

# Memorandum

**To:** Sacramento and Region Forest Practice Managers and Unit Foresters **Date:** August 6, 2009

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**Subject:** Environmental Review of Plans, Reports, and Permits Regarding Potential Adverse Impacts to Botanical Resources from Timber Operations

An important part of the California Department of Forestry and Fire Protection's (CAL FIRE) Lead Agency role in the environmental review and approval of timber harvesting operations<sup>1</sup> is the consideration of potential significant adverse impacts to botanical resources. The Department of Fish and Game (DFG) provides comments to CAL FIRE in its role as a Review Team Member or as a Responsible Agency regarding "special plants"<sup>2</sup>, including formally listed rare, threatened or endangered species<sup>3</sup> and non-listed species which meet the criteria of California Environmental Quality Act (CEQA) guidelines 14 CCR § 15380(d)<sup>4</sup>. The guidance below and attached flowchart is directed toward review team staff and forest practice inspectors in their consideration of potential impacts to botanical resources arising from timber operations.

## REVIEW TEAM CONSIDERATIONS FOR BOTANICAL RESOURCES

- Registered Professional Foresters (RPFs) are encouraged to follow the scoping disclosure and mitigation guidance described in the 1999 memo entitled: *CDF Guidelines for Species Surveys, Avoidance of Significant Impacts and Identified Mitigations*. RPFs need to conduct adequate scoping prior to plan submittal and provide sufficient disclosure of the presence of individuals or habitat of state or federally listed plants or California Native Plant Society listed species in categories 1a, 1b, or 2 that might be significantly impacted by the proposed operations.
- CAL FIRE will evaluate the sufficiency of information and the proposed protection measures specified in the plan. As necessary, CAL FIRE will require the RPF to provide available site specific information related to the species abundance, distribution, reproductive cycle, quality and quantity of habitat, and present/historic range, including any site specific observations and data collected by the landowner that may not be available to the review team.

- If CAL FIRE records, review team agency reports or public letters raise a fair argument supported by substantial evidence<sup>5</sup> that a significant adverse impact or cumulative impact may occur from proposed timber operations, CAL FIRE will evaluate the issues raised in the fair argument and will ensure that those issues have been addressed, as appropriate based upon the listing status of the plant species in question.
- For those species which are listed as threatened, endangered (under the California Endangered Species Act (CESA) or the Endangered Species Act (ESA)) or rare under the Native Plant Protection Act (NPPA)<sup>6</sup>, CAL FIRE will limit its consideration of the species' population status to within California in its evaluation of significant adverse impacts and/or cumulative impacts. The frequency and distribution of a listed plant species beyond the California border will not be a factor when determining the significance of impacts or in the development of take avoidance strategies as consistent with ESA and CESA. Evaluation and application of ESA and CESA take prohibitions will only be applied to lands within the State<sup>7</sup>. Removal of plants listed as rare under NPPA may occur in accordance with Fish and Game Code §1913 where a significant effect will not occur.
- For those plant species which are not listed under ESA, CESA or NPPA their distribution throughout all or a significant portion of its range may be considered when determining whether or not potentially significant impacts will arise under CEQA Guidelines §15380 (d) (i.e. a plant is "considered" rare, threatened or endangered). Mitigation for unlisted plants shall be designed to prevent a significant reduction of the known distribution and range and should be directed at preventing extirpation of a plant population from a known location. This is particularly applicable in those instances where a plant is found to exist in very small numbers or in isolated groupings within California, but also known to exist outside of California.
- The requirement for botanical survey(s) should be based upon the lack of sufficient information and knowledge regarding the plant's location or habitat requirements, to allow the review team to make an informed decision on the potential for significant or cumulative impacts. If timber operations are planned in a manner which clearly avoids potential impacts (e.g. via altering the timing and location of operations), then it is likely that surveys will not be needed. The Plan record should include: specific information on plant biology and habitat requirements (soils, aspect, elevation, moisture, micro-climate, shade tolerance, sensitivity to site disturbance), the results of previous plant surveys, pertinent bibliographic citations, and descriptions of all individuals, organizations and plant records used in Plan preparation.

- CAL FIRE shall review all requests by DFG for surveys for the purpose of determining the presence or absence of sensitive botanical resources. CAL FIRE, as lead agency, may conclude that surveys are unnecessary to avoid/mitigate significant adverse impacts. In lieu of surveys, CAL FIRE may require other measures that ensure avoidance, subject to constraints of plant phenology including, but not limited to: (1) on-site training for the Licensed Timber Operator (LTO) and inclusion of photographs and plant habitat description(s) in the approved Plan; (2) "walk-through survey(s)" by the RPF or qualified botanist prior to commencement of operations; (3) project specific mitigation to avoid unnecessary damage if the plant is discovered in the area during timber operations; and (4) effectiveness monitoring.
- In making a decision to approve or disapprove timber operations CAL FIRE should examine the whole record (e.g. Timber Harvest Plan (THP) and supporting literature, agency reports, and public comment) in determining the sufficiency of disclosure and the effectiveness of the proposed protection measures to avoid significant impacts or take to comply with CEQA, NPPA, CESA and ESA.
- Where a THP implements, in part, a project approved by another lead agency (typically conversions to alternate or non-timber growing use), the THP should reference and rely upon the mitigation measures identified for reducing impacts to botanical resources found in the CEQA document adopted or certified by the lead agency (CCR §15096 (f)). If the CEQA document does not contain mitigations for botanical resources, or the mitigations are not sufficient in reducing impacts to a level of less than significant, CAL FIRE should: 1) request the submitter to provide additional information and require mitigation, as above (CCR §15096 (g)(2)); or, 2) where mitigations and/or avoidance measures required in the THP would result in changes to the project approved by the lead agency, request that the lead agency prepare a subsequent or supplemental CEQA document that addresses impacts that are new or not recognized, or mitigations that were found to be infeasible at the time of the lead agency's approval of the project (CCR §§ 15162 and 15163).
- Where the Director has certified a Program Timberland Environmental Impact Report (PTEIR) in conformance with CCR §1092.02, all Program Timber Harvesting Plan(s) (PTHP(s)) shall rely upon the measures found in the PTEIR for protecting botanical resources as referenced in the checklist that accompanies each PTHP (CCR §1092.01(c)). DFG shall review PTHPs in accordance with CCR §1092.18 and ensure its consistency with the PTEIR's provisions to mitigated impacts to botanical resources. Where the PTHP is found by the Director to be within the scope of the analysis in the certified PTEIR, the PTHP shall be approved. Where the PTHP is outside the scope of analysis in

- the PTEIR for protection of botanical resources the submitter may alternatively rely upon the guidance in CCR §1092.01(d).
- In addition to the CDF Guidelines for species surveys, RPFs are also encouraged to be familiar with the following information sources:

California Department of Fish and Game, Natural Diversity Database. July 2009. Special Vascular Plants, Bryophytes, and Lichens List. Quarterly publication. 71 pp.

California Department of Fish and Game. 2005. Guidelines for conservation of sensitive native plant resources within the timber harvest review process and during timber harvest operations.

[http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/THP\\_BotanicalGuidelines\\_July2005.pdf](http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/THP_BotanicalGuidelines_July2005.pdf)

Attachment: "Evaluation Process for Botanical Resources" (8-6-2009 Flowchart)

Footnotes:

<sup>1</sup> CAL FIRE reviews and approves timber harvesting operations proposed in Timber Harvesting Plans (THPs), Nonindustrial Timber Management Plans (NTMPs), Program THPs (PTHPs) tiering to certified Program Timberland Environmental Impact Reports (PTEIRs) and Timberland Conversion Permit applications.

<sup>2</sup> "Special Plants" refers to all plant taxa inventoried by DFG's Natural Diversity Database (CNDDDB), regardless of their legal or protection status, including: federally or state listed rare, threatened or endangered species or candidates for listing; those that fall under CEQA § 15380 (d); California Native Plant Society listed species, 1a, 1b, 2 and some 3; populations threatened with extirpation in California but present elsewhere; and, plants associated with habitats that are declining in California at a significant rate (e.g. wetlands, riparian, vernal pools, old growth forests, desert aquatic systems, native grasslands, valley shrub land habitats, etc.).

<sup>3</sup> Scientific and common names for State-listed plants are listed in Title 14, § 670.2. A federal listing of endangered and threatened animal and plant species is provided in the Code of Federal Regulations (see 50 C.F.R. §§ 17.11–.12).

<sup>4</sup> CEQA Guidelines § 15380 (d) defines Endangered, Rare or Threatened Species to include "A species not included in any listing identified in subdivision (c) [state or federally listed] shall nevertheless be considered to be endangered, rare or threatened, if the species can be shown to meet the criteria in subdivision (b) [criteria for rare and endangered]. The Department must evaluate potential significant impacts to plants meeting § 15380 (d) criteria.

<sup>5</sup> "Substantial evidence" shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts (CEQA Guidelines § 15184 (b)).

<sup>6</sup> In 1984 the Legislature uplisted all plants identified as endangered under the Native Plant Protection Act (NPPA) (Fish and Game Code §§1900 – 1913) to endangered under the CESA. Only those plants listed as "rare" under NPPA are still subject to those code sections.

<sup>7</sup> Under the provisions of the ESA, plants uncommon in one state but common in other states are not eligible for federal listing consideration. Until 1979, a similar policy was followed in California; however, after the passage of the Native Plant Protection Act, plants were considered for protection without regard to their distribution outside the State.

# Evaluation Process for Botanical Resources

Thursday, August 06, 2009

