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Mr. Leslie Markham
California Department of Forestry and Fire Protection
135 Ridgeway Ave.
Santa Rosa, CA 95401

Re: THP 1-04-059 SON, TCP 04-531, Martin Conversion

Dear Ms. Markham:

I write this letter on behalf of the Redwood Chapter of Sierra Club regarding *both* the above-referenced THP and timberland conversion. I am sending a copy to Mr. Allen Robertson in Sacramento.

In a number of fundamental ways, the environmental review documents for these two permits fail to satisfy the minimal standards of the California Environmental Quality Act (CEQA) and the Forest Practice Act (FPA).

Alternatives

The THP's consideration of alternatives does not satisfy CEQA. The consideration of feasible, less damaging alternatives is one of the most important tasks under CEQA. By comparing them with the project, the decision-maker and the public can appreciate the environmental consequences of the latter. An alternative is feasible even if it would impede to some degree the attainment of the project objectives, or would be more costly. The consideration of alternatives must be sufficiently detailed to provide decision-makers and the public with information to allow them to intelligently take account of environmental consequences.

Is difficult to determine whether any of the alternatives, particularly alternative land uses, are feasible and less damaging. Although several may be—forest management, rural vacation property, rural residential—insufficient information about them or any others is provided to allow them to be compared to the project.

Ordinarily, alternatives for projects like the proposed conversion are smaller versions of the project, say conversions of fifteen, ten, and five acres. These are feasible and satisfy the landowner's objectives. But none are considered.

In addition, the no project alternative does not provide sufficient information. (CEQA Guidelines, § 15126.6, subd. (e)(2)-(3).) And neither it nor any other alternative is identified as the environmentally superior one.

Cumulative Impacts

Cumulative effects are defined as incremental or minor (less than significant) effects that become significant when combined with similar incremental effects from other past, present, and future activities, both on and off-site. The CEQA Guidelines set forth the minimum elements necessary for an adequate analysis of cumulative impacts: (1) a list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency; (2) a "summary of the expected environmental effects to be produced by those projects....," and (3) a "reasonable analysis of the cumulative impacts of the relevant projects." (Guidelines, § 15130, subds. (b)(2), (3).) In short, the essence of a cumulative impacts analysis is a list of projects, a discussion of their effects, and a reasonable analysis of their cumulative impacts.

The THP falls well short of these minimal requirements. It does not identify and summarize the incremental impacts from any past, present, or future projects on or off-site. And, as one would expect, without this information, the THP does not even attempt to analyze how these incremental effects may combine to deleteriously affect the environment.

Even the list of projects in the relevant assessment area is inadequate. It does not provide their location, let alone their location with respect to the present THP; and it does not indicate whether they are past, present, or future projects.

Finally, it is well to note that CEQA does not limit consideration of past impacts to the preceding 10-year period. Even assuming the previous 10 years were relatively benign, past incremental impacts, which are known to be considerable, must be considered in combination with the present plan.

I note that CDF's PHI states that the landowner will not develop other portions of his property as a mitigation. I trust you can see that this is not a mitigation, it is sophistry. If a project has a cumulative impact, it is not a mitigation to say you will not add to it. A project does not mitigate its actual effects by saying it will not make them worse than they already are. We truly hope that CDF does not begin to accept such cynical nonsense to justify approvals.

The THP is also flawed because it assumes that cumulative impacts will be addressed through the mitigation of significant effects. This rationale is wrong as a matter of law and fact. In *Environmental Protection Information Center, Inc. v. Johnson* (1985) 170 Cal. App. 3d 604, the court of appeal concluded that CDF was not permitted to conclude that cumulative impacts are addressed by maximizing mitigation measures for the project at hand. Indeed even Technical Rule Addendum No. 2 recognizes that cumulative impacts are minor and incremental in nature and by definition frequently escape mitigation measures for significant on-site effects.

It is now well accepted by the regulatory and scientific communities that CDF fails to evaluate cumulative impacts on a THP-by-THP basis, leading to well-documented environmental harm. This is the conclusion not only of CDF's own task force, but of every independent scientific and agency evaluation of CDF's THP program. This THP continues that well-documented trend. It fails to adequately identify and describe other related projects in the region and on site that may combine with one another to cumulatively affect the environment. It fails to identify any of the potential cumulative effects from any of those projects. And it fails to analyze the potential cumulative effects of all of these projects in combination. The present THP is worse than the many that were studied and found wanting in the attached reports and documents. It does not include methodology for identifying and evaluating cumulative impacts, baseline data for measuring them, and adequate description of the current resource conditions. It assumes cumulative impacts will be eliminated by best management practices, a conclusion that has been forcefully refuted by any number of the enclosed studies.

Please consider the following documents, which are in the record, in evaluating the adequacy of the cumulative impacts analysis for this project.

Little Hoover Commission, Timber Harvest Plan: A Flawed Effort to Balance Economic and Environmental Needs

LSA Associates, Final Report: Conclusions and Recommendations for Strengthening the Review and Evaluation of Timber Harvest Plans

61 Fed.Reg. 56138: Endangered and Threatened Species: Threatened Status for Central California Coast Coho Salmon

July 28, 1997, Memorandum from Division of Mines and Geology to CDF re THP 1-97-232 HUM

August 21, 1997, Memorandum From Division Of Mines And Geology To CDF re Bear Creek Drainage

1997 letter from Alexis Strauss, acting director of the Water Division of the United States Environmental Protection Agency to the California Board of Forestry

October 17, 1997, letter from National Marine Fisheries Service (NMFS) to CDF

September 11, 1997, article appearing in the Humboldt Beacon: *CDF Says Logging Has Adverse Effect*

October 14, 1997, Memorandum from Department of Fish and Game to CDF re fish habitat conditions in Bear Creek

November 25, 1997, article appearing in the San Jose Mercury News, *Critics scorch forestry agency*

January 22, 1998, letter from NMFS to the Regional Water Quality Control Board

February 11, 1998, letter from CDF to Pacific Lumber Co.

April 7, 1998, letter from NMFS to CDF

November 20, 1998, Water Quality Control Board, Executive Officer's Summary Report: *Cumulative Watershed Effects Assessment on North Coast Timberlands*

January 21, 1999, letter from CDF to Pacific lumber Co.

May 24, 1999, letter from Dr. Leslie Reid to Assemblyman Fred Keeley; Dr. Leslie Reid: *Forest Practice Rules and cumulative watershed impacts in California*

May 26, 1999, article appearing in the San Diego Union-Tribune: *Logging regulation should be tightened, scientist says*

Scientific Review Panel (June 1999): *Report of the Scientific Review Panel on California Forest Practice Rules and Salmonid Habitat*

Cumulative Impacts Analysis: A Report of CDF Director's THP Task Force (July 1999)

December 2, 1999, letter from NMFS to CDF

65 Fed.Reg. 36074: *Endangered And Threatened Species: Threatened Status for One Steelhead Evolutionarily Significant Unit in California*

The University of California Committee on Cumulative Watershed Effects (June 2001): *A Scientific Basis for the Prediction of Cumulative Watershed Effects*

August 2, 2001, Water Quality Control Board, Executive Officer's Summary Report: *Timber Harvest Division Regulatory Coordination*

The California Senate Office of Research, *Timber harvesting and Water Quality* (December 2002)

EPA, *California Nonpoint Source Program Findings and Conditions* (June 1998)

Status Review of California Coho Salmon North of San Francisco Report to the California Fish and Game Commission (April 2002)

Final Report on Sediment Impairment and Effects on Beneficial Uses of the Elk River and Stitz, Bear, Jordan and Freshwater Creeks, Humboldt Watersheds Independent Scientific Review Panel

Phase II Report: Independent Scientific Review Panel on Sediment Impairment and Effects on Beneficial Uses of the Elk River and Stitz, Bear, Jordan and Freshwater Creeks, Humboldt Watersheds Independent Scientific Review Panel

In addition, under Rule 916.9(b), "Pre-plan adverse cumulative watershed effects on the populations and habitat of anadromous salmonids shall be considered. The plan shall specifically acknowledge or refute that such effects exist. Where appropriate, the plan shall set forth measures to effectively reduce such effects." The THP does not contain the analysis required by this rule. Nor does it set forth measures to effectively reduce the adverse impacts that anadromous salmonids have suffered in the relevant watershed.

Lack of Public Notice

I note that numerous documents have been added to the record without public notice in violation of CEQA and the Forest Practice Act. These include an

amended consideration of alternatives, wildlife survey for red-legged and yellow-legged frogs, and a botanical report. As you know Judge Lawrence Antolini recently found CDF's practice of adding such documents to the file without notice to be illegal. (*Joy Road Area Forest And Watershed Association v. CDF* (Super. Court Sonoma County, 2003, 229850.)

Wildlife Survey

The RPF recently provided his own wildlife survey of two species of special concern, the red-legged frog and the yellow-legged frog. There is no evidence in the record demonstrating that Mr. Jacobszoon is a wildlife biologist, never mind one with the expertise needed to survey for these species. In addition, there is no evidence that he followed any of the several protocols for surveying the species. Indeed, it is apparent that he did not. I provide these protocols under cover of separate letter. His conclusions therefore are not supported by substantial evidence.

Violation of Forest Practice Rule 916.9

Little Creek and its tributaries lie within a Threatened and Impaired Watershed and are therefore subject to Forest Practice Rule 916.9. (Cal. Code Regs., tit. 14, § 916.9.) Among other things, the rule prohibits any measurable increase in sediment load:

Every timber operation shall be planned and conducted to prevent deleterious interference with the watershed conditions that primarily limit the values set forth in 14 CCR 916.2....To achieve this goal, every timber operation shall be planned and conducted to meet the following objectives where they affect a primary limiting factor: (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.*

(Cal. Code Regs., tit. 14, § 916.9(a)(1), italics added.) The Gualala River watershed, of which Little Creek is a part, is listed pursuant to the Clean Water Act, Section 303(d), as sediment impaired.

The evidence of record demonstrates that the present plan will have a measurable sediment load increase to a watercourse system. Recently CDF had Peter Cafferata estimate the increase in turbidity for a similar timberland conversion to vineyard in the Pocket Canyon Creek THP 1-02-216 SON. The Pocket Canyon Creek conversion was 49 acres on gentle to moderate slopes. Mr. Cafferata concluded that the conversion would increase turbidity or sediment load by 18

percent in the class I watercourse, and by far more than that in the class II and III watercourses draining the site. Mr. Cafferata informed me during a telephone conversation that these were measurable increases in sediment load. Even after the conversion was removed from the Pocket Canyon plan, Mr. Cafferata was unable to say that the THP would not have any measurable increase in sediment load. In fact, when I asked him if it would, he politely declined to answer my question. (See my letters to CDF of September 27, 2003, and March 6, 2004, regarding THP 1-02-216 SON.)

Rule 916.9(a)(1) requires CDF to demonstrate that a plan will not have a measurable sediment load increase in a watercourse system, including any class I, II, or III watercourses. We respectfully request that CDF have Mr. Cafferata or a comparable professional demonstrate using appropriate data or assumptions that the present project will not have a measurable sediment load increase in any watercourse system. I refer you to the administrative record for the Pocket Canyon THP and Mr. Cafferata's hydrologic review, in which he performed a number of calculations in concluding that the conversion would result in a measurable increase in turbidity. I incorporate by reference the Pocket Canyon THP file, in particular those documents relating to Mr. Cafferata's hydrologic review.

I note that CDF may take the position that any measurable increase in turbidity will be short-lived or insignificant. But such conclusions are beside the point. The rule clearly prohibits any *measurable* increase, because it is designed to speed the recovery of an impaired watershed. It recognizes that even short-lived or less-than-significant incremental effects can hinder recovery. Since the present plan will have a measurable sediment load increase, it must be denied.

Preparation of Official Response

It was recently learned that CDF had commenced preparing the official response for the Pocket Canyon THP well before the end of public comment. This was highly improper. It demonstrated that CDF had decided to approve the project, or at least expected to approve it, before it had received all the evidence regarding the project. Such a procedure makes CDF's decision inherently suspect.

CDF's response was that it had not decided to approve the project, at the same time it admitted it was working on the OR. This is difficult to comprehend. If there was a real possibility that CDF did not intend to approve the project, why was it preparing a document that only gets prepared in the event of approval? Surely, it is a waste of scarce public funds to be expending considerable agency time and energy on an OR for a project that is ultimately denied.

In short, CDF should not commence preparation of an OR until it has decided to

approve the project. We respectfully request CDF to reveal whether it has been preparing an OR regarding this case prior to the end of public comment.

Incorporation by Reference

A number of other THPs, conversions, studies, agency memoranda, and miscellaneous documents, are mentioned throughout the THP, related documents, and public comments. The Redwood Chapter of the Sierra Club reserves the right to incorporate these by reference into the administrative file at a later date, if necessary. I think all parties agree that duplicating them now and placing them into the administrative file at this juncture is unnecessary and wasteful.

In light of the foregoing, the THP and timberland conversion should be denied. Thank you for your consideration of this letter.

Very truly yours,

Paul V. Carroll

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cc: Allen Robertson, CDF