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April 7<sup>th</sup>, 2014

Mr. Stuart Farber, Chair  
Management Committee  
California Board of Forestry and Fire Protection  
P.O. Box 944246  
Sacramento, CA 94244

**Re: EPIC comments regarding proposed regulatory language for implementation of Assembly Bill 904 “Working Forest Management Plan”**

Dear Chairman Farber and Committee Members:

The Environmental Protection Information Center (EPIC) has reviewed a “February 17, 2014 Draft” set of regulations for the “Working Forest Management Plan,” hereinafter referred to as “Draft Regulations.” We believe it is important that the implementing regulations provide an adequate structure for AB 904’s goal to ensure long term benefits and require rigorous timber inventory standards for non-industrial landowners who may choose to develop the “Working Forest Management Plan” (WFMP). In an effort to assist in achieving the legislation’s intent, EPIC provides the following comments and suggestions for development of regulations to implement AB 904.

It is equally important that the implementing regulations provide for documentation of conditions in a manner that is consistent with common & current professional practice and organization for planning documents. This includes documentation of conditions and recovery measures necessary for compliance with the laws which AB 904 identifies as requiring compliance, including CESA, CEQA and Porter-Cologne Water Quality Act.

**I. Legislative Intent Must Guide Development of Regulations.**

The WFMP is intended “[t]o ensure *long-term benefits* such as *added carbon sequestration*, local and regional employment and economic activity, *sustainable production of*

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Environmental Protection Information Center

145 G Street, Suite A, Arcata, CA 95521

(707) 822-7711

[www.wildcalifornia.org](http://www.wildcalifornia.org)

*timber and other forest products, aesthetics, and the maintenance of ecosystem processes and services,”* and thus “shall comply with *rigorous timber inventory standards* that are subject to periodic review and verification.” PRC § 4597(a) (5), emphasis added. The Legislature specifically requires that the governance of the WFMP “shall be implemented in a manner that complies with the applicable provisions of this chapter and other laws, including, but not limited to, the Timberland Productivity Act of 1982 (Chapter 6.7 (commencing with [Section 51100](#)) of [Division 1 of Title 5 of the Government Code](#)), the California Environmental Quality Act (Division 13 (commencing with [Section 21000](#)) of the [Public Resources Code](#)), the Porter Cologne Water Quality Control Act (Division 7 (commencing with [Section 13000](#)) of the [Water Code](#)), and the California Endangered Species Act (Chapter 1.5 (commencing with [Section 2050](#)) of the [Fish and Game Code](#)).” *Id.* (b). These important requirements are not included in the NTMP statute. See PRC § 4593.

AB 904 authorizes the Board of Forestry to not only adopt regulations for specific sections, but also to adopt any regulations “needed to implement this article . . .” PRC § 4597.20. It is therefore very important to develop provisions which implement the WFMP statute, and are not largely only a regurgitation of the existing NTMP regulations, as they would be insufficient to implement the statute.

Our comments first identify the statutory provisions which require interpretation and guidance and how in our view the Draft Regulations have or have not provided this interpretation and guidance. We then provide a review of specific provisions of the Draft Regulations which have not already been addressed.

## **II. AB 904 Statutory Provisions Require Interpretation and Guidance.**

### **Section 4597 (a)(5) - Legislative intent**

The statute provides that to “ensure long-term benefits,” such as “added carbon sequestration,” “sustainable production of timber and other forest products,” and the “maintenance of ecosystem processes and services,” the working forest management landowner “shall comply with rigorous timber inventory standards that are subject to periodic review and certification.”

Regulation is needed to identify and/or provide these “rigorous standards.” While some of the content of the statute (i.e., § 4597.2(c)) may be viewed as providing standards, even if fully adopted as regulation, they do not provide sufficient guidance and interpretation.

It is not clear whether Draft Regulations section 1094.6 subsection (d) is intended to provide these “rigorous standards.” As an initial matter, the Draft Regulations are unclear and/or wrongly formatted, as there is a subsection (d) on page 5 and another on page 6. The subsection (d) on page 6 appears to be the intended version. This version suffers from ambiguity, in that while it requires a “description of the plan area within which timber operations are to be conducted,” it then lists numerous items that go beyond a description of the plan area, requiring information as to what activities, operations, and measures are proposed, rather than the required description of the plan area. It would make better sense to require first a description of the plan

area, and then separately provide the requirements to identify the proposed activities, operations, methods, etc.

Separate from these concerns, however, is the failure to adequately bring forward the intent of Public Resources Code Section 4597. The “rigorous timber inventory standards” need to be defined and identified as such, and provisions must be included to ensure their “periodic review and certification.” PRC § 4597(a)(5). The Legislature provided some guidance as to what are relevant standards. PRC § 4597.2(c). These too require interpretation and effective regulation. We believe the Draft Regulations need to establish rigorous and enforceable standards.

In providing this guidance, it is important that the maintenance of ecosystem processes and services includes provisions that adequately describe those processes and services and their maintenance in the context of the 14 CCR 916(b) , as well as the Porter-Cologne definition of Water Quality Control: “. . . protection and correction of water pollution and nuisance.” A comprehensive description of the plan area is key. Mandatory compliance with 14 CCR 916.4 is necessary.

### **Section 4597.1 - Definitions**

AB 904 did not define what it meant by “long-term benefits” such as “sustained production of timber and other forest products,” “added carbon sequestration,” “ecosystem processes,” and “ecosystem services.” The Board needs to give definition to and provide parameters for these terms if the objectives are to be satisfied, as they are at the heart of the WFMP.

In addition, the definition of “sustained yield” provided in the Draft Regulations section 1094.3 should be amended to address the use of the word “commercial.” It is unclear what that term means; it is clear that the WFMP is limited to non-industrial timberlands. At a minimum, the definition should refer to “non-industrial commercial timberland.” We note that the definition of “sustained yield” is not a substitute for a definition of “sustained production of timber and other forest products.”

### **Section 4597.2 - WFMP Contents**

As a general comment, the Draft Regulations section 1094.6, identifying the WFMP content, in large part either use the same provisions as in the NTMP content regulations, or simply restate the language in Public Resources Code Section 4597.2 in defining the WFMP content. As the NTMP is a different kind of plan, which does not require all of the rigorous standards as in the WFMP, incorporating some of the NTMP provisions may be confusing and inaccurate. We note those below, as appropriate, when discussing specific sections.

And while there is nothing inherently incorrect with merely restating the legislation, the Board as the regulatory body is duty bound to provide adequate interpretation and clarity in order to ensure that the Legislative objectives are satisfied. This is why the Legislature gave the Board

the right to adopt any regulations “needed to implement” AB 904. There are certain areas in particular where this interpretation is needed, as discussed herein.

Overall, the format and accessibility of a WFMP is key. It should include a table of contents, and be readily accessible through internet

### **Long-term sustained yield estimate and/or plan.**

The statute requires information used to “determine long-term sustained yield” (subsection (c), (c)(3)), and refers to (1) “long-term sustained yield estimates” (subsection (c)(3)), (2) “long-term sustained yield projections” (subsection (i)(2)(A)), and (3) a “long-term sustained yield plan” (subsection (i)(1)(A)). While the statute does not then expressly require a “long-term sustained yield estimate” or “long-term sustained yield plan,” it surely is implied that a proposed “long-term sustained yield” will be provided, and that the WFMP will include a “long-term sustained yield plan.” The Draft Regulations do not provide this, and perpetuate the confusion by simply repeating the language of the statute. *Compare* PRC § 4597.2(c), (f), (i)(A) with Draft Regulations § 1094.6(d)(6), (9), (13). We do not find in the Draft Regulations, for example, an express requirement in section 1094.6 to even identify the “long term sustained yield.” This must be required, and based on the language in AB 904 Section 4597.2 a WFMP must include a “long term sustained yield plan.” The Board needs to adopt regulations to implement this requirement. Absent this, there is no real way to verify compliance over time.

### **Impacts to species and species habitat.**

The statute requires the WFMP’s “long-term sustained yield projections” to include an “assessment” which “addresses” listed and other species that could be adversely impacted by potential changes to habitat (subsection (i)(2)(C)(i)), species habitat needs (subsection (i)(2)(C)(ii)), and constraints to timber management etc. (subsection (i)(2)(C)(iii)). Regulations are needed to interpret what is meant by an “assessment” and “address[ing]” these resources and potential impacts. For example, how is the WFMP to “address” these resources; what standards are to be applied; what criteria? Unfortunately, the Draft Regulations provide no insight or interpretation, as they merely adopt the statute’s language. *Compare* PRC § 4597.2(i)(2)(A) with Draft Regulations § 1094.6(d)(15). Regulations are needed to make clear what is required and what standards will apply to the assessment.

Similarly, subsection (i)(2)(C)(iii) refers to the “cumulative impacts assessment,” yet it is not specifically required by the statute and the Draft Regulations simply adopt the statute’s language. A cumulative impacts assessment should be and needs to be expressly required – with its measurable required contents. Mere reference to the term “plan” at the outset of the Draft Regulations is insufficient to impose this requirement. The cumulative impacts assessment is required because the language in Draft Regulations section 1094.6(d)(12) requires disclosure of state or federally listed threatened, candidate, endangered, or rare plant or animal species located within the “biological assessment area.” Presumably, that is intended to refer to a biological assessment area within a cumulative impacts analysis, but absent an express requirement for such an analysis, that term is unclear.

## **4597.6 - Review Process for WFMP.**

There are provisions within this statute which need regulatory interpretation.

### **Initial Inspection.**

Subsection (b)(2), while somewhat in-artfully written, does require an initial inspection. The Draft Regulations simply adopt its language, § 1094.18(d)(2), without providing any guidance as to the scheduling of the initial inspection in a manner that involves all public agencies who have expressed a desire to participate in the inspection. This is needed to ensure that adequate review team agency participation and review occurs.

### **Appeal of denial.**

Subsection (c) refers to the right to a “hearing” before the Board of Forestry, should a WFMP be denied.

Subsection (e)(1) refers to the ability of the working forest landowner to request, and the Board to conduct, a public hearing when the WFMP has been denied. Subsection (e)(4) then refers to an “appeal to the board.”

The Draft Regulations use this same language. §§ 1094.18(e)(1)-(h). These provisions are confusing at best. Does the landowner have a right of appeal, or merely a right to request a hearing? This is clearly an area where the Legislature needs the Board’s assistance to interpret the statute and make it clear, to clarify and make consistent that the landowner’s right to a hearing is a right of “appeal” which includes the public hearing.

Subsection (c) also provides that if the director denies the WFMP, s/he shall “state the reasons” for the denial. Subsection (e)(3) provides that if the Board overturns the director’s denial, it shall prepare “findings and its rationale” for overturning the decision. Again, the Draft Regulations simply adopt this language, failing to provide consistency and transparency for these decisions, by requiring that the director adopt “findings and rationale.” Draft Regulations § 1094.18(e), (g). In addition, EPIC believes it is necessary that both the director’s findings and the Board’s findings are issued publicly and made available in the same manner that all the other notices are posted.

Subsection (e)(4) provides that if the WFMP denial is upheld, then the director shall notify the landowner as to what changes are needed. The Draft Regulations provide nothing further. § 1094.18(h). Regulation is needed to require findings by the Board of Forestry to identify any reasons it may have, in addition to or different from those provided by the director’s statement of reasons (findings and rationale) that may become clear as a result of the appeal and public hearing process.

Regulation is also needed to clarify the process for a post-appeal review including provisions for a post-appeal inspection should it become necessary and for inter-agency review.

#### **4597.7 - Substantial deviations**

This section specifically requires the Board to define actions that would be considered to “substantially deviate[]” from the approved WFMP. Draft Regulations section 1094.15(b) provides the same definition of “substantial deviation” as in 14 CCR § 895.1. EPIC believes that more thought needs to be given to this section, to include criteria to identify substantial changes to the core provisions of AB 904 such as the rigorous timber inventory standards and LTSY, as well as the need for increased carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, and the maintenance of ecosystem processes and services.

#### **4597.8 - Non substantial deviations**

This section specifically requires the Board to “specify, by regulation, those nonsubstantial deviations that may be taken.” The Draft Regulation section 1094.15(a) appears to be nothing more than what already exists in the NTMP regulation 1090.14(a). This is insufficient, as the WFMP is intended to be much more rigorous than the NTMP, particularly given its very large acreage of up to 15,000 acres. A clear standard must be used to define what is insignificant, so as to not seriously affect the key objectives of a WFMP. Section 1094.15(a) is unclear as well, failing to define or provide standards for what may be “minor in scope” and what may be presumed to be “reasonable.” Better regulation is needed to limit the potential for abuse of so-called “minor” deviations.

#### **4597.10 and 4597.16 - Cancellation/Termination of WFMP**

This section authorizes the landowner to cancel the WFMP, but provides no process by which that is to occur, other than through a written notice. Draft Regulations section 1094.28 adopts this language, without providing interpretation or guidance as to what kind of notice is provided, whether it must be circulated by the Department for review, whether other agencies and/or the public are entitled to receive this notice for the purpose of ensuring compliance with “rigorous timber inventory standards,” adopted commitments for sustainability, ecosystem maintenance, added carbon sequestration, wildlife protection, etc. Since the overall legislative intent is to ensure long-term benefits and verification of WFMP provisions, a regulatory process must be adopted to provide this in the event a landowner wants to cancel the WFMP. It is insufficient to simply allow for satisfactory completion of any given notice of operations.

Subsection (a) of section 1094.28 adopts the language of AB 904 Section 4597.16. Just as regulations are needed to define a process for landowner cancellation, so too regulations are needed to define what standards and process CalFire may use to cancel a WFMP. This process must include criteria to evaluate the WFMP in conjunction with the rigorous inventory standards and other objectives which the WFMP is intended to meet. Regulation is needed to provide standards to evaluate for satisfying these objectives, and to also ensure that if a WFMP is cancelled, whatever mitigation and protection measures required by the WFMP are fully satisfied, so that a landowner may not simply walk away from commitments which were incorporated to ensure the long-term benefits identified by the legislature.

## 4597.11 - WFMP Notice

This section outlines the contents for the notice to operate under an approved WFMP. Once again, the Draft Regulations largely simply adopt the statutory language, without providing needed guidance and interpretation. *Compare* PRC § 4597.11(a) - (l) with Draft Regulation § 1094.8(a) - (m). Many of the statutory provisions need interpreting regulations.

Subsection (e) provides for a “statement” that no archaeological sites have been discovered in the harvest area since the approval of the WFMP. However, the WFMP contents outlined in Draft Regulation section 1094.6 make no reference to “archaeological sites,” referring only to “cultural or historical resources.” The current regulations do not define any of these three terms. Regulations are needed to clarify that the results of a search for “archaeological sites” must be documented in the WFMP.

Subsection (f) also provides for a “statement” that protected and listed species “have not been discovered,” and specifies requirements for disclosure of documented occurrences of these species and development of take avoidance and mitigation measures if this information is not provided in the approved WFMP. It goes on to specify a requirement to report “documented occurrences of the species” as obtained from publically available sources, but does not require an actual search for these protected species within the WFMP area or the area proposed for operations.

These two subsections do not expressly require a plan area “search” or “survey,” yet it is obvious that to make the required “statements” some search must have been done. Regulation is needed to clarify that an actual on-the-ground search for archaeological sites and these protected plant and animal species must be conducted and documented in the Notice. This search should be done within the proposed area of operations as well as through the review of public and readily available sources of information, including management area review. Otherwise, the landowner may make the statement that the sites and/or species have not been discovered, without any search.

Similarly, subsection (g) provides for a statement that “no physical environmental changes in the harvest area [ ] are so significant as to require any amendment” of the WFMP. Regulation is needed to clarify that an assessment and review of the land covered by the WFMP and proposed area of operation under the notice has been conducted to determine whether there are significant physical environmental changes which require a WFMP amendment.

Subsection (j) requires statement of “special provisions to protect unique areas within the area of timber operations,” but as with previously noted subsections, fails to require the elemental step to actually determine if any “unique areas” are within the area of timber operations. A requirement to determine if unique areas exist must be included.

Subsection (m) requires an update on erosion control mitigation measures “if conditions have changed.” Regulation is needed to interpret and provide standards for what constitutes “changed” conditions.

Draft Regulation subsection 1094.8(n) appears to be simply repeating what is in the statute, requiring any other information the Board may require by regulation. This appears unnecessary.

There is a second subsection “m” to Draft Regulation section 1094.8, on page 17, which appears to include some of the same requirements as for an NTMP. It is unclear, in the absence of effective regulation to ensure that the objectives of AB 904 will be implemented, to know whether some of these provisions and what they may allow in terms of operations are appropriate. We note that in the version we have reviewed, for subsection (m)(3)(2) there is a comment which reads “Delete regeneration methods to alleviate need to map unevenaged silviculture.” We do not understand why such a deletion would be appropriate, as a prime objective of the WFMP is to achieve uneven aged timber stands, and thus mapping those stands would seem advantageous toward documenting compliance.

### **4597.12 - Five Year Review**

This section outlines a process for the five-year review of an approved WFMP.

Subsection (a) provides that the director shall convene a “meeting with the interdisciplinary review team” to “review” the administrative record and other information to “verify” that operations have been conducted in accordance with the WFMP. A field inspection “may” be conducted if a review team member requests one. As with other provisions, this language contemplates, yet does not expressly state, that an actual review must be done to “determine” if the Director can “verify” compliance. Regulation is needed to clarify this.

Subsection (b) provides that the Board shall adopt regulations for the development of a “plan summary” before each five-year review, for the purpose of allowing the review team to analyze information, including the number of notices of timber operations, the acreage operated under each notice, the violations received, and the volume harvested in relation to the projections of harvest in the plan.

The Draft Regulations section 1094.26(b) adopt these provisions. Subsection (b)(1)-(4) provides additional information, but it poorly worded so that it is unclear under what circumstances this information is required. It is also unclear whether this information constitutes the “plan summary” required by AB 904 Section 4597.12. If for example subsection (b)(1) is information to be provided in all instances, it requires an RPF for the WFMP owner to certify compliance. How then is that to occur? There are no provisions outlining the timing and manner in which that is to occur. Subsection (b)(3) is similarly unclear and objectionable. How are violations “received?” Either they are a part of the record or not. What standards are to apply to determine whether “potentially significant impact to public trust resources may occur from continuance of the WFMP?” And what is the process by which Cal Fire may be presented with “a fair argument that a project may have a significant effect on the environment?”

AB 904 section 4597.12 subsection (c) provides for public notice of the five-year review and a copy of the plan summary, with the ability to provide additional information to the review team for the five-year review. Draft Regulations section 1094.26(c) adopts this language,



without providing the necessary guidance as to how the public review can occur. The public is entitled to not only notice, but a defined period of time in which to review the plan summary and five-year review, particularly if the public wants to provide “a fair argument” as to significant effects on the environment and to public trust resources.

The Board needs to develop clear provisions for the five-year review to adequately implement the statute, to provide (1) a defined process and content for the “plan summary”, (2) a defined process for the five year review, which includes notice, scheduling, and agency and public access, (3) the standards which will be used to evaluate compliance with the WFMP as well as the legislative objectives such as uneven-aged management, added carbon sequestration, sustained production of timber and other forest products, aesthetics, maintenance of ecological systems and processes, etc., and (4) findings that are necessary to document the required “verification” required in Section 4597.

### **Section 4597.15 - Immediate Operation**

This section provides that if the RPF certifies that the written notice conforms to and meets the requirements of the WFMP, then operations may immediately commence. While Section 4597.14 provides for disciplinary action against an RPF who makes any material misstatement, we find no provision in AB 904 which prevents and remedies impacts from immediate operations which are inconsistent with the approved WFMP. Regulation is needed to specify that should it be determined that a notice is materially misleading, the director has the right to and must immediately stop operations and proceed with Notice of Violation as provided in the FPR. The landowner as well as the RPF must be subject to discipline and held accountable.

### **Section 4597.17 - Change from NTMP to WFMP**

This statute provides for a NTMP landowner to transition to a WFMP and requires the Board to adopt regulations to establish this amendment process. The Draft Regulations section 1094.29 appear to have not yet addressed this need. At this point, EPIC encourages the Board to draft regulation which clearly identifies how such a transition may occur, in a manner that ensures that the underlying NTMP provisions have been fully satisfied, and the rigorous standards imposed by the WFMP shall be incorporated.

### **Section 4597.18 - Safe Harbor Agreements**

This provision allows a landowner submitting a WFMP to simultaneously seek a safe harbor agreement from the Department of Fish and Wildlife pursuant to the Fish and Game Code. The Draft Regulations adopt the statute’s language. The Draft Regulations simply adopts the statutory language. In doing so, they fail to address how the review process for the WFMP shall proceed in conjunction with, or independent from, the application for a safe harbor agreement. Clarity as to how these two application processes may proceed, and/or coincide, should be provided.

### **Section 4597.19 - State Restoration Projects**

This section specifies that a state restoration grant application may not be summarily denied on the basis that the proposed restoration project is a condition of the harvesting plan. The Draft Regulations simply adopt the statute's language, failing to deal with some ambiguity. The term "harvesting plan" is not used in any other section of the Draft Regulations, so it is unclear what this references.

### **Section 4597.20 - Adoption of Regulations**

This section gives the Board full authority to adopt regulations it finds necessary to implement AB 904. Thus, the Board needs to exercise its full authority to provide legitimate interpretation and guidance through regulation to advance AB 904's legislative intent.

### **III. Comments on Specific Draft Regulations.**

In addition to those Draft Regulations which are referenced above, the following are specific Draft Regulations which need refinement or change.

#### **Unnumbered Introduction to Working Forest Management Plan**

The introduction which provides for equivalency of the term THP, timber harvesting plan, or word plan to the WFMP does not ensure that key information requirements and particularly the obligation to provide a cumulative effects assessment will be satisfied. Refinement is needed to ensure that at a minimum, key information requirements that are necessary to evaluate the WFMP are included. This can occur here or in the WFMP Contents regulation, at § 1094.6.

### **Section 1094.2 - Definitions**

In addition to what is identified above, EPIC suggests the following changes:

The statute defines "late succession forest stand" as "stands of dominant and predominant trees that meet the criteria of the California Wildlife Habitat Relationships System class 5D, 5M, or 6 with an open, moderate, or dense canopy closure classification, often with multiple canopy layers, and are at least 10 acres in size. Functional characteristics of late succession forest stands include large decadent trees, snags, and large down logs." AB 904, § 4597.2(g)(3). In addition, AB 904 provides that "[n]othing in this requirement shall be interpreted to preclude active management on any given acre of an approved plan if the management is conducted in a manner that maintains or enhances the overall acreage of late succession forest stands that existed in the plan area upon initial plan approval ." AB 904, §4597.(g)(1). EPIC recommends that the Board take notice of the Legislature's recognition that late succession forest stands can be much smaller than the current 20-acre limitation, to as little as one acre. Given this recognition by the Legislature that acreage of at least 10 acres--- or as small as 1 acre – qualify as late succession forest stands, EPIC recommends that the Board adopt a definition which permits late succession

forest stands one acre or larger, This is consistent with current Department policy. In addition, EPIC suggests that the Board apply the new definition of “late successional forest stands” across the board by amending the definition of “late successional forest” currently contained in 14 CCR 895.1 to reflect a change from the minimum 20 acres down to the one acre or more in order to ensure consistency of identification, and application of this definition across all ownerships and as a part of all timber harvest planning documents.

“Long-term sustained yield” for the WFMP should incorporate the objective and standard of “uneven-aged management” such that the planning horizon for an “un-evenaged forest encompassed by the WFMP has reached a balance between growth and yield.”

### **Section 1094.3 - WFMP Submittal and Notice of Preparation**

The intent language provided in this section needs to be expanded to reference that the WFMP is for non-industrial landowners, and it should include the objectives set forth in Public Resources Code Section 4597(a)(5).

### **Section 1094.6 - Contents of the WFMP**

In addition to comments concerning subsections of 1094.6 addressed above, EPIC suggests that the preliminary statement, which is patterned after the NTMP regulation at 14 CCR 1090.5, is too limiting. The WFMP should serve not only the functions as outlined, but the express function of developing an uneven-aged forest which ensures long-term benefits such as added carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, and the maintenance of ecosystem processes and services.

### **Section 1094.6 (d)(7) - Methods used to avoid significant sediment discharge to watercourses from timber operations**

This section needs better definition and precision, particularly as to the phrase in the last sentence which permits “compliance with similar requirements of other applicable provisions of law.” This is very vague and ambiguous, and needs specificity.

### **Section 1094.6 (d)(10) - Description of late succession forest stands**

This section uses an undefined phrase – “a constraint of no net loss.” This needs definition so that it can be an enforceable standard.

### **Section 1094.6 (d)(13)(A) - Description for each management unit**

This subsection illustrates well the issue concerning the need for a “LTSY plan,” as it expressly refers to the “LTSY plan,” yet as discussed above, the regulations do not require a “LTSY plan.” The regulations should require an LTSY plan.

**Section 1094.6 (d)(15) - LTSY projections for reduction in trees greater than 12 inches in diameter or reduced level of inventory of a major stand type**

This subsection appears to permit a reduction in LTSY, provided certain resources (protected species, species habitat, and constraints no timber management) are “addressed.” EPIC objects to this provision, as written, as it appears to permit reduction in overall canopy and age classes. The subsections (A), (B) and (c) are also all unclear to the extent they require the WFMP to “address” the identified resources and issue, as it the term “address” is too vague and without criteria to gauge whether the information to be presented may be adequate. Stricter standards are required to ensure that any such reduction in LTSY must be limited, so as to prevent disregard for the core objectives of a WFMP.

**Section 1094.6 (d)(17) - Certification of personal inspection of plan area**

One of the ongoing concerns in private land forestry is the lack of disclosure and inspection of the entirety of a plan area. This subsection should be amended to require that the certification attests to personal inspection of “all of the plan area.”

**Section 1094.6 (d)(18) - Any other information required by regulation**

This subsection appears unnecessary.

**Section 1094.6 (d)(25) - Description of cumulative impacts analysis**

As referenced above, the Draft Regulations need to include an express required that a cumulative impacts analysis is required.

**Section 1094.10 (d) - Plan submitted responsibility**

It is unclear to EPIC why a provision would be included to exempt corporations from the duty to file a notification of change in responsibilities or substitution of an RPF “because the RPF of record on each document is the responsible person.” This makes no sense, as the RPF of record is always a responsible person, subject to significant license requirements. A corporation is no different than a person under the code, Public Resources Code Section 4525, and should be treated no differently when it comes to notifying the Department of changes of the RPF for WFMP implementation.

**Section 1094.11 (e) - Registered Professional Forester Responsibility**

This subsection refers to “attainment of the resource conservation standards of the WFMP.” As discussed above, the Draft Regulations do not identify requirements for or specifics of “resource conservation standards” for any given WFMP. Thus, this terminology is meaningless. Draft Regulation section 1094.6 must include express resource conservation standards.

**Section 1094.17 - Agency and Public Review for the WFMP**  
**Section 1094.18 - Director's Determination**

We address these two sections together because we believe they need to be reorganized to better outline first the review process for the WFMP, and second the decision-making process for the WFMP.

To illustrate this need, we note that while section 1094.17 provides for posting of the WFMP, and circulation to other public agencies, it says nothing about a review process for the general public. That is found in section 1094.18(a)-(c). These provisions should be in the same regulation.

With respect to introduction to section 1094.17, the placement of the proposed plan is provided as either in a location OR on an internet Web site. The proposed plan should be available BOTH in a location and on an internet Web site.

Section 1094.17(a) permits the Department to "bill such persons," but it is entirely unclear what "persons" are referenced here. This appears to be a consequence of cutting and pasting from the NTMP regulations, and the deletion in the Draft Regulations of the provision that the Department shall transmit a copy of any specific plan to any person who has made a written request for it. EPIC believes that this subsection needs to be reinserted.

The provisions of section 1094.18(a)-(c) should be placed in section 1094.17, as provisions identifying "agency and public review for the WFMP." Additional language is needed to identify the manner and format in which the public may provide comments.

The Draft Regulations adopt AB 904 Section 4587.6(a) process for public review. Section 1094.18 (d) identifies what is needed for approval. While technically this is part of the Director's determination, it is clearly part of the review process. It is unfortunate that the Draft Regulations simply adopt the structure of AB 904 Section 4587.6, rather than organize the regulations to deal first with the review process, and second with the decision process. Additionally, Section 4587.6(a) does not provide a provision to determine "completion of final interagency review of the plan." This provision is adopted in Draft Regulations subsection 1094.18(d)(4). A provision is needed to define what constitutes "completion of final interagency review of the plan." The Board should address this through regulation.

Draft Regulations section 1094.18(e) - (h) effectively provides a right of appeal to a landowner in the event the Director finds the WFMP is not in conformance with the rules. As discussed above, the Draft Regulations need to clarify the process as an "appeal" process, and provide appropriate procedures to document decision-making.

**Section 1094.20 - Nonconformance of the WFMP**

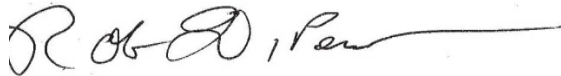
This section appears to be a copy of the NTMP regulation 14 CCR 1090.20, and by reference to 14 CCR § 1054, appears to introduce conflicting provisions from those set forth in

Draft Regulations section 1094.18. Careful review is needed to determine whether this section should be included.

#### **IV. Conclusion**

EPIC appreciates the opportunity to provide comments to the Committee at this early stage of regulatory development for the WFMP. Please do not hesitate to contact me at the number provided below if there are questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob DiPerna", with a long horizontal flourish extending to the right.

Rob DiPerna  
California Forest and Wildlife Advocate

Environmental Protection Information Center  
145 G Street, Suite A  
Arcata, California 95521  
Office: (707) 822-7711  
Email: [rob@wildcalifornia.org](mailto:rob@wildcalifornia.org)