases smoke production. A hotter fire will also contribute to smoke dispersion by causing the smoke plume to rise higher.

Subsection 5-111.2

Slight changes to language affecting the allowable afternoon hours for open burning are intended to clarify that an existing fire or visible advancing flames may not be allowed to burn additional material or fuel, and material or fuel may not be added to an existing fire after two hours before sunset.

Subsections 5-111.3 and 5-111.4

Additionally, two new conditions have been added to resolve on-going enforcement issues caused by excessive smoke from open burning. The first provision in subsection 5-111.3 is intended to reduce smoke impacts when complaints from the public are received and help reduce the possibility of public nuisance violations. This condition would give District inspection staff the authority to require a person to attempt to cease burning that day once the inspector advises the burner of three or more confirmed complaints.

A new provision in subsection 5-111.4 is intended to reduce the smoke produced from smoldering tree trunks and stumps by not allowing burning to continue into the overnight hours by requiring that they be split or cut into pieces small enough to ensure that burning the material does not produce smoke after sunset. This measure is intended to reduce the adverse smoke impacts from this activity.

Amendments to Definitions

The proposed amendments in this section clarify an existing definition, delete obsolete language in Sections 5-208 and 5-211 that are no longer used in the Regulation, and add two new definitions.

Section 5-208

Staff proposes to modify the definition of “Hazardous Material” to address an enforceability issue caused by a lack of clarity. This proposal clarifies that hazardous material means any combustible or flammable material that poses a fire or explosion hazard including, but not limited, to vegetation cleared to create or maintain a firebreak around a structures on a property as required to comply with PRC section 4291 to reduce the risk of a wildfire. This proposal is also intended to help burners and local fire agencies understand that Section 5-401.6 essentially regulates two types of Hazardous Material fires: those that are related to PRC section 4291 and those that are not.

Section 5-213

In Section 5-213, the definition for “prescribed burning” has been expanded to be consistent with the Guidelines and reflect the needs of the District. Under this proposal, four specific fire types in the Regulation, if the fire is expected to exceed 10 acres in size or burn piled material cleared or generated from more than 10 acres of land, would be regulated by the same requirements as prescribed burning. The affected types of burns include Forest Management and Range Management fires, Hazardous Material fires that are not related to Section 4291 of the Public Resources Code, and any Crop Replacement fire for the purpose of establishing an agricultural crop on previously uncultivated land. Each of these fires would then be subjected to all requirements for Wildland Vegetation Management fires, such as the submittal and approval of a prescribed burn plan and the proposed open burning fee.

Sections 5-221 and 5-222

Two new terms, “forest” and “marshland,” are also proposed in new Sections 5-221 and 5-222 to help clarify the regulatory requirements for Forest Management, Marsh Management, and Wildland vegetation Management fires.

Amendments to Standards

The proposed amendments in Section 5-300 are intended to clarify the compliance standards of the Regulation. To accomplish this, staff propose to include certain existing requirements for allowable fires, which are not clearly enforceable under other sections or standards of the current Regulation, in an existing standard (subsection 5-301.2) and a new proposed standard (subsection 5-301.3).

Besides specifying enforceable standards for acreage burning allocation limits, the conditions in Section 5-111 and the administrative requirements in Section 5-400 of the Regulation, these changes would subject the conditions and requirements of a prescribed burn plan or smoke management plan to an enforceable standard. This proposal would also satisfy one of the requirements of the Guidelines.

In effect, these changes would strengthen the enforceability of the Regulation and help burners understand and comply with all requirements they are subjected to. Ultimately, these changes would also help reduce the potential of smoke impacts from open burning.

Amendments to Administrative Requirements

Section 5-400 describes the specific requirements for each allowable fire type, sets forth conditions an applicant must satisfy to qualify to burn debris cleared from land in agricultural use, and describes the requirements for granting emergency waivers from these requirements. Section 5-400 also includes the notification requirements for certain allowable fires, and additional requirements for prescribed burning and the occasional fire set for filmmaking.

No substantive changes are proposed for Section 5-403 (Agricultural Land Use) and Section 5-404 (Emergency Waivers). Only minor clarifications are proposed to improve the enforceability of these sections. In addition, staff propose to delete the requirements in Section 5-405 and subsection 5-401.14 for Waste Propellant, Explosives and Pyrotechnics fires. These sections have expired so are no longer relevant.

Allowable Fires (Section 5-401)

There are several substantive amendments proposed in this Section. The first proposal, which is discussed below in Section 5-406, would expand the Prior District Notification requirements to include the remaining five allowable fire types currently not required to notify the District prior to burning: Crop Replacement, Orchard Pruning and Attrition,

Double Cropping Stubble, Flood Debris, and Forest Management. The primary purpose of this proposal is to help the District satisfy the annual reporting requirements in the Guidelines. The additional information obtained would also be used to improve the District's open burning emissions inventory because the burning data would be more accurate and complete.

The remaining proposed amendments in Subsections 401.2, 401.5, 401.6, 401.7, 401.8, 401.9, 401.11, and 401.12 are minor non-substantive revisions intended for clarify and consistency in existing requirements of the Regulation.

Subsection 5-401.1

A minor revision in this section is proposed to clarify that Disease and Pest fires are a type of agricultural fire only. This proposal is also intended to reflect an existing requirement and current policy in the District's Compliance and Enforcement Division (C&E).

Subsection 5-401.3

In this section, staff propose to add specific minimum drying time periods for pruning performed between February 15 and April 30 for integrated pest management purposes. The proposed minimum drying periods, 30 days for trees and branches over six inches in diameter and 15 days for grape vines and branches less than or equal to six inches in diameter, are less than the minimum 60-day drying time condition in Section 5-111.4 for piled material. This proposal is in response to a request from the Coast Agricultural Commissioners and Sealers Association, which includes members that represent the Bay Area, who pointed out that the current 60-day drying time condition and the orchard pruning permissive burning period did not allow growers to utilize a recommended disease control practice, which is to delay or time dormant pruning to avoid times of highest disease occurrence or potential to spread.

Subsection 401.6

In this subsection, staff proposes to add a condition that must be satisfied by burners who conduct fires to dispose of materials generated to comply with an order or notice issued by a fire official pursuant to Public Resources Code section 4291. The new condition, which states, "the material is inaccessible for removal by vehicle" reflects current District C&E Division policy and is intended to improve the enforceability of the Regulation.

At the request of FireSafe San Mateo County, staff also proposes a 9:30 a.m. morning burn hour limit, instead of the proposed 10:00 a.m. general morning burn limit, for Hazardous Material fires involving piled material. This is intended to help accommodate burning vegetation cleared by FireSafe work crews to reduce fire hazards in urban/wildland interface areas.

Subsection 401.7

Staff proposes to allow fire training burns outside of the burn hour limits in subsections 111.1 and 111.2 if the APCO is notified in writing or facsimile at least 7 calendar days in advance. This new provision is intended to address an on-going issue raised by local fire agencies in the District, where the current burn hour limits effectively prohibit fire training exercises at night unless a variance is granted. This type of training is necessary for many fire agencies in the District.

Subsection 5-401.13

Staff also propose revisions that would affect Wildlife Management fires (i.e., marsh or tule burning). Under this proposal, Wildlife Management fires would be renamed “Marsh” Management fires to help clarify the applicability of this allowable fire type. Burners would be required to comply with the proposed requirements in Section 5-410, which are discussed in more detail below, and receive written APCO approval of a smoke management plan prior to burning. We are also proposing that any person who conducts a “Marsh” Management fire in the District must receive an acreage burning allocation from the APCO prior to burning. This is a substantive change from the current Regulation because an acreage burning allocation is now only required for fires conducted in the Suisun Resource Conservation District (SRCD), and because the allocation is granted by the Solano County Sheriffs’ Dispatch. These changes are necessary for the District to be able to allocate acreage for marsh burning as part of the new smoke management program for prescribed burning and to satisfy the program requirement in the Guidelines to have a daily “burn authorization system” that includes marsh or tule burning. The Solano County Sheriffs’ Department has been consulted on this change and concurs.

Subsection 401.17

An additional proposal would allow public exhibition fires on no-burn days, such as fires for air shows. Under this proposal, the burn applicant would have to submit a written petition and receive APCO approval prior to burning instead of having to apply for a variance.

Prior District Notification (Section 5-406)

The proposed amendments in this section would require persons conducting Crop Replacement, Orchard Pruning and Attrition, Double Cropping Stubble, Forest Management and Flood Debris fires to notify the District prior to burning. This will allow staff to develop more complete emissions estimates from these types of agricultural burns. Other proposed amendments would eliminate verbal notifications as a compliance option. District experience has found them to be burdensome to burners and ineffective in getting accurate and complete information. Mailed, faxed or electronic notification will be required.

Prescribed Burn Requirements (Section 5-408)

The substantive amendments proposed in this section are intended to satisfy the prescribed burning requirements of the Guidelines. In particular, the proposed changes would clarify and specify what information must be included in a prescribed burn plan for District review, and would establish new requirements for the District's daily "burning authorization system" for prescribed burning and marsh burning activities. As an significant part of the District's new smoke management program for prescribed burning, these revisions include a requirement that prescribed burners must receive an acreage burning allocation verbally from the APCO on the day of each burn prior to ignition. The District's daily "burning authorization system" will revolve around the acreage burning allocation, which will be determined by District meteorology staff each day in the morning based on that day's forecasted meteorological conditions around the District. For example, on hot, still days burn allocations might be limited to 100 acres in each of Marin, San Francisco, and San Mateo Counties (which make up the new Coastal Section) and no acres allowed to be burned in the South or North Sections of the District. In contrast, on days with good air movement and cool temperatures, up to 500 acres might be allocated in each section of the District. The allowable acreage to be burned will be allocated by the burn coordinator in the Compliance & Enforcement Division according to the number of acres to be burned, and the location of burn sites. Ignition times will be staggered. All prescribed and marsh burning activities will be subjected to the requirements of this new system.

Staff also proposes to modify a provision that would prohibit prescribed burning on a no-burn day and specify how prescribed burners get permission to burn on a permissive burn day. Currently in subsection 5-408.2, permission to burn on a no-burn day is governed by the 48-hour forecast decision. This means that if the District gives a burner a "go" decision 48 hours before a proposed burn date, then they have permission to burn on that date even if due to drastic weather changes, it turns out to be no-burn day and the meteorological conditions are not conducive for burning. Under this proposal, in order to get the APCO's permission to conduct a prescribed burn on a permissive burn day, they would first have to receive an acreage burning allocation from the APCO on the day of a proposed burn. As a result, the acreage allocation governs how much, when and where prescribed burning could occur. When District meteorology staff determine that the

conditions are such that no prescribed burning is desirable, a no-burn day notice is issued and the acreage burning allocation will be zero.

The proposed revisions would also require prescribed burners to report to the APCO the total acreage and tonnage of vegetation actually burned no later than 12:00 p.m. the day after burning occurs. This proposal is necessary for successful implementation of the District's daily "burning authorization system" because this critical information will be used by District staff to determine how many acres should be allocated for prescribed burning and marsh burning on the subsequent day. This proposal is a substantive change from the current requirement, which allows up to 30 days after completion of the burn project to report the acreage burned.

To be consistent with another requirement of the new Guidelines, staff proposes to require prescribed burners to submit a post-burn evaluation within 30 days after completion of the burn project that addresses whether or not the vegetation management objectives of the project were met and describes the observed smoke behavior. This proposal will provide District staff with valuable information that would be used to evaluate subsequent burn prescriptions and to determine future acreage allocations for prescribed burning.

Sometimes, a naturally ignited wildfire occurs in an area that has an exceptionally high fuel load, so that a decision is made by a fire official to allow the burn as a wildland resource management tool. An additional proposal would add new requirements for these naturally ignited wildfires, so that they can be considered a type of prescribed burning. When these wildland areas that could be burned exceed 10 acres in size, staff propose to require the fire official who would then manage the burn to register the potential project with the APCO annually, with updates as wildfires or changes to the project occur. In addition, the burn project would be subjected to the prescribed burning fee requirements in proposed Regulation 3, Schedule R. The proposed effective date of this proposal is June 1, 2002.

Filmmaking Burn Petition (Section 5-409)

In order to address an issue raised by Travis Air Force Base, which burn materials as part of their annual air show, staff proposes to expand the filmmaking requirements in this section to apply to public exhibition fires. This proposal would allow a person to conduct a public exhibition fire on a no-burn day provided the APCO approves a written petition submitted by the burner, the APCO is notified on the day of the burn prior to ignition, and the written approval is available at the burn site for inspection by District staff. The proposed revisions would rename this section "Filmmaking and Public Exhibition Burn Petitions" from "Filmmaking Burn Petition" to reflect this change. The proposal is expected to reduce a number of recurring variances involving public exhibition burns by allowing these fires on no-burn days provided certain conditions are met. This would reduce the amount of time and resources spent in the variance process and provide a way to streamline and improve the District's management of this type of allowable fire.

Wildlife Management Burn Requirements (New Section 5-410)

The proposed requirements in this Section are necessary for the District to be able to allocate acreage for marsh burning as part of a daily “burn authorization system” and to ensure the successful implementation of the District’s new smoke management program for prescribed burning. These revisions would also enable the District to be consistent with several smoke management program requirements in the new Guidelines.

Under this proposal, any person who wants to conduct marsh or tule burning would be required to satisfy two requirements at least 30 days prior to a proposed burn in order to qualify for an acreage burning allocation from the APCO. The first requirement is to submit a District-approved smoke management plan to the APCO. The second requirement would compel any person conducting a burn to submit a written determination of the necessity of each burn from the California Department of Fish & Game (DFG) to the APCO for verification. DFG would also have to certify the determination and explain why available alternatives to burning could not achieve the management objectives. Only after the APCO verifies the necessity determination would DFG be able to approve the burn. The proposed effective date of this proposal is June 1, 2002.

The proposed revisions would also require marsh or tule burners to report to the APCO the total acreage and tonnage of vegetation burned no later than 12:00 p.m. the day after burning occurs. This proposal is necessary for successful implementation of the District’s daily “burning authorization system” because this information will also be used by District staff to determine how many acres should be allocated for marsh burning and prescribed burning on subsequent days. The proposed effective date of this proposal is also June 1, 2002.

Open Burning Fees (Section 5-411)

This new section is proposed to clarify that Marsh Management fires (marsh or tule burns), Wildland Vegetation Management fires (prescribed burning), and those fires that meet the definition of prescribed burning in the Regulation are subject to the proposed fee requirements in Regulation 3, Schedule R. Those fires include any Forest Management fire, Range Management fire, Hazardous Material fire that is not related to PRC section 4291, and any Crop Replacement fire for the purpose of establishing an agricultural crop on previously uncultivated land fire that is expected to exceed 10 acres in size or burn piled vegetation cleared or generated from more than 10 acres of land. An example of the latter is land clearing in eastern Napa County for vineyards. The proposed amendments are also intended to serve as a convenient cross-reference between Regulation 5 and proposed Schedule R requirements.

Amendments to Monitoring and Records Requirements

Under Section 5-501, the current regulatory language requires open burning records for Waste Propellant, Explosives and Pyrotechnics fires. However, these requirements have been obsolete since January 1, 1997, when a previous revision went into effect prohibiting this type of fire. This type of fire was primarily conducted by United Technologies Corporation (UTC) to dispose of waste rocket propellant. UTC has since changed to an alternative, non-burning method of waste disposal.

The proposed amendments in this section would delete the obsolete regulatory language for Waste Propellant, Explosives and Pyrotechnics fires, and impose new record keeping requirements for prescribed burning and marsh burning activities. If subjected to this proposal, a person who conducts a Wildland Vegetation Management fire (prescribed burning) or a Marsh Management fire (marsh or tule burning) would be required to maintain specified records on a daily basis, retain the records for at least twelve months and make the records available upon request. The information required by this proposal is important for District quality assurance purposes such as the verification of actual burn acreage and proper payment of open burning fees, and to assist in staff's evaluation of the methods or techniques used by burners to estimate burn acreage. The proposed effective date of this proposal is also June 1, 2002.

Proposed Amendments to Regulation 3 and Proposed Schedule R

Proposed Schedule R would add a new fee schedule for certain open burning activities and is intended to recover a portion of the cost of the District's new smoke management program for prescribed burning, which is estimated to be \$582,000/year. Based on the fee requirements proposed in new Schedule R and authorized prescribed and marsh burning acreages averaged over the last three years (1998-2000), the total projected revenue from the fee proposal is approximately \$126,000/year or about 22% of the program cost this fiscal year. This cost estimate assumes an increase in prescribed burning acreage over the current average, resulting in 25% more revenue than the current acreage would generate. However, it excludes any potential decrease in marsh burning fees due to the two discounts proposed for marsh burning conducted only during the Spring burning period. Beyond this fiscal year, the remaining cost of this new District program (about 78%) will have to be funded through General Fund expenditures until other revenue sources are secured. District staff will continue to explore all options in this regard, including State Subvention funding, federal EPA grants, possible legislation, and potential burning fee increases.

As previously discussed, the proposed fee would primarily apply to any Wildland Vegetation Management fire (prescribed burning) and Marsh Management fire (marsh or tule burning). In addition, the proposed fee requirements for prescribed burning would apply to any Forest Management fire, Range Management fire, Hazardous Material fire that is not related to Section 4291 of the PRC, and any Crop Replacement fire for the purpose of establishing an agricultural crop on previously uncultivated land fire that is

expected to exceed 10 acres in size or burn piled vegetation cleared or generated from more than 10 acres of land.

In Schedule R, staff proposes separate but similar fee requirements for prescribed burning activities and for marsh burning. For each prescribed burning project, the fee would be determined by the acreage to be burned and would range from a minimum of \$250 (for 50 acres or less) up to \$3000 (for any amount greater than 750 acres). In addition, the fee paid would be valid for one year from the burn plan approval date (i.e., when the APCO authorizes the burn in writing). Any burning after one year would be subject to a new fee.

For marsh or tule burning projects, the fee would be determined for each property by the proposed acreage to be burned and the proposed burning period(s). The fee would range from a minimum of \$250 (for 50 acres or less) to \$1000 (for more than 200 acres up to 300 acres). These types of burns are allowed in the spring and again in the fall, but the fee will be valid for a one-year period. Any burning after either one of these time periods would be subject to a new fee. In addition, staff propose a 25% discount of the marsh management burning fee when the proposed burning is only conducted during the spring burning period (which begins February 1 and normally ends March 31). This is intended to encourage burning in the spring when the weather and soil moisture content is more conducive for good smoke dispersion and less potential smoke impacts.

In response to a concern raised by the Suisun Resource Conservation District about the need to have a lower burning fee for fires less than 20 acres, staff propose a 50 % discount of the marsh management burning fee, provided the proposed acreage to be burned is less than or equal to 10 acres and the proposed burning will only be conducted during the spring. This proposal is also intended to encourage burning in the spring when the weather and soil moisture content is more conducive for good smoke dispersion and less potential smoke impacts

Also included in this proposal are requirements that all burning fees would be non-refundable and must be paid before conducting the burn. The only exception to the proposed requirement to pay “up front” would be when a fire official makes a decision to manage a naturally ignited wildfire for resource benefits (i.e., as prescribed burning). The fee for this type of prescribed burning would have to be paid no later than 10 days after the burn project is completed.

As detailed in the District’s FY01-02 budget, the cost of the new smoke management program for prescribed burning is approximately \$582,000/year. This cost is based on the following positions being dedicated to the program: six inspectors, one half of a supervising inspector, one air quality specialist, and one meteorologist. Staff believe that this is the minimum level necessary to develop, implement, and administer the new program adequately and efficiently.

Please note that the development of the proposed open burning fee proposal was based, in part, on the new prescribed burning fee recently adopted by the Governing Board of the

San Joaquin Valley Air Pollution Control District (SJVAPCD). Under SJVAPCD Rule 3160, the new prescribed burning fee rate is \$5.00 per acre burned in a calendar year and is in addition to other agricultural/open burning fees found in SJVAPCD Rule 3040. The District's proposed fee schedule is similar to the amount paid by burners in the SJVAPCD.

Other air districts in the state also have existing fees in effect for agricultural and open burning. Examples of several air districts close to the District include the Sacramento Metropolitan Air Quality Management District (SMAQMD), the Yolo-Solano County AQMD, Butte County AQMD and the San Luis Obispo County APCD. These air districts and others in the State are also currently considering a new fee for prescribed burning to recover their costs of satisfying the new Guidelines.

EMISSIONS AND EMISSION REDUCTIONS

Total estimated emissions from open burning are small compared to the overall emissions from all source categories in the District emission inventory. According to the District's 1999 base year emission inventory, the estimated emissions from open burning for calendar year 2000 are 0.53 tons per day of PM₁₀, 6.05 tons per day of carbon monoxide (CO), 0.17 tons per day of nitrogen oxides (NO_x), and 0.25 tons per day of volatile organic compounds (VOC). These estimates account for less than 0.1% of the overall District emissions for PM₁₀, NO_x and VOC.

Because reliable information for estimating emission reductions from the amendments proposed is not available, staff is currently unable to quantify the emissions reduction potential of the proposal. Because the proposed amendments do not impose any new emission standards that specifically reduce emissions, and because increases in prescribed burning are projected irrespective of the proposed amendments, staff are not expecting an emission reduction from this proposal. In fact, the projected increases in prescribed burning activities may offset any reductions and actually increase smoke emissions District-wide on an annual basis.

Nevertheless, expected results from the proposal include more effective smoke management that reduces the potential for smoke impacts from open burning and in particular prescribed and marsh burning activities. Through implementation of the daily "burn authorization system" and the other provisions developed to improve smoke management, the changes will not only improve smoke management on a temporal and spatial basis; they will also address the problem of impacts from too many large fires simultaneously occurring in close proximity to population centers and sensitive receptor sites. In addition, the changes will meet the challenge posed by the projected increases in prescribed burning activities. The anticipated net effect is that emissions would be spread over several days instead of all being emitted on the same day. Areas and populations downwind from these burns would have fewer smoke impacts because smoke will be less likely to drift into populated areas and less concentrated when it does.

SOCIOECONOMIC ANALYSIS

Pursuant to Section 40728.5 of the California Health and Safety Code, the District is required to perform a socioeconomic analysis for certain rule development activities. Specifically, this analysis is required whenever the District intends to propose the adoption, amendment or repeal of a rule or regulation that will significantly affect air quality or emissions limitations.

However, staff have determined that the proposed amendments to Regulation 5 and the proposed open burning fee requirements in Regulation 3 including proposed Schedule R will not significantly affect air quality or emission limitations, and therefore this analysis is not required.

INCREMENTAL COST ANALYSIS

Pursuant to California Health and Safety Code Section 40920.6, the District is also required to perform an incremental cost analysis prior to adopting or amendment of a rule or regulation to meet best available retrofit control technology (BARCT) or feasible measure requirements under the California Clean Air Act. However, staff have determined that the proposed amendments to District Regulation 5 and the proposed open burning fee requirements in Regulation 3 including proposed Schedule R do not add BARCT requirements or involve emission control options, and therefore are not subject to the requirements of this State law.

ENVIRONMENTAL IMPACTS

Pursuant to the requirements of the California Environmental Quality Act (Public Resources Code section 21000, *et seq.*), the District prepared an initial study to determine the potential environmental impacts of the proposed amendments to District Regulation 3: Fees and Regulation 5: Open Burning.

The initial study concluded that the proposed amendments to Regulation 5 would not result in any significant environmental impacts. A CEQA negative declaration is proposed by staff for adoption by the Board in connection with these amendments.

REGULATORY IMPACTS

California Health and Safety Code Section 40727.2 requires the District to identify existing federal and District air pollution control requirements for the equipment or source type affected by the proposed rule or regulation. The District must then note any differences between these existing requirements and the requirements imposed by the proposed change.

Upon review, staff have determined that there are not existing federal air pollution requirements for open burning affected by the proposed amendments. The federal EPA did issue a national policy that addresses how best to achieve national clean air goals, including EPA's national air quality standards for particulate matter and regional haze program, while improving the quality of wildland ecosystems through the use of prescribed burning. Called the *Interim Air Quality Policy on Wildland and Prescribed Fire* (EPA, 1998), this policy has been used by District staff as well as other air districts in the State as a guideline document for prescribed burning activities since it was issued. The *Interim Air Quality Policy* is not a federal regulation or air pollution control requirement, so this Section does not apply.

The only air pollution control requirements imposed on open burning are those incorporated into Regulation 5.

RULE DEVELOPMENT SUMMARY

District staff initiated this rule development effort in late 1999 when the final revisions to the State's Agricultural Burning Guidelines proposed by ARB were being drafted, and how the implementation costs would affect the District became apparent. Subsequently, District staff conducted two scoping workshops on April 17, 2000 and May 4, 2000 to discuss the initial draft of the open burning fee proposal. Since then, staff participated in the final promulgation of the new Guidelines, solicited input from affected parties and began developing the amendments to Regulation 5 and Regulation 3 including proposed Schedule R.

To fulfill a commitment made to landowners in the Suisun Marsh, staff conducted a workshop on August 9, 2001 in Fairfield, CA so that more of the private landowners in the Suisun Marsh had an opportunity to discuss the proposed Regulation 5 amendments and proposed Schedule R. A second workshop was held on August 10, 2001 in San Francisco at the District offices.

Except for the concerns about any new fee for marsh burning and prescribed burning, the issues raised in the comment letters received after the recent workshops have been addressed or resolved. Staff subsequently met separately with East Bay Regional Park District, SRCD and DFG staff to discuss their issues, and had phone conversations with BLM, Marin Municipal Water District staff to address their issues.

DISTRICT STAFF IMPACTS

Adequate staff resources are essential to implement and administer the proposed amendments to Regulation 5, the District's new smoke management program for prescribed burning, and to satisfy the new Guidelines. However, these changes are also expected to significantly impact District staff resources.

For the current fiscal year (FY01-02), the budget for the District's new smoke management program for prescribed burning is approximately \$582,000/year. This cost is based on funding 8.50 full-time positions: six air quality inspectors, one air quality specialist, and half of a supervising air quality inspector in the Compliance & Enforcement Division; and one meteorologist in the Technical Services Division. In addition, the use of existing technical support and clerical staff resources is expected to supplement this expenditure.

Under this new program, District staff resources will be used to conduct administrative, compliance and enforcement activities associated with prescribed burning and marsh burning. Several examples of these enhanced activities include inspecting burn sites; evaluating and approving prescribed burn and smoke management plans; developing and revising open burning policies and procedures; making burn forecasts and day-of-burn acreage allocations; collecting burning fees; annual reporting to ARB; enforcement actions; and developing and coordinating outreach with other air districts, fire agencies, DFG, county Agricultural Commissioners, SRCD, and other land management agencies.

COMMENTS AND RESPONSES

This section summarizes written comments on the District proposals and CEQA document. Comments on the working draft were received from the Marin County Fire Department (MCFD), federal Bureau of Land Management (BLM), Marin Municipal Water District (MMWD), East Bay Regional Park District (EBRPD), Sonoma-Lake-Napa Ranger Unit of the California Department of Forestry & Fire Protection (CDF-SNLRU), City of Gilroy (CG), Coast Agricultural Commissioners and Sealers Association (CACSA), California Department of Fish & Game (DFG), and the Suisun Resource Conservation District (SRCD).

Comments on the final draft were received from the City of Antioch (Antioch); see comment 30 and staff response. Comments regarding purported environmental impacts from the prescribed burning fees were received from CDF-SNLRU; see comments 31 through 36 and staff responses.

1. The District is imposing a new smoke management program on a voluntary basis that targets such a minor producer of emissions, and fees to fund the program, that we believe are not needed or required by state law. (MCFD)

We are proposing a smoke management program for prescribed burning, and new fees to partially fund the program, because the District Board of Directors has committed to satisfying the prescribed burning provisions of the amended Agricultural Burning Guidelines in Title 17 of the California Code of Regulations. Staff believe that the program is needed to ensure statewide consistency with these provisions, to ensure consistency with federal regional haze requirements and prescribed burning policy, to address the

same concerns in the Bay Area that prompted revision of the state Guidelines, and to address compliance and enforcement issues identified since 1994, when Regulation 5 was last amended.

- 2. The proposed definition of a “forest” in Section 5-221 should reference a document that refers to the California Native Plant Society classification system. (MCFD)**

We concur with your suggestion. Accordingly, the proposed definition of “forest” in Section 5-221 has been modified to incorporate the most current version of “A Manual of California Vegetation” as the reference document.

- 3. The proposal in Subsection 5-111.4, which would require that “ ... all tree trunks and stumps must be cut or split into small enough sections to ensure that burning the material does not produce smoke after sunset on any day,” is unreasonable in a wildland setting. We would rather extinguish smoldering trunks and stumps rather than cut or split them. (MCFD)**

District staff concur with your choice as a means of complying with this proposed requirement so long as the burning activity does not cause smoke impacts.

- 4. Why does the proposed definition of a “forest” in Section 5-221 exclude the eucalyptus series? (MCFD)**

There are several reasons why. First, District staff wanted to make sure that alternatives to burning eucalyptus material were evaluated prior to burning. We decided that the best way to accomplish this objective would be to subject this particular burning activity to the prescribed burning requirements in Section 5-408, and specifically to the proposed provision in Subsection 5-408.1.k., which requires the burner to include an evaluation of alternatives to burning as part of the environmental impact analysis prepared for and submitted with the prescribed burning plan. This approach also prevents burners from circumventing the proposed prescribed burning fees (and the required evaluation of alternatives to burning) by “calling” the burn a forest management fire when it is expected to burn 10 acres or less or piled vegetation cleared or generated from 10 acres or less of land. As you probably know, under the proposed amendments these smaller types of forest management fires are not subject to the prescribed burning requirements including burning fees.

Second, this proposal is one part of the District’s plan to provide for analysis and periodic assessment of actions that are taken to minimize smoke through the use of non-burn alternatives. This plan is a required element of the District’s new smoke management program for prescribed burning, which

is being developed by District staff to satisfy the amended Guidelines in Title 17 (see 17 CCR, section 80150(l)). The last reason is because District staff believe that eucalyptus material can be readily used in the growing biomass recycling and energy production industries in the region should the land manager decide to utilize these alternatives.

- 5. In Subsection 5-111.3, the District proposes that, “upon notification of three or more complaints by a District inspector, a person shall cease the burning activity that day.” We are concerned that a small number of confirmed complaints, even those based only on aesthetics, could potentially stop a prescribed burn. Also, further clarification of what you mean by cease burning activity is needed. (MCFD, BLM)**

In order to clarify Subsection 5-111.3, the proposed language has been modified to read, “ ... A person shall attempt to cease the burning activity that day.” This change acknowledges the difficulties a burner would face if required to cease burning activity that day once notification is received. What it means is that the burner, once notified, will be required to make some attempt to cease burning that day to prevent or minimize additional complaints about the burn and the possibility of a public nuisance violation. The burner’s response should be based on the conditions under which the burn is operating, including the potential for additional complaints; what will matter is whether or not a reasonable attempt is made. Please note that this proposal seeks to prevent public nuisance violations from such burns.

Also, as discussed during the public workshops, this proposal does not change the existing Compliance & Enforcement Division’s policy that includes the criteria of a “confirmed complaint.” A confirmed complaint will continue to include those based on aesthetics as well as those based on direct impact on the party.

- 6. The proposed open burning fee, Schedule R in Regulation 3, is reasonable. (MMWD)**

Comment noted.

- 7. In Section 5-401.15, we suggest adding “annual grass” to the description of wildland vegetation and burning for control/reduction of exotic weeds. (BLM)**

After discussions with BLM staff, we propose to add the term “grass” to the description of prescribed burning in this section. Regarding your suggestion about exotic weeds, this section is intended to define allowable prescribed burning, which may be carried out for many purposes including the control/reduction of exotic weeds. Though this is an appropriate objective of a prescribed burn plan, and should be included in the burn plan pursuant to

Section 5-408.1.a, staff cannot anticipate nor do we wish to include a list of all possible objectives in this section.

- 8. Some clarification is needed in the first paragraph of Section 5-111 to provide that the conditional exemptions in this section may be superseded by conditions and/or parameters of prescribed burn plan approved by the APCO. (BLM)**

To address this issue, proposed language has been added to Section 5-111 to clarify that the conditions, requirements or parameters in a written prescribed burn plan approved by the APCO may supersede any of the conditional exemptions.

- 9. The proposed amendments to the conditional exemptions in Subsections 5-111.1 and 111.2 that prohibit allowable fires before 10:00 a.m. and clarify the afternoon burn hour limits are unrealistic because they will unnecessarily restrict prescribed burning activities and pose a significant health and safety threat to fire personnel conducting this type of burning. (MCFD, BLM, CDF-SLNRU)**

As discussed in the response to comment 8 above, proposed language has been added in Section 5-111 to clarify that the conditions, requirements or parameters in a written prescribed burn plan approved by the APCO may supersede any of the conditional exemptions (including those in Subsections 5-111.1 and 111.2). This change should address the concerns about the proposals affecting the morning and afternoon burn hour limits in Subsections 5-111.1 and 111.2, especially since these proposals were never intended to apply to prescribed burning nor were they being considered. In addition, the intent of the proposed language in Subsection 5-111.2 about the afternoon burn hour limit is to clarify an existing requirement and reflect current District Compliance and Enforcement Division policy. As discussed during the public workshops, the burn hour limits for prescribed burning have been and will continue to be governed and regulated by the schedule and prescription of an approved prescribed burn plan.

- 10. We are concerned that the proposal in Subsection 5-408.3, which would require a person to receive an acreage burning allocation prior to ignition of a prescribed burn, could significantly impact the cost of our prescribed burning program and make conducting a burn very difficult logistically because assembling fire personnel and resources involves lengthy travel times and assistance from outside agencies. (BLM, CG)**
District staff recognizes the potential impacts associated with this requirement. However, this proposal is consistent with the revised prescribed burning requirements in Title 17 of the California Code of Regulations recently adopted by the California Air Resources Board (see section 80145 (a) and (g)), which the District made a commitment to

incorporate. This requirement is also necessary to help minimize smoke impacts of a prescribed burn project should the meteorology change unexpectedly the morning of a proposed burn prior to ignition. To minimize this possibility, District meteorology staff has committed to provide enhanced burn forecasting services including 96-hour trends, 72-hour outlooks, and 48-hour and 24-hour burn forecasts for specific prescribed burning projects. In addition, the burn forecast zones in the District have been modified in a way that is intended to increase the opportunities to burn.

- 11. In Section 5-408(i), we suggest deleting the term “registered” when discussing certification of a prescribed burn plan by a professional and recommend that certification may also be made by the agency land manager. (BLM)**

Regarding the certification of a prescribed burn plan by specified professionals, new proposed language was discussed with BLM staff that resolved this issue. The proposed language now reads “qualified professional.”

- 12. The regulations should adopt terminology that is consistent with current professional practices of wildland burning. Any type of burning, be it hazard reduction, wildland vegetation management, or wildlife management, should be termed a prescribed burn independent of District permit requirements. (MMWD)**

While District staff recognize the value of consistent terminology, we are also trying to develop regulations that meet District and burner needs without excessive costs. As such, there will periodically be differences of opinion about what is appropriate regulatory language. Your suggestion that any type of burning be termed a prescribed burn is an example of this difference of opinion. We disagree that wildlife management fires should be termed a prescribed burn because in the Bay Area these fires are only conducted in marshland areas (as opposed to wildlands in general), which make it necessary to manage unique problems and issues associated with these burns. To clarify this point, we are proposing to change the name for Wildlife Management fires in Subsection 5-401.13 to “Marsh” Management fires. Similarly, the proposed amendments to Regulation 5 that apply to Hazardous Material and Wildland Vegetation Management fires are intended to reflect the need to manage the unique problems and issues associated with these burns, including unnecessary, burdensome costs.

- 13. We suggest that there should be a professional standard for prescribed burning on all wildlands. Plan requirements for prescribed burns and wildlife management smoke management plans should be identical. (MMWD)**

District staff disagree with this suggestion based on the same reasoning discussed above in the response to comment 12.

- 14. Burn applicants should have reasonable prior expectation of when prescribed burn plans might be approved and that District staff will be able to complete their review of a smoke management plan for marsh management burning within the 30-day time frame proposed in Section 5-410. (MMWD, SRCD)**

As discussed during the public workshops and in recent conversations, District staff is committed to determining prescribed burn plan approval prior to any proposed burning provided the burn applicant submits the burn plan at least 30 days prior to the proposed burning as currently required in Subsection 5-408.1. District staff is also committed to completing smoke management plan review within the 30-day time frame proposed for marsh management fires in Section 5-410, provided the burn applicant submits the plan at least 30 days prior to the proposed burning. In addition, there is nothing in Regulation 5 that prohibits a burn applicant from submitting their plan perhaps 45 or 60 days prior to the proposed burning should the applicant have concerns about the turn-around time for approval. Other measures the applicant should consider prior to plan submittal include ensuring that the plan is complete and contacting District staff to get any questions answered. To provide further assurance, staff recently committed to revising the District Compliance and Enforcement Division's written policy to include the 30-day review period if the proposed amendments are adopted.

- 15. Because the proposed amendments reserve final approval for ignition of a prescribed burn to the day of the burn (i.e., until a acreage burning allocation is received), we propose a "likelihood of approval" rating be developed and included in the final regulation. (MMWD)**

We agree that there is a need for some indication or level of confidence in the District's 24-hour burn forecast when getting an acreage burning allocation the next morning. However, we also feel that it is more appropriate to incorporate this type of information in written Compliance & Enforcement Division policy instead of in Regulation 5 because this approach provides more flexibility in our new smoke management program for prescribed burning.

- 16. Hazardous Material is defined in multiple locations in the proposed regulations often in a confusing manner. We suggest that the final regulation consolidate and clarify definitions of Hazardous Material. (MMWD)**

District staff concur with your suggestion. Accordingly, the definition of Hazardous Material in Section 5-208 was modified and minor revisions to the language in Subsection 5-401.6 were made. MMWD staff subsequently reviewed and approved these changes.

- 17. Under Subsection 5-401.1 (Disease and Pest fires), specifying “agricultural fires” may limit the use of fire to control exotic weeds, such as the control of Yellow Star Thistle, on open space and parklands. As the general public continues to express concerns over the use of pesticides, we would not like to see this type of fire restricted to production agriculture only. (CG)**

Regarding your concern about specifying Disease and Pest fires as a type of “agricultural” fire only, this proposal is intended to clarify an existing requirement and reflect the current policy of the District’s Compliance & Enforcement Division. Subsection 5-401.1 has not previously been considered as the appropriate allowable fire type for the control of exotic weeds on open space and in parklands. In fact, many of the proposed fires allowed for this purpose have historically been subjected to the prescribed burning requirements in Subsection 5-401.15 (Wildland Vegetation Management). As far as we know, all of the open burning activities your municipality has conducted to control Yellow Star Thistle have also been prescribed burns regulated by Subsection 5-401.15. There are no proposed changes that would eliminate this practice under this subsection.

- 18. Subsection 5-401.15 continues to reserve wildland vegetation management burning for state and federal agencies. Our municipality has jurisdiction over open space land. We would like to see Subsection 5-401.15 allow municipalities to conduct prescribed burning for management of habitat and urban/wildland interface fuel management. (CG)**

Subsection 5-401.15 and District Compliance & Enforcement Division policy already allow an entity other than a state or federal agency to conduct prescribed burning provided the project is conducted “through a cooperative agreement or contract involving such agencies.” In practice, this policy has allowed local municipalities such as yours to conduct prescribed burning in the past in cooperation with the California Department of Forestry & Fire Protection or Department of Parks & Recreation. For this reason and because of District staff concerns about the risks associated with prescribed burning activities without adequate state or federal fire agency involvement, I do not anticipate any changes in this subsection. In addition, we are sure that you are aware that Subsection 5-401.6 (Hazardous Material) already allows fires for the purpose of prevention or reduction of a fire hazard, which includes urban/wildland interface fuel management, provided the requirements of this specific allowable fire type are satisfied.

- 19. We are asking you to consider allowing growers of grapes and tree fruits in the District to burn agricultural prunings before the 60-day drying time period required for piled material in Subsection 5-111.4. This proposal would only apply to prunings performed for integrated pest management purposes between February 15 and April 30. (CACSA)**

District staff contacted a member of CACSA and requested the submittal of draft language of the proposal for review. After staff made some revisions to the draft received, the revised draft language was subsequently reviewed and approved by the CACSA member. The final draft of the proposed language, which was added to Subsection 5-401.3 reads, "When pruning is performed between February 1 and April 1 for integrated pest management purposes, the following minimum drying time periods shall apply: trees and branches over six inches in diameter: 30 days; for grape vines and branches less than or equal to six inches in diameter: 15 days."

- 20. The fee proposed in Regulation 3, Schedule R will effectively eliminate prescribed burning as a management option for reducing dangerous wildland fuels and impair or eliminate our agency's prescribed burning program. (CDF-SLNRU, EBRPD)**

Though we understand the concerns about limited resources for managing EBRPD lands in the Bay area, we do not think the fees would have this effect. We agree that we are imposing another item for the EBRPD budget and that the fees may require that budget priorities be changed in relatively minor ways. However, we also feel that this accomplishes important public purposes. Though we agree that prescribed burning has important environmental benefits, we note that it can have serious adverse impacts on public health if it occurs on the wrong day or at the wrong time so that smoke is transported into populated areas. Our program is intended to minimize the likelihood of these adverse impacts.

We also understand CDF concerns about the potential cost impacts. However, the fee proposal is necessary to recover a portion (less than 25%) of the District's cost of our new smoke management program for prescribed burning and is in response to a directive from the District's Board of Directors. In addition, this program is required in order to comply with revisions to the State's Agricultural Burning Guidelines in Title 17 of the California Code of Regulations adopted by the California Air Resources Board (ARB). CDF staff at the state level participated in the discussions with ARB staff and stakeholders throughout the Title 17 regulatory process, which included discussion of the costs associated with these new State requirements.

- 21. The prescribed burning fee proposal in Regulation 3 would require up front payment even if the burn is not accomplished or attempted. We also question whether the proposed fees are justified and are concerned that collected fees may be used for other District programs. (BLM)**

As discussed during the public workshops and in subsequent telephone conversation with BLM staff, the District's Board directed that the District recover costs of the program. The fee proposal is necessary to recover a portion (less than 25%) of the District's costs. The District will incur costs of this program regardless of whether approved burns are carried out. We expect, however, that the fee requirement will mean that burn plans will be submitted only for burns that are truly expected to be carried out.

The District has carefully analyzed the costs of the new smoke management program for prescribed burning, and the fees will only recover about 25% of these costs. Under California Health & Safety Code sections 41512.5 and 42311.2, the District is entitled to impose fees that do not exceed actual administrative costs. No fees will go to fund other programs. We are already proposing to absorb about 75% of the costs of administering the program. We think this is more than reasonable.

- 22. We also question why the 25% discount (of the proposed burning fee in Regulation 3, Schedule R) is applied to wildlife management burns in marshland and not to wildland burning in general. (BLM)**

The intent of the 25 % discount is to provide an incentive for landowners to conduct their marsh burns in the spring when the weather reduces the risks of smoke impacts and when moist soils prevent the occurrence of peat fires, which have a problematic history of causing smoke impacts. The proposed discount is not intended for wildland burning (i.e., in habitats other than marshland) because prescribed burning in the spring is not encouraged due to concerns expressed by the DFG about wildlife nesting during this time of year.

- 23. The fee proposal will have significant adverse impacts on EBRPD aesthetics, biological resources, cultural resources, hydrology and water quality, land use and planning, hazards and hazardous material and recreational use. The draft CEQA Initial Study should address these potentially significant impacts if the fee proposal is implemented. (EBRPD)**

For every impact suggested, the mechanism cited is that the new fees will increase the costs of prescribed burning, thereby forcing curtailment or elimination of prescribed burning.

Generally, economic impacts shall not be treated as significant effects on the environment (Cal. Public Resources Code §21082.2, subd. (c), and CEQA Guidelines §§ 15064, subd. (e), and 15131). The District's proposed fees may lead to the environmental impacts suggested only if EBRPD makes the policy decision that it will curtail prescribed burning rather than pay the proposed fees.

These indirect impacts, however, are not significant adverse impacts under CEQA because they only reduce the beneficial impacts of prescribed burning. They can only be seen as adverse when measured against the prescribed burning program that EBRPD would have undertaken in the absence of the District's proposed fees. But CEQA requires that projects be measured against the existing environment. Some scaling back of the burn program would still produce net benefits for the environment. Whether EBRPD scales back its program is mostly a question of EBRPD budget priorities and realities. Prescribed burning is important for East Bay open space, but so is proper management of the smoke from the prescribed burns.

In any case, as noted during a meeting with EBRPD staff and in the public workshops, the fee proposal is statutorily exempt from CEQA requirements pursuant to CEQA Guidelines, 15273 because the proposed fees will be used to meet operating expenses of the District (in this case, the BAAQMD's new smoke management program for prescribe burning). For all of these reasons, there are no adverse impacts under CEQA that must be addressed in the CEQA analysis for the proposed regulation and fee amendments.

- 24. The draft CEQA Initial Study prepared for the proposed amendments to Regulations 3 & 5 has not adequately evaluated potential added costs or the health and safety threat that the proposal (in Subsection 5-111.2) requiring fire suppression resources to stop all additional fire after two hours before sunset may have on fire personnel implementing a prescribed burn. The adverse impacts on land use planning from the acreage burning allocation not being available until the day of a burn in the morning, and the significant additional costs that may be incurred due to a zero or low acreage burn allocation are also does not adequately evaluated by the document. (BLM)**

In discussions with BLM staff, BLM conceded that the cost, health and safety impacts associated with the proposed changes in Subsection 5-111.2 would be resolved by adding language in Section 5-111 to clarify that the conditions and requirements of a written prescribed burn plan as approved by the APCO may supersede any one of the conditional exemptions in this section. This proposed language has been added.

With respect to any impacts caused by the proposal in Subsection 5-408.3 - which would require the burner to receive the acreage burning allocation in

the morning on the day of a burn prior to ignition - that possibility already exists in Regulation 5. This is because, under the existing program, District meteorology staff may wait until the morning of a burn to issue the burn forecast when the expected weather conditions cannot be forecasted with confidence the prior afternoon.

Regarding the CEQA comment about the costs incurred by postponing a burn operation on the day of a burn due to a zero or low acreage allocation, these costs may also occur under existing Regulation 5 requirements because any allowable fire type, including a prescribed burn, is subject to acreage limits set by the APCO (see Section 5-111.9). In the past, this requirement has been incorporated into numerous burn plans as a condition of approval. These conditions may specifically limit the burn acreage of a project on a daily basis or specifically any burning if the meteorological prescription is not satisfied prior to ignition or if and when other burning activities are occurring nearby. The current proposed language only formalizes current and past practice.

- 25. The District's fee proposal for prescribed burning that would benefit wildlife will likely exclude DFG and other landowners from conducting burns. DFG has a very limited budget for managing its properties in the region. We are also opposed to the proposal to provide a discounted fee rate if prescribed burning is conducted in the spring. Spring burning can pose a significant threat to native plants and animals, especially in forest and brush lands. (DFG)**

The District understands the concern about limited resources for managing DFG properties in the Central Coast Region. However, as discussed in a meeting on August 29, 2001 between District staff and DFG, the fee proposal is necessary to recover a portion (less than 25%) of the District's cost of our new smoke management program for prescribed burning, which includes marsh burning. The fee proposal is in response to a directive from the District's Board that it recover all or some of the costs.

As discussed in the meeting, the discounted fee proposal only applies to marsh burning activities and not fires conducted for any wildlife management purpose outside of areas considered a marshland. Fires conducted outside of marshland areas for any wildlife management purpose would be subject to the proposed prescribed burning requirements in Subsection 5-401.15 and Regulation 3, Schedule R, for Wildland Vegetation Management fires. No fee discounts are proposed for prescribed burning.

- 26. In Subsection 5-401.13, we are concerned about the proposed timing limitations placed on wildlife management burns in the spring and fall, and the proposal to restrict daily burn acreage. We also recommend that the District remove the upper limit of acreage to be burned. (DFG)**

As noted in the response to comment 25, no such limitations are proposed nor are they being considered for fires conducted in marshlands for wildlife management purposes. All of the acreage and timing limitations in the subsection are existing requirements. To further clarify this point, District staff has changed the name for Wildlife Management fires in Subsection 5-401.13 to "Marsh" Management fires, as suggested by DFG staff.

- 27. In Subsection 5-401.13, we question how the APCO determines the necessity of each marsh burn and the qualifications of the APCO to make such a determination. We also believe that DFG should be able to make a much more educated assessment of the necessity of each burn. (SRCD)**

The proposed amendments will not require a separate determination of necessity by the APCO. That determination will remain with the DFG, and the proposed language has been modified to make this clear. We agree that DFG staff are the most qualified authority to assess the need for each marsh burn. What we are proposing is that DFG provide specific information to the APCO so that the APCO can verify that the necessity determination has been made by DFG prior to authorizing a burn (see Section 5-410).

- 28. The proposed amendments in Subsection 410.1 would require any person seeking to conduct a marsh burn to submit a smoke management plan to the APCO for review. The proposed smoke management plan requires information that landowners would be unable to obtain. We recommend drafting a standardized smoke management plan form that will make it easier for landowners to complete and one that meets the needs of DFG, BAAQMD, and the local fire departments. (SRCD)**

While we recognize that the landowners may have to spend some time initially to obtain required information, the information is readily available. For example, the legal description of a property should be readily available from the Solano County Assessor's office or from a property deed. Burn acreage estimates also should cause no problem. The landowners have provided this information to Solano County sheriff's dispatch for years in order to get an acreage burning allocation, and we haven't had problems with those estimates in the past. The proposal is for an estimate of the acreage to be burned, and staff trust that the landowners' estimates will be reasonably accurate. What this also means is that property owners, including DFG, will continue to be responsible for determining their own burn acreage.

We concur with your recommendation to draft a standardized smoke management plan for marsh burning. In fact, based on the draft document presented by District staff during the SRCD Landowners Fall Workshop on

September 18, 2001, which was developed with SRCD assistance, we believe that a final draft document is pending. We appreciate your assistance in this regard.

- 29. Regulation 3 proposes fees for (marsh) burning based on the amount of acreage to be burned. These fees must be paid before burning is to occur. But those who submit a smoke management plan are paying their fees in order to be able to burn. They in essence, are paying for a service [the ability to burn] not the program itself. If the proposed burner has paid a fee and is unable to burn (e.g., for environmental reasons, no burn allocation) he has paid for a service that has not been rendered, thereby in essence giving a donation to the BAAQMD. In all fairness, a small fee should be paid for processing and review of the smoke management plan with the balance to be paid following the burn.**

Also, the payment of fees should be expanded to include not just areas 50 acres and below, but also areas below 20 acres. We also propose that those who burn 20 acres or less pay a smaller fee than those who burn between 21 and 50 acres. (SRCD)

We understand your concern about up front costs incurred by property owners even if the marsh burn is never attempted. We also understand that those who submit a smoke management plan feel that they are paying their fees "for the ability to burn" and not for the District's new smoke management program. Our perspective is that we incur program costs in reviewing every plan, regardless whether the burn actually occurs. We have tried to minimize the burdens on landowners by only seeking to recover a portion (less than 25%) of the District's program costs. In the past, it is true that many landowners requested approvals for burns that they never carried out. But we don't think that this will continue to be the case. The fees will require landowners to think more carefully about whether they truly intend to burn. The result will be that most landowners will only submit a plan if they intend to carry it out. We think that there will be few "donations to the BAAQMD."

Regarding the proposal that the fee schedule for marsh burning should be expanded to include a new category and lower fees for areas below 20 acres, we are proposing that the burning fee for a property would be discounted 50% when the proposed acreage to be burned is less than or equal to 10 acres in size and the proposed burning will only be conducted during the Spring burning period. District staff discussed this proposal with SRCD on September 13, 2001, and presented it to the attendees of the SRCD Fall 2001 Landowners Workshop on September 18, 2001. This proposal appears to be a reasonable compromise that reduces potential fees for smaller burns and provides another incentive for landowners to conduct

marsh burning in the spring when the potential risks of adverse smoke impacts are minimal.

- 30. We suggest a modification to proposed subsections 5-111.3 and 5-111.4, which gives District inspection staff the authority to require a person to attempt to cease burning once the inspector receives three or more confirmed complaints. We believe these subsections could be modified so that a single complaint from a mayor, city manager, city attorney, police or fire chief or similar county official would have the same effect of triggering a stop to burning. (Antioch)**

While District staff recognize that other public officials may be called upon to respond to public complaints about open burning, the District proposal is based upon requirements of California Health and Safety Code section 41700. That section requires the District to find that a particular activity has caused “injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public” for it to take action. We believe that the proposed modification, which would require District action based on a single complaint, raises significant legal issues and practical concerns about fairness and enforceability. Where other public officials receive complaints, they can refer them to the District for investigation and potential enforcement action.

- 31. Regarding Regulation 5, one of our most serious concerns has to do with the conditional exemption that no additional fuel “be burned by any existing fire” two hours before sunset. This is not only unrealistic, especially during the winter prescribed burning season, but it also compromises the health and safety of fire personnel in the remote and inaccessible areas where we do much of this type of burning. (CDF-SLNRU)**

This comment refers to the proposed language in Subsection 5-111.2, the existing afternoon burn hour limit. As discussed in the responses to comments 8 and 9 and in the District’s September 12, 2001 letter to CDF, the proposed language in Subsection 5-111.2 is intended to clarify the existing afternoon burn hour requirement and reflect current District enforcement policy. The proposed language in Subsection 5-111.2 was not intended nor was it ever considered to apply to prescribed burning activities. In response to comments received about this proposal affecting prescribed burning, proposed language has been added to Section 5-111 to clarify that the conditions, requirements or parameters in a written prescribed burn plan approved by the APCO may supersede any of the conditional exemptions in this section, including the conditional exemption in Subsection 5-111.2.

- 32. Regarding Regulation 3, we question the logic and appropriateness of fees that, according to your staff report, are “intended to recover ...**

\$126,000/year cost to develop, implement and administer the District's new smoke management program for prescribed burning." The imposition of such fees will have the direct effect of killing prescribed burning projects planned for Napa, Sonoma, and Solano counties. (CDF-SLNRU)

As noted in responding to CDF-SLNRU's previous comment (see comment 20 and response), the fee proposal is necessary to recover a portion (less than 25%) of the \$582,000/year cost of the District's new smoke management program for prescribed burning. The District program is a requirement of the State's new "Smoke Management Guidelines for Agricultural and Prescribed Burning" in Title 17 of the CA Code of Regulations, which was adopted by the CA Air Resources Board (CARB). CDF at the state level was actively involved throughout the Title 17 regulatory process and supported the new requirements. CDF was well aware that air districts would have to impose new fees or increase existing fees for prescribed burning to recover these costs.

- 33. The CEQA document fails to consider unintended negative impacts that will result from the imposition of prescribed burn fees. These effects would come from reductions in prescribed burning and include increased smoke from uncontrolled wildfires and reductions in the biological resource benefits of prescribed burning. (CDF-SLNRU)**

We acknowledge that an increase in the cost of prescribed burning could result in less prescribed burning than otherwise expected if CDF-SLNRU chooses to respond in this way to the fees, despite the commitment of CDF at the state level to the new program. But this is a policy difference with the District over fees rather than a CEQA comment. Under CEQA, the impacts of a project are measured against the existing environmental baseline. If there are "x" acres of wildland within the SLNRU for which the Unit would like to use prescribed burning, the prescribed burning of something less than x acres, say "x minus 1000" acres, will still produce benefits when measured against the baseline of the land in its current unburned state. This is because, though there would be some increase in wildfire risk and some reduction in biological benefits when measured against burning all "x" acres, there would still be overall risk reductions and biological benefits in burning what the budget would permit to be burned. Whether SLNRU burns less than it would like to burn seems to be mostly a question of budget priorities. See also, District Response to Comment 23 above.

- 34. If the fee increases are exempt from CEQA, why lead us through an environmental analysis and negative declaration?**

Fee increases of this sort are exempt from CEQA as noted in the Negative Declaration. However, the analysis was intended to examine whether there

were adverse impacts regardless whether the fees are exempt. As discussed in the response to comment 33, the Negative Declaration concludes that there would be no impacts. We also conducted the analysis because the fees are part of a regulatory package that includes amendments to Regulation 5.

- 35. Requiring prescribed burn fees for fires intended to create a firebreak pursuant to Section 4291 of the California Public Resources Code will restrict the use of these fires, resulting in increasing wildlife hazards. (CDF-SLNRU)**

The prescribed burning fees do not apply to these fires. Section 5-411 requires fees for March Management Fires and Wildland Vegetative Management fires. Section 5-213 specifically excludes Section 4291 fires from the fee requirements that apply to Wildland Vegetation Management fires.

- 36. Statements in the CEQA document that the amount and types of open burning will remain unchanged and will therefore not produce hydrology impacts, land use and planning impacts, public service impacts, and utility impacts are contradicted by agency comments [that suggest that prescribed burning will be reduced in response to fees].**

The cited statements primarily refer to the amendments to Regulation 5, which are not expected to change amounts and types of open burning. Though prescribed burning is expected to increase from current levels, these increases are a response to changes in state and federal policy. While prescribed burning fees may lead to smaller increases in prescribed burning than would occur in the absence of fees, this is not an adverse impact under CEQA (see comment 33 and response).

CONCLUSIONS

The proposed amendments are designed to improve the management of smoke from prescribed burning and marsh management burning and to address current open burning issues. These revisions are also critical for the successful implementation the District new smoke management program for prescribed burning, which is necessary for the District to be consistent with requirements of the new State Guidelines.

The proposed amendments are also intended to minimize or eliminate the potential smoke impacts from open burning on populated areas. These changes should also decrease the number of smoke-related public complaints and violations, help prevent visibility degradation, and alleviate public health concerns.

Adoption of this proposal will also improve the enforceability and clarity of the regulation and reduce variance costs associated with two existing types of fires.

Pursuant to Section 40727 of the California Health and Safety Code, regulatory amendments must meet findings of necessity, authority, clarity, consistency, non-duplication, and reference. The proposed amendments are:

- Necessary to limit smoke and particulate emissions from open burning, and to ensure compliance with ARB and EPA burn requirements;
- Authorized by Sections 39002, 40000, 40001, 40702, 40725 - 40728, 41864, 41800 – 41815, 41512.5 and 42311.2 of the California Health and Safety Code and 17 CCR 80100 *et seq.*;
- Written or displayed so that meaning of the amendments can be easily understood by the persons directly affected by them;
- Consistent with other District rules, and not in conflict with state or federal law;
- Non-duplicative of other statutes, rules, or regulations; and
- Are implementing, interpreting, or making specific the provisions of California Health and Safety Code Sections 39002, 40000, 40001, 40702, 41864, 41800 – 41815, 41512.5 and 42311.2, and 17 CCR 80100 *et seq.*

District staff recommend adoption of the proposed amendments to Regulation 3 and 5.

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