



COPY

April 10, 2012

Ms. Giny Chandler
Chief Counsel
California Department of Forestry and Fire Protection
1311 9th Street, Floor 15
Sacramento CA 95814

Re: The use of the terminology "should" in the Forest Practice Rules

Dear Ms. Chandler,

Thank you for meeting with me to discuss your Department's interpretation of the term "should" in the context of the Forest Practice Rules. As I understand it, our clients have the same interpretation of the term "should". The term is governed by the California Environmental Quality Act Guidelines ("CEQA Guidelines"), specifically CEQA Guideline 15005. That provision says: "Should" identifies guidance provided by the Secretary for Resources based on policy considerations contained in CEQA, in the legislative history of the statute, or in federal court decisions which California courts can be expected to follow. Public agencies are advised to follow this guidance in the absence of compelling, countervailing considerations."

Therefore, definition of "should" applicable to the Forest Practice Rules directs a particular practice or analysis unless some countervailing reason exists to deviate from that direction, and that generally if there is such deviation, the forester should err on the side of greater environmental protection in his or her preparation of a timber harvest plan.

I understand that you were unaware that Department staff was using an outdated response to comments on various individualized timber harvest plans. You indicated to me that you have discussed this with forest management staff who will address an appropriate response to comments through staff training and development and that Timber Harvest Plans currently under review will be analyzed, and where necessary, corrected to reflect the proper interpretation of the term "should."

Thank you so much for your time and assistance in helping us better understand this issue.

Sincerely,

Heather Baugh
Assistant General Counsel

cc: Liane Randolph; Richard Stapler; Jodi Frediani

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