

FIGHT BACK!

2009 Updated Version 3

Forest Defenders Handbook (A Citizen's Guide to Timber Harvest Regulation)

By Jodi Frediani



Original version by Elizabeth Herbert



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Forward

At long last, the original 1994 “Don’t Wait for the Chainsaws...Fight Back!” booklet has been completely updated! I commend author Jodi Frediani for enhancing the content and format in this great new 2009 version, while retaining the spirit and organization of the original, which literally flew off the shelves when it was first released. My intent with the original was to create a useful guide for concerned citizens to exercise their legal rights to be heard in the complex and unfriendly state government process of reviewing commercial logging plans. The 2009 version, aptly titled “Fight Back! Forest Defenders Handbook, A Citizen’s Guide to Timber Harvest Regulation” continues in that vein. It provides updated contact information, great new photographs, and a real-life case study that clearly demonstrates the amazing power of an informed and organized neighborhood group.

Kudos to Jodi Frediani, who helped research the original version and who has been reviewing timber harvest plans and writing about forestry issues for 25 years. Her new 2009 Version 3 “Fight Back! Forest Defenders Handbook”, easily accessible on-line, will undoubtedly assist folks throughout California in bringing about better forestry.

—Elizabeth (Betsy) Herbert, Ph.D.

Introduction

This guide is intended to help you, as a concerned citizen and resident of Santa Cruz, Santa Clara or San Mateo County, participate in the review of Timber Harvest Plans and other logging activities. This guide shows you how and when to get involved in the process so that you can have a say in logging operations that affect you. Throughout this guide, you see references to the Forest Practice Rules found in the California Code of Regulations, Title 14 Natural Resources, Division 1.5, Department of Forestry. Each reference is followed by a section number, for example (CCR14 913.8). You’ll need a copy of the Forest Practice Rules in order to find these references. You can find copies at:

Felton CAL FIRE Resource Office (\$5)
6059 Highway 9, Felton, CA 95018
P.O. Drawer F-2, Felton, CA 95018
PH: 831-335-6740

Forest Practice Rules:

On-line:

http://www.fire.ca.gov/resource_mgt/resource_mgt_forestpractice.php (click on Forest Practice Act)

Or directly:

http://www.fire.ca.gov/resource_mgt/downloads/2009_Forest_Practice_Rules_and_Act.pdf

The rules change annually, so you will need to purchase an updated copy each year, or check the web for the latest version at:

http://www.fire.ca.gov/resource_mgt/resource_mgt_forestpractice.php.

Forest Practice Act:

The Z-Berg Nejedly Forest Practice Act is found nestled within the Rules (PRC 4511)

http://www.fire.ca.gov/resource_mgt/resource_mgt_forestpractice.php (click on Forest Practice Act)

Or directly:

http://www.fire.ca.gov/resource_mgt/downloads/2009_Forest_Practice_Rules_and_Act.pdf

1 How is Logging Regulated?

In California, logging on both private and state land is regulated by the state. The California Board of Forestry, a nine-member board appointed by the governor, establishes the Forest Practice Rules that apply to logging. It is the responsibility of the California Department of Forestry and Fire Protection (CAL FIRE) to enforce these rules. Rules vary depending on the three forest districts in the state. Santa Cruz, Santa Clara and San Mateo Counties are in the Coast Forest District (CCR 14 906, 907). Within the Coast Forest District, the following counties are grouped into the Southern Subdistrict: Santa Cruz, Santa Clara, San Mateo, San Francisco, and Marin. The Southern Subdistrict is subject to special regulations (CCR 14 911, 924). Special county regulations also apply to Santa Cruz County forest practices (CCR 14 926), Santa Clara County forest practices (CCR 14 925) and San Mateo County forest practices (CCR 14 928). Finally, Special Treatment Areas defined in each county, such as along Highway 1 and bordering state parks, are subject to special regulations (CCR 14 921).

In addition to state regulation by CAL FIRE, Regional Water Quality Control Boards are responsible for issuing Waste Discharge Requirements (WDRs) or Waivers for timber harvest operations. This is a separate process, but the approved timber harvest permit is the California Environmental Quality Act (CEQA) document on which the WDRs or Waivers are based. With recent wildfires in California, additional Forest Practice Rules have been revised and/or created to allow for logging and fuel hazard reduction for fire prevention purposes. Three-acre exemptions and conversions are subject to the provisions of county ordinances.

What is a Timber Harvest Plan?

Under the California Environmental Quality Act (CEQA), a Timber Harvest Plan is supposed to be the functional equivalent of an environmental impact report (EIR) (CCR 14 896). The purpose of a Timber Harvest Plan (THP) is to describe the logging operation to the California Department of Forestry (CAL FIRE), so that CAL FIRE can determine if the operations conform to the Forest Practice Rules (CCR 14 896, 897).



A THP is also used to guide the licensed timber operator (LTO), who actually cuts and removes the trees. A THP is prepared by a registered professional forester (RPF) licensed by the State of California who is either employed by a timber company or who is a private contractor. The RPF can appoint supervised designees to prepare the plan, but the RPF must sign it. The LTO may be hired by the RPF or by the landowner/timber owner.

Each THP must be reviewed and approved before any logging occurs. The review team shall include participants from other regulatory agencies. As a public citizen, you can participate in the review process if you are informed and know how to do it.

Are there other types of logging permits?

Yes. **Nonindustrial Timber Management Plans** (14 CCR 1090, PRC 4593) NTMPs, once approved, are good forever and no future public input is allowed, nor can future harvest be appealed. They apply to non-industrial (do not own a mill) timberland owners who own less than 2500 acres of timberland. However, CAL FIRE does not require any 'proof' of qualifying acreage.

Non-industrial Timber Management Plans (NTMPs) are similar to THPs, except they contain additional management directives. Operations may begin under an approved NTMP at any time with a simple "Notice of Operations" submitted to CAL FIRE. The public will not be notified.

Exemptions. There are also logging permits that exempt the landowner from having to file a THP. These include the following issued by CAL FIRE:

- Dead, dying, and diseased tree cutting (14 CCR 1038 b)
- Fuelwood operations (14 CCR 926.8, 1028 b)
- Fuelbreak clearance (14 CCR 1038 c)
- Emergency Fire Exemption (14 CCR 1052)
- Christmas tree cutting (14 CCR 1038 a)

Dead, Dying and Diseased Tree Cutting. The dead, dying and diseased tree-cutting exemption (14 CCR 1038 b) allows for harvesting small or large volumes of timber and/or fuelwood simply by filing an application to do so with CAL FIRE. Because there is no acreage limit, this exemption makes it easy for corporate timber owners with large tracts of timberland to remove millions of board feet of timber (up to 10% of the standing inventory per year) without a timber harvest plan. Some RPFs have taken the full 10%, claiming that all trees are dying or diseased. The Felton CAL FIRE office encourages timberland owners to use this exemption after a THP to commercialize 'wind throw' along roads, or those trees that due to the previous harvest are susceptible to wind knock-down. Some RPFs use these exemptions to do 'clean-up' of hardwood harvesting after operations under the THP or NTMP have been completed. Certain restrictions apply such as no heavy equipment operations on slopes greater than 50% or on known slides or unstable areas. No new road construction or reconstruction is allowed. However, there is little-to-no oversight of these operations, and no required pre-operational site inspections.

Fuelwood Operations. (14 CCR 926.8 Santa Cruz, 1038) This permit applies only to commercial hardwoods, such as oak and madrone. In Santa Cruz County the LTO must legally comply with the requirements listed under 14 CCR 926.8, to ensure "minimum impact." This exemption is often used after a THP, since it allows for harvesting more hardwoods than might have been approved under the THP. These exemptions are good for one year.

Emergency Fire Exemptions (14 CCR 1052) These exemptions have rarely been utilized in the Southern Subdistrict, as major wildland fires have been rare. However, in the last two years multiple wildland fires encompassing over 12,000 acres have led to the use of these Exemptions. Ordinarily these exclude Watercourse and Lake Protection Zones. As of 2010, these approved Emergency Exemptions will be good for one year.

Inspections. According to the Felton CAL FIRE office, inspections of exemption operations are done 1) on a complaint basis, 2) through random sampling and, 3) when exemptions look suspicious on paper or when driving by.

Approved Exemption applications may be reviewed in the Felton CAL FIRE office.

2 The Timber Harvest Plan Review Process

The Timber Harvest Plan (THP¹) review process is complicated. You must move quickly to find out whom to contact, and when, so that you can participate in the process. From the date of plan filing, you may only have 35 days to act before the decision to approve or deny the plan is made. Extensions of the timeline can be made with the submitter's approval. In recent years, due to budget and staffing cuts, fire and other considerations, the timeline has regularly been extended. However, too often citizens attempt to participate in the review process when it is too late. Don't wait until your voice no longer counts!

The THP review process consists of ten steps (or eleven, if litigation is pursued):

1. Request for Information on Domestic Water Supplies and Notice of Intent
2. Plan Submittal/Notice of Intent
3. First Review
4. Acceptance for Filing
5. Pre-harvest Inspection(s)
6. Public Hearing
7. Second Review Team Meeting(s)
8. Period of Public Comment
9. Decision
10. Appeal
11. Litigation

There is an additional process that timberland owners must comply with under rules of the Regional Water Quality Control Boards (Water Boards) once a THP is approved and prior to commencement of logging operations. A timber waiver must be obtained (required by Region 3 for all of Santa Cruz County, parts of Santa Clara and San Mateo Counties; not always required by Region 2 for portions of San Mateo and Santa Clara counties). Usually, these applications are



¹ To simplify, we will use the acronym THP to include timber harvest plans and non-industrial timber management plans (NTMPs).

processed by staff. However, when a Region 3 plan falls into a Tier IV category as determined by the Plan Submitter, the waiver must be approved by the Water Board at a public hearing. The tier categories are determined by criteria including cumulative impacts, length of roads and skid trails, acreage, watercourse density, winter operations, etc. Information on the Central Coast Water Board timber harvest program can be found at: http://www.waterboards.ca.gov/centralcoast/water_issues/programs/timber_harvest/index.shtml

The rest of this section explains what goes on during each of the above steps in the THP review process, and what you need to do to participate. Work closely with your County Supervisor if you have special concerns, and/or with the staff person responsible for timber harvest review in your county.

1. Request for Information on Domestic Water Supplies

(14 CCR 1032.10) The plan submitter provides written notification to all landowners within 1,000 feet downstream of the THP boundary whose ownership adjoins or includes a Class I, II, or IV watercourse which receives surface drainage from the proposed timber operations. The notice must also be published in a local newspaper. Often this notice is combined with the Notice of Intent. (See 2b below)

What to do:

- a. You must reply within 10 days of the postmark date, to be sure that mitigations to protect your water supply (spring, stream intake) will be considered in the plan review.
- b. You may request CAL FIRE to require a post-harvest evaluation of the effectiveness of the mitigations and practices designed to protect the domestic water supply as a condition of plan approval. (14 CCR 916.10)
- c. You may wish to contact your local Water Board (Central Coast or Oakland/San Francisco) to see if they will support your concerns in their review of the plan.

2(a). Plan Submittal

The landowner, licensed timber operator (LTO), or registered professional forester (RPF) submits the THP to the Santa Rosa Regional Office.



CAL FIRE posts all THP and NTMP submissions on its website at:
www.fire.ca.gov/resource_mgt/resource_mgt_forestpractice_thpstatus.php

While this is convenient to access from home or office, it requires vigilance. Previously CAL FIRE sent out mailings noticing the submittal of new THPs and NTMPs. This service has once again been made available. You can request to be put on their mailing list by contacting Leslie Markham in the Santa Rosa CAL FIRE office: leslie.markham@fire.ca.gov

In addition to the easily accessible list of all plans submitted, individual plans can be tracked on CAL FIRE's ftp site:
ftp://thp.fire.ca.gov/THPLibrary/North_Coast_Region/

While this site is still considered a pilot project, it was started for the North Coast Region and has now been expanded to include the Cascade Region and the Sierra Southern Region. Plans for the southern Sub-district will be found under the North Coast Region section, listed by year under NTMPs or THPs. Each plan has a suffix that pertains to the county in which the harvest is to occur. (SCL=Santa Clara, SMO=San Mateo, SCL=Santa Cruz) You can check the site from time to time and scan for any new plans in your county. CAL FIRE posts all plans and all agency documents and RPF responses pertaining to each plan. However, comments submitted by the public will not be posted. Finding the url for this site has not always been easy, so bookmark it right away. If you lose it, you can either reference this guide, or you will need to phone the CAL FIRE office if you are unable to find it by browsing through CAL FIRE's website www.fire.ca.gov. (Go to: resource management, forest practice—look for ftp link to THP Library)

What to do:

- a. Request to be put on CAL FIRE's THP submission notification list (leslie.markham@fire.ca.gov)
- b. Check CAL FIRE's ftp site often (ftp://thp.fire.ca.gov/THPLibrary/North_Coast_Region/), if you have received a Notice of Intent to Harvest Timber and/or Domestic Water Supply Inquiry in the mail. Make sure to check under THPs and/or NTMPs for the current year.

2(b). Notice of Intent to Harvest Timber

(14 CCR 925.2 Santa Clara County, 926.3 Santa Cruz, 1032.7, 1032.8) Noticing requirements vary between counties. Within two working days of submitting the THP, the Department mails a Notice of Intent to all owners of property within 300 feet of the boundary of the property where the THP is proposed in San Mateo. (14 CCR 1032.7 f applies). The plan submitter shall mail copies of the Notice of Intent prior to plan submission. (Santa Clara, Santa Cruz) Those with property fronting or bordering that portion of the haul route lying between the plan area and the nearest public road in Santa Clara and Santa Cruz Counties shall also receive a mailed Notice. (14 CCR 925.2, 926.3) The Notice of Intent shall also be posted at a conspicuous location on the private road (CCR 926.3 c). If helicopter yarding is proposed in Santa Cruz, the notice must be sent to property owners with property located within three thousand feet of any location in the proposed harvest area in which logs are to be picked up, carried, or landed, or helicopters are to be in use for servicing. Tenants will also be notified if the landowner has a mailing address outside of the noticing area. (14 CCR 926.3 b) In Santa Cruz the notice must also be mailed to the appropriate County Supervisor, the local school district, and any local publicly owned water district, which maintains any water production or water storage facility downstream from any location within which any timber operation is proposed.

In Santa Cruz County the Notice of Intent is supposed to be published in a local newspaper in the legal notices section simultaneously with plan submission (14 CCR 926.3 d). However, CAL FIRE has not always enforced this provision and to save money, RPFs generally publish a single notice combining the Domestic Water Supply Inquiry with the Notice of Intent. Unfortunately, there is sometimes a significant time lag between this published notice and the actual plan submission. Vigilance is always the order of the day. To be sure to know what is going on in your neighborhood, weekly checking of CAL FIRE's website will keep you in the know. http://www.fire.ca.gov/resource_mgt/resource_mgt_forestpractice_thpstatus.php

The Notice of Intent provides the following information about a specific THP:

- The name of the timberland owner(s)
- The name of the plan submitter

- The name of the registered professional forester preparing the plan
- The estimated date of plan approval (45 days from the date the plan was submitted to CAL FIRE. This is the minimum time for review. Most plans take longer.)
- The distance from and the name of the nearest perennial stream
- The location of the plan area by county, section, township and range, with approximate distance from the nearest landmark
- A map of the general area, marking the boundaries of the area to be logged
- The number of acres to be logged
- The method of logging to be used (in Santa Cruz, San Mateo and Santa Clara counties, this is always “selection”, but 913.8 a, b, and/or c should be specified)
- A statement that questions and comments concerning this THP should be directed to the CAL FIRE Regional Office (Santa Rosa), to be included in the Official Response
- A statement that a copy of the plan may be obtained from the regional office of CAL FIRE upon payment of printing charges

Note: Renters do not usually receive the Notice of Intent: only landowners do.

What to do:

- a. Ask your County Supervisor to request a public hearing be held for the plan. Such request must be made within 1 day after the pre-harvest inspection. (14 CCR 1115) (See Item 4 below for more info.) If the plan is contentious and you are not the only one with concerns, have as many people as possible call your County Supervisor to request an evening hearing in the Board of Supervisors Chambers, so that working people can attend. If you don't, the hearing will probably be scheduled for 9:00am in the Felton CAL FIRE office.
- b. Get a copy of the Forest Practice Rules (Title 14 California Code of Regulations), from the Felton or Santa Rosa office. (See addresses at the end of this guide.) The Rules may be accessed online at: http://www.fire.ca.gov/resource_mgt/downloads/2009_Forest_Practice_Rules_and_Act.pdf

3. Acceptance for Filing

(14 CCR 1037.1, 924.2) Within 10 days of submittal, the regional CAL FIRE office reviews the submitted THP, and is supposed to accept it for filing only if it conforms to the Forest Practice regulations. (Actually, THPs are often accepted for filing when they do not conform to the Forest Practice regulations. How you can address these oversights is explained later.) A list of issues needing clarification or correction is always prepared by the CAL FIRE person conducting First Review. This document will be posted on the ftp site under the plan number. It is important to read this report to see what red flags CAL FIRE (and sometimes other review team members) has identified.

When a plan is accepted or rejected for filing, this information is posted on the CAL FIRE website:

http://www.fire.ca.gov/resource_mgt/resource_mgt_forestpractice_thpstatus.php

More extensive information can be found including the plan, listed by Section. Correspondence between CAL FIRE, the reviewing agencies, and the RPF will also get posted on the ftp site:

ftp://thp.fire.ca.gov/THPLibrary/North_Coast_Region/

When plans are not accepted, they are often resubmitted in a week or so. Watch the Notice of Submissions for resubmittals. Also watch CAL FIRE's ftp site where the plan will be noted under the same THP number and listed as 'resubmitted'.

CAL FIRE must notify the public if a hearing will be held. Notice of Public Hearing is printed in the legal section of the local newspaper (14 CCR 1115.2, PRC 4582.6(d)). The notice shall, at a minimum, also be mailed to the county requesting the hearing, the Review Team members and all property owners within 300' of the plan boundary (14 CCR 1032.7(e)). This

notice must include the time and location of the hearing and shall be given at least five days before the date that the hearing will be held. Hearings will only be held if the County has made a request.

What to do:

- a. Download the plan from the ftp site and start reading. (Alternatively, you can purchase a copy from the Santa Rosa or Felton CAL FIRE offices. You will be charged by the page. Refer to the THP plan number when requesting a copy. Call ahead to find out how much you will be charged and write a check for that amount. Santa Rosa requires receipt of your check before they will mail the plan.)
- b. Review the plan with your neighbors and write down all the issues that concern you. (See chapter 3, "What are the issues?")
- c. Get ready for the Pre-Harvest Inspection. Contact the appropriate state or county agencies to make sure that they will attend the pre-harvest inspection. If the county does not attend, no appeal can be filed!

4. Pre-harvest Inspection

The Pre-harvest Inspection (PHI) is an on-site inspection by a review team of the land proposed for logging (14 CCR 1037.5). The PHI is required by the rules to occur within 10 days of the date that the plan was accepted for filing. However, in reality at this writing, the PHI usually occurs sometime within 10-30 days of the filing date, due to staffing shortages. A CAL FIRE forester and the registered professional forester (RPF) who prepared the plan must attend. Personnel from the following agencies may also attend, depending on the resources at risk: the California Department of Fish and Game, the California Geological Survey, the Regional Waterboard, local water purveyors, public water agencies (14 CCR 926.6)



and the County Planning Department. Attendees may ask the RPF questions about any of the resources at risk. The usual concerns are: water supplies, watercourses, wet areas, roads, slope factors, timber, endangered or threatened species (i.e. coho salmon, steelhead trout, California red-legged frogs, marbled murrelets). You can attend the PHI if you have the permission of the THP landowner, though this is usually unlikely.

In Santa Cruz County under certain circumstances (i.e. a multi-owner private road will be used for hauling or the harvest is adjacent to a residential neighborhood), residents of the adjacent neighborhood or owners of the private road(s) may designate one person as their representative to attend the pre-harvest inspection and all Review Team field inspections and meetings. (14 CCR 926.7) However, the representative may only enter the harvest property with consent of the landowner. Multiple PHIs may be held for some plans.

What to do:

- a. If your neighborhood or road association (Santa Cruz County only) wishes to designate a representative to attend the pre-harvest inspections, you must provide CAL FIRE and the plan submitter with a written notice of the designated representative's name, address and telephone number. (14 CCR 926.7)
- b. Check the CAL FIRE ftp site for postings of the Pre-harvest Inspection Reports: The issues raised in the PHI are described and addressed in these reports. Each agency usually prepares a PHI report. While the PHI reports are typically posted prior to the Second Review Team, they are not always available prior to the public hearing. If they have not been posted, call the agency representatives and ask them what their concerns are. Ask CAL FIRE for copies of the reports to be made available before the public hearing. Ask your county to ask CAL FIRE to make sure the PHI reports are available prior to the public hearing. It is very difficult to testify orally at the hearing without knowing what concerns and proposed mitigations the various agencies are calling for. However, you can always submit comments in writing until the Close of Public Comment.

5. Public Hearing

This is your chance to voice your concerns about the THP to CAL FIRE. Take advantage of it! It is not a question and answer session, and there is no debate. Sometimes the RPF makes a brief presentation about the plan, but often there is very little information presented at the hearing. Make sure you have read all pertinent documents in advance, to be most effective with your comments. CAL FIRE must address in writing, at the Close of Public Comment (PRC 4582.6(d)) every significant environmental concern that you raise. Ask them to explain inconsistencies in the plan, oversights, and possible violations of the Forest Practice Rules. Also bring up any potential threats to health and safety, and possible environmental impacts. Ask how they plan to address these issues. They will not address philosophical matters; for example, the ethics of cutting old-growth forests, so it is best not to waste your three – five minutes with this type of concern (unless you have good press coverage and you are an excellent speaker.) If you anticipate having a large crowd present, invite the media to attend. (Folks in Los Gatos rallied 500 members of the public to attend a hearing on a 1000 acre NTMP. This makes a clear statement, although the informed presentations of the public were equally important. These folks held a press conference in front of the venue prior to the hearing to ensure media coverage of the hearing. [See sample case study, Section 8.]

What to do:

- a. Be prepared. Have everything you want to say written down clearly and read the statement if you are not comfortable with public speaking. Legitimate issues include potential threats to the environment, public health and safety. (See chapter 3, "What are the issues?")
- b. Limit your statement to five minutes per person (CAL FIRE may limit speakers to two or three minutes if the crowd is large), and plan ahead with your neighbors so that each and every issue is addressed. Don't be concerned about your public speaking ability. Usually visual aides are not



allowed (slides, power point presentations, etc.), but if you have hardcopy maps or photos these may be submitted at the hearing or in a follow-up letter.

- c. Make sure you bring a tape or video recorder and tape the entire public hearing. Although CAL FIRE is required to electronically record the hearing, you may find it difficult to obtain a copy of the tape.

Note: You will receive a copy of the Official Response (OR) to issues raised at the public hearing only if you purchased a copy of the plan or specifically asked for a copy. (14 CCR 1037.4; 1037.8)

Note: At the end of the public hearing, there may be a question and answer period, but these discussions are off the record. State your real concerns during the actual hearing. If you participate in these unofficial dialogs, be sure to tape them. If you bring up significant issues that were not addressed during the hearing itself, be prepared to submit these concerns in writing, regardless of what response you may have gotten from the RPF or CAL FIRE.

6. Review Team Meeting

(14 CCR 1037.5) This meeting is supposed to occur after everyone on the review team has read the various agency PHI Reports and the RPF's written response to them. These reports should have all been posted on the ftp site. You may attend this meeting to educate yourself about the issues raised and/or addressed by the THP review team. Listen to how the RPF responds to the environmental issues raised. Do the mitigations offered actually resolve the problems, or do they skirt the issues, or take the easy way out? Is the RPF argumentative or agreeable to the agency recommendations? If the RPF refuses to incorporate some proposed mitigations and the agencies back down on their requests, do you agree? Go to listen to the discussion, take notes, and bring a tape recorder. (You may be allowed to ask questions, but your main purpose is to listen and gather information. CAL FIRE is not required to respond to issues you bring up at the review team meeting, but sometimes may courteously do so.) Sometimes copies of the PHI reports are made available at the beginning of the meeting to the agency review team members, particularly if they were not available in advance. Ask for a copy, but be prepared to pay for it. This meeting (called Second Review) takes place in the Felton CAL FIRE office; sometimes it is conducted as a conference call.

Non-concurrences: Sometimes the County or DFG review team members are unhappy with the RPF's (and CAL FIRE's) response to their recommendations. If a satisfactory solution is not found, the agency which does not concur with the Review Team Chairperson's recommendation has five days from the review team meeting to file a non-concurrence. (14 CCR 1037.5e) Usually, CAL FIRE will direct the RPF to try to work out the problem with the non-concurring agency, but some plans get approved in spite of an unresolved non-concurrence.

If your County plans to appeal, it is best if they submit a non-concurrence outlining their issues of concern.

What to do:

Call CAL FIRE to find out the date of the review team meeting. Depending on what your concerns are, contact the appropriate state or county agency to make sure that they will attend the review team meeting to address your concerns. If the county does not attend, no appeal can be filed! The review team meeting is held in the Felton CAL FIRE office. The public is allowed to attend, though CAL FIRE can limit public participation and the number of public attendees (CCR 1035.7d).

- a. Contact CAL FIRE to let them know you plan to attend.
- b. Attend the review team meeting; listen and take notes.
- c. Bring a tape recorder to record the meeting.
- d. Obtain copies of the reports in advance, if available, or at the meeting.

7. Period of Public Comment

Even though the local CAL FIRE recommendation for approval or denial is made in writing shortly after the Review Team (RT) Meeting, you can still present evidence, rebuttals, and petitions regarding your concerns directly to the Santa Rosa office until the Close of Public Comment date. The date of the close of public comment is 45 days after the office receives the plan, or ten days after the second Review Team meeting, or if the RPF needs to submit additional change pages after the RT meeting, then ten days from receipt by CAL FIRE of those changes. (See Section 5 for addresses, email addresses and fax numbers.) CAL FIRE is required to extend public comment by 30 days when substantial new information is received. (Per CEQA, 14 CCR 15088.5, 21092.1, PRC 4582.7, 14 CCR 898.1(d), 1037.4) Legally, you can continue to submit comments until the plan is approved, and while CAL FIRE must consider the issues you raise, they are not required to respond to any comments submitted after the Close of Public Comment.

What to do:

- a. Call CAL FIRE to confirm the date of Close of Public Comment.
- b. Send letters and/or faxes to the Santa Rosa regional office before the close date, or faxed no later than 5:00pm on the close date. (Don't wait till the very last minute, as the fax machine may be busy.) Emailed comments are perfectly acceptable, but you may want to follow up with a hard copy.
- c. Send copies of your comments to the appropriate review team members, your county Supervisor, and possibly your local Assemblyperson and state Senator, if you have made your opposition high profile. Some folks have submitted their comments to the Director of CAL FIRE and the Governor as well. You may want to contact the media.

8. Decision

The decision to approve or deny the THP is made by the Santa Rosa Regional CAL FIRE office, which considers the recommendation of the local CAL FIRE Review Team chairperson, as well as all information received prior to the Close of Public Comment. The decision is to be made within 10 days of the close of public comment. However, the deadline is often extended if CAL FIRE needs more time to prepare their Official Response.



Certain conditions require that the Director disapprove the THP, including: the THP boundaries are not clearly delineated, information in the THP is misleading or insufficient to evaluate significant environmental impacts, or rare or endangered species are threatened by the THP. (14 CCR 898.2)

If you spoke at the public hearing, received a Notice of Intent, or wrote a letter to CAL FIRE, you should receive notification of how you can obtain the Official Response (OR) to the significant environmental issues of concern raised during the public comment period. It will also be posted on the CAL FIRE ftp website.

9. Reopening Public Comment

If significant new information is received by CAL FIRE anytime during the plan review (from the RPF, a reviewing agency, or on rare occasions from the public), Public Comment must be extended for an additional 30 days. If such information is received after the Close of Public Comment, CAL FIRE is required to re-open the public comment period for 30 days. (Per CEQA Guidelines Section 15088.5)

10. Appeal

If CAL FIRE's decision was to approve the THP, the county can appeal the decision. NOTE: The decision can be appealed only if the county review team member attended both the Pre-harvest Inspection and the Review Team Meeting. (CCR 14 1055(a)(8)) The County Board of Supervisors must vote to direct staff to file the appeal within 10 days of the plan approval date (14 CCR 1055). If this is a contentious plan, it is best to ask the Board of Supervisors in advance of plan approval to agree to appeal if the plan is approved. No new issues may be raised during the appeal, although new evidence regarding previously raised issues may be introduced.

What to do:

- a. Contact your County Supervisor as soon as the plan is approved, or sooner, to make sure the appeal is going to be filed.
- b. Work with your County Supervisor, and all the agencies involved in the review team and your neighbors to plan your appeal.

The Board of Forestry will grant an appeal hearing only if they find that the appeal raises substantial issues regarding public safety and/or the environment. (14 CCR 1055.1)

11. Litigation

If you lose your appeal, or even if you don't appeal, you can sue CAL FIRE. Of course, you and your neighbors must be prepared to spend many thousands of dollars, especially if you lose. (If you win, CAL FIRE may be required to reimburse your attorney fees.) Also, remember that even if you win, the THP can be resubmitted at a later date. Talk to a good environmental attorney to find out if you have a case. (See Section 7 for a list of attorneys.) Do this in advance if you know that the County is planning to appeal. CAL FIRE's Official Response (OR) is probably the most critical document for determining whether or not you have a case. If the significant environmental impacts presented during the period of public comment are not adequately addressed by the OR, the judge may find that the THP review process was inadequate and the decision could be overturned. For a comprehensive guide to the Forest Practice Act, refer to the [Guide to the](#)

[California Forest Practice Act and Related Laws](#), Duggan, Sharon and Mueller, Tara, 2005.





3 What Are the Issues?

A THP is generally organized in five sections:

SECTION I: (Administrative items) The first includes the nuts and bolts of ownership, name of Registered Professional Forester (RPF) preparing the plan, and Licensed Timber Operator (LTO), division of responsibilities, location, acreage, and expected date of commencement.

SECTION II: (Operational items) This is the part of the document which includes instructions to the LTO and covers such things as Silvicultural Methods, Yarding, Stocking, Winter Operations, Roads and Landings, Watercourse Protections, Hazard Reduction, Pests, Biological and Cultural Resources, Hours of Operation, In-lieu Practices, Additional Provisions and the various Plan Maps.

SECTION III: This is where the RPF expands on the questions answered in Section II. You will find information on listed species, proposed mitigations for slides and other features, watercourse crossings, biological and cultural resources.

SECTION IV: This is where the Cumulative Impacts Analysis is found.

SECTION V: This is where you will find Notice of Intent to Harvest Timber/Domestic Water Supply published notices, Erosion Hazard Rating Worksheets and maps, Marbled Murrelet Survey if required, Geologic Survey if required, DFG Pre-consultation letters if required, Haul Route Maps, the Notification List, Notification letters to the Timberland Owners and Plan Submitter, Archaeological Addendum (always removed to protect archaeological sites), and acknowledgement of RPF responsibilities.

At the time of this revision, CAL FIRE is preparing a revised THP form, so the above may be slightly altered.

As you read the THP, make notes about anything that concerns you about the proposed operations. It is essential to make sure that the plan does not contradict itself from one section to another. If it does, address this in your comments. Otherwise, even though the plan says “a” in Section II, if it contradicts itself elsewhere, those items that are conflicting may be unenforceable. The significant issues that are considered by the Forest Practice Act concern health and safety, and/or environmental impacts. Many of these concerns, such as erosion, water pollution, and fire hazard from slash could threaten both health and safety, and the environment;

- **Domestic water supply** (14 CCR 916.2, 916.10, 926.20 Santa Cruz, 1032.10) If you get your drinking water from a stream or spring in the same watershed as the logging operation, your drinking water could be at risk.
- **Lake and watercourse protection** (14 CCR 914, 916, 926.6 Santa Cruz) These rules cover stream and lake pollution prevention requirements. They prohibit the deposition of any pollutants that would “unreasonably” degrade the quality of the stream. Tractor crossings should be “kept to a minimum,” and trees should not be dropped into the stream. A certain percentage of overstory canopy must be maintained to protect the watercourse from too much sun. Winter operations should be restricted in the Lake and watercourse protection zone. Procedures for establishing Watercourse and Lake Protection Zones (WLPZ) are defined.
- **Anadromous Salmonid Protection** (ASP) rules (14 CCR 916.9) Special rules apply to streams with anadromous salmonids (coho and steelhead). These rules recently underwent significant revision by the Board of Forestry. They will go into effect January 1, 2010 and be included in the 2010 Rule Book. Most of the new rules applying to the southern sub-district are actually weaker than the previous rules, which were known as Threatened and/or Impaired Watershed Protection rules. The ASP rules include specifications that pertain to canopy retention, tree retention, and other measures to ostensibly protect endangered coho salmon. A new 30’ no-cut buffer is required adjacent to perennial fish-bearing streams.
- **Wildlife protection** (14 CCR 919, 1034w, 926.14 Santa Cruz) Trees with nests of listed species must not be cut; buffer zones around the trees may be imposed. A few of the sensitive or listed species in the Santa Cruz, San Mateo and Santa Clara areas include the marbled murrelet, osprey, Coopers hawk, sharp-shinned hawk,



and the golden eagle. While the FPRs do not specifically accord protection to unlisted, but sensitive species, the DFG code requires that they be protected. Encourage DFG to take a stand if you know such species may occur in the plan area.

- **Special treatment areas** (14 CCR 921) Special Treatment Areas, as designated by the California Coastal Commission, are subject to additional regulations. (14 CCR 921.8)
- **Winter operations** (14 CCR 914.7, 925.1 Santa Clara, 926.18 Santa Cruz) Winter operations can proceed only under special conditions. In Santa Cruz and Santa Clara counties, the winter period is from October 15 to April 15. There are special winter operating dates for waterbodies with anadromous salmonids (14 CCR 916.9)
- **Erosion hazard rating** (EHR) (14 CCR 914.2, 915.8) Tractor operations are prohibited on slopes greater than 65%, on unstable areas, on slopes greater than 50% which drop into a Class I or II stream or lake, or on slopes greater than 50% where the EHR is high or extreme, unless a justified alternative is proposed. Check to see that the math in the EHR calculations is correct.
- **Erosion control maintenance** (14 CCR 914, 916.7, 926.19 Santa Cruz) Drainage structures must be maintained in effective working condition throughout three winter periods after completion of timber operations. The Regional Water Board waiver will require more years of Erosion Control Maintenance.
- **Fire hazard rules** (14 CCR 917.4, 918) These rules govern where and how deep slash can be piled in relation to roads and houses, methods of slash treatment, insect and disease prevention, fire prevention.
- **Proper noticing** (14 CCR 924.1, 925.2 Santa Clara, 926.3 Santa Cruz, 1032.10) The plan submitter must comply with all the noticing regulations for each county (Domestic Water Inquiry, Notice of Intent, Notice of Filing, Notice of Public Hearing, and Notice of Appeal)
- **Soquel Creek Watershed** (PRC 4660-4664) The state owns the Soquel Demonstration State Forest (SDSF) within the Soquel Creek Watershed. Since this is public land, members of the public may be allowed to attend the pre-harvest inspection for all THPs submitted on SDSF. Request permission from CAL FIRE to attend. Old-growth redwoods are protected on SDSF lands.
- **Archeology** (14 CCR 929.4) Poof of archeological surveys by certified authorities must be supplied as part of the THP. However, these documents are considered sensitive and are never available to the public for review.
- **Roads** (14 CCR 923, 926.7, 926.10, 926.13 Santa Cruz) Construction of logging roads can cause significant erosion, which in turn can pollute streams and cause landslides. Logging trucks on residential roads are subject to performance bonding, and hours of operation can be restricted. Private roads, which are to be used as haul roads, must be addressed in the plan.
- **Sudden Oak Death** (14 CCR 917.9a) The Southern Subdistrict has been declared a Zone of Infestation pursuant to PRC 4712-4718, therefore, the plan must identify feasible measures to mitigate adverse infestation or infection impacts from the logging operation.
- **NTMPs** (14 CCR 1090; PRC 4593) These in-perpetuity timber harvest permits have a somewhat different set of rules with additional requirements. These must be reviewed if you are commenting on a non-industrial timber management plan (NTMP).

Alternative Practices

The THP may propose alternatives (in-lieu practices) to specific regulations. If so, the RPF must explain and justify why the regulation is not to be followed and then show that the proposed alternative provides protection equal to or greater than the original rule. (14 CCR 897) Be critical of the stated reasons given for not following a rule.

Definitions

Definitions of terms can be found both in the FPRs (14CCR 895.1) and the FPA (PRC 4511). These can help illuminate questions that may arise as you review a THP. Check them as necessary.

Section 4: Frequently Asked Questions?

4 Frequently Asked Questions?

How Can We Protect Our Road from Logging Trucks?

If you live on a public road, you can request the county to require that the timber operator post a bond. However, the bond can only be collected if the county can prove that the timber operator was willfully negligent; i.e. that the logging trucks exceeded 80,000 lbs, which is the legal limit, or some similar willful action.

If you live on a private road, be sure that your road agreement protects your road from abuse by logging trucks. The regulations pertaining to public and private roads, such as performance bonds (14 CCR 926.13 Santa Cruz) and hours of log hauling (14 CCR 926.10 Santa Cruz) are often not enforced by CAL FIRE for private roads. CAL FIRE may only require a bond of up to \$5000. If you are concerned, ask the County to ask CAL FIRE to make sure the bond gets posted and the check gets deposited into a trust account. Ask that no winter hauling be allowed, though you are not likely to get this.

You should incorporate protective regulations into your road association agreement if you want to avoid litigation. Logging trucks are extraordinarily heavy (up to 80,000 pounds) , and they have a large turning radius. If your road is not built to accommodate logging trucks, it could be extensively damaged very quickly. Check with a soils engineer (they are listed in the Yellow Pages) to find out what type of damage might be expected on your road surface. The amount of the performance bond or tariff you require through your association should be adequate to cover the cost of repairing your road, or better yet, beefing it up to proper specifications before the logging begins. With a performance bond, you must be prepared to show that the logging trucks did the damage. Professional analysis by a soils engineer before and after the logging operation in conjunction with before and after photos could accomplish that. Videotape the road before hauling operations begin, and again during operations.

In Santa Cruz County (14 CCR 926.3b, c), the plan submitter must notice all members of any private road association over whose private road log hauling will occur. A member of the association may be allowed to participate in the pre-harvest site inspection. (14 CCR 926.7)

What Harvesting Method is Used in the Southern Sub-District?

The Southern Subdistrict of the Coast Forest District, of which Santa Cruz, San Mateo and Santa Clara counties are a part, requires selective cutting (14 CCR 913.8). Selective cutting allows timber operators to remove up to 60% of the conifers greater than 18" in diameter (at chest height) and 50% of all those greater than 12" in diameter. Hardwoods may also be harvested as firewood, or felled and left in place. Since redwoods sprout from the cut trunks, tree planting is generally not required to regenerate the forest. The area cannot be harvested again for a minimum of ten years. Some clear-cutting is allowed in Santa Cruz County under the 3-acre conversion exemption (14 CCR 1104 a). In addition, up to 1/2 acre can be clear-cut within a THP under (14 CCR 913.8b)

Santa Cruz County has special rules governing the re-entry period. (14 CCR 926.25) If the harvest rate is between 51-60%, the minimum re-entry period (the next harvest) shall be 14 years. If the cut is below 51%, re-entry may occur in 10 years.

What are the Allowed Hours of Timber Operations in the Southern Subdistrict?

(14 CCR 925.10 Santa Clara; 926.9, 926.10 Santa Cruz; 928.5 San Mateo) Chainsaws are restricted to the hours between 7 am and 7 pm throughout the Southern Subdistrict. No chainsaws may operate on weekends or holidays. However, foresters often get permission to use chainsaws outside of these hours, as well as to haul logs on weekends and holidays. Be vigilant and oppose such allowances if they will impact your neighborhood. You can request to have log hauling restricted during commute hours and school bussing hours. However, you may need to rally your neighbors and school parents to get the forester to agree.

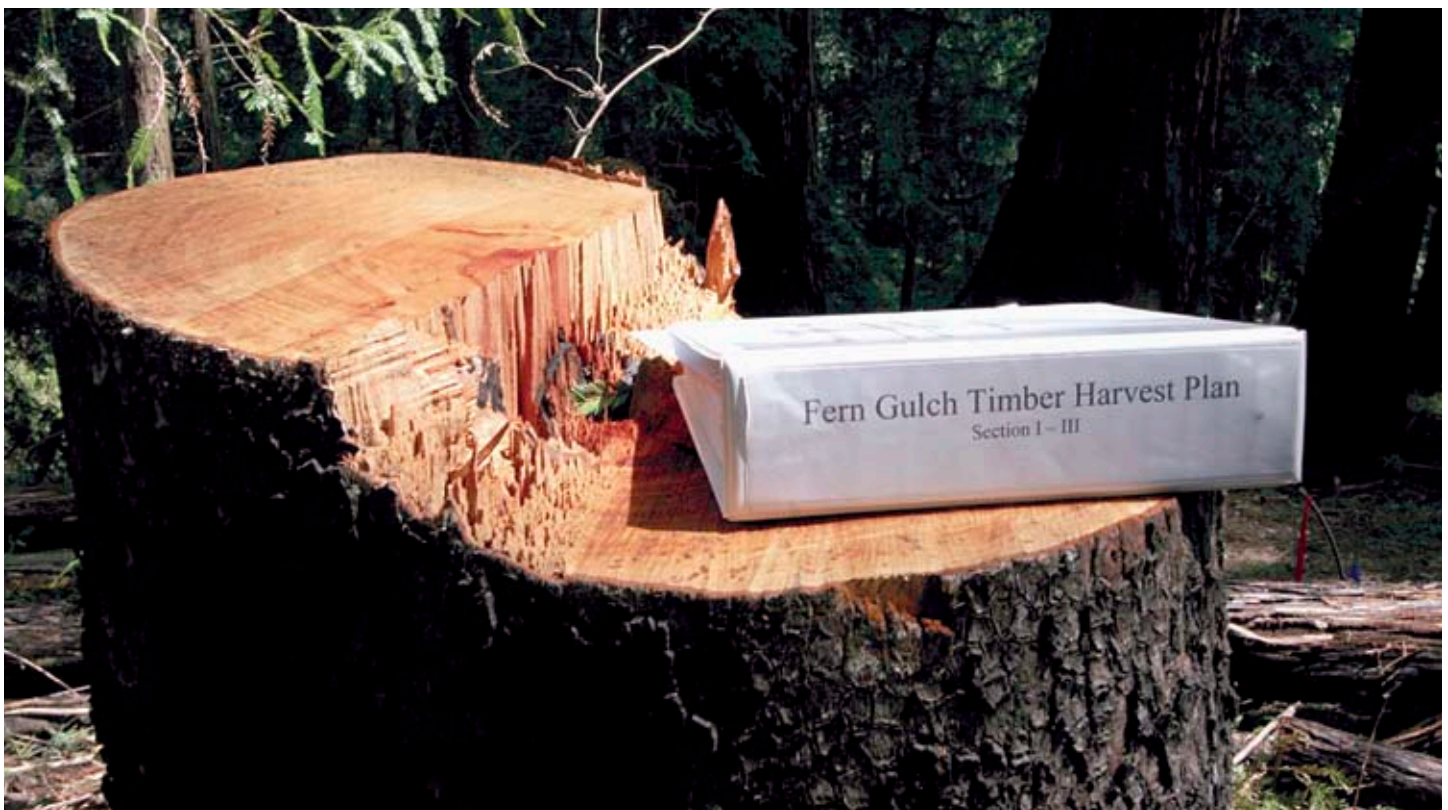
What about Enforcement of Timber Harvesting Regulations?

The THP, prepared by a Registered Professional Forester (RPF), serves as a guide for the licensed timber operator (LTO), who directs the felling and removal of trees. The Forest Practice Rules define the following legal responsibilities:

- The RPF who prepares and signs a plan is responsible for the accuracy and completeness of its contents (14 CCR 1035.1) The RPF is also responsible for explaining to the LTO the intent and provisions of the plan.
- The plan submitter is responsible for providing correct information about legal rights, interest in and responsibilities for the land, timber, and access to the plan area (14 CCR 1035).
- The Licensed Timber Operator (LTO) must comply with the Forest Practice Rules, as well as with the approved plan and all amendments to it. S/he must keep a copy of the plan and its amendments on site. The LTO is also responsible for the work of his or her employees, and for informing them of all of the requirements of the plan that affect their work (14 CCR 1035.3).

CAL FIRE is responsible for enforcing the Forest Practice Rules (PRC 4601-4612) during the logging operation and prior to a signed Completion Report. CAL FIRE can make on-site inspections to determine if violations are occurring in areas such as: waterbar construction, slash treatment, winter operations closures, stocking requirements and WLPZ encroachment. (PRC 4604) DFG and the Regional Waterboard may also make inspections. Rule violations are supposed to be reported in a CAL FIRE Inspection Report. If corrective action is called for, the action is supposed to be completed by the indicated date. The Inspection Reports and violations are kept in the file folders in the Felton CAL FIRE office. These may be viewed by the public during business hours. A follow-up inspection is supposed to be made to determine if violations were corrected. CAL FIRE can issue warnings to the LTO, a Notice of Intent to Take Corrective Action, and can also issue a stop work order. CAL FIRE can cite the LTO or RPF for violations of the Forest Practice Rules. These violations can be prosecuted by the District Attorney of the county in which the violations occurred. However, the matter must be brought to the DA's attention by an agency, rather than a member of the public.

If you have evidence that the rules have been broken, you can write CAL FIRE and your County Supervisor as well as the county Planner responsible for timber harvest review. Contact DFG, too, if the issue pertains to fish or wildlife.





What about Boundary Trees and Tree Theft?

The best way to avoid tree theft as a result of logging activity is to have a prior agreement with your neighbor about the location of your property boundaries and to mark the boundaries prior to approval of the plan. If a tree is on the boundary the tree cannot legally be cut without your permission. In California, a boundary tree is one whose trunk straddles the line.

The RPF is required to flag the boundary of the property when the THP will harvest trees adjacent to the property line. (14 CCR 921.1(a)(1), 925.6 Santa Clara, 926.16 Santa Cruz, 928.3 San Mateo) You should check this flagged perimeter. If it does not agree with your understanding of the property line, contact the landowner in question. Bring your concerns up to CAL FIRE during the review of the plan. However, if you cannot resolve the matter and get the RPF to agree to leave any trees in question, you will have to contact a land use attorney. CAL FIRE staunchly affirms that boundary disputes are a civil matter and outside their jurisdiction. (If logging will occur on your land, then legally you should be listed as a timberland owner!)

If one of your trees is cut, you are entitled to triple damages (California Civil Code 3346). Contact your homeowner's insurance company to determine the value of the trees. According to California law, the act of damaging a tree is subject to fines or jail sentencing (California Penal Code 384a).

If you have evidence that the timber operator failed to observe the plan boundaries, you can write to the local CAL FIRE office as well as the Board of Forestry in Sacramento and register a complaint against the timber operator.

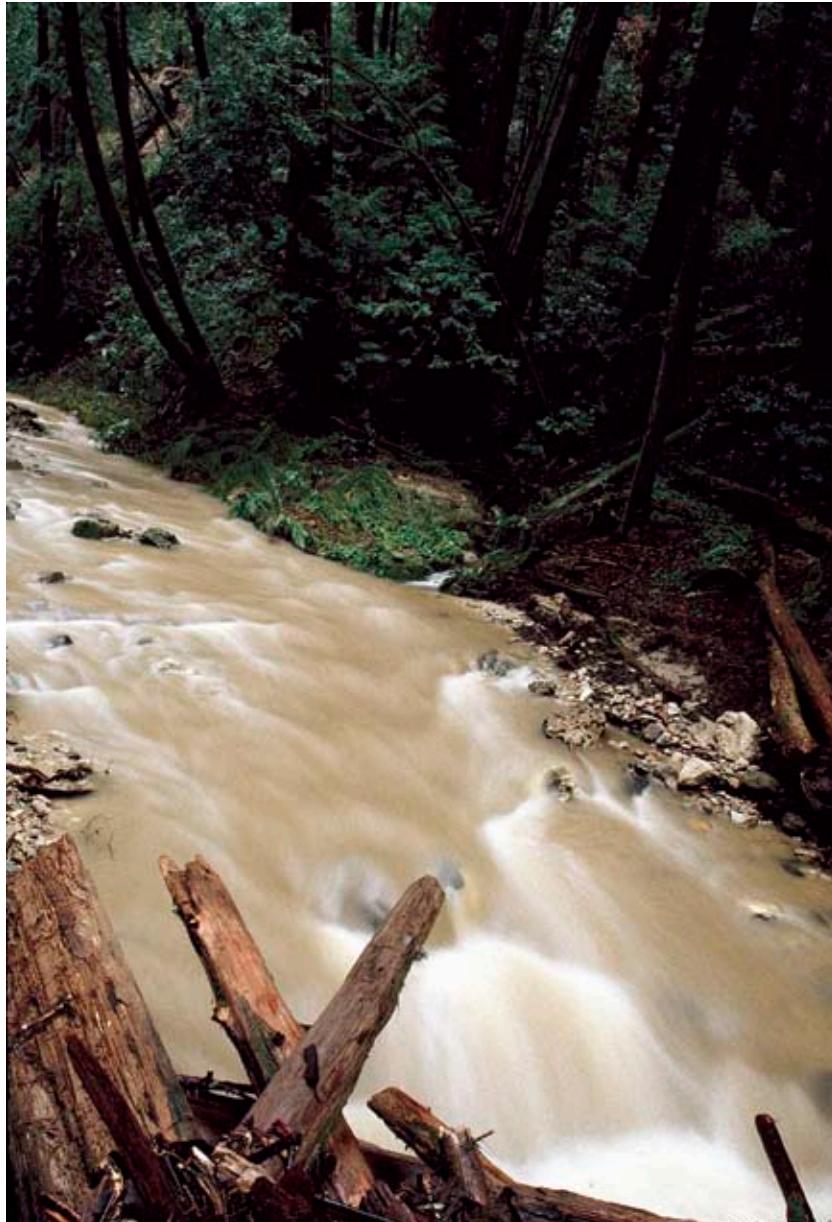
What other Issues Should We Look Out for?

Each plan is unique, even when foresters use 'boiler plate' to draft their arguments. Issues will vary from plan to plan. Often the information presented in the plan is inaccurate, or conflicting from section to section. For instance, we have seen multiple plans state that the forest is 'young second growth' and neglect to mention significant amounts of old

growth and/or late seral forest, or we find a mention buried deep in Section V. It is always helpful to have first hand knowledge of on-the-ground conditions. Often neighbors have hiked the area for years. Sometimes by reading with a fine-tooth comb, one can find a mention in one section that alerts one to issues not identified elsewhere as needed. Sometimes the Erosion Hazard Ratings are not mathematically correct. Culverts are often missing. Old-growth trees must be disclosed. Each of these items can cause approval of a plan to be delayed. If you have knowledge of listed or sensitive species in the area (i.e. osprey, red-legged frogs) that are not identified in the plan, notify DFG and submit your comment in writing.

Climate Change and Carbon Sequestration are Up and Coming Topics.

CAL FIRE and the Board of Forestry, along with the California Air Resources Board are all being heavily lobbied by the timber industry as this revision goes to press. Industry is jockeying for the best possible outcome that will allow logging (including clear cutting) and carbon credits on the same piece of land. The Center for Biological Diversity is taking an active lead in working to ensure that the dialogue and the regulations are based in science. When commenting on plans that include significant amounts of old growth and/or late seral forest insist that the plan submitter demonstrate how logging these elements will not adversely impact carbon sequestration. Then be prepared to critique their answer.



5 Public Agencies

Board of Forestry

George Gentry, Executive Officer
1416 Ninth St.
Sacramento, CA 95814
PH: 916-653-8007
FAX: 916-653-0989
George.Gentry@fire.ca.gov
www.fire.ca.gov

Christopher Zimny
Regulations Coordinator
Board of Forestry and Fire Protection
California Department of Forestry
and Fire Protection
1416 9th Street
P.O. Box 944246
Sacramento, CA 94244-2460
PH: 916-653-9418
Fax: 916-653-0989
Cell: 916-712-7329
chris.zimny@fire.ca.gov

CAL FIRE, Regional Office

Leslie Markham, Deputy Chief
PO Box 670
135 Ridgeway Ave.
Santa Rosa, CA 95402
leslie.markham@fire.ca.gov
PH: 707-576-2953
General:
PH: 707-576-2275
FAX: 707-576-2608

For Official Submissions of Public Comment:

santarosapubliccomment@fire.ca.gov
FAX: 707-576-2608

CAL FIRE Felton Office

Rich Sampson, Forester II
San Mateo-Santa Cruz ADM
richard.sampson@fire.ca.gov
PH: 831-335-6742

Scott Bullock, Forest Practice
Scott.Bullock@fire.ca.gov

Cherie Alver, Receptionist
6059 Highway 9
Felton, CA 95018
Cherie.Alver@fire.ca.gov
PH: 831-335-6740

CAL FIRE Sacramento Office

William Snyder
Deputy Director, Resource
Management
P.O. Box 944246
Sacramento, CA 94244
William.Snyder@fire.ca.gov
PH: 916-653-4298

Central Coast Regional Water Board (Region 3)

Mike Higgins
Environmental Scientist
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
mhiggins@waterboards.ca.gov
PH: 805-542-4649
FAX: 805-788-3532

Department of Fish and Game

Richard Fitzgerald
Program Coordinator
Timber Conservation Program
Central Coast Region
P.O. Box 47
Yountville, CA 94599
rfitzgerald@dfg.ca.gov
PH: 707-944-5568
FAX: 707-944-5509

San Francisco Bay Regional Water Board (Region 2)

1515 Clay Street, Suite 1400
Oakland, CA 94612
PH: 510-622-2300
FAX: 510-622-2460

San Mateo County Planning

Mike Schaller
Planning Department
455 County Center, Second Floor
Redwood City, CA 94063
mschaller@co.sanmateo.ca.us
PH: 650-363-1849

Melissa Ross
mross@co.sanmateo.ca.us
PH: 650-599-1559

Santa Clara County Planning

Gary Rudholm, Senior Planner
Planning Office
County of Santa Clara
East Wing 7th Floor
70 W. Hedding Street
San Jose, CA 95110
gary.rudholm@pln.sccgov.org
PH: 408-299-5747
FAX: 408-288-9198

Santa Cruz County Environmental Health

Donna Bradford, Resource Planner IV
(THP Review Team Member)
701 Ocean Street, Room 312,
Santa Cruz, CA 95060-4073
ENV035@co.santa-cruz.ca.us
PH: 831-454-2735
FAX: 831-454-3128

State Board of Equalization

Timber Tax Office (statistics on board
feet by county, current timber rates)
http://www.boe.ca.gov/
PH: 916-227-6700

6 Organizations

Central Coast Forest Watch (CCFW)

Jodi Frediani, Director
1015 Smith Grade
Santa Cruz, CA 95060
831-426-1697
JodiFredia@aol.com
www.treesfoundation.org

Committee for Green Foothills (CGF)

San Mateo: Lennie Roberts,
Legislative Analyst
650-854-0449
lennie@darwin.ptvy.ca.us
www.greenfoothills.org

Santa Clara: Brian Schmidt,
Legislative Analyst
650-968-7243
brian@greenfoothills.org
www.greenfoothills.org

Lompico Watershed Conservancy

Kevin Collins
Board President
PO Box 99
Felton, CA 95018
contact@lompicocreek.org
PH: 831-335-8136
www.lompicocreek.org

Neighbors Against Irresponsible Logging (NAIL)

Terry Clark, Chair Steering Committee
408-353-3454
tallanclark@comcast.net
www.mountainresource/nail

Sierra Club, Loma Prieta Chapter

Karen Maki, Chair, Forest Protection
Committee
650-366-0577
karenmaki@earthlink.net
www.lomaprieta.serriacub.org

Sierra Club, Santa Cruz Group

Dennis Davie, Task Force Chair,
Forestry Task Force
P.O. Box 604
Santa Cruz, CA 95061
831-426-4453
scscrg@cruzio.com
www.ventana.serriacub.org

Sempervirens Fund

Reed Holderman
Executive Director
PO Drawer BE
Los Altos, CA 94023
redwoods@sempervirens.org
PH: 650-968-4509
www.sempervirens.org

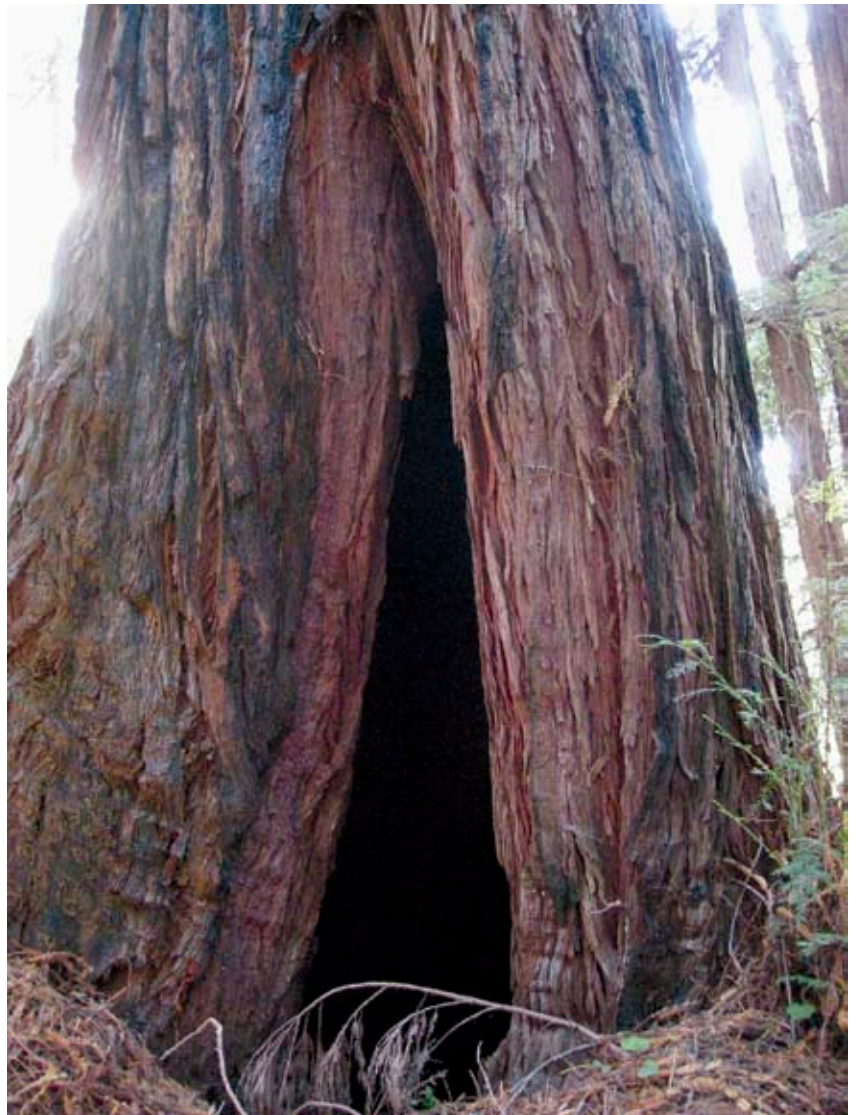
Save the Redwoods League

Ruskin Hartley
Executive Director
114 Sansome Street, Suite 1200
San Francisco, CA 94104
info@savetheredwoods.org
PH: 415-362-2352
www.savetheredwoods.org

Mouthpiece of the Central Coast
Timber Industry

Central Coast Forest Association

www.ccfassociation.org



7 Attorneys

Justin Augustine

Center for Biological Diversity
351 California Street, Suite 600
San Francisco, CA 94104
PH: 415-436-9682 ext. 302
FAX: 415-436-9683
jaugustine@biologicaldiversity.org

Paul Carroll

Attorney at Law
1103 17th Avenue
Redwood City, CA 94063
PH: 650-839-8644
pvcarroll@igc.org

Sharon Duggan

370 Grand Avenue
Suite 5
Oakland, CA 94610
PH: 510-271-0825
FAX: 510-271-0829
foxsduggan@aol.com

Michael Graf

Law Offices
227 Behrens St.
El Cerrito, CA 94530
PH: 510-525-7222
FAX: 510-525-1208
mwgraf@aol.com

Tom Lippe

Lippe Gaffney Wagner LLP
329 Bryant St.; Suite 3D
San Francisco, CA 94107
PH: (415) 777-5600
FAX: (415) 777-9809
tlippe@lgwlawyers.com
www.lgwlawyers.com

Brian Nowicki

California Climate Policy Director
Center for Biological Diversity
PH: 916-201-6938
bnowicki@biologicaldiversity.org

Deborah A. Sivas

Luke W. Cole Professor of
Environmental Law
and Director of the Stanford
Environmental Law Clinic
Stanford Law School
559 Nathan Abbott Way
Stanford, California 94305
PH: (650) 723-0325
FAX: (650) 723-4426
dsivas@stanford.edu
[www.law.stanford.edu/
naturalresources/](http://www.law.stanford.edu/naturalresources/) [www.law.stanford.edu/
program/clinics/environmental/](http://www.law.stanford.edu/program/clinics/environmental/)



8 Links and/or documents

THP List (CAL FIRE)

www.fire.ca.gov/resource_mgt/resource_mgt_forestpractice_thpstatus.php

FTP Library/North Coast (CAL FIRE)

ftp://thp.fire.ca.gov/THPLibrary/North_Coast_Region/

CAL FIRE Resource Management general website

www.fire.ca.gov/resource_mgt/resource_mgt.php

Forest Practice Rules and Act

www.fire.ca.gov/resource_mgt/resource_mgt_forestpractice.php (click on Forest Practice Act)

5000 Resource Management Handbook (CAL FIRE)

<http://webmain02.fire.ca.gov/Pubs/Issuance/5000/Index5000.htm>

Chapter 0350 — CAL FIRE Forest Management Policies

www.bof.fire.ca.gov/.../board_policies/board_policies/chapter_0350_forestmanagement.pdf—1997-07-26

CAL FIRE Memorandums

http://www.fire.ca.gov/resource_mgt/resource_mgt_forestpractice_pubsmemos_memos.php

DFG Species of Special Concern and Listed Species

www.dfg.ca.gov/wildlife/nongame/list.html

California Natural Diversity Data Base (CNDDDB)

www.dfg.ca.gov/biogeodata/cnddb/

Santa Cruz County General Plan Locally Unique Plant and Animal Species

Not available on-line. Seriously out-of-date. Contact County Staff doing THP review.

Central Coast Regional Water Quality Control Board Timber Harvest Program

www.swrcb.ca.gov/rwqcb3/water_issues/programs/timber_harvest/index.shtml

Guide to the California Forest Practice Act and Related Laws, Regulation of Timber Harvesting on Private Lands in California

Duggan, Sharon E. and Mueller, Tara, 2005, Solano Press Books

The Rebirth of Environmentalism, Grassroots Activism from the Spotted Owl to the Polar Bear

Bevington, Douglas, 2009, Island Press.

9 A Case Study

Neighbors Against Irresponsible Logging (NAIL)

A group of neighbors came together in 2006 to stop a 1000-acre NTMP proposed in their backyards. They named themselves Neighbors Against Irresponsible Logging or NAIL. Their story is inspirational and educational. You will find the story in prose, followed by a Power Point Presentation highlighting their campaign. Because their efforts were so stellar and they were ultimately successful, they were invited to present at the Bioneers Conference in 2008.

A power point presentation of the key strategies NAIL employed can be found here:

http://www.treesfoundation.org/downloads/ccfw/Bioneers_NAIL.ppt

Community Activism Protects a Watershed and a Way of Life:

NAIL, Google Earth and a 'Village' Take on Goliath and Win

Labeled a 'light thinning' to 'protect' the 1000-acre forest and adjacent neighborhoods from wildfire, the massive 'in-perpetuity' industrial logging proposal along Los Gatos Creek did not fool those living nearby. When San Jose Water Company, the largest water purveyor for Santa Clara County, and Big Creek Lumber mailed out cryptic maps announcing their logging plans, neighbors were confused, surprised, stunned and outraged by turns. But the community did not sit idly by waiting for the trees to fall.

What had once been a quiet, rural, mountain community on the outskirts of Silicon Valley was soon to become a battle zone. Neighbors knew the proposal to log six miles along the San Andreas Fault was bad for the neighborhood, and bad for the forest, the wildlife and their watershed. Fragile slopes, a major drinking water supply, endangered species, nearby schools and hundreds of adjacent homes do not mix well with chainsaws, helicopters, skid trails, flammable logging slash, and loaded log trucks lumbering along narrow, winding country roads. And worst of all, the logging plan would actually increase the risk of fire to a forest and community that had burned in 1987.

Initially labeled 'NIMBYS', folks shrugged off the criticisms, dug in their heels and got to work. Not dissuaded when warned there was no way to stop the logging, they set out to do the undoable. First they created a simple, yet effective governance structure - a steering committee of dedicated residents with a wide variety of valuable skills. The leadership group included a cross-section of bright, educated professionals including students and teachers, engineers and software geeks, media pros and web designers. One person had experience saving another local redwood forest from logging, but none had ever engaged in an all out battle to protect valuable watershed and wildlife habitat, their homes and their drinking water, the sanctity of their children's schools and, quite simply, their entire way of life. The collaborative effort that ensued is a story of determination, perseverance, passion, mastery of an extraordinary learning curve, and ultimately, victory. Ordinary people accomplished extraordinary goals.

Neighbors Against Irresponsible Logging (NAIL) became their moniker, community organization and education, mainstays of their campaign. They divided up tasks and remained vigilant to guard against burnout. They set their sights high and employed all the tools at their disposal. NAIL hired the best advisors and experts to guide them through complex territory. They consulted with an environmental forestry advisor, fire experts, a drinking water specialist and a hydrologist and launched a multi-pronged fundraising campaign to meet their financial needs.

They hosted neighborhood meetings, created a website, sent out e-mail alerts, and submitted articles and letters to the editors of large and small local publications. They produced a glossy brochure replete with shocking photos and damning expert quotes. They cultivated relationships with the media and met regularly with state and local government officials. They worked with the agencies responsible for review of the logging plan, and flooded the CAL FIRE file with expert comments and informed and impassioned letters-of-concern.

NAIL tabled at the Farmer's Market and protested in front of the water company corporate offices. Nearly 5000 signatures were gathered on a stop-the-logging petition through tabling, door-to-door and an online link. Low-tech methods, such

as neighborhood 'coffees' for education and fundraising were combined with the high-tech tools of Google Earth and the Web to dispel false information, educate, reach out, and organize.

To highlight their efforts, NAIL adopted as a mascot, Charlie the Beaver, "a responsible logger." Charlie and his family live downstream from the proposed logging zone. And the group was extremely fortunate to have a few special angels: those who provided significant financial backing, and others, like Al Gore, who lent his name and words of support and wisdom to their campaign.

NAIL members took photos, prepared Power Point presentations, produced videos and turned heads with their infamous Google Earth 'flyover'. An unprecedented over-flow crowd of 500 people turned out to testify at the CAL FIRE public hearing on the logging plan. Children joined parents offering informed and passionate testimony. One hundred people spoke in opposition to the ill-advised and ill-fated logging plan.

In an amazing display of creativity, technical prowess, community building and pure 'chutzpah', with the aid of a helicopter and Google Earth, NAIL exploited a technicality and proved that the water company simply owned too many timberland acres to qualify for an in-perpetuity logging permit. The project's visibility forced CAL FIRE to do its own corroborating analysis. NAIL had nailed it. CAL FIRE had no choice but to deny the plan.

**First they ignore you,
then they laugh at you,
then they fight you,
then you win.**

.....Ghandi

LATE BREAKING NEWS!! San Jose Water Company (SJWC) chose to appeal to the Board of Forestry the denial of their NTMP. After requesting the appeal they then postponed the hearing for a year. On October 8, 2008, after three hours of testimony from SJWC's attorney, CAL FIRE, Santa Clara County's contract attorney and two-dozen NAIL steering committee members and supporters, the Board of Forestry unanimously denied the appeal. The Board upheld CAL FIRE's determination (only undertaken after NAIL provided the initial data showing the true timberland acreage ownership) that SJWC owns too many acres of timberland to qualify for the in-perpetuity timber harvest permit.



Steering Committee



Protest in front of SJWC Corporate Offices





Booth at Santa Clara County Creeks Watershed Conference



CAL FIRE Public Hearing



Giving public testimony



A reporter takes notes as the media picks up the story.

10 Sample Comment Letters

Here are two sample comment letters to give you an idea of what kinds of comments you may wish to submit:



Santa Cruz County Group of the Ventana Chapter

P.O. Box 604 Santa Cruz, California 95061 831-426-4453

ventana.sierraclub.org

santacruz-staff@ventana.sierraclub.org

CENTRAL COAST FOREST WATCH

1015 Smith Grade
Santa Cruz, CA 95060
ph/fax 831-426-1697
JodiFred@aol.com

October 12, 2009

Leslie Markham, Deputy Chief
Coast Area Resource Management
California Department of Forestry and Fire Protection
135 Ridgway Avenue
Santa Rosa, CA 95401

RE: THP 1-08-063 SMO Lagomarsino THP

Dear Ms. Markham,

I am writing on behalf of Sierra Club, Santa Cruz Group of the Ventana Chapter and Central Coast Forest Watch requesting that THP 1-08-063 SMO be denied per CCR 898.2(c) which requires the Director to disapprove all plans where, *"There is evidence that the information contained in the plan is incorrect, incomplete or misleading in a material way, or is insufficient to evaluate significant environmental effects."*

This plan was originally submitted in 2004 as 1-04-227 SMO, Lagomarsino, and was withdrawn in part because a marbled murrelet survey was needed due to the old growth stand on the property and adjacent lands. Additional deficiencies of that plan were identified in the 11-11-2005 CDF PHI Report. Although the MAMU Survey has since been conducted, a number of the other CDF concerns from the 11-11-05 PHI Report have still not been addressed, even though the plan has been resubmitted three more times and returned twice.

The Lagomarsino THP was resubmitted in April 2008 as 1-08-063 SMO, then resubmitted in June and again in November of 2008. It was finally accepted for filing on December 5, 2008. The plan has been amended numerous times since then and was re-circulated on September 14, 2008. However, the latest version of the plan (amended again on September 30, 2009) continues to be seriously deficient.

We will try to outline the most salient issues below, but due to the significant amount of agency input already allocated for this 35 acre THP, we feel it inappropriate for CAL FIRE to continue to assist the RPF in bringing this THP into conformance with the Forest Practice Rules and CEQA. When the state is suffering from a major financial crisis, it is inappropriate and a poor use of taxpayer dollars to invest so many agency resources (CAL FIRE, DFG, CGS) into the review of one small timber harvest. With state agency staff required to take furlough days, it is not acceptable for those agencies to over-allocate time

to projects that are incomplete, inaccurate and misleading in a material way. Clearly CAL FIRE does not have sufficient staff to fully read and review THPs or this plan would never have made it this far through the review process.

As currently written, this THP is not an enforceable document and does not meet the CEQA equivalency standards required by law.

Pages inserted out of order

A portion of the Oak Mortality Disease Control regulations have been inserted haphazardly into the plan as page 7.1 in the middle of the discussion of Item #18 Soil Stabilization. Inserting pages out of order makes it difficult for those reviewing the document to adequately locate information.

The Erosion Hazard Map was also inserted as page 7.2 in the middle of Item #18. In this instance the problem is magnified as page 8 of the plan directs the reviewer (and LTO) to the end of Section II, not the middle, for the EHR map.¹

Conflicting Information/Violations of the FPRs

1. LTO responsibilities (will he or won't he?):

In two different paragraphs on Pg 8-9, we find the following: "Erosion control structures shall be installed and maintained by the LTO through the first winter period following filing work completion report." This is in violation of CCR 1022.3. The length of the maintenance period is not stated as required by CCR 916.9(p) and as previously pointed out by CAL FIRE.²

Two paragraphs later, the RPF says that maintenance may be assumed at an earlier date by the landowner or can be delegated to a third party." This violation of CCR 1022.3 was also pointed out to the plan preparer by CDF.³

Further confusing the issue, the CAL FIRE PHI report for 1-08-063 SMO (6-17-09) says, "The plan states that the LTO is responsible instead of the landowner for the 3 year erosion control maintenance period." We did not see this language anywhere in the plan.

2. Watercourse crossings (now you see them, now you don't):

The plan has at least three different responses re watercourse crossings: Page 10 tells us there are no watercourse crossings. Revised page 11 has a section on watercourse crossings in which three are noted, Crossing A, Crossing B and Crossing C. However, language re Crossing C submitted on page 19.1a (revised 8/28/09) per RT Recommendation #7⁴ no longer appears to be in the plan. It is no longer on page 19.1a (revised 9-30-09), nor has it been incorporated in the revised page 11 or revised page 19.1.

Information pertaining to Crossing B has been added under Additional item #32, Plan Provisions, (Revised page 19.1, 9-30-09), although Watercourse and Lake Protection Zone Protection Measures are listed under Item 26, along with the rest of the Section II information on Watercourse Crossings on pages 11-12.

The EHR maps in Section II and III have not been revised to include Crossing C.

And page 21 in Section III tells us that there are only two watercourse crossings.

1 "(see EHR Map at the end of Section II), pg 8.

2 CDF PHI Report, 11-11-05, for 1-04-227 SMO

3 ibid

4 June 17, 2009 CalFire PHI Report, 1-09-063 SMO

3. Mitigation for 100 sq' of disturbance:

Mitigation language is included on pages 8 and 10, but language on page 10 is weaker than page 8 language. Which applies?

4. In-lieu Practices (in-lieu or not?):

Depending on which pages you review, "Trees were to be felled away from all watercourses, springs, and other wet areas (pg 6) or "specific trees on the South side of the Class 2 watercourse between Landing 4 and Crossing A" will be felled across the Class 2 as an in-lieu practice (page 21). Item 27c is answered NO regarding site-specific practices proposed in-lieu of the standard WLPZ practice, while the plan expressly admits, "This in lieu practice will provide greater protection than the Standard Rule because it will allow reduced skid trail construction and use and a reduced number of watercourse crossings." (pg 21) This is misleading in a material way and, therefore, the plan must be denied.

5. Hazard Reduction (will it be burned or won't it?):

Item #30a has been incorrectly answered NO, because the following paragraph addresses the need for slash treatment adjacent to Native Sons Road. In that same paragraph we are told that slash may be 'piled and burned', while #31 answers NO to the question of whether 'piling and burning' will be used for hazard reduction. The public has no idea what to believe. As written, the plan is misleading in a material way and must be denied.

We were not able to find the map referred to in RT Recommendation #8 (6-17-09) - "To clarify where hazard reduction rules will apply, the RPF shall provide a map of all public roads and structures that will require compliance with 14 CCR 917.4(a)&(b) designating areas where the LTO will need to apply slash control standards more strict than lopping within 30" of the ground."¹ The plan submitter has added three structures to his map on page 19.2, however, he has not included them in his hazard reduction discussion on page 13 #30, nor does the map identify designated areas for slash control.

In addition, the concerns of San Mateo County regarding slash (see 6-17-05 letter) have not been addressed.

Incorrect or Incomplete Information Provided

1. Erosion Hazard Rating (EHR) calculation is incorrect.

The numbers have simply not been added correctly. Four different columns have been added incorrectly. This is not a single math error, but four math errors. The sub totals in both columns for both soil types are incorrect. The actual totals are 67 and 78 points, respectively, putting the plan area in High and Extreme EHR categories rather than Moderate and High.

Thus all other information in items #18 and #21 must be re-evaluated. The EHR map must be corrected and any and all references to or involving the erosion hazard ratings must be corrected. The waterbar spacings are listed for Moderate and High, not High and Extreme. These changes will constitute significant new information and, therefore, the plan will need to be re-circulated for another 30 days.

In addition, the plan answers NO to all questions regarding use of ground-based equipment on slopes over 50% with high or extreme EHR, as well as on slopes over 65%. The Geologist report states that there are slopes over 70% in the plan area. Given that the EHR ratings are incorrect, these questions must all be re-evaluated and re-answered.

2. Mapping

The map on page 19.2 has no title. The plan references the 'THP map' on page 10, but no map bears that title.

3. Slides

¹ ibid

Page 10 says, "There are four slides present as shown on the THP map." There is no map identified as the THP map and there are no slides identified in the legend of any map included in Section II.

4. MAMU mitigation

The PHI report specifies that, "The LTO shall be required to pack out all trash from the operation."¹ We found no language in Section II that alerts the LTO to this requirement.

5. RPF Responsibilities

The CAL FIRE PHI states that, "The RPF will need to spend additional time onsite during operations to monitor the LTO's progress and compliance with his instructions to ensure that the LTO can adequately interpret the plan and field layout to comply with the plan." This was noted due to confusing paint colors and flagging colors that don't "comply with the normal colors observed on other plans in the county".² We did not see any language in the plan from the RPF agreeing to this condition.

Rather, in his letter to the timberland owners (5-21-08), the RPF states that he will be onsite ".....not less than once during the life of the plan." While we understand that this is language excerpted from CCR 1035.1, we feel that language needs to be incorporated into the plan per the above PHI statement to address CAL FIRE's concern regarding confusing paint colors for tree marking and flagging.

6. Winter Ops Erosion Control Materials

We were unable to locate the language from Item #4, in the RPF's 6-26-09 response to CAL FIRE's PHI Recommendations regarding pre-positioning of erosion control materials prior to the winter period.

7. Cultural Resources Info Misleading and Incorrect

On page 18, Item #36, "Are there any archaeological or historical sites located in the THP area?", the question is answered NO. Yet on page 88 the RPF says in a 5-21-08 letter to the Plan Submitter, "I will take care of this", referring to the requirements of the Plan Submitter to alert the LTO to protection of any archaeological or historic sites. We also understand from an un-numbered page (after 88.23) that pages 89-112 have been removed concerning archaeological sites.

In CAL FIRE's 11-11-09 PHI Report for the previous incarnation of this plan, the Reviewer noted that "The RPF marked "No" on item 37 of the current plan but marked "Yes" in the previous plan. "

Why has this not been corrected? I can understand how old growth trees disappear in between harvests, but archaeological sites should still be present.

Misplaced Information

Additions and revisions must be incorporated into the plan in the appropriate location so that they will be easily accessible to the LTO, the Review Team members, the public and all agency personnel who may participate in review of the plan during operations and into the future. Finding information should not constitute a treasure hunt.

1. Geologic mitigations have been added on page 19 along with Hours of Operation and a continuation of Biological and Cultural Resources. Geology mitigations must all be located under Items 21 and/or 24.
2. Additional Biological and Cultural Resource mitigations should be inserted into a revised page 14.
3. Additional CLRF and SFGS mitigations must be inserted on the same page as the original mitigations included in the plan.
4. Provisions for burl need to be incorporated into harvesting practices and/or #14, not included along with additional operational buffers around Geologic Points, which need to be added directly to Geology mitigations. In addition, the burl harvest restrictions in the WLPZ must be listed under the WLPZ section, too.

¹ ibid

² ibid

The plan is to serve as a guidance document for the LTO and a functional equivalent to an EIR under CEQA.

Consistent Lack of Required Disclosure of Old Growth

A guidance letter (Memo) was prepared by CAL FIRE in 2005 “to inform Registered Professional Foresters (RPFs), CDF personnel and Review Team members of the expectation that potential significant adverse impacts pertaining to large old trees must be adequately disclosed, evaluated and mitigated within the context of the existing Forest Practice Rules (FPR), California Environmental Quality Act (CEQA) and the California Endangered Species Act (CESA).”¹ Disclosure is required even in situations involving a single tree or small stand of trees less than 20 acres in size.

CAL FIRE’s 2005 Memo states that, “During Plan preparation, the RPF should identify large old trees and stands of trees having significant or unique characteristics and those activities or operations having the potential to affect such trees, resulting in significant adverse impacts on the environment.” This plan was originally submitted in April 2008, yet disclosure by the plan submitter was not done until August 2009. Even now, the plan still contains conflicting information throughout regarding the existing stand and presence of large old trees. There is no way to know how many people may have reviewed this plan, did not see any disclosure of large old trees as required, and assumed none were present. As such, the plan continues to be out of conformance with the Forest Practice Rules, CEQA and CESA and the review of the plan has been compromised.

The Memo references the following FPRs that provide direction for disclosure, evaluation and mitigation regarding large old trees: CCR 895.1897(b)(1)(c), 898, Technical Rule Addendum No. 2, 919.16, 921.3 and 1034(jj).

The CAL FIRE June 17, 2009 PHI report states that, “There is a significant amount of old growth associated with this property.”

Pg 14 of the plan currently states that, “The wildlife habitat is typical of second growth conifer timberlands...” This is not accurate. It is incomplete and misleading in a material way. The ten acres of old growth ultimately disclosed are not even mentioned under Biological Resource Assessment or Protection Measures. Neither are Marbled Murrelets (MAMU) identified or discussed. We cannot understand this major oversight as MAMU habitat is present and a 2-year MAMU survey was conducted prior to re-submission of this plan.

Pg 15 discusses species that “have been identified as having potential habitat within the harvest areas.” MAMU are not listed in Section II as having potential habitat. Instead, mention of this state endangered and federally threatened species was inserted as a three-line afterthought on pg 18 following the FPRs for Specific Requirements of Protection of Nest Sites, 919.3. This information is incorrectly located in the plan. This information should be easily available to anyone reviewing the plan, not buried in an obscure location.

Pg 18, Item #34 re LSF for harvest is checked NO. A previous CDF PHI Report (11-11-05) notes that, “... it was determined that a Late succession forest stand approximately 30 acres in area occurs on and adjacent to the plan area.”

CDF is now saying that there does not appear to be contiguous LSF. Given that harvesting has occurred on adjacent lands since the DFG determination, we can assume that the LSF contiguous habitat has not been protected as required by the FPRs. Two wrongs don’t make a right. The remaining LSF habitat must be identified up front and protected per DFG’s letter of October 1, 2009.

The RPF in his first discussion of Large Old Trees page 65.2 (revised 8-26-09) says, “In my opinion, if a stand of large old trees is within about 150 feet of an existing stand it can be considered connected because it is close enough to influence and bear some relationship to the other stand. On the other

¹ http://www.fire.ca.gov/resource_mgmt/downloads/Various_3_2_05_ProtectionofOldTrees.pdf

hand, if a stand is located 1/4 mile or more from another, they can reasonably be considered a separate stand. Somewhere between those distances, connectivity is lacking. Based on this definition, there is no connectivity between adjacent stands and the project site. Therefore, by rule definition of 20 acre minimum, no contiguous stand of Late Seral Stage Forest exists.”

The RPF cannot use unsubstantiated opinion to make such a determination: “CEQA Guidelines, 14CCR, Division 6, § 15064(f)(5): *Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.*”¹

On pg 20 Sect III, under Site Description, Vegetation Characteristics, there continues to be no mention of old growth. We are told, “The slopes consist largely of second growth conifers with a few hardwoods found in gaps.” Disclosure of the 44-60 large old trees on the property is required by CDF’s Large Tree memo of 2005. That is a 4-year old memo. Are we to understand that the RPF has been unaware of this critical requirement for over four years??

On pg 22 Biological Assessment, Flora Elements, we are told that “The Lagomarsino property is second growth redwood forest.” There is no mention of old growth, or large old trees.

On pg 56 under Cumulative Biological Impacts Assessment, once again the plan identifies the forest as young growth, and in violation of the Memo, makes no mention of 10 acres of residual Old Growth.

We find the consistent lack of disclosure of large old trees found throughout this plan to be most disturbing. Absence in one section could be considered an oversight. Absence throughout seems to be deliberate or shows the RPF is not aware of all the rules, regulations and memos governing the preparation of timber harvest plans, which are to be CEQA EIR equivalent documents.

The only reference we could find of the remnant stand of old growth on the property was in the MAMU Survey prepared by Mr. Suddjian. A very belated discussion was submitted by the RPF in August 2009 at the urging of CAL FIRE, but the rest of the plan has not been brought into conformance. At this late date, the plan continues to be incomplete and misleading in a material way, both grounds requiring denial.

The RPF cannot claim ignorance of the old growth and need for disclosure as DFG recommended in 1991 (10-1-91) that, “A better description of the old-growth habitat on the plan and any adjacent areas with old-growth characteristics be developed.” The RPF for this plan was the RPF for the 1991 plan.

Irregularities Regarding Page Revisions

There are three pages at the end of this plan that are not numbered. One references revised pages received on 5-29-08, another references a page revised on 6-26-08. They are attached after pages stamped received by CAL FIRE in January 2009, after the plan had been accepted for filing. These last three pages have no such stamp. Were they ever formally accepted by CAL FIRE? When? Why were they not stamped by the Coast Area Office? This is very irregular.

In addition, pages 88.22 and 88.23 are stamped received January 14, 2009, yet they are not identified as Revised Pages and it is not clear when they were added to the THP, which was accepted for filing more than a month earlier.

Cumulative Impacts Analysis Incomplete and/or Incorrect

Traffic Analysis

San Mateo County and CAL FIRE have both expressed concerns regarding cumulative traffic

¹ ibid

impacts. While the plan preparer has calculated impacts from the proposed harvest, he has not calculated cumulative impacts if the four NTMPs in the watershed were to conduct operations and haul simultaneously with the Lagomarsino THP. Given that plans are good for 3 years (and may get extended for up to 7 years with pending legislation), the possibility of multiple active harvests is certainly ever present. Therefore the traffic analysis is flawed, incomplete and misleading in a material way.

We understand that larger tractors are required to access old growth of the size present and proposed for harvest in this plan. We did not see acknowledgment of these added potential impacts regarding the buried Christy box under the haul road.

Alternatives Analysis Incorrect

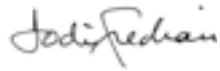
No discussion of Conservation Easements has been included, even though Conservation Easements were brought up by DFG and discussed extensively at Second Review as a means of protecting the old growth forest elements, and even though a letter has been submitted into the file from Sempervirens Fund expressing an interest in purchase of a Conservation Easement.

The plan still says, "As of this time, there has been no interest in purchase of the property by either a public or private entity." That statement is no longer true, as Sempervirens Fund submitted a letter on September 28, 2009 expressing interest in purchasing the land at fair market value from the landowners or purchasing a conservation easement at fair market value to permanently protect the old-growth trees.

Our analysis of the ways in which this plan is incorrect, incomplete or misleading in a material way, or is insufficient to evaluate significant environmental effects is by no means comprehensive or complete. However, we feel we have given ample examples to show that this plan as currently written must be denied.

Thank you for the opportunity to comment. We look forward to a written response to our comments.

Sincerely,



Jodi Frediani

cc: Melissa Ross, San Mateo County

Terris Kastner, DFG

Lennie Roberts, Legislative Advocate, Committee for Green Foothills



Santa Cruz County Group of the Ventana Chapter
P.O. Box 604
Santa Cruz, California 95061
831-426-4453
ventana.sierraclub.org
santacruz-staff@ventana.sierraclub.org

CENTRAL COAST FOREST WATCH

1015 Smith Grade
Santa Cruz, CA 95060
ph/fax 831-426-1697
JodiFred@aol.com

April 7, 2009

Leslie Markham, Deputy Chief
Coast Area Resource Management
California Department of Forestry and Fire Protection
135 Ridgway Avenue
Santa Rosa, CA 95401

RE: THP 1-08-159 SCR Eureka Gulch West

Dear Ms. Markham,

I am writing on behalf of Sierra Club, Santa Cruz Group of the Ventana Chapter and Central Coast Forest Watch again requesting that THP 1-08-159 SCR be denied per CCR 898.1(c) (1) which requires the Director to disapprove all plans which *"do not incorporate feasible silvicultural systems, operating methods and procedures that will substantially lessen significant adverse impacts on the environment"*.

We believe that this plan must also be denied per CCR 898.2 (c), because *"There is evidence that the information contained in the plan is incorrect, incomplete or misleading in a material way, or is insufficient to evaluate significant environmental effects."*

Please consider our comments in our February 2009 letter on this THP in addition to the new concerns below.

Cutting Prescription

Page 4, item #14 contains conflicting language. As written, it does not appear to be enforceable and is extremely confusing and misleading. The RPF was asked by the CAL FIRE first reviewer to change some of the language and refused to do so.

Paragraph 1 states that *"the stand will both maintain a residual basal area of 75 square feet per acre" per 913.8(a) and will meet "the minimum seed tree stocking requirements of 913.1(c)(1)(A)(1) of 15 square feet of basal area of trees over 18 inches DBH."* We do not understand why the RPF has included seed tree removal as a prescription. An alternative prescription to 913.8(a) is only allowed per 913.8(b)(1) if *"The regeneration method described in subsection (a) above is not silviculturally appropriate or feasible in the professional judgment of the Director and the RPF who prepared the plan."* Nowhere has the RPF identified or discussed or justified that he is proposing an alternative prescription. Instead he has stated that he will be utilizing 913.8(a). Currently the plan is in violation of the FPRs, is unenforceable and the language regarding 913.1 should be removed or justified and re-reviewed since the Review Team members seem to be unaware of the proposed seed tree removal prescription.

Further confusion from misleading information is found when comparing paragraph 1 and 2 under item #14. The RPF both states that he will retain post harvest *“at least 40% by number of those trees 18 inches DBH and greater”* and, *“for this THP the proposed harvest is 50% or less of the trees greater than 18 inches d.b.h.”* He then states that a 10-year re-entry period shall apply. Retention of at least 40% is the same as harvest of up to 60%. A ten year re-entry period only applies per 926.25 (a)(2), *“For areas where the proposed harvest is 50% or less of the trees greater than 18 inches d.b.h.”* This plan contains conflicting and misleading information about the very basic issue of the cutting prescription.

Tail Holds and Total Acreage

At the request of CAL FIRE per our letter of 2-4-09, the RPF has finally mapped (revised page 24, 2-25-09) an area where he intends to locate *“an estimated ten to 20 tailholds outside of the proposed project area.”* (Page 38.1, 3-9-09, Plan Addendum to Item 16) The RPF claims he will only be impacting an area less than 1/10 of an acre, yet he has mapped an area (identified on the Yarding Map only) of approximately 40 acres within which he will decide where to locate his tail holds. This recently mapped tailhold area also includes multiple existing road segments. There are also several slides that have been previously mapped within the new ‘tailhold’ area, but are not included on the revised yarding map. The RPF has not discussed how he will avoid the slide areas, what impact they may have on the stability of the tailhold trees, etc. While he has included several road segments within his newly mapped tailhold area, he has not discussed what kind of access will be required or how those roads will be utilized. Given that the RPF has not identified a winter operating period for his cable yarding operations, these roads can be utilized all winter long.

Tail holds are part of ‘timber operations’ (PRC 4527) and as such the area for tailholds must be mapped (CCR 10(x)(1)) and the acreage included in the plan acreage totals as part of the ‘logging area’ (CCR 895.1 - Logging Area means that area on which timber operations are being conducted). There must also be a discussion of the potential impacts of any additional road usage during the winter period. Additionally, the full length of such roads must be identified within the logging operation boundary, including at a minimum 100’ on both sides.

The PHI for this plan did not visit the site of proposed tail holds.

Cumulative Impacts

In addition to the various issues surrounding the TMDL that have not been addressed in this plan (see our previous letter, February 4, 2009), the Cumulative Impacts acreage assessment is incorrect as it does not include the additional mapped area acreage for tailholds and tailhold access.

Mapping

The only map that has been amended to include the tailhold area is the Yarding Methods Map. All of the plan maps must be amended to include this additional acreage as well as all roads inside the tailhold boundary, plus appurtenant road segments to access the tailhold area. Such roads must be included in the waiver required by the TMDL for this plan.

TMDL sediment objective

Please refer to our previous letter of February 4, 2009 for further detail. This THP is not in compliance with 916.9(a)(1) *“Comply with the terms of a Total Maximum Daily Load (TMDL) that has been adopted to address factors that may be affected by timber operations if a TMDL has been adopted, or not result in any measurable sediment load increase to a watercourse system or lake.”*

Biological Resources

In Section IV, under Biological Resources, Listed Species, the plan states, *“Mitigations have been incorporated into the plan to address coho salmon and steelhead trout.”* However, we do not agree that the proposed mitigations are sufficient. This plan does not conform to the TMDL for the Pajaro River and Corralitos Creek which states (pg 8), *“Steelhead trout (Oncorhynchus mykiss) in the Pajaro River are at high risk for extinction. There has been a substantial decline in steelhead population over the past 30 years in the South-Central California Coast Region, which includes the Pajaro River. It is estimated that steelhead numbers in the Pajaro River have decreased from more than 1,000 in the 1960s to less than 100 in 1991 (NOAA 1996). Reasons for the decrease in population size include minor habitat blockages such as small dams and impassable culverts, as well as forestry practices and dewatering due to irrigation and urban water diversions.”*

The TMDL further states (pg 17), *“Streambed sediment characteristics are being used as numeric targets for the Pajaro River watershed to ensure that sediment accumulation in pools, or fines around gravels do not degrade invertebrate, amphibian, and fish habitat. While there are several factors contributing to the decline in steelhead and other organisms’ habitat, including low flows, competition with non-native species, and fish barriers, sedimentation of these habitats is a significant factor. These numeric targets were developed with specific consideration for the steelhead.”*

In the latest federal register notice (852 Federal Register / Vol. 71, No. 3 / Thursday, January 5, 2006 / Rules and Regulations) regarding the updated listing determinations for steelhead, it states, *“The BRT (biological review team) was concerned, however, that the larger Pajaro and Salinas basins are spatially and ecologically distinct from other populations in the DPS, such that further degradation of these areas will negatively impact the DPS’s spatial structure and diversity. The BRT found high risks to the abundance, productivity, and the diversity of the DPS, and expressed concern particularly for the DPS’s connectivity and spatial structure. Informed by this assessment, the strong majority opinion of the BRT was that the South-Central Coast steelhead DPS is “likely to become endangered within the foreseeable future.”*

There are 50 slides identified within the logging boundary, with 46 of those within the harvest boundary. Logging of up to 50% of redwood stems is proposed “on the margin of “20 of the ‘features’ (i.e. slides), with a lesser number of stems proposed for harvest on the margin of two additional slide areas. Timber operations are proposed during the winter period with no winter cut off date or rainfall amount. Up to three roads, landings and skid trails are proposed to be open during the winter period while the last THP for this acreage only proposed one road, landing and skid trail open at a time and had a winter cut off date in November. New landings and 70’ of road are proposed for construction, even though the plan area was successfully logged in the mid 1990s using the current infrastructure.

There are 30 identified watercourses (10 Class II and 20 Class III) within the harvest boundary for this THP.

Winter Operations and Winter Operating Period

This THP is confusing, unenforceable and not in conformance with the Forest Practice Rules particularly as pertains to winter operations and the winter operating period.

CCR 914.7, Timber Operations, Winter Period (b) requires that the winter period operating plan address the following subjects including (4) Operating Period.

On page 10, item 4 Operating Period, the RPF does not actually identify his Operating Period. In the preceding paragraph on page 10 of the plan he states that, *“All operations conducted between October 15th and May 1st shall comply with this Winter Operations Plan. This plan complies with 916.9(k) and (l) and 914.7(b).”* CCR 916.9(k) states, *“From October 15, to May 1, the following shall apply: (1) no timber operations shall take place unless the approved plan incorporates a complete winter period operating plan pursuant to 14 CCR 914.7(a)”*

We believe that the intent of this language is to have the winter operating plan conditions apply to the period between October 15 and May 1. However, the winter operating plan for this THP only encompasses the period from October 15 - April 15. The only activity that applies from October 15-May 1 that we were able to discover requires that erosion control facilities will be installed on all skid trails, roads, and landings prior to the end of the day...if there is a "chance of rain 30% or more" before the next day.

Nowhere were we able to actually find stand-alone language, which identified the Winter Operating Period for this plan. We found bits and pieces such as "following October 15..", "until the end of the winter period(April 15th)", ("during the winter period"), and ("following October 15th until April 15th").

Furthermore, the complex proposed mitigations are impossible to follow. Language changes from sentence to sentence (i.e. 1/4" of rain; 1/4" rainfall event; soil saturating event; soil saturating precipitation even; soil saturation; low antecedent moisture conditions; wet weather, non-saturated soil conditions; low moisture conditions; heavy equipment operations; ground based operations; ground based winter period yarding), leading to confusion for the reader. We seriously doubt that this plan conforms to the FPRs as pertains to giving clear direction to the LTO.

Our analysis of the ways in which this plan is incorrect, incomplete or misleading in a material way, or is insufficient to evaluate significant environmental effects is by no means comprehensive or complete. However, we feel we have given ample examples to show that this plan as currently written must be denied.

Thank you for the opportunity to comment. We look forward to a written response to our comments.

Sincerely,



Jodi Frediani

cc: Donna Bradford, Santa Cruz County

Terris Kastner, DFG

Thomas Lippe, Attorney-at-Law

Notes:



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Author Jodi Frediani
has been reviewing
THPs for the public
since 1980.

She is currently a
Forestry Consultant
for Sierra Club,
Santa Cruz Group
and Director, Central
Coast Forest Watch.

Photo by Rebecca Moore

