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Board of Forestry and Fire Protection
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Executive Officer, Board of Forestry and Fire Protection
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5 November 2012

Dear Chairman Dixon and members of the Board

Ebbetts Pass Forest Watch (EPFW) is pleased to respond to your call for information on:

- a. Areas where questions exist on interpretation of the regulatory standards, including potential solutions – *EPFW key comments cover:*
 - *General failure of the THP process to meet legislative intent of the Z'Berg Nejedly Forest Practice Act of 1973 (FPA)*
and
 - *Failure to adapt appropriately in response to state-level analyses of the THP process*

- b. Issues encountered in achieving compliance with the regulatory standard of rules, including potential solutions – *EPFW key comments cover:*
 - *Lack of public access to THP Review Team meetings*
 - *Lack of meaningful measurable protection for hardwoods in THPs*

- c. Suggested regulatory modifications that may clarify existing rule language, improve resource protection, and/or reduce regulatory inefficiencies - *EPFW key comments cover:*
 - *Lack of THP appeal process other than litigation*

EPFW submitted comments to the Policy Committee in 2008, and again in 2010 which documented many issues of this sort. Unfortunately, most of these same issues still exist today, and we would refer you to the full text of those letters as a basis for your development of future committee priorities and for a deeper understanding of the context and content of these current comments. These letters were forwarded to the Board along with this letter. Four years since our first letter, the BOF priorities and CAL FIRE actions continue to ignore the advice of the California Attorney General to assure that protection of the entire forest ecosystem and its resources is given equal consideration in timber harvest decisions as maximum sustained timber yield.

a. **Areas where questions exist on interpretation of the regulatory standards, including potential solutions**

- **General failure of the THP process to meet legislative intent of the Z’Berg Nejedly Forest Practice Act of 1973 (FPA)**
 - **and**
- **Failure to adapt appropriately in response to state-level analyses of the THP process**

Failure to meet legislative intent

The FPA declares: that “it is the policy of this state to encourage prudent and responsible forest resource management calculated to serve the public’s need for timber and other forest products, while giving consideration to the public’s need for watershed protection, fisheries and wildlife, and recreational opportunities alike in this and future generations.”¹ However, in fact, THPs are assessed and approved primarily based on their relationship to “maximum sustained timber yield” with only token consideration to the other forest values required to be evaluated and maintained. Please consult EPFW’s November 2008 comment letter which discusses this point in depth, particularly in relation to current timber harvest practice in the Sierra Nevada.

As well, the Forest Practices Rules, developed to implement the FPA, set forth principles based on a high standard of biological diversity and resource protection across the landscape under which THPs shall be evaluated.² However, in practice, THPs are routinely approved that provide minimal diversity and biodiversity across a landscape.

In January 2009, the Board of Forestry (Board) received “Advice Regarding Board of Forestry’s Regulatory Authority to Provide for the Restoration of Resources” from the Attorney General of the State of California. This document clearly discussed legislative intent and emphasized the Board’s responsibility to protect resources and biodiversity. “In sum, the plain intent of the Legislature in enacting the FPA was to require the Board to view

¹ http://www.fire.ca.gov/resource_mgt/downloads/2010_FP_Rulebook_w-Diagrams_wo-TechRule_No1.pdf; p. 271.

² *Ibid.* p. 26.

(b) In determining whether a THP conforms to the intent of the Act, the Director shall be guided by the following principles:

(1) The goal of forest management on a specific ownership shall be the production or maintenance of forests which are healthy and naturally diverse, with a mixture of trees and under-story plants, in which trees are grown primarily for the production of high quality timber products and which meet the following objectives:

(A) Achieve a balance between growth and harvest over time consistent with the harvesting methods within the rules of the Board.

(B) Maintain functional wildlife habitat in sufficient condition for continued use by the existing wildlife community within the planning watershed.

(C) Retain or recruit late and diverse seral stage habitat components for wildlife concentrated in the watercourse and lake zones and as appropriate to provide for functional connectivity between habitats.

(D) Maintain growing stock, genetic diversity, and soil productivity.

(2) Individual THPs shall be considered in the context of the larger forest and planning watershed in which they are located, so that biological diversity and watershed integrity are maintained within larger planning units and adverse cumulative impacts, including impacts on the quality and beneficial uses of water are reduced.

the forests of the state as a complete working ecosystem, and not only as a producer of high quality timber, but also as forest lands valuable in their own right as a public resource.”³

However, consistently in practice, bias toward timber yield as the pre-eminent value is evident in THP review and approval. For those who live in the Sierra Nevada or who have seen visual documentation of the evenage conversion to plantations occurring range-wide, no other evidence is necessary to convince them that maximum timber yield is trumping resource protection.

Failure to adapt appropriately in response to state-funded analyses of the THP process

In 1990, LSA Associates exhaustively studied the THP process, preparing a report for CAL FIRE (Department) on that investigation.⁴ They concluded that major change was needed. Unfortunately, twenty years later, their report seems eminently current and relevant.⁵

³ Rudd, Anita E., Deputy Attorney General. “Advice Regarding Board of Forestry’s Regulatory Authority to Provide for the Restoration of Resources.” Attorney-Client Communication and Work Product (copied and distributed by the Board of Forestry). State of California Department of Justice, Office of the Attorney General. January 9, 2009. p. 4

The Board’s general authority to promulgate regulations is found in section 4551, which specifically defines the goals for the forest practice rules and regulations. It states (in essential part) that:

The board shall adopt district forest practice rules and regulations . . . in accordance with the policies set forth in Article 1 (commencing with Section 4511) . . . to assure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, and wildlife, and water resources, including, but not limited to streams, lakes, and estuaries.

The language here is important. The rules and regulations are (1) to assure the continuous growing and harvesting of commercial forest tree species, and, (2) to protect the soil, air, fish, and wildlife, and water resources. Both parts of the mandate are equal: to assure timber growth and to protect the forest resources.

⁴ FINAL REPORT: CONCLUSIONS AND RECOMMENDATIONS FOR STRENGTHENING THE REVIEW AND EVALUATION OF TIMBER HARVEST PLANS. PREPARED FOR: CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION. PREPARED BY: LSA ASSOCIATES, INC. LSA PROJECT #CDF802. March 1990.

⁵ *Ibid.* p. 13.

In our view, the Department is at a crisis point with respect to the administration of the forest practices program. Bold action aimed at recapturing public support is called for. We believe these actions should be pursued on two related fronts:

establishing a greater degree of independence from the industry it regulates,

asserting a stronger leadership role in forestry matters in California.

Rightly or wrongly, too many people perceive CDF as not aggressively enforcing the intent of the Forest Practices Act and the requirements of CEQA. While it is vital to maintain a working relationship with the industry, it is equally important to visibly demonstrate to the industry and the public that the statutory obligations of assuring adequate environmental consideration in the management of private forestlands cannot be compromised and that the Department is committed to its regulatory obligations even if it angers the industry. Past CDF actions have failed to demonstrate this. In areas such as the determination of significant impacts, the identification of appropriate mitigations, and currently, the development of a new rule package for wildlife and cumulative impacts, the Department is operating in a manner that fails to establish a public perception of appropriate independence from the industry it regulates.

As detailed in our previous comments, there is a systemic failure of the entire THP process, which will not be remedied by small modifications in current process. This failure was thoroughly analyzed and documented in the Little Hoover Commission Report of June 1994⁶. At that time, numerous conclusions were drawn⁷ and recommendations made⁸ for meaningful and effective change to the process. Unfortunately, the bulk of substantive changes mandated by that bipartisan report have yet to be addressed, let alone implemented, by the Board of Forestry and Department. So, the THP process remains now, as then, “A Flawed Effort to Balance Economic and Environmental Needs.”

Potential Solutions:

As stated above, solution to the large problem of failure to meet legislative intent or respond adequately to exhaustive investigations of the THP process cannot be remedied by small modifications. Rather, there must be a commitment from both the Board and Department to make the THP process meet its intended role for the concerned public, the regulated public, and the state’s public trust resources. Such a process must be prioritized and begun as quickly as possible. EPFW is willing to be a good-faith participant in this much-needed process, volunteering time and effort to aid in its success. We hope other stakeholders will also step forward.

If the commitment and resolve to undertake this overhaul from within is lacking, then the impetus for it must be provided by an outside source.

b. Issues encountered in achieving compliance with the regulatory standard of rules, including potential solutions:

We are not unaware of the complexities of interactions with the industry and, particularly, the Board. CDF does not make the rules; it is charged with administering them. But as a key agency staking claim to a leadership position in the forestry and wildland management affairs of California, the Department needs to begin taking more independently derived positions that may not march in close step with either the Board or the industry.

⁶ State of California. LITTLE HOOVER COMMISSION. “Timber Harvest Plans: A Flawed Effort to Balance Economic and Environmental Needs”. June 1994. Report #126. <http://www.bsa.ca.gov/lhcdir/126rp.html>.

⁷ from the Little Hoover Commission Report:

The Outcome

- * Timber Harvest Plans have not protected the environment from degradation.
- * The plans are too narrow in scope, examining only a small portion of an ecosystem.
- * State efforts are focused more on procedural steps than on the desired outcome: a balance between economic and environmental needs.

⁸ A sample of recommendations from the Little Hoover Commission report:

Recommendations:

- * Require planning on a watershed or ecosystem basis.
- * Create a public appeal process and encourage mediated solutions.
- * Shift focus from plan approval to monitoring and enforcement.

Issue: Review Team meetings

Issue: Lack of protection for hardwoods in THPs

There are many specifics in which EPFW has encountered difficulties with the achievement of compliance with the regulatory standard of rules. At this time, EPFW will document only a few as part of this comment letter. However, as in 2008, we remain available for continued discussions with the Department and/or the Board for ongoing discussions of how to resolve the problems of which we are aware.

Issue: Review Team meetings

In-person multi-disciplinary review team meetings, other than the PHI, are generally not occurring despite FPR language calling for these meetings. California Department of Fish and Game (DFG) participation is limited or non-existent on many THPs, despite language in the rules calling for their participation. Since there are no public meetings, other than the PHI, the public is excluded from attending THP meetings in direct contradiction to FPR intent.⁹

Potential Solutions:

- Assure that in-person Review Team meetings take place
- Allow public participation in PHIs if no other Review Team meeting is to take place
- Assure that public that has expressed interest is welcomed to and invited to participate in Review Team meetings taking place by telephone
- Make all review team correspondence readily available in a timely manner on the internet

Issue: Lack of protection for hardwoods in THPs

The value of hardwoods, particularly oaks, and the importance of their post-harvest retention is set forth in the FPR.¹⁰ However, throughout the Sierra Nevada hardwoods are being

⁹ http://www.fire.ca.gov/resource_mgt/downloads/2010_FP_Rulebook_w-Diagrams_wo-TechRule_No1.pdf
p. 174:

(d) Review Team Meetings. The Director or his designee is responsible for establishing and scheduling the meeting of a review team to perform the necessary review of plans for the Department. Review team meetings shall be open to the RPF, supervised designee, the landowner, and the timber owner and, insofar as possible without disrupting the work of the team, to the public. The chairperson may impose limitations on the scope of any public participation at the meetings. All interested persons will normally be allowed to attend team meetings. On occasions when space or other considerations will require some limitation on attendance the review team chairperson shall endeavor to allow for attendance of at least one representative for each of the various agencies, organizations or special interest groups.

¹⁰ p. 42: **e. Hardwood Cover:** Hardwoods provide an important element of habitat diversity in the coniferous forest and are utilized as a source of food and/or cover by a large proportion of the state's bird and mammal species. Productivity of deer and other species has been directly related to mast

systematically removed from the overall landscape as diverse, uneven forests are converted to plantations. EPFW has submitted comment and visual data repeatedly to the Department related to this issue, yet no change in Department policy has resulted.

As well, there has been no recent implementation of the Joint Policy on Hardwoods adopted by the Board that states:

In cooperation with the Integrated Hardwood Range Management Program and Private landowner, Departmental personnel should jointly establish a process, which includes both satellite imagery and ground checking, to monitor the status of the hardwood resource, to examine the effectiveness of local policies with respect to hardwoods, and to evaluate the performance of the Integrated Hardwood Range Management Program; staff should report annually, in joint session, to the Commission and the Board.¹¹

Potential Solutions:

- Create a workplan within 6 months to adhere to the Oak Woodland Policy Recommendations; implementation to begin by 1 September 2011
- Require pre- and post-harvest field review by both DFG and DFG of all evenage THPs to assure hardwood retention and survival
- Require photo documentation pre-harvest and annually for 5 years post-harvest to document hardwoods management and retention in all evenage THPs
- Assure that the Department adheres to the FPR intent for hardwoods in THP review and approval
- Replace 14 CCR 959.15 subsection of the FPR with:
 - An average of at least 10 sq. ft. of basal area of oaks per acre or 100 sq. ft. of basal area of oaks per 10 acres shall be retained within all timber harvest units where that level of oaks exists prior to logging; if that level doesn't exist, then all oaks of 4" dbh or larger that are present shall be retained. Preference shall be given to deciduous oaks. Oaks shall be retained on areas designated by DFG as deer migration corridors, holding areas, or key ranges. Whenever possible, oaks should be retained in clumps. Any herbicide treatments within timber harvest units with retained oaks shall be kept at suitable distance from retained oak trees to assure that the oaks are not damaged or killed from herbicide application.

c. Suggested regulatory modifications that may clarify existing rule language, improve resource protection, and/or reduce regulatory inefficiencies.

crops. Hardwood cover can be estimated using the basal area per acre provided by hardwoods of all species.

[Northern and Southern only]: Post-harvest deciduous oak retention for the maintenance of habitats for mule deer and other hardwood-associated wildlife shall be guided by the Joint Policy on Hardwoods between the California Board of Forestry and California Fish and Game Commission (5/9/94). To sustain wildlife, a diversity of stand structural and seral conditions, and tree size and age classes of deciduous oaks should be retained in proportions that are ecologically sustainable. Regeneration and recruitment of young deciduous oaks should be sufficient over time to replace mortality of older trees. Deciduous oaks should be present in sufficient quality and quantity, and in appropriate locations to provide functional habitat elements for hardwood-associated wildlife.

¹¹ State Board of Forestry and Fire Protection. Policy and Management Committee. "Oak Woodland Policy Recommendations." Submitted by the Range Management Advisory Committee. August 31, 2004. 21.

Issue: THP appeal

The Little Hoover Commission found litigation as the only allowed means of appealing an approved THP unfortunate.¹² The LSA report also noted that Official Responses (OR) to THP comments were lacking, perhaps largely because they are used as means to position the Department for legal challenges.¹³

Legal action, while useful for those who like to hold up the concerned public as fond of litigation, is in fact a process that expends valuable state resources of both money and professional staff time. And in the end, it leaves the development of forest law in the hands of judges who may not fully understand the complexities involved or be sufficiently motivated to consider all of these in issuing rulings.

As well, the threat of legal action has increased divisiveness among stakeholders, resulted in lengthier THPs without commensurate increases in resource protection, and led to Department staff having written process become a greater portion of their THP review work than on-the-ground monitoring. None of this has served any positive purpose.¹⁴

¹² From the Little Hoover Commission Report:

Lack of public appeal mechanism leads to challenges in court system

In addition to failing to address cumulative impacts effectively, the design of the Timber Harvest Plan process encourages litigation rather than consensus-shaped resolution to problems. The process lacks a public appeal mechanism that would allow plan approvals to be challenged short of court action. As a result, when environmentalists or other interested parties believe that CDF has reached a bad decision, a lawsuit may follow.

¹³ From the LSA Report:

Our evaluation of several recent' ORs prepared for THPs in the coast region leads us to the conclusion that additional guidance and assistance is needed for personnel who are preparing ORs. Many ORs do not compare favorably with the standard of presenting a reasoned, meaningful response to environmental comments and of demonstrating the scientific opinion and/or reasoned analysis that supports the THP decision. A more detailed discussion of this conclusion is contained in our August 1, 1989, interim report and we will only briefly repeat them, here. As currently being prepared, ORs clearly do not respond to Judge Cox's ruling that even non-significant environmental comments merit a response as to why CDF judges them to be non-significant. And for significant comments, it is sometimes very difficult to identify in the OR where and how the Department has responded. Current direction to OR preparers is to lump all comments into a synthesized response rather than splitting out and responding to each significant comment, individually. But in applying this direction, the ORs generally fail to present an impression of responsiveness or even acknowledgement that many of the comments have been considered. They leave the department vulnerable to judicial impressions that the Director and/or his representative have prejudicially abused their discretionary authority. The use of "boiler plate" language further erodes the credibility of the OR and lends credence to the impression that the Department has not seriously considered some of the significant points raised by commenters.

¹⁴ From the Little Hoover Commission Report:

Litigation is an expensive, divisive way to reach balanced decisions

Litigation is not only expensive to pursue -- 10 of the cases involved more than 300 hours of state attorney time and four exceeded 500 hours, according to the Department of Justice -- but it also tends

EPFW has twice asked the Board at their meetings to at least develop a pilot project to test an alternative means for THP appeals. In neither instance did we receive even an acknowledgement of our request, let alone a follow-up conversation. Our hope is that now the Board will wish to undertake that discussion.

Potential Solutions:

- Create a workplan within 6 months and begin Implementation by 1 September 2011 of the Recommendation from the Little Hoover Commission Report:
Recommendation #7:
The Governor and the Legislature should enact legislation establishing a public appeals process to allow non-litigation challenges to Timber Harvest Plan approvals.

Members of the public have little avenue for recourse other than filing a lawsuit if they disagree with a plan approval or believe further restrictions should be imposed on harvesting operations. Providing an alternative to litigation could save money, encourage compromise solutions and diminish the animosity that is usually heightened by legal processes. Potential places in the state bureaucracy for establishing the appeals process include the Board of Forestry, the Office of Administrative Hearings or the Secretary for Environmental Protection.

- Create a workplan within 6 months and begin Implementation by 1 September 2011 of a pilot project for an alternative, mediated means of THP appeal

Thank you for the opportunity to comment on these important issues and for your serious consideration of our concerns.

EPFW looks forward to working with the Board and Department to make the THP process effective, efficient, and protective of public trust resources.

Respectfully submitted on behalf of Ebbetts Pass Forest Watch,



Addie Jacobson



Susan Robinson, Board Member

to increase antagonism and harden positions. The result over time can be disadvantageous to both economic and environmental interests.

While there is no formal recourse for appealing Timber Harvest Plan approvals, mediation has proven successful in at least two areas where it has been tried.

Hardwoods in Sierra Nevada Forests: A Valuable Resource Being Put at Risk by Rangelwide Clearcutting

“Hardwoods provide an important element of habitat diversity in the coniferous forest and are utilized as a source of food and/or cover by a large proportion of the state's bird and mammal species. Productivity of deer and other species has been directly related to mast crops [acorns].”

California Forest Practice Rules 2011, p. 42

http://www.fire.ca.gov/resource_mgt/downloads/2011_FP_Rulebook_with_Diagrams_with_Tech_Rule_No_1.pdf



“Oaks (as well as dogwoods and other hardwoods) are a critical resource for wildlife and for the forest ecosystem, yet clearcutting or visual retention alternative prescriptions across SPI lands in Calaveras and Tuolumne County have resulted in the majority of oaks and other hardwoods being cut, bulldozed, sprayed with herbicides, or otherwise damaged or killed by operations.”

Central Sierra Environmental Resouce Center comment letter to Cal Fire, 2007.



Hardwoods in Sierra Nevada Forests: A Vital Resource

Oaks and other hardwoods form the foundation of the forest food web in the forests of the Sierra Nevada. They provide forage as well as abundant crops of acorns, berries, nuts, and other fruits that are essential for wildlife. They provide structural habitat for concealment, resting, nesting, denning, and birthing. Their flowers provide nectar and pollen that are essential for the survival of countless species of butterflies, bees, and beetles. Together they comprise the beautiful and diverse forest understory of the conifer forests of the Sierra. Many species of shrubs and trees are endemic to the forests of Northern California, and do not occur anywhere else on the planet.



Acorns are consumed by a variety of animals in every forest habitat type, from squirrels to acorn woodpeckers, black bear and black-tailed deer. They support the prey species that in turn are eaten by rare animals like the Pacific fisher, American marten, Northern goshawk, great gray owl, and California spotted owl—species which are associated with old-growth forest habitats. Many animals fatten up on acorns in the fall, providing them with the necessary fat reserves to survive the winter. Without oaks, animals throughout the Sierra would literally starve.



Hardwoods in Sierra Nevada Forests: A Resource at Risk

The loss of hardwoods in the forests of the Sierra Nevada was identified in the 2001 Sierra Nevada Framework forest plan as one of five priority issues which must be addressed in order to sustain the viability of Sierra forest ecosystems. The loss of oaks in particular was identified by Forest Service scientists as a serious threat.

Forest management practices that favor the production of conifers for commercial lumber production have severely impacted the quantity and quality of hardwood vegetation in the Sierra Nevada, especially on the western slope where hardwood diversity is highest. For many decades, foresters and loggers have treated oaks and other hardwoods, as well as non-commercial conifers, as weed species that must be eliminated. Oaks are killed during clearcutting, thinning, and during plantation management that includes the use of herbicides. A lack of understanding of native forest ecology has led to widespread conversion of natural oak-dominated landscapes to conifer tree plantations. Areas which normally would not support conifers are cleared of their oaks and diverse shrub communities, and densely planted with ponderosa pines. Potent chemical herbicides are used to suppress the natural regeneration of the native hardwoods and shrubs. Scientific studies have shown that young ponderosa pine plantations are the most fire prone configuration—even more fire prone than shrub-dominated sites, and remain so for fifty years or more. Thus, such practices are not only devastating to wildlife which depend upon the rich food source found in hardwood communities, but the practice has greatly increased fire hazard throughout the Sierra. Despite small improvements in forest management and policies on oak management, there is little oversight or enforcement of protective measures, and oak and other hardwoods continue to decline throughout the range.

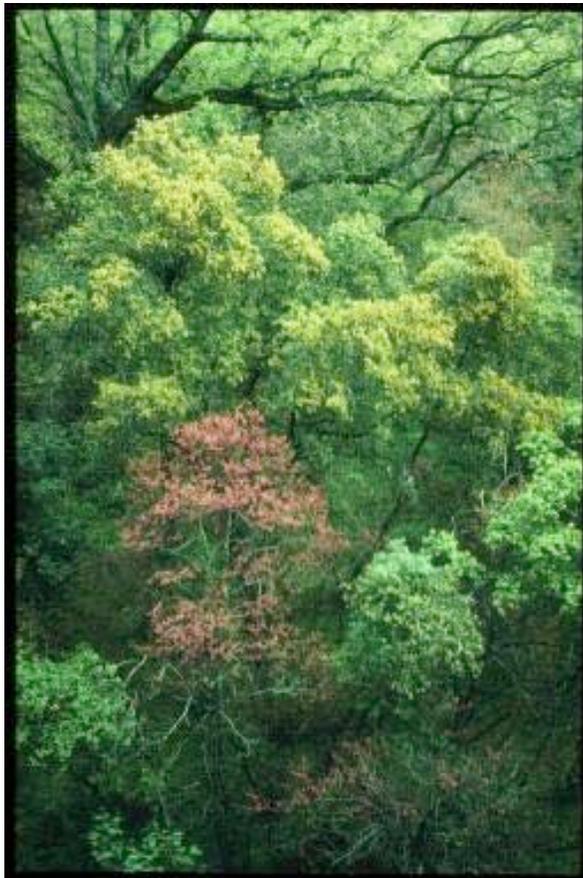


Oaks can become massive in size in the Sierra. The oldest giants, particularly black oak (*Quercus kelloggii*), are important denning and rest sites for the rare Pacific fisher. Black oaks don't start to produce a significant crop of acorns until they are at least fifty years old. The loss of black oak has resulted in long term, significant adverse impacts to Sierra Nevada forest ecosystems.

Measures to Protect and Restore Hardwoods in Sierra Nevada Forests

**Steps must be taken to ensure the survival of oaks and other hardwoods in the Sierra.
These may include:**

- Assure that Cal Fire adheres to the Forest Practice Rules (FPR) intent for hardwoods in THP review and approval
- Replace all precatory “should” language in the FPR related to hardwood protection with “shall” language to assure that the intent of these rules is achieved
- Implement the Joint Policy on Hardwoods between the California Board of Forestry and California Fish and Game Commission (5/9/94)
- Retain oaks 6” dbh or larger within all harvest units unless there is evidence that particular units exceed the general standard of 10 sq ft of basal area of oak on average per acre for that unit
- Require pre- and post-harvest field review by both Cal Fire and California Department of Fish and Game (DFG) of all evenage Timber Harvest Plans (THPs) to assure hardwood retention and survival
- Require photo documentation pre-harvest and annually for 5 years post-harvest to document hardwoods management and retention in all evenage THPs
- Set limits on the amount of clearcutting permitted in each watershed on private timber lands, as recommended by DFG in the State Wildlife Action Plan (2007)
- Protect oaks and other hardwoods during thinning operations
- Assure that a variety of oaks of all ages be retained to ensure successful regeneration



CALIFORNIA OAK FOUNDATION
1212 Broadway, Suite 810 / Oakland, CA 94612

California Oak Woodland Community

Species shown on the California Oak Woodland Community poster, available from the California Oak Foundation (www.californiaoaks.org/html/merch2.html) are:

Birds

- Californian Quails
- Nuttall's Woodpecker
- Acorn Woodpecker
- Western Blue Bird
- Yellow-Billed Magpie
- Anna's Hummingbird
- Lazuli Bunting
- Cooper's Hawk

Mammals

- Dusky Footed Woodrat
- Black Bear
- Mountain Lion
- Mule Deers
- Gray Fox
- Rabbit

Insects

- Butterfly California Dogface

Vegetation

- Coast Live Oak
- Maple Vine
- Poison Oak
- Californian Poppies
- Sticky Monkey Flowers
- Blue Oaks
- Madrone Tree
- Valley Oak
- Willow
- Black Oaks
- Golden Chanterelle

California's oak woodlands sustain higher levels of biodiversity than virtually any other terrestrial ecosystem in the state. More than 300 species depend on oak woodlands for food and shelter. Species not shown include the following:

Amphibians

- Arboreal Salamander (*Aneides lugubris*)
- Black Salamander (*Aneides flavipunctatus*)
- Black- Bellied Slender Salamander (*Batrachoseps nigriventris*)
- Bullfrog (*Rana catesbeiana*)
- California Newt (*Taricha torosa*)
- California Slender Salamander (*Batrachoseps attenuatus*)
- California Treefrog (*Hyla cadaverina*)
- Ensatina (*Ensatina eschscholtzi*)

- Foothill Yellow- Legged Frog (*Rana boyleii*)
- Kern Canyon Slender Salamander (*Batrachoseps simatus*)
- Limestone Salamander (*Hydromantes brunus*)
- Long- Toed Salamander (*Ambystoma macrodactylum*)
- Northwestern Salamander (*Ambystoma gracile*)
- Pacific Slender Salamander (*Batrachoseps pacificus*)
- Pacific Treefrog (*Hyla regilla*)

- Red- Bellied Newt (*Taricha rivularis*)
- Red- Legged Frog (*Rana aurora*)
- Rough-Skinned Newt (*Taricha granulosa*)
- Shasta Salamander (*Hydromantes shastae*)
- Tehachapi Slender Salamander (*Batrachoseps stebbinsi*)
- Tiger Salamander (*Ambystoma tigrinum*)
- Western Spadefoot (*Scaphiopus hammondi*)
- Western Toad *Bufo boreas*

Reptiles

- Blunt-Nosed Leopard Lizard (*Gambelia silus*)
- California Legless Lizard (*Anniella pulchra*)
- California Mountain Kingsnake (*Lampropeltis zonata*)
- California Whipsnake (*Masticophis lateralis*)
- Coachwhip (*Masticophis flagellum*)
- Coast Horned Lizard (*Phrynosoma coronatum*)
- Common Garter Snake (*Thamnophis sirtalis*)
- Common Kingsnake (*Lampropeltis getulus*)
- Desert Night Lizard (*Xantusia vigilis*)
- Desert Spiny Lizard (*Sceloporus magister*)
- Giant Garter Snake (*Thamnophis gigas*)
- Gilbert's Skink (*Eumeces gilberti*)
- Glossy Snake (*Arizona elegans*)
- Gopher Snake (*Pituophis melanoleucus*)
- Granite Night Lizard (*Xantusia henshawi*)
- Granite Spiny Lizard (*Sceloporus orcutti*)

- Long-Nosed Snake (*Rhinocheilus lecontei*)
- Lyre Snake (*Trimorphodon biscutatus*)
- Night Snake (*Hypsiglena torquata*)
- Northern Alligator Lizard (*Gerrhonotus coeruleus*)
- Orange-Throated Whiptail (*Cnemidophorus hyperythrus*)
- Racer (*Coluber constrictor*)
- Red Diamond Rattlesnake (*Crotalus ruber*)
- Ringneck Snake (*Diadophis punctatus*)
- Rubber Boa (*Charina bottae*)
- Sagebrush Lizard (*Sceloporus graciosus*)
- Sharp-Tailed Snake (*Contia tenuis*)
- Side-Blotched Lizard (*Uta stansburiana*)
- Small-Scaled Lizard (*Urosaurus microscutatus*)
- Southern Alligator Lizard (*Gerrhonotus multicarinatus*)

- Speckled Rattlesnake (*Crotalus mitchelli*)
- Western Aquatic Garter Snake (*Thamnophis couchi*)
- Western Black-Headed Snake (*Tantilla planiceps*)
- Western Blind Snake (*Leptotyphlops humilis*)
- Western Fence Lizard (*Sceloporus occidentalis*)
- Western Patch-nosed Snake (*Salvadora hexalepis*)
- Western Pond Turtle (*Clemmys marmorata*)
- Western Rattlesnake (*Crotalus viridis*)
- Western Skink (*Eumeces skiltonianus*)
- Western Terrestrial Garter Snake (*Thamnophis elegans*)
- Western Whiptail (*Cnemidophorus tigris*)

Birds

Acorn Woodpecker (*Melanerpes formicivorus*)
Allen's Hummingbird (*Selasphorus sasin*)
American Crow (*Corvus brachy-rhynchos*)
American Goldfinch (*Carduelis tristis*)
American Kestrel (*Falco sparverius*)
American Robin (*Turdus migratorius*)
Anna's Hummingbird (*Calypte anna*)
Ash-Throated Flycatcher (*Myiarchus cinerascens*)
Bald Eagle (*Haliaeetus leucocephalus*)
Band-Tailed Pigeon (*Columba fasciata*)
Bank Swallow (*Riparia riparia*)
Barn Owl (*Tyto alba*)
Barn Swallow (*Hirundo rustica*)
Bewick's Wren (*Thryomanes bewickii*)
Black Swift (*Cypseloides niger*)
Black-Chinned Hummingbird (*Archilochus alexandri*)
Black-Crowned Night Heron (*Nycticorax nycticorax*)
Black-Headed Grosbeak (*Pheucticus melanocephalus*)
Black-Throated Gray Warbler (*Dendroica nigrescens*)
Blue-Gray Gnatcatcher (*Poliopitila caerulea*)
Brewer's Blackbird (*Euphagus cyanocephalus*)
Brown Creeper (*Certhia americana*)
Brown-Headed Cowbird (*Molothrus ater*)
Burrowing Owl (*Speotyto cunicularia*)
Bushtit (*Psaltriparus minimus*)
California Condor (*Gymnogyps californianus*)
California Quail (*Callipepla californica*)
California Thrasher (*Toxostoma redivivum*)
California Towhee (*Pipilo crissalis*)
Calliope Hummingbird (*Stellula calliope*)
Cassin's Kingbird (*Tyrannus vociferans*)
Cattle Egret (*Bubulcus ibis*)
Cedar Waxwing (*Bombycilla cedrorum*)
Chestnut-Backed Chickadee (*Parus rufescens*)
Chipping Sparrow (*Spizella passerina*)
Cliff Swallow (*Hirundo pyrrhonota*)
Common Nighthawk (*Chordeiles minor*)
Common Poorwill (*Phalaenoptilus nuttallii*)
Common Raven (*Corvus corax*)
Cooper's Hawk (*Accipiter cooperii*)
Cordilleran Flycatcher (*Empidonax occidentalis*)
Dark-Eyed Junco (*Junco hyemalis*)
Downy Woodpecker (*Picoides pubescens*)
Dusky Flycatcher (*Empidonax oberholseri*)
European Starling (*Sturnus vulgaris*)
Evening Grosbeak (*Coccothraustes vespertinus*)
Ferruginous Hawk (*Buteo regalis*)
Flammulated Owl (*Otus flammellus*)
Fox Sparrow (*Passerella iliaca*)
Golden Eagle (*Aquila chrysaetos*)
Golden-Crowned Kinglet (*Regulus satrapa*)
Golden-Crowned Sparrow (*Zonotrichia atricapilla*)
Great Blue Heron (*Ardea herodias*)
Great Egret (*Casmerodius albus*)
Great Horned Owl (*Bubo virginianus*)
Greater Roadrunner (*Geococcyx californianus*)
Green Heron (*Butorides virescens*)
Hairy Woodpecker (*Picoides villosus*)
Hammond's Flycatcher (*Empidonax hammondii*)
Hermit Thrush (*Catharus guttatus*)
Hermit Warbler (*Dendroica occidentalis*)
Horned Lark (*Eremophila alpestris*)
House Finch (*Carpodacus mexicanus*)
House Sparrow (*Passer domesticus*)
House Wren (*Troglodytes aedon*)
Hutton's Vireo (*Vireo huttoni*)
Lark Sparrow (*Chondestes grammacus*)
Lawrence's Goldfinch (*Carduelis lawrencei*)
Lazuli Bunting (*Passerina amoena*)
Lesser Goldfinch (*Carduelis psaltria*)
Lesser Nighthawk (*Chordeiles acutipennis*)
Lewis Woodpecker (*Melanerpes lewis*)
Lincoln's Sparrow (*Melospiza lincolni*)
Loggerhead Shrike (*Lanius ludovicianus*)
Long-eared Owl (*Asio otus*)
MacGillivray's Warbler (*Oporornis tolmiei*)
Mallard (*Anas platyrhynchos*)
Merlin (*Falco columbarius*)
Mountain Bluebird (*Sialia currucoides*)
Mountain Chickadee (*Parus gambeli*)
Mountain Quail (*Oreortyx pictus*)
Mourning Dove (*Zenaidura macroura*)
Nashville Warbler (*Vermivora ruficapilla*)
Northern Flicker (*Colaptes auratus*)
Northern Goshawk (*Accipiter gentilis*)
Northern Harrier (*Circus cyaneus*)
Northern Mockingbird (*Mimus polyglottos*)
Northern Oriole (*Icterus galbula*)
Northern Pygmy-Owl (*Glaucidium gnoma*)
Northern Rough-Winged Swallow (*Stelgidopteryx serripennis*)
Northern Saw-Whet Owl (*Aegolius acadicus*)
Nuttall's Woodpecker (*Picoides nuttallii*)
Olive-sided Flycatcher (*Contopus borealis*)
Orange-Crowned Warbler (*Vermivora celata*)
Osprey (*Pandion haliaetus*)
Pacific-Slope Flycatcher (*Empidonax difficilis*)
Peregrine Falcon (*Falco peregrinus*)
Phainopepla (*Phainopepla nitens*)
Pileated Woodpecker (*Dryocopus pileatus*)
Pine Siskin (*Carduelis pinus*)
Plain Titmouse (*Parus inornatus*)
Prairie Falcon (*Falco mexicanus*)
Purple Martin (*Progne subis*)
Red-Breasted Nuthatch (*Sitta canadensis*)
Red-Breasted Sapsucker (*Sphyrapicus ruber*)
Red-Naped Sapsucker (*Sphyrapicus nuchalis*)
Red-Shouldered Hawk (*Buteo lineatus*)
Red-Tailed Hawk (*Buteo jamaicensis*)
Rock Dove (*Columba livia*)
Rock Wren (*Salpinctes obsoletus*)
Rough-Legged Hawk (*Buteo lagopus*)
Ruby-Crowned Kinglet (*Regulus calendula*)
Rufous Hummingbird (*Selasphorus rufus*)
Ruffed Grouse (*Bonasa umbellus*)
Rufous-Sided Towhee (*Pipilo erythro-phthalmus*)
Savannah Sparrow (*Passerculus sandwichensis*)
Say's Phoebe (*Sayornis saya*)
Scott's Oriole (*Icterus parisorum*)
Scrub Jay (*Aphelocoma coerulescens*)
Sharp-Shinned Hawk (*Accipiter striatus*)
Short-eared Owl (*Asio flammeus*)
Solitary Vireo (*Vireo solitarius*)
Song Sparrow (*Melospiza melodia*)
Spotted Owl (*Strix occidentalis*)
Steller's Jay (*Cyanocitta stelleri*)
Swainson's Hawk (*Buteo swainsoni*)
Swainson's Thrush (*Catharus ustulatus*)
Townsend's Solitaire (*Myadestes townsendi*)
Townsend's Warbler (*Dendroica townsendi*)
Tree Swallow (*Tachycineta bicolor*)
Turkey Vulture (*Cathartes aura*)
Varied Thrush (*Ixoreus naevius*)
Vaux's Swift (*Chaetura vauxi*)
Vesper Sparrow (*Poocetes gramineus*)
Violet-Green Swallow (*Tachycineta thalassina*)
Warbling Vireo (*Vireo gilvus*)
Western Bluebird (*Sialia mexicana*)
Western Kingbird (*Tyrannus verticalis*)
Western Meadowlark (*Sturnella neglecta*)
Western Screech-Owl (*Otus kennicottii*)
Western Tanager (*Piranga ludoviciana*)
Western Wood-Pewee (*Contopus sordidulus*)
White-Breasted Nuthatch (*Sitta carolinensis*)
White-Crowned Sparrow (*Zonotrichia leucophrys*)
White-Tailed Kite (*Elanus leucurus*)
White-Throated Swift (*Aeronautes saxatalis*)
Wild Turkey (*Meleagris gallopavo*)
Wilson's Warbler (*Wilsonia pusilla*)
Wood Duck (*Aix sponsa*)
Wrentit (*Chamaea fasciata*)
Yellow Warbler (*Dendroica petechia*)
Yellow-Billed Magpie (*Pica nuttalli*)
Yellow-Rumped Warbler (*Dendroica coronata*)

Mammal

Allen's Chipmunk (*Tamias senex*)
American Badger (*Taxidea taxus*)
Barbary Sheep (*Ammotragus lervia*)
Beaver (*Castor canadensis*)
Big Brown Bat (*Eptesicus fuscus*)
Black Bear (*Ursus americanus*)
Black Rat (*Rattus rattus*)
Black-Tailed Hare (*Lepus californicus*)
Bobcat (*Felis rufus*)
Botta's Pocket Gopher (*Thomomys bottae*)
Brazilian Free-Tailed Bat (*Tadarida brasiliensis*)
Broad-Footed Mole (*Scapanus latimanus*)
Brush Mouse (*Peromyscus boylii*)
Brush Rabbit (*Sylvilagus bachmani*)
Bushy-Tailed Woodrat (*Neotoma cinerea*)
California Chipmunk (*Tamias obscurus*)
California Ground Squirrel (*Spermophilus beecheyi*)
California Kangaroo Rat (*Dipodomys californicus*)
California Mouse (*Peromyscus californicus*)
California Myotis (*Myotis californicus*)
California Pocket Mouse (*Chaetodipus californicus*)
California Vole (*Microtus californicus*)

Coyote (*Canis latrans*)
Deer Mouse (*Peromyscus maniculatus*)
Desert Cottontail (*Sylvilagus audubonii*)
Desert Woodrat (*Neotoma lepida*)
Douglas' Squirrel (*Tamiasciurus douglasii*)
Dusky-Footed Woodrat (*Neotoma fuscipes*)
Elk (*Cervus elaphus*)
Ermine (*Mustela erminea*)
Fallow Deer (*Cervus dama*)
Feral Goat (*Capra hircus*)
Fox Squirrel (*Sciurus niger*)
Fringed Myotis (*Myotis thysanodes*)
Golden-Mantled Ground Squirrel (*Spermophilus lateralis*)
Gray Fox (*Urocyon cinereo-argenteus*)
Heermann's Kangaroo Rat (*Dipodomys heermanni*)
Himalayan Tahr (*Hemitragus jemlahicus*)
Hoary Bat (*Lasiurus cinereus*)
House Mouse (*Mus musculus*)
Island Fox (*Urocyon littoralis*)
Kit Fox (*Vulpes macrotis*)
Little Brown Myotis (*Myotis lucifugus*)
Long-eared Myotis (*Myotis evotis*)
Long-Legged Myotis (*Myotis volans*)

Long-Tailed Weasel (*Mustela frenata*)
Marsh Shrew (*Sorex bendirii*)
Merriam's Chipmunk (*Tamias merriami*)
Mountain Beaver (*Aplodontia rufa*)
Mountain Lion (*Felis concolor*)
Mule Deer (*Odocoileus hemionus*)
Narrow-Faced Kangaroo Rat (*Dipodomys venustus*)
Northern Flying Squirrel (*Glaucomys sabrinus*)
Norway Rat (*Rattus norvegicus*)
Ornate Shrew (*Sorex ornatus*)
Pacific Kangaroo Rat (*Dipodomys agilis*)
Pallid Bat (*Antrozous pallidus*)
Pinyon Mouse (*Peromyscus truei*)
Porcupine (*Erethizon dorsatum*)
Raccoon (*Procyon lotor*)
Ringtail (*Bassariscus astutus*)
River Otter (*Lutra canadensis*)
Sambar (*Cervus unicolor*)
San Joaquin Kangaroo Rat (*Dipodomys nitratoides*)
San Joaquin Pocket Mouse (*Perognathus inornatus*)
Shrew-Mole (*Neurotrichus gibbsii*)
Silver-Haired Bat (*Lasionycteris noctivagans*)

Siskiyou Chipmunk (*Tamias siskiyou*)
Sonoma Chipmunk (*Tamias sonomae*)
Spotted Bat (*Euderma maculatum*)
Striped Skunk (*Mephitis mephitis*)
Townsend's Big-Eared Bat (*Plecotus townsendii*)
Trowbridge's Shrew (*Sorex trowbridgii*)
Vagrant Shrew (*Sorex vagrans*)
Virginia Opossum (*Didelphis virginiana*)
Western Gray Squirrel (*Sciurus griseus*)
Western Harvest Mouse (*Reithrodon-tomys megalotis*)
Western Mastiff Bat (*Eumops perotis*)
Western Pipistrelle (*Pipistrellus hesperus*)
Western Pocket Gopher (*Thomomys mazama*)
Western Red Bat (*Lasiurus blossevillii*)
Western Small-Footed Myotis (*Myotis ciliolabrum*)
Western Spotted Skunk (*Spilogale gracilis*)
Wild Horse (*Equus caballus*)
Wild Pig (*Sus scrofa*)
Yellow-Pine Chipmunk (*Tamias amoenus*)
Yuma Myotis (*Myotis yumanensis*)

List compiled by California Department of Forestry in 1996

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Board of Forestry and Fire Protection
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2 November 2010

Dear Chairman Ostrowski and members of the Policy Committee,

Ebbetts Pass Forest Watch (EPFW) is pleased to respond to your call for information on:

- a. Areas where questions exist on interpretation of the regulatory standards, including potential solutions;
- b. Issues encountered in achieving compliance with the regulatory standard of rules, including potential solutions;
- c. Suggested regulatory modifications that may clarify existing rule language, improve resource protection, and/or reduce regulatory inefficiencies. ¹

EPFW submitted comments to the Policy Committee in 2008, which documented at that time many issues of this sort. Unfortunately, most of these same issues still exist today, and we would refer you to the full text of that letter as a basis for your development of future committee priorities and for a deeper understanding of the context and content of these current comments.

- a. **Areas where questions exist on interpretation of the regulatory standards, including potential solutions**

General failure of the THP process to meet legislative intent of the Z'Berg Nejedly Forest Practice Act of 1973 (FPA)

and

Failure to adapt appropriately in response to state-level analyses of the THP process

Failure to meet legislative intent

¹http://www.bof.fire.ca.gov/board_business/meeting_agendas/2010_board_meeting_agendas/agenda_nov10.pdf

The FPA declares: that “it is the policy of this state to encourage prudent and responsible forest resource management calculated to serve the public's need for timber and other forest products, while giving consideration to the public's need for watershed protection, fisheries and wildlife, and recreational opportunities alike in this and future generations.”² However, in fact, THPs are assessed and approved primarily based on their relationship to “maximum sustained timber yield” with only token consideration to the other forest values required to be evaluated and maintained. Please consult EPFW’s November 2008 comment letter which discusses this point in depth, particularly in relation to current timber harvest practice in the Sierra Nevada.

As well, the Forest Practices Rules, developed to implement the FPA, set forth principles based on a high standard of biological diversity and resource protection across the landscape under which THPs shall be evaluated.³ However, in practice, THPs are routinely approved that provide minimal diversity and biodiversity across a landscape.

In January 2009, the Board of Forestry (Board) received “Advice Regarding Board of Forestry’s Regulatory Authority to Provide for the Restoration of Resources” from the Attorney General of the State of California. This document clearly discussed legislative intent and emphasized the Board’s responsibility to protect resources and biodiversity. “In sum, the plain intent of the Legislature in enacting the FPA was to require the Board to view the forests of the state as a complete working ecosystem, and not only as a producer of high quality timber, but also as forest lands valuable in their own right as a public resource.”⁴

² http://www.fire.ca.gov/resource_mgt/downloads/2010_FP_Rulebook_w-Diagrams_wo-TechRule_No1.pdf; p. 271.

³ *Ibid.* p. 26.

(b) In determining whether a THP conforms to the intent of the Act, the Director shall be guided by the following principles:

(1) The goal of forest management on a specific ownership shall be the production or maintenance of forests which are healthy and naturally diverse, with a mixture of trees and under-story plants, in which trees are grown primarily for the production of high quality timber products and which meet the following objectives:

(A) Achieve a balance between growth and harvest over time consistent with the harvesting methods within the rules of the Board.

(B) Maintain functional wildlife habitat in sufficient condition for continued use by the existing wildlife community within the planning watershed.

(C) Retain or recruit late and diverse seral stage habitat components for wildlife concentrated in the watercourse and lake zones and as appropriate to provide for functional connectivity between habitats.

(D) Maintain growing stock, genetic diversity, and soil productivity.

(2) Individual THPs shall be considered in the context of the larger forest and planning watershed in which they are located, so that biological diversity and watershed integrity are maintained within larger planning units and adverse cumulative impacts, including impacts on the quality and beneficial uses of water are reduced.

⁴ Rudd, Anita E., Deputy Attorney General. “Advice Regarding Board of Forestry’s Regulatory Authority to Provide for the Restoration of Resources.” Attorney-Client Communication and Work Product (copied and distributed by the Board of Forestry). State of California Department of Justice, Office of the Attorney General. January 9, 2009. p. 4

The Board’s general authority to promulgate regulations is found in section 4551, which specifically defines the goals for the forest practice rules and regulations. It states (in essential part) that:

The board shall adopt district forest practice rules and regulations . . . in accordance with the policies set forth in Article 1 (commencing with Section 4511) . . . to assure the continuous

However, consistently in practice, bias toward timber yield as the pre-eminent value is evident in THP review and approval. For those who live in the Sierra Nevada or who have seen visual documentation of the evenage conversion to plantations occurring range-wide, no other evidence is necessary to convince them that maximum timber yield is trumping resource protection.

Failure to adapt appropriately in response to state-funded analyses of the THP process

In 1990, LSA Associates exhaustively studied the THP process, preparing a report for CAL FIRE (Department) on that investigation.⁵ They concluded that major change was needed. Unfortunately, twenty years later, their report seems eminently current and relevant.⁶

As detailed in our previous comments, there is a systemic failure of the entire THP process, which will not be remedied by small modifications in current process. This failure was

growing and harvesting of commercial forest tree species and to protect the soil, air, fish, and wildlife, and water resources, including, but not limited to streams, lakes, and estuaries.

The language here is important. The rules and regulations are (1) to assure the continuous growing and harvesting of commercial forest tree species, and, (2) to protect the soil, air, fish, and wildlife, and water resources. Both parts of the mandate are equal: to assure timber growth and to protect the forest resources.

⁵ FINAL REPORT: CONCLUSIONS AND RECOMMENDATIONS FOR STRENGTHENING THE REVIEW AND EVALUATION OF TIMBER HARVEST PLANS. PREPARED FOR: CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION. PREPARED BY: LSA ASSOCIATES, INC. LSA PROJECT #CDF802. March 1990.

⁶ *Ibid.* p. 13.

In our view, the Department is at a crisis point with respect to the administration of the forest practices program. Bold action aimed at recapturing public support is called for. We believe these actions should be pursued on two related fronts:

establishing a greater degree of independence from the industry it regulates,

asserting a stronger leadership role in forestry matters in California.

Rightly or wrongly, too many people perceive CDF as not aggressively enforcing the intent of the Forest Practices Act and the requirements of CEQA. While it is vital to maintain a working relationship with the industry, it is equally important to visibly demonstrate to the industry and the public that the statutory obligations of assuring adequate environmental consideration in the management of private forestlands cannot be compromised and that the Department is committed to its regulatory obligations even if it angers the industry. Past CDF actions have failed to demonstrate this. In areas such as the determination of significant impacts, the identification of appropriate mitigations, and currently, the development of a new rule package for wildlife and cumulative impacts, the Department is operating in a manner that fails to establish a public perception of appropriate independence from the industry it regulates.

We are not unaware of the complexities of interactions with the industry and, particularly, the Board. CDF does not make the rules; it is charged with administering them. But as a key agency staking claim to a leadership position in the forestry and wildland management affairs of California, the Department needs to begin taking more independently derived positions that may not march in close step with either the Board or the industry.

thoroughly analyzed and documented in the Little Hoover Commission Report of June 1994⁷. At that time, numerous conclusions were drawn⁸ and recommendations made⁹ for meaningful and effective change to the process. Unfortunately, the bulk of substantive changes mandated by that bipartisan report have yet to be addressed, let alone implemented, by the Board of Forestry and Department. So, the THP process remains now, as then, “A Flawed Effort to Balance Economic and Environmental Needs.”

Potential Solutions:

As stated above, solution to the large problem of failure to meet legislative intent or respond adequately to exhaustive investigations of the THP process cannot be remedied by small modifications. Rather, there must be a commitment from both the Board and Department to make the THP process meet its intended role for the concerned public, the regulated public, and the state’s public trust resources. Such a process must be prioritized and begun as quickly as possible. EPFW is willing to be a good-faith participant in this much-needed process, volunteering time and effort to aid in its success. We hope other stakeholders will also step forward.

If the commitment and resolve to undertake this overhaul from within is lacking, then the impetus for it must be provided by an outside source.

b. Issues encountered in achieving compliance with the regulatory standard of rules, including potential solutions:

There are many specifics in which EPFW has encountered difficulties with the achievement of compliance with the regulatory standard of rules. At this time, EPFW will document only a few as part of this comment letter. However, as in 2008, we remain available for continued discussions with the Department and/or the Board for ongoing discussions of how to resolve the problems of which we are aware.

⁷ State of California. LITTLE HOOVER COMMISSION. “Timber Harvest Plans: A Flawed Effort to Balance Economic and Environmental Needs”. June 1994. Report #126.
<http://www.bsa.ca.gov/lhcdir/126rp.html>.

⁸ from the Little Hoover Commission Report:

The Outcome

- * Timber Harvest Plans have not protected the environment from degradation.
- * The plans are too narrow in scope, examining only a small portion of an ecosystem.
- * State efforts are focused more on procedural steps than on the desired outcome: a balance between economic and environmental needs.

⁹ A sample of recommendations from the Little Hoover Commission report:

Recommendations:

- * Require planning on a watershed or ecosystem basis.
- * Create a public appeal process and encourage mediated solutions.
- * Shift focus from plan approval to monitoring and enforcement.

Issue: Review Team meetings

In-person multi-disciplinary review team meetings, other than the PHI, are generally not occurring despite FPR language calling for these meetings. California Department of Fish and Game (DFG) participation is limited or non-existent on many THPs, despite language in the rules calling for their participation. Since there are no public meetings, other than the PHI, the public is excluded from attending THP meetings in direct contradiction to FPR intent.¹⁰

Potential Solutions:

- Assure that in-person Review Team meetings take place
- Allow public participation in PHIs if no other Review Team meeting is to take place
- Assure that public that has expressed interest is welcomed to and invited to participate in Review Team meetings taking place by telephone
- Make all review team correspondence readily available in a timely manner on the internet

Issue: Loss of DFG review for THPs

The recent disclosure of the loss of funding for the majority of DFG THP review staff from the current State budget poses a huge issue for THP review. It will be impossible to assure compliance with regulatory standards, including CEQA requirements, without adequate DFG input.

Potential Solutions:

- Assure that the Board, Department, and public apply sufficient pressure to reinstate funding
- Halt all THP reviews and approvals until DFG review is reinstated
- Have THP applicant pay for DFG review in the same manner as most other CEQA project applicants pay for their environmental reviews

Issue: Lack of protection for hardwoods in THPs

¹⁰ http://www.fire.ca.gov/resource_mgt/downloads/2010_FP_Rulebook_w-Diagrams_wo-TechRule_No1.pdf
p. 174:

(d) Review Team Meetings. The Director or his designee is responsible for establishing and scheduling the meeting of a review team to perform the necessary review of plans for the Department. Review team meetings shall be open to the RPF, supervised designee, the landowner, and the timber owner and, insofar as possible without disrupting the work of the team, to the public. The chairperson may impose limitations on the scope of any public participation at the meetings. All interested persons will normally be allowed to attend team meetings. On occasions when space or other considerations will require some limitation on attendance the review team chairperson shall endeavor to allow for attendance of at least one representative for each of the various agencies, organizations or special interest groups.

The value of hardwoods, particularly oaks, and the importance of their post-harvest retention is set forth in the FPR.¹¹ However, throughout the Sierra Nevada hardwoods are being systematically removed from the overall landscape as diverse, uneven forests are converted to plantations. EPFW has submitted comment and visual data repeatedly to the Department related to this issue, yet no change in Department policy has resulted.

As well, there has been no recent implementation of the Joint Policy on Hardwoods adopted by the Board that states:

In cooperation with the Integrated Hardwood Range Management Program and Private landowner, Departmental personnel should jointly establish a process, which includes both satellite imagery and ground checking, to monitor the status of the hardwood resource, to examine the effectiveness of local policies with respect to hardwoods, and to evaluate the performance of the Integrated Hardwood Range Management Program; staff should report annually, in joint session, to the Commission and the Board.¹²

Potential Solutions:

- Create a workplan within 6 months to adhere to the Oak Woodland Policy Recommendations; implementation to begin by 1 September 2011
- Require pre- and post-harvest field review by both DFG and DFG of all evenage THPs to assure hardwood retention and survival
- Require photo documentation pre-harvest and annually for 5 years post-harvest to document hardwoods management and retention in all evenage THPs
- Assure that the Department adheres to the FPR intent for hardwoods in THP review and approval
- Replace 14 CCR 959.15 subsection of the FPR with:
 - (a) An average of at least 10 sq. ft. of basal area of oaks per acre or 100 sq. ft. of basal area of oaks per 10 acres shall be retained within all timber harvest units where that level of oaks exists prior to logging; if that level doesn't exist, then all oaks of 4" dbh or larger that are present shall be retained. Preference shall be given to deciduous oaks. Oaks shall be retained on areas designated by DFG as deer migration corridors, holding areas, or key ranges. Whenever possible, oaks should be retained in clumps. Any herbicide treatments within timber harvest units with retained oaks shall be kept at suitable distance from

¹¹ p. 42: **e. Hardwood Cover:** Hardwoods provide an important element of habitat diversity in the coniferous forest and are utilized as a source of food and/or cover by a large proportion of the state's bird and mammal species. Productivity of deer and other species has been directly related to mast crops. Hardwood cover can be estimated using the basal area per acre provided by hardwoods of all species.

[Northern and Southern only]: Post-harvest deciduous oak retention for the maintenance of habitats for mule deer and other hardwood-associated wildlife shall be guided by the Joint Policy on Hardwoods between the California Board of Forestry and California Fish and Game Commission (5/9/94). To sustain wildlife, a diversity of stand structural and seral conditions, and tree size and age classes of deciduous oaks should be retained in proportions that are ecologically sustainable. Regeneration and recruitment of young deciduous oaks should be sufficient over time to replace mortality of older trees. Deciduous oaks should be present in sufficient quality and quantity, and in appropriate locations to provide functional habitat elements for hardwood-associated wildlife.

¹² State Board of Forestry and Fire Protection. Policy and Management Committee. "Oak Woodland Policy Recommendations." Submitted by the Range Management Advisory Committee. August 31, 2004. 21.

retained oak trees to assure that the oaks are not damaged or killed from herbicide application.

c. Suggested regulatory modifications that may clarify existing rule language, improve resource protection, and/or reduce regulatory inefficiencies.

Issue: THP appeal

The Little Hoover Commission found litigation as the only allowed means of appealing an approved THP unfortunate.¹³ The LSA report also noted that Official Responses (OR) to THP comments were lacking, perhaps largely because they are used as means to position the Department for legal challenges.¹⁴

Legal action, while useful for those who like to hold up the concerned public as fond of litigation, is in fact a process that expends valuable state resources of both money and professional staff time. And in the end, it leaves the development of forest law in the hands of judges who may not fully understand the complexities involved or be sufficiently motivated to consider all of these in issuing rulings.

As well, the threat of legal action has increased divisiveness among stakeholders, resulted in lengthier THPs without commensurate increases in resource protection, and led to

¹³ From the Little Hoover Commission Report:

Lack of public appeal mechanism leads to challenges in court system

In addition to failing to address cumulative impacts effectively, the design of the Timber Harvest Plan process encourages litigation rather than consensus-shaped resolution to problems. The process lacks a public appeal mechanism that would allow plan approvals to be challenged short of court action. As a result, when environmentalists or other interested parties believe that CDF has reached a bad decision, a lawsuit may follow.

¹⁴ From the LSA Report:

Our evaluation of several recent' ORs prepared for THPs in the coast region leads us to the conclusion that additional guidance and assistance is needed for personnel who are preparing ORs. Many ORs do not compare favorably with the standard of presenting a reasoned, meaningful response to environmental comments and of demonstrating the scientific opinion and/or reasoned analysis that supports the THP decision. A more detailed discussion of this conclusion is contained in our August 1, 1989, interim report and we will only briefly repeat them, here. As currently being prepared, ORs clearly do not respond to Judge Cox's ruling that even non-significant environmental comments merit a response as to why CDF judges them to be non-significant. And for significant comments, it is sometimes very difficult to identify in the OR where and how the Department has responded. Current direction to OR preparers is to lump all comments into a synthesized response rather than splitting out and responding to each significant comment, individually. But in applying this direction, the ORs generally fail to present an impression of responsiveness or even acknowledgement that many of the comments have been considered. They leave the department vulnerable to judicial impressions that the Director and/or his representative have prejudicially abused their discretionary authority. The use of "boiler plate" language further erodes the credibility of the OR and lends credence to the impression that the Department has not seriously considered some of the significant points raised by commenters.

Department staff having written process become a greater portion of their THP review work than on-the-ground monitoring. None of this has served any positive purpose.¹⁵

EPFW has twice asked the Board at their meetings to at least develop a pilot project to test an alternative means for THP appeals. In neither instance did we receive even an acknowledgement of our request, let alone a follow-up conversation. Our hope is that now the Board will wish to undertake that discussion.

Potential Solutions:

- Create a workplan within 6 months and begin Implementation by 1 September 2011 of the Recommendation from the Little Hoover Commission Report:

Recommendation #7:

The Governor and the Legislature should enact legislation establishing a public appeals process to allow non-litigation challenges to Timber Harvest Plan approvals.

Members of the public have little avenue for recourse other than filing a lawsuit if they disagree with a plan approval or believe further restrictions should be imposed on harvesting operations. Providing an alternative to litigation could save money, encourage compromise solutions and diminish the animosity that is usually heightened by legal processes. Potential places in the state bureaucracy for establishing the appeals process include the Board of Forestry, the Office of Administrative Hearings or the Secretary for Environmental Protection.

- Create a workplan within 6 months and begin Implementation by 1 September 2011 of a pilot project for an alternative, mediated means of THP appeal

Issue: Cumulative Impacts Analysis

The issue of cumulative impacts analysis in THPs continues to be an area in which the practice fails to reach compliance with the regulatory standard. Increasingly lengthy verbiage in THPs has failed to provide additional protection of natural resources.

The failures of the cumulative impacts analysis in the present day seem to reflect the same systemic failure of this crucial element identified in the LSA Report twenty years ago:

Title 14 Section 898 of the California Administrative Code requires the RPF to determine if the proposed operation will have any significant adverse impact on the environment, after considering the rules of the Board and any mitigation measures proposed in the plan. A significant, adverse impact is defined as a substantial, or

¹⁵ From the Little Hoover Commission Report:

Litigation is an expensive, divisive way to reach balanced decisions

Litigation is not only expensive to pursue -- 10 of the cases involved more than 300 hours of state attorney time and four exceeded 500 hours, according to the Department of Justice -- but it also tends to increase antagonism and harden positions. The result over time can be disadvantageous to both economic and environmental interests.

While there is no formal recourse for appealing Timber Harvest Plan approvals, mediation has proven successful in at least two areas where it has been tried.

potentially substantial, adverse change in any of the physical conditions within the affected area including flora and fauna. To date, a THP with a positive determination of significance has been submitted in only the rarest of occasions (well less than .1% of all THPs). We were not able to uncover an instance in which CDF rejected the RPF's judgement. So in effect, the THP has evolved into the functional equivalent of a "mitigated negative declaration," applied categorically.

With respect to possible wildlife impacts, we believe the Department's tacit endorsement of the almost-categorical judgement of non-significance is both practically and factually untenable. While the forest practices rules and additional mitigations included in many THPs do substantially reduce the level of adverse impact, it is clear that the preponderance of professional and scientific biological opinion (including ours) holds that significant impacts on some species may still occur.

We believe that it will be increasingly difficult for the Department to successfully argue in the official response documents or in court that impacts of some proposed harvesting operations on some species are not potentially substantial (i.e., significant). The impacts of clearcutting old growth stands on "old growth dependent" species are the obvious case in point. To categorically hold to the position that impacts are not significant, as the Department has essentially done to date, increasingly puts the credibility of the THP review process in jeopardy. Some RPF's have argued, and the CDF has accepted, that for non-listed species, significant impacts occur only if viability of the species is threatened. Relative to definitions of significance in both the forest practice rules and the CEQA guidelines, we find this standard to be overly restrictive and without the support of widespread professional biological opinion.¹⁶

Potential Solutions:

- Create a workplan within 6 months and begin Implementation by 1 September 2011 of a full stakeholder process to develop a agreed-upon and protective method of cumulative impacts analysis

As in 2008, EPFW is concerned about other issues related to the ability to reach regulatory compliance. Without going into detail, some of these include:

- The mapping discussion included in our November 2008 comment letter, which has yet to be addressed.

At this time, EPFW asks that the Department also require inclusion in either the maps and/or the narrative evidence of fire/development/landslide/other loss of forestland or disruption of natural environment within 10 years in the assessment area(s).

- Expansion of 14CCR 1034, **Contents of Plan** currently applicable in only specific counties to all districts to read as follows:

14CCR 1034, **Contents of Plan**, shall include in all districts:

(kk) A statement shall be prepared indicating the proposed type, quantity, purpose and method of application of any chemicals listed as restricted by the State Department of Food and Agriculture that are to be used. A description shall be included of all such chemicals applied within the county in the

¹⁶ LSA Report. 4-5.

preceding two years, including type, amount, method of application, and location.

(II) The plan submitter shall identify any publicly owned water purveyor within the drainage and indicate on the plan whether a watershed protection agreement with any publicly owned water purveyor has been obtained for the proposed operation and append any such agreement to the plan. Any such agreement shall be appended for information purposes only. If no such agreement has been reached with the water purveyor, the plan submitter shall attach any previous correspondence to and from the water purveyor concerning the proposed timber operation.

- Development of a Department data base of peer-reviewed science on topics of importance in THPs. Also, institute a requirement that the Department explain why legitimate science entered into the record in public comment is being ignored or rejected, as well as an explanation of why science submitted by plan proponent is being accepted with discussion of related studies not being referenced by proponent. If necessary, develop a scientific panel, agreed upon by all major stakeholders, to determine the legitimacy of the Department's assessment of the science.
- Development of rule language to require THPs including over 150 acres of evenage harvest to publicly post mitigation and adaptive management plans for species and other resources as well as evidence of compliance with them, including pre- and post-harvest aerial and ground-level photos.

Thank you for the opportunity to comment on these important issues and for your serious consideration of our concerns.

EPFW looks forward to working with the Board and Department to make the THP process effective, efficient, and protective of public trust resources.

Respectfully submitted on behalf of Ebbetts Pass Forest Watch,



Addie Jacobson



Susan Robinson, Board Member



Addie Jacobson, Board Member
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October 30, 2008

re: POLICY COMMITTEE Public Hearing
November 3, 2008

Dear Mr Gentry and members of the Policy Committee,

The following comments are submitted on behalf of Ebbetts Pass Forest Watch (EPFW), a forest and watershed coalition headquartered in Arnold, California. This letter is in response to your call for public comment regarding the efficacy of Forest Practice Rules based on their implementation and effectiveness, in order for you to meet your responsibility to the public and to protect the state's interests.

Changes to the Rules that will be considered for the first time at your November 3, 2008 Policy Committee meeting will not allow an adequate timeframe to have suggestions take effect on January 1, 2009. Because of this, EPFW requests that further discussions be held over the course of the next year with Board of Forestry staff and Board members as well as with CAL FIRE staff. Discussions need to cover details on matters EPFW references in this comment letter, including broad and major issues of Rules' implementation as well as others not brought forward at this time but which are of concern to EPFW and other public entities. We look forward to working with you after November 3 to schedule these follow-up meetings.

Failure of rules' implementation to meet legislative intent

The Z'Berg-Nejedly Forest Practice Act of 1973 set forth a framework for forest management in California. 35 years later it is worth revisiting that framework and determining if the practices on the ground reflect the intent of the legislature. EPFW believes that the range-wide cumulative effects of approved timber harvest in the Sierra Nevada over the past 10-12 years do not meet that intent.

The law states:

Article 1. General Provisions

4511. This chapter shall be known as the Z'berg-Nejedly Forest Practice Act of 1973.

4512. Findings and declarations.

(a) The Legislature hereby finds and declares that the forest resources and timberlands of the state are among the most valuable of the natural resources of the state and that there is great concern throughout the state relating to their utilization, restoration, and protection.

(b) The Legislature further finds and declares that the forest resources and timberlands of the state furnish high-quality timber, recreational opportunities, and aesthetic enjoyment while providing watershed protection and maintaining fisheries and wildlife.

(c) The Legislature thus declares that **it is the policy of this state to encourage prudent and responsible forest resource management calculated to serve the public's need for timber and other forest products, while giving consideration to the public's need for watershed protection, fisheries and wildlife, and recreational opportunities alike in this and future generations.** (emphasis added)

(d) It is not the intent of the Legislature by the enactment of this chapter to take private property for public use without payment of just compensation in violation of the California and United States Constitutions.

4513. Intent of Legislature. It is the intent of the Legislature to create and maintain an effective and comprehensive system of regulation and use of all timberlands so as to assure that:

(a) Where feasible, the productivity of timberlands is restored, enhanced, and maintained.

(b) **The goal of maximum sustained production of high-quality timber products is achieved while giving consideration to values relating to recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment, and aesthetic enjoyment.** (emphasis added)

Since 1996, CAL FIRE has approved over 250,000 acres of evenage harvest to just one company, Sierra Pacific Industries (SPI). This amount of intensive harvest is part of an acknowledged intent by SPI to harvest over a million acres of the Sierra Nevada in similar manner. The result is an experiment in timber harvest never previously undertaken in this significant range in an uncertain time of climate change.

To date, CAL FIRE continues to make decisions parcel by parcel without looking at the larger picture. It could be said that they can't see the forest for the trees when using this methodology of approvals. However, there are ways to assess the cumulative result of the parcels. One of these is to look at CAL FIRE's GIS data. Another is to view the larger picture from above as in these following pictures from just two spots in the Sierra:



Clearcuts across Calaveras County looking eastward, with Tuolumne County in the distance



Clearcuts near Shingletown

These two sites are representative of the entire Sierra Nevada. EPFW awaits the chance to discuss with CAL FIRE these activities in the context of all standards set forth in the enabling legislation.

Inadequacies of the THP process as it is employed

The THP process as currently employed has been analyzed in various quarters. Perhaps the most exhaustive was the Little Hoover Commission's report of 1994. It will soon be 15 years since tax money in a recessionary budget-deficit time funded this examination. Numerous individuals, organizations, legislators from both parties, and agencies participated in the process which resulted in a report titled "Timber Ebbetts Pass Forest Watch Comments" November 3, 2008
 State Board of Forestry Policy Committee 3

Harvest Plans: A Flawed Effort to Balance Economic and Environmental Needs” with findings and recommendations for implementation to improve the process. Since that time, the report has been generally ignored and its recommendations on the whole still await implementation. Here are the findings of the Little Hoover Commission:

Timber Harvest Plans: A Flawed Effort to Balance Economic and Environmental Needs (Report #126, March 1994)

Executive Summary

About 18 percent of California's land mass is composed of productive forests, an extensive and valuable natural resource that provides not only timber and wood products, but also wildlife and fish habitat, recreational opportunities and esthetic enjoyment. A challenge facing state government is to allow multiple uses of this resource without degrading its value or allowing any one use to dominate or exclude the others.

To carry out this responsibility, the State has created the Timber Harvest Plan process to regulate logging activities. Originally a streamlined procedure that assured continued logging while acknowledging environmental needs, the process has been reshaped and molded in response to new state laws, federal laws and court decisions. While the focus of many of these new thrusts is on issues other than logging -- such as preservation of species and protection of water quality -- the impact on timber operations is substantial and tangible.

Timber Harvest Plans have grown increasingly complex in response to emerging laws and policies. At the same time, the ground rules for what is allowed, what mitigation measures are required and what is forbidden are constantly changing and are rarely clearly understood by all the parties involved. Despite the frequent reforms and fine-tuning, the process remains an inadequate tool for protecting both economic and environmental interests.

The ripple effect from how timber harvest proposals are handled touches all Californians in both direct and subtle ways. The timber industry employs 113,000 people, with another 300,000 jobs linked to timber operations. Counties where logging occurs receive millions of dollars in timber taxes. An unrestricted approach to timber harvesting threatens to eliminate plant and animal species that can never be replaced, while an overly restrictive approach drives the cost of wood products up, affecting prices on everything from pencils to houses.

The Little Hoover Commission has identified the key problems with the Timber Harvest Plan process in two findings and has proposed meaningful reform of the State's approach in eight recommendations.

Finding #1: The current Timber Harvest Plan process is complex, inequitable and costly, producing frustration for the administering state departments, the timber industry and environmental advocacy groups.

Participation in the review of Timber Harvest Plans is spread across two agencies, four departments and seven boards, leaving the process

open to inconsistent policy application and fragmented leadership. Rules regulating the process change so frequently that participants are often unclear about what standards they are required to meet. In addition, the process is the target of criticism from all sides, including:

- * State departments, which say they lack the resources to do the thorough review required by a combination of state and federal laws.

- * The timber industry, which says demands for more information as new laws, regulations and court orders come into play makes the Timber Harvest Plans increasingly lengthy and costly for the harvesters. Timber industry interests are also critical of approval delays -- especially in the case of controversial and complicated harvesting proposals.

- * Environmental groups, which say the limited amount of time for public input effectively rules out any meaningful analysis and response. Too often, they add, the plan is a paperwork exercise that is routinely approved.

Finding #2: The Timber Harvest Plan process has not proven effective in achieving a sound balance between economic and environmental concerns.

The authorizing statutes for the Timber Harvest Plan set the stage for logging while acknowledging the need to protect natural resources, including waterways, wildlife, fish, plants, scenic views and recreational areas. Despite timber industry complaints about the process, harvesting on private land has declined only marginally in the past five years and plans are routinely approved -- both signs that economic interests are being met. But the plan process has proven less effective in protecting the environment, as demonstrated in three areas:

- * The process looks at potential damage on a site-by-site basis rather than across entire ecosystems, making it difficult to assess cumulative impacts over time and throughout watersheds.

- * Litigation rather than resolution is often the focus of the participants, leading to a strained decision-making process and lack of consensus.

- * Resources and priorities are devoted to issues of process rather than outcome, with the result that people are more interested in dotting i's and crossing t's than in how effective mitigation measures are.

2009, the 15th anniversary of the hard work of the Little Hoover Commission, should serve as the time to review these findings and belatedly redress failings in the THP process.

There are other THP analyses that, in the interest of time and space, EPFW will reserve until such future discussions take place.

EPFW Comments on the Department's 2007 report on AB 47 Mapping Requirements (14 CCR § 912.9, Board of Forestry Technical Rule Addendum No. 2, Cumulative Impacts Assessment)

The Department's report last year stated:

This rule package amended the Board Technical Rule Addendum No. 2, Cumulative Impacts Assessment, Past and Future Activities to require the inclusion of a map depicting the silvicultural method and category for past, present, and reasonably foreseeable future timber harvesting projects on land owned or controlled by the timberland owner within the planning watershed.

CAL FIRE has not received any substantive comments and presents no comments on this rule.

EPFW does wish to comment on the effectiveness of this rule. The way in which AB 47 has been interpreted and implemented in the THP process has made it minimally useful, which does not appear to have been the legislative intent when passed.

For cumulative impact of past and proposed THPs to be clear to both the public and all agencies (whose job it is to protect the resources of the state), GIS maps need to show all the past, currently proposed, and likely future THPs layered into one map. Instead of this, currently the THPs EPFW reviews include up to seven separate GIS maps to show the past THPs within an area. By spreading the past THPs among numerous maps and not superimposing them all together with the proposed THP, the public's ability to perform meaningful cumulative impacts assessment is obviously shortchanged, and the intent of the mapping is not well served.

Included with these comments is a map, prepared for EPFW by a volunteer, which exhibits a way this can be done.

Fuel Hazard Reduction Emergency and Forest Fire Prevention Exemption (14 CCR §§ 895.1, 1052, 1052.1, 1052.4, 1038(e), and 1038(i))

While EPFW is in agreement with most of the provisions of the Fuel Hazard Reduction Emergency rules, we see a major omission in these rules. Currently rules allow fire-prone landscapes in fire-critical areas to be treated to lessen their fire threat. However, there is no provision to assure that such landscapes will not be placed onto the landscape in the future by management allowed through the FPRs. This oversight in the rules needs to be corrected for the safety and wellbeing of mountain communities and to achieve savings in firefighting costs.

Cumulative Impacts Assessment

While EPFW has numerous comments that could be made on Cumulative Impacts Assessment, due to the short timeframe of notice for this comment letter, most of these will be deferred for future meetings. However, a few key points are worth bringing forward and we will be happy to flesh these out more in the future.

- **Cumulative Assessment categories need to be expanded to include climate change and effect on fire threat from the proposed harvest**

- **Climate change:** Some quotes to use as the springboard for future rules development:

“Large amounts of carbon could be released into the atmosphere during transitions from one forest type to another because the rate at which carbon can be lost during times of high forest mortality is greater than the rate at which it can be gained through growth to maturity.”

IPCC Working Group II. “Summary for Policymakers: Scientific-Technical Analyses of Impacts, Adaptations and Mitigation of Climate Change.”
<http://www.ipcc.ch/pub/sarsum2.htm>

“Some definitions of reforestation include the activity of regeneration after disturbance or harvesting, while disturbance or harvesting are not defined as deforestation. In these circumstances credits could be accounted for the regeneration, without debits for disturbance or harvesting, this would lead to an accounting system where the changes in terrestrial carbon do not reflect the real changes in the atmosphere.”

Robert T. Watson, Chair of the IPCC. “A Report on the Key Findings from the IPCC Special Report on Land-Use, Land-Use Change and Forestry.” 12th Session of SBSTA, Bonn, Germany. June 13, 2000. <http://www.ipcc.ch/press/sp-lulucf.htm>

“There is a widespread and misguided belief that logging or clearing mature forests and replacing them with fast-growing younger trees will benefit the climate by sequestering atmospheric CO₂. While younger trees grow and sequester carbon quickly, the fate of stored carbon when mature forests are logged must also be considered. When a forest is logged, some of its carbon may be stored for years or decades in wood products. But large quantities of CO₂ are also released to the atmosphere - immediately through the disturbance of forest soils, and over time through the decomposition of leaves, branches, and other detritus of timber production. One study found that even when storage of carbon in timber products is considered, the conversion of 5 million hectares of mature forest to plantations in the Pacific Northwest over the last 100 years resulted in a net increase of over 1.5 billion tons of carbon to the atmosphere.”

Union of Concerned Scientists. “Recognizing Forests' Role in Climate Change”
http://www.ucsusa.org/global_warming/solutions/recognizing-forests-role-in-climate-change.html

“Fluxes of CO₂, water vapor, and sensible heat were measured by the eddy covariance method above a young ponderosa pine plantation in the Sierra Nevada Mountains (CA) over two growing seasons.... We conclude that the net C[arbon] balance of Mediterranean-climate pine ecosystems is sensitive to extreme events under low soil moisture conditions and could be altered by slight changes in the climate or hydrologic regime.”

A.H. Goldstein, N.E. Hultman, J.M. Fracheboud et al. “Effects of climate variability on the carbon dioxide, water, and sensible heat fluxes above a ponderosa pine plantation in the Sierra Nevada (CA).” <http://nature.berkeley.edu/~ahg/pubs/Effects.pdf>

“Research by CarboEurope, a European program that has pioneered research into the carbon budget, reveals that soils in forests release more carbon than their trees will absorb in the first 10 years. Forest soils and the organic matter within them generally contain three to four times as much carbon as does vegetation on the ground. CarboEurope’s researchers contend that, when ground is cleared for forest planting, rotting organic matter in the soil

releases a surge of carbon dioxide into the air that will exceed the amount of carbon dioxide absorbed by growing trees for at least the first 10 years of forest growth; only later will the uptake of carbon by the trees begin to offset the release of carbon dioxide from the soil.”

Energy Information Administration: “Emissions of Greenhouse Gases in the United States 2003: Land Use Issues.” <http://www.eia.doe.gov/oiaf/1605/gg04rpt/land.html>

Timber harvest, clear cutting in particular, removes more carbon from the forest than any other disturbance (including fire). The result is that harvesting forests generally reduces carbon stores and results in a net release of carbon to the atmosphere.”

Mark Harmon, PhD. Professor and Richardson Chair in Forest Science, Oregon State University College of Forestry. Comment letter to the California Air Resources Board. October 2007. http://www.arb.ca.gov/lispub/comm/bccomdisp.php?listname=forestghg07&comment_num=22&virt_num=22

o **Fire threat: Some quotes to use as the springboard for future rules development:**

“Extensive harvest in the late 1800s and early 1900s resulted in an overall young forest. There is concern that these changes have contributed to an increased likelihood of severe fire. Younger forests are more susceptible to mortality from fires. This is due to the lower height and size of small trees. Their bark is thinner, and their crowns are lower to the ground, making them more susceptible to lethal heating by flames of a low height. With much of the Basin in a younger state, a large proportion of it could burn severely, with high rates of mortality. These two human activities— creating younger forests by harvesting older trees and suppressing fires that otherwise would have burned off accumulated fuel—have increased the likelihood of severe fire in the Basin.”

http://www.bof.fire.ca.gov/pdfs/OALEmergencyfinal%206_20_05withOALedits%20.pdf

State Board of Forestry and Fire Protection. “Findings Pursuant to Government Code Section 11346.1(b) in Support of Adoption of Emergency Rules to Implement Lake Tahoe Region Exemption Emergency Rule, 2005.” Final Version with OAL Edits 6_20_05. Notice Date: June 13, 2005. p. 8

"Since European settlement of the United States, fire has been altered substantially by anthropogenic factors acting as root causes of the current fire crisis, including... increases in fuel accumulation through active creation of dense tree plantations and a buildup of shade-tolerant conifers from fire suppression (Agee 1993; Arno & Allison-Bunnell 2002; Odion et al 2004); ...[and] losses of fire-resilient properties at the stand and landscape levels through the removal of large trees and "legacy" stand components and homogenization of fuels across large landscapes (Lindenmayer & Franklin 2002; Brown et al 2004); Such fundamental changes in fire behavior may be amplified by a predicted incremental lengthening of the fire season and increase in fire intensity in the western United States, exacerbated by global warming (McKenzie et al 2004)."

“Beyond Smoke and Mirrors: A Synthesis of Fire Policy and Science.” Dominick A. Dellasalla, Jack E. Williams, Cindy Deacon Williams, and Jerry F. Franklin. *Conservation Biology*. Volume 18, No. 4, August 2004. p. 977

From “Turning Plantations into Healthy, Fire Resistant Forests: Outlook for the Granite Burn:”

Both fire and competitive stress threaten the development of the plantations into mature forest ecosystems....In some areas, the over story density of pole sized trees compounds the

hazard by providing a uniform high-density canopy fuel complex that could not only carry crown fire, but would also trap convective heat and increase crown scorch and mortality.... Silviculturalists from both the federal and private side are concerned about how to handle well-growing plantations of this age. Mike Landram, R5 Regional Silviculturist, defined three pressing problems driving a need for action:

- Where the pine plantations have taken, independent of fuel concerns, the stands are overstocked.
- Competition and beetles, in addition to the creation of continuous crown fuels, constitute considerable threats to the development of these plantations. High tree density tends to increase tree damage through increased crown scorch resulting from limiting the escape of the convective heat rising from the surface fire.
- The USDA Forest Service does not have a sufficient Timber Stand Improvement budget to do much about it. Landrum estimates that at least 300,000 acres within Region 5 need treatment. Many of the private plantations are in a similar situation, and contribute to the landscape level problem.

Sapsis, Dave (Fuel and Fire Behavior Specialist) and Brandow, Clay (Watershed Specialist). "Turning Plantations into Healthy, Fire Resistant Forests: Outlook for the Granite Burn." Fire and Resource Assessment Program; California Department of Forestry and Fire Protection. October 9, 1997.

http://frap.cdf.ca.gov/projects/granite_burn/gb.html

- **Hardwood protection needs to be addressed in a meaningful way in the Sierra Nevada plantation forestry currently being conducted**

The Problem: Current oak protection is inadequate and needs to be strengthened. THPs provide little protection for oaks; THP language does not commit to protection of oaks but rather says that the intent will be to save some.

In THPs reviewed by EPFW, we find most oaks cut down with those that are left generally damaged and comprised of poor specimens. Larger oaks that are also acknowledged in the FPRs as critical nesting and cavity habitat are generally destroyed and burned.

Inspection of clearcut areas shows that oaks are not being retained with a diversity of stand structural and seral conditions or meeting the requirements in the Joint Policy on Hardwoods referenced in the FPRs. Retained oaks are also found that have subsequently died after herbicide applications in plantations.

The Solution: All Oaks over 12 inches diameter left undisturbed and intact. A definition for Heritage Oaks must be created and a buffer zone must be maintained around them to assure no damage occurs.

All precatory "should" language in hardwood rules must be replaced by "shall" language to assure that the intent of these rules are achieved.



These two photos of recent SPI evenage cut units in Tuolumne County are typical of the way that mature oaks are cut, intentionally removed, and then stacked on landings to rid the site of the oaks. The ecological values of the large, mature oaks are high for wildlife, and are lost because SPI does not abide by the Forest Practice Rules target to retain oak at 400 sq ft per 40 acres.

Thomas S. Hofstra, PhD
CSERC Staff Ecologist

John Buckley
CSERC Executive Director



California State Wildlife Action Plan not being adhered to

The Problem: The California State Wildlife Action Plan, mandated by federal law, was approved last year and contains many recommendations that have not been addressed by CAL FIRE in respect to THPs and the protection of wildlife. Among the recommendations:

State and federal forest managers and state and federal wildlife managers should cooperatively develop timber-harvest cumulative-impact standards for each watershed or group of adjacent watersheds of the Sierra, Cascades, and Modoc regions to protect aquatic ecosystems and conserve wildlife habitat.

Using the best-available science, forest and wildlife managers should determine the extent, pattern, and pace for timber-harvest in a forest watershed or cluster of watersheds.

Ecologically based standards or limits should be set for timber-harvest. State and federal forest managers should coordinate to ensure that cumulative effects of timber-harvest plans for public and private lands meet the standards for each watershed. (p 328).

EPFW is under the understanding that CAL FIRE was a collaborator in this plan along with the US Forest Service, California Department of Fish and Game, Bureau of Land Management, State Water Resources Control Board, and others. Compliance with this jointly-developed plan is of utmost importance.

The plan can be accessed at <http://www.dfg.ca.gov/wildlife/WAP/>

The Solution: Develop and implement a timeline of activities to achieve the recommendations of this plan. Include the public in the process in a meaningful way.

Inadequate opportunity for public participation in the THP Process

- **Inadequate access to file documents**

The Problem: Despite the passage of SB774 and the Governor's clear support for the public and other agencies to have access to THPs, there has been no change in CAL FIRE's method of providing THP or other file documents since June 2004 when the Governor wrote:

SB 744

GOVERNOR'S VETO MESSAGE:

"I am returning Senate Bill 744 (Kuehl) without my signature.

"This bill is unnecessary because the California Department of Forestry and Fire Protection (CDF) is already working to improve the publics [sic] access to timber harvest plans (THPs) through a pilot internet access program. Because I support improving the publics [sic] access to information, CDF initiated this program. Accomplishing this through regulations assures that it will be implemented in an efficient and effective manner."

As well, EPFW as a member of the public has experienced great difficulty getting electronic copies of documents received by the Department in electronic format. As well, we have no real access to files since they are kept in Fresno which is an eight hour round trip for us rather than having them being made available at our local CAL FIRE office or online.

The Solution: Expand the program of online THP and other file documents currently being conducted through the Santa Rosa office to all Districts. At the very least, make full THP files available at local offices as requested or needed.

- **Access denied to participation in review team meetings**

The Problem: The current THP review process is not being implemented as intended, with the consequence that there is no public opportunity to observe “review team” activities on THPs. CAL FIRE and the industry continue to indicate to the public that THP process is “open” for public comment and observation. However, in fact there is little transparency of the process regarding “review team discussions” and there is no opportunity for the public to have a discussion with the “review team”

EPFW has been told by the Fresno office that region review team meetings rarely if ever actually even take place and that there is no physical “review team meeting” nor are there “team conference calls.”

EPFW has asked to attend various THP review team meetings as allowed under the FPRs (1037.5):

“Review team meetings shall be open to the RPF, supervised designee, the landowner, and the timber owner and, insofar as possible without disrupting the work of the team, to the public. The chairperson may impose limitations on the scope of any public participation at the meetings. All interested persons will normally allowed to attend team meetings. On occasions when space or other considerations will require some limitation on attendance the review team chairperson shall endeavor to allow for attendance of at least one representative for each of the various agencies, organizations or special interest groups.”

However, because we have been informed that these review team meetings in fact do not “occur,” we have been told we cannot attend.

The Solution: Public special interest groups or other interested parties who ask to be included in review team meetings must be informed of all physical meetings, electronic meetings, or conference call meetings and must be afforded an opportunity to attend. Notice of the meetings shall be made prior to the meeting to the interested parties.

As well, various county rules provide alternative language, which could be adapted to provide for public meetings on THPS.

Additional Issues:

Additional issues of concern to EPFW will simply be listed here without amplification. We look forward to providing you detail on our thought at a later date on these and other matters of concern to the public. These issues include:

- Changes in the process for adopting county rules
- Treatment and identification of late seral elements
- Public concern over slash treatment in the Sierra Nevada
- Chronic under-participation of other agencies in the THP review process
- Inadequacy of the alternatives discussion in THPs
- Inadequacy of evidence cited in THPs and failure of CAL FIRE to require adequate evidence or to provide it themselves
- Surveys permitted to occur after THP approval with no public review of such surveys
- Inadequacies in survey requirements
- Lack of any thresholds of significance for significant impacts, hindering meaningful public and agency review
- Inadequate impact assessment areas considered in review process
- Inadequate assessment for noise, visual resources, peak flow, vehicular traffic, multistory canopy, recreational resources, economic effects on the county, and other significant impacts in THPs

EPFW appreciates the opportunity to submit these comments on behalf of the public and the public trust resources of the State of California. We ask that the Board of Forestry accept these in the spirit of improvement in which they have been offered. We look forward to robust and substantive further exploration of these crucial issues.

Respectfully submitted,



Addie Jacobson, Board Member



Susan Robinson, Board Member

Closer view of one of the plantation units in the earlier Shingletown photo:



