



April 4, 2022

Forest Practice Committee
California Board of Forestry and Fire Protection
PO Box 944246
Sacramento, CA 94244-2460

Submitted electronically to: Jane.VanSusteren@bof.ca.gov; eric.hedge@bof.ca.gov.

CC: Isabel Baer, Environmental Program Manager, Timberland Conservation Program, California Department of Fish and Wildlife, Isabel.Baer@wildlife.ca.gov;
Secretary Wade Crowfoot, California Natural Resources Agency, Wade.Crowfoot@resources.ca.gov.

Re: Comments on Botanical Resource Guidance Document (March 2022 Version)

Dear Forest Practice Committee:

Thank you for the opportunity to comment on the most recent draft of the Board of Forestry and Fire Protection's Botanical Resources Guidance Document, revised March 30, 2022 (referred to herein as "Guidance"). The following comments are submitted on behalf of the California Native Plant Society (CNPS) and the Environmental Protection Information Center (EPIC). CNPS is a non-profit environmental organization with over 10,000 members in 35 Chapters across California and Baja California, Mexico. CNPS's mission is to protect California's native plant heritage and preserve it for future generations through the application of science, research, education, and conservation. We work closely with decision-makers, scientists, agencies, and local planners to advocate for well-informed policies, regulations, and land management practices. EPIC is a non-profit environmental organization based in Arcata, California. EPIC's mission is the science-based protection and restoration of northwest California's forests. EPIC's advocacy utilizes community organizing, public education, collaboration, and litigation. EPIC frequently submits substantive comments on timber harvest plans that would negatively impact private forestlands.

I. Background and Progression of the Current Version of Guidance.

On November 15, 2018, the California Department of Fish and Wildlife (CDFW) submitted a letter to the Board requesting prioritization of updates to the Forest Practice Rules for botanical resources (Attachment 1). Because the Forest Practice Rules contain no botany-specific

regulations, CDFW found that a significant portion of its time reviewing timber harvest plans (THPs) was spent dealing with issues related to routine scoping, surveying, and protection. CDFW asked the Board to augment the Forest Practice Rules to provide clear direction to foresters on how to address botanical resources in THPs, for the purpose of minimizing impacts to botanical resources and increasing efficiency for agency and stakeholder plan participants.

The Board decided in early 2021 not to go through the formal rulemaking process. Instead, the Board elected to develop a non-regulatory guidance document to clarify any inconsistencies between existing guidance documents. Several versions of the document were discussed during Forest Practice Committee meetings throughout 2021.

During the November 2, 2021 Forest Practice Committee meeting, the Guidance document was unexpectedly taken off agenda to allow the Board to comply with a request from the California Natural Resource Agency (CNRA) to discuss the document. The current version of the Guidance document was put on the agenda for the April 5, 2022 Forest Practice Committee meeting.

II. Global Comments on Effectiveness of the Guidance.

CNPS and EPIC appreciate the time and resources the Board has devoted to the process of creating this document, as well as the recent collaboration with the CNRA and CDFW. However, we remain concerned that the Guidance is still insufficient to fully address the current problems that exist in the THP process. Some of these problems include but are not limited to:

Excerpted from CDFW 2018 letter, attached as Attachment 1:

- The current Forest Practice Rules' omission of scoping, mitigation, and management practices for botanical resources creates uncertainty and results in avoidable impacts to these resources.
- A significant proportion of CDFW's review effort is dedicated to identifying potential impacts to botanical resource issues, and comments often recommend routine scoping, surveying, or protection.
- More thorough plan disclosure of botanical resources via the Forest Practice Rules has the added benefit of leading to more flexible, effective management strategies for these resources. It is unclear whether botanical resources are being adequately addressed during the plan review process and if plan-specific protection measures are effective. Because the Forest Practice Rules do not contain disclosure and protection standards specific to botanical resources, protection measures have been applied inconsistently. Further, landscape-level data for plant populations and plants' responses to timber harvesting is either not collected or is inefficiently used to guide management recommendations.
- As submitted to CAL FIRE, plan-specific botanical protection measures often employ a one-size-fits-all approach, which may not reflect the diversity of California's native plants and plant communities and their varied responses to timber harvesting.

Other concerns:

- CAL FIRE commonly defers surveys for biological resources until after plan approval (Letter to Secretary Wade Crowfoot August 2021, Attachment 2);
- Failure to adequately analyze impacts to sensitive natural communities;
- Implementation of boiler plate, one-size-fits-all mitigation measures;
- Failure to adequately disclose, analyze and mitigate impacts to botanical resources sufficient to satisfy the requirements of CEQA.

As an initial matter, we do not believe that the Guidance is likely to address these concerns or accomplish the consistency and improvement in plan preparation that is needed because it is non-regulatory and unenforceable. The document is full of permissive language that leaves the reader with the impression that the recommendations in the Guidance are optional when these recommendations should be mandatory in all THPs. We urge the Board to follow through with CDFW's initial request from its 2018 letter to formally augment the Forest Practice Rules to include botany-specific regulations. We are also concerned that the permissive nature of the guidance could be counter-productive to much needed THP reform, as the optional nature of the Guidance may lead some registered professional foresters (RPFs) who are currently following appropriate guidelines (such as the 2018 CDFW survey protocols¹) to regress into an inadequate plan preparation process.

We are also concerned that if the Guidance is finalized and disseminated in its current form, RPFs who follow the Guidance in good faith will end up preparing THPs that are not CEQA-equivalent. The regulation of timber harvesting operations is a Certified Regulatory Program, which means that the "environmental analysis undertaken in compliance with the certified program is the functional equivalent of a CEQA analysis." 14 C.C.R. 15251; *see also* 14 C.C.R. 896 ("The THP process substitutes for the EIR process under CEQA because the timber harvesting regulatory program has been certified pursuant to PRC Section 21080.5"). One of CEQA's main requirements, which has been imported to THPs, is that adequate information be gathered to allow for informed decisionmaking.² Despite well-established authority that the substantive requirements of CEQA apply to timber harvest plans,³ reviewers often come across THPs that are not CEQA equivalent either for failure to survey for botanical resources or failure to properly analyze and mitigate significant environmental impacts.

¹ <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>.

² *Ebbetts Pass Forest Watch v. California Dept. of Forestry and Fire Protection*, 43 Cal.4th 936, 943 (2008) ("Serving as the functional equivalent of an EIR, a timber harvest plan must 'provide public and governmental decisionmakers with detailed information on the project's likely effect on the environment, describe ways of minimizing any significant impacts, point out mitigation measures, and identify any alternatives that are less environmentally destructive.'" (internal citation omitted)).

³ *Environmental Protection Information Center, Inc. v. Johnson*, 170 Cal.App.3d 604, 620 (Cal. Ct. App. 1985) ("CEQA and its substantive criteria for the evaluation of a proposed project's environmental impact apply to the timber harvesting industry, and are deemed part of the FPA and the Forestry Rules.").

We are deeply concerned by some of the provisions in the Guidance, described in detail in the following sections. Even if the flaws in the Guidance are cured, the document is still not going to create positive and noticeable change in the plan review process because the Guidance is non-regulatory and unenforceable. We urge the Board to direct RPFs to follow the 2018 CDFW protocols until the Board can complete the formal rulemaking process and create regulations for botanical resources that are sufficiently protective. We look forward to continuing to work with the Board and CDFW in the formal rulemaking process to create formal Forest Practice Act regulations that will have a meaningful impact.

The following sections specify the section of the document that are particularly troublesome and need to be revised or removed from the Guidance altogether.

III. Section 3.1.3 “Avoidance and Good Design Can Affect Need for Some Analysis” Contradicts CEQA Principles and Must Be Deleted.

Section 3.1.1 is fundamentally flawed and needs to be removed from the Guidance. The statement that “Project design, avoidance, and additional measures may reduce the need for surveys” is misleading, incorrect, and contrary to well-established CEQA principles. In fact, the Guidance has this concept backwards. Avoidance and minimization strategies need to be informed by surveys, not the other way around. While avoidance and minimization measures can be effective for reducing impacts to a less than significant level after those impacts have been identified, incorporating avoidance or minimization measures into project design does not relieve an RPF of the crucial first step of identifying and determining the significance of the impact through botanical surveys at the outset of plan preparation.

THPs are supposed to serve as the functional equivalent of an environmental impact report (EIR), which means they need to describe the baseline physical conditions on the project site, through which the lead agency will determine whether an impact is significant. (CEQA Guidelines, § 15125(a)(1)). Like an EIR, a THP cannot fulfill its function of disclosing, analyzing, and mitigating environmental impacts unless it completes the critical threshold step of establishing the environmental setting so that the agency can determine which -- and to what extent -- biological resources might be impacted by the timber operations. *See Communities for a Better Environment v. City of Richmond*, 184 Cal.App.4th 70, 89 (Cal. Ct. App. 2010) (“When an EIR omits relevant baseline environmental information, the agency cannot make an informed assessment of the project's impacts.”). The presence and location of botanical resources is a key part of the environmental setting.

It is common sense that one cannot avoid or minimize an impact until they confirm the presence and location of the resource being impacted. Once the presence and location of the resource is determined via surveys, then RPFs and review team agencies can develop avoidance and

minimization strategies to reduce impacts to them. *See Sierra Club v. State Bd. of Forestry*, 7 Cal.4th 1215, 1236-37 (1994) (failure to obtain necessary information regarding existing conditions and failure to consider site-specific survey data during evaluation of timber harvest plans made meaningful assessment of impacts and development of site-specific mitigation measures impossible; approving timber harvest plans without the necessary information is contrary to CEQA and the Forest Practice Act). Simply put, it is impossible to know whether mitigation measures are sufficient for a particular impact if the magnitude of the impact is unknown. *See also Save the Agoura Cornell Knoll v. City of Agoura Hills*, 46 Cal.App.5th 665, 694 (Cal. Ct. App. 2020) (“[A]n updated [plant] survey would not merely be helpful, but would be necessary to formulate an adequate mitigation measure for these affected plant species.”).

After stating that “Project design, avoidance, and additional measures may reduce the need for surveys,” the Guidance goes on to list generic avoidance and minimization strategies such as avoiding areas where special status plant populations have been identified in the past, equipment exclusion zones, retaining overstory canopy for shade dependent species, exclusion of site preparation or herbicide application near habitat for special status plant species, and others. By doing this, the Guidance falls directly back into the problem that CDFW pointed out when it initially asked the Board to augment the Forest Practice Rules, meaning the problem of one-size fits all generic mitigation measures that are not tailored to site-specific data and do not reflect the diversity of California’s native plants and plant communities and their varied responses to timber harvesting.

Furthermore, these strategies will only be effective if they are informed by data gathered through on-the-ground surveys. Surveys are the only way to confirm the presence of species and to delineate their locations with certainty; this cannot be done through positive occurrence databases and historical information alone. Data are often not reported, or the information in the database is outdated and does not accurately reflect what exists on the site at the time of plan preparation. Positive occurrence databases show where species have been documented in the past, but they are not meant to confirm that a special status species is *absent* from a location, or that a previously documented species is still present. Even if a database query result shows that no special status plants are present in a plan area, it is still possible that special status species or sensitive natural communities could be located during a survey, especially in light of the fact that many areas of forest habitat have never been surveyed and many privately owned timberlands are inaccessible to botanists who can later submit their survey data to CNDBB.

CEQA prohibits the use of preemptive avoidance and minimization measures, such as the strategies listed in Section 3.1.3, that are incorporated into project design in lieu of disclosure and analysis of potential significant environmental impacts. “[T]his short-cutting of CEQA requirements subverts the purposes of CEQA by omitting material necessary to informed decision-making and informed public participation. It precludes both identification of potential environmental consequences arising from the project and also thoughtful analysis of the

sufficiency of measures to mitigate those consequences.” *Lotus v. Dep't of Transp.*, 223 Cal.App.4th 645, 658 (Cal. Ct. App. 2014); *San v. County*, 149 Cal.App.4th 645, 663-64 (Cal. Ct. App. 2007); *see also San v. County*, 149 Cal.App.4th 645, 663-64 (Cal. Ct. App. 2007) (“a mitigation measure cannot be used as a device to avoid disclosing project impacts.”). Botanical surveys are essential for identifying and disclosing potentially significant environmental impacts. Skipping this step of the process by incorporating preemptive avoidance and minimization is improper and unlawful.

While we understand the Board’s motivation to convey flexibility in the Guidance when it comes to botanical surveys, we caution the Board against the language in Section 3.1.3 in light of the substantial risk that the timber harvest plans resulting from such guidance likely will not comply with the legal principles described above. If exceptional circumstances exist that reduce the need for a survey, for instance, if the plan area has been surveyed within the previous 5 years, it may be appropriate to consult with CDFW to determine if and to what extent the area needs to be re-surveyed. But for the reasons stated above, these limited and atypical circumstances should not be portrayed in the Guidance as commonplace. As CDFW stated in its 2018 letter, even when landowners have already made efforts to survey their land, **“there will always be a need for botanical surveys (i.e. when new species are described, to determine if plants have colonized unoccupied habitat, or when projects are proposed in areas that have never been surveyed)”**.

Based on the CEQA principles and the reasons described above, Section 3.1.3 should be deleted.

IV. Section 2.3 “Identifying Unlisted Special Status Plan Species Under Guideline § 15380(d)” Needs to Be Deleted or Significantly Revised.

Section 2.3 instructs RPFs to determine whether unlisted plant species meet the criteria for listing and should be considered in a timber harvest plan under section 15380(d) of the CEQA guidelines. The Guidance lists a variety of factors that may be relevant in this determination, including but not limited to number of reported populations, population size, degree of phylogenetic isolation of the species, degree of habitat specialization, and population size within the plan area.

The determination of which unlisted species should be considered under section 15380(d) is complex, as demonstrated by the factors articulated above. CNPS recommends that this section be deleted and that the task of determining 15380(d) species should be reserved for CDFW scientists, professional botanists, or other individuals who can prove they have requisite expertise in making such determinations. If this section is to remain in the Guidance, it is essential that it include language reminding RPFs of their professional obligations under PRC § 752(b) to perform only those services for which they have expertise, and that they should engage the service of a botanist or other qualified expert where the RPF is unable to demonstrate the requisite level of expertise. It should also instruct RPFs to defer to the CNDDDB Special Vascular

Plants, Bryophytes, and Lichens List, listed in the Appendix to the Guidance, and that RPFs should consult with CDFW review team members for question questions about which species should be considered under 15380(d).

V. Section 3.2.4 “Timing of Surveys Relative to Plan Submittal” Needs to Significant Revision or Deletion.

Section 3.2.4 states that “botanical surveys are most helpful if submitted at the time of Plan review,” but this permissive language ignores the legal and practical requirements surrounding the timing of surveys. Survey data plays a key role in the plan review and approval process. It is not only helpful but also legally required that survey data be submitted early enough so that review team agencies and the public have an opportunity to review and consider the data. *See Sundstrom v. County of Mendocino*, 202 Cal.App.3d 296, 307 (Cal. Ct. App. 1988) (internal quotations and citations omitted) (“Environmental problems should be considered at a point in the planning process where genuine flexibility remains.”).

CDFW and the public have the right to know and be informed about botanical resource data before plans are approved. As the functional equivalent of EIRs, THPs are meant to “inform public agency decision makers *and the public generally* of the significant environmental effect of a project,” and “identify possible ways to minimize the significant effects.” 14 C.C.R. § 15121. When survey data is submitted late into the plan review process or submitted as a plan amendment, it diminishes the review team’s ability to assess the information and incorporate any necessary protection measures into the plan. It also violates the public’s right to be informed about and comment on the environmental impacts of the timber operation and the effectiveness of proposed mitigation measures. *See Save Our Peninsula Committee v. Monterey County Bd. of Supervisors*, 87 Cal.App.4th 99, 133 (Cal. Ct. App. 2001) (“The purpose of requiring public review is to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action. . . . Public review permits accountability and informed self-government . . . [P]ublic review ensures that appropriate alternatives and mitigation measures are considered, and permits input from agencies with expertise . . . Thus, public review provides the dual purpose of bolstering the public's confidence in the agency's decision and providing the agency with information from a variety of experts and sources.” (citing *Schoen v. Department of Forestry and Fire Protection* (1997) [58 Cal.App.4th 556, 573-574](#), internal quotation marks and citations omitted)).

The Guidance should unequivocally state that surveys should be performed early in the plan process and should be made publicly available at the time of plan submission. A recent infographic published in the Winter 2022 edition of the California Forest Stewardship Program publication (Attachment 3), offers a helpful view of where botanical surveys should fit into the THP process. As depicted in the graphic, biological surveys should be done early in the fieldwork stage, prior to plan submission, agency review, and the public comment period. This

allows the review team to meaningfully consider and incorporate survey data into the plan and develop avoidance and mitigation measures based on the data. It also protects the public's right to be fully informed of the environmental impacts, assess for themselves the sufficiency of the analysis of impacts and proposed mitigation measures, and to raise concerns during the public comment process. The Guidance document should be consistent with the process shown in this infographic. As described at the beginning of this letter, instead of non-regulatory, unenforceable guidance regarding the timing of surveys relative to plan submittal, RPFs and review team agencies would benefit from formal Forest Practice Rules in this regard. There is no reason that straightforward procedural steps such as the timing of threshold environmental studies should be left up to non-regulatory guidance documents.

The Board should also delete the portion of Section 3.2.4 that allows for deferred mitigation in the event surveys cannot be completed prior to plan submission. Deferred mitigation is prohibited under CEQA unless very specific requirements are met (see 14 C.C.R. § 15126.4 for the full list of requirements) and this Guidance does not adequately instruct RPFs on how to properly create a legally defensible deferred mitigation measure. The Guidance should reinforce the widely accepted practice of conducting biological surveys early in the plan preparation process. Submitting survey data late in the THP process when it is less useful to review team agencies and the general public is bad practice and should not be condoned in the Guidance.



Thank you for the opportunity to comment on the March 2022 version of the Botanical Resource Guidance Document. If you have any questions or would like to discuss this letter, please feel free to contact Isabella Langone at ilangone@cnps.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Isabella Langone'.

Isabella Langone, J.D.
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A handwritten signature in black ink, appearing to read 'Matt Simmons'.

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Attachment 1



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Habitat Conservation Planning Branch
P.O. Box 944209
Sacramento, CA 94244-2090
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



November 15, 2018

Mr. Matt Dias, Executive Officer
California Board of Forestry and Fire Protection
PO Box 944246
Sacramento, CA 94244-2460

Dear ^{Matt} Mr. Dias:

2018 PRIORITIZATION OF FOREST PRACTICE RULE UPDATES FOR BOTANICAL RESOURCES

The California Department of Fish and Wildlife (CDFW) requests that the California Board of Forestry and Fire Protection (Board) consider reviewing the California Forest Practice Rules (Cal. Code Regs., tit. 14, § 895.1 et seq.) to augment the rules for evaluating impacts to botanical resources related to timber harvesting. In recognition of the botanical questions that routinely arise during the timber harvesting review process, CDFW convened an internal working group in early 2017 to review the Forest Practice Rules related to botanical resources and the management of botanical resources on private timberlands. The outcome of this working group is CDFW's recommendation to augment the Forest Practice Rules for botanical resources to make the timber harvesting review process more effective and efficient.

Clear direction in the Forest Practice Rules will increase the likelihood that potentially significant impacts to botanical resources will be addressed by applicants prior to timber harvesting plan (plan) submittal, and reduce the time and effort necessary to complete plan review. A significant proportion of CDFW's review effort is dedicated to identifying potential impacts to botanical resource issues, and comments often recommend routine scoping, surveying, or protection. Appendix 3 illustrates some of the potentially significant, adverse impacts that may occur during timber harvesting operations. Many of these impacts could be reduced to a level below significant through routine best management practices implemented during plan preparation and implementation. Augmenting the Forest Practice Rules specific to botanical resources would minimize impacts and increase efficiency for agency and stakeholder plan participants.

More thorough plan disclosure of botanical resources via the Forest Practice Rules has the added benefit of leading to more flexible, effective management strategies for these resources. Thorough documentation of botanical resources, including species' locations and monitoring of known populations, will contribute to a better understanding of how botanical resources respond to timber harvesting. Such information would allow CDFW and stakeholders to focus review and management efforts on a smaller subset of species needing specific protection, resulting in more defensible and effective

Conserving California's Wildlife Since 1870

FP00(N)(2)

management practices over time.

Background and Need

California has more plant species than any other state in the nation (approximately 6,500 native species), and more than one-third of these are found nowhere else in the world (CNPS 2018). However, 284 species, subspecies, and varieties of native plants are designated as rare, candidate, threatened, or endangered by state or federal law (CDFW 2018a), and over 2,000 more plant taxa are considered to be of conservation concern (CDFW 2018b). According to California Natural Diversity Database (CNDDDB) spatial records, approximately 12,904 special-status plant occurrences have been documented in forested ecosystems (see Appendix 1). There is also a high diversity of plant communities in California, in which 53 percent are considered potentially sensitive (1,347 out of 2,555 plant associations are designated a State Rank of 1-3) (CDFW 2018c).

California law related to timber harvesting establishes the Legislature's intent in the Forest Practice Act that timber harvesting be conducted via "an effective and comprehensive system of regulation" while protecting natural resources (Pub. Resources Code, §§ 4512 & 4513). Likewise, the Forest Practice Rules state "the goal of forest management on a specific ownership shall be the production or maintenance of forests which are healthy and naturally diverse, with a mixture of trees and under-story plants..." (Cal. Code Regs., tit. 14, § 897, subd. (b)(1)). In 2012, Assembly Bill (AB) 1492 passed with direction from the California Legislature to identify areas to improve efficiencies and protect natural resources during the timber harvesting review process (Pub. Resources Code, § 4629.2).

Agencies and land managers have tried to address gaps in the current Forest Practice Rules related to botanical resources through development of guidance documents. In 2005 CDFW developed timber-specific botanical survey guidelines (CDFW 2005) to address many of the common botanical issues that arise during reviews and inspections. A 2009 memorandum issued by the California Department of Forestry and Fire Protection (CAL FIRE 2009), describes practices to address "special-status plants" (rare, threatened or endangered listed species, or species that meet the criteria of California Environmental Quality Act (CEQA) Guidelines §15380(d)) during the scoping process for timber harvesting plans. Landowners address botanical resources through various mechanisms, such as project-specific surveys and protection measures, and may also implement property-wide management plans or agreements.

Botanical scoping and survey processes, and the application of protection measures to avoid significant adverse impacts to botanical resources have been employed inconsistently in timber harvesting plans. In 2016, 44 percent and in 2017, 37 percent of first review comments from CDFW's Region 1 Interior Timberland Conservation Program, were specific to eliciting information about botanical resources missing from

applicants' plans. Commonly addressed topics are shown in Appendix 2.

It is unclear whether botanical resources are being adequately addressed during plan review process and if plan-specific protection measures are effective. Because the Forest Practice Rules do not contain disclosure and protection standards specific to botanical resources, protection measures have been applied inconsistently. Further, landscape-level data for plant populations and plants' responses to timber harvesting is either not collected or is inefficiently used to guide management recommendations. As submitted to CAL FIRE, plan-specific botanical protection measures often employ a one-size-fits-all approach, which may not reflect the diversity of California's native plants and plant communities and their varied responses to timber harvesting.

Healthy plant communities are heterogeneous and resilient environments, adapted to dynamic ecological conditions. In recognition of changing landscape conditions associated with timber harvesting, as well as with other factors such as climate change and severe fires, botanical best management practices need to evolve. While there will always be a need for botanical surveys (i.e. when new species are described, to determine if plants have colonized unoccupied habitat, or when projects are proposed in areas that have never been surveyed) many timberland owners have already expended considerable effort to locate botanical resources on their properties. Having years of botanical surveys on many areas of private timberlands available can allow for a shift in resources towards the active management of botanical resources. Active management practices, compared to common hands-off approaches will benefit the plants while also allowing flexibility in conducting timber operations. CDFW suggests the Board develop a framework for botanical surveys, and shift the focus of botanical resource protection from comprehensive inventorying and avoidance of species, to targeted studies and active management.

Conclusion

California has many unique and rare botanical resources that are in need of protection and management. However, the current Forest Practice Rules' omission of scoping, mitigation, and management practices for botanical resources creates uncertainty and results in avoidable impacts to these resources. Augmenting the Forest Practice Rules to recommend routine scoping, surveying, and protection of botanical resources will provide clear direction to applicants prior to plan submittal, reduce the time and effort necessary for CDFW and other review team agency staff to complete plan review, and lead to more flexible, effective management strategies for these resources.

CDFW asks that the Board consider this request to prioritize the evaluation of existing Forest Practice Rules pertaining to botanical resources during the 2019 rule-making session. CDFW has been working to evaluate botanical regulatory changes for several months and would welcome the opportunity to discuss our findings with the Board. CDFW is committed to working with the Board and stakeholders to develop efficient and

Mr. Matt Dias, Executive Officer
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effective botanical rules.

Please see the CDFW Native Plant Program website at:
<http://wildlife.ca.gov/Conservation/Plants> for more information on rare plant biology,
laws, and best management practices. Additional information specific to timber
harvesting review is provided at: <http://wildlife.ca.gov/conservation/timber>.

If you have questions about this letter or would like further information, please contact
Ms. Isabel Baer, Timberland Conservation and Native Plant Program Manager, at
(916) 651-3110 or isabel.baer@wildlife.ca.gov; or me, at (916) 653-3861 or
richard.macedo@wildlife.ca.gov.

Sincerely,



Richard Macedo, Branch Chief
Habitat Conservation Planning Branch

cc: J. Keith Gillless, Ph.D., Chair
California Board of Forestry and Fire Protection
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California Department of Fish and Wildlife

Chad Dibble, Deputy Director
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Attachment 2



To: Secretary Crowfoot
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

CC: Kevin Conway
Charlton Bonham
Senator Mike McGuire

Re: CAL FIRE's Pattern and Practice of Conducting Biological Surveys After Approving Timber Harvest Plans

Dear Secretary Crowfoot,

The Environmental Protection Information Center, Sierra Club California, the Center for Biological Diversity, Forests Forever, and the California Native Plant Society (collectively "conservation organizations") write to highlight a pattern and practice that CAL FIRE frequently employs in its Timber Harvest Plans (THPs). CAL FIRE regularly approves THPs for which the necessary botanical and wildlife surveys have not been conducted prior to THP approval; rather the surveys are conducted after the plan is approved and amended into the plan. This pattern and practice negates the ability of the public and the California Department of Fish and Wildlife

(CDFW) to meaningfully consult on the environmental impact of THPs as mandated by the Forest Practice Act. Because this pattern and practice violates CEQA, the Secretary of Natural Resources may be required to revoke CAL FIRE's State Regulatory program. We recommend that CAL FIRE immediately halt this practice in order to prevent this from occurring.

This letter consists of three parts. First, we document numerous instances where CAL FIRE has approved a THP only to conduct necessary surveys months later. Second, we explain why this practice violates the Forest Practice Act and CEQA. Finally, we argue that continued violation of these laws jeopardizes CAL FIRE's State Timber Harvesting Certified Regulatory Program.

- I. Examples of THPs Where CAL FIRE Has Delayed Surveys Until After The Close of Public Comments
 - A. The Caspar 500 THP NSO Surveys

The Caspar 500 THP (1-20-00006-MEN) was approved on May 5th, 2020. More than a year later, on June 11th, 2021, CAL FIRE released to the public new northern spotted owl (NSO) survey data for the Caspar 500 THP.¹ Thus, none of the information obtained in these surveys was available when the public had the opportunity to comment on the THP. On June 10th, CAL FIRE began logging almost concurrently with the public release of this survey data. In this case, CDFW was eventually able to review the surveys, and provide feedback to CAL FIRE. CAL FIRE uploaded their responses to CDFW on June 15th.² On July 14th, CDFW uploaded an additional memorandum defending the process of conducting surveys post-THP approval. The public had no opportunity to review or comment on CDFW's consultation or CAL FIRE's responses.

EPIC hired a northern spotted owl biologist to review the surveys on June 11th, 2021. While she was still conducting her review, CAL FIRE released CDFW's consultation. Her review (see attached) reveals that there were considerable flaws in CAL FIRE's survey methodology.³ In particular, she concluded that there was a "highly reasonable certainty that unauthorized incidental take of northern spotted owl will occur as a direct result of implementing operational activities."⁴ EPIC and the public had no opportunity to bring our concerns to CAL FIRE prior to the project's implementation because these surveys were conducted after the review period concluded and the project was approved. Not only that, the project actually began logging before CDFW's consultation was released to the public.

B. The Caspar 500 Botanical Surveys

¹ Memorandum from Jason Serna to Dominik Schwab, Caspar 500 THP THP #1-20-00006 MEN, Minor Amendment (Jun. 3, 2021)

² Memorandum from Jason Serna to Domink Schwab, Caspar 500 THP #1-20-00006 MEN, RPF responses (Jun. 9, 2021)

³ Memorandum Prepared by Tonja Chi, Caspar 500 Timber Harvest Plan Jackson Demonstration State Forest Northern Spotted Owl Evaluation Summary, July 1, 2021.

⁴ Id at 2.

On April 28th, 2021, CAL FIRE uploaded the “Botanical and Special Status Plant and Natural Communities Report” for the Caspar 500 THP.⁵ The surveys are meant to identify the locations of sensitive plant species within the THP area. The surveys were completed on September 23rd, 2020 but were not made available to the public until April of the following year.⁶ On May 21, 2021 the Dorothy King Young Chapter of the California Native Plant Society (CNPS) submitted substantive comments on these surveys written by Teresa Sholars, MSc (see attached).⁷ Ms. Sholars is Professor Emeritus of Biology and Sustainable Agriculture at the College of the Redwoods, where for over 40 years she has taught students about ecology of mushrooms, lichens, native plants and vegetation on the Mendocino Coast. Based on the survey results, Ms. Sholars’s comments illuminated several serious negative impacts to sensitive plants.⁸ In particular, the surveys used out of date references to develop prospective species lists which means that these surveys would not have registered important sensitive species that are likely on site.⁹ Ms. Sholars could not have made these comments until after the surveys were conducted because the errors within the surveys could not have been known until the surveys were made publicly available. However, when she submitted her comments after the survey was conducted, her comments were excluded from meaningful agency review because the deadline for public comments had passed. This highlights the problem that withholding survey results and data until after the review process ends precludes CAL FIRE from considering valuable feedback from members of the public with expertise, and even CDFW if they are not informed that new data is available, which, as discussed later in this letter, is required by law.

Ms. Sholars reached out to CDFW to find out if they had had an opportunity to read the new surveys or her comments. Jon Hendrix of CDFW responded as follows:

CDFW did review your comments, and we reviewed the submitted final botanical report and found issues too, namely with survey coverage and treatment of sensitive natural communities. There has been occasion in the past when CAL FIRE has asked us to review backloaded botanical surveys for our comments, opinions and/or concurrence. That has not happened in this case and leaves CDFW no ability to comment for the record, since the record is in effect closed to the 14 CCR 1037.5 review team. Should CAL FIRE ask for our assistance, or had there been a requirement in the THP for them to consult with us prior to operations, that’d be a different story.¹⁰

This illustrates another major problem with CAL FIRE’s practice of amending surveys into their THPs after the THP has already been approved. Sometimes, CAL FIRE consults with

⁵ Memorandum From Jason Serna to Dominic Schwab, Deviation Image, 4/28/201

⁶ Id.

⁷ Teresa Sholars, DKY CNPS comments on THP 1-20 -00006 (Caspar 500) Minor amendment Botany Report, 5/21/2021

⁸ Id.

⁹ Id.

¹⁰ Email From Jon Hendrix to Teresa Sholars 6/29/2021 (see attached)

CDFW (as was the case with the Northern Spotted Owl surveys) and sometimes they decide not to. In this case, despite CDFW having “found issues” they were unable to consult with CAL FIRE regarding their surveys. According to Jon Hendrix, “CDFW [had] no ability to comment for the record” regarding the botanical surveys

C. The Mitchell Creek THP 1-20-00193-MEN Marbled Murrelet Surveys

The Mitchell Creek THP (1-20-00193-MEN) is a THP currently under review by CAL FIRE. There is a concern that the THP will impact endangered marbled murrelet habitat. Section 919.11 of the Forest Practice Act provides “Where there is evidence of an active murrelet site in or adjacent to the THP area, or where there is evidence of a potential Impact to a murrelet, the Director shall consult with CDFW as to whether the proposed THP will result in a “take” or “jeopardy” (pursuant to the California Endangered Species Act) of the murrelet before the Director may approve or disapprove a THP.”¹¹ CAL FIRE initially only disclosed two redwood trees within 0.25 miles of the plan area as potential marbled murrelet habitat.¹² After CDFW scientists completed an initial field inspection, additional marbled murrelet habitat which was “not discussed in the THP nor illustrated on the THP maps” was identified.¹³ CDFW requested that “the RPF include CDFW marbled murrelet Consultation in Section II prior to Second Review in accordance with Section 919.11 and disclose all marbled murrelet suitable habitat and protection measures.”¹⁴ In their response the RPF stated, “consultation will be revised into the THP when completed.”¹⁵ The amended THP again states “[s]pecific protection measures shall be submitted to CAL FIRE as a minor amendment.”¹⁶ In other words, the consultation won’t occur until after the THP is approved.

EPIC has submitted comments stressing that this postponement of surveys until after the plan is approved violates the Forest Practice Act. But, we don’t know if CAL FIRE will amend their plan. If the plan is approved, EPIC will have no opportunity to comment during the public review period on the efficacy of these surveys and the consultation.

D. Mitchell Creek Botanical Surveys

CAL FIRE is repeating the same practice of amending survey data into a THP after it has been approved for the Mitchell Creek THP.¹⁷ As was the case with the Caspar 500 THP, this will negate the public’s (and potentially CDFW’s) ability to comment on the results of these surveys.

E. Little North Fork Big River THP Botanical Surveys

¹¹ Cal. Code Regs., tit. 14, § 919.11.

¹² 1-20-00193-MEN THP, PHI Responses at 4.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ 1-20-00193-MEN THP, Revised sec. 2, p. 70 (3/4/21).

¹⁷ 1-20-00193-MEN THP, Revised sec. 2, p. 71 (3/4/21).

The Little North Fork Big River THP 1-20-00173-MEN is another THP currently under review by CAL FIRE. The plan currently calls for botanical surveys to be conducted at some undetermined time in the future.¹⁸ The Little North Fork Big River THP area has not been harvested in the last 100 years and thus has the potential to contain rare, undocumented plants. The THP cannot confidently claim that there are no rare, threatened or endangered forest species within the THP area while simultaneously failing to conduct the appropriate botanical survey.

F. Little North Fork Big River THP NSO Surveys

No surveys for Northern Spotted Owls were conducted in association with preparation for this THP. Instead, the THP relied on data obtained from the California Natural Diversity Database (CNDDDB). Data within the CNDDDB is not recognized as representative because the data is often collected inconsistently based on project-level monitoring needs and not all data is reported to the Department's database.¹⁹ Also, the CNDDDB is a positive-occurrence database and should not be relied on as evidence for a species' absence from a location. Knowing that this reliance on CNDDDB data was insufficient, the THP included a draft proposal showing future NSO calling station locations on a map.²⁰ Again, CAL FIRE seeks to have this THP approved *before any* surveys have been conducted. The public and CDFW will have no opportunity to comment on the efficacy of these surveys or the information which is obtained from them.

G. Soda Gulch THP NSO surveys

The Soda Gulch THP (1-20-00041 MEN) was approved on July 24th, 2020. Almost a year later, on July 2nd, 2021 CAL FIRE uploaded amendment #3 to the THP which contained the 2020 and 2021 NSO survey results. There was no consultation with CDFW concerning these results.

H. Red Tail THP NSO surveys

The Red Tail THP (1-19-00224 MEN) was approved on March 20th, 2020. A year later, on April 7th 2021 CAL FIRE uploaded amendment #2 to the THP which contained the 2020 and 2021 NSO Survey results. There was no consultation with CDFW concerning these results.

II. Deferred Surveys Violates CEQA and the Forest Practice Act

As demonstrated above, the practice of deferring surveys is frequently employed by CAL FIRE. Of particular note is the fact that CAL FIRE employs this practice on Jackson Demonstration State Forest (JDSF), a forest managed by CAL FIRE. Timber harvest plans in a state demonstration forest should be reviewed and implemented under the highest standards and serve as an example for timber harvest plans across the state. As such, it is of the utmost importance that CAL FIRE follow both the letter and spirit of our environmental laws in order to ensure the public that they are managing our public lands in the public interest, especially when

¹⁸ 1-20-00173-MEN THP sec. 2, p. 68.

¹⁹ CDFW (California Department of Fish and Wildlife). January 27, 2016. A status review of the northern spotted owl (*Strix occidentalis caurina*) in California. At 15.

²⁰ 1-20-00173-MEN THP, sec. 5, p. 249

CAL FIRE acts as both the project proponent and lead agency approving the project. The Forest Practice Act and Forest Practice Rules govern timber harvesting on private lands as well as State owned lands within California. The Forest Practice Act mandates that Industrial Timber Harvests be governed by a Timber Harvest Plan (THP).²¹ A THP is a “functionally equivalent” document that is meant to fulfill the necessary environmental review required by CEQA and courts have found that many of CEQA’s procedural and substantive requirements apply to THPs as well.²² The conservation organizations believe that this practice of deferred surveys violates CEQA and the Forest Practice Act because it inhibits interagency review and public participation during the Timber Harvest Plan approval process. In short, THPs fail as the informational documents they are supposed to be when crucial information that should factor into the review process is tacked on after the THP is approved.²³

A. Interagency Review

The Forest Practice Act requires that CAL FIRE establish interdisciplinary review teams in order to evaluate timber operations.²⁴ The FPA mandates that CDFW have a representative on the interdisciplinary review team.²⁵ The review team’s function “shall be to assist the Director in determining if Plans are in conformance with Board Rules and to evaluate the potential environmental impacts of Timber Operations.”²⁶ Review team members have the option to file a non-concurrence for a plan explaining that environmental resources are not being adequately protected.²⁷ The Director, when making the decision whether to approve a THP, is charged “to consider recommendations and mitigation measures of other agencies” and “to respond in writing to the issues raised”.²⁸ In doing so, “[t]he Director shall insure that an interdisciplinary review team has had an opportunity to review each Plan.”²⁹

CAL FIRE’s practice of conducting surveys after a THP has been approved and amending them into the plan violates these requirements. We can clearly see this in the Caspar 500 THP where CAL FIRE conducted Botany surveys that CDFW had no opportunity to comment on despite the fact that they had concerns.³⁰ Sometimes, CAL FIRE allows CDFW to consult on surveys conducted after approval of a THP, as we saw with the Caspar 500 NSO Surveys, but CAL FIRE believes doing so is entirely within their discretion. The Forest Practice Rules make clear that CDFW is meant to consult with CAL FIRE *during* the decision making process, not after it is

²¹ Cal. Pub. Rec. Code § 4581

²² *Sierra Club v. State Bd. of Forestry*, 7 Cal. 4th 1215, 30 (1994); Pub. Rec. Code § 21080.5(a), (d), (e)

²³ *Ebbetts Pass Forest Watch v. California Dept. of Forestry and Fire Protection*, 43 Cal.4th 936, 943 (2008) (“Serving as the functional equivalent of an EIR, a timber harvest plan must ‘provide public and governmental decisionmakers with detailed information on the project’s likely effect on the environment, describe ways of minimizing any significant impacts, point out mitigation measures, and identify any alternatives that are less environmentally destructive.’” (internal citation omitted)).

²⁴ Cal. Code Regs., tit. 14, § 1037.5

²⁵ Cal. Code Regs., tit. 14, § 1037.5(a)

²⁶ Cal. Code Regs., tit. 14, § 1037.5(b)

²⁷ Cal. Code Regs., tit. 14, § 1037.5(e)

²⁸ Cal. Code Regs., tit. 14, § 1037.4

²⁹ *Id.*

³⁰ Email From Jon Hendrix to Teresa Sholar 6/29/2021; 14 Cal. Code Regs. § 1037.5 [See attached]

concluded. The reason for this is obvious: Consultation is meant to influence the Director's Decision. That's why the Director is required to "review and consider the recommendations made on each Plan by the interdisciplinary review team before determining if the Plan conforms to the Rules of the Board."³¹ But, if the plan has already been approved long before the surveys have been conducted, there is no opportunity for that consultation to occur. Having already approved the plan, any consultation that does occur is merely a courtesy on CAL FIRE's part. And, if CAL FIRE feels strongly that they would not like to hear CDFW's input on a survey, they can choose not to request it. In many cases, this can lead to CDFW being unable to fulfill its obligations as a member of the review team and as the state agency tasked with managing California's fish, wildlife, and plant resources.

This dynamic obfuscates the entire purpose of the Forest Practice Act and CEQA. These laws are meant to ensure that forest managers, in this case CAL FIRE, are subject to environmental review before a THP is approved. The drafters of the Forest Practice Act determined that substantive environmental review required an interdisciplinary review team to provide recommendations and consultation with regards to each Timber Harvest Plan. CAL FIRE should not be permitted to evade that review simply by scheduling surveys for a time period after the Director's Decision. While surveys do need to be conducted at certain times of the year in order to be effective, there is nothing preventing CAL FIRE from conducting those surveys *prior* to the Director's Decision. Doing so would ensure that all agencies tasked with reviewing Timber Harvest Plans have a fair opportunity to provide recommendations and consultation with regards to these proposed discretionary actions. Having taken their advice into consideration, the Director could then approve THPs in accordance with the Forest Practice Act.

B. Public Participation

The other victim of CAL FIRE's decision to conduct surveys after the Director's decision is public participation. The Forest Practice Act and CEQA both require an opportunity for public participation and comment *prior to* a decision being made with regards to a discretionary project such as a Timber Harvest Plan. The Forest Practice Act mandates a public comment period wherein the public can submit comments in writing.³² When making a decision regarding whether to approve a THP, "The Director shall consider all written comments regarding the Plan."³³ This mandate ensures that the thoughts of the public are taken into account when THPs are being approved.

Likewise, CEQA requires an opportunity for public comment on discretionary projects. One of the key purposes of CEQA and the THP process is to allow the public to comment on proposed plans before they are approved with the information necessary to make informed comments.³⁴

³¹ Cal. Code Regs., tit. 14 § 1037.4

³² Cal. Code Regs., tit. 14 § 1037.3, 1037.4

³³ Cal. Code Regs., tit. 14 § 1037.4

³⁴ Cal. Pub. Res. Code. § 21003.1.

In order for that public comment to be meaningful, it must be received at a point in the planning process where “genuine flexibility remains.”³⁵ *Sundstrom v. County of Mendocino* explains:

In *Bozung v. Local Agency Formation Com.*, supra, 13 Cal.3d 263, 282, the Supreme Court approved “the principle that the environmental impact should be assessed as early as possible in government planning.” Environmental problems should be considered at a point in the planning process “where genuine flexibility remains.” (*Mount Sutro Defense Committee v. Regents of University of California*, supra, 77 Cal.App.3d 20, 34.) A study conducted after approval of a project will inevitably have a diminished influence on decisionmaking. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA. (*Id.* at p. 35; *No Oil, Inc. v. City of Los Angeles*, supra, 13 Cal.3d 68, 81; *Environmental Defense Fund, Inc. v. Coastsides County Water Dist.* (1972) 27 Cal.App.3d 695, 706 [104 Cal.Rptr. 197].)³⁶

By conducting these surveys after the public comment period has closed, CAL FIRE has foreclosed the possibility of the public commenting on their results. Surveys can provide valuable information about the location of sensitive species. It’s also difficult, if not impossible, to analyze the feasibility and effectiveness of mitigation measures without assessing them side by side with survey data. But the public has no opportunity to provide insights to CAL FIRE regarding what measures should be taken in response to that new information. After CAL FIRE released the Caspar 500 THP’s additional NSO surveys, EPIC hired a northern spotted owl biologist to review them. She documented numerous flaws in the survey methodology, the mitigations taken by CAL FIRE, and CDFW’s review of the surveys.³⁷ Normally, EPIC would supply that information to CAL FIRE as a public comment and hope to persuade CAL FIRE to take measures to mitigate the impacts. However, in this case EPIC, along with the rest of the public, was barred from doing so. Similarly, after CAL FIRE released the results of the Caspar 500 botanical surveys, CNPS was unable to supply CAL FIRE with the valuable knowledge held by Ms. Sholars.

Surveys also have the potential to produce “significant new information” as defined by the Forest Practice Rules.³⁸ “Significant new information means substantial changes in the plan or environmental setting, as well as additional data or other information. New data or information added to a plan is not “significant” unless the plan is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the plan...”³⁹ The Forest Practice Rules § 1037.3(e) provide that “Any substantial deviation in the plan or the inclusion of significant new information (as described in 14 CCR § 895.1), made during the Director’s review of the plan shall require recirculation as described in this section

³⁵ *Mount Sutro Defense Committee v. Regents of University of California*, 77 Cal.App.3d 20, 34 (1978).

³⁶ *Sundstrom v. County of Mendocino*, 202 Cal. App. 3rd 296, 307 (1988).

³⁷ Memorandum Prepared by Tonja Chi, Caspar 500 Timber Harvest Plan Jackson Demonstration State Forest Northern Spotted Owl Evaluation Summary, July 1, 2021. [see attached]

³⁸ Cal. Code Regs. tit. 14 § 895.1

³⁹ Cal. Code Regs. tit. 14 § 895.1

and reopening or extending the public comment period for a minimum of thirty days.”⁴⁰ Because the surveys are conducted after the Director’s review, CAL FIRE is effectively barring this significant new information from triggering a reopening of the public comment period as mandated by § 1037.3(e).

Now, EPIC is faced with the prospect of commenting on upcoming THPs that are proposing the same kinds of delayed surveys. For both the Little North Fork Big River THP 1-20-00173-MEN and the Mitchell Creek THP 1-20-00193-MEN, we’ve commented to the effect that surveys should be conducted *before* the end of the public comment period. But, in all likelihood CAL FIRE will approve these THPs, conduct the surveys at some undetermined time in the future, and start logging without obtaining public input on the results of those surveys. There is a simple solution to this problem: Surveys should be conducted before the THPs are approved and survey data should be included in the version of the THP publicly available during the public comment period.

III. CAL FIRE Risks Jeopardizing Their Certified Regulatory Program

The State’s timber harvesting regulatory program is currently certified pursuant to Public Resource Code Section 21080.5.⁴¹ In order to qualify for such certification, “a regulatory program shall require the utilization of an interdisciplinary approach that will ensure the integrated use of the natural and social sciences in decisionmaking.”⁴² Certified regulatory programs must also “[r]equire the administering agency to consult with all public agencies that have jurisdiction, by law, with respect to the proposed activity” and “Require that final action on the proposed activity include the written responses of the issuing authority to significant environmental points raised during the evaluation process.”⁴³ Furthermore, timber harvest plans, as certified regulatory documents, must be “available for a reasonable time for review and comment by other public agencies and the general public.”⁴⁴ CAL FIRE, by conducting surveys and amending them into Timber Harvest Plans after approval, is violating all of these provisions of the State’s certified regulatory program. This practice evades consultation with “public agencies that have jurisdiction” such as CDFW. Moreover, by amending the plan with substantial new information after the public comment period has closed, this practice violates the mandate to have the plan be “available for a reasonable period of time for review and comment...”

If CAL FIRE continues this practice, they are inviting decertification of the State’s timber regulatory program. The Secretary of Resources is required to do so by law if the program does not meet the requirements outlined in Public Resource Code § 21080.5.⁴⁵ The solution to this problem is simple: CAL FIRE should conduct all necessary surveys prior to approval of timber harvest plans. This would allow the other agencies and the public to review these surveys and

⁴⁰ Cal. Code Regs. tit. 14 § 1037.3(e)

⁴¹ Cal. Pub. Rec. Code § 21080.5; Cal. Code Regs., tit.14, §896.

⁴² Cal. Pub. Rec. Code § 21080.5(d)

⁴³ Cal. Pub. Rec. Code § 21080.5(d)(2)(C-D)

⁴⁴ Cal. Pub. Rec. Code § 21080.5(d)(3)(B)

⁴⁵ Cal. Pub. Rec. Code § 21080.5(e)(1)

provide input to CAL FIRE on environmental impacts. Doing this would save the State's timber regulatory program.

In conclusion, by this letter, the conservation organizations formally request that CAL FIRE cease this practice in all future THPs and THPs currently under review. We also formally place the Secretary of Resources on notice of the issue. Should CAL FIRE continue this practice, the conservation organizations reserve the right to seek a writ of mandamus to compel the Secretary to decertify the regulatory program. If you would like to discuss anything raised within this letter, please do not hesitate to contact our organizations by writing to matt@wildcalifornia.org.

Sincerely,



Matt Simmons, Legal Fellow, Environmental Protection Information Center



Isabella Langone, Conservation Analyst, California Native Plant Society



Daniel Barad, Policy Advocate Sierra Club California



Justin Augustine Senior Attorney, Center for Biological Diversity



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Tonja Y. Chi

PROFESSIONAL PREPARATION

<u>Undergraduate Institution</u>	<u>Major</u>	<u>Degree Year</u>
Sonoma State University	Chemistry	B.A. 1993
<u>Graduate Institution</u>	Organismal Biology, Conservation, and Ecology	M.S. 2006
San Jose State University		

APPOINTMENTS

- Wildlife Field Biologist Consultant-Natural History Film, Earthscape Productions Limited, Bristol, UK (May-June 2021)
- Spotted Owl Expert-NSO Project Analyses: Jackson Demonstration State Forest-Mitchell Project and Little Big River Project, Environmental Protection Information Center, Arcata, CA (2021)
- Spotted Owl Expert-Klamath National Forest Crawford Vegetation Project, Environmental Protection Information Center, Arcata, CA (2019 – 2020)
- Spotted Owl Biologist, Conservation Congress, Billings, MO (2013 – 2020)
- Lead Field Biologist/Researcher, John Muir Project of Earth Island Institute, Big Bear, CA (2014 – 2020)
- Senior Wildlife Biologist, Californian Environmental Services, Fremont, CA (2011 – 2017)
- California Spotted Owl Surveyor – Stanislaus National Forest, John Muir Project of Earth Island Institute. Big Bear, CA (2015)
- Wildlife Biologist and Monitor, Olberding Environmental, Pleasanton, CA (2011 – 2012)
- Wildlife Biologist, Insignia Environmental, Palo Alto, CA (2009 – 2011)
- Senior Research Associate, Bayhill Therapeutics, Palo Alto, CA (2008)
- Graduate Student Researcher, San Jose State University, San Jose, CA (2001 – 2006)
- Biological Wildlife Science Technician, U.S. Forest Service, Mendocino National Forest, CA (2002)
- Field Technician, San Jose State University-Jerry Smith and Andrea Henke, Monterey, CA (2001)

EXPERT DEPOSITION

- Rim Fire Reforestation Project, Stanislaus National Forest, California (2019)
- Smokey Fuels Treatment Project, Mendocino National Forest (2017 and 2013)
- Elk LSR Enhancement Project, Shasta-Trinity National Forest, California (2016)
- Porcupine Vegetation and Road Management Project, Shasta-Trinity National Forest, California (2015)
- Mill Fire Salvage and Hazard Tree Removal Project, Mendocino National Forest, California (2013)

RELATED PUBLICATIONS AND PRESENTATIONS

Hanson, C.T. and T.Y. Chi. 2021. *Impacts of postfire management are unjustified in spotted owl habitat*. *Frontiers in Ecology and Evolution* 9: 1-7 (Article 596282).

Hanson, C.T. and T.Y. Chi. 2020. *Black-backed woodpecker nest density in the Sierra Nevada, California*. *Diversity* 12, 364: 1-10.

Chi, T. Y. 2006. *Genetic characterization of four populations in two subspecies of spotted owl*. Master's Thesis, San José State University, California. 36 pp.

Chi, T. Y., A. L. Henke, J. J. Smith, and C. Brinegar. 2004. *Mitochondrial DNA sequencing of Northern and California spotted owl populations*. Presented to the Department of Biology, San José State University in San José, California.

Chi, T. Y., A. L. Henke, J. J. Smith, and C. Brinegar. 2004. *Mitochondrial DNA analysis of Northern spotted owl (*Strix occidentalis caurina*) and California spotted owl (*Strix occidentalis occidentalis*) Populations*. Presented at the Raptor Research Foundation – California Hawking Club Annual Meeting in Bakersfield, California.

Henke, A. L., T. Y. Chi, J. J. Smith, and C. Brinegar. 2004. *DNA analysis of naturally molted feathers for expanded raptor monitoring with examples from spotted owls (*Strix occidentalis*)*. Presented at the Raptor Research Foundation – California Hawking Club Annual Meeting in Bakersfield, California.

Chi, T. Y., A. L. Henke, J. J. Smith, and C. Brinegar. 2004. *Mitochondrial DNA analysis of Northern and California spotted owl populations*. Presented to the Sustainable Ecosystems Institute genetic scientific panel at the Northern spotted owl Status Review Public Meeting in Portland, Oregon.

Henke, A. L., T. Y. Chi, J. J. Smith, and C. Brinegar. 2004. *Microsatellite genotyping of Northern and California spotted owl populations*. Presented to the Sustainable Ecosystems Institute genetic scientific panel at the Northern spotted owl Status Review Public Meeting in Portland, Oregon.

Henke, A. L., T. Y. Chi, J. J. Smith, and C. Brinegar. 2004. *Microsatellite typing of Northern spotted owls (*Strix occidentalis caurina*) in northern California and preliminary results from California spotted owls (*S. o. occidentalis*) in central California*. Presented at the Annual Conference of the Western Section of the Wildlife Society in Rohnert Park, California.

Henke, A. L., T. Y. Chi, J. J. Smith, and C. Brinegar. 2004. *A Method of extracting DNA from single feathers for multiple genetic analyses*. Poster given at the Annual Conference of the Western Section of the Wildlife Society in Rohnert Park, California.

Chi, T., A. Henke, C. Brinegar, and J. Smith. 2004. *Mitochondrial DNA analysis of Northern spotted owl and California spotted owl populations*. Technical Report Prepared for U.S. Fish and Wildlife Service Northern spotted owl Status Review.

Henke, A., T. Chi C. Brinegar, and J. Smith. 2004. *Preliminary Microsatellite Analysis of Two Populations of Northern spotted owls (*Strix occidentalis caurina*)*. Technical Report Prepared for U.S. Fish and Wildlife Service Northern spotted owl Status Review.

COLLABORATORS (with current affiliations)

Dr. Chad Hanson (Director, John Muir Project of Earth Island Institute)
Denise Boggs (Director, Conservation Congress)

GRADUATE ADVISORS

M.S. Advisor: Jerry Smith, Associate Professor, Department of Biological Sciences, San Jose State University
Chris Brinegar, Professor, Department of Biological Sciences, San Jose State University

Caspar 500 Timber Harvest Plan
Jackson Demonstration State Forest
Northern Spotted Owl Evaluation Summary
Prepared by Tonja Chi (July 1, 2021)

INTRODUCTION

On June 11, 2021, the Environmental Protection Information Center (EPIC) requested an expert biological evaluation and review of northern spotted owl (*Strix occidentalis caurina*) within the Caspar 500 Timber Harvest Plan (THP No, 1-20-00006-MEN) project assessment area. The following report contains the information requested by EPIC. This analysis is based on professional experience spanning more than 20 years working with spotted owls. Significant work experience includes focused field and laboratory research of four California populations of spotted owls that resulted in a Master's Degree in Biological Sciences – Organismal Biology, Conservation, and Ecology. A fundamental knowledge of the species has developed over many thousands of hours of spotted owl field work and research where extensive observation provided an inherent understanding of the species' behavioral patterns and fundamental habitat requirements. Additionally, a deeper professional understanding of the species has been gained through extensive evaluation of historic and current peer-reviewed literature, research, and scientific studies. Relevant science and applicable material have been carefully considered and integrated into this analysis.

DESCRIPTION

The Caspar 500 Timber Harvest Plan is situated on a small parcel of land that extends west from the main body of Jackson Demonstration State Forest (JDSF) in Mendocino County, California, and will modify approximately 500 acres of northern spotted owl habitat. Although the project contains a small amount of foraging habitat (approximately 50 acres), the majority of the THP area contains the largest unfragmented northern spotted owl (NSO) nesting and roosting habitat for miles (THP, Section V, map p.241). This portion of land measures approximately 2.5-mi in length from west to east with a variable width, averaging approximately 0.3-mi wide. This THP is bordered on the south by Caspar Creek and located about 0.5 mile from the western-most boundary of the JDSF. The west JDSF boundary is the edge of the forest stand with the exception of a narrow strand of trees stretching approximately 1.5 mile west along the riparian corridor of Caspar Creek, terminating at State Highway 1, where there is a transition into coastal vegetation communities. Private lands bound the areas to the north and south within approximately 0.25 to 0.75-mile distance from the western half section of the THP area and its boundary. The majority of surrounding NSO habitat type found adjacent to the THP boundary is composed of foraging habitat, with a few pockets (<100 acres each) of nesting/roosting habitat and unsuitable habitat.

BACKGROUND

The NSO is a threatened wildlife species legally recognized and protected by Federal and California State laws, thereby requiring a complete evaluation of all harvest associated activities or impacts that may result in potentially significant, direct or indirect, impacts to the owls or their habitat. In order to obtain reliable spotted owl survey data and avoid unauthorized incidental take, two sets of guidelines and

procedures have been established¹ and should be instituted for this project: (1) *Northern Spotted Owl Take Avoidance Analysis and Guidance for Private lands in California Attachment A: Take Avoidance Analysis – Coast Redwood Region* (USFWS 2019) (identified as: *Attachment A*), and (2) *Revised 2011 Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls* (USFSW 2012).

‘Complete Surveys’ that follow and meet survey protocol guidelines provide reliable NSO presence or absence data and minimize the likelihood unauthorized take will occur. To achieve Complete Survey status, a minimum of 2-consecutive years of survey data with complete coverage of all suitable NSO habitat must occur, include 6 complete visits per year that adhere to appropriate procedural requirements², and complete daytime stand searches of identified activity centers prior to beginning nighttime surveys. Conducting protocol-level surveys utilizes a scientific methodology to evaluate with reasonable certainty the presence of spotted owls where they coexist with barred owls. In 2012, the revised version of the 2011 Protocol Survey, increased time spent, number of surveys, and intensity of survey efforts to detect spotted owls in areas with barred owl range expansion, overlap of shared habitat with spotted owl, and competition between the two species. Barred owl presence has decreased the traditional detectability of the NSO requiring more rigorous survey efforts to ensure adequate detection probability.

CASPAR 500 TIMBER HARVEST PLAN NORTHERN SPOTTED OWL ANALYSIS

Despite an appearance of following appropriate guidance documents to avoid incidental take to resident NSOs, a thorough evaluation of all historic information, survey data sheets, and NSO survey summaries, reveal alarming deviations from the protocol that create with **highly reasonable certainty that unauthorized incidental take of northern spotted owl will occur as a direct result of implementing operational activities.**

California Department of Forestry and Fire Protection (CAL FIRE) have proposed, and assert that protective measures will be implemented for the three NSO territories mapped and identified in the Caspar 500 assessment area³: two historic territories where each one is represented by a single⁴ activity center⁵ (AC) and one newly discovered activity center that has been established as a ‘provisional’ territory. However, NSO 2020 surveys also had several other detections that qualify as new activity centers. These detections have not been included, mapped, or identified as activity centers, and are not protected by the same measures, as those set forth above.

¹ Scientifically designed and developed by a team of experts with input from the most knowledgeable spotted owl and barred owl biological experts.

² Ability to complete surveys in a project area within 7 days, completion of daytime follow-up surveys, appropriate temporal spacing of visits, acceptable seasonal timing, and the addition of extra visits if resident status remains undetermined.

³ Assessment area is the combined Caspar 500 Timber Harvest Plan boundary plus a 0.7-mi area that buffers and surround the THP.

⁴ An NSO home range may have multiple mapped activity centers, and multiple activity centers may need to be protected to avoid take (USFWS 2019, p.13).

⁵ Activity Center: A mapped point located at the highest-ranking detection for each breeding season (e.g., nest, then daytime pair, then daytime single, etc.) at an area of concentrated activity. Generally, single nighttime detections where an owl cannot be located during adequate daytime follow-ups should not be considered a valid activity center (USFWS 2019, p.13).

CAL FIRE THP documents result in faulty conclusions based on an incorrect analysis of NSO survey information because they fail to recognize critical NSO detection data that should activate the establishment of new activity centers and assign appropriate habitat protections within the THP boundary. Recognition of the most current, up-to-date, and biologically significant activity center information, is necessary for timber harvest planning and is required by *Appendix A*, where it is a key component “critical to the protection of core use area habitat” and especially significant in the coast redwood forests where territorial pressure from barred owls result in NSO readily changing activity center locations (USFWS 2019). Protection of these locations as activity centers, effectively increase protections to large areas of habitat within the Caspar 500 THP boundary, and focus survey efforts to those areas. The failure to formally designate activity centers, fatally flaws all further analyses, surveys conducted, and conclusions made by misleading efforts to locate NSO. Furthermore, it discourages evaluation of areas with high biological value to the NSO, obstructs collection of potential NSO occupancy information, and decreases odds of locating resident owls. In the absence of habitat protection associated with activity center designations, there is an increased likelihood for NSO using those areas to encounter and be subject to unauthorized take.

BARRED OWL

Increasing barred owl populations create direct competition with NSO for limited quantities of essential resources where their presence is known to result in negative impacts to spotted owls (Jenkins et al. 2019, Wiens et al. 2014). The *Revised Recovery Plan for the Northern Spotted Owl* (USFWS 2011) delineates and identifies threats posed to NSO by barred owl and indicate barred owl to be the leading short-term threat facing recovery of the northern spotted owl (USFWS 2011). Since the release of the Revised Recovery Plan, barred owl presence and population continue to increase across the landscape and adversely impact NSO populations. This is documented annually by continued declines in NSO population trends observed across thirteen long-term demographic studies sites where increasing barred owl presence has shown negative effects on survival, productivity, recruitment, population viability of NSO and has increased local territorial extinction rates for NSO (Dugger et al. 2016). Impacts to spotted owls are widespread and far-reaching where the extent of these concerns is highlighted and conservation recommendations are presented in the Revised Recovery Plan. A greater scientific understanding of barred owl impacts on spotted owls continues to be the focus of much ongoing research that is represented by a growing body of published information (Long and Wolfe 2019).

The presence of barred owl in this assessment area, requires very careful attention and deliberation because of complex intraspecific competitive interactions, and the role these play in the detectability and behavior of NSO. Consideration must be given to the extent of barred owl presence and a spatial understanding of all available habitat. For the Caspar 500 THP, regular detections of barred owls have been documented since 2005 within the Caspar Creek drainage (Caspar 500 THP Revised 4/2/2020, Section V, pg. 238), and were specifically located in the area of the historic MEN0585 activity center during 2020 survey efforts (Caspar 500 THP #1-20-00006 MEN Amendment No 3., June 3, 2021, Attachment: 2020 NSO Detections Map). There is no documentation or further written description characterizing the details of barred owl detections (i.e., dates, years, nests, reproduction, species-specific surveys, unsolicited vocalizations, or incidental detections obtained during NSO survey efforts) except in a single statement describing MEN0585 in Caspar 500 THP (Revised 4/2/2020) Section V: “Barred owls began to be heard in the Caspar Creek drainages in 2005 and have probably taken over the whole Caspar watershed.”

Provided information suggest that barred owls have had long-standing presence in this area where shared habitat with NSO results in intraspecific competition with barred owl. These interactions likely exert a pressure on resident NSO where tactics to avoid barred owls result in modified behavioral patterns. When barred owls are in the vicinity or in close proximity to NSO, some of these behaviors are likely to include shifts in locations of habitat use and core use areas, movement away from barred owl activity centers, and a tendency to be less responsive to territorial calls, where NSO are generally quieter and more difficult to detect. Movement of barred owls into the MEN0585 historic activity center have negatively affected and forced NSO into other areas. The competition with barred owls for access to limited quantities of available nesting/roosting habitat, make these displaced NSO especially vulnerable to additional stressors such as disturbance and loss in quality or quantity of available habitat.

SURVEYS

The Caspar 500 THP initiated protocol-level surveys based on the *Revised 2011 Survey Protocol* (USFWS 2012) for the 2020 and 2021 breeding seasons⁶. Although survey efforts followed many of the recommended guidelines, they did not meet all the necessary requirements to qualify as a Complete Survey for 2020 or 2021. In the *Revised 2011 Survey Protocol* (USFWS 2012) a Complete Survey to determine the presence or absence of spotted owls requires two years of six complete visits per year, and includes an activity center daytime search to known spotted owl sites that are to be conducted as part of the initial visit to the survey area, but prior to the initiation of nighttime routes. Furthermore, in order for a survey visit to be considered a “complete visit”, all nighttime detections must also have a daytime follow-up outing; a 2-hour daytime stand search throughout the 0.5 mi area around the area of the night detection. ***The follow-up visit should be completed as soon as possible after presence was detected, as owls are more apt to be located near the previous night’s location.***

There are several noteworthy deviations from Protocol-level survey efforts in the 2020 THP surveys that reduce confidence in the survey methodology and increase the likelihood that NSO in the assessment area are remaining undetected:

- (1) Activity center searches were not conducted for MEN0585 and MEN0659, prior to the initiation of nighttime surveys.
- (2) Follow-up surveys were not conducted according to protocol guidelines.
 - a. The follow-up to a male detection from 3/4/20 was conducted on 3/5/20 but did not cover the 0.5-mile radius area around the detection location. Instead, this follow-up visit was combined with an Activity Center Search for MEN0659, covering about ¼ the required area and moving almost a mile west, away from the actual detection location. Based on the detection located on the boundary of the THP, half of the appropriate follow-up area should have extended into the THP. As the surveyor completed the follow-up and returned to the original location of the detection, the owl was observed and moused. This was a day detection that qualifies for the establishment of an activity center, but was not mapped, identified, or established as a new activity center for MEN0659.
 - b. A follow-up was not conducted for a female detection from 3/4/20. The estimated location of the female detection was within 0.25 to 0.5-miles of historic female detections reported for

⁶ In the California Coast Ranges the breeding season is recognized as March 1 – August 31.

5/24/2016, 5/24/2013, 2/25/2013, and the male day detection for 3/5/20, all associated with MEN0659 (Figure 1). The lack of a follow-up to the night detection makes this an incomplete visit.

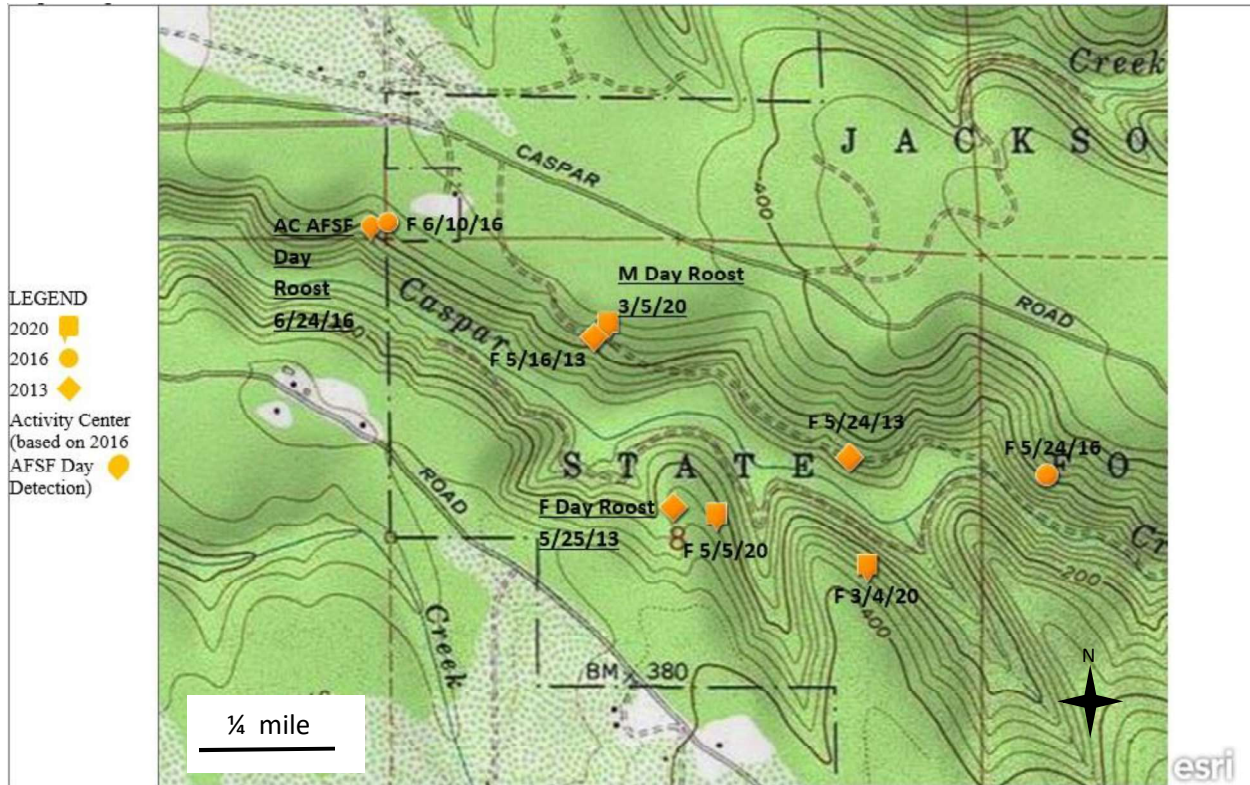


Figure 1. MEN0659 NSO detections from 2020 surveys and combined with SPOWDB survey records for 2013 and 2016.

c. The follow-up to a female detection from 5/5/20 was conducted on 5/7/20, 2 days after the detection. The owl was not found on 5/7/20. A map was not attached to the survey form to indicate areas searched.

d. The follow-up to a male detection from 5/7/20 was conducted on 5/13/20, 6 days after the detection. The follow-up only covered approximately 2/3 of the 0.5-mile radius area. No owls were detected.

e. The follow-up to a female detection from 6/23/20 was conducted on 6/25/20, 2 days after the survey detection. The owl was not found on 6/25/20. The detection was from the same call point and drainage where a male was detected on 4/13/20. This area is approximately 1-mile from the historic MEN0585 AC. Barred owls responded from the ridgeline, causing the female NSO to go quiet. Detections of both a male and female in the same drainage on different nights but in such close proximity to historic MEN0585 AC, the presence of territorial barred owl in the historic AC, resulting displacement of NSO from the historic AC, and the lack of any NSO detections for MEN0585 “During 2008, 2009, 2012, 2013, 2014, 2015, 2016, 2017, and 2018, no

owls were detected,” (Caspar 500 THP, Revised 4/2/2020, Section V, pg. 238) *strongly warrants* the establishment of a protected activity center in the area where these two owls were located.

f. The follow-up to a female detection from 8/4/20 was conducted on 8/6/20, 2 days after the detection. The owl was found on 8/6/20 and moused.

(3) Activity centers were not created, updated, mapped, or protected according to protocol guidelines.

Protocol-level survey efforts in the 2021 THP surveys only resulted in a single male detection on 3/17/21, a detection associated with MEN0659. In 2021, daytime Activity Center Searches of the most current ACs, were not conducted in the two areas representing the most biologically significant and up-to-date location information. Instead, Activity Center Searches were conducted on three separate dates at the MEN0659 activity center (in the area where a female was observed 5 years ago; in 2016). Activity Center Searches were also conducted on two separate dates at the MEN0585 activity center (in the area where a nest and pair were located 16 and 17 years ago; in 2004 and 2005). No owls or sign indicating NSO presence or use were observed in the five Activity Center Searches that took place at these ACs.

ACTIVITY CENTER ESTABLISHMENT

Prior to initiating any call surveys for the project, two historic NSO sites were identified within the footprint of the THP assessment area. These two activity centers were established at locations centered on the ‘then’ most recent, biologically meaningful and high-ranking detections (e.g., nest, daytime pair, daytime single, concentrated nighttime responses). NSO surveys conducted in 2020 (THP #1-20-00006 MEN, Amendment No. 3, CAL FIRE June 3, 2021), indicate the potential presence of two pairs of spotted owls, two single adults, and at least one pair of barred owls within the biological assessment area. As per *Attachment A: Take Avoidance Analysis – Coast Redwood Region* (USFWS 2019) the purpose of conducting NSO protocol-level surveys following the *Revised 2011 NSO Survey Protocol* (USFWS 2012) is to determine if planned operations are to occur in the home range of any NSO, accurately determine up-to-date activity center location(s), core use area⁷, and establish necessary habitat protection measures to avoid unauthorized take to the NSO.

Despite the implementation of NSO protocol surveys in 2020 which resulted in nine detections of seven NSO within the project area, the important fundamental information gained from these surveys were not used to update and accurately map the location of each activity center, therefore failing to protect core use areas of NSO habitat. The failure to incorporate current survey data results, undermines the accuracy of analysis and brings into question the reliability of conclusions on which they are based, especially in the Coast Redwood Region of California.

Attachment A: Take Avoidance Analysis – Coast Redwood Region (USFWS 2019)

Section II. Accuracy of NSO Activity Center Location and Mapping:

“Given the cooler temperatures and higher productivity of coast redwood forests as compared to interior forests, and also territorial pressure from barred owls, NSO in the Coast Redwood Region readily change activity center locations necessitating up-to-date survey information for timber harvest planning. Accurately mapping the location of each activity center is critical to the protection of core use area habitat. Because NSO can move from year to year, current activity

⁷ Core Use Area: 100 acres of the 200 acres, or 40 acres (depending on silviculture prescription), of the highest-quality nesting/roosting habitat that is retained around each activity center, regardless of ownership (USFWS 2019, p.13)

center locations are more accurate when plotted as a result of surveys rather than solely relying on the locations found in SPOWDB. Multiple activity centers for an NSO home range are possible. If one core use area does not encompass all known activity centers (current and historical), then multiple core use areas will need to be mapped and protected to avoid the likelihood of incidental take.”

Based on the descriptive guidelines above, at least two more activity centers should have been established as a result of the 2020 survey efforts. These activity centers would be centered on the male spotted owl daytime detection located at call point 600-001 on 3/5/20 (MEN0659) and the second activity center would be centered on the average between the male spotted owl night detection on 4/13/20 and the female spotted owl night detection on 6/25/20 located along Blue Gum Creek (MEN0585). A rudimentary sketch of these approximate locations as they pertain to the THP can be seen in figure 2.

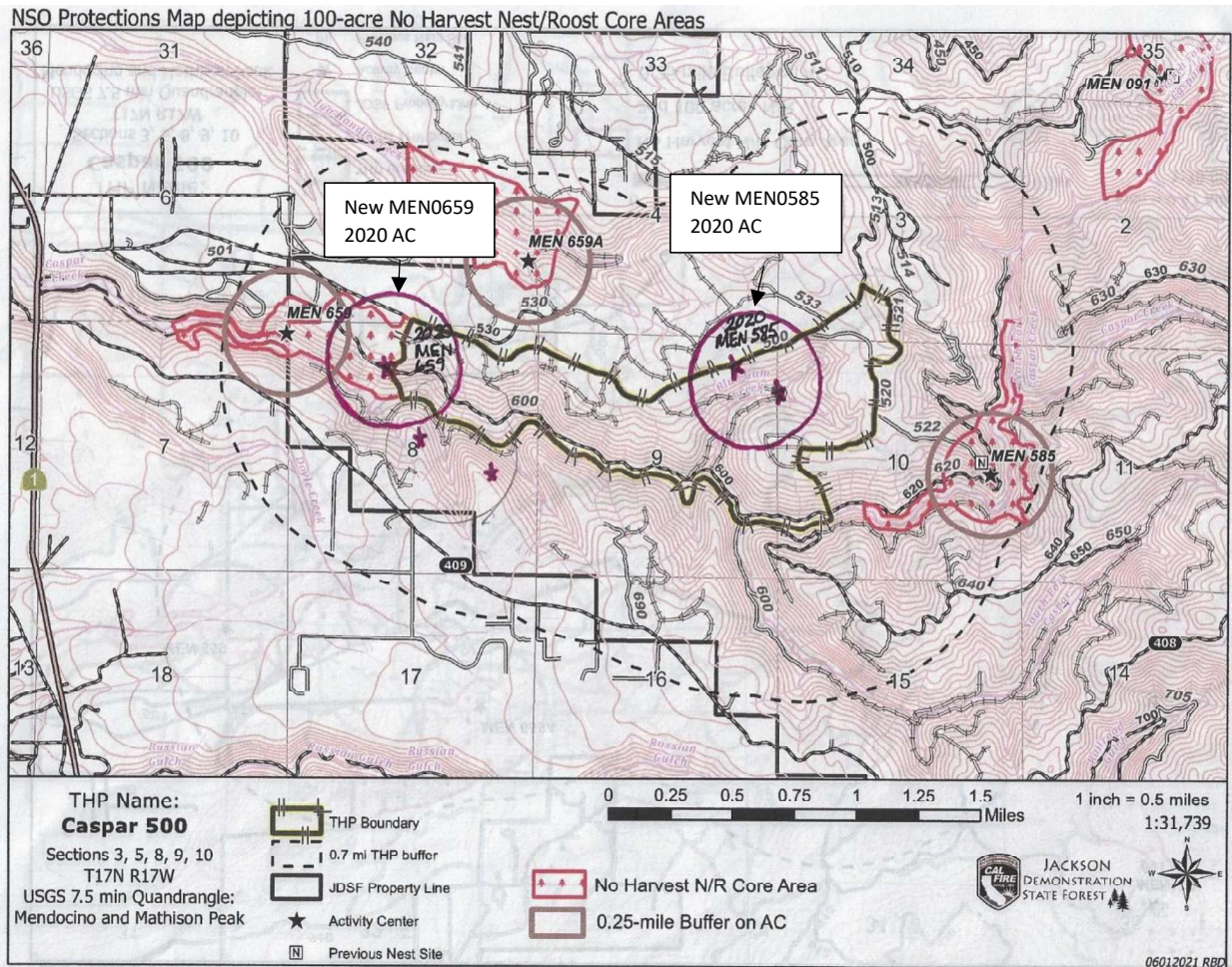


Figure 2. New 2020 activity center locations drawn in by hand to show proximity to the project.

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE (CDFW) CONSULTATION

An email exchange took place between CAL FIRE and CDFW, on June 4, 2021. Content included a discussion regarding deficits where specific NSO Protocol guidelines were not met in the NSO survey efforts of 2020. The CDFW agency did address the lack of a follow-up survey to a female night detection from 3/4/20 and the absence of a detailed map for a follow-up on 5/5/20. However, it is significant that the agency **did not** recognize other shortfalls in the 2020 survey results where establishment of additional protected ACs are warranted based on the most current NSO location observations. It is also very important that CDFW **did not** identify that for multiple night survey detections, the surveyor failed to adhere to protocol requirements by allowing excessive time delays between initial follow-up survey visits. The lack of instituting immediate and timely follow-ups to night detections, significantly increased the likelihood that owls would not be relocated. The regulating agency failed to consider specific guidelines detailed in Attachment A; crucial issues applicable to NSO in the Coast Redwood Region.

As mitigation for the failure to conduct protocol level surveys in 2020, the agency recommendation was to perform a few extra surveys in 2021. Unfortunately, the lack of follow-up surveys from 2020 cannot be remedied by additional survey efforts in 2021. NSO often have alternating years of reproductivity and detectability, protocol guidelines were established with this life history characteristic in mind and thereby *require a minimum of two years of complete surveys* to best analyze and determine areas of importance and use by NSO. Increasing the number of surveys in 2021, does not equate to the multi-year methodology that accounts for year-to-year variation and detectability. Unfortunately, the person responsible for making this recommendation is inexperienced and does not understand the relevance of specific survey protocol requirements that have been scientifically vetted to accommodate for spotted owl behavior. The female owl was detected on the evening of 3/4/20, where the required follow-up to locate the bird was not performed. Without this information, *it must be assumed that the bird was occupying that area and must be treated as protected AC since confirmation was never performed, or until a second year of complete surveys are conducted to protocol.*

SUMMARY

The information provided in the Casper 500 Timber Harvest Plan, Amendment No. 3 (CAL FIRE June 3, 2021) provides detailed information regarding the 2020 and 2021 NSO survey results. Surveys conducted within this THP during these years are incomplete, do not adequately follow protocol-level methodology, and do not recognize important survey results that are essential to protecting NSO and their habitat. Without adhering to protocol guidelines as set forth by the USFWS, there is not enough information to make confident conclusions regarding the local NSO population that would clearly confirm presence, absence, or occupancy status. The failure by CAL FIRE to recognize and protect the most up-to-date locations associated with current NSO use and to move forward initiating any operations that continue to ignore this critical information, will with highly reasonable certainty result in the unauthorized incidental take of northern spotted owl. The constant and continued presence of barred owl on the landscape, the extra pressure exerted on NSO because of shared and overlapping resource competition, and the limited availability of essential habitat, make the NSO in the vicinity of this THP and the habitat assessment area even more susceptible to adverse implications of habitat alteration and habitat loss. Loss and alteration of this valuable nesting/roosting habitat, will effectively remove the largest intact stand of suitable nesting/roosting habitat in an area that already observes a

deficit of forest with these unique qualities, characteristics, structural complexity, and biological value to NSO.

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5 21 2021

CAL FIRE - Forest Practice Program Manager
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Santa Rosa, California 95401
santarosapubliccomment@calfire.ca.gov

Subject: **DKY CNPS comments on THP 1-20 -00006 (Caspar 500) Minor amendment Botany Report**

To CAL FIRE, Santa Rosa Forest Practices

The Dorothy King Young (DKY) Chapter of the California Native Plant Society (CNPS)¹ has reviewed the proposed THP **THP 1-20 -00006**, particularly as it relates to potential impacts to native plants and plant communities.

Our expert plant conservation review team has evaluated the THP's preliminary "scoping" (database queries) for sensitive plants, THP botanical surveys, impact assessments, and impact mitigation. Their review is included as Attachment A. A statement of qualifications for the plant conservation team to evaluate botanical survey methodology, interpretation of survey results, and plant conservation within coastal forestlands, is included in Attachment B.

The plant conservation review team evaluation of the THP's botanical assessment is based on criteria set by the California Department of Fish and Wildlife's March 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (State of California Natural Resources Agency Department of Fish and Wildlife).

The CNPS-DKY supports the findings of the expert review team. The THP fails to meet the standards of CDFW botanical survey protocols for the following reasons:

1. **The report lacks** a vegetation map of the project area using Survey of California Vegetation Classification and Mapping Standards 24 at a thematic and spatial scale that allows the display of all sensitive natural communities.
2. **The report scopes using the Holland 1986 list and the 2010 CDFW natural communities' lists.** The appropriate list is **California Sensitive Natural Communities September 9, 2020.**

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<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=153609&inline>

3. Because the list used was out of date the report did not include sensitive vegetation that is likely on the site. (Presence of the Mendocino Cypress, Bolander Pine, Labrador Tea, pygmy manzanita, bishop pine, chinquapin and grand fir make it highly likely that the sensitive vegetation that these species occur in are on the THP) See Attachment C for a list of the possible sensitive vegetation types that are likely to occur on the THP.
4. The report used out of date references for species lists and rare plant lists (Using 2014 instead of 2021 California Native Plant Society, Rare Plant Program. 2021. Inventory of Rare and Endangered Plants of California (online edition, v8-03 0.39). Website <http://www.rareplants.cnps.org> [accessed 17 May 2021].

Using 2019 instead of 2021 :Citation: Jepson Flora Project (eds.) 2021. *Jepson eFlora*, <https://ucjeps.berkeley.edu/eflora/>

Using incorrect information. See Lichens of North America by Brodo, Sharnoff and Sharnoff.

We also note that the THP fails to include any monitoring and reporting plan to validate the accuracy of pre-harvest surveys, and the adequacy of post-harvest protection measures for sensitive botanical resources. Without basic monitoring of pre- and post-harvest protections for special-status plants and plant communities, the THP fails to provide CEQA-equivalent environmental review of potential significant impacts.

It is important to also note that retaining Douglas fir, hemlock, and bishop pine within the THP is critical to maintain mycorrhizal diversity. These fungal relationships help give resilience to the entire forest to drought. This feature is critical to decrease wildfire danger in this era of wildfire danger.

Please do not hesitate to contact us at (rareplants@dkycnps.org) if you have questions regarding the review team findings and conclusions.

Respectfully,

Nancy Mouni Teresa Skolars

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ATTACHMENT A

CNPS-DKY Technical and Scientific Review of THP 1 20 -0006 Caspar 500 Botanical Survey and Impact Assessment

The checklist below is derived from “Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities”, issued by the State of California Natural Resources Agency Department of Fish and Wildlife, March 20, 2018

1. Scope for Special-status plants

“Special status plants” include all plants that meet one or more of the following criteria:

- **Plants Federally listed or proposed for listing as threatened or endangered** under the **Endangered Species Act** or candidates for possible future listing as threatened or endangered under the ESA (50 C.F.R., § 17.12).

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- **Plants State-listed or candidates for as threatened or endangered under the California Endangered Species Act** (Fish & Game Code, § 2050 et seq.)
- Plants listed as rare under the California Native Plant Protection Act (Fish & Game Code, § 1900 et seq.)
- Plants that meet the definition of rare or endangered under CEQA Guidelines section 15380, subdivisions (b) and (d), including:
 - Plants considered by CDFW to be “rare, threatened or endangered in California.” This includes plants tracked by the California Natural Diversity Database (CNDDDB) and the California Native Plant Society (CNPS) as California Rare Plant Rank (CRPR) 1 or 25;
 - Plants that may warrant consideration on the basis of declining trends, recent taxonomic information, or other factors. This may include plants tracked by the CNDDDB and CNPS as CRPR 3 or 46.
 - **Plants considered locally (regionally) significant plants**, that is, plants that are not rare from a statewide perspective but are rare or uncommon in *a local context such as within a county or region* (CEQA Guidelines, § 15125, subd. (c)), or as designated in local or regional plans, policies, or ordinances (CEQA Guidelines, Appendix G). Examples that CNPS DKY chapter botanists have found to meet criteria for regionally significant plants include:
 - **plants that are at the outer limits of their known geographic range (peripheral populations, range limits, disjunct populations)**
 - **atypical plant populations** (occurrence on atypical substrates, atypical morphological traits or trait combinations)

The plant species “scoping” (preliminary database query for past reports of special-status plant species) **does** include all special-status plants that are reasonably likely to occur in the THP area.

2. THP area vegetation description.

The THP **does not** describe the range and distribution of vegetation or stand types within the THP area, including potential unique or atypical vegetation stands.

The THP **does** include minimal maps and summary descriptions of the soil series, significant soil inclusions, and other substrate types (sediments, bedrock outcrops, talus, etc.) relevant to plant species distributions.

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The THP **does not** include NWI or equivalent wetland maps, or hydric soil series maps (if present) needed for preliminary identification of areas likely to support wetland plant species or hydrophytic vegetation (pursuant to California State or Federal wetland definitions relevant to CEQA, including seasonal wetlands, not limited to Forest Practice Rule definition of perennial “wet areas”).

3. Field-based botanical survey methodology and reporting

3.1. **Botanical Qualifications and Experience.** The botanical qualifications of the surveyor or surveyors **are not** stated regarding

- Plant taxonomy and morphology training or education sufficient to correctly identify most vascular plant genera in the THP vicinity, and all special-status plants in the THP vicinity. Training to recognize a few specific species is described.
- Field experience with plant surveys in the THP vicinity or region.

3.2. Floristic surveys.

The THP botanical surveys **are** floristic, including all vascular plant taxa (native and non-native) identified to the lowest taxonomic level feasible in the THP area.

The botanical surveys **are not** inappropriately restricted to “focal species surveys” or “focused surveys” (target species lists) in lieu of floristic surveys.

3.2. Plant taxonomy, nomenclature, and identification.

The THP botanical surveys **do** report accurate, unique botanical names under taxonomic treatments that are currently accepted and consistently applied (or with accurate synonyms), with identification to the lowest relevant taxonomic rank.

The THP **does** include reference to, or append, vouchers specimens or equivalent documentation (photographs) of diagnostic traits of rare, sensitive/special-status taxa or ambiguous taxonomic determinations, to allow for expert verification of plant taxa identified.

3.3. Timely survey dates.

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The date of completion of botanical field surveys **is** reasonably current for an ecologically meaningful description of “existing conditions” regarding plant species occurrence within the THP area (standard: completed in the growing season prior to THP circulation, not more than 1 calendar years prior to THP circulation).

Sufficient description and explanation of survey dates **were** included in the plant survey description.

3.4. Phenological control of survey dates.

The seasonal dates of plant surveys **do** cover the stages of flower or fruit development for most likely seasonal detection and diagnostic identification of all potential special-status plant species, and all vascular plant genera.

Reference sites for flowering or fruiting periods of special-status species **were not** included to calibrate seasonal timing of plant surveys.

(Reference sites for the likely *Campanula californica* were not listed)

Sufficient description of phenological controls **was** included in the plant survey description.

3.5. Spatial distribution of plant survey sampling.

The distribution of sample points, transects, relevés, **was not** adequately described and explained in relation to topography, soils, other substrates, soils, drainage patterns within the THP area.

Plant surveys **did** include a map of survey route and points sampled.

Plant survey information **did not** estimate a percentage of total THP area surveyed, and **did** state that the whole THP area was covered in plant surveys.

3.6. **Plant survey methodology description.** Botanical survey report or equivalent information included? (methodology, vegetation, topography, soils description; dates of survey, coverage, findings, conclusions)

4.0 Plant and vegetation impact assessment

4.1. **Ecological assessment of impacts to plants and vegetation.** The THP **does not** include explicit, substantive ecological assessment (sufficient for CEQA equivalency) of direct, indirect,

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and cumulative impacts to specific plant populations and vegetation stands caused by timber harvest operations (including but not limited to:

- ground disturbance (log skidding; skid trail density and distribution in relation to sensitive plant populations or vegetation stands; equipment and vehicle operation and exclusion areas; erosion control measures)
- soil compaction (skid trail density and distribution; equipment and vehicle operation and exclusion areas)
- alteration of drainage patterns in relation to depressional topography or potential seasonal or perennial wetlands (skid trail density and distribution, erosion control measures, rock slope stabilization or armoring, in relation to plant populations);
- dispersal of invasive species or pathogens;
- deposition or removal of litter, woody debris, or duff;
- change in competition due to gap size (canopy or other strata openings) or ground disturbance;
- change in average or extreme temperature or moisture conditions; change in herbivory pressure)

4.2. **Existing conditions description of plants and vegetation.** The THP **does not** include vegetation descriptions with sufficient pre-project baseline data (“existing conditions”) for meaningful CEQA-equivalent impact assessment, and comparison of alternatives.

4.3. **Monitoring and reporting of post-harvest plant populations and vegetation.**

The THP **does not** include a CEQA-equivalent monitoring and reporting plan to objectively document post-THP changes in protected special-status plant populations or sensitive vegetation stands, sufficient to verify the efficacy of mitigation measures or standard FPR protections to minimize or avoid potential significant direct, indirect, or cumulative impacts to them.

Pursuant to CEQA §21081.6 et seq. and Guidelines §15097 et seq., a lead state agency must adopt a monitoring or reporting program to ensure project compliance and to mitigate or avoid significant effects on the environment.

Teresa Sholars

Tereasa Sholars

Teresa Sholars, Rare Plant Coordinator and Vegetation Chair

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Dorothy King Young Chapter, California Native Plant Society¹

ATTACHMENT B
STATEMENT OF QUALIFICATIONS FOR BOTANICAL EXPERT REVIEWER

Teresa Sholars, MSc

Teresa Sholars is Professor Emeritus of Biology and Sustainable Agriculture, College of the Redwoods, where for over 40 years she has taught students about ecology of mushrooms, lichens, native plants and vegetation on the Mendocino Coast. She is also retired from 40 years as a part time Botanical and Ecological Consultant on the Mendocino Coast. She has been involved with surveying and mapping rare plants and vegetation as a volunteer for CNPS and CDFW for decades. She actively participated in formal vegetation surveys to document and classify Mendocino Cypress Woodland and coastal headland natural communities for the California Department of Fish and Wildlife Vegetation Classification section. She is a CNPS Fellow, and author of *Lupinus* in the second edition of The Jepson Manual, Jepson eflora, Arizona Flora and co-author for the Flora of North America *Lupinus*. Currently she is an Adjunct Professor, Curator of the Herbarium and Natural History Collection at the Mendocino Coast Campus, of Mendocino College in Fort Bragg. She is one of the co-author's of Reed Noss' book "The Redwood Forest, History, Ecology and Conservation of the Coast Redwood" and co-author with CDFW Clare Golec on a paper "Rare Plants of the Redwood Forest and Forest Management Effects". She also was coauthor with Andrea J. Pickart on the chapter on vegetation of coastal northern California in "California's Botanical Landscapes". She holds a master's degree in Ecology from UC Davis where she worked on the Mendocino pygmy forest and has completed 6 years in the PhD program at UC Berkeley in systematic botany. Teresa owns 40 acers of coastal redwood forest that she has been actively managing for 45 years, she has been a licensed LTO.

¹The mission of the California Native Plant Society (CNPS) is to protect California's native plant heritage and preserve it for future generations through application of science, research, education, and conservation. CNPS works closely with decision-makers, scientists, and local planners to advocate for well-informed policies, regulations, and land management practices. A formal cooperative agreement between CNPS and the California Department of Fish and Wildlife (CDFW) is the backbone of California's rare plant and vegetation status review programs. The data compiled and shared by both organizations are used throughout the environmental review process. The Dorothy King Young (DKY) Chapter of CNPS focuses on protecting and providing education about the native plants and natural communities within

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coastal Mendocino County and we often work directly with local and Sacramento-based CDFW science staff.

Attachment C

The following sensitive vegetation associations were not on the scoping list. They contain species that are on the floristic list so it is reasonable to assume that it is likely that some of these associations occur within the THP boundary

Mendocino coast Rare Forest plant communities (alliances and associations)

Compiled by Teresa Sholars

From Rare California Natural Community List Wednesday, September 9, 2020

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=153609&inline>

This document provides the current list of vegetation Alliances, Associations, and Special Stands. State and Global rarity ranks are indicated for Alliances and some Associations; those with ranks of 1-3 are considered Sensitive. Associations considered Sensitive are marked with a Y in the rightmost column. A “?” indicates our best estimate of the rank when we know we have insufficient samples over the full expected range of the type, but existing information points to this rank.

Hesperocyparis pygmaea Alliance Rarity Rank: G1/S1¹

Mendocino cypress woodland (Pygmy cypress)

Associations within this Alliance:

1. *Hesperocyparis pygmaea* - *Pinus contorta* var. *bolanderi* / *Rhododendron columbianum* Association
2. *Hesperocyparis pygmaea* - *Pinus contorta* ssp. *bolanderi* - *Pinus muricata* / *Rhododendron macrophyllum* Association
3. *Hesperocyparis pygmaea* - *Pinus muricata* / *Arctostaphylos nummularia* Association

Bishop Pine- Monterey Pine *Pinus muricata* - *Pinus radiata* Alliance

4. *Pinus muricata* - *Notholithocarpus densiflorus* Provisional Association S3G3
5. *Pinus muricata* - *Chrysolepis chrysophylla* / *Arctostaphylos nummularia* Association S2G2

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Redwood Forest Sequoia sempervirens Alliance

6. *Sequoia sempervirens* - *Hesperocyparis pygmaea* Provisional Association S1G1

Sequoia sempervirens - *Pinus muricata* Provisional Association

Chinquapin Chrysolepis chrysophylla Alliance S1G1

7. *Chrysolepis chrysophylla* / *Vaccinium ovatum* Association S2G2

Manzanita Arctostaphylos (nummularia, sensitiva) Alliance

8. *Arctostaphylos nummularia* Association S2G2

Labrador Tea Rhododendron columbianum Alliance S2 G4 ?

Non-Mendocino cypress or oligotrophic sensitive associations

9. *Abies grandis* – *Picea sitchensis* / *Gaultheria shallon* / *Polystichum munitum* G1 S1

10. 88.100.01Y S1G2 *Abies grandis* – *Tsuga heterophylla* / *Polystichum munitum* G1S1

11. 87.070.01Y *Pinus muricata* – *Pseudotsuga menziesii* G3S3

12. 87.070.04YS2G2 Provisional *Pinus muricata* / *Arctostaphylos glandulosa* G2S2

13. 87.070.07Y *Pinus muricata* / *Xerophyllum tenax* sensitive not ranked

14. 87.070.09YS2G2 *Pinus muricata* – *Chrysolepis chrysophylla* / *Arctostaphylos nummularia* G2S2

15. 87.070.11YS3G3 Provisional *Pinus muricata* – *Notholithocarpus densiflorus* 87.070. G3S3

16. 73.100.03 *Notholithocarpus densiflorus* – *Arbutus menziesii* G3 S3 Y

17. 73.100.14 *Notholithocarpus densiflorus* – *Chrysolepis chrysophylla* Y

Bishop Pine- Monterey Pine Pinus muricata - Pinus radiata Alliance

18. *Pinus muricata - Notholithocarpus densiflorus* Provisional Association S3G3

19. *Pinus muricata - Chrysolepis chrysophylla / Arctostaphylos nummularia* Association S2G2

Redwood Forest Sequoia sempervirens Alliance

20. *Sequoia sempervirens - Hesperocyparis pygmaea* Provisional Association S1G1

21. *Sequoia sempervirens - Pinus muricata* Provisional Association

Chinquapin Chrysolepis chrysophylla Alliance S1G1

22. *Chrysolepis chrysophylla / Vaccinium ovatum* Association S2G2

Manzanita Arctostaphylos (nummularia, sensitiva) Alliance

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23. *Arctostaphylos nummularia* Association S2G2

24. *Labrador Tea Rhododendron columbianum* Alliance S2 G4 ?

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From: Linda Perkins <lperkins@mcn.org>
Sent: Wednesday, June 30, 2021 6:26 AM
To: Matt Simmons
Subject: Fwd: Caspar 500 comments

Matt,

Can this help your efforts? We've long complained about backloaded information, including NSO and botanical surveys.

Is EPIC reading all recently approved Jackson THPs?

Linda

----- Forwarded Message -----

Subject:RE: Caspar 500 comments

Date:Tue, 29 Jun 2021 22:39:37 +0000

From:Hendrix, Jon@Wildlife <Jon.Hendrix@wildlife.ca.gov>

To:tsholars@mcn.org <tsholars@mcn.org>

CC:Linda Perkins <lperkins@mcn.org>, conservation@dkycnps.org <conservation@dkycnps.org>

Teresa,

CDFW did review your comments, and we reviewed the submitted final botanical report and found issues too, namely with survey coverage and treatment of sensitive natural communities.

There has been occasion in the past when CAL FIRE has asked us to review backloaded botanical surveys for our comments, opinions and/or concurrence.

That has not happened in this case and leaves CDFW no ability to comment for the record, since the record is in effect closed to the 14 CCR 1037.5 review team.

Should CAL FIRE ask for our assistance, or had there been a requirement in the THP for them to consult with us prior to operations, that'd be a different story.

Jon
CDFW

From: tsholars@mcn.org <tsholars@mcn.org>
Sent: Monday, June 21, 2021 2:28 PM
To: Hendrix, Jon@Wildlife <Jon.Hendrix@wildlife.ca.gov>
Cc: Linda Perkins <lperkins@mcn.org>; conservation@dkycnps.org
Subject: FW: Caspar 500 comments

WARNING: This message is from an external source. Verify the sender and exercise caution when clicking links or opening attachments.

Hi Jon

I did not hear back from anyone on my comments. Did anyone in CDFW look at my comments and respond?

Thanks

Teresa Sholars

Rare Plant Chair, DKY Chapter , California Native Plant Society

Vegetation Chair, DKY Chapter , California Native Plant Society

Adjunct Professor, Curator Herbarium and Natural History Collection Mendocino Coast Campus Mendocino College

Professor Emeritus, College of the Redwoods

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707 9374130 landline

707 4726370 (reception limited, text only)

From: Linda Perkins <lperkins@mcn.org>

Sent: Monday, June 21, 2021 2:21 PM

To: tsholars@mcn.org

Subject: Re: Caspar 500

Teresa, Jon Hendrix said that he had had some state botanist look at the survey. Can you ask him again about what he/she found and how it compared to your comment? Linda

On 6/21/2021 12:01 PM, tsholars@mcn.org wrote:

Many of you have a copy of this but attached are my comments on the Caspar 500 Botanical Survey. I have never received any response to these comments.

Teresa Sholars

Rare Plant Chair, DKY Chapter , California Native Plant Society

Vegetation Chair, DKY Chapter , California Native Plant Society

Adjunct Professor, Curator Herbarium and Natural History Collection Mendocino Coast

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Attachment 3

Timber Harvest Plan (THP) Review Process



Notification

Letters of Intent are sent to notify local tribal representatives and landowners within 300 ft of the proposed harvest. Landowners within 1,000 ft downstream of a proposed harvest are also notified.



Fieldwork

RPF conducts biological and cultural surveys, conducts a timber inventory, designates silvicultural prescriptions, maps plan areas, and designs road construction and maintenance.



Confidential Archeology Review

RPF requests survey records from the CA Office of Historic Preservation, conducts field surveys, and writes archeology report that is reviewed by a CAL FIRE archeologist. Findings are not disclosed to the public to protect sensitive information.



Sign & Submit

Once the RPF writes the THP, signatures are required from the landowner, RPF, and timber owner. Once signed, the THP is sent to the CAL FIRE regional review office, assigned a number, and the review begins.



Agency Review

CAL FIRE distributes the THP to a Review Panel comprised of CDFW, CGS, and the CA Regional Water Quality Control Board.



RPF Response

The panel submits questions, clarifications, and comments. Panel may request as many review periods as necessary, but RPFs generally work through two or three reviews.



Pre-Harvest Inspection (PHI)

Review panel physically examines proposed plan area. A PHI report is submitted to the review team and includes first review questions. The PHI marks the start of the 30-day public comment period.



Public Comment Period

Public comment period lasts 30 days after PHI. Within 15 days of the end of the public comment period, the CAL FIRE director must make the final decision and approve the plan if it aligns with the Forest Practice Rules.



Plan Operations

Logging requires the use of a certified License Timber Operator (LTO) whose signature is required for a complete THP. There can be more than one LTO per THP.



Begin Harvest

Once a THP is approved, representatives from CAL FIRE or the review panel may inspect the harvest periodically. A THP is valid for 5 to 7 years.

The THP process ensures that logging operations are compliant with all environmental laws and regulations. Any violations are promptly addressed and may result in civil penalties, fines, criminal proceedings, or the revocation of an RPF or LTO license.