

Climate Change Comments submitted for Railroad Flat THP by Tom Lippe as part of additional comments on that THP – the FPC should consider these issues in their deliberations re Greenhouse gases (note – this is a compilation of several separate comment letters for Timber Harvest Plan 1-14-080 MEN (Railroad Gulch) and all the comments can be found on the Cal Fire FTP website.

2

a. The THP Fails to Assess the "Significance" of its Near Term GHG Impact.

The THPs assessment of the "significance" of its GHG impacts ignores the fact that in the next ten to fifteen years, the timber operations will cause the emission "of more" carbon than forest growth will sequester in that time period. State policy is to maintain the current amount of carbon sequestration by California forests to achieve the state's carbon emissions reduction goals by 2020 - only six years in the future. The California Air Resources Board's (CARB) "2020 Scoping Plan target for California's forest sector is to maintain the current 5 MMTC02E of sequestration through sustainable management practices, potentially including reducing the risk of catastrophic wildfire, and the avoidance or mitigation of land-use changes that reduce carbon storage." (Exhibit 9, 2009, CARB Plan, p. 64.)

The 5 MMTC02E of "sequestration" is not the amount of carbon currently sequestered in California's forests. It is the amount by which annual carbon capture and sequestration by California forests exceeds carbon emissions from California forests. As explained in Appendix C of the CARB Plan: Current net forest sector emissions are approximately -5 MMTC02E (2002-2004 average). This net number is negative because the gross emission rate from disturbances such as fires, harvesting, land conversion, and decomposition of wood and other forest products is less than the gross atmospheric uptake and sequestration of carbon from forest growth.

(Exhibit 10, CARB Plan, Appendix C, p. C-165f This THP says current carbon sequestration in California forests is 6.1 MMTC02E. (THP p. 133.)

The time frames for the THPs carbon "balance sheet" to move from red to black vary between silviculture units, but all are at least 5-years and most are much longer (i.e., 14-years on page 221, 17-years on page 225, 5-years on page 229, 18-years on page 233, and 6-years on page 237.) **In other words, this THP will undermine California's policy to maintain current carbon sequestration in California forests between now and 2020, regardless of whether the THP will achieve positive net carbon sequestration over a longer time horizon.**

Indeed, climate change as a result of increasing GHG concentrations in the atmosphere is regulated by AB 32. AB 32 regulates "annual" emissions. See Health and Safety Code § 38505(h) ["Greenhouse gas Emission ('limit' means an authorization, during a specified year, to emit up to a level of greenhouse gases specified by the state board, expressed in tons of carbon dioxide equivalents."]. Thus, all CARB Plan targets are annual target set for the year 2020. The forestry target was being met in 2008 when the CARB plan was published.

Timber Harvest Plan 1-14-080 MEN (Railroad Gulch)

January 9, 2014

Page 13

characterized by tipping points. These tipping points are GHG concentrations, which once achieved, result in types and degrees of environmental harm that are irreversible for centuries or millennia. (See e.g., Exhibit 15, Perspective of a Climatologist, James Hansen.) Therefore, near term positive net carbon emissions represent significant environmental harm, regardless of whether long sequestration exceeds short term emissions.

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FPC 3.9

term-20 or 30 years after an EIR is prepared-decision makers and members of the public are entitled under CEQA to know the short- and medium-term environmental costs of achieving that desirable improvement. These costs include not only the impacts involved in constructing the project but also those the project will create during its initial years of operation. Though we might rationally choose to endure short- or medium-term hardship for a long-term, permanent benefit, deciding to make that trade-off requires some knowledge about the severity and duration of the near-term hardship. An EIR stating that in 20 or 30 years the project will improve the environment, but neglecting, without justification, to provide any evaluation of the project's impacts in the meantime, does not "giv[e] due consideration to both the short-term and long-term effects" of the project (Cal.Code Regs., tit. 14, § 15126.2, subd. (a)) and does not serve CEQA's informational purpose well.

Neighbors for Smart Rail v. Exposition Metro Line Const. Authority (2013) 57 Cal.4th 439, 455.

b. The THP Unlawfully Relies on Unenforceable Projections Regarding Future Forest Growth to Conclude GHG Impacts Will Be Less Than Significant.

The THP's reliance on future tree growth to avoid a finding of significance, however, suffers from the fact that such growth is not part of the timber operations -the "project" -being approved.

(Guidelines, § 153 78, subd. (c) ["The term 'project' refers to the activity which is being approved"].)

"Timber operations" are defined as "the cutting or removal, or both, of timber or other solid wood forest products ... from timberlands for commercial purposes, together with all the incidental work, including, but not limited to, construction and maintenance of roads, fuelbreaks, firebreaks, stream crossings, landings, skid trails, and beds for the falling of trees, fire hazard abatement, and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities ... " (Pub. Resources Code, § 4527, subd. (a).)

Projected future tree growth, on the other hand, is not part of the timber operations, and more importantly; as explained below, is not actually required to occur. While future tree growth could perhaps be relied upon as "mitigation" for significant GHG impacts, the THP does not treat it as such, and it falls far short of CEQA's requirement that mitigation be assured. CEQA requires that mitigation measures for a project's impacts be considered only after the significance analysis is complete. This bifurcation of the significance analysis and mitigation matters greatly in the CEQA context because an agency approving a project application must guarantee that measures designed

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Timber Harvest Plan 1-14-080 MEN (Railroad Gulch)

January 9, 2014

Page 14

to mitigate impacts are "fully enforceable through permit conditions, agreements, or other measures." (Pub. Resources Code, § 21081.6, subd. (b).) "The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded." (*Fed'n of Hillside & Canyon Ass 'ns v. City of Los Angeles* ("*Fed'n of Hillside*") (2000) 83 Cal.App.4th 1252, 1261.) However, when, as here, the significance analysis and mitigation are conflated, the "mitigation" is not treated as an enforceable aspect of the project approval.

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Although the THP relies on future tree growth to mitigate its GHG impacts, the THP fails to provide any assurances (e.g., conservation easements) that such growth will actually occur. The Forest Practice Act only requires that MRC replant the area logged (Cal. Code Regs., tit. 14, § 953.1(b))- but there is nothing in the Act ensuring there will be a forest at this location in 10-years, 15-years, 50-years, or 80-years, hence. Nothing in the Act guarantees the sequestration MRC relies on to offset its GHG emissions will come to fruition; and just as importantly, nothing can be done to hold MRC accountable should there not continue to be a growing forest at this particular site in 10, 15, 50, or 80 years in the future. It is equally possible that after replanting the area post-harvest, MRC will sell the land or develop it; similarly, it is possible the forest, for whatever reason (e.g., fire), will not actually continue to grow and sequester carbon.

CEQA's substantive mandate is clear: "each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so." (Pub. Resources Code, § 21002.1(b), emphasis added.) The future tree growth relied upon in the THPs to address what would otherwise have to be considered significant GHG impacts, however, is unenforceable, and includes no monitoring to ensure it will occur. This violates the basic CEQA principle that mitigation measures must be "fully enforceable" and that there must exist "a monitoring program to ensure that the mitigation measures are implemented." (*Fed'n of Hillside*, Cal.App.4th at 1261.) MRC's assumptions regarding future tree growth are merely a forecast of what might grow at the site. Enforceable mitigation, on the other hand, is more than a forecast, it actually guarantees there will be a future forest and allows for accountability should the forest not come to fruition. In this instance, an enforceable requirement (like a conservation easement) could be incorporated into the THPs; therefore, absent such a requirement, future tree growth must be seen for what it is- speculation without accountability. Accordingly, the THPs should be deemed invalid for wrongly conflating "mitigation" that is not part of the project into the significance analysis, and thereby failing to require that any measures designed to mitigate project impacts are actually enforceable and monitorable.

c. The 2014 update to the California Air Resources Board's (CARB) Climate Action Scoping Plan demonstrates that forest growth (and thus carbon sequestration) will not measure up to the THP's growth projections.

Climate change is projected to suppress growth rates in California's forests, as a result of increased fire risk and insect infestations. The CARB's "First Update to the Climate Change

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Timber Harvest Plan 1-14-080 MEN (Railroad Gulch)

January 9, 2014

Page 15

Scoping Plan," issued in May, 2014, shows that forest growth (and thus carbon sequestration) will not measure up to the THP's growth projections. (Exhibit 11.)

Previous research by USFS suggests that there could be substantial declines in carbon storage beginning in 2050 assuming the status quo for land management [2]. The decrease in carbon storage is a function of declining forest health; expect pest outbreaks, and losses from wildfire. To change the status quo state climate change strategies need to consider federal lands and broader forest health issues that extend beyond ownership boundaries.

FPC 3.9

(Exhibit 12 [2014 CARB CAP Update, Appendix C, Focus Group Working Papers- Natural and Working Lands Working Paper], p. 4.)

Climate can greatly influence the dynamics of forest and range ecosystems. Climate influences the type, mix and productivity of species. Future climate change scenarios predict increases in temperature, increases in atmospheric CO2 concentrations, and changes in the amount and distribution of precipitation [4]. Altering these fundamental drivers of climate can result in changes in tree growth, changes in the range and distribution of species, and alteration to disturbance regimes (e.g., wildfires, outbreaks of pests, invasive species).

(Exhibit 12, p. 5.)

Research has provided estimates of expected changes in wildfire activity resulting from climate change [9]. Results from this research predict an extended fire season with a substantial increase in wildfire acres burned. Early studies [10] showed only a modest increase in wildfire acres burned (9- 15%) under a range of future climate scenarios. However, more recent modeling showed that the expected wildfire-burned forested area for Northern California, under a high emissions scenario, increased in excess of 100% [11]. The increased activity in number and extent of wildfires would likely result in significant increases in emissions from wildfire. In addition, research predicted outcomes that varied with fire regimes; where expected increases in temperature promoted greater large fire frequency in wetter forested areas [12].

(Exhibit 12, p. 7.)

As discussed by RPF Tom Amesbury in his report, the GHG Calculator does not account for fire risk (Exhibit 16, pp. 9-10), nor does it account for the expected increase in fire risk associated with future climate change. Indeed, the THP fails to support its growth projections in the "Variable Retention" silviculture units, even ignoring the growth suppressing effects of future climate change (Exh. 16, p. 7).

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Timber Harvest Plan 1-14-080 MEN (Railroad Gulch)

January 9, 2014

Page 16

Therefore, even if forest growth were an enforceable mitigation measure for this THP's GHG impacts, there is insufficient support for a conclusion that future growth will result in more carbon sequestration than project-induced carbon emissions.

d. The THP must Determine the Cumulative Significance of its Carbon Impact.

In order to comply with CEQA, CalFire "must determine whether any of the possible significant environmental impacts of the project will, in fact, be significant." *Protect the Historic Amador Waterways v. Amador Water Agency*, 116 Cal. App. 4th 1099, 1109 (Cal. App. 3d Dist. 2004). Moreover, CEQA requires CalFire to determine the significance of the THP's emissions with or without established significance thresholds -lack of established significance thresholds does not

excuse CalFire from its obligation under CEQA to determine the significance of a THP's impacts. As noted in the CAP COA white paper on CEQA and Climate Change, "[t]he absence of a threshold

FPC 3.9

does not in any way relieve agencies of their obligations to address GHG emissions from projects under CEQA" (Exhibit 13 [CAPCOA 2008] p. 23; see also, Exhibit 15 [OPR Technical Advisory document], p. 4 ("Even in the absence of clearly defined thresholds [of significance] for GHG emissions, the law requires that such emissions from CEQA projects must be disclosed and mitigated to the extent feasible whenever the lead agency determines that the project contributes to a significant, cumulative climate change impact."))

Any determination of whether the THP may have a significant impact must also include the consideration of the California Global Warming Solutions Act of 2006 (AB 32), wherein the State of California recognized that "global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California" and required that existing levels of greenhouse gases be reduced to 1990 levels by 2020. Health & Safety Code §§ 38501(a), 38550. As recently pointed out in the OPR Technical Advisory document, p. 3, "AB 32 ... acknowledge[s] that [GHG] emissions cause significant adverse impacts to human health and the environment." Moreover, SB 97 "amends the CEQA statute to clearly establish that GHG emissions and the effects of GHG emissions are appropriate subjects for CEQA analysis." (Exhibit 14, OPR Technical Advisory document, p. 3.)

Because AB 32 establishes that existing greenhouse gas levels are unacceptable and must be substantially reduced within a fixed timeframe, any additional emissions that contribute to existing levels frustrate California's ability to meet its ambitious and critical emissions reduction mandate. Even ignoring emissions from smaller sources would be neglecting a major portion of the greenhouse gas inventory. In accordance with the scientific and factual data, and in order to account for the fact that any additional emissions are problematic, California should adopt a zero significance threshold for any Project's greenhouse gas emissions. The THP's contribution to emissions is especially serious when considered from a cumulative perspective. An impact is considered cumulatively significant where its "effects are individually limited but cumulatively considerable." See *Friends of the Old Trees v. Dep't of Forestry & Fire Prot.*, 52 Cal. App. 4th 1383, 1394 (Cal. App. 1st Dist. 1997) ("[T]he Forest Practice Act and the Forestry Rules establish a statutory and

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Timber Harvest Plan 1-14-080 MEN (Railroad Gulch)

January 9, 2014

Page 17

regulatory framework that, construed together with CEQA, confers on the Department the obligation to see that cumulative impacts and alternatives to the project, as well as other specified environmental information, be taken into consideration in evaluating THP's."). As explained in *Joy Road Area Forest & Watershed Assn. v. California Dept. of Forestry & Fire Protection*, 142 Cal. App. 4th at 667:

[T]he substantive CEQA requirement of assessing cumulative environmental impact must be included in the evaluation of each THP by CDF. [C]umulative damage [is] as a whole greater than the sum of its parts Furthermore, the cumulative impact analysis must be substantively meaningful. A cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker's perspective concerning the environmental consequences of the project, the necessity

FPC 3.9

for mitigation measures, and the appropriateness of project approval. While technical perfection in a cumulative impact analysis is not required, courts have looked for adequacy, completeness, and a good faith effort at full disclosure.

Climate change is the classic example of a cumulative effects problem; emissions from numerous sources combine to create the most pressing environmental and societal problem of our time. *Center for Biological Diversity v. NHTSA*, 538 F.3d at 1218 ("the impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct."). While a particular project's greenhouse gas emissions represent a fraction of California's total emissions, courts have flatly rejected the notion that the incremental impact of a project is not cumulatively considerable because it is so small that it would make only a de minimis contribution to the problem as a whole. *Communities for a Better Environment v. California Resources Agency*, 103 Cal. App. 4th 98, 117 (Cal. App. 3d Dist. 2002); see also *Kings County Farm Bureau v. City of Hanford*, 221 Cal. App. 3d 692, 720 (Cal. App. 5th Dist. 1990) ("perhaps the best example of [a cumulative impact] is air pollution, where thousands of relatively small sources of pollution cause a serious environmental health problem"). As noted by former D.C. Circuit Judge Wald in a 1990 dissenting opinion, recently quoted with unanimous approval by the Ninth Circuit in *Center for Biological Diversity v. NHTSA*:

[W]e cannot afford to ignore even modest contributions to global warming. If global warming is the result of the cumulative contributions of myriad sources, any one modest in itself, is there not a danger of losing the forest by closing our eyes to the felling of the individual trees?

, 538 F.3d at 1217. Moreover, as stated in CEQA and Climate Change: Addressing Climate Change Through California Environmental Quality Act Review, from the Governor's Office of Planning and Research:

When assessing whether a Project's effects on climate change are

cumulative: CEIVED

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Forest Practice Program Manager

CAL FIRE

Timber Harvest Plan 1-14-080 MEN (Railroad Gulch)

January 9, 2014

Page 18

considerable, even though its GHG contribution may be individually limited, the lead agency must consider the impact of the project when viewed in connection with the effects of past, current, and probable future projects Lead agencies should not dismiss a proposed project's direct and/or indirect climate change impacts without careful consideration, supported by substantial evidence. Documentation of available information and analysis should be provided for any project that may significantly contribute new GHG emissions, either individually or cumulatively, directly or indirectly (e.g., transportation impacts).

Accordingly, because the THP will contribute to greenhouse gas emissions, CalFire must find the THP's emissions a cumulatively significant impact.

Thank you for your attention to this.

Very Truly Yours,

Thomas N. Lippe

List of Exhibits

FPC 3.9

1. Letter from Richard Tanner to Thomas Lippe, December 11, 2014.
2. Northern Spotted Owl Conservation and Management on Mendocino Redwood Company Forestlands, February 14, 2014.
3. Final California 2010 Integrated Report(303(d) List/305(b) Report), http://www.waterboards.ca.gov/water_issues/programs/tmdl/2010state_ir_reports/categoryS_report.shtml
4. Albion River Total Maximum Daily Load for Sediment, December, 2001. [http://www .waterboards.ca.gov/northcoast/water _issues/programs/tmdls/albion river/](http://www.waterboards.ca.gov/northcoast/water_issues/programs/tmdls/albion_river/)
5. Emails exchange between Thomas Lippe and CalFire dated October 28, 2014, and October 29, 2014.
6. Planning Agreement between The Mendocino Redwood Company and The California Department of Fish and Game regarding the Mendocino Redwood Company Natural Community Conservation Plan, June 23, 2003.
7. Letter from Dr. Robert Curry to Thomas Lippe dated January 9, 2014. **RECEIVED**

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CAL FIRE

Timber Harvest Plan 1-14-080 MEN (Railroad Gulch)

January 9, 2014

Page 19

8. California Forestry Report No. 5, "Applications of Long-term Watershed Research to Forest Management in California: 50 Years of Learning from the Caspar Creek Experimental Watersheds," by Peter H. Cafferata and Leslie M. Reid, May 2013
9. 2009 Climate Change Scoping Plan, A Framework for Change, California Air Resources Board, Pursuant to AB 32, the California Global Warming Solutions Act of 2006; December 2008.
10. CARB 2009 Climate Change Scoping Plan, Appendices, Volume 1.
11. CARB 2014 First Update to Climate Change Scoping Plan .
12. CARB 2014 First Update to Climate Change Scoping Plan, Appendix C- Focus Group Working Papers, Natural and Working Lands Working Paper, March 14, 2014.
13. CAPCOA, CEQA & Climate Change Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act, January 2008.
14. Office of Planning and Research, Technical Advisory, Ceqa and Climate Change: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review, June 19, 2008.
15. Perspective of a Climatologist, James Hansen, 2008-2009 State of the Wild.
16. December 31, 2014 Report from Tom Amesbury of Forester's Co-op.

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Greenhouse gas statements from recent THP in Calaveras = SPI

With respect to considerations for potential significant adverse cumulative effects of the project on global warming, both CAL FIRE and SPI recognize their obligations to analyze a THPs potential to impact the release and sequestration of Greenhouse Gases (GHGs). Both AB32 (Global Warming Solutions Act of 2006) implemented through SB97, and the CEQA Guidelines (Codified under 14 CCR §15000 et seq.) provide the regulatory framework upon which to evaluate GHG release and sequestration potential of any THP. If emissions from the THP are deemed to be significant, then specific mitigation must be included in the THP in order to offset this impact.

Since the Board of Forestry and Fire Protection has not developed specific criteria upon which to determine how a projects GHG emissions must be evaluated, individual plan submitters must use their own methodology. SPI has included this evaluation on pages 147 to 166 of the THP, which includes both a site-specific evaluation of emissions, as well as an evaluation of significance based upon the defined assessment areas. Without the benefit of regulatory guidance, it can only be assumed by the Department that the type of analysis presented in the THP might be equivalent to that which would be acceptable to the Board of Forestry and Fire Protection for evaluation of the GHG production for a timber harvesting project. An analysis of the submission by CAL FIRE has resulted in a finding that the approach constitutes a reasonable methodology.

While no regulatory authority in California has established a threshold of significance for GHG emissions, there are other standards which may help determine if significant GHG emissions will be emitted by a THP. On September 22, 2009 the US EPA approved its "Final Mandatory Reporting of Greenhouse Gases Rule", wherein they set reporting limits for facilities. The EPA defined a reporting limit of 25,000 tonnes of CO₂e /year (tonnes of carbon dioxide equivalents per year) at any facility as being the threshold at which these emissions should be reported to the EPA. While this at least can be considered some sort of a regulatory benchmark for now as CAL FIRE searches for guidance with respect to these evaluations, it is important to note that this is only the level at which they must be reported, not the level at which they must be considered significant or even mitigated.

For the proposed THP, SPI has estimated that the total emissions from this project (including direct and indirect releases) to be 257 tonnes of CO₂e over a 100 year period for the Rehabilitation areas. 10,133 tonnes of CO₂e over a 100 year period will be emitted from the non-Rehabilitation areas (Selection Silviculture, fuelbreak and Sanitation/Salvage). Timber stand computer modeling indicates that the THP will recoup all primary, secondary and tertiary emissions in less than 15 years for the 35 acres of Rehabilitation, and less than 4 years for the balance of the THP (1372 acres). To determine significance, this level would have to be compared to the stands of trees that will be replanted and grown in this THP area, and their ability to sequester additional carbon over time.

CAL FIRE understands the importance of approving projects which do not combine to significantly contribute to global warming of the planet and which meet the AB 32 goals for the Forestry Sector by maintaining the current 5 MMT CO₂e reduction target through 2020 by ensuring that current carbon stock is not diminished over time. Due to the growth expected to occur from trees growing on the post-harvest area, replacement of this level of CO₂e can be

Official Response, THP 4-14-026/CAL-5 (Love Creek Fuels Reduction THP)

8

expected within about 1.5 decades for the Rehabilitation areas of the THP (35 acres) and 4 years for the balance, and majority of the THP. The 1 acre of trees cleared for the Road Right-of-Way is not accounted for as the placement of the new road will result in a non-forested area that will not be re-planted. CAL FIRE has determined that the proposed THP will result in a less than significant release of GHG. The rapid replacement of carbon emissions from the thinned areas in the fuelbreak, and re-growth of new planted trees in areas determined to be understocked in the Rehabilitation areas will result in a net benefit to the environment over time. The undertaking of the fuelbreak prescription will result in forested conditions designed to reduce the catastrophic effects of large wildfires, thus potentially reducing long term carbon emissions in an even greater amount.

In addition to this watershed area, CAL FIRE also took into consideration known activities that have occurred in assessment areas other than the planning watershed where there could be a potential for impacts to combine to create significant adverse individual or cumulative effects in the general vicinity of the THP area. CAL FIRE has the ability to utilize Geographical Information Systems to document the location and silvicultural methods of past and present projects and maintains a database of past projects by location, date of various events and silvicultural methods. The CAL FIRE Forest Practice Inspector considered projects inside and outside the immediate THP location to determine that the project would not contribute to significant adverse direct or cumulative environmental impacts.

From The Law Offices of THOMAS N. LIPPE. Sent to CalFire January 9, 2015. Re: Timber Harvest Plan 1-14-080 MEN (Railroad Gulch) pages 11-18

GHG/Climate Change.

The discussion of GHG impacts on THP pages 133-134 relies entirely on the GHG “calculator” at THP pages 218-237. Assuming, arguendo, that the GHG “calculator” is accurate, the THP still fails to lawfully assess the Project’s impacts on GHG emissions.

The GHG the “calculator” results shows the THP achieving negative net carbon emissions, also known as carbon “sequestration” over a long time horizon. The THP’s discussion of GHG impacts is legally erroneous for several reasons.

a. The THP Fails to Assess the “Significance” of its Near Term GHG Impact.

The THPs assessment of the “significance” of its GHG impacts ignores the fact that in the next ten to fifteen years, the timber operations will cause the emission “of more” carbon than forest growth will sequester in that time period. State policy is to maintain the current amount of carbon sequestration by California forests to achieve the state’s carbon emissions reduction goals by 2020 - only six years in the future. The California Air Resources Board’s (CARB) “2020 Scoping Plan target for California’s forest sector is to maintain the current 5 MMTCO₂E of sequestration through sustainable management practices, potentially including reducing the risk of catastrophic wildfire, and the avoidance or mitigation of land-use changes that reduce carbon storage.” (Exhibit 9, 2009, CARB Plan, p. 64.)

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The THP’s reliance on future tree growth to avoid a finding of significance, however, suffers from the fact that such growth is not part of the timber operations – the “project” – being approved. (Guidelines, § 15378, subd. (c) [“The term ‘project’ refers to the activity which is being approved”].) “Timber operations” are defined as “the cutting or removal, or both, of timber or other solid wood forest products ... from timberlands for commercial purposes, together with all the incidental work, including, but not limited to, construction and maintenance of roads, fuelbreaks, firebreaks, stream crossings, landings, skid trails, and beds for the falling of trees, fire hazard abatement, and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities ...” (Pub. Resources Code, § 4527, subd. (a).)

Projected future tree growth, on the other hand, is not part of the timber operations, and more importantly, as explained below, is not actually required to occur. While future tree growth could perhaps be relied upon as “mitigation” for significant GHG impacts, the THP does not treat it as such, and it falls far short of CEQA’s requirement that mitigation be assured. CEQA requires that mitigation measures for a project’s impacts be considered only after the significance analysis is complete. This bifurcation of the significance analysis and mitigation matters greatly in the CEQA context because an agency approving a project application must guarantee that measures designed to mitigate impacts are “fully enforceable through permit conditions, agreements, or other measures.” (Pub. Resources Code, § 21081.6, subd. (b).) “The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded.” (Fed’n of Hillside & Canyon Ass’ns v. City of Los Angeles (“Fed’n of Hillside”) (2000) 83 Cal.App.4th 1252, 1261.) However, when, as here, the significance analysis and mitigation are conflated, the “mitigation” is not treated as an enforceable aspect of the project approval.

Although the THP relies on future tree growth to mitigate its GHG impacts, the THP fails to provide any assurances (e.g., conservation easements) that such growth will actually occur. The Forest Practice Act only requires that MRC replant the area logged (Cal. Code Regs., tit. 14, § 953.1(b)) – but there is nothing in the Act ensuring there will be a forest at this location in 10-years, 15-years, 50-years, or 80-years, hence. Nothing in the Act guarantees the sequestration MRC relies on to offset its GHG emissions will come to fruition, and just as importantly, nothing can be done to hold MRC accountable should there not continue to be a growing forest at this particular site in 10, 15, 50, or 80 years in the future. It is equally possible that after replanting the area post-harvest, MRC will sell the land or develop it; similarly, it is possible the forest, for whatever reason (e.g., fire), will not actually continue to grow and sequester carbon.

CEQA’s substantive mandate is clear: “each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.” (Pub. Resources Code, § 21002.1(b), emphasis added.) The future tree growth relied upon in the THPs to address what would otherwise have to be considered significant GHG impacts, however, is unenforceable, and includes no monitoring to ensure it will occur. This violates the basic CEQA

FPC 3.9

principle that mitigation measures must be “fully enforceable” and that there must exist “a monitoring program to ensure that the mitigation measures are implemented.” (Fed’n of Hillside, Cal.App.4th at 1261.) MRC’s assumptions regarding future tree growth are merely a forecast of what might grow at the site. Enforceable mitigation, on the other hand, is more than a forecast, it actually guarantees there will be a future forest and allows for accountability should the forest not come to fruition. In this instance, an enforceable requirement (like a conservation easement) could be incorporated into the THPs; therefore, absent such a requirement, future tree growth must be seen for what it is – speculation without accountability. Accordingly, the THPs should be deemed invalid for wrongly conflating “mitigation” that is not part of the project into the significance analysis, and thereby failing to require that any measures designed to mitigate project impacts are actually enforceable and monitorable.

c. The 2014 update to the California Air Resources Board’s (CARB) Climate Action Scoping Plan demonstrates that forest growth (and thus carbon sequestration) will not measure up to the THP’s growth projections.

Climate change is projected to suppress growth rates in California’s forests, as a result of increased fire risk and insect infestations. The CARB’s “First Update to the Climate Change Scoping Plan,” issued in May, 2014, shows that forest growth (and thus carbon sequestration) will not measure up to the THP’s growth projections. (Exhibit 11.)

Previous research by USFS suggests that there could be substantial declines in carbon storage beginning in 2050 assuming the status quo for land management [2]. The decrease in carbon storage is a function of declining forest health; expect pest outbreaks, and losses from wildfire. To change the status quo state climate change strategies need to consider federal lands and broader forest health issues that extend beyond ownership boundaries.

(Exhibit 12 [2014 CARB CAP Update, Appendix C, Focus Group Working Papers - Natural and Working Lands Working Paper], p. 4.)

Climate can greatly influence the dynamics of forest and range ecosystems. Climate influences the type, mix and productivity of species. Future climate change scenarios predict increases in temperature, increases in atmospheric CO₂ concentrations, and changes in the amount and distribution of precipitation [4]. Altering these fundamental drivers of climate can result in changes in tree growth, changes in the range and distribution of species, and alteration to disturbance regimes (e.g., wildfires, outbreaks of pests, invasive species).

(Exhibit 12, p. 5.)

Research has provided estimates of expected changes in wildfire activity resulting from climate change [9]. Results from this research predict an extended fire season with a substantial increase in wildfire acres burned. Early studies [10] showed only a modest increase in wildfire acres burned (9 – 15%) under a range of future climate scenarios. However, more recent modeling showed that the expected wildfire-burned forested area for Northern California, under a high emissions scenario, increased in excess of 100% [11]. The increased activity in number and extent of wildfires would likely result in significant increases in emissions from wildfire. In addition, research predicted outcomes that varied

with fire regimes; where expected increases in temperature promoted greater large fire frequency in wetter forested areas [12].

(Exhibit 12, p. 7.)

As discussed by RPF Tom Amesbury in his report, the GHG Calculator does not account for fire risk (Exhibit 16, pp. 9-10), nor does it account for the expected increase in fire risk associated with future climate change. Indeed, the THP fails to support its growth projections in the “Variable Retention” silviculture units, even ignoring the growth suppressing effects of future climate change (Exh. 16, p. 7).

Therefore, even if forest growth were an enforceable mitigation measure for this THP’s GHG impacts, there is insufficient support for a conclusion that future growth will result in more carbon sequestration than project-induced carbon emissions.

d. The THP must Determine the Cumulative Significance of its Carbon Impact.

In order to comply with CEQA, CalFire “must determine whether any of the possible significant environmental impacts of the project will, in fact, be significant.” *Protect the Historic Amador Waterways v. Amador Water Agency*, 116 Cal. App. 4th 1099, 1109 (Cal. App. 3d Dist. 2004). Moreover, CEQA requires CalFire to determine the significance of the THP’s emissions with or without established significance thresholds – lack of established significance thresholds does not excuse CalFire from its obligation under CEQA to determine the significance of a THP’s impacts. As noted in the CAPCOA white paper on CEQA and Climate Change, “[t]he absence of a threshold does not in any way relieve agencies of their obligations to address GHG emissions from projects under CEQA.” (Exhibit 13 [CAPCOA 2008], p. 23; see also, Exhibit 15 [OPR Technical Advisory document], p. 4 (“Even in the absence of clearly defined thresholds [of significance] for GHG emissions, the law requires that such emissions from CEQA projects must be disclosed and mitigated to the extent feasible whenever the lead agency determines that the project contributes to a significant, cumulative climate change impact.”))

Any determination of whether the THP may have a significant impact must also include the consideration of the California Global Warming Solutions Act of 2006 (AB 32), wherein the State of California recognized that “global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California” and required that existing levels of greenhouse gases be reduced to 1990 levels by 2020. Health & Safety Code §§ 38501(a), 38550. As recently pointed out in the OPR Technical Advisory document, p. 3, “AB 32 ... acknowledge[s] that [GHG] emissions cause significant adverse impacts to human health and the environment.” Moreover, SB 97 “amends the CEQA statute to clearly establish that GHG emissions and the effects of GHG emissions are appropriate subjects for CEQA analysis.” (Exhibit 14, OPR Technical Advisory document, p. 3.)

Because AB 32 establishes that existing greenhouse gas levels are unacceptable and must be substantially reduced within a fixed timeframe, any additional emissions that contribute to existing levels frustrate California’s ability to meet its ambitious and critical emissions reduction mandate. Even ignoring emissions from smaller sources would be neglecting a major portion of the greenhouse gas

inventory. In accordance with the scientific and factual data, and in order to account for the fact that any additional emissions are problematic, CalFire should adopt a zero significance threshold for any Project's greenhouse gas emissions. The THP's contribution to emissions is especially serious when considered from a cumulative perspective. An impact is considered cumulatively significant where its "effects are individually limited but cumulatively considerable." See *Friends of the Old Trees v. Dep't of Forestry & Fire Prot.*, 52 Cal. App. 4th 1383, 1394 (Cal. App. 1st Dist. 1997) ("[T]he Forest Practice Act and the Forestry Rules establish a statutory and regulatory framework that, construed together with CEQA, confers on the Department the obligation to see that cumulative impacts and alternatives to the project, as well as other specified environmental information, be taken into consideration in evaluating THP's."). As explained in *Joy Road Area Forest & Watershed Assn. v. California Dept. of Forestry & Fire Protection*, 142 Cal. App. 4th at 667:

[T]he substantive CEQA requirement of assessing cumulative environmental impact must be included in the evaluation of each THP by CDF. '[C]umulative damage [is] as a whole greater than the sum of its parts Furthermore, the cumulative impact analysis must be substantively meaningful. A cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker's perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval. While technical perfection in a cumulative impact analysis is not required, courts have looked for adequacy, completeness, and a good faith effort at full disclosure.

Climate change is the classic example of a cumulative effects problem; emissions from numerous sources combine to create the most pressing environmental and societal problem of our time. *Center for Biological Diversity v. NHTSA*, 538 F.3d at 1218 ("the impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct."). While a particular project's greenhouse gas emissions represent a fraction of California's total emissions, courts have flatly rejected the notion that the incremental impact of a project is not cumulatively considerable because it is so small that it would make only a de minimis contribution to the problem as a whole. *Communities for a Better Environment v. California Resources Agency*, 103 Cal. App. 4th 98, 117 (Cal. App. 3d Dist. 2002); see also *Kings County Farm Bureau v. City of Hanford*, 221 Cal. App. 3d 692, 720 (Cal. App. 5th Dist. 1990) ("[p]erhaps the best example of [a cumulative impact] is air pollution, where thousands of relatively small sources of pollution cause a serious environmental health problem"). As noted by former D.C. Circuit Judge Wald in a 1990 dissenting opinion, recently quoted with unanimous approval by the Ninth Circuit in *Center for Biological Diversity v. NHTSA*:

[W]e cannot afford to ignore even modest contributions to global warming. If global warming is the result of the cumulative contributions of myriad sources, any one modest in itself, is there not a danger of losing the forest by closing our eyes to the felling of the individual trees?

538 F.3d at 1217. Moreover, as stated in *CEQA and Climate Change: Addressing Climate Change Through California Environmental Quality Act Review*, from the Governor's Office of Planning and Research:

When assessing whether a Project's effects on climate change are cumulatively considerable, even though its GHG contribution may be individually limited, the lead agency must consider the impact of the project when viewed in connection with the effects of past, current, and probable future projects Lead agencies should not dismiss a proposed project's direct and/or indirect climate change impacts without careful consideration, supported by substantial evidence. Documentation of available information and analysis should be provided for any project that may significantly contribute new GHG emissions, either individually or cumulatively, directly or indirectly (e.g., transportation impacts).

Accordingly, because the THP will contribute to greenhouse gas emissions, CalFire must find the THP's emissions a cumulatively significant impact.

Thank you for your attention to this.

From The Law Offices of THOMAS N. LIPPE. Sent to CalFire March 16, 2015. Re: Timber Harvest Plan 1-14-080 MEN (Railroad Gulch) pages 2-3

New THP page 134.1 (revises page 134.1 as submitted on 12/12/14.)

This page adds several points that purportedly support the THP's conclusion that GHG emissions are less than significant. New text includes:

“While this THP may result in a short-term increase in GHG emissions from the THP area, this increase will be more than made up for by the growth elsewhere on MRC's property.... MRC demonstrates its commitment to sustainability through its Option A plan, which mandates the use of specific silvicultures across MRC's property at regular intervals to ensure MRC always harvests substantially less volume than it grows in a given year. This THP is a small part of this larger plan for ownership- wide sustainability, and as such, it is part of MRC's net annual carbon sink.”

This text is riven with both express and implied assertions that are entirely unsupported. First, the purpose of the Option A document is to identify a “yield of timber products” that can be achieved on MRC's timberland while “balancing growth and harvest over time” and “taking into account biologic and economic factors, while accounting for limits on productivity due to constraints imposed from consideration of other forest values, including but not limited to, recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment and aesthetic enjoyment.” (Rule 913.11(a), (b).) The mere fact that MRC has prepared an Option document does not establish that the GHG impacts of MRC's overall timber operations are less-than- significant, or have achieved a “new annual carbon sink.”

Also, the THP cannot rely on general references to an extraneous document. (Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 442 [“[I]nformation ‘scattered here and there in EIR appendices’ or a report ‘buried in an appendix,’ is not a substitute for ‘a good faith reasoned analysis.’ ”] [citations] To the extent the County, in certifying the FEIR as complete, relied on information not actually incorporated or described and referenced in the FEIR, it

failed to proceed in the manner provided in CEQA.]

In addition, if the THP is going to assert that the Option A document supports its conclusion that the THP's GHG impacts are less-than-significant" based on the rationale that "This THP is a small part of this larger plan for ownership-wide sustainability, and as such, it is part of MRC's net annual carbon sink;" then the public needs at least 30 days to review and comment on this aspect of the Option A document. This new text referencing the Option A document is "significant new information" requiring recirculation because otherwise the public is deprived of "a meaningful opportunity to comment upon a substantial adverse environmental effect of the project" because the draft THP "was so fundamentally and basically inadequate and conclusory in nature that public comment on the draft was in effect meaningless." "Laurel Heights Improvement Assn. v. Regents of University of California (1993) 6 Cal.4th 1112, 1129.)

Further, nothing supports the new text's implied assertion that harvesting less than growth turns MRC's timberlands into a carbon sink. Timber operations involve many sources of GHG emissions in addition to the GHGs emitted by decomposition of the harvested wood (e.g., chain saws, tractors used for yarding, landing construction, slash removal, etc., haul trucks, milling, transportation of logs to mills and finished products to wholesalers, etc. Also, as discussed in my January 9, 2015, letter, MRC's future growth projections are both unenforceable and made without regard to the anticipated effects of climate change on forest growth in California.

The new text at new THP pages 134.1 also states: "The majority of the THP area is expected to recoup its carbon stocks within 5 to 10 years, while the Alternative Group Selection and Variable Retention Units are expected to take 14 to 17 years...." As discussed in my January 9, 2015, letter, these periods are well beyond the 2020 time horizon required by AB 32.

From The Law Offices of THOMAS N. LIPPE. Sent to CalFire April 23, 2015. Re: Timber Harvest Plan 1-14-080 MEN (Railroad Gulch) pages 5-8

Climate change

It appears that page 134 is deleted; otherwise, the discussion of climate change is unreadable. Please clarify.

Also, I write to bring your attention to a decision by the Fourth District Court of Appeal in *Cleveland National Forest Foundation v. San Diego Association of Governments* (2014) 231 Cal.App.4th 1056, as modified on denial of reh'g (Dec. 16, 2014), review granted and opinion superseded sub nom. *Cleveland Nat. Forest Foundation v. San Diego Assn. of Governments* (Cal. 2015) 184 Cal.Rptr.3d 725 (*Cleveland National Forest Foundation*).

My January 9, 2015, comment letter argues that the THP fails to assess or disclose the significance of the THP's inconsistency with the California Air Resources Board's (CARB) "2020 Scoping Plan" policy to maintain current carbon sequestration in California forests between now and 2020, regardless of whether the THP will achieve positive net carbon sequestration over a longer time horizon. The

FPC 3.9

plaintiffs made a similar argument in *Cleveland National Forest Foundation*, by reference to the Governors' Executive Order S-3-05.

As the Court in *Cleveland National Forest Foundation* noted, "In 2005 then Governor Arnold Schwarzenegger issued the Executive Order establishing greenhouse gas emissions reduction targets for California. Specifically, the Executive Order required reduction of greenhouse gas emissions to 2000 levels by 2010, to 1990 levels by 2020, and to 80 percent below 1990 levels by 2050." (*Cleveland National Forest Foundation, supra.*)

FPS adopts the argument presented by the plaintiff and adopted by the Court of Appeal in *Cleveland National Forest Foundation, supra*; specifically that this THP fails to assess or disclose the significance of the THP's inconsistency with Executive Order S-3-05:¹

The Court of Appeal's opinion is superceded by the California Supreme Court's grant to review, which states: "The issue to be briefed and argued is limited to the following: Must the environmental impact report for a regional transportation plan include an analysis of the plan's consistency with the greenhouse gas emission reduction goals reflected in Executive Order No. S-3-05 to comply with the California Environmental Quality Act." (*Cleveland Nat. Forest Foundation v. San Diego Assn. of Governments* (Cal. 2015) 184 Cal.Rptr.3d 725.)

In this case, SANDAG's decision to omit an analysis of the transportation plan's consistency with the Executive Order did not reflect a reasonable, good faith effort at full disclosure and is not supported by substantial evidence because SANDAG's decision ignored the Executive Order's role in shaping state climate policy. The Executive Order underpins all of the state's current efforts to reduce greenhouse gas emissions. As SANDAG itself noted in its Climate Action Strategy, the Executive Order's 2050 emissions reduction goal "is based on the scientifically-supported level of emissions reduction needed to avoid significant disruption of the climate and *is used as the long-term driver for state climate change policy development.*" (Italics added.)

Indeed, the Executive Order led directly to the enactment of AB 32, which validated and ratified the Executive Order's overarching goal of ongoing emissions reductions, recognized the Governor's Climate Action Team as the coordinator of the state's overall climate policy, and tasked CARB with establishing overall emissions reduction targets for 2020 and beyond. The Executive Order also led directly to the enactment of SB 375, which tasked CARB with establishing regional automobile and light truck emissions reduction targets for 2020 and 2035. CARB is required to revisit these targets every eight years through 2050, or sooner if warranted by changing circumstances. (Gov. Code, § 65080, subd. (b)(2)(A)(iv).) Thus, the Executive Order, with the Legislature's unqualified endorsement, will continue to underpin the state's efforts to reduce greenhouse gas emissions throughout the life of the transportation plan. The EIR's failure to analyze the transportation plan's consistency with the Executive Order, or more particularly with the Executive Order's overarching goal of ongoing greenhouse gas emissions reductions, was therefore a failure to analyze the transportation plan's consistency with state climate policy. As evidence in the record indicates the transportation plan would actually be inconsistent with state climate policy over the long term, the omission deprived the public and decision makers of relevant information about the transportation plan's environmental

consequences. The omission was prejudicial because it precluded informed decisionmaking and public participation. (*Smart Rail, supra*, 57 Cal.4th at p. 463, 160 Cal.Rptr.3d 1, 304 P.3d 499; *City of Long Beach, supra*, 176 Cal.App.4th at p. 898, 98 Cal.Rptr.3d 137.)

SANDAG contends the EIR cannot analyze the transportation plan’s consistency with the Executive Order because there is no statute or regulation translating the Executive Order’s goals into comparable, scientifically based emissions reduction targets. However, we do not agree the lack of such targets precludes the EIR from performing a meaningful consistency analysis in this instance. “Drafting an EIR ... necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.” (Guidelines, § 15144.) Although SANDAG may not know precisely what future emissions reduction targets the transportation plan will be required to meet, it knows from the information in its own Climate Action Strategy the theoretical emissions reduction targets necessary for the region to meet its share of the Executive Order’s goals. It also knows state climate policy, as reflected in the Executive Order and AB 32, requires a continual *decrease* in the state’s greenhouse gas emissions and the transportation plan after 2020 produces a continual *increase* in greenhouse gas emissions. With this knowledge, SANDAG could have reasonably analyzed whether the transportation plan was consistent with, or whether it would impair or impede, state climate policy.⁶

SANDAG’s attempts to disavow its responsibility for performing this analysis are unavailing. The Legislature specifically found reducing greenhouse gas emissions cannot be accomplished without improved land use and transportation policy. Accordingly, the transportation plan plays both a necessary and important role in achieving state climate policy. By failing to adequately inform the public and decision makers the transportation plan is inconsistent with state climate policy, the EIR deterred the decision makers from devising and considering changes to favorably alter the trajectory of the transportation plan’s post–2020 greenhouse gas emissions. When the decision makers are inevitably faced with post–2020 requirements aligned with state climate policy, their task of complying with these requirements will be more difficult and some opportunities for compliance may be lost. As SANDAG explained in its Climate Action Strategy, “Once in place, land use patterns and transportation infrastructure typically remain part of the built environment and influence travel behavior and greenhouse gas emissions for several decades, perhaps longer.” In this regard, the EIR falls far short of being “an ‘environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reach ecological points of no return.’ ” (*Laurel Heights, supra*, 47 Cal.3d at p. 392, 253 Cal.Rptr. 426, 764 P.2d 278.) It also falls far short of “ ‘demonstrat[ing] to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its actions.’ ” (*Ibid.*)

We are likewise unpersuaded by SANDAG’s assertion the EIR’s analysis of the transportation plan’s greenhouse gas emissions impacts fully complies with CEQA because it utilized significance thresholds specified in Guidelines section 15064.4, subdivision (b).⁷ This Guideline states in relevant part: “A lead agency should consider the following factors, *among others*, when assessing the significance of impacts from greenhouse gas emissions on the environment: [¶] (1) The extent to which

the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting [.] [¶] (2) Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project. [¶] (3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. Such requirements must be adopted by the relevant public agency through a public review process and must reduce or mitigate the project’s incremental contribution of greenhouse gas emissions. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding compliance with the adopted regulations or requirements, an EIR must be prepared for the project.” (Guidelines, § 15064.4, subd. (b), italics added.)

Cleveland National Forest Foundation v. San Diego Association of Governments (2014) 231 Cal.App.4th 1056, as modified on denial of reh’g (Dec. 16, 2014), review granted and opinion superseded sub nom. *Cleveland Nat. Forest Foundation v. San Diego Assn. of Governments* (Cal. 2015) 184 Cal.Rptr.3d 725.