

Memorandum

To: Region Chiefs
Region Forest Practice Managers
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From: 
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Subject: AB 47 (Simitian) Chapter 816: Mapping Requirements, and Timber Harvesting Plans (THPs) tiered to Sustained Yield Plans (SYPs)

Legislative direction for development and review of Sustained Yield Plans (SYPs) is primarily established in Public Resources Code (PRC) §§ 4551 and 4551.3. The PRC § 4551 gives the State Board of Forestry and Fire Protection (Board) broad authority to adopt forest practice rules (Rules) to assure the continuous growing and harvesting of trees and to protect other resource values. The PRC § 4551.3(a) provides for a 10-year effective period upon a determination that a SYP is in compliance with the rules of the Board. The plan shall remain in effect for the 10-year period unless the Department determines that implementation of the plan is not in conformance with the original SYP, including the rules which were in effect at the time the sustained yield plan was approved (ref. PRC § 4551.3(c)). In developing specific rules applicable to SYPs, it is clear that it was the Board's intent to establish a demonstration of sustainability of harvest for an ownership pursuant to 14 CCR § 913.11 [933.11, 953.11](b). It is also clear in 14 CCR §§ 1091.5(b) and 1091.6(d) that the Board intended the analysis contained in the SYP to address cumulative impacts to watersheds, fish, and wildlife resources.

Two questions have arisen recently regarding (1) the applicability of new Board rules to Timber Harvesting Plans (THPs) tiered to a SYP and, (2) the applicability of mapping requirements of the recently enacted *Simitian bill*, AB 47 (Ref. PRC § 4551.9) to THPs tiered to a SYP. These questions are answered below as follows:

1) The applicability of new Board rules to THPs tiered to a sustained yield plan.

The question of applicability of new Board Rules to an approved SYP, and THPs which are tiered to it, is framed against the backdrop of PRC § 4583. The PRC § 4583 requires a THP to be in conformance with the rules and standards which are in effect at the time the plan becomes effective. Furthermore, PRC § 4583 requires approved THPs to be in conformance with operational changes in Board rules which later come into effect.

Pursuant to PRC § 4551, the Board adopted Rules specific to SYPs. The SYP regulations deal with both process and content, including requirements that a SYP identify and mitigate potential significant adverse effects and cumulative impacts (ref. 14 CCR § 1091.8). Also, the Board Rules allow for THPs to be tiered to an approved SYP. Pursuant to 14 CCR § 1091.2, to the extent that sustained timber production, watershed impacts, and fish and wildlife issues are addressed in the approved SYP, these issues shall be considered to be addressed in associated THPs.

Potential impacts are expected to be mitigated through application of Board Rules and site specific mitigations. If the SYP adequately addresses environmental issues that have bearing on how operations will be conducted under a tiered THP, the Department and plan submitter can assume the impact has been addressed and mitigated. Barring a change in conditions applicable to the area covered by the SYP or need to mitigate a potential impact not previously addressed in the SYP, the specific provisions of PRC § 4583 requiring application of subsequent operational rules of the Board for THPs tiered to the sustained yield plan do not apply. The caveat would be that this would apply for only 10 years during the effective period of the SYP in accordance with PRC § 4551.3(a).

Exceptions to this general determination and procedures for how to deal with these circumstances are found in both the Act and the Rules (ref. PRC § 4551.3(b) and 14 CCR §§ 1091.1(b), 1091.5(c), 1091.6(d), 1091.8, 1091.13, 1091.14).

2) The applicability of AB 47 mapping requirements to THPs tiered to an approved Sustained Yield Plan.

14 CCR § 1091.6(d) states that:

*“Where significant impacts are identified and feasible mitigation is not available, a THP relying upon a SYP shall address these remaining impacts. The SYP submitter shall utilize **any one or a***

combination of methods to assess adverse watershed impacts including but not limited to:

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

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

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

The Board, as charged under AB 47, did promulgate regulations and Technical Rule Addendum No. 2 was altered. If an individual has used other "combinations" approved by the director to address cumulative impacts (more specifically, past, present, and probable future project disclosure information), the evaluation of cumulative impacts per Technical Rule Addendum No. 2 may not be necessary. However, it is worth noting that a SYP may not, in all cases, address biological concerns pursuant to 14 CCR § 1091.5 or watershed impacts pursuant to 14 CCR § 1091.6. If this is the case, the mapping requirement may be required per AB 47. Thus, the question as to whether or not the informational mapping requirements of AB 47 apply depends on how the analysis contained in the SYP deals with cumulative impacts.

As a result of the various "Accords" and the "Big Green" initiative, the Board worked on a number of regulatory changes between 1992-1994 regarding silviculture and planning for sustained yield. Regulations adopted in 1994 regarding SYPs contained all the currently existing provisions with one exception. At the time the Board adopted the rules related to SYPs, authority within the PRC only existed for a SYP to be effective for a three-year period, with two 1-year extensions. Through the Department, the Board requested that Assembly Member Olberg propose legislation that would allow for a longer term SYP and expressly recognize the Board's existing regulations. The legislature did change the PRC in 1995 and extended the effective length of a SYP to ten years.

At the time the law was changed affecting the length of a SYP, the legislature recognized existing regulations that included these provisions:

Pursuant to 14 CCR § 1091.1:

"It is the intent of this Article that the requirements for informational or analytical support for a SYP shall be guided by the principles of practicality and reasonableness...."

"However, it is the intent of this Article that all potential adverse environmental impacts resulting from proposed harvesting be described, discussed and analyzed before such operations are allowed. Should such analysis not be included in the SYP, it must be contained in those THPs which rely on the SYP, including any impact discovered after the SYP is approved."

Pursuant to 14 CCR § 1091.2 - Relation to THPs:

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

The legislature, in approving AB 1937, was aware of these provisions. The Senate analysis, just prior to passage, states:

*"The BOF adopted new silvicultural rules which became operative May 1, 1994. These new rules authorize a landowner to prepare a "Sustained Yield Plan" (SYP) which addresses issues of sustained timber production, **watershed impacts, and fish and wildlife (CCR § 1091.2)**. The rules also state that the sustained yield for a timber ownership shall be determined by the landowner. The SYPs are effective for a period of 3 years, with up to two 1-year extensions. To date, no sustained yield plan has been approved. **To the extent that these issues are addressed in an approved SYP, these issues do not need to be addressed in individual THP's.**" (emphasis added)*

This is an express recognition of the regulations and offers the legislative intent. AB 47 was intended to provide the Department with mapping information to assist in disclosure and evaluation of the combination of harvesting activities by a landowner for the purpose of assisting with an evaluation of potential cumulative effects. Likewise, SYPs require disclosure and mapping pursuant to 14 CCR §§ 1091.5 and 1091.6 to provide the Department with information necessary to evaluate potential cumulative effect. The sustained yield rules also provide the submitter, under 14 CCR § 1091.6(d), a range of options with which to evaluate cumulative watershed effects.

Both AB 47 and existing Board rules for SYP disclosure requirements are informational in nature. The Department, in approving a SYP, has made a

determination that the plan is in conformance with Board rules and that impacts have been disclosed and mitigated. This includes a necessary determination that cumulative impacts have been addressed. Given that the cumulative impacts have been addressed in the sustained yield plans, the informational requirements of AB 47 related to mapping requirements for THPs tiered to an approved SYP would not be applicable as long as the THP demonstrates consistency with the SYP pursuant to 14 CCR § 1091.14.