

Letter 49

Michele Dias  
VP Legal and Environmental Affairs  
California Forestry Association

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**Comment 49-1**

Commenter expresses support for the proposed amendments to sections 15064.4, 15150 and 15183.5.

**Response 49-1**

The Natural Resources Agency appreciates the support for various elements of its proposed amendments.

**Comment 49-2**

Commenter suggests deleting removing all references to forest resources and the Forest Protocols from Appendix G.

**Response 49-2**

The Natural Resources Agency disagrees with the suggestion that forestry resources should not be addressed in the Appendix G environmental checklist. As explained in the Initial Statement of Reasons.

Forestry questions are appropriately addressed in the Appendix G checklist for several reasons. First, forests and forest resources are directly linked to both GHG emissions and efforts to reduce those emissions. For example, conversion of forests to non-forest uses may result in direct emissions of GHG emissions. [Citations omitted.] Such conversion would also remove existing carbon stock (i.e., carbon stored in vegetation), as well as a significant carbon sink (i.e., rather than emitting GHGs, forests remove GHGs from the atmosphere). [Citation omitted.] Thus, such conversions are an indication of potential GHG emissions. Changes in forest land or timberland zoning may also ultimately lead to conversions, which could result in GHG emissions, aesthetic impacts, impacts to biological resources and water quality impacts, among others. Thus, these additions are reasonably necessary to ensure that lead agencies consider the full range of potential impacts in their initial studies. In the same way that an EIR must address conversion of prime agricultural land or wetlands as part of a project (addressing the

whole of the action requires analyzing land clearance in advance of project development), so should it analyze forest removal.

Additionally, the Legislature has declared that “forest resources and timberlands of the state are among the most valuable of the natural resources of the state” and that such resources “furnish high-quality timber, recreational opportunities, and aesthetic enjoyment while providing watershed protection and maintaining fisheries and wildlife.” (Public Resources Code, § 4512(a)-(b).) Because CEQA defines “environment” to include “land, air, water, minerals, flora, fauna, noise, [and] objects of historic or aesthetic significance” (Public Resources Code, section 21060.5), and because forest resources have been declared to be “the most valuable of the natural resources of the state,” the addition of forestry questions to Appendix G is appropriate both pursuant to SB97 and the Natural Resources Agency’s general authority to update the CEQA Guidelines pursuant to Public Resources Code section 21083(f). This comment is introductory in nature. Specific objections to portions of the proposed amendments are addressed below.

#### **Comment 49-3**

Commenter believes any climate change policy must recognize the significant role of California forests and wood products and guard against incentives to develop or convert forest lands.

#### **Response 49-3**

The Natural Resources Agency recognizes the importance of the forest sector’s role in California’s overall climate strategy and its contribution to the State’s economy. For the reasons described in Response 49-2, above, the Natural Resources Agency finds that the addition of forestry resources to the Appendix G checklist will assist lead agencies in considering the potential adverse effects of proposed projects on such resources.

#### **Comment 49-4**

Commenter believes that the amendments to Appendix G, requiring additional review of timber operations, is unnecessary. Review of potential impacts to forestry resources is already accomplished through implementation of the California Forest Practice Act and compliance with Forest Practice Rules.

#### **Response 49-4**

The Natural Resources Agency disagrees that the amendments to Appendix G, Section II are unnecessary because of the California Forest Practice Act (FPA). The FPA generally requires a land owner who wants to convert “timberland” to non-timber uses to obtain a timberland conversion permit (TCP). (Public Resources Code § 4621(a); 14 C.C.R. § 1103.) “Both the TCP and the project for which the timberland is being converted is subject to environmental review by the local government pursuant to the California

Environmental Quality Act (CEQA), which may include the preparation of either an environmental impact report (EIR) or a negative declaration, depending upon the type of project at issue.” (Guide to California Forest Practice Act and Related Laws at pg. 418.) This will depend upon “the nature, type, and extent of the timber operations and the proposed new land.” (Guide to California Practice Act and Related Laws at pg. 426.)

Not all projects that may be subject to CEQA would necessarily be regulated by the FPA, however. There are numerous exemptions to the TCP requirement. (See, e.g., Cal. Code Regs., tit. 14, §§ 1104.1, 1104.2.) Also, Timber Harvest Plans, which the comment references, only apply to timber harvests for “commercial purposes,” as that term is defined in the FPA. (Public Resources Code, § 4527.) Moreover, the proposed amendments to Appendix G address not only timberland, which is regulated by the FPA, but also forest land, which is more broadly defined in the Public Resources Code. Finally, as the comment admits, the Forest Practice Rules do not yet directly address greenhouse gas emissions.

#### **Comment 49-5**

Commenter notes that lands in timber operations cause a net carbon sequestration.

#### **Response 49-5**

The amendments to Appendix G, Section II are intended to assist lead agencies in determining impacts resulting from the conversion of forests to non-forest uses. Other proposed amendments to the Appendix G checklist address greenhouse gas emissions specifically. To the extent that substantial evidence demonstrates that a project will result in no change in greenhouse gas emissions, or a decrease in such emissions, section 15064.4(b)(1) would allow lead agencies to consider such information in determining the significance of those emissions. No revision is required in response to this comment.

#### **Comment 49-6**

Revise Appendix G: Section II to remove “forest resources” from the checklist. This amendment is not required or authorized by SB 97. A lead agency will presumably conclude an EIR is required whenever a decision is made to rezone land or convert timberland. The determination of whether to prepare an EIR should be based on potential impacts on public trust resources: air, water, biological and cultural resources, and not on impacts to forest resources themselves.

#### **Response 49-6**

The Natural Resources Agency disagrees that impacts to forest resources should not be considered in an environmental analysis. As explained in Response 49-2, above, the amendments to Appendix G, Section II are reasonably necessary to further the Legislature’s intent in SB 97.

Inclusion of forest resources in the Appendix G checklist will not cause lead agencies to presume that any impact to forest resources will be significant. Rather, any determination must be supported by substantial evidence in the record. The checklist, moreover, includes an option for forestry-related questions, just as with all other potential impact areas, for the lead agency to select the No Impact and Less Than Significant boxes. The inclusion of forestry resources in Appendix G will not increase regulatory burdens for at least two reasons. First, as explained in Response 49-2, above, forest resources already fall within CEQA's definition of environment, so analysis of impacts to such resources is already required. Second, to the extent that a Timber Harvest Plan is required, the Forest Practice Rules would govern the environmental analysis. (Cal. Code Regs., tit. 14, § 896.)

#### **Comment 49-7**

Revise Appendix G: Agriculture and Forestry Resources to remove the reference to "Forest Protocols" adopted by the California Air Resources Board from the list of tools to determine impacts.

#### **Response 49-7**

The amendments to Appendix G would suggest that lead agencies consult forest protocols adopted by the Air Resources Board in impacts to forestry as they relate to carbon measurement. The comment implies the protocols are not appropriate for purposes of CEQA review. The Natural Resources Agency disagrees.

The protocols may be used to determine tradable carbon credits. However, the protocols also contain methodologies to count, and appropriately discount, the sequestration potential of forestry projects. Protocols, such as the *Urban Forest Project Reporting Protocol*, also provide methodologies to quantify not just sequestration values, but other environmental benefits, such as reduced energy consumption and improved air quality. (Urban Forest Project Reporting Protocol at pg. 16.)

In any event, use of such protocols is completely discretionary, as indicated by use of the word "may." The comment does not indicate that the protocols would provide inaccurate or irrelevant information. Therefore, the Natural Resources Agency declines the suggestion to remove the reference to protocols.

#### **Comment 49-8**

Commenter states that the Air Resources Board's Forestry Protocols were adopted by resolution, a non regulatory action, which does not comply with the Administrative Procedure Act. A lead agency should be required to consult with a registered professional forester because an analysis includes a review of "forested landscapes".

**Response 49-8**

As explained above, the protocols can provide considerable information useful in a CEQA review. While the comment correctly notes that the current protocols were adopted by resolution there is no requirement that reference materials used in a CEQA evaluation be adopted pursuant to the Administrative Procedure Act. Moreover, as noted above, and consistent with the rule that lead agencies may choose the most appropriate methodology in its environmental analysis, reference to protocols adopted by the Air Resources Board is completely discretionary. Nothing in the amendments or in CEQA, as a general matter, requires a lead agency to use specific protocols or methods.

Regarding the use of registered professional foresters, the CEQA Guidelines already acknowledge that state law may require the use of registered professionals in developing information used in an EIR. (State CEQA Guidelines, § 15149.) No additional revision to that effect is necessary.

**Comment 49-9**

Revise the Appendix G: Agriculture and Forestry Checklist, preamble to focus on potential impacts to public trust resources associated with forest lands, such as air, water, and biological resources, rather than changes to land use.

**Response 49-9**

The Appendix G checklist already requires a lead agency to consider potential impacts to natural resources such as those mentioned in this comment. As explained in Response 49-2, above, forest lands are themselves an environmental resource that is encompassed in CEQA's definition of "environment." The Natural Resources Agency, therefore, declines to make the revisions suggested in this comment.

**Comment 49-10**

Remove any reference to "forest lands" in the context of rezoning. A rezone does not result in direct changes to forestland or to public trust resources associated with forestlands. The existing permitting process to rezone or convert timberlands is already subject to CEQA, thus potential impacts to public trust resources resulting from conversion would be addressed.

**Response 49-10**

As explained in Response 49-2, the changes to Appendix G, Section II are reasonably necessary to ensure a lead agency considers the impacts of rezoning forestland. The comment notes that a rezone may not cause direct physical impacts; however, CEQA also requires analysis of indirect impacts. (State CEQA Guidelines, § 15358.) The definition of project in the CEQA Guidelines, for example, expressly includes the example of "amendment of zoning ordinances." (*Id.* at § 15378.)

Further, as explained in Response 49-4, above, while the FPA regulates some forest uses, it does not address all uses. Therefore, inclusion of forest resources questions in the Appendix G checklist is necessary to ensure full consideration of potential impacts to such resources. The Natural Resources Agency rejects this comment.

**Comment 49-11**

Remove checklist question (e) because the loss of forest land or conversion to a non-forest land use does not automatically adversely impact public trust resources.

**Response 49-11**

As explained in Response 49-2, above, forest lands are themselves an environmental resource that is encompassed in CEQA's definition of "environment." The comment implies that all conversions would be considered significant and require preparation of an EIR. As explained in Response 49-6, above, inclusion of forest resources in the Appendix G checklist will not cause lead agencies to presume that any impact to forest resources will be significant. Rather, any determination must be supported by substantial evidence in the record. The checklist, moreover, includes an option for forestry-related questions, just as with all other potential impact areas, for the lead agency to select the No Impact and Less Than Significant boxes. The Natural Resources Agency rejects this comment.

**Comment 49-12**

Potential impacts resulting from the conversion of forest land to non-forest land are already addressed in CEQA. Expanding this section is unnecessary and burdensome.

**Response 49-12**

The inclusion of forestry resources in Appendix G will not increase regulatory burdens for at least two reasons. First, as explained in Response 49-2, above, forest resources already fall within CEQA's definition of environment, so analysis of impacts to such resources is already required. Second, to the extent that a Timber Harvest Plan is required, the Forest Practice Rules would govern the environmental analysis. (Cal. Code Regs., tit. 14, § 896.)

**Comment 49-13**

Commenter believes none of the changes proposed to Appendix G, Section II are mandated by or associated with SB 97. The necessity of and the basis for making these changes has not been established under the Administrative Procedures Act.

**Response 49-13**

The Natural Resources Agency disagrees. The amendments to Appendix G, Section II are reasonably necessary as explained in Response 49-2.