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VIA EMAIL ONLY (PLEASE CONFIRM RECEIPT)

California Department of Forestry and Fire Protection
Forest Practice Program Manager
135 Ridgeway Avenue
Santa Rosa, CA 95401
Email: SantaRosaPublicComment@fire.ca.gov
Santarosareviewteam@fire.ca.gov

Re: **Comments on Pending McCanned Eel THP (1-21-00153-HUM)**

Dear Forest Practice Program Manager and THP Review Team:

On behalf of several neighbors residing in the McCann area adjacent to the middle main fork of the Eel River, we respectfully submit the following comments on the above-referenced Timber Harvesting Plan (THP) identifying areas in the proposed THP requiring further impact analysis and mitigation, as required under the Z'berg-Nejedly Forest Practice Act of 1973 ("Forest Practice Act").¹ We request that the agency officials carefully consider these and prior comments submitted on the THP when considering whether to approve the timber harvesting activities as proposed or with modifications.

By providing these comments and the comments concerning the THP, the neighbors to the proposed activities intend to foster a productive dialogue with staff of California Department of Forestry and Fire Protection ("CDF" or "CalFire") and the applicant, so that the environmental issues of pressing concern to the McCann community are satisfactorily resolved. While we have noticed problems with other sections of the THP, we place special emphasis on the sections that address impacts to aesthetics and recreational values associated with the adjacent "Wild and Scenic" Eel River, impacts to a diverse array of biological resources and their habitat, the potential to increase wildfire risks, traffic safety impacts, contributions to cumulative impacts, and community degradation.

¹ See Cal. Pub. Res. Code § 4511 *et seq.*, and Cal. Code Regs. tit. 14, § 895 *et seq.*

I. Introduction: the THP Does Not Adequately Analyze and Mitigate the Proposed Activities' Impacts.

The THP is inadequate as a public information and disclosure document concerning a timber harvesting project located in a biologically rich and sensitive area. This THP will impact a stand of second-growth forest on a steep hillside adjacent to the Eel River, a documented wildlife movement corridor and a designated Wild and Scenic River.²

This stretch of the Eel River has already been impacted by historic and recent THPs and recently approved industrial-scale commercial cannabis projects. The THP does not consider the proposed THP in this context of increasing cumulative impacts on a sensitive and protected natural resource.

II. The EIR/EIS and Watershed Analysis Upon Which the THP Purportedly Relies Should Be Made Readily Available to the Public By Being Posted Online.

The THP relies upon and effectively tiers off of an Environmental Impact Report (“EIR”) / Environmental Impact Statement (“EIS”) (“EIR/EIS”) prepared by the U.S. Fish & Wildlife Service (“USFWS”) and CDF for the Habitat Conservation Plan (“HCP”) upon which the THP also relies for standards, protocols, and mitigation. During the public comment period for the THP, the undersigned requested an electronic copy of the EIR/EIS and several other referenced documents.³ However, we have not received any response to this request in the following two days. As stated in our request, without this referenced information, it is not possible for the public to meaningfully participate in the environmental review process.

Rather than only making paper copies of this critically important document available at the Santa Rosa CalFire office and the Eureka USFWS office, as described in the THP,⁴ the EIR/EIS should be made available online for the public’s access and review. By not making this background environmental review document readily available to the reviewing public, CDF has not made a “good faith effort at full disclosure” as required under CEQA. A lot has transpired since 1999, not least of which is the widespread availability of pertinent information online. If CDF and Responsible Agencies intend to rely upon the EIR/EIS for impact analysis purposes, as stated in the THP, then this document should be easily accessible to the reviewing public. Please immediately provide the undersigned with a copy of the EIR/EIS and please provide notice when the HCP EIR/EIS has been posted to a website or otherwise made available for public review.

² See National Wild and Scenic Rivers Website, Eel River, at <https://www.rivers.gov/rivers/eel.php> [adjacent stretch of middle main fork of Eel designated for recreational values]; see also <https://www.blm.gov/programs/national-conservation-lands/california/eel-wsr>.

³ See Exh. 1 – Email from J Holder to CDF requesting referenced documents, dated Dec. 21, 2021.

⁴ See THP, Section IV, p. 155.

Limited access to supporting documents and information has compromised the public's ability to review the THP in its full context. Most notably, CDF has not made the HCP EIR/EIS, the relevant Watershed Analysis, and watershed-specific THP checklist and monitor information, available online during the public comment period. The neighbors reserve their rights to submit supplemental comments following our review of produced and outstanding documents and information.

III. General Comments on the Proposed THP

A. The THP Does Not Explain or Demonstrate Compliance with the federal Wild and Scenic Rivers Act and California Wild and Scenic Rivers Act.

The THP's primary emphasis is on commercial timber harvest and compliance with the state requirements for a THP, as implemented by CalFire. Under the Forest Practice Rules, the 200-foot wide area adjacent to the Eel River is defined as a "special treatment area."⁵ The THP does not acknowledge this special designation and the added protection it affords under statutes and regulations. The THP also does not explain or demonstrate compliance with the federal Wild and Scenic Rivers Act ("WSRA") and the state Wild and Scenic Rivers Act.⁶ The HCP, as revised in August 2015, does not even mention wild and scenic rivers, nor does it address measures to protect these designated rivers.

The WSRA establishes a system where "certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations."⁷ The WSRA requires CalFire, as a state cooperating agency, to place "primary emphasis" on protecting the river's esthetic, scenic, historic, archeological, and scientific features.⁸ The THP should be revised to address consistency between the proposed activities and both the federal and state statutes – each of which protect this portion of a wild and scenic river, designated for its recreational values.

⁵ See 14 C.C.R., § 895.1.

⁶ See 16 U.S.C. §§ 1271, et seq.; see also Public Resources Code, §§ 5093.50, 5093.545(f)(5). Congress enacted the National Wild and Scenic Rivers Act in 1968 to preserve the free-flowing condition of rivers that have outstanding scenic, recreational, geologic, fish and wildlife, historic, and cultural values. California passed its own Wild and Scenic Rivers Act in 1972. The statute prohibits activities that could damage soil, water, timber, and habitat close to the river. It also restricts state agencies from permitting development and activities that could harm the wild and scenic values of a protected river.

⁷ 16 U.S.C. § 1271.

⁸ 16 U.S.C., §§ 1281(a) and 1283(a).

B. Effectively Tiering off of the 1999 HCP EIR / EIS is Inappropriate.

The THP describes and relies heavily upon the applicable HCP and the EIR/EIS prepared when that HCP was adopted.⁹ The THP does not address how documents that are now more than 20 years old (and now contain quite dated and incomplete information) can continue to serve as the first-tier analysis for THPs proposed by Humboldt Redwood Company (“HRC”).

According to the appellate court decision upholding the HCP and its EIR/EIS, the HCP and the 1999 Implementation agreement “require PALCO to undertake a complete watershed analysis within five years so as to develop site-specific information that was not available at the time the EIS/EIR was prepared.”¹⁰ The THP does not reference a relevant watershed analysis that has been prepared for the subject area. We have located a section of the watershed analysis for the Lower Eel River and Eel River Delta,¹¹ but have not located any portion of the watershed analysis for the Upper Eel River. Please provide the public access to any watershed level analysis that has been prepared for stretch of the Eel River in the vicinity of McCann. As is obvious, such an analysis would be highly relevant to the proposed THP and is essential for the promised level of detailed environmental impact analysis.

The 1999 HCP refers to a THP checklist and states that the watershed-level analysis “will be used to create a THP checklist for each watershed to ensure implementation of watershed-specific prescriptions.”¹² The 1999 HCP also refers to a “THP monitor.”¹³ The THP, however, does not discuss whether the analysis complies with the THP checklist developed for the upper Eel River watershed and it does not disclose information concerning the required THP monitor.

While the THP should not rely on such a stale document for its substantive environmental review, if it is going to rely on the 1999 EIR/EIS, it must live up to the “expectation” assumed in that document “that more detailed examination of specific watershed sites will be forthcoming in the timber harvest plans.”¹⁴ The THP preparers instead attempt to “have it both ways” by relying upon a stale generalized analysis that is not made readily available to the public for review to substitute for detailed project-level review.

⁹ See THP, Section IV, p. 155 [“Any environmental effects not covered in the FEIS/EIR will be addressed in the THP, following the format established by CAL FIRE in 14 CCR 912.9 and Technical Rule Addendum No. 2 of the Forest Practice Rules.”].

¹⁰ See *Environmental Protection Information Center v. Department of Forestry & Fire Protection* (2005) 134 Cal.App.4th 1093, 1109 (*EPIC II*).

¹¹ See Lower Eel River and Eel River Delta Watershed Analysis Scotia, California: Cumulative Watershed Effects Assessment, available at: https://www.hrcllc.com/pdf/Watershed_Analysis/HRC/Lower_Eel_Eel_Delta/LEED-CWE-CMR%20Report.pdf, accessed 12/21/21.

¹² See 1999 HCP, Section 6.13, p. P-81.

¹³ See *ibid*.

¹⁴ See *EPIC II*, *supra*, 134 Cal.App.4th at p. 1110.

C. The THP is Incomplete.

The THP is subject to both CEQA and the Forest Practice Act.

The THP is an informational document designed to serve as an ‘abbreviated’ environmental impact report, setting forth proposed measures to mitigate the logging operation’s potential adverse impact on the environment. CDF and public review of the THP prior to approval is intended to ensure that the adverse environmental effects are substantially lessened, particularly by the exploration of feasible less damaging alternatives to the proposed harvesting project.

[¶¶]

As an ‘abbreviated’ EIR, the THP must contain sufficient information regarding the environmental effect of the logging project to enable the evaluation of the effect of the project on the environment, the feasibility of alternatives to the project, and the measures to minimize any significant adverse impact.

[¶¶]

Section 21080.5 does not grant the timber harvesting industry a blanket exemption to CEQA's provisions; it grants only a limited exemption to the applicability from CEQA by allowing a timber harvester to prepare a THP in lieu of a complete environmental impact report.¹⁵

More specifically, Certified Regulatory Programs (“CRPs”), such as CalFire’s THP program, are only exempt from chapters 3 and 4 of CEQA, and section 21167.¹⁶ CRPs remain subject to CEQA’s substantive requirements articulated in Chapters 1, 2, 2.6, 5, and 6, including the language of section 21080.5.

Unfortunately, contrary to CEQA’s requirements, the THP does not provide a detailed description of the proposed project, a thorough analysis of the project’s direct, indirect, and cumulative impacts, or a description of all feasible mitigation measures and alternatives that can reduce or avoid the potentially significant impacts. The revised THP must provide a project description that enables the public to understand all aspects of the project, from the road improvements required, to the equipment involved, to the implementation schedule.¹⁷

¹⁵ *Environmental Information Protection Center v. Johnson* (1985) 170 Cal. App. 3d 604, 609-610, 616 (*EPIC I*).

¹⁶ See PRC, § 21080.5(c). Chapter 3 (§§ 21100-21108) and Chapter 4 (§§ 21150-21154) describe the environmental impact report (“EIR”) process to which state agencies, boards, commissions, and local agencies, must adhere in order to comply with CEQA’s general requirements as prescribed by Chapters 1, 2, 2.6, 5, and 6.

¹⁷ See PRC, § 21080.5(d)(3). Under Public Resources Code, section 21080.5, which authorizes CalFire’s THP process as a certified regulatory program, every THP prepared under this program “must include a description of the proposed activity, its alternatives, and mitigation measures to minimize any identified significant adverse

The public comment period on the THP should not begin until the THP is complete. Because the THP remains incomplete, recirculation of a more thorough updated THP for public review is required. One appellate court described the problem that would result when recirculation is not required when a THP is not recirculated when revised:

If an interested party reviews and/or obtains a copy of the THP before CDF substantively alters it, and that party is thereafter not notified of the change, then he or she has been denied a meaningful opportunity to review and comment on the THP. Absent notice that CDF has made a substantive change or even that it has the right to make such a change, we question why a member of the public should be expected to anticipate such a change. Further, if the THP is routinely significantly altered by CDF during the review period, then the THP that CDF ultimately approves is essentially a different plan than that which the property owner submitted.¹⁸

Here the original six sections of the THP are available at the CalTREES website, as are the Preharvest Inspection Report, notice documents, and the applicant's consultant's responses to agency feedback. The CalTREES website does not include a coherent revised copy of the THP that includes all of the most recent revisions to the analysis made by the applicant in response to agency feedback. This is improper under CEQA.¹⁹ Unless the THP is substantially revised, CalFire's Director may not approve the THP.²⁰

The disjointed presentation of the analysis provided in the current THP does not foster meaningful public participation and does not function as an "informational document" for purposes of CEQA. The revised THP should include an index that refers the reader to each topic of analysis and references to supporting technical reports, exhibits, and other supporting information. Given the especially short public review period (which is substantially shorter than the 30 to 45 days provided for an EIR), the THP should be well organized, concise, and understandable to the lay reader. This disjointed and opaque THP does not come close to meeting these standards.

environmental impacts. The plan must also be available for a reasonable time for review and comment by other concerned agencies and by the general public."

¹⁸ See *Joy Road Area Forest & Watershed Assn. v. California Dept. of Forestry & Fire Protection* (2006) 142 Cal. App. 4th 656, 671.

¹⁹ See *Vineyard Area Citizens for Local Control v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442 ["The data in an EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project." Information scattered here and there "is not a substitute for a good faith reasoned analysis"], citations omitted.

²⁰ See 14 CCR § 898.2.

D. The THP Does Not Accurately and Completely Describe the Project.

The THP's description of the Project is inadequate. Because an accurate, stable, and finite project description is essential for an adequate analysis of impacts under CEQA, the project description deficiencies must first be remedied before a complete assessment of environmental impacts can be conducted.

For example, the THP states in Section II that "1.6 acres of special treatment area associated with the Eel River a wild and scenic river area will meet Selection and Group Selection Post-harvest stocking standards between 150' and 200' of the Eel River. Between 0 and 150' the Eel river will receive Class I Inner and Outer band prescriptions listed above."²¹ This description appears to conflict with the prohibition against the RPF prescribing different treatment than authorized under the Forest Practice Rules.²² It also appears to conflict with the requirement for a "no harvest band" adjacent to Class 1 rivers. The 2015 Revised HCP states that the prescriptions specified in Section 6.3.4.1.2 (re Class 1 RMZs) are no longer current and that "Post-Watershed Analysis prescriptions are incorporated into the THP Templates."²³ If this is the case for the Sensitive Treatment Area within the proposed THP, then it is essential that the Watershed Analysis that supports this prescription be made available to the public for review. The THP must also specifically reference the supporting Watershed Analysis discussion regarding the Class 1 Inner Band and Class II Outer Band prescriptions in order to adequately incorporate the information by reference. The THP should be revised to fully comply with applicable requirements given the adjacent designated wild and scenic river.²⁴

The THP also discloses that the herbicide treatment known as "hack & squirt" will be employed, but does not disclose the estimated number of trees that would be affected by this controversial method.²⁵ The THP also does not disclose the measures that would be taken to prevent herbicide pollution and reduce the risk of wildfires caused by standing dead trees affected by the practice.

The THP must be revised to clearly and specifically describe the "whole of the project" in a manner that is understandable to the reviewing public.

²¹ See THP, Section II, p. 10.

²² See 14 C.C.R., §§ 897(f)(2), 916.6, 936.6, 956.6 (v)(7)(B).

²³ See HCP, Revised 2015, p. P-55, fn. 20.

²⁴ See Public Resources Code, § 5093.68.

²⁵ See Sierra Club, M. Rounds, Mendocino County Passes Measure V — A Victory for Communities and the Climate, available at: <https://www.sierraclub.org/sites/www.sierraclub.org/files/sce/loma-prieta-chapter/FPC/MendocinoVDoc.pdf>; see also Ukiah Daily Journal, Mendocino County working to enforce Measure V timber ordinance (Feb. 12, 2020), available at: <https://www.ukiahdailyjournal.com/2020/02/12/mendocino-county-working-to-enforce-measure-v-timber-ordinance/>.

E. The Baseline for Analyzing Environmental Impacts is Improper.

The THP does not state which date was used for purposes of an environmental baseline for impact analysis. This lack of clarity regarding the baseline constitutes a failure to provide relevant information to the public.

Furthermore, a 1999 baseline (as established in the EIR/EIS) is far too dated for impact analysis. While using the NOP issuance date as the baseline for “existing conditions” is “normally” acceptable,²⁶ it is inappropriate in this situation to use such stale information regarding existing conditions. The determination of existing (or baseline) conditions is an important aspect of an THP because, without an adequate baseline description, an accurate analysis of a project's impacts and the development of proper mitigation measures may be impossible.²⁷

The THP must also be substantially revised to appropriately consider the setting for the proposed harvesting activities. CDF previously acknowledged that harvesting timber on steep slopes adjacent to a perennial water course could cause potentially significant impacts that must be mitigated.

A harvest of 10% of a watershed confined to steep slopes adjacent to watercourses would not have the same impact as an equivalent acreage of harvest confined to flat ridge-top areas with no watercourses in any of the harvest units. By recognizing and avoiding sensitive areas, or mitigating the harvest that is proposed in areas that are most likely to produce adverse impacts (e.g. unstable areas, areas adjacent to perennial watercourses, etc.), the impacts are minimized.²⁸

In contrast to the above acknowledgement of an obvious fact, the THP does not address the impacts of the proposed harvesting (together with past, present, and future THPs) in this biologically sensitive environment characterized by steep slopes and surrounded by perennial watercourses, including the designated wild and scenic Eel River.

Under CEQA Guidelines, section 15206(b)(4)(d), project for which an EIR was prepared located in areas within 1/4 mile of a wild and scenic river as defined by Section 5093.5 of the Public Resources Code are considered “areas of critical environmental sensitivity.” The THP should be revised to describe this sensitive setting as a benchmark for analyzing the potentially significant environmental impacts of the proposed activities.

²⁶ See CEQA Guidelines, § 15125.

²⁷ *Save Our Peninsula Com. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 120-124 (*Save Our Peninsula Com.*)

²⁸ See CDF, Official Response to Significant Environmental Points Raised During the Timber Harvesting Plan Evaluation Process, available at: http://www.fov.org/pdf_files/04-239%20HUM%20OR.pdf, accessed 12/21/21.

IV. Specific Comments Concerning the THP's Analysis of Impacts.

A. The THP Does Not Adequately Analyze and Mitigate the Proposed Activities' Impacts to Biological Resources.

Because the THP proposes to harvest timber immediately upslope and adjacent to the Eel River, it has the potential to impact an important wildlife movement corridor.²⁹ McCann neighbors have observed many species within the riparian area adjacent to the THP, the following is a non-exhaustive list of species observed in the THP area:

<u>Mammals</u>	<u>Birds</u>	<u>Fish</u>	<u>Amph. / Reptiles</u>
fox	pileated woodpecker	Steelhead ³⁰	western pond turtle
coyote ³¹	golden eagle	Salmon	Pacific giant salamander
otter ³²	bald eagle		
raccoon,	blue heron		
bobcat	egret		
black bear	kingfisher		
cougar	merlin		
deer	red tailed hawk		
possum	cormorant		
skunk	Canada geese		
ring-tailed cat	northern spotted owl		
	wild turkey		
	bobwhite		
	numerous migratory		
	bird species (e.g.,		
	thrush, western		
	tanager)		

The HCP upon which the THP relies does not even mention wildlife movement, much less require any protective measures related to the issue. The THP fails to analyze the THP's effects on wildlife movement.

While the THP purports to address impacts to the Northern Spotted Owl ("NSO"), potentially significant impacts to this species may not be addressed through the HCP measures. McCann neighbors have recently reported NSO calls from adjacent to or within the proposed

²⁹ See Krosby, et al., Identifying riparian climate corridors to inform climate adaptation planning (2018) available at: <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0205156>, accessed 12/21/21; see also CDFW, Guidance Document for Fine-Scale Wildlife Connectivity Analysis (2015).

³⁰ Steelhead: https://youtube.com/shorts/45ku0yKON_I?feature=share.

³¹ Coyotes: https://youtube.com/shorts/pPe_dAoxbK0?feature=share.

³² Otters: <https://youtube.com/shorts/-8Ofm2CTECo?feature=share>.

THP area.³³ The THP should be revised to address potentially significant impacts to this threatened species.

Further the THP should be revised to address the potential for the “hack and squirt” practice to cause contamination. Federal courts have found that the chemicals used for this practice can cause adverse health effects to humans.³⁴ Accordingly, the THP should be revised to address the potential significant impacts to biological resources from the application of poisonous chemicals.

B. The THP Does Not Adequately Analyze the Proposed Activities’ Impacts to Recreational Resources.

According to the THP, the “Recreational Resources Assessment Area” was identified as “[t]he logging area and the area within 300’ of the project area.”³⁵ The THP preparers chose this area “because it offers adequate evaluation when considering audio and visual impacts of timber operations and impacts to potential recreational resources. Beyond 300 feet the sights and sounds of timber operations are greatly diminished due to surrounding vegetation and other physical barriers.”³⁶

The above statement is not accurate and is based on false assumptions. In this setting on steep slopes adjacent to the designated Wild and Scenic Eel River, there are no physical barriers between the river (and the opposite bank of the river) and the slopes that are proposed for intensive harvesting.³⁷ Thus, the Recreational Resources Assessment Area should be expanded to all areas along the river that provide an unobstructed view to the THP area.

Additionally, a segment of the proposed Great Redwood Trail will be located within the THP area (along the former NCRA tracks).³⁸ The THP must be revised to address the proposed activities potential impacts to this proposed recreational resource.

C. The THP Does Not Adequately Analyze the THP’s Potentially Significant Aesthetic Impacts.

The proposed THP has the potential to cause significant impacts to views and the viewshed along the Wild and Scenic Eel River. The THP does not adequately address these potentially significant aesthetic impacts. Federal courts have recognized that timber harvesting

³³ See Exh. 2 – substance of email exchanges between M Gaterud and CDFW officials re NSO calls.

³⁴ *Peteet v. Dow Chemical Co.* (1989) 868 F.2d 1428; see also *United States Sugar Corp. v. Henson* (2000) 787 So. 2d 3.

³⁵ THP, Section IV, p. 159.

³⁶ *Ibid.*

³⁷ See Exh. 3 – M Gaterud photos of THP area.

³⁸ See *generally* Great Redwood Trail website, at: <http://www.thegreatredwoodtrail.org/>.

operations located within the corridor of a designated wild and scenic river may cause significant aesthetic impacts.³⁹

The THP has the potential to adversely affect the visual character of this stretch of the Eel River and the adjacent slopes. A recent neighboring THP has had just such an impact.⁴⁰ The analysis must be revised to address the proposed activities impacts to the viewshed along the river and adjacent to the proposed Great Redwood Trail.

D. The Proposed Activities Will Increase Traffic Safety Impacts, Yet the THP Does Not Address This Issue.

Because the THP will impact the hillside above and below Dyerville Loop Road, the THP should be revised to address the potential that disturbing the steep slopes above and/or below the road could lead to a landslide that either blocks or damages the road. Our clients have observed over the years such landslides and their impacts on this road.

The proposed activities will also introduce large logging equipment on the narrow and steep Dyerville Loop Road. Logging operations may cause traffic safety problems for other users of the road. The THP does not address this potentially significant impact. The THP should be revised to describe the safety measures that will be employed to avoid or reduce this impact.

E. The THP's Discussion of the Effects of Climate Change on Timberlands is Dated and Inaccurate.

The THP states:

The rate and direction of climate change remains very uncertain. (IPCC 2007). It is a certainty that the earth's climate has changed in the past with variable cooling and warming trends, but no models exist to reliably predict the rate and direction of climate change or the regional or localized effects on temperatures, precipitation, growing seasons, drought, vegetation, and wildlife. (IPCC 2007).⁴¹

Contrary to these outdated assertions, the science concerning climate change and its potential impacts on forests has developed rapidly in recent years. Please see the attached comments from a climate scientist concerning a THP proposed within the Jackson Demonstration State Forest (JDSF) (1-20-00173-MEN).⁴² These comments are also highly relevant to the proposed THP, and as such are incorporated by reference. CalFire should address these expert comments in a revised analysis concerning climate change impacts.

³⁹ See, e.g., *Idaho Rivers United v. Probert* (D. Idaho, May. 12, 2016), Case No. 3:16-cv-00102-CWD.

⁴⁰ See Exh. 4 – Before and After Photos of Neighboring THP.

⁴¹ See THP, Section IV, p. 216.

⁴² See Exh. 5 – O'Brien Climate Comments on 1-20-00173-MEN 041221.

F. The THP Does Not Acknowledge the Potential for the Proposed Activities to Increase Wildfire Risks.

We incorporate the comments concerning increased wildfire risks in Exhibit 5 and request responses to these substantiated expert comments with respect to their applicability to the instant THP. Because the 1999 EIR/EIS did not consider the historic wildfires that have increased in severity in recent years, the THP must squarely address this important issue.

G. The Revised THP Must Consider the Proposed Activities' Potential to Contribute to Significant Cumulative Impacts.

CEQA Guidelines, § 15355, subd. (b)

The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

The cumulative impact analysis in a THP must be substantively meaningful.

A cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker's perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval. [Citations.][Citation.] [¶] While technical perfection in a cumulative impact analysis is not required, courts have looked for “adequacy, completeness, and a good faith effort at full disclosure. [Citation.]”⁴³

The THP, however, fails to consider several relevant neighboring development and THP projects. For example, the cumulative impact from harvest as proposed by other neighboring THP's (e.g., 1-21-00012-HUM (Tickle THP), 1-19-00119-HUM (Jets Timber Harvest Plan), 1-97-00234-HUM, 1-05-00105-HUM) in the Main Middle Eel Watershed will cause negative impact to biological life, increase sedimentation, will be detrimental to the beneficial uses of water, and will cause significant adverse effects in the watershed. Most of these plans have been approved by CDF over this period of time without regard for the cumulative effects to the watershed. The “green rush” of commercial cannabis projects in the County, as manifested in the nearby Rolling Meadow Ranch project and the Black Bear project also contribute to cumulative impacts that this THP must consider. However, the THP instead completely ignores

⁴³ *Joy Road Area Forest & Watershed Assn. v. California Dept. of Forestry & Fire Protection* (2006) 142 Cal. App. 4th 656, 678, quoting *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal. App. 3d 1043, 1051– 1052, internal quotation marks omitted.

rapid-paced approvals of large commercial cannabis operations in the region and their contributions to cumulative impacts.

Approval of all these THPs will have significant adverse effects and represent a “substantial deviation” as defined in FPR 895.1 because combined they potentially have a significant adverse effect on timber productivity, or values related to soil, water quality, watershed, wildlife, fisheries, range and forage, recreational and aesthetic enjoyment of the Eel River watershed.

The McCann neighbors are extremely concerned about the cumulative impacts affecting biological life and the negative effect on the life of residents in the community. The accelerated timber harvesting adjacent to the main middle Eel River is a violation of the Clean Water Act. As a Wild and Scenic River, the Eel deserves a higher level of protection than the ordinary Class 1 river. The Eel River watershed has exceptional recreation and ecological significance, and the cumulative impact from excessive harvesting is causing irreparable harm to the watershed.

The THP’s cumulative impact analyses do not consider the cumulative impacts caused by resuming intensive logging operations in a sensitive habitat area. The cumulative impacts must also consider the impacts of past projects.⁴⁴ Furthermore, the THP must evaluate the cumulative effects of both the THP and the nearby commercial cannabis projects located both across the Eel River (e.g., Black Bear and Rolling Meadow Ranch) and upstream from the THP site (e.g., Unity Farm).

A robust analysis of the Project’s cumulative impacts is especially important here, given the evidence of past THP impacts, the sediment impairment of the Eel River, and the “green rush” of commercial cannabis projects in southern Humboldt County.⁴⁵ In general, the poorer the quality of the existing environment, the more likely it is that a project’s incremental contribution to future cumulative conditions will be significant (i.e., “cumulatively considerable”).⁴⁶

Recreation. The THP does not address the cumulative impacts to recreational resources caused by this THP combined with other THPs and past, present and reasonably foreseeable development projects within the McCann area. The geographic scope of analysis for cumulative impacts to recreation fails to consider impacts along the Eel River from past development projects and timber harvesting activities

⁴⁴ *EPIC, supra*, 44 Cal.4th at p. 523.

⁴⁵ *See San Franciscans for Reasonable Growth, supra*, 151 Cal.App.3d at p. 79.

⁴⁶ *CBE, supra*, 103 Cal.App.4th at p. 120 [in the context of cumulative impacts, the issue is not the relative contribution of the project as compared to existing conditions, but whether “any additional amount” contributed by the project should be considered significant in light of the severity of the existing problem]; see also *Kings County Farm Bureau, supra*, 221 Cal.App.3d at p. 720.

Transportation and Traffic. The THP must evaluate the cumulative effects of the Project in light of the various “closely related past, present, and reasonably foreseeable probable future projects” to ensure that all cumulatively significant environmental effects resulting from the Project are adequately identified and mitigated.⁴⁷ The THP fails to adequately consider the potential cumulative traffic impacts and applicable mitigation measures for this THP’s contribution to traffic when combined with all of the THPs and commercial cannabis projects which have contributed to a measurable transformation of this remote area.

Biological Resources. The THP does not adequately consider the cumulative context of intensive timber harvesting and commercial cannabis activities and their cumulative impacts on biological resources and their habitats. The 1.3-mile radius employed by the THP preparers for considering cumulative projects contributing to impacts to biological resources is artificially constrained.

Rather than provide, the detailed meaningful analysis of cumulative impacts required under CEQA, the THP provides jargon and generalities. For example, when purporting to address cumulative impacts to the upper Eel River watershed, the THP states the following:

Summary of ATM Trends in the Upper Eel River WAU

A summary of the Upper Eel River WAU habitat characteristics from 2020 is provided in and APFC report card (Table 26). Results of habitat composite scores from 2020 and 2017 are compared to baseline (2003) data (Figure 56). Overall, the greatest examples of stability in habitat composite scores were observed in bed surface, pool characteristics, and water temperature. LWD and mid-channel canopy cover both scored below the baseline records in 2020.

Finding: The maintenance or achievement of properly functioning conditions within the assessment area is a primary objective of the landowner's HCP and this THP. Because the practices and mitigation measures proposed here carefully follow the HCP's guidelines designed to achieve properly functioning conditions, and were tailored for the specific field conditions within the assessment area, a trend towards healthy forest ecosystem with properly functioning conditions will be aided by the implementation of this THP. The ultimate finding by the forester based on interdisciplinary team review is that implementation of this THP will not have significant or cumulative adverse watershed effects.⁴⁸

What exactly does the above statement mean? What evidence supports this conclusory opinion? To satisfy CEQA’s informational purposes, the THP’s analysis must be understandable to those who were not involved in its preparation.

⁴⁷ CEQA Guidelines, § 15355, subd. (b); *L.A. USD, supra*, 58 Cal.App.4th at pp. 1024-1025.

⁴⁸ See THP, Section IV, p. 191.

H. The Revised THP Should Consider Alternatives and Mitigation Measures.

The revised THP must consider a range of feasible alternatives to the proposed Timber Harvesting project. Petitioners recommend that among the alternatives considered is a project design that:

1. Sustainably thins the forest within the THP area, eliminating the combustible fuels that have accumulated since the last clearcut;
2. Does not employ the “hack & squirt” method that introduces toxic herbicides to the environment, and leaves dead trees standing, contributing to the risk of wildfire;⁴⁹
3. Preserves and protects a broader riparian corridor adjacent to the Eel River and tributary streams.

These alternative designs and protective measures would reduce the potential for significant impacts to biological resources, traffic and traffic safety, and wildfire risk and response.

V. Conclusion: the McCanned Eel THP Must be Revised.

For the foregoing reasons, McCann neighbors urge CalFire and Responsible Agencies to revise the THP to fully analyze and mitigate significant environmental impacts. Petitioners also recommend substantial revisions to the proposed THP before it is again released for public review and comment. Pursuant to Public Resources Code, § 4582.4, please provide the undersigned with notice concerning the Director’s consideration of the THP, either as submitted or as revised. Please also provide us with any responses to these comments.

Please contact us with any questions or concerns you may have regarding the above comments and objections.

Very Truly Yours,



Jason Holder

⁴⁹ See The Press Democrat, Approval of Measure V in Mendocino County ends ‘hack and squirt’, available at: <https://www.pressdemocrat.com/article/news/approval-of-measure-v-in-mendocino-county-ends-hack-and-squirt/?ref=related>, accessed 12/12/21.

cc: (Via e-mail only)
Client contacts
Deakon Duey RPF # 2853, Humboldt Redwood Company LLC (DDuey@hrcllc.com)

California Department of Fish and Wildlife
Susan Sniado (susan.sniado@wildlife.ca.gov)
Greg O'Connell (Gregory.OConnell@wildlife.ca.gov)
Rich Klug (Richard.Klug@wildlife.ca.gov)

CalFire
James Strong, Forester II, RPF #2689, Review Team Chair, Northern Region - Coast
(James.Strong@fire.ca.gov)

Attachments:

- Exh. 1. Email from J Holder to CDF requesting referenced documents, dated Dec. 21, 2021
- Exh. 2. Substance of email exchanges between M Gaterud and CDFW officials re NSO calls;
- Exh. 3. M Gaterud photos of THP area;
- Exh. 4. Before and After Photos of Neighboring THP; and
- Exh. 5. O'Brien Climate Comments on 1-20-00173-MEN 041221



McCanned Eel THP (1-21-00153-HUM): Request for Referenced Background Documents

1 message

Jason Holder <jason@holderecolaw.com>

Tue, Dec 21, 2021 at 2:11 PM

To: "Santa Rosa Public Comment@CALFIRE" <SantaRosaPublicComment@fire.ca.gov>

Cc: Santarosareviewteam@fire.ca.gov, Jason Holder <jason@holderecolaw.com>

Bcc: Mary Gaterud <elevenator@mac.com>

Dear Forest Practice Program Manager and THP Review Team,

On behalf of neighbors of the above-referenced proposed THP concerned about its potentially significant impacts, I am writing to request electronic copies of the following documents referenced in the THP and relied upon for the analysis of impacts and identification of mitigation and other protective measures:

- Final Environmental Impact Statement and Environmental Impact Report (FEIS/EIR) Volumes I, II, and III,
- Habitat Conservation Plan/Sustained Yield Plan for the Headwaters Forest Project, January 1999;
- Biological Opinion, prepared by NMFS and USFWS, February 24, 1999;
- Upper Eel Watershed Analysis Final Report, 2006; and
- Prescriptions Based on Watershed Analysis for HCP Ownership in the Upper Eel Watershed, California, April 4, 2007;

The above documents are not available online. The THP states that the FEIS/EIR is only available in paper form at the Arcata USFWS office (Section IV, p. 155). Please immediately provide the undersigned with electronic copies of the background documents listed above (and referenced in the THP). Please also make these documents available online so that the reviewing public has access to important "first-tier" impact analysis. Without this information, it is impossible for the reviewing public to make sense of the analysis in the THP and meaningfully participate in the THP review process.

Further, because the above documents were not made readily available for public review during almost all of the THP public review period, we request that the public review period be extended past the current deadline of December 23, 2021. The public review period should be extended by at least two weeks following the above documents being posted at the CalTrees website for this THP (or otherwise made readily available online to the public).

Please let me know if you have any questions or concerns regarding this request.

Thank you,
-Jason

--

Jason W. Holder
Holder Law Group

Important: This electronic mail message, including any attached files, is being sent by or on behalf of a lawyer; it is confidential and it may contain or constitute information protected by the attorney-client and/or the attorney work-product privileges. If the person actually receiving this message, or any other reader of this message, is not the named recipient, or the employee or agent responsible to deliver it to the named recipient, you are not authorized to retain, read, copy or disseminate this communication or any part of it. If you have received this communication in error, please immediately notify Holder Law Group at (510) 338-3759. Thank you

Exhibit 2

Good morning,

Thank you all! Mary, it looks like you actually submitted Wildlife Incident Reports instead of CNDDDB Online Field Survey Forms. The former is for reporting nuisance animals and the latter is for reporting sensitive species observations. Please do use the [link](#) you provided in your initial email for future owl observations. You'll be able to include audio files with the CNDDDB forms. Not to worry, though, the WIR folks were very helpful and forwarded the information you provided over to me. Dan, the details are below.

Thank you again.

Kate

Kate Whitney Keiser
Database Manager - [Spotted Owl](#) | [Barred Owl](#) | [Golden Eagle](#)
California Department of Fish and Wildlife
[Biogeographic Data Branch](#)

WIR-2021-001391

Reporting Person:

Gaterud, Mary

Reporting Person Phone:

707-845-2199

Reporting Person Email:

elevenator@mac.com

Date of Incident:

5/24/2021

County where Incident occurred:

Humboldt

Latitude:

40.3203867

Longitude:

-123.8113481

Landmark or Property name:

my home

Street Address:

1465 McCann Road

City:

Redcrest

Zip:

95569

Driving Directions/Description:

On 3/25/21, at approximately 10:00 PM, I heard two Northern Spotted Owls calling to each other; they seemed to be across the Eel River from my house. I verified that this was the species by listening to their calls online. I have lived here for twenty years, and never heard them before. They were distinctly different from the Barred Owl call, which I heard for the first time in this area last year.

Suspected Observed Species:

Other bird

If Other:

Northern Spotted Owl

Incident Classification:

Sighting

Date Incident Submitted:

5/24/2021 3:12 PM

Added By:

Reporting person

Currently Assigned To:

Rehse, Angela

Incident Status:

Closed

WIR-2021-002011**Reporting Person:**

Gaterud, Mary

Reporting Person Phone:

707-845-2199

Reporting Person Email:

elevenator@mac.com

Date of Incident:

6/22/2021

County where Incident occurred:

Humboldt

Latitude:

40.3209204

Longitude:

-123.8176946

Landmark or Property name:

Main Stem Eel River

Street Address:

same as above

City:

McCann

Zip:

95569

Driving Directions/Description:

I heard two Spotted Owls calling to each other immediately across the Eel River from my property, and they also flew across the river towards me, went behind my house, and continued hooting and calling to each other.

Suspected Observed Species:

Other bird

If Other:

Nothern Spotted Owl, *strix occidentalis caurina*

Incident Classification:

Sighting

Date Incident Submitted:

7/6/2021 12:57 PM

Added By:

Reporting person

Currently Assigned To:

Rehse, Angela

Incident Status:

Closed

Thanks for the clarification on the timing. Daytime pair locations are not always afforded protection (in contrast with contemporary nest locations) but are more likely to receive direct protection than are nocturnal pair locations, which can be located relatively distant from the nest or roost. A detection very close to dawn or dusk, however, is more likely to be close to the nest or roost and definitely gets my attention when I'm reviewing spotted owl detection information. Regardless, your observations do indicate this general area has a currently occupied spotted owl territory (they exceed the survey

protocol's requirements for determining a site is occupied by a territorial pair). That information will need to be considered, alongside whatever detections, if any, occur during the proposed timber plan's surveys. Most timber harvesting projects conduct two years of surveys prior to the start of timber harvesting operations. As long as the detections get into the spotted owl database (which I believe they have), they should be looked at (as part of the whole body of spotted owl information for the area) by whoever reviews the timber harvesting plan in regard to potential impacts to spotted owls. Ultimately, as the lead agency, CALFIRE makes the determination regarding whether the project will avoid federal "take" of spotted owls. CDFW can only provide input in the form of observations and recommendations. Rich Klug, or one of his staff members, will likely review the plan for CDFW (I currently only review timber plans south of the Van Duzen River). One option, is you can contact CALFIRE (and ask for the CALFIRE inspector for this THP) when the plan gets submitted for review and remind them of these detections and express any concerns or ask any questions you may have. Public comments are accepted and should be considered during the THP review process. You can also contact Rich Klug at that time (richard.klug@wildlife.ca.gov) if you want to get his take on the spotted owl information and what it suggests in regard to the project's potential impacts to the species.

Dan

Dan Hansen
Environmental Scientist
Timberland Conservation Program
California Department of Fish and Wildlife
619 Second Street, Eureka, CA 95501
(707) 441-5788 | dan.hansen@wildlife.ca.gov

The Mission of the Department of Fish and Wildlife is to manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public.

From: Mary Gaterud <elevenator@mac.com>
Sent: Tuesday, July 6, 2021 3:18 PM
To: Hansen, Dan@Wildlife <Dan.Hansen@Wildlife.ca.gov>
Cc: Wildlife OWLOBS@wildlife.ca.gov <owlobs@wildlife.ca.gov>;
Sanville, Cheri@Wildlife <Cheri.Sanville@wildlife.ca.gov>; Manthorne,
David@Wildlife <David.Manthorne@wildlife.ca.gov>; Andrew
Orahoske <andrew.ras@gmail.com>
Subject: Re: Spotted Owls recorded in McCann

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

Hi Dan,

Thank you for your quick response, and confirmation that they are a pair of Spotted Owls. That's very exciting, and I'm pleased that my birding observation skills are useful in documenting them! I really appreciate the information about their foraging habits/roosting.

Actually, to clarify, both of my incidents were nocturnal... the one I recorded on 6/22 started at about 8:45 pm, and continued for hours. Later I transferred the audio file from my phone to my computer... perhaps that's why the time stamp is different.

Regarding THP's in the area, there is a recent harvest, (now replete with dead hardwoods from the "hack & squirt practice") completed by Sierra Pacific a couple of years ago, immediately adjacent to the area I heard the owls, on the Eel River across from my property.

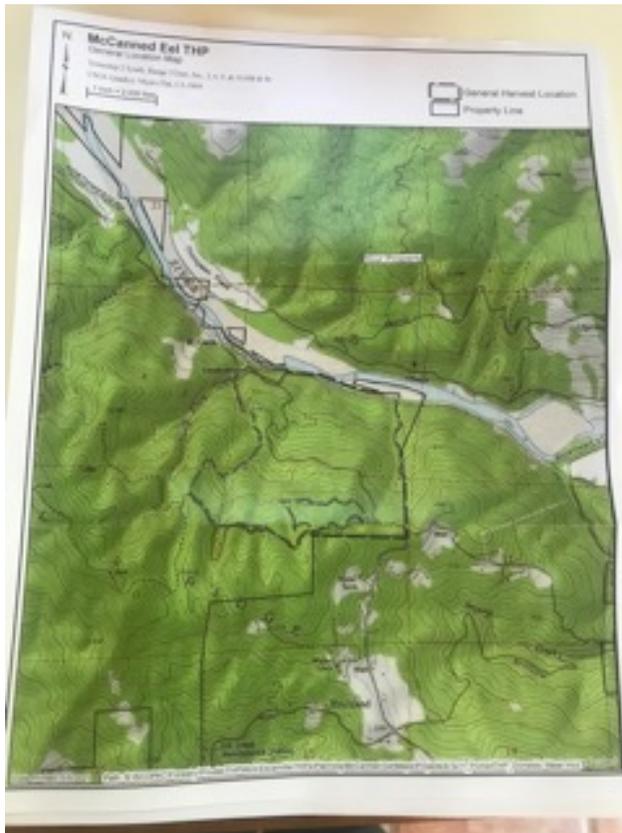
Apparently Humboldt Redwood plans another THP for next summer, also immediately adjacent to the Owl incident location. I have received correspondence in the mail, with a map of the proposed THP. I have been in communication with their forester, Domingo Escamilla, about it; he indicated that it will be filed for approval with CalFire soon.

Please see the map below, from Humboldt Redwood Company.

What implications, if any, does the presence of these owls have for this THP?

Best,

Mary



On Jul 6, 2021, at 2:48 PM, Hansen, Dan@Wildlife
<Dan.Hansen@Wildlife.ca.gov> wrote:

Sorry, I see now that the recording was close to 1pm. Published research indicates that spotted owls rarely move very far from their

roost during the daytime. So, most likely, a daytime roost is in that area. Thanks for reporting your observations and sharing your recording!

Dan Hansen
Environmental Scientist
Timberland Conservation Program
California Department of Fish and Wildlife
619 Second Street, Eureka, CA 95501
(707) 441-5788 | dan.hansen@wildlife.ca.gov

The Mission of the Department of Fish and Wildlife is to manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public.

From: Mary Gaterud <elevenator@mac.com>
Sent: Tuesday, July 6, 2021 1:20 PM
To: Wildlife OWLOBS@wildlife.ca.gov <owlobs@wildlife.ca.gov>
Cc: Sanville, Cheri@Wildlife <Cheri.Sanville@wildlife.ca.gov>; Hansen, Dan@Wildlife <Dan.Hansen@Wildlife.ca.gov>; Manthorne, David@Wildlife <David.Manthorne@wildlife.ca.gov>; Andrew Orahoske <andrew.ras@gmail.com>
Subject: Spotted Owls recorded in McCann

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

Hello,

I am a twenty year resident of McCann, CA, And I am writing to report an observation(s) of Northern Spotted Owls, as directed by Mr. Andrew Orahoske and other members of the Redwood Region Audubon Society (RRAS), as well as David Manthorne, of CDFW.

The first incident occurred in the evening on 3/25/21, and I heard two

owls calling to each other, a type that I have never heard before.

Based on my research online, it seemed very likely that the calls were made by male and female Northern Spotted Owls, especially given that it was their breeding season.

I contacted Mr. Manthorne on 3/26/21 about this incident, and he referred me to: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data> to report it, which I did, although I was not able to make a recording. The incident identifier is **WIR-2021-001391**.

On 6/22, I heard similar owls calling to each other (perhaps the same ones?) in the same location, across the Main Stem Eel River from my property. This time, I was able to get a recording:

I forwarded it to Mr. Manthorne for his assessment, as well as members of RRAS, three of whom confirmed that the birds recorded are Spotted Owls. I have reported this second incident on the same reporting portal; the incident identifier is **WIR-2021-002011**.

I was unable to upload my recording file with this incident report (I think because the file format is not accepted), and so I am forwarding it to you now.

I will continue to compile more data like this as I am able. Please contact me if you have any questions.

Yours truly,

Mary Gaterud
(707) 845-2199

Exhibit 3 – M Gaterud Photos of THP Area







Exhibit 4 -- Before and After Photos of Neighboring THP from Across River



Photo of Neighboring THP area, taken 5/20/2017



Photo of Neighboring THP area, taken 6/20/18 (during timber harvesting operations)



Photo of Neighboring THP area, taken 12/22/21 (after timber harvesting operations, note steep slopes and the dead trees standing after "hack & squirt" herbicide treatment)