



California Forestry Association

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RE: Proposed Amendment of Regulations Implementing the California Environmental Quality Act

Mr. Calfee,

The California Forestry Association [CFA] submits the following written comments with regards to the above referenced matter. CFA represents forest landowners, professional resource managers, and producers of wood products and biomass energy throughout California. CFA members manage their lands not only to provide a sustainable timber supply for the manufacture of wood products that Californians and citizens throughout the world rely on, but has the potential to be the most valuable tool available in the effort to reduce global warming emissions and address climate change for future generations.

Well managed, resilient forests are perhaps the most efficient scrubbers of greenhouse gases [GHG] on the planet. Forestry can increase the sequestration capacity of our forestlands by creating ideal growing conditions and accelerating the rate at which carbon is removed from the atmosphere. Transferring carbon fixed in the forest to wood products like limber for homes can safely store millions of tons of carbon for decades, or even centuries.

The California Natural Resources Agency [Resources Agency] is proposing to amend and add certain guidelines implementing the California Environmental Quality Act [CEQA]. These amendments implement the Legislature's directive in Public Resources Code section 21083.05 [enacted as part of SB 97]. The broad objective of the Proposed Amendments is to implement the Legislative directive in SB 97, which requires the development of "guidelines for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions as required by this division, including, but not limited to, effects associated with transportation or energy consumption." Id.

On a positive note, CFA supports several elements in the proposal, including:

- I. directing lead agencies to consider whether a project, over time, will result in a net decrease in greenhouse gas emissions compared to the existing baseline [15064.4];
- II. avoidance of duplication and conservation of resources by incorporating existing environmental information developed for other environmental analysis or plans into the environmental document for a proposed project [15150]; and
- III. tiering environmental documents wherever feasible [15183.5].

On the other hand, our members are very concerned about the implications that any Resources Agency action with regard to this matter may have for the management of their timberlands and business.

It is with that concern in mind that CFA makes the following recommendations, specific to Appendix G:

- I. remove "Forest Resources" from the list of "Environmental Factors Potentially Affected;"
- II. eliminate all reference to the "Forest Protocols adopted by the California Air Resources Board" from the list of tools to determine impacts;
- III. remove any reference to "forest land" in the rezoning context; and
- IV. remove the "loss of forest land" and "conversion of forest land" as a factor determining significant environmental effects.

BACKGROUND

California Forestry and Carbon Sequestration

California is rich in natural resources. Of the 85 million acres classified as wildlands, nearly 17 million are commercial timberland, half privately-owned and half government-owned. This timberland grows 3.8 billion board feet annually. Approximately 1.3 billion board feet of timber is harvested per year, with a value of over \$1 billion. In addition to timber, the state's wildlands sequester and store carbon, provide valuable watershed, wildlife habitat, and recreation resources. Just as trees store carbon, so, too, do manufactured wood products. Wood products such as furniture, posts, lumber and wood structures can store carbon for decades.

California's forests sequester over five million metric tons of carbon every year. Healthy, well-managed forests scrub the air and act as "carbon sinks," removing carbon dioxide from the atmosphere, storing the carbon and releasing air-cleansing oxygen. Forest management as practiced on California's private timberlands provides unique carbon benefits. Of the 165 business sectors identified by the California Air Resources Board, the forest sector *is the only one that sequesters carbon*. All others are net carbon emitters.

Any climate change policy must recognize the significant role of California forests and wood products, and guard against perverse incentives resulting in the development or conversion of forested land.

California's Regulatory Regime for Timber Operations

Private timberland owners in California are governed by the most stringent state forestry laws and regulations in the nation: the California Forest Practice Act [FPA], and the Forest Practice Rules [FPR]. The FPR implement the provisions of the FPA in a manner consistent with other laws, including, but not limited to the Timberland Productivity Act of 1982, the *California Environmental Quality Act* [CEQA], the Porter-Cologne Water Quality Act, and the state and federal Endangered Species Acts. All timber operations on private lands in California must comply with the comprehensive regulatory regime established by the FPA and FPR.

Under California law, timber operations may only be conducted pursuant to an approved timber harvest plan [THP]. The THP review process has been certified as the functional equivalent to the Environmental Impact Report [EIR] requirement under CEQA.

The Board of Forestry and Fire Protection [BoF] is the regulatory authority for promulgation of timberland regulations to, among other things, assure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish and wildlife, and water resources, including but, not limited to, streams, lakes and estuaries. The California Department of Forestry and Fire Protection [CalFIRE] is the agency with final authority in the review and approval of those THPs.

CalFIRE serves as the lead agency in the process; it consults with the other agencies, during the process, but ultimately CalFIRE makes the decision whether a plan complies with the exhaustive and detailed requirements of the FPA and FPR.

Since the adoption on the FPA in 1973, the BoF has enacted numerous regulations to support the FPA's intent related to sustained yield and has adopted conservation and stocking standards for non-federal timberlands. Pub. Res. Code § 4561. The BoF has established rules related to demonstration of Timberland Productivity, Sustained Forestry Planning [14 CCR 933.10], demonstration of Maximum Sustained Productivity [14 CR 933.11], and had defined sustained yield and long term sustained yield [14 CCR 895.1]. Under these various rule provisions, landowners with more than 50,000 acres of timberland are required to demonstrate long-term sustained yield under the management regime they have selected for their ownership. Under this provision, the Department has received and approved long-term sustained yield document covering approximately 3.2 million acres of timberland.

While the BoF has not yet directly addressed GHG in its regulatory language, there are a host of rules as described in the above paragraph that address forest sustainability and which can help to preserve the ability of California's forests to continue to sequester carbon by; site-specific mandates for even- and unevenaged silviculture to maximize forest production [which maximizes GHG sequestration] while protecting public trust resources; regulating the conversion of forests to other non-forest uses which has been shown in many studies to reduce the potential for carbon sequestration and elevate carbon release on a long-term basis; requiring planting of trees or leaving trees that are capable of replacing trees that are harvested [stocking]; allowing for the capture of mortality through easily processed exemptions or emergency notices which can help forest sustainability by reducing the potential of spread of insect or disease or allow salvage of fire damaged trees to be made in to carbon sequestering forest products; and addressing forest sustainability through the requirements of MSP/LTSY.

Following is a brief compendium of the BoF rules that most apply to the issue of forest sustainability as a mechanism to help address the newly developing issue of carbon sequestration. All citations are set forth under Title 14 of the California Code of Regulations.

- 916.16 Late Succession Forest Stands
- 913.1 Regeneration Methods Used in Evenaged Management
- 1103 Conversion of Timberland
- 1103.1 Prohibited Activity
- 1070 Stocking Sampling
- 1071 Minimum Stocking Standards
- 1038 Exemption
- 1052.1 Emergency Conditions
- 913.11 Maximum Sustained Production of High Quality Timber Products

As with all other resource areas, CEQA does not require project proponents to eliminate effects associated with GHG emissions; only to mitigate emission impacts to a level of less than significant. CFA believes that through the implementation of the FPA/FPRs and rigorous THP review and approval process, it is unnecessary to require additional measures or review of timber operations.

In fact, The California Air Resources Board and the California Energy Commission in their efforts to determine the GHG emissions inventory for California and for the forests lands in California have determined these lands to be net sequestering between 5 and 17 million metric tons of CO₂ equivalents annually [MMTCO₂eq/year]. In fact a very detailed baseline analysis for forest GHG emissions in the northern forest lands indicates that the forests of California are net of all emissions sequestering 8.76 MMCO₂eq/year, hardly an impact that needs mitigating.

RECOMMENDATIONS

I. Remove "Forest Resources" from the list of "Environmental Factors Potentially Affected"

The draft Guidelines proposes the inclusion of "Forest Resources" in the list of "Environmental Factors Potentially Affected". This change does not appear to be required or authorized by SB 97 (which requires changes to the CEQA guidelines to address greenhouse gas emissions) and, for the reasons discussed further under item III below, is unnecessary. This change is likely to result in significantly increased analysis [most likely an EIR] whenever forestlands are converted or rezoned. This may occur for even small projects such as rock development or cell tower development. These changes could effectively establish a presumption that any land use decision that could result in a rezoning or conversion of timberland requires the preparation of an Environmental Impact Report [EIR] simply because forestlands are involved. The trigger for preparing an EIR in such a case should be potential impacts on public trust resources themselves such as air, water quality, biological resources, and cultural resources. All such resources are already listed in Appendix G, so that any project—including a conversion or rezoning of timberland—must consider potential impacts to such resources. However, the proposed change could necessitate preparation of an EIR even in cases where a conversion or rezoning of timberland does not pose any risk of adversely impacting such resources. Accordingly, this change would impose unnecessarily burdensome analytical requirements.

II. Eliminate all reference to the "Forest Protocols adopted by the California Air Resources Board" from the list of tools to determine impacts

Included in the list of tools to determine impacts are the "Forest Protocols adopted by the California Air Resources Board". See Appendix G, Section II. These protocols are to determine "tradable forest carbon credits" for the cap and trade market- not for impact analysis. Forest carbon credits are only a small part of the total GHG sequestered by a forest.

Moreover, the current protocols were "adopted" through a Resolution by a non regulatory action by the CARB [Oct 2007]. The adoption of the protocols was not compliant with the Administrative Procedures Act [APA] and, therefore, the protocols are not regulations. Nor was the public provided an opportunity to participate in the construction of the protocols though the APA's review and comment process. Also, the protocols are in the process of undergoing significant changes. In addition, because the analysis includes a review of "forested landscapes" it should also include the requirement to consult with a registered professional forester.

To further make the language of the additions to Section II consistent with the above discussion in our comment I, the language in the introductory paragraph of Section II should be changed from "impacts to forest resources, including timberland," to "impacts to resources associated with timberland" to acknowledge that the concerns should not be focused on changes to land use itself but on potential impacts to the public trust resources associated with forest lands, such as air, water, biological resources, etc.

III. Remove any reference to "forest land" in the rezoning context

Appendix G, Section II (c), states, "[c]onflict with existing zoning for, or cause rezoning of, forest land or timberland." This language does not take into account that the act of a rezone does not result in direct changes to forestland or to public trust resources associated with forestland [e.g., air, water, biological resources and cultural resources].

The state has recognized the importance of forestland for the benefit of many resources. Even before carbon sequestration was in the national spotlight it was acknowledged that the most significant threat to resource values associated with forestlands is when those forestlands are converted to non-timberland uses. As part of the Timberland Productivity Act, a Timberland Preserved Zone [TPZ, later renamed the Timber Production Zone] was designated for the zoning of land used for growing and harvesting timber.

Forest economists have traditionally viewed the production of timber as a result of two primary inputs: the bare land [called "site"] and the tree itself. Typically the value of both the land and the tree are reflected in property values that are assessed for property taxes. Because trees take a long time to grow to merchantable sizes, an annual property tax on land and timber value can lead to a serious mismatch between taxes and revenues.

For this reason, many states, including California, have modified the annual property tax as it applies to timber and timberlands. The California Forest Taxation Reform Act of 1976 made two modifications. It placed values on bare land that are related to its ability to grow trees, and it substituted a percent tax on the value of timber at the time of harvest ["yield" tax] for the annual property tax on the trees. In exchange for this tax benefit, landowners had to be willing to dedicate their timberland to timber growing and compatible uses for a period of at least ten years. Unless terminated by the county or landowner, these ten years renew each year, thus creating a rolling minimum or self-perpetuating ten-year commitment [California Board of Equalization, 2000].

Lands zoned in this manner are called Timberland Production Zone [TPZ]. Gov't Code §§ 51110-51119.5. Total acres of TPZ ostensibly indicate land is committed to timber growing and compatible uses, thus forming the long-term productive base of the State's privately owned forestland base. Currently, California has just over 5.4 million acres of lands specifically zoned for timber production and compatible uses, but according to the Fire and Resources Assessment Program [FRAP] only 2 million acres are in the most productive site categories.

Parcels zoned TPZ must meet the timber stocking standards set forth in the FPA. Pub. Res. Code § 4561. TPZ parcels can be rezoned by either the county or the landowners. If the parcel fails to meet the timber stocking standards, the county shall immediately rezone the parcel and specify a new zone for the parcel, which is in conformance with the county general plan and whose primary use is other than timberland. If a landowner desires in any year to rezone a parcel from its current TPZ, the owner shall give written notice to the appropriate local governing body, naming the new zone desired. Gov't Code § 51120. The board or council by a majority vote of the full body may remove the parcel from the TPZ and specify a new zone for the parcel. The new zone shall become effective 10 years from the date of approval. If the board or council denies the owner's request for change of zone, the owner may petition for a rehearing. *Id.*

Changing TPZ zoning is a complicated and costly process which includes written notice to the appropriate board of supervisors [county or city and county] or city council, a public hearing, majority vote [or four-fifths vote for immediate rezoning] of the Board or Council. Except in the case of immediate rezoning the new zone becomes effective 10 years from the date of the majority vote. For immediate rezoning a recoupment fee is imposed that is the difference between the current tax levy for TPZ and new zoning multiplied by a factor [13.97164]. Without a change in zoning, the lands can only be used for timber production and the compatible uses described above. TPZ lands can not be converted to non-forest use without changing the zoning.

Existing CEQA Guidelines limit the necessity for local agencies to prepare an EIR to projects that may have a significant effect on the environment. "For purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial, *adverse changes in physical conditions which exist within the area* as defined in Section 21060.5" 14 CCR 21151.

If an actual change of land use follows a rezoning, then a "project" subject to CEQA occurs and impacts must be assessed. Also, land meeting the FPA's definition of "timberland" may exist under any zoning designation [including TPZ]. However, before any conversion of "timberland," as defined under the FPA can occur, regardless of zoning, a Timberland Conversion Permit is required, which is subject to CEQA. Pub. Res. Code 4526. Because the conversion permit process is subject to CEQA

and potential impacts to public trust resources that could result from the conversion are already addressed in Appendix G, Item (c) should be dropped.

IV. Remove the "loss of forest land" and "conversion of forest land" as a factor determining significant environmental effects

The addition of subsection II (d) and the proposed change to subsection II (e) in the Appendix G checklist should be dropped from the proposal for the reasons discussed in I and III above. A loss of forest land or proposed conversion of forest land to a non-forest land use does not automatically adversely affect public trust resources and should not by itself trigger the extensive analysis that is required in an EIR.

Since a proposed conversion of forest land to non-forest land is already subject to CEQA, and Appendix G requires additional consideration of any potential impacts to air, water, biological resources, etc. that could result from a loss or conversion of forest land, an EIR must be prepared wherever such a potential impact is identified. Therefore it would be unnecessary and overly burdensome to expand Section II as proposed.

CONCLUSION

As discussed above, none of the changes proposed to Section II (c), (d) and (e) are mandated by SB 97, which required changes to the CEQA guidelines to address Greenhouse Gas Emissions. Because these changes are not associated with the requirements of SB 97, the necessity of and the basis for making these changes has not been established under the Administrative Procedure Act.

As demonstrated above, California forests are an important component in the State's efforts to mitigate climate change impacts of greenhouse gas emissions. Timberland management will play a major role in climate change. The forests of California will both effect and be affected by climate change. Additional mitigations to address the impacts of timber management on climate change is not necessary.

Sincerely,



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