

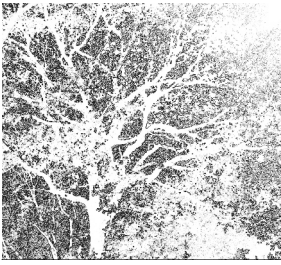
Organization: Hardwood Resources Consultants
Date Received: September 3, 2009

Subject: CEQA Forest Amendments
Christopher Calfee, Special Counsel
ATTN: CEQA Guidelines

Greetings from the Quercus Group:

Attached please find Tejon Mountain Village FEIR comments for the Kern County Planning Commission. This document will provide insight regarding how the Resources Agency CEQA forest amendments are/will be received.

Respectfully,
Ron Cowan, Principal
Quercus Group
Hardwood Resource Consultants



September 2, 2009

Kern County Planning Commission
2700 "M" Street, Suite 100
Bakersfield, CA 93301-2323
planning@co.kern.ca.us

Re: Tejon Mountain Village FEIR

Honorable Commissioners:

The Quercus Group (QG) writes with comments regarding the Tejon Mountain Village (TMV) final EIR. Unfortunately, QG finds that the FEIR does not make a good faith effort to analyze or mitigate project greenhouse gas (GHG) emissions. Specifically, the project fails to acknowledge or comply with the 2007 California Air Resources Board (CARB) Forest Protocols measurement methodology to analyze and mitigate carbon dioxide (CO₂) biological emissions associated with the conversion of California native forests to non-forest use.

Instead of using CARB's credible GHG standards, TMV appears to have intentionally selected an inappropriate methodology for measuring its native forest carbon emissions in an attempt to avoid actually addressing project deforestation carbon impacts or proportional mitigation measures. Consequently, the FEIR fails to provide the oak woodlands information necessary for informed public participation and informed decision-making regarding GHG environmental effects or proportional mitigation measures.

Below are Quercus Group replies to FEIR GHG misrepresentations:

FEIR Response 35 A: *"It should be noted that the Forest Protocol provides guidance to account for and report GHG emission reductions associated with 'forest projects'...The guidance is not intended to apply to non-forest, real estate development projects such as the proposed Project."*

Reply: This response is without merit, demonstrating a lack of forestry training and experience on the part of the respondent. The forestry challenged Kern County/project consultants clearly can't differentiate between the Climate Action Reserve forest protocols as they currently apply to the voluntary carbon credit market, and soon to the cap/trade market, from the CARB forest protocols as they apply to CEQA review. Forestry professionals wouldn't make this glaring error.

FEIR Response 35 B: *“It is worth noting that AB 32 – California's primary legislation to address GHG emissions – does not discuss carbon sequestration from forest conservation. The comment specifically identifies the Office of Planning and Research's proposed CEQA Guideline Amendments (Proposed Guidelines) to support the argument that California requires analysis of biological emissions of GHGs, and that the CARB Forest Protocol must be used for this analysis. It should be noted that the Proposed Guidelines are still in the rulemaking process and will not be adopted until 2010.”*

Reply: The respondent is misinformed. Not only is it disputable whether AB 32 is the “primary” GHG legislation, AB 32 has nothing to do with CEQA (see SB 97), which is why AB 32 doesn't reference native forest emissions but CEQA specifically does in its Initial Study Checklist. Furthermore, AB 32 designates CARB as the lead state agency in establishing greenhouse gas regulations, standards and guidelines. CARB has exercised its mandate with the inclusion of specific forest amendments in the CEQA GHG update.

First the FEIR claims the forest protocols don't apply to TMV, then if they do apply it's not until a future date. In fact, the Resources Agency amendments statement of reasons concludes: *“Thus, the amendments to the CEQA Guidelines developed pursuant to SB 97 do not create new requirements; rather, they interpret and clarify existing CEQA law.”* This Resources Agency finding requires valuation of climate change impacts in CEQA documents now, *even* before final adoption of State CEQA Guidelines on climate change. If it isn't new CEQA, there's no need to wait until January 1, 2010 to implement the GHG amendments. The Resources Agency ruling also validates QG's July 6, 2009 contention that TMV CO₂ biological emissions due to the conversion of oak woodlands are subject to the usual CEQA scientific and factual evidence standards for evaluating potentially significant effects.

FEIR Response 35 B cont: *“In addition, although Appendix G of the Proposed Guidelines does state that lead agencies may refer to, inter alia, ‘the forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board,’ the Proposed Guidelines do not mandate use of this methodology for determining GHG impacts from a project. As discussed in Response to Comment 24-P3, the IPCC methodology employed in the Draft EIR represents an accepted approach for determining biological emissions associated with forest conversion, and is supported by substantial evidence.*

That the Proposed Guidelines note that lead agencies may refer to forest protocols developed by CARB does not represent a mandate of their use. CEQA grants lead agencies broad discretion to determine the appropriate methodology for analyzing a project's environmental impacts. Substantial discretion is granted to lead agencies in determining what analytical methodology to utilize in evaluating CEQA impacts...The Draft EIR's use of the IPCC methodology is fully supported.”

Reply: The respondent's defense of the IPCC methodology used to measure TMV native forest carbon emissions is ludicrous, as the following DEIR statement attests:

"Development of the project site is likely to affect the existing carbon stock and CO₂ uptake of the land in the project area...In addition, the decomposition of removed vegetation would release CO₂ from stored carbon back into the atmosphere....The following analysis employed the IPCC Tier 1 methodology to determine changes in carbon sequestration due to land use change. Due to the large uncertainty pertaining to this [IPCC] methodology, CO₂ emissions associated with land use change were not included in the project inventory." (DEIR 4.3-93)

TMV knew of the existence of the CARB forest protocols but instead chose an inadequate generic international vegetation standard as a DEIR substitute to measure forest CO₂ emissions. Then TMV rejected their hand picked IPCC methodology as being too inaccurate to include carbon biological emissions in the project environmental analysis. Meanwhile, TMV has refused to apply the simple and precise CARB forest emissions measurement methodology for CEQA review:

1. How much potential CO₂ sequestration over the next 100 years will be lost as a result of project impacts to live native trees three inches or greater dbh?
2. How much sequestered CO₂ will be released if the live trees, standing dead trees or downed-woody debris are burned or otherwise disposed?
3. How will project forest CO₂ biological emission impacts be proportionally mitigated?

Concerning Kern County's forest carbon emissions methodology discretion, the Resources Agency states: *"Where a mitigation proposal cannot be verified with an existing protocol, a greater evidentiary showing may be required."* Does Kern County intend to cite the IPCC methodology disavowed by TMV as the substantial evidence alternative to the CARB forest protocols?

FEIR Response 35 F: *"Commentor states that the CARB Forest Protocol represents a quantitative standard available to determine a threshold of significance for biological emissions due to land use conversion, and that the appropriate threshold of significance is very low. Commentor appears to confuse the question of analysis under CEQA with the determination of significance. While the Forest Protocol may provide assistance in quantifying the emissions of GHGs resulting from land use conversion (although, as discussed in the Response to Comment 24-P3, the Draft EIR properly utilized the IPCC methodology), it does not represent a significance threshold. Rather, a significance threshold is a qualitative or quantitative standard against which a project's impact can be measured to determine its significance. As discussed in Global Response 7.5.2, Climate Change, the Draft EIR utilizes a significance threshold of consistency with AB 32's emission reduction requirements [29%], which is supported by substantial evidence."*

Reply: The confusion is on the part of the respondent. In fact the CARB forest protocols do function as a CEQA accounting system by which a threshold of significance for a project's forest carbon emission impacts can be assessed and proportional mitigation measures developed. Due to two (direct and cumulative) CO₂ biological emission effects occurring for each tree impacted the threshold of significance for the conversion of oak woodlands is as close as it gets to the mythical zero molecule emissions rule.

The respondent also makes the common mistake of believing that the analysis of significant GHG effects focuses exclusively on cumulative impacts. This GHG perception is untrue for forest conversions because of the singular capacity of native trees to cumulatively store large quantities of CO₂ when alive and to directly emit that carbon when they die. The Resources Agency CEQA statement of reasons is succinct regarding direct forest CO₂ emissions effects. If the forest protocols are applied to measure TMV direct and cumulative forest carbon emissions these impacts will be found to be very significant, which is why TMV refuses to apply the CARB methodology.

Kern County is operating under the illusion that the AB 32 generalized 29 percent GHG emission reduction target is a magical substitute for specifically analyzing and mitigating CEQA deforestation carbon emissions. As previously explained AB 32 has nothing to do with CEQA, which means the 29 percent figure is irrelevant for TMV CEQA deforestation CO₂ emissions analysis or mitigation. Moreover, Kern County hasn't analyzed project GHG impacts, instead it proposes to defer GHG analysis and mitigation measures until future focused EIRs are conducted. Notably, CO₂ biological emission assessments are not stipulated in these focused EIRs.

FEIR Response 35 O: *"It should be noted, however, that commentor's suggested mitigation does not make logical sense. If, as the commentor asserts, the Project would produce net CO₂ emissions as a result of the loss of sequestration potential and if the planting of replacement trees would be inadequate, then the commentor's suggestion of replacement with equivalent oak woodlands outside the Project site would not result in avoidance of the impact. In the context of commentor's letter, "replacement" would be the preservation of existing oak trees. Preserving an equivalent number of oak trees elsewhere would not change the Project's impact because it would not increase sequestration in an amount equivalent to the sequestration potential that is lost as a result of the Project. Instead it would simply retain the existing sequestration potential of the offsite preservation area."*

Reply: As QG stated in DEIR comments, it is infeasible to mitigate forest carbon emissions to less than significant. Nonetheless, the Lead Agency must identify and adopt feasible CO₂ mitigation measures or project alternatives to substantially reduce these adverse public health effects, which Kern County hasn't done. CEQA's preferred mitigation measure is impact avoidance. Outside of forest impact avoidance, the QG mitigation recommendation is the most meaningful measure to reduce TMV deforestation CO₂ emissions under CEQA provisions.

The QG 1:1 acre offsite mitigation ratio suggestion is consistent with the forest protocols fundamental purpose of preserving existing oak woodlands. Essentially, QG's proposal is the best of the bad CEQA mitigation alternatives available for oak woodland conversions. Kern County is challenged to identify one mitigation measure other than in-kind forest replacement that proportionally mitigates habitat impacts, plus both the direct and cumulative oak woodland carbon biological emissions associated with TMV woodlands conversion.

CEQA Mitigation

California's GHG policy has placed a premium on conserving native forests, specifically recognizing the singular capacity of existing trees to naturally sequester large quantities of CO₂ over time and the adverse public health effects of discharging that stored carbon back into the atmosphere when forests are unnaturally impacted.

California has officially designated CO₂ a grave human health risk. Local "overriding considerations" are based on CEQA findings that public benefits outweigh the significant environmental impacts of a project. It will be enlightening to see the scientific and factual evidence proffered to establish the Tejon Mountain Village public benefits that offset the globally recognized public health threat from deforestation CO₂ emissions. Then this: The US has been the biggest GHG emitter in the world and California is the second-largest CO₂ emitter in the US. In fact, all the CEQA overriding considerations over the past 40 years have been a significant contributor to the current GHG crisis. Local indiscretion has been the granddaddy of carbon cumulative impacts.

Summary

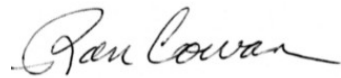
The Tejon Mountain Village EIR shows Kern County to be oblivious regarding how to properly conduct a lawful GHG analysis for native forests. The forestry performance of project consultants has been unprofessional and inexperienced. Rather than simply comply with the law, the FEIR has chosen to ignore and attempted to manipulate CEQA GHG requirements.

The responses to Quercus Group GHG comments represent nothing more than unsubstantiated opinions that provide no new information, evidence or relevant cited references to support the FEIR assertions. The TMV claim of providing substantial evidence for its FEIR forest emission findings are proved speculative and clearly erroneous by the science, fact and law upon which California's official GHG regulatory policy is founded. For substantial evidence the FEIR serves up stale US Department of Energy science and a dodgy IPCC international methodology rather than referencing the extensive up to date GHG science, fact and standards developed by the State of California. Nor did TMV ever consult with the California Air Resources Board, Governor's Office of Planning and Research, Natural Resources Agency or Office of the Attorney General to substantiate its fanciful CEQA forest CO₂ emission interpretations.

There is overwhelming scientific and factual evidence that Tejon Mountain Village conversion of oak woodlands will result in potentially significant CO₂ biological emissions and the project has not made a meaningful attempt to comply with the required GHG evaluation. The FEIR also contains incomplete native tree data for the oak woodlands impacted by the project. These numerous information deficiencies makes intelligently determining air quality-climate change effects or the sufficiency of mitigation measures an impossible task for Kern County decision-makers and general public. To rectify this situation the project must conduct a detailed forest inventory of the impacted oak woodlands and measure TMV deforestation carbon emissions using CARB measurement methodology, then formulate proportional mitigation for CO₂ impacts.

The Tejon Mountain Village project EIR has failed to proceed as required by law and it would be an abuse of discretion for Kern County to approve the project or certify the EIR in its current form.

Sincerely,

A handwritten signature in cursive script that reads "Ron Cowan".

Ron Cowan, Principal
Quercus Group

cc: Board of Supervisors
Christopher Calfee, Resources Agency Special Council

Attachments (2): Resources Agency CEQA Statement of Reasons
California Native Forests and Climate Change