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BOARD OF FORESTRY AND FIRE PROTECTION

Affiliate of Redwood Coast Watersheds Alliance

State Board of Forestry and Fire Protection  
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**Subject: Working Forest Management Plan – Rulemaking – AB 904/Regulatory Compliance**

This is Coast Action Group's 7<sup>th</sup> round of comments on this project (the first 6 comment letters being directed at first process ending in the approval of a product that was rescinded due to defects in the document and process).

The Board is now considering a "revised" proposed set of rules that is essentially the same (with some minor changes) as the WFMP Rules package that was rescinded. Thus, Coast Action Group is re-submitting our historical comments - along with the discussion and comment on the new proposed rule making with "revised" language, in this document. The comments pertaining to the original (rescinded) WFMP rules continue to be relevant and applicable to these currently proposed rules.

We believe, and the discussion will show, that the current rulemaking proposal fails to meet the intent and plain language mandates stated in the enabling legislation and other California Code. (AB 904 – see attached comment letters including and Appendix AB – 904 Highlighted for statute language indicating the intent of AB 904 to be a planning mechanism superior (or enhanced) to the standard Forest Practice Rules – yielding benefits not considered in the FPRs ).

#### **Issue Discussion related to the WFMP proposed Rules and ISOR**

In previous comment letters and discussion (including workshop discussion) the point was raised that the Working Forest Management Plan (plain language and legislative intent) was intended to be a long term planning document for a ("A" singular) large conservation minded ownership. This long term planning document was to be built upon the format or basis of the Non-Industrial Timber Harvest Plan.

The term building upon is clearly stated by the legislative intent and mandate (terms and conditions in the AB 904 legislation) that indicates improving upon (where improvements are to be high levels of forest production, carbon sequestration, ecosystem recovery, enhanced erosion control, and compliance with all other State Code) the model provided by the NTMP. The highlighted areas of the above noted Appendix are attached to support this argument.

In support of this superior or elevated level of planning and management the landowner would derive the benefit of one time CEQA based review (the need for the development of Timber Harvest Plans and related review would be eliminated). However, there would be lower level periodic reviews (with agency and public participation) to assess performance and compliance with the plan.

### **Number of Ownerships Under One WFMP**

Note: The legislature, individuals and entities that participated in the development and approval of the AB 904 legislation did consider the idea of multiple ownerships under one plan. The legislature, individuals, and entities – with due consideration – said “NO” to this idea. That is the basis for producing the authorizing legislation (AB 904 indicates that the WFMP is to be for one (sole) landowner). The fundamental reasoning that resulted in decision to authorize a planning document (WFMP) for a single ownership was that managing such a plan with multiple ownerships, with different management histories, land types, stand types, management goals and objectives, methods for accounting for inventories, and different RPFs was way to complicated (fraught with problems and issues) to be appropriately managed for attainment of the benefits noted in AB 904.

Additionally; the proposed rule language indicates that there could be a number of different RPFs for each ownership or the multitude of ownerships under one WFMP reporting, not the Cal Fire, but to a Designated Agent (who then may report to Cal Fire – and – who may have no basis in forestry training). The lines of communication and differences in the Designated Agent capabilities indicates oversight potential by Cal Fire (and the Review Team) may be corrupted (make control of operations and verification of compliance impossible).

The challenges of assessment and accounting for compliance by the Review Team (responsible managing agencies) would necessarily be limited by including numerous landowners under one WFMP (not to mention there is no cap on the number of ownerships allowed under one WFMP).

Currently; the language in the proposed rule package would allow for an unlimited number of ownerships under one WFMP – as long as the acreage limit (15,000 acres) is not exceeded. The current language allows for the possibility of creating a situation that is totally unmanageable – were review and verification of compliance would not be possible - a ridiculously untenable situation.

### ***Phrases in italics are quotes directly from the WFMP***

*In fact, the number of forestland owners eligible for a WFMP is higher, but is unknown, because there are a couple of other pathways for timberland owners to become eligible for a WFMP. First, a collection of two (2) or more landowners with a combined acreage of timberlands less than 15,000 acres*

*may file a WFMP jointly and second, the owner of less than 2,500 acres of timberland may acquire ownership of additional acres.*

The language (included above - p.5 of ISOR) indicates an unlimited and unknown number of possible ownerships and acreage of forestland in the State that could fall under a WFMP. Of the nearly 8 million acres of private forest lands in California (of which 90% are in smaller ownerships – less than 500 acres) – it is possible that under the current proposed WFMP rules that combinations of these smaller landowners can be collated to meet the requirements noted in the language (above). Given the stated language in the ISOR it is possible (an necessary for analysis potential impacts, under CEQA) to make some estimates as to the total acreage of forestlands that could eventually come under WFMP.

## **Erosion Control**

AB 904 legal consistency requirements, in addition to stated language regarding recovering water quality resources (which includes compliance with approved TMDLs).(See AB 904 4597, 5 (b), 4597.2 (3) (d), 4597.7 (2), 4597.11 (H) (1) & (2). This language indicates that the plan (WFMP) is the Water Quality Control Plan for the area of the (a WFMP) project. The statute requirements (consistency with all California Code and compliance with Erosion Control Implementation Plan) mandate that all existing and potential sediment sources must be assessed and contained in an Erosion Control Implementation Plan that indicates actions necessary to remedy and mitigate these active and potential sources. The current language in the WFMP limits management of active and potential sediment sources to activities related to timber operations. This is not consistent with the wording and intent of AB 904, the Forest Practice Rules, and California Water Code. (Note: As an area Water Quality Control Plan a WFMP is subject to Cal Water Code – including Section 13242.)

**Note: All erosion sites, existing and potential, are the responsibility of the landowner. California Water Code, regional Basin Plans, and TMDL compliance and must be made part of the updated ECI. This should occur at the onset of the plan and updated at time of notice of operations. The ECIP inventory and prioritized work timelines should include mapping of all active and potential erosion sites on a WFMP ownership. To be consistent with CEQA and Cal Water Code every plan must have a discussion of how the plan is complying with current TMDLs. These erosion control issues and remedies must and be part of any WFMP.**

AB 904 (4579.2 (3) (d)) – mandates description and discussion of the methods to be used to avoid significant sediment discharge to watercourses from timber operations. This section goes on to state that an erosion control implementation plan must be developed that includes “a schedule to implement erosion controls that prioritizes major (major meaning significant) sources of erosion.” This wording , by law, is inclusive of existing and potential sediment sources. (Again, the legislation requires compliance with existing State Code).

Current language in the proposed rule (1094.6 (j) and entire document) limits erosion control assessment and remedies to roads on landings (issues related to timber harvest operations). This limited application of the landowners (and responsible agency(s)) responsibility to comply with the legislation (including other California Code) does not meet legal requirements to be consistent with all California Code (including regional Basin Plans and TMDLs). Additionally, (under section (ee) exceptions and alternatives are allowed with explanation. For legal consistency, any

permitted exceptions and alternatives must demonstrate compliance with outcomes mandated by the intent of the legislation (control of all existing and potential sediment sources) and California Water Code and Basin Plan standards. The proposed language does not make this clear.

Proposed rules section 1094.8 (n) limits the assessment, inventory, and prioritization of significant sediment control issues to timber operations. These limitations are not consistent with the legislation, Cal Water Code, Basin Plan, and TMDL requirements.

Any project (development project including THPs, NTMPs, and WFMPs) that resides in a planning basin that is subject to an impairment listing (303 (d) list – California’s List of Water Quality Limited Segments) that in process for approval by a planning entity (in this case Cal Fire – and Review Team) must consider and address pollutant impairment issue(s) that are related to the noted water quality impairment. Such consideration would include how the project may pose additional threats to impairment (introduction of additional pollutants – which not allowed under regional Basin Plans), and how additional threats to impairment will be constrained or remedied (mitigated). All threats to impairment must be considered – existing (or active), and potential. (see Basin Plan language – included in previous documents). Failure to address the issue of existing (or active) as well as potential pollutant sources renders any project application out of compliance with the requirements of Cal Water Code, TMDL compliance, CEQA, and the Forest Practice Act and Rules (916.9 (a) (1) – where such plan must comply with the terms of a Total Maximum Daily Load. No plan may be approved that is not consistent with the applicable water quality control plan).

Failure to assess, inventory, and mitigate existing (active) and potential pollutant sources allows for a process that makes compliance with a an approved TMDL, Basin Plan standards, and Cal Water Code impossible. Landowners are responsible for all pollutant sources and their property (timber harvest related or not) that are a threat to Basin Plan and/or Water Quality Standards.

Another issue regarding the language is the word “significanat”. The proposed rule language does not define significant and how it meets the Basin Plan requirement to limit controllable sources of pollutant introduction into impaired and high quality waters.

### **Public Participation In the Five Year Review**

The new proposed language does appropriately clarify the noticing requirement dates and production of the Five Year Summary by Calfire. However, the proposed language does not provide the public with a clear and meaningful opportunity to review and comment upon the plan summary and the Review Team analysis and development of the review.

**The limitations indicated in (b)**, the “number of violations received”, the “number of substantial deviations received” does not provide the public or responsible agency with meaningful information. Nor are these limitations indicated in the legislation.

The legislation indicates that the public should have enough information to monitor the WFMP (baseline data, verification of compliance, and implementation of harvest and related activities). The information to be included in the Summary is not limited by the legislation. The legislation

indicates that the information in the Summary should be sufficient for public and the Review Team to have a substantial basis for analysis and comment.

Additionally, the legislation put no time limit on the ability of the public to submit comment on the available information.

The new language proposes noticing and publication of the Five Year Review Summary 30 days prior to the 5 year Anniversary – allowing the public to submit comments in that 30 day period. Thus, this public is not allowed access to or comment on Review Team questions, issues, reports, or the findings made by the Department or Review Team.

The proposed timeline provides no meaningful way for public access to all relevant information necessary for review and informed comment in a meaningful way. Again, the language of AB 904 provides no such limitations on the public.

It is suggested that the public comment timeline be revised to allow for meaningful participation.

#### **Issues Discussed (below) Related to ISOR language (justification for the proposed WFMP rules language)**

**Superior:** Apparently it has been recognized by the Board and staff that the WFMP (built on the model of the NTMP) is intended to be a long term planning document that incorporates superior management criteria (rigorous inventory assessments and targets along with greater than standard (FPR) protections for forest resources (species, old growth, water quality, and carbon sequestration). Language is included in the ISOR that indicates that these “Superior” standards are incorporated in the proposed WFMP proposed rules. The ISOR fails to support and demonstrate the proposed WFMP rules meet any such “Superior” (above and beyond) standards, as stated in the ISOR. **(ISOR comparisons of the WFMP to NTMP rules - merely reflects certain administrative standards incorporated in NTMPs with minor improvements that are of no real consequence – e.g. added contact information and other minor controls will not provide claimed benefits - or worse – in the case of water quality/erosion control standards).**

**Examples:** (below) is a discussion of issue related to ISOR language - where the WFMP does not meet the ISOR claim of superior (above and beyond) and/or compliance with the plain language and intent of AB 904. Please respond with analysis of Standard FPRs and NTMP control language in comparison with the WFMP proposed rules with discussion supporting claim of benefits provided under the proposed WFMP rules.

**\*No evenaged silviculture:** Both NTMPs and WFMPs have this objective (though this objective is not enforced in the rules). Both are exactly the same in this department. A “Superior” (above and beyond”) long-term management plan is not supported in this area.

**\*Rigorous inventory Control:** The stated goal is rigorous analysis and compliance with LTSY. Without a standardized measurement baseline of inventory measurement Cal Fire is very unlikely to have capacity to provide analysis for verification and assurance of compliance. LTSY is the same stated goal as for NTMPs and other FPR requirements. Under current LTSY standards it is

possible for inventories to be greatly diminished in the first 30 or 40 years of management (negating any near term carbon storage benefits – which is an adverse impact to the environment in GHG and carbon sequestration goals or benefits), while 100 year horizon LTSY compliance can generally be met (thus, there may be no long term carbon storage benefits).

**\*Carbon Storage (indicated goal of AB 904):** As noted above there is no management criteria supported by the WFMP proposed rules and/or the ISOR that supports increased carbon storage (superior or otherwise). And, in fact, the rules allow for short term (30 to 40 year) decreases in inventories that would have negative carbon sequestration effects. Current CARB rules require measurable carbon storage increases at 10 year intervals.

**\*Water Quality:** Language (included above – as comments) indicates failure and/or inability to comply with State Water Code and/or area Basin Plan (including TMDL compliance). In this case “Superior” (“above and beyond”) can not be claimed (as in the ISOR). Nor can equal to the NTMP can be claimed – as NTMPs are subject to stand alone equivalents to the proposed language for the Erosion Control Implementation Plan – where NTMPs are subject to assessment and control of all active and potential sediment sources (not limited to just timber harvest activity).

**\*Old Growth Protection:** Are, at best, equivalent to current NTMP old growth protections – and other general provisions of the FPRs.

**\*Number of Ownerships under One Plan:** Currently Cal Fire is having extreme difficulty in assessing plan compliance on NTMPs. Some of the assessment issues are related to multiple ownerships under one plan. Multiple ownerships under one plan present serious verification issues (none of which were addressed – except for use of a Designated Agent, (which is also an issue). Furthermore, the WFMP intended for the single “conservation minded” ownership – as indicated in the AB 904 authorizing language. Irrespective of the fact there should be only one (A landowner) landowner; the language in the proposed rules and ISOR confuses the issue by use of the language “A landowner” (indicating singular) and other conflicting language – with the inclusion of “s” in “landowner(s)”. Not only is this confusing, it is wrong and inconsistent with the statute. Justification of “Superior” (“above and beyond”) does not comport with the issue or language in the ISOR.

**\*Designated Agent:** The idea of providing a “Designated Agent” as a specified contact person was inserted into the proposed rule in an effort to solve one (of many) issues related to managing a WFMP with multiple ownerships (issues related to contacting and managing the needs and issues of many owners – where the idea of having one contact person may solve some problems). With the creation of the “Designated Agent” there is incomplete and ambiguous information as to the requirements and authorities attributed to this position.

The definitions phrase “those activities specifically assigned to a Designated Agent by Board Rules and Regulations” (“*name, address, and phone number of Designated Agent if known at the time of WFMPA submission, Designated Agent shall file a Working a Harvest Notice, Designated Agent shall notify timberland owner(s).....that the Working Harvest Notice has been submitted*”, 1094.10 *Plan Submitter(s) Responsibility – identify and notice Designated Agent*), 1094.8 *Working Forest Harvest Notice Content*, 1094.14 *Notice of Commencement of Operations*,

*1094.23 Substantial Deviations – The Designated Agent may submit a proposed deviation, prepared by an RPF....., 1094.24 Report of Minor Deviations - ....but considered as minor deviation by submitter(s), may be undertaken only if the person who submitted the plan (RPF?) or Designated Agent submits the proposed deviation in writing.” 1094.25 Completion Reporting – by timberland owner(s) or Designated Agent (not clear who inspects and promulgates the report), 1094.27 Stocking Report - by timberland owner(s) or Designated Agent (not clear who inspects and promulgates the report – RPF?). 1094.29 Five (5) Year Review – the Five Year Review Summary is to be distributed to .....(5) Working Forest Landowner(s) and the Designated Agent if one exists (I thought there had to be one?). Another complication with use of the Designated Agent is where compliance issues are to be discussed and resolved with the Department. It is unclear how this can successfully occur if the Designated Agent does not exist. And, if the Designated Agent is not RPF and is not subject to forestry training criteria: how are these issues to be effectively conveyed to the RPF or owners? There are many management gaps in these potential scenarios that need to be addressed.*

The Designated Agent may not be an RPF. Or - in some cases it may be an RPF. The definition of the Designated Agent – qualifications and responsibilities is not clear. In some cases it appears that though the Designated Agent who may not be an RPF is allowed, or required, to carry out responsibilities of an RPF.

It is clear by the above language in the proposed WFMP rules (related to the multiple ownership issue) that it may be the case that there may be a different RPF for each individual ownership under one WFMP. This is another complication – where there are obvious problems and issues related to transacting accurate, uniform, and actionable information between parties (managing agencies, various landowners, various RPFs, and LTOs.

#### ***Adopt § 1094.2(a) Definition of “Designated Agent”***

*The proposed adoption of the definition of “Designated Agent” is for the purpose of reducing the enforcement issues that the Department has experienced with the management of NTMPs with multiple landowners. The Department requested that a single point of contact be designated for each WFMP so that administrative processes and land management decisions for landowners participating in WFMPs are communicated to the Department through one entity, which resulted in the development of the “Designated Agent”.*

First, the ISOR statement above notes problems managing NTMPs with multiple ownerships (notably smaller plans with a minimum amount of ownerships under one NTMP). The issue of having one contact person is not the only issue at hand

The Department may have requested having one contact person to deal with. The Department probably did not consider the other issues of relating all the information regarding conformance to a plan (various conformance issues on various ownerships under one plan – including completion, stocking, violations, inspection and implementation issues, etc) through one party (that may or may not exist or is not subject to specific criteria) that has no professional forestry background (unless the Designated Agent is an RPF – not specified in the definition). Nor did the Department envision the issue of

communication of such information from a non-professional Designated Agent to various RPF and LTOs on an unknown number of different ownerships.

In all – with no limit on ownerships under one WFMP, where there may be different RPFs and LTOs on each ownership, with each ownership potentially having different harvest and conditions history, each ownership having different harvest and management objectives, and the potential to impose management of all of the above on one untrained individual, as Designated Agent, is a recipe for problems (if not disaster).

The above noted issues are precisely why the legislator made the decision that the WFMP was to be for one (“A” singular) ownership under one WFMP. This decision was made to avoid the management complications presented by multiple ownerships under one plan.

***Adopt § 1094.8(a)-(e) Working Forest Harvest Notice Content***

*The proposed adoptions specify that the WFHN shall contain the name, address and telephone number of (a) the timberland owner(s) (b) the Designated Agent (c) the timber owner(s) (if different from the timberland owner(s)) (d) the licensed timber operator(s) conducting operations and their license number and person responsible for on the ground supervision of timber operations (if different than the LTO) and (e) the RPF who prepared the WFHN and their registration number and the RPF responsible pursuant to 14 CCR § 1094.11(if different) and their registration number.*

*These provisions are necessary so the Department has the names and contact information for each of the parties responsible in the implementation of the WFHN to facilitate communication and enforcement.*

*These provisions are substantially the same as 14 CCR § 1090.7(b), the comparable provision in the NTMP rules, except that they go above and beyond the NTMP rules, which do not require the inclusion of the RPF registration number and LTO license number, which the Board deemed necessary for efficient identification of responsible parties.*

The ISOR is claiming additional protections “above and beyond” those of the NTMP (not THP) by including certain (new) contact information. These comments indicate the likely hood of confusion and where the proposed rules that allow for a very complicated management system (which is likely to have communication failures that can be a threat to resources). We fail to see how providing contact numbers to this mess adds much in the way of resource protection.

Additional claims are made in 1094.10 (and elsewhere in the ISOR) that the Designated Agent was created in consultation with Cal Fire as the solution to communications and management issues. Considering multiple ownerships were not part of the authorizing legislation and that the Designated Agent responsibilities are ill defined and conflicting with professional management considerations and communication with potentially numerous landowners, RPFs, and LTOs, it is not clear if the Department is satisfied with current proposed language on this issue.

***Adopt § 1094.29(e) Five (5) Year Review of WFMP***

*The proposed adoption specifies that if notices of violation have been issued, or the five (5) year review indicates potentially significant adverse impacts to the environment may occur from continuance of the WFMP, or if the Department is presented with a fair argument that a project may have a significant*

*adverse impact on the environment, the Department shall provide written comments that a review of the WFMP content and procedures may be necessary. The Director shall state any changes and reasonable conditions in the Director's professional judgment that are needed to bring timber operations into compliance with the applicable Board rules and regulations and offer to confer with the Designated Agent in order to reach agreement on the conditions necessary to bring the timber operations into compliance and to mitigate significant adverse impacts on the environment identified during the five (5) year review. Failure to implement the changes or reasonable conditions provided by the Director or developed in conference with the Designated Agent may result in cancellation of the WFMP pursuant to §1094.31(b).*

Is conferring on compliance issues with the Designated Agent preferable to conferring with the RPF? How is the Designated Agent (possibly not a professional) to deal with these professional considerations? Or – is the Designated Agent presumably responsible to communicate issues back and forth between landowners, RPFs, and the Department? This appears to be an avenue of communication fraught with complexity with resulting confusion and with opportunity for issues to fall through the cracks.

Inventory Assessment, Compliance and Verification of LTSY: For accurate measurement of inventory baselines to be carried forward to measure compliance and verification with LTSY a standard (specific targets or benchmarks that would indicate compliance with multi-aged stands and increased inventories over specific time periods – necessary to attain benefits mandated by the statute) needs to be set for measurement of these factors that can be carried forward in time as a consistent metric for such measurement and verification purposes.

The ISOR indicates (See example below and other relevant Sections dealing with the same subject: 1094.6(g)(1)-(3), 1094.6(h)(1)-(3), 1094.6(i)(1)-(9), 1094.6(k), 1094.6(q), 1094.6(q)(1)-(3) The Section (below illustrates problems and issues):

***Adopt § 1094.6(g)(1)-(3) Contents of WFMP***

*The proposed adoptions specify that the description of the inventory design and standards shall contain (1) the baseline conditions found on the WFMP and the future conditions and planning horizon associated with the estimate of LTSY, (2) a description of the design of inventory plots or strips, cruise lines and reference points between plots or strips, that are sufficient to facilitate initial review of the WFMP and (3) the type of projections or models used for projecting growth and yield appropriate for stand conditions and estimated period of time to achieve LTSY.*

*The Board deemed that it was not necessary to make the term "baseline conditions" more specific. However, the Board added that the requirement that existing timber volumes be provided in the property description pursuant to § 1094.6(i) and that existing timber volumes and tree sizes to be available for harvest be provided in the description for each management unit pursuant to § 1094.6(n) to insure that baseline conditions would be captured. Regarding the term "baseline conditions", terms not specifically defined in the rules retain their plain meaning. Merriam-Webster defines "baseline conditions" as a usually initial set of critical observations or data used for comparison or a control. Therefore in the context of § 1094.6(g)(1), "baseline conditions" means the initial set of critical observations or data to be used for comparison with actual future conditions.*

*These provisions are necessary to provide additional clarity and enforceability above and beyond the NTMP rules, which do not substantially contain these provisions, and to make specific PRC §*

*4597.2(c) which requires a description of inventory design. These proposed provisions are also necessary to allow the Department to effectively evaluate the proposed project with regard to growth and yield and allow flexibility for RPFs and landowners to develop a LTSY that is specific to the proposed project.*

*Additionally, these provisions are necessary to allow the project proponent, public and interdisciplinary review team to evaluate the accuracy of the inventory and the projected growth and yield. The current inventory of forest stands is determined through measuring a sample of the trees occupying the stand. There are numerous acceptable sampling methods to arrive at an inventory estimate. The public and review team need to know the estimated inventory and the method by which the estimate was derived to evaluate the appropriateness of the proposed management strategy. The rigorous inventory standards goal required by the statute PRC § 4597(a)(5) and specific rules § § 1094.6(g), § 1094.6(h), § 1094.6(i), and § 1094.6(n) require rigorous sampling methods and inventory estimates to allow the project proponent, public and reviewing agencies to understand the assumptions and limitations of the projected growth and yield data being reported.*

*These provisions are informed by 14 CCR § 1090.5(j) and PRC § 4597.2(c)(3) and (f).*

It is true that the NTMP rules do not contain all of these provisions (some similar provisions are contained in the NTMP rules – and – they are not working very well) . The proposed provisions will not deliver accurate or useful information unless there is agreement and utilization of some standard units of measurement that can be carried forward into the future, and that (in the case of multiple ownerships under one WFMP all ownerships are using the same measurement matrix). Cal Fire (the Department) is having great difficulty measuring compliance on NTMPs (with the problem exacerbated with multiple ownerships) measuring compliance, from baseline data to existing inventory data, and assessing LTSY outcomes (including inventory increases near short term and long term – to attained benefits mandated by the statute). The Department has made it very clear to the Board and staff that this is an issue that needs to be addressed. Additionally, units of measurement and modeling as part of NTMP management and compliance assessment have changed over time. These mid-stream changes in standards confound the assessment and verification process. Thus, without some standardized format of measurement that can be carried forward no claim of usefulness, additional clarity, or enforceability (including the issue – beyond what is contained or required by the NTMP process) can be supported.

**AB 904 requires “rigorous timber inventory standards,”** – where rigorous means: extremely thorough, exhaustive, or accurate, strictly applied or adhered to. The effectiveness of these requirements must be applied in a way that is consistent and that works – over time. This standard has not been met in the current proposed rules application. (See – above noted sections).

Additionally, the above section indicates the required information will inform the public as to baseline conditions, growth, and yield projections. It pointed out that this may be true for the initial review for plan approval. It will not hold true for assessment at the 5 year review – where the public will not be privy (under the proposed rule making) to or able to comment on the accrual of any such information and data.

**AB 904 requires additional carbon sequestration:** This goal is intended to be accomplished over time (though no time period is noted in the authorizing legislation – short term - 30 or 40 year losses in carbon sequestration were not intended). Given the above noted issues in tracking in-

ventory over time and the definition of LTSY (the target goal of the WFMP as far as forest inventory goes – definition included here);

c) “Long Term Sustained Yield (LTSY)” , pursuant to PRC § 4597.1(a), means the average annual growth sustainable by the inventory predicted at the end of a 100-year planning horizon, or a shorter planning horizon if the forest encompassed by the WFMP has reached a balance between growth and yield

the goal of increased carbon storage may not be attainable. The ISOR indicates that that incentivizing(sic) unevenaged management may increase carbon sequestration (no rational or scientific support for this claim is provided). This ISOR also states that the proposed rigorous inventory standards will also provide additional carbon sequestration. It is pointed out in these comments that 1) there are problems with the claim of rigorous as no real standards for inventory assessment are in place, and 2) the goal of LTSY does not provide assurance of increased inventory over time (short run or long run). If, with the goal of LTSY conformance, inventories are allowed to be decreased in the first 30 or 40 years – but – LTSY can be met at the 100 year horizon; how does this comport with the AB 904 mandate for increased carbon storage or current California GHG regulations? (this issue is not discussed in the ISOR – and should be under CEQA mandates). In summary, the ISOR alludes to potential (“may increase”, “may afford increased carbon”) increases in carbon sequestration – with no explanation or assurance provided. Reliance on “incentivizing” reduced use of evenaged management units do not assure increased carbon sequestration. It is the overall growth of inventory (including larger trees – near term and long term) that would assure such benefits.

**Erosion Issues:** Erosion issues are discussed at length, above in this document. In addition to that discussion the ISOR, section 1094.6(cc), 1094.6(ii), 1094.8(u)(16) - that the WFMP shall contain explanation and justification for use of landings, logging roads and skid trails in the protection zones of Watercourses, Lakes, Wet Meadows, or Other Wet Areas – where the ISOR claims that this is an improvement (“beyond”) what is contained in a NTMP. The FPRs (including road rules), and NTMP ECP all mandate such consideration. Thus, this is standard procedure and not an improvement as claimed. Mapping of operations on unstable areas is required in THPs, NTMPs under the FPRs and WDRs and would be an necessary element of any project to address TMDL, Basin Plan, and Cal Water Code issues.

**Superior Protections/Benefit to the Environment:** AB – 904 calls for superior protections and increased forest inventory allowing for species, water quality, and carbon sequestration benefits. This ISOR , in many sections claims or alludes to such benefits and/or standards “beyond” information, data, and goals contained in the NTMP rules.

*The proposed action may have a beneficial effect on the environment. These beneficial effects upon the environment could be related to fire resiliency, habitat, aesthetics, carbon sequestration and decreased timberland conversion. However, these prospective benefits are speculative, but it may be presumed, at a minimum, that the level of protective effect upon the environment will not be reduced as a result of the proposed action*

The ISOR makes such claims as superior and beyond protections included in the NTMP rules. The quote above (p104 ISOR) only alludes to the possibility of such benefits – that are speculative – and with no assurances contained in the proposed rules as they stand. The comment and analysis in this

document indicates issues and short falls in the proposed rules that are an impediment to any such benefits.

**Proprietary Information - 1094.6(kk), 1094.11(h), 1094.25(c)(1) –(3):** The working forest land-owner is not (and should not) be a industrial entity – in competition with other industrial ownerships. Proprietary information, and disclosure thereof, need not be and issue. Many sections of the ISOR claim that such information related to baseline inventory, growth and yield, LTSY compliance, completion report, etc. should be made available to the public and Review Team. In the case of this section it appears that such information may be withheld (without rational basis). In any case, this section represents no improvement in any rules or superior management. Additionally keeping private “disclosures between a RPF and owner(s), Designated Agent or LTO(s)” is another area of the proposed rules that should not be considered an management improvement.

#### **Adopt § 1094.6(e)(1) Contents of WFMP**

*The proposed adoption requires that WFMP Management Units be mapped. Additionally, boundaries of Management Units shall not exceed a single ownership which may include, but is not limited to, entities comprised as a single ownership of divided interest, natural-persons with undivided interests, or a legally established artificial-person. This limitation was included at the request of the Department to address issues of the Department being the mediator of disagreements between timber owners during implementation of NTMPs when a management unit spans multiple ownerships. The Board deemed this limitation necessary in the WFMP rules to remediate the problem conveyed by the Department about the NTMP rules.*

*This provision is informed by 14 CCR § 1090.5(w)(1), the comparable provision in the NTMP rules, except that it has been made specific to the WFMP. This provision was also informed by PRC § 4597.2(i)(1)(C).*

Another issue that I am finding with current NTMPs, allowed by the rules - which also resides in the WFMP proposed language. The FSOR indicates benefits of long term planning (meeting LTSY standards).

Currently there are a number of NTMPs that indicate serious (extensive) decreases in inventory over the initial first 30 years of management - to be mitigated by disciplines and growth in the next 70 years (or 100 year horizon). This is discussed elsewhere in this document. However, the ISOR does not contemplate the effects of initial inventory losses – nor do the proposed rules assure inventory gains and related benefits over a reasonable time period. Additionally, in this case the aggregation of ownerships (with potentially different baselines, growth potential, different growth and yield goals, and disagreements related to these varying circumstances) complicates the assessment and verification process – where secluding the boundaries does not really solve, or remediate (sic)(remedy), these problems – including the CalFire concerns. The complexities and complications of aggregated ownerships under one plan is not remedied by this mapping fix.

Finally: the nproject review (ISOR and proposed Rule Language – Board of Forestry Certified Regulatory Program (CEQA project review responsibility): there is absolutely no analysis or discussion, including Project Alternatives (discussion of full range of project alternatives that fit within the framework provided by the statute – where provisions for assurance of the outcomes called for in AB 904 can be realized), of how the proposed rules will (or will not) attain the desired benefits sought in AB 904 – including some level of confidence related to the probability of attaining (or making progress towards attainment) these required (as the basis and intent of the statute) benefits. Nor is there dis-

cussion of any adverse effects related to the lack of meeting the standards and benefits called for in the statute. As noted in the above comments – attainment of these benefits and the measurement and validation of growth and yield (forest management targets – with increased inventory over all time periods) is questioned. Additionally, the framework that would monitor and validate this process is questioned. However, these issues are not addressed under the Boards CEQA responsibility for this project.

The above comments are made in an effort to: 1) point out shortcomings and failures of the proposed rules so that they may be corrected and that a final product – a long term management plan for “A” conservation minded landowner can be accomplished that will provide the benefits mandated in AB 904, 2) to notice and preserve legal arguments and standing in the case that the Board of Forestry fails to bring the Working Forest Management Plan into compliance with the intent of the legislation, AB 904 and other California Statute. The Board must follow the law.

This is an opportunity to fix this project and make it work. Please do so.

Sincerely,

Alan Levine for Coast Action Group

## **APPENDIX #1 – Forest Lands in California – Statistics – from US Forest Service**

33 million acres of forest(ed) lands in California

Federal ownership is 19 million acres = 57%

State and local agencies (including land trusts) own 3%

Privately owned forest lands are 13.3 million acres = 40%

Industrial private owners are 4.7 million acres = 14%

Remainder private owned forestlands are 9 million acres = 26%

Non-corporate private forestlands are 7.9 million acres

REITs and other investment devices are 344,000 acres

90+% of the non-corporate private ownerships are 500 acres or less

Four million acres are classified as very highly productive lands (capable of producing 165 cu ft of wood product growth per year.

Redwood forests are the highest producing forests (and are a large part of the Four million acres of highly productive forestlands in the State.

Approx. 80% of wood product produced in California comes from private lands

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