

(1) How to use this document

(a) Legal descriptions are in standard font

(b) Information that will change with each comment letter is in underlined highlighted font

(c) Advice and pointers on how to frame your comment are in italics

(2) Standard THP comment introduction

Dear _____ and CAL FIRE:

On behalf of Your Organization, I submit the following comments regarding CAL FIRE's Timber Harvest Plan (THP) RECORD NUMBER "THP Name." Please include these comments and associated attachments in the record for the above referenced THP.

(3) Summary

It's useful to begin your comments with a summary of what you intend to say. State the issue(s) you are addressing and succinctly explain your concerns about those issues.

(4) Menu of Potential Ways to Attack a THP

(a) Substantial evidence

All findings made in a THP must be supported by "substantial evidence." Substantial evidence requires "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion" and must include "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." Examples of things that are not substantial evidence are "[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment." Courts have held that "[t]he unsubstantiated opinions of project applicants do not constitute substantial evidence."¹ Likewise, the reviewing agency's assertions must also be supported by substantial evidence.²

Successful comments can undermine the findings made by the THP by introducing evidence that was not considered by the agency and runs counter to their argument and/or introduce new categories of potential impacts that were not considered in the THP. Your THP comments should also be backed up with "substantial evidence." When writing your THP comments, try to support all of your arguments with as much evidence as possible. If you are discussing a particular section of the THP, cite that section so that the comment reviewer knows exactly what you are talking about. Support your arguments that do not come directly from the THP itself with scientific evidence wherever possible. Google Scholar contains a multitude of free,

¹ Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County (1988) 197 Cal.App.3d 1167.

² Sierra Club v. County of Fresno (2018) 6 Cal.5th 502

searchable articles on a wide variety of topics. Calfire is required to consider “the whole record before [it],” so it is imperative to either cite to the THP itself or to attach any scientific evidence that your comment relies on. Be sure to attach any scientific articles you reference to your THP comment.

(b) Challenging the Baseline

CEQA environmental assessments and CEQA equivalent documents like THPs, must “include a description of the physical environmental conditions in the vicinity of the project” as they exist at the time the notice of preparation is published.³ This description is then used as “the baseline physical conditions by which a lead agency determines whether an impact is significant.”⁴ In the baseline, “[s]pecial emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project.”⁵

In a THP, the description of the environmental baseline is typically contained within section III. A simple way to challenge a THP is to challenge the description of the environmental baseline in the THP. Did the RPF claim there were more trees in the THP area than there actually are? Did they claim the watercourses are less sedimented than they actually are? Proving that the THP used the wrong environmental baseline can be damaging to a THP because it calls into question all of the THPs findings about the significance of its environmental impacts.⁶

The key here is that you need substantial evidence that Calfire’s choice of baseline is inaccurate. (discussed above). Acquiring substantial evidence that an environmental baseline is inaccurate can be expensive and time consuming. However, if a THP is blatantly misleading regarding the environmental baseline comments to that effect may be warranted.

(c) Alternatives analysis

All THPs are required to have “[a] statement of the objectives sought by the proposed project.”⁷ In general, courts refer to this as a “purpose and need” statement based on a similar requirement in federal law. The purpose and need statement is then used as the basis for the required alternatives analysis.⁸ CalFire is required to evaluate and compare the environmental impacts of alternatives to the proposed project in THP.⁹ This means the alternatives need to be described in enough detail to allow a comparative analysis of the alternatives against the proposed project.¹⁰ However, the alternatives do not need to be evaluated at the same level of

³ 14 CCR § 15125(a)

⁴ 14 CCR § 15125(a)

⁵ 14 CCR § 15125(c)

⁶ *Communities for a Better Environment v. South Coast Air Quality Management Dist.*, 226 P.3d 985, 48 Cal. 4th 310, 106 Cal. Rptr. 3d 502 (2010).

⁷ 14 CCR § 15124(b)

⁸ 14 CCR § 15124(b)

⁹ 14 CCR § 15126.6(a)

¹⁰ *Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979)

detail as the proposed project.¹¹ The THP is not required to consider “every conceivable alternative to a project” but it must consider “a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation.”¹² “Calfire is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives” but “[t]he range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects.”¹³ They are also required to consider a no-project alternative.¹⁴

Challenging a failure to consider a reasonable range of alternatives is difficult, not impossible. One routine issue is that the THP is not required to consider alternatives that fail “to meet most of the basic project objectives.”¹⁵ So, if the THP has its purpose and need statement as “to demonstrate economical forest management by producing timber and allowing opportunities for research and demonstration purposes while giving consideration to other inherent value of the forest,”¹⁶ our hands are a little tied because all of the alternatives (except the no-project alternative) must envision some timber harvesting.

Courts have overturned environmental assessments because their alternatives analysis was inadequate.¹⁷ In particular, comments calling attention to unexplained inconsistencies or internal contradictions within the alternatives analysis can be fatal to a THP. If you choose to comment on a THP’s alternatives analysis by asking why the project did not consider another alternative, be sure to explain why your proposed alternative would still fulfill the purpose and need of the project. If you comment that the THP did not adequately consider one of the alternatives already listed, be sure to support that comment with citations to the record (the THP itself).

(d) Significant effect on the environment

A fundamental mandate of CEQA is that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of the project”¹⁸ Significant effect on the environment” means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or

¹¹ 14 CCR § 15126.6(d)

¹² 14 CCR § 15126.6(a)

¹³ 14 CCR § 15126.6(a-c)

¹⁴ 14 CCR § 15126.6(e)

¹⁵ 14 CCR § 15126.6(c)

¹⁶ Little North Fork Big River THP at p.105.

¹⁷ See *Cleveland National Forest Foundation v. San Diego Association of Governments* (2017); *North Coast Rivers Alliance v. Kawamura* (2015); *Habitat and Watershed Caretakers v. City of Santa Cruz* (2013); *Watsonville Pilots Association v. City of Watsonville* (2010).

¹⁸ 13 PRC §§ 21002, 21081

social change by itself is not considered a significant effect on the environment but a social or economic change related to a physical change may be considered in determining whether the physical change is significant.¹⁹

It's important that you explain in your comments why something you are commenting on has a significant effect on the environment and back that assertion up with substantial evidence. A simple way for Calfire to dismiss your comments is for them to claim that the issue you commented on will not have a significant effect on the environment. If you are commenting on an economic or social change, like the temporary closure of trails, your comments need to be focused on the physical change itself with the economic or social change acting as a factor in determining the significance of the physical change.

(e) Materially incorrect, incomplete, or misleading information:

The director is required to disapprove of any THP where “[t]here is evidence that the information contained in the plan is incorrect, incomplete or misleading in a material way, or is insufficient to evaluate significant environmental effects.”²⁰

Any comments alleging false information within the plan will need to be supported by substantial evidence.

(f) Cumulative impacts

THPs are required to consider cumulative impacts when the cumulative impacts are expected to be significant and when the project’s incremental contribution to the effect is cumulatively considerable. “Cumulative impacts” refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.²¹ This includes “changes resulting from a single project or a number of separate projects” and “can result from individually minor but collectively significant projects taking place over a period of time.”²²

The Forest Practice Act dictates that the RPF complete a “Cumulative Impacts Assessment Checklist” for specific resources.²³ The list of resources that the RPF is required to discuss is as follows: watershed, soil productivity, biological, recreational, visual, traffic, Greenhouse gasses, and Wildfire Risk and Hazard.²⁴ The last two resources (GHGs and Wildfire risk) were only added to the list in 2019 and therefore RPFs have less experience with them and are more likely to have made an error. The RPF must indicate for each of these subject areas whether the project in combination with reasonably foreseeable future projects has a reasonable

¹⁹ 14 CCR § 15382

²⁰ FPR 898.2(c)

²¹ 14 CCR § 15355

²² 14 CCR § 15355(a-b)

²³ FPRs 912.9, 932.9, 952.9

²⁴ FPRs 912.9, 932.9, 952.9

potential to cause or add to significant adverse cumulative impacts for any of these subject areas. The Forest Practice Rules lay out specific guidelines for how the THP preparer should address each of these resources.²⁵

Cumulative impacts analysis is contained within Section IV of a THP. Your comments could challenge the cumulative impacts analysis by arguing that there is a significant cumulative impact which the THP failed to consider.²⁶ A comment could also challenge the cumulative impacts analysis by arguing that the analysis of a cumulative impact that was considered was inadequate. As always, these comments should be supported by substantial evidence which is attached to your comment if it is not already present within the THP.

²⁵ TECHNICAL RULE ADDENDUM NO. 2 CUMULATIVE IMPACTS ASSESSMENT GUIDELINES

²⁶ Laurel Heights Improvement Assn. v. Regents of University of California, 47 Cal. 3d 376, 253 Cal. Rptr. 426, 764 P.2d 278 (1988).