Timber Harvest Plan Review Workshop
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Why monitor Timber Harvest Plans?

• Logging on private lands can affect forest, biological, and watershed resources
• Advocate for forests, wildlife, and watersheds
• Watchdog for industry and the State
• Ensure compliance with State and federal laws
What’s a Timber Harvest Plan?

- Functional Equivalent of a CEQA document
- Similar to an Environmental Impact Report (EIR)
- Discretionary permitting process for private forestland owners
- Rules and regulations promulgated by Board of Forestry
- Review and approval process administered by Cal Fire as “lead agency”
Introduction to the Forest Practice Act of 1973
PRC 4511 et seq.

• Intent of Legislature:
  – PRC 4513(b) to ensure “The goal of maximum sustained production of high-quality timber products is achieved while giving consideration to values related to sequestration of carbon dioxide, recreation, watersheds, wildlife, range and forage, fisheries, regional economic viability, employment, and aesthetic enjoyment.”
While giving consideration…

- “While giving consideration”
  – “The Attorney General issued an opinion after the FPA was enacted, which specifically stated that the mandatory language of sections 4551 and 4551.5 require that Board regulations "must provide for the protection of the soil, air, fish and wildlife and water resources." (58 Ops.Cal.Atty.Gen. 250 (1975).) In reaching this conclusion, the Attorney General specifically rejected the argument, based on Public Resources Code sections 4512, subdivision (c) and 4513, subdivision (b), that the Board "need only consider recreational opportunities, watershed protection, fisheries, wildlife, range, forage, and aesthetic enjoyment." (Id. at p. 251.) The Attorney General opined that this interpretation "would improperly leave the protection of the enumerated resources to the uncontrolled discretion of the Board" when it adopts regulations and would render ineffectual sections 4551 and 4551.5 of the Public Resources Code. (Ibid.)” (California Attorney General’s Office. 2009.)
The Forest Practice Rules
Commonly used acronyms
14 CCR 895

• THP=Timber Harvest Plan
• Cal Fire= Department of Forestry and Fire Protection
• DFG=Department of Fish and Game
• RPF=Registered Professional Forester
• CEQA=California Environmental Quality Act
• CCR=California Code of Regulations
• PRC=Public Resources Code
• FPA=Forest Practice Act
• FPR=Forest Practice Rules
Important Definitions
14 CCR 895.1

• Cumulative Impacts (as defined per 14 CCR 15355 CEQA Guidelines)
• Feasible
• Long-term significant adverse effects
• Significant adverse impact on the environment
• Substantial deviation
• While giving consideration
• Other definitions:
  – Substantial evidence (14 CCR15384(b) CEQA Guidelines)
Important Rule Sections

• Article 1 (14 CCR 895): Abbreviations and Definitions

• Article 2 (14 CCR 912): Ratings and Standards. Includes Cumulative Impacts Assessment Checklist, Technical Rule Rule Addendum No. 2 (14 CCR 912.9)

• Article 3 (14 CCR 913[933, 953]): Silvicultural Methods

• Article 6 (14 CCR 916[936, 956]): Watercourse and lake protection measures

• Article 9 (14 CCR 919[939, 959]): Wildlife protection practices
Standard for “Lead Agency” review and determination

- The FPRs state that CALFIRE “shall disapprove a plan as not conforming to the rules” if it does not contain enough information to evaluate potential environmental effects, if it would cause “significant, long-term damage” or cause a “taking” of a threatened or endangered species or if it would cause irreparable harm to rare or endangered plant species (see 898.2 of the FPRs).
Contents of a Timber Harvest Plan

• Section I: Legal description and information
• Section II: Operational Provisions of Plan
• Section III: Supporting materials, explanations
• Section IV: Cumulative Impacts Assessment, Technical Rule Addendum No. 2
• Section V: Attachments, e.g. plant surveys, NSO documentation, EHR calculations
• Section VI: Confidential Archeological Information
Timber Harvest Plan Review Process

Timber Harvest Plan (THP) Review Process

1. THP submitted to Cal Fire by Plan Proponent

2. Within 10-days of receipt:

3. THP is assigned a number, distributed to review team agencies. First Review conducted.

4. If THP is accepted for filing:

5. Review Team Conducts Pre-harvest Inspection within 10 days

6. Second Review held within 20 days after PHI

7. Public comment closed 10 days following Second Review

8. Directors determination made within 15 days following close of public comment unless extended

9. Agency Nonconcurrence must be filed within 5 days after review team meeting
Timber Harvest Plans post-approval

- Valid for 3 years with two 1-year extensions
- Notice of commencement
- Notice of completion
- Stocking report
- Prescribed maintenance period
Failures of Review Process

• Lack of information-based decisionmaking
• Failure to accept all recommendations from all reviewing agencies
• Lack of funding prevents agencies from fully participating. Other agencies have dropped out, e.g. NMFS, U.S. Fish and Wildlife Service
• Lack of a post-approval public hearing process
  – Litigation is only public option
Failures of the Forest Practice Rules

- FPRs as traditionally implemented have not prevented significant environmental damage
  - Result in impacts to listed species and contributed to species’ listings
  - Result in impacts to watersheds, resulting in listing of many under section 303(d) of Federal Clean Water Act
  - Result in cumulative impacts to forestland resources
Examples

• Failure to address rate of harvest
• Failure to require quantitative information-based decision making predicated on best available science
• Failure to meet federal standards for avoiding “harm” to listed species
  – Northern Spotted Owl
  – Coho Salmon and Steelhead
• Failure to disapprove THPs that would result in significant adverse individual or cumulative impacts
Possible remedies

• Board of Forestry:
  – Revise Cumulative Impacts Assessment
  – Provide guidance document for assessment of cumulative effects
  – Require information-based assessment predicated on best available science
  – Implement rate of harvest limitations
  – Require watershed assessments, road management plans
  – Bring FPRs into compliance with federal and other state laws and regulations
Commenting on Timber Harvest Plans

- Significant environmental concerns raised during the review team process
- Fair argument
- Substantial evidence
- Rule conformance
- State and federal law conformance
Important Operational Items
(Section II)

• Section II, Item #14(a)=Silviculture
• Section II, Item #16=Yarding methods
• Section II, Item #17=Erosion Hazard Rating
• Section II, Item #23=Winter operations
• Section II, Item #24=Roads and landings
• Section II, Item #26=Watercourse and lake protections
• Section II, Item #27(a)=Alternative watercourse and lake protections in lieu of standard rules
• Section II, Item #32=Wildlife observances and enforceable provisions
Identifying issues of concern

- Rare, threatened or endangered species
- Watershed resources
- Silviculture (clearcutting)
- Alternative practices in lieu of standard rules
- “Should” versus “Shall”
- Accuracy and consistency of plan, supporting information, maps, etc.
- Inconsistency between FPRs, State and federal laws and regulations
Identifying potentially significant adverse cumulative impacts

- Rate of harvest, harvest history
- Status of rare, threatened or endangered species within planning area (planning watershed)
- Status of waterbodies in project area (303(d) listed??)
- Late seral/old growth habitat or characteristics
Presenting a “fair argument” via “substantial evidence”

- Cite relevant rules
- Cite relevant State and federal laws
- Cite items from THP
- Cite best available science
- Cite agency reports, including past statements
- Cite alternative resources (e.g. CNDDDB, CALWatershed Mapper, DPR database)
Challenging a Timber Harvest Plan

- Cal Fire Official Response to comments
- Abuse of discretion
- Deference to lead agency
- Filing a complaint
- Preliminary injunction
- Motion for summary Judgment
- Appeals
Questions???
Thank You!
Resources

- Environmental Protection Information Center  
  www.wildcalifornia.org
- THP Tracking Center  
  http://www.thptrackingcenter.org/resources.html
- Cal Fire THP library  
  ftp://thp.fire.ca.gov/THPLibrary/
- Cal Watershed Mapper  
  http://frap.fire.ca.gov/watersheds/mapper.html
- California Native Diversity Database  
  http://www.dfg.ca.gov/biogeodata/cnddb/
- DFG IMAPS GIS  
  http://www.dfg.ca.gov/biogeodata/gis/imaps.asp