RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes  No _x_) Resolution Opposing Confiscatory Regulation of Private Timberlands by the California Department of Forestry and Urging State Legislators to Support Legislation to Challenge the Constitutionality of the Regulations

BACKGROUND AND HISTORY OF BOARD ACTIONS:
This action requests that the Board of Supervisors strongly oppose present regulations of the California Department of Forestry on private timberlands and request help from State legislators to stop the growing encroachment on private landowners' rights. Attached is a comprehensive opinion on the regulations by Mr. Mark Bevan, a Registered Professional Forester, for the Board's review and a proposed letter to legislators. The information is a response to a request for help from a landowner in Fish Camp. As Mr. Bevan opines, the regulations are confiscatory and unconstitutional and are being placed upon private property owners who cut down even a single tree for barter or trade (see page 6, last paragraph). The public has a right to know the serious nature of these regulations on each individual's private property rights and to be protected from the unconstitutional intrusion upon their rights.

The regulations further impact the entire County by reduced income from timber sales and the economic impact rolls to the individual as supply and demand become unbalanced in the process. As the cost of the regulations to the private landowner increase, more and more will stop harvesting timber. As timber harvests fall, the County's share of the timber tax decreases and the cost of lumber increases, with impact on jobs and real estate.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
1. Silence on this issue leaves the private landowner in a precarious position for growing future regulation on private lands for all uses, not only those of timber land. Negative action will be a silence by the Board on a subject of concern to citizens of the mountain communities and on the fiscal impact to the County.

COSTS:  (x) Not Applicable
A. Budgeted current FY
B. Total anticipated costs
C. Required additional funding
D. Internal transfers

SOURCE:  (x) 4/5ths Vote Required
A. Unanticipated revenues
B. Reserve for contingencies
C. Source description:
Balance in Reserve for Contingencies, if approved:

SPECIAL INSTRUCTIONS:
List the attachments and number the pages consecutively:

Proposed Letter to Legislators
Letter from Mark Bevan dated May 26, 1995

CLERK'S USE ONLY:  Ord. No.
Res. No.:  95-294  Ayes: 5  Noes: 1  Abstained: 1
Vote:  Approved  ( ) Denied  ( ) No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date:  ATTEST:  MARGIE WILLIAMS, Clerk of the Board
6-2095mbr  County of Mariposa, State of California
By:  Deputy

ADMINISTRATIVE OFFICER'S RECOMMENDATION:
This item on agenda as:
Recommend
Not Recommended
For Policy Determination
Submitted with Comment
Returned for Further Action

Comment:  
A.O. Initials:  W
TO: SUPERVISOR BALMAIN
FROM: MARGIE WILLIAMS, Clerk of the Board
SUBJECT: PRIVATE TIMBERLANDS REGULATIONS

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,
ADOPTED THIS Order on June 20, 1995

ACTION AND VOTE:

11:15 a.m. Resolution Opposing Confiscatory Regulation or Private Timberlands by the California Department of Forestry and Urging State Legislators to Support Legislation to Challenge the Constitutionality of the Regulations (Supervisor Balmain)
BOARD ACTION: Discussion was held concerning the regulations and wording in the proposed letter to the State legislators, and relative to consideration of including the Board of Forestry and other organizations in the discussion. Input was provided by Mark Bevan/Registered Forester, and Miriam Warren/MERG.
(M)Balmain, (S)Taber, Res. 95-294 adopted, with direction given that the letter also be copied to Board of Forestry, Cattleman's Association, Farm Bureau, and other organizations/Ayes: Balmain, Stewart, Taber; Noes: Reilly, Parker.

cc: File
June 20, 1995

The Honorable George House
State Capitol Office
P. O. Box 942849
Sacramento, CA 94249-0001

The Honorable Dick Monteith
State Capitol Office
P. O. Box 942848
Sacramento, CA 94248-0001

Dear Assemblyman House and Senator Monteith:

The Mariposa County Board of Supervisors strongly opposes the increasing regulations of the California Department of Forestry on private property owners of timberland and requests your support in protecting California's timberland property owners from regulations that are essentially taking property without compensation.

Effective May 1, 1994, a portion of the Forest Practice Rules for the management of timber stands was substantially changed and imposed new requirements upon the timberland owner that are confiscatory in nature and affect all owners of timberland property. The regulations go far beyond the protection and management of our forests and reach into the constitutional rights of the individual.

It is our duty to the People of the State of California to inform them of the encroachment onto their private property by the State's increasing regulations and to protect them from further intrusion. In response to a cry for help from a constituent of the Mariposa County Board of Supervisors, the attached opinion was prepared and the information is essential to the legislators of this State in order that action may be taken to stop the invasion by the California Board of Forestry and the California Department of Forestry onto the private property of individuals.

The private property timberland owner who has responsibly and skillfully managed the harvesting of timber on his land is penalized, in direct opposition to his constitutional rights, for that responsibility and skill with the requirement to spend huge sums of money for the government's benefit to study the land he has diligently managed. The private property timberland owner has created a healthy and viable resource for continued harvesting while benefiting the People of the State of California with timber taxes, timber resources and reduced fire control. Many of these timberland owners will stop harvesting with the over-regulation of their private property, reducing the income of timber sales, increasing the cost of fire control and creating unhealthy and overgrown private property forests. The timber industry is already on its back and the people are paying three to four times higher cost for timber resources without the recent, unconscionable regulations, and the threat of even greater penalty to the landowner hangs ominously over them.
The Mariposa County Board of Supervisors urges you to become aware of the California Department of Forestry's regulations for timber sales and to take action to protect the People of the State of California from them. The government is not in the business of private property timber sales and should remove itself from the private property landowners timber business.

Very truly yours,

Garry R. Parker
Chairman

enclosures: 1. Resolution No. 95-294
2. Letter from Mark Bevan, R.P.F., dated May 26, 1995 w/enclosures

cc: Alpine County Board of Supervisors
    Amador County Board of Supervisors
    Calaveras County Board of Supervisors
    Fresno County Board of Supervisors
    Mono County Board of Supervisors
    Madera County Board of Supervisors
    Placer County Board of Supervisors
    Shasta County Board of Supervisors
    Siskiyou County Board of Supervisors
    Tuolumne County Board of Supervisors
    Trinity County Board of Supervisors
    California Board of Forestry
    California Division of Forestry
    Cattleman's Association
    Farm Bureau
    Regional Council of Rural Counties

cc w/o enclosure #2: Mark Bevan, R.P.F.
    J. Edward Martin, Private Property Timberland Owner
    Forest Landowners Association
Mr. Doug Balmain,
Supervisor District 2, Mariposa County
5846 Dogtown Rd.
Coulterville, Cal. 95311

Dear Doug,

The following information is in regard to the telephone call made to your Board of Supervisors by Mr. J. Edward Martin on behalf of Yosemite Mountain Ranch, asking for help in the matter of land management and timber harvesting regulations. Specifically, he was questioning the need for a 'Sustained Yield Plan' as a prerequisite for being able to continue to harvest timber from Yosemite Mountain Ranch.

Doug, I am not sure of whether my response is for your use only or for the use of the whole board. Consequently, there is a lot of information included with which I'm sure you are familiar; but it is included in case this is to provide background and information for persons not familiar with the wood industry and interests of the State of California in forests growing on private land in the state.

For background: Yosemite Mountain Ranch is 3500+ acres located near Fish Camp, owned by an Association of individual owners. The ranch has been very conservatively managed for many years as a recreational retreat for the owners, and to provide timber, wildlife and water values for the owners and the surrounding community. It is fine timber growing ground, and has an excellent forest established and growing on it, capable of producing annual crops of timber into perpetuity, without damaging the other resources. The Association of owners have used, and continue to use the services of professional foresters to manage their resources for them. The condition of their property is a testimony to the owners' commitment to responsibly manage their land. Mr. Martin's call for help is not the request of someone indifferent to responsible land management practices, seeking help to circumvent regulations preventing him from maximizing his immediate return. Mr. Martin's call is that of frustration and dismay at the ever increasing demands of state regulation, that do not add benefits to the landowner, are extremely expensive to comply with, and irony of ironies, are enforced on private forests to 'protect, enhance, and perpetuate' stands of timber that are the result of private land management in the past that was not subject to all the protections and management guidance these laws are 'designed' to provide. In other words, except for the responsible use of these lands in the past by the
owners, there would not be an existing forest over which the State could exert this control.

This cry for help is heard from many private landowners, particularly those with smaller properties, when they learn of the regulations. The state exerts control over the methods, volume, timing, and value of harvests, regardless of the costs to, needs of, or desires of the owner of the property.

The short answer to Mr. Martin's request, is, that he does not have to submit a Sustained Yield Plan (SYP) in order to continue harvesting on his ranch. He can continue to use the Timber Harvest Plan process as he has done in the past with one significant change. He must show that he is moving toward the 'Maximum Sustained Production of High Quality Timber Products' (MSP) through the use of clause 953.11(a), which is significantly more demanding than is required of him now. However this clause is considerably less demanding than the Sustained Yield Plan.

Both of these requirements, the SYP, and MSP (a), are quite expensive to comply with. However, I would expect that given the number of years the ranch has been managed by foresters, that they would have much of the basic required information already on hand; although it might need updating. Based on review of the requirements, and without spending quite a bit more time in figuring a proposal specific to the Yosemite Mtn. Ranch, I would not be surprised if the cost to prepare an SYP for the ranch was in the range of $65,000 as Mr. Martin stated, if they were starting from scratch.

A cruise, (measurement of timber volume), would be needed; the services of a consulting wildlife biologist helpful; timber type and wildlife habitat type maps prepared; growth estimates made; determinations of assessment areas for each of the resources (watershed, soil, aesthetics, biologic, recreation, traffic) made; a management plan for harvesting into the foreseeable future prepared; and the effects of such a plan on the other resources within the assessment areas determined individually for the property, and cumulatively with other operations, past, present and future, taking place within the assessment areas. For a full list of requirements see enclosures with this letter. In effect, the SYP is a super Timber Harvest Plan covering the entire property, which permits the filing of future Timber Harvest Plans on portions of the property, based in part on the information provided in the SYP.

My opinion would be that if Mr. Martin was planning to continue harvest operations on the same basis as in the past, i.e. one harvest per year on a part of the property, then he would be better off to utilize the MSP (a) clause, and not get involved with SYP. It may be that with future changes in the Forest Practice Act or Rules, a SYP becomes mandatory, but that bridge can be crossed when necessary.
The basis of all this regulation is found in the 'findings and declarations, and statement of intent' of the legislature in the 1973 Zberg-Nejedly Forest Practice Act. They state:

"The legislature hereby finds and declares that the forest resources and timberlands of the state are among the most valuable of the natural resources of the state and that there is great concern throughout the state relating to their utilization, restoration and protection."

"The legislature further finds and declares that the forest resources and timberlands of the state furnish high-quality timber, recreational opportunities, and aesthetic enjoyment while providing watershed protection and maintaining fisheries and wildlife."

"The legislature thus declares that it is the policy of this state to encourage prudent and responsible forest resource management calculated to serve the public's need for timber and other forest products, while giving consideration to the public's need for watershed protection, fisheries and wildlife, and recreational opportunities alike in this and future generations."

"It is not the intent of the legislature by the enactment of this chapter to take private property for public use without payment or just compensation in violation of the California and United States Constitutions."

"It is the intent of the legislature to create and maintain an effective and comprehensive system of regulation and use of all timberlands to assure that:

a. Where feasible, the productivity of timberlands is restored, enhanced and maintained.
b. The goal of maximum sustained production of high quality timber products is achieved while giving consideration to values relating to recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment, and aesthetic enjoyment."

Timberland is defined as:

""Timberland" means land, other than land owned by the Federal government and land designated by the board as experimental forest land, which is available for, and capable of, growing a crop of trees of any commercial species used to produce lumber and other forest products, including Christmas trees. Commercial species shall be determined by the board on a district basis after consultation with the district committees and others."

Timber Operations are defined as:

""Timber Operations" mean the cutting or removal or both of timber or other solid wood forest products, including Christmas trees, from timberlands for commercial purposes, together with all the work incidental thereto, including, but not limited to, construction and maintenance of roads, fuelbreaks, stream crossings, landings, skid trails, beds for the falling of trees, fire hazard abatement, and site preparation that involves the disturbance of soil or burning of vegetation following timber harvesting activities.
conducted after Jan 1, 1988, but excluding preparatory work such as tree marking, surveying or road flagging. "Commercial purposes" includes 1. the cutting or removal of trees which are processed into logs, lumber, or other wood products and offered for sale, barter, exchange, or trade, or 2. the cutting or removal of trees or other forest products during the conversion of timberlands to land uses other than the growing of timber, ...including but not limited to, residential or commercial developments, production of other agricultural crops, recreational developments, ski developments, water development projects, and transportation projects. Removal or harvest of incidental vegetation from timberlands, such as berries, ferns, greenery, mistletoe, herbs, and other products which action cannot normally be expected to result in a threat to forest, air, water, or soil resources, does not constitute timber operations."

The Board of Forestry's authority to produce and adopt regulations is contained in section 4551 of the Act. This section states:

"The board shall adopt district forest practice rules and regulations for each district in accordance with the policies set forth in Article 1 of this chapter.... to assure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish and wildlife, and water resources, including, but not limited to, streams lakes and estuaries."

The result of the state effort and desire to comply with this Act has resulted in the most comprehensive, restrictive and costly controls over the commercial use of private timberland that exist in the United States. There is little doubt that these controls as they presently exist are confiscatory for the private owner; and proposals that have been made and passed by the board in the past were even more so, but were challenged in court and defeated by the California Licensed Foresters Association.

The application of the rules and the required form of response is stated in section 4581 of the Act, which states:

"No person shall conduct timber operations unless a timber harvesting plan prepared by a registered professional forester has been submitted for such operations to the department pursuant to this article. Such plan shall be required in addition to the Timber Operator's license."

The contents of such a timber harvesting plan are given in broad form in following sections of the Act. However, the specific requirements of the plan are contained in the Forest Practice Rules adopted by the Board of Forestry pursuant to the Act of 1973.
The Forest Practice Rules (FPR) state in section 1032.7(a):
"A plan shall be submitted by the person who owns, leases, contracts, or operates on
timberland to harvest timber for commercial purposes."

The purpose and contents of a Timber Harvest Plan (THP) is given in section 1034 of the
rules and is comprehensive and specific:
"The plan shall serve two functions: to provide information the Director needs to
determine whether the proposed timber operation conforms to the rules of the Board; and
to provide information and direction to timber operators so that they comply with the
rules of the Board. For the plan to serve these functions, it shall, as a minimum, contain
the following information: ....

Item 'gg' of the above section states:
"Any other information required by the rules or the Act to be included in the plan. ..."

Effective May 1, 1994, the portion of the Forest Practice Rules dealing with Silviculture,
or the management of timber stands, was substantially changed. The new rules imposed far more
stringent requirements on the timberland owner than had previously been demanded. Compliance
with these new rules is the basis of Mr. Martin's call for help. Section 953.11, changed by the
new rules, provides direction for the attainment of 'Maximum Sustained Production of High
Quality Timber Products' (MSP).
"The goal of this section is the achieve (sic) Maximum Sustained Production of High
Quality Timber Products (MSP). MSP is achieved by meeting the requirements of either (a)
or (b) or (c) in a THP, SYP, or NTMP."

THP = Timber Harvest Plan.
SYP = Sustained Yield Plan.
NTMP = Non-Industrial Timber Management Plan.

Of the three subsections of the MSP section, subsection (c) is the least demanding. It
has been available to all ownerships for a 30 month period that ends in October of 1997. The
permission for ownerships of 2500 acres or more to use (c) was to provide time for the landowner
to develop, and the state to become prepared to understand and examine the type of information
required. The ownerships of 2500 or more acres will still have to file timber harvest plans after
October of 1997, but those plans must either be in addition to a SYP, or have an MSP component
based on the requirements of subsection (a). As stated earlier, although subsection (a)
requirements are far greater than have been required in the past, they are not as demanding as
those of a SYP. Directions for matching the situation a particular property to the subsections are
included in the description:

"(a) Where a Sustained Yield Plan or Nonindustrial Timber Management Plan has not been approved for an ownership, MSP will be achieved by: ....".

"(b) Where a SYP or NTMP is submitted for an ownership, an approved SYP or NTMP achieves MSP by providing sustainable harvest yields established by the landowner which will support the production level of those high quality timber products the landowner selects while at the same time....".

"(c) In a THP or NTMP, Maximum Sustained Production is achieved by:

(4) Timberland ownerships totaling less than 2500 acres may use subsection (c) to show MSP.

(5) Timberland ownerships of 2500 acres or more may use subsection (c) for 30 months after the effective date of this section. Thereafter they may use subsection (c) if a SYP has been filed with the department and has not been returned unfilled or approved"

It therefore appears to me that Yosemite Mtn. Ranch can prepare timber harvest plans using subsection (c) until 1997. At that time they will have to either submit a Sustained Yield Plan, or prepare their Timber Harvest Plans using subsection (a). All this of course assumes that no further changes will be made to the rules in the meantime!

Doug, I was going to include a table comparing the requirements of the Sustained Yield Plan with those of section 953.11(a). But this is becoming too long, so will just enclose copies of the requirements as attachments. I have the table in rough form, so if you would like it in the future I will pass it along.

A copy of Mr. Martin's fax to Supervisor Taber came in the mail today, and I would like to include some comments.

First, I understand Mr. Martin's frustration and outrage. The state is, through its rules and regulation taking property without compensation. In addition, it is costing landowners a lot of money to comply with the rules. This applies not only to industrial and other large landowners like Yosemite Mtn. Ranch, but also to small owners of 40 to 160 acres, and even to owners of 1, 5, or 10 acre parcels, down to the lot owner in a forested urban location such as Greeley Hill, or Jerseydale, or Fish Camp. Recently the state imposed a rule that requires a lot owner with a few trees on his lot to apply for a 'Less than 3 Acre Conversion Permit' before he may cut a live conifer tree for whatever reason other than 'firesafeing', if he makes a commercial use of the tree. Commercial use is interpreted as sale, barter, trade etc. Thus the owner cannot trade the logs or firewood in the tree to the tree surgeon that takes it down for him in exchange for putting the tree
down, without one of these permits. Further, all the slash resulting from the tree must be removed from his property. The rule specifically states that it may not be cleaned up and neatly piled for future use as firewood; it must be removed or disposed of.

The state 'logic' for this is contained in their definition of 'Commercial Timberland', which is "that forest land capable of and available for producing successive crops of commercial tree species, and is generally capable of producing an annual growth of wood fibre in excess of 20 cubic feet/acre." This is being interpreted to include all forested land however zoned, and regardless of present use and obvious lack of suitability for forest management.

This permit also requires preparation by a Registered Professional Forester, requires a 20 day wait period, and notification of all neighbors within 300' of the operation. Again, removing value, and costing money to implement.

As with many regulations, the forest practice rules impact one owner at a time, but you can take it from me and other foresters involved in providing advice or services to the public, that each and every one of them is unhappy when they wish to use their property. Most people are quite unaware of the degree to which these rules intrude into their wellbeing and their privacy, and thus don't understand the need for relief until they are affected.

All this is to say that I am in agreement with Mr. Martin that something needs to be done. However I think my approach might vary a little. In my mind, the problem is not so much that state and federal forests are not subject to the same rules; but rather that we should reduce the rules covering private property. This is for 2 reasons; first and obvious is re-instating the benefits of ownership to the private landowners; and second, it could be argued by the regulators that Federal lands are controlled by equally stringent management requirements, and they are; and that state lands other than experimental forests, are subject to the same rules as private lands, and they are. Thus our position should be to remove the misery for the private owner, not spread it around.

I would agree that the cost of compliance on private land for those practices required for the public good should be recoverable; and Mr. Martin's idea of recovery through a reduction in either income tax, or timber yield tax, or both, is a good one. Another way of looking at this type of regulation might be through incentives to the landowner to incorporate in his land management program those practices the regulators feel have public value by providing for lower tax payments. The decision of whether or not to take advantage of the incentives would be the landowners'.
By the way, incentives will become a part of forest management in the future I believe. The next step of the regulatory process is probably going to be a quota system. The state will look at large management areas as a whole, regardless of how many, or whom the owners of the area are. They will then set a limit on the amount of an activity such as timber harvesting that can take place in that management area over a period of time. The decision of which landowner/s will be able to practice that activity may depend on arbitrary factors chosen by the regulatory agency. And the incentive for the landowner to comply with state demands will be the opportunity to include his property in the 'quota'. The total activity may well be affected by past activity in the area, and could severely limit an owner's opportunity to utilize his property. This has been considered for those watersheds being designated as 'sensitive'. Thus we have not seen the end or depth of 'imaginative regulation', and the sooner the whole trend can be stopped, the better.

This is another reason why I believe we must stop the regulation not spread it around.

The constitutionality of these regulations must be challenged. I think for many years industry and those larger landowners informed about the regulatory process, have tried to accommodate, refine to 'liveable' proportions, and otherwise survive the avalanche of control we have seen as a result of the efforts of the preservationists. The result has been disastrous; there is no end to the demands and expectations of those people seeking to control that which they do not own. We have been in a lose/lose situation for many years, and it will continue if some basic rights are not reaffirmed.

It is my opinion that a change for the better in the present situation will only occur when sufficient landowners are made aware of the ownership rights that have been taken from them, and are willing to directly challenge the authority of the state to make and enforce confiscatory regulations without compensation. I think Mr. Martin's idea of making use of the Forest Landowners Association, and the services of Mr. Landenberger is good. If this can be coordinated with the forest industry associations, the Cattlemen's Association, other land use organizations and the Association of Rural Counties, there could well be sufficient support and financing to carry such a challenge. I certainly hope so.

If it would help to meet with you, other Board members, Mr. Martin, or other interested parties, to explain anything in this letter, or to provide more detail regarding the rules and their application, I would be happy to do so. Thanks, Doug, for the opportunity to comment, and to sound off.

Sincerely,

Mark F. Bevan

Enclosures
913.10, 933.10, 953.10. Timberland Productivity, Sustained Forestry Planning, Addendum

The goal of this section is to restore, enhance and maintain the productivity of the state's timberlands, where feasible.

a) Where feasible, the productivity of timberlands shall be maintained on a site-specific basis by
   1) meeting the stocking standards of the selected silvicultural or regeneration method, or that level of stocking above the minimum that will achieve long term sustained yield (LTSY) that is proposed in 913.11 a or b.
   2) proposing and implementing an appropriate silvicultural system and regeneration method for the site,
   3) protecting the soil resource and its ability to grow commercial tree species and provide sustainable associated forest values.

b) Timberland productivity is restored by mitigating the adverse effects of catastrophic events or previous land use activities in order to improve the site capacity to grow for harvest commercial tree species and provide forest values.

c) Timberland productivity is enhanced by such means as planting, thinning, stand manipulation, stream channel improvement, or other techniques that will lead to increased tree growth and yield, accumulation of growing stock and production of associated forest values.

d) Measures implemented to mitigate or avoid adverse environmental impacts of timber harvesting contribute to restoration and enhancement of timberland productivity. Plan submitters are encouraged, but not required, to undertake additional measures to restore and enhance timberland productivity. CDF may advise plan submitters of measures which could be undertaken at the plan submitters' option to further restore and enhance timberland productivity.

e) This section does not impose any additional obligation on owners of timberlands where wildfires, insects, disease, wind, flood, or other blight caused by an act of nature reduces stocking levels below any applicable stocking requirements.

913.11, 933.11, 953.11. Maximum Sustained Production of High Quality Timber Products

The goal of this section is the achieve Maximum Sustained Production of High Quality Timber Products (MSP).

MSP is achieved by meeting the requirements of either (a) or (b) or (c) in a THP, SYP or NTMP.

(a) Where a Sustained Yield Plan (14 CCR 1091.1) or Nonindustrial Timber Management Plan (NTMP) has not been approved for an ownership, MSP will be achieved by:

(1) Producing the yield of timber products specified by the
landowner, taking into account biologic and economic factors, while accounting for limits on productivity due to constraints imposed from consideration of other forest values, including but not limited to, recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment and aesthetic enjoyment.

(2) Balancing growth and harvest over time, as explained in the THP for an ownership, within an assessment area set by the timber owner or timberland owner and agreed to by the Director. For purposes of this subsection the sufficiency of information necessary to demonstrate the balance of growth and harvest over time for the assessment area shall be guided by the principles of practicality and reasonableness in light of the size of the ownership and the time since adoption of this section using the best information available. The projected inventory resulting from harvesting over time shall be capable of sustaining the average annual yield achieved during the last decade of the planning horizon. The average annual projected yield over any rolling 10-year period, or over appropriately longer time periods for ownerships which project harvesting at intervals less frequently than once every ten years, shall not exceed the projected long-term sustained yield.

(3) Realizing growth potential as measured by adequate site occupancy by species to be managed and maintained given silvicultural methods selected by the landowner.

(4) Maintaining good stand vigor.

(5) Making provisions for adequate regeneration.

At the plan submitter's option, a THP may demonstrate achievement of MSP pursuant to the criteria established in (b) where an SYP has been submitted but not approved.

(b) Where a SYP or NTMP is submitted for an ownership, an approved SYP or NTMP achieves MSP by providing sustainable harvest yields established by the landowner which will support the production level of those high quality timber products the landowner selects while at the same time:

(1) meeting stocking and basal area standards for the selected silvicultural methods as provided in these rules;

(2) protecting the soil, air, fish and wildlife, water resources and any other public trust resources;

(3) giving consideration to recreation, range and forage, regional economic vitality, employment and aesthetic enjoyment;

(4) balancing growth and harvest over time. The projected inventory resulting from harvesting over time shall be capable of sustaining the average annual yield achieved during the last decade of the planning horizon. The average annual projected yield over any rolling 10-year period, or over appropriately longer time periods for ownerships which project harvesting at intervals less frequently than once every ten years, shall not exceed the projected long-term sustained yield. A THP which relies upon and is found to be consistent with an approved SYP shall be deemed adequate to achieve MSP.

(c) In a THP, SYP, or NTMP, MSP is achieved by:
(1) for evenage management, meeting the minimum stand age standards of 913.1(a)(1), meeting minimum stocking and basal area standards for the selected silvicultural methods as contained in these rules only with group A species, and protecting the soil, air, fish and wildlife, water resources and other public trust resources through the application of these rules; or
(2) for unevenaged management, complying with the seed tree retention standards pursuant to 913.1(c)(1)(A), meeting minimum stocking and basal area standards for the selected silvicultural methods as contained in these rules only with group A species, and protecting the soil, air, fish and wildlife, water resources and other public trust resources through the application of these rules.
(3) for intermediate treatments and special prescriptions, complying with the stocking requirements of the individual treatment or prescription.
(4) Timberland ownerships totaling less than 2500 acres may use subsection (c) to show MSP.
(5) Timberland ownerships of 2500 acres or more may use subsection (c) for 30 months after the effective date of this section. There after they may use subsection (c) if a SYP has been filed with the department and has not been returned unfiled or approved.
(6) The department will make a report to the Board 24 months after this section goes into effect on the progress made by landowners towards submitting SVPs, report any problems encountered in addressing MSP and the appropriateness of subsection (c).

14 CCR 953.5 to be renumbered to 953.12.

953.12 High Use Subdistrict
In the "high use subdistrict," the selection regeneration method, or sanitation-salvage or commercial thinning treatments may be used. An RPF may propose a modification of the selection regeneration method or sanitation-salvage intermediate treatments when explained and justified in the plan. (See 14 CCR 953 for alternative prescriptions.) In these areas, no trees shall be cut unless first marked on both the bole and stump with either paint, tags or blazes so as to be plainly visible. Such marking shall be done sufficiently in advance of cutting to allow for inspection by the Director's representatives. In these areas, the leave stand will be at least 50% of the number of trees 30.5 cm (12 inches) or larger d.b.h. standing prior to the time of harvesting. These leave trees should be in Dunning's tree classes 1, 2, or 3 (Ref. 14 CCR 952 def. Dunning's classification). The composition and distribution of the leave stand shall be maintained as nearly as practical, giving consideration to the esthetics of the areas. Only sanitation-salvage treatment shall be allowed in the cutover areas for 10 years following the harvest.

Note: Authority cited: Sections 4551, 4561 and 4561.1, Public

1034(m) Contents of Plan THP

(m) Identity of the regeneration methods, intermediate treatments, special harvesting methods, alternative prescriptions, and any information specified by the district rules. Also for THPs that do not reference an approved Sustained Yield Plan, or do not demonstrate achievement of MSP pursuant to 913.11(c), the following applies:
(1) The plan shall provide a description of the stand before and after harvesting including: volume, growth projection, stocking, and species composition.
(2) The Director may require such additional information as necessary and feasible to demonstrate how maximum sustained production of high quality timber products will be achieved for an ownership within a THP.


Subchapter 7
Article 6.75
SUSTAINED YIELD PLAN

1091.1 - Sustained Yield Plan -

(a) General. This Article establishes requirements applicable to Sustained Yield, watershed impacts, and fish and wildlife.

(b) Authority and Intent. This Article carries out the Legislature’s direction that the Board adopt regulations to assure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish and wildlife, and water resources in accordance with the policies of the Forest Practice Act (FPA). Those policies include creating and maintaining a system of timberland regulations and use which ensures that timberland productivity is maintained, enhanced and restored where feasible and the goal of maximum sustained production of high-quality timber products (MSP) is achieved while giving consideration to environmental and economic values. The Sustained Yield Plan (SYP) may be submitted at the option of the landowner and is intended to supplement the THP process by providing a means for addressing long-term issues of sustained timber production, and cumulative effects analysis which includes issues of fish and wildlife and watershed impacts on a large landscape basis.
In the interpretation and implementation of this Article, it is recognized that the accuracy of, and therefore the need for, detailed future projections becomes less as the time horizon lengthens. It is not the intent of this Article
1034(m) Contents of Plan

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In the interpretation and implementation of this Article, it is recognized that the accuracy of, and therefore the need for, detailed future projections becomes less as the time horizon lengthens. It is not the intent of this Article.
that speculation shall be promoted such that analyses shall be undertaken which would produce only marginally reliable results or that unneeded data would be gathered. Moreover, it is recognized that in certain cases, landowners, and particularly owners of smaller areas, may not have nor can be reasonably expected to obtain or project information which otherwise might be helpful. It is the intent of this Article that the requirements for informational or analytical support for a SYP shall be guided by the principles of practicality and reasonableness; no information or analysis shall be required which in the light of all applicable factors is not feasible. However, it is the intent of this Article that all potential adverse environmental impacts resulting from proposed harvesting be described, discussed and analyzed before such operations are allowed. Should such analysis not be included in the SYP, it must be contained in those THPs which rely on the SYP, including any impact discovered after the SYP is approved.


1091.2 - Relation to THPs -
If submitted, a SYP shall address issues of sustained timber production, watershed impacts and fish and wildlife by preparing an SYP for a Management Unit. The SYP shall not replace a THP. However, to the extent that sustained timber production, watershed impacts and fish and wildlife issues are addressed in the approved SYP, these issues shall be considered to be addressed in the THP; that is the THP may rely upon the SYP.


1091.3 - Definitions
"Management Unit" means the part or parts of timberland ownership which are analyzed together as part of an SYP and may include areas outside of an ownership. The Management Unit shall contain all of the ownership in one forest district, and may include areas outside the district that the Director agrees are part of a logical unit. The Management Unit must include one or more planning watersheds, and may include additional planning watersheds, or resource assessment areas.
"Planning Horizon" means the 100 year period over which sustained timber production, watershed, and fish and wildlife effects shall be evaluated.

NOTE: Authority cited: Sections 4551 and 4561, Public Resources
1091.4 - Sustained Yield Plan Contents.
(a) Contents of SYP. If a SYP is submitted, it shall be prepared and signed by a Registered Professional Forester and shall include the following information:

(1) Name and Address of timber and timberland owner.
(2) Ownership description and location, including legal descriptions and maps depicting the ownership and Management Units which shall be at a scale sufficient to allow the Director to determine the area covered by the SYP.
(3) Management objectives for resources addressed in the SYP, including timber products.
(4) General narrative description of the forest types, fish and wildlife habitats and watercourses and lakes.
(5) Descriptions of Management Units (e.g., planning watersheds or larger areas) and rationale for Management Unit selection.
(6) Identification and mapping of Planning watersheds classified as sensitive watersheds and description of the measures taken to protect resources within those watersheds.


1091.4.5 - Sustained Timber Production Assessment
(a) Consistent with the protection of soil, water, air, fish and wildlife resources a SYP shall clearly demonstrate how the submitter will achieve maximum sustained production of high quality timber products while giving consideration to regional economic vitality and employment at planned harvest levels during the planning horizon. The average annual projected harvest over any rolling 10-year period, or over appropriately longer time periods for ownerships which project harvesting at intervals less frequently than once every 10 years, shall not exceed the long-term sustained yield estimate for a SYP submitter’s ownership.
(b) Where a SYP is based upon data on file with the Director, such data shall be updated every 10 years. Proprietary information shall be treated consistent with PRC 21160.
(c) Each sustained timber production assessment shall include:
(1) A summary table of Wildlife Habitat Relationships compositions and stand structure types (WHR), or comparable stand structure types within forest vegetation types with their respective acreage. For an ownership’s specific stand structure types, the RPF shall provide a written description of the stand.
structure and characteristics which define each type, and comparisons of those types to WHR typing. The WHR system, which is herein incorporated by reference, and its uses is described in "A Guide to the California Wildlife Habitat Relationships System", California Department of Fish and Game, March 1983.

(2) An estimate of the long-term sustained yield of the ownership stated in terms of board feet per year or cubic feet per year, or other reasonable measurement consistent with products chosen by the owner, and a description of how the estimate was reached. For ownerships that have not attained long-term sustained yield, the SYP shall estimate and justify the transition period necessary to achieve long-term sustained yield.

(3) A projection of growth and harvest for each WHR type or comparable stand structure type within forest vegetation type over each 10 year period in the planning horizon, and a description in narrative form of the accuracy and methodology used to estimate growth.

(4) A discussion of the accuracy of the inventory data for the management unit and/or ownership. Inventory data, models and growth and harvest projections utilized for harvest scheduling projections shall be available for confidential audits by reviewing agencies along with the basis for such data, including but not limited to the cruise design and sample plot data and statistical validity of such estimates. The SYP shall describe how the submitter will, over time, make reasonable progress to improve inventory estimates for the major WHR or vegetation types, with a goal of achieving standard errors that are no greater than 15 percent of their respective inventory estimates within the effective period of the SYP. The major WHR types include all tree-dominated habitats in size classes 4, 5, and 6 with canopy closure classes of O, P, M, or D.

(5) A description of the prescriptions applied to each stand type projected. A narrative discussion of the methods used to project inventory, growth and harvest and WHR type or comparable stand structures type.

(d) The use of Spreadsheet Assisted Resource Analysis (SARA) planning model, Cooperative Redwood Yield Project Timber Output Simulator (CRYPTOS), and California Conifer Timber Output Simulator (CACTOS) growth models and WHR types are encouraged in order to aid in the Departmental review.

1091.5 Fish and Wildlife Assessment -
The following fish and wildlife issues shall be addressed in an SYP:

(a) Assessment Area. The area for the fish and wildlife impacts assessment shall be at least the Management Unit under the SYP and may include the entire ownership within a forest district. Areas outside the ownership may be included as necessary to assess the potential individual or cumulative effect of timber operations. In areas with multiple ownerships, landowners may cooperate to establish a management unit and develop a fish and wildlife habitat assessment and management plan.

(b) Impacts to be addressed. The Assessment shall address threatened, endangered and sensitive species and other fish and wildlife species which timber operations could adversely impact, resulting in significant adverse individual or cumulative impacts. The Assessment shall address, as feasible, such species’ habitat needs and the availability, shapes and distribution of habitats in relation to harvest schedule and growth projections and the impacts of harvesting on such habitats. The SYP shall discuss and include feasible measures planned to avoid or mitigate potentially significant adverse environmental effects on such fish and wildlife. The plan may also discuss positive effects of the timber or timberland owner’s operations on fish and wildlife.

For the initial ten year period, maps by Management Unit showing significant changes to WHR types or stand structure types that are likely to result from projected timber operations shall be included. For the remaining periods within the planning horizon, type changes shall, at a minimum, be discussed in a narrative manner (including tabular analyses by management unit) and may include maps.

(c) Where significant impacts are identified and feasible mitigation is not available, a THP relying upon the SYP shall address these remaining impacts. Reasonable Mitigation considered but rejected as infeasible shall be identified.


1091.6 Watershed Assessment and Planning -
The following watershed issues shall be addressed in an SYP:

(a) Assessment Area. The minimum assessment area shall be no less than a planning watershed. The assessment area may include multiple watersheds within a Management Unit, and areas outside the ownership may be included.

(b) Impacts Analysis and Mitigation. The Assessment shall include an analysis of potentially significant adverse impacts, including cumulative impacts, of the planned
operations and other projects, on water quality, fisheries and aquatic wildlife.

(c) The SYP shall contain a description of the individual planning watersheds in sufficient detail to allow a review of the analysis of impacts.

(1) For all planning watersheds in the ownership within a forest district descriptions shall include as appropriate:

(A) Estimate of the stand structure type acreage and percent composition of the watershed by decade.

(B) General maps and descriptions of unstable areas and unstable soils known to the plan submitter to be actively or potentially discharging sediment, as well as those mapped by public agencies.

(2) For the initial ten year period, for all planning watersheds in which harvesting will take place, descriptions shall include as appropriate:

(A) Map of existing roads and approximate location and miles of proposed new, reconstructed and abandoned roads.

(B) Estimate of the SYP submitter’s ownership acres of forest types to be harvested by silvicultural method and yarding method, and the location of submitter’s approved and submitted THPs and presently projected future timber operations.

(C) A general description of areas known to be sensitive to ground disturbance and present sources of erosion.

(d) The SYP shall also discuss and include feasible measures planned to mitigate or avoid significant adverse impacts. Where significant impacts are identified and feasible mitigation is not available, a THP relying upon a SYP shall address these remaining impacts. The SYP submitter shall utilize any one or a combination of methods to assess adverse watershed impacts including but not limited to:

(1) Board of Forestry Technical Rule Addendum #2 (14CCR 912.9, 932.9, 952.9).

(2) The use of a Cumulative Watershed Effects Analysis, including the Equivalent Roaded Area (ERA) method, for screening planning watersheds to determine whether watershed-specific thresholds of concern have been exceeded when appropriate.

(3) Other methods proposed in the SYP and approved by the Director.

(e) Multiple Ownerships. In areas with multiple ownerships, landowners may cooperate to establish a management unit and develop a watershed assessment.

1091.7 - Limitation on Information Requirements -
Where landowners do not cooperate to develop a watershed or fish
and wildlife assessment, or where a management unit is adjacent
to lands operated by landowners or timber owners who have not
submitted a SYP, the information required of a SYP submitter
regarding past, present and reasonably foreseeable probable
future projects shall be limited to information regarding the
same ownership, to matters of public record, readily available to
the submitter and shall be guided by the principles of
practicality and reasonableness. The sufficiency of the
information provided in a SYP to evaluate environmental effects
shall be judged in light of what is reasonably feasible and
necessary.

NOTE: Authority cited: Sections 4551 and 4561, Public Resources
Code. Reference Sections 4551.5 4561, 21003, and 21068.5, Public
Resources Code.

1091.8 - Compliance and Effectiveness Evaluation
The SYP shall include provisions for determining the compliance
with and effectiveness of the measures adopted in the SYP to
mitigate or avoid significant environmental effects. Such
provisions may include evaluation by the SYP submitter and
evaluation of affected areas with representative conditions.
Progress reports shall be provided periodically to CDF at their
request. Such evaluations shall be developed in consultation
with the Director and appropriate review agencies.

NOTE: Authority cited: Sections 4551 and 4561, Public Resources
Code. Reference Sections 4551.5 4561, 21003, and 21068.5, Public
Resources Code.

1091.9 - SYP Effective Period
The effective period of SYP shall extend for three years. Up to
two one year extensions may be granted.

1091.10 - Review of Sustained Yield Plan (SYP) -
The Director shall review and approve or disapprove a SYP. The
Director's determination shall be based on multi-disciplinary
review used to determine whether the SYP satisfies the
requirements of MSP and, in case of watershed and fisheries and
wildlife issues, whether the SYP identifies potentially
significant adverse impacts and includes feasible measures
necessary to mitigate or avoid such impacts and is consistent
with 14 CCR 897 (b). Where significant impacts are identified
and feasible mitigation is not available, a THP relying upon the
SYP shall address these remaining impacts. Reasonable Mitigation
considered but rejected as infeasible shall be identified.
For purposes of Public Resources Code 4582.7 submission of a SYP
shall be deemed to constitute agreement by the SYP submitter to
extend the review and comment periods to the times specified in this article.

(a) Within 20 days of the receipt of an SYP, the Director shall determine if the SYP is in proper order, and meets the informational requirements of the rules, and if so, the SYP shall be filed. If the SYP is not acceptable for filing the Director shall return the SYP with written specifications of the deficiencies. Where the Director does not make this determination within 20 days the plan shall be deemed filed. Once the SYP is accepted for filing the Director shall have 45 days or a longer period as mutually agreed to by the submitter and the Director to review and determine if the SYP contains sufficient and complete information to permit further review by the public and other agencies. If it does not, the Director will communicate with the submitter with written specification of the deficiencies including any information necessary to review and analyze the SYP. When the submitter provides adequate written response to each of the deficiencies, the SYP will be scheduled for further review. The Director shall deny the SYP if the information is not provided or is insufficient. Once the SYP is ready for public and agency review the Director shall schedule a date for the start of a 90 day or longer period as mutually agreed to by the submitter and the Director.

(b) The Director shall schedule the SYP for the 90 day review as the SYP is determined to be ready for further review while considering departmental workload.

(c) Public Notice of SYP.

The Director shall 15 days prior to the start of the 90 day scheduled review transmit notice to the public and agencies consistent with the noticing requirements of sections 1037.5 and 1037.1 b(1-5). The notice shall advise the public of the name of the submitter, geographic location of the SYP, where a copy of the SYP can be reviewed or obtained and when and where the public hearing will be held.

(d) Public Hearing.

The Director shall hold a public hearing on the SYP within 45 days from the start of the Public Review Period. The SYP submitter shall participate with the Director in that hearing.

(e) Determination Period.

At the end of the review and comment period the Director shall have 30 days to review public input, consider recommendations and mitigation measures of other public agencies, respond in writing to the issues raised and determine if the SYP is in conformance with the rules. Within this period, the Director shall make a determination of conformance.

(f) SYP Disapproval.

If the Director disapproves a SYP, the Director shall
provide written reasons for disapproval that conform with section 1054.


1091.11 - Appeals
Appeals of SYP's shall be the same as provided in the FPA for THPs. For Head of Agency Appeals, the appealing agency shall have 10 days from the Directors determination date to notify the Board of their intent to appeal. The other requirements of Section 1056(a) shall be submitted to the Board within 30 days after the Director's decision. The 30 days specified in section 1056.2 commence when the appeal statement meets the requirements of 1056(a).


1091.12 - Emergency Departures from SYP -
In the case of an Emergency as specified in the rules of the Board (14 CCR 1052.1), the SYP submitter shall notify the Director of such departure in writing and shall comply with Section 1091.13. This notice shall accompany any notice required by Section 1052 for cutting timber on an emergency basis. If an amendment to the SYP is required pursuant to Section 1091.13, it shall be filed within 20 days of the filing of the Emergency Notice. The SYP submitter shall comply with the Emergency Notice requirements.


1091.13 - Amendments.
Except under emergency circumstances, substantial deviations from the SYP shall not be undertaken in the THPs unless an amendment has been submitted to and approved by the Director following the same procedures as for approving an SYP initially. No THPs may be approved which rely upon a substantial deviation proposed in an amendment to a SYP until such a deviation is approved by the Director.

(a) Substantial Deviations. For purposes of the sustained timber production portion of any SYP, any deviation from the average harvesting projections in any ten-year period which exceeds ten percent, including a deviation caused by changes of ownership and catastrophic events, shall be considered a substantial deviation. For purposes of watershed and fish
and wildlife issues, any deviation from the plan which could result in a significant change in timber operations and could result in significant adverse effects to watershed or fish and wildlife values shall be considered a substantial deviation.

(b) Minor deviations shall be reported to the Director immediately in writing but shall not require amendment of the plan.


1091.14. Timber Harvest Plans Submitted Within a SYP Management Unit.

Each timber harvest plan submitted for an area within an ownership subject to and relying upon an approved SYP shall demonstrate consistency with the SYP and reference the SYP in response to THP questions addressing subjects covered in the SYP. Each THP shall contain feasible mitigation included in the SYP to address identified impacts. Responses to significant environmental issues raised during THP review on subjects addressed in the SYP shall refer to the SYP. Where new issues or potentially significant adverse effects not addressed in the SYP exist, they shall be identified in the THP or a substantial or minor deviation shall be submitted for the SYP as appropriate. Additional feasible mitigation measures to address new issues identified shall be discussed and included in the THP or amendment.