

Bunch Creek TPZ Rezone

PREAT20060521

Correspondence Received Since

June 2008 BOS Hearing



DEPARTMENT OF FORESTRY AND FIRE PROTECTION

Nevada-Yuba-Placer Unit
 13760 Lincoln Way
 Auburn, CA 95603
 530-889-0111
 Website: www.fire.ca.gov



March 8, 2010

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 PLANNING DEPT.

Placer County Board of Supervisors
 175 Fulweiler Avenue
 Auburn, CA 95603

Dear Board of Supervisors:

I am writing in regard to the Bunch Creek Rezone Mitigated Negative Declaration. Battalion Chief Chris Paulus submitted a letter on 1/30/10 to Crystal Jacobsen on this topic. My letter is to present the Department of Forestry and Fire Protection's (CAL FIRE's) position on this project.

Chief Paulus correctly points out that the project can be mitigated to provide advantageous fire control features. However, that should not be interpreted as a project endorsement. CAL FIRE values timberland and vegetative cover for:

- a. Beneficial water production;
- b. Wood products;
- c. Livestock forage and wildlife habitat;
- d. Recreation and aesthetics; and
- e. Soil erosion control and flood prevention;

CAL FIRE has concerns with structural development in State Responsibility Area for fire protection. Policy 0342.5.3 finds that structures:

- a. Severely complicates and handicaps the ability of a fire protection agency to control the spread of wildfires, while at the same time trying to protect values of exposed life and property;
- b. Substantially restricts the ability of fire protection agencies to use certain techniques such as prescribed burning to reduce and control the large volume of flammable vegetation intermingled with the property values;
- c. Increases the State's expenditure of public funds for fighting wildfires because of the greater number of fire starts and the requirement for more fire protection resources and fire prevention inspections;
- d. Results in more state involvement in structural fire protection;

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- e. Can result in damage to watersheds from grading of residential and industrial sites and road building, as well as from increased fire incidence;
- f. Frequently includes a citizenry who does not appreciate or understand the risks from wildfires to themselves and to their property. This lack of awareness in wildland and suburban communities can drastically restrict the ability of fire protection agencies to implement necessary programs risk and hazard reduction;
- g. Historically, has resulted in the loss of thousands of homes located in and adjacent to these areas by fires originating in the wildlands and spreading into inhabited areas and from fire which originated in urbanized areas and spread into the adjacent wildlands;
- h. Generally brings an increase in locally supported fire protection resources to protect life and property.

In light of these findings, cities and counties of California are urged to carefully consider the placement of any developments and individual structures in wildlands designated as having a high fire hazard severity on maps prepared by the various counties as part of the safety element of their general plans. Clustered development which reserves substantial open space to be managed through fire environment modification is preferred to dispersed development.

It is important to maintain timber growing land in California as a permanent source of current and future timber supply. It is in the public interest to generally oppose diversion to uses which preclude timber growing and harvesting which have been classified as timberland preserve zone (TPZ).

My staff is ready to advise and support any landowner that wishes to participate in any of our programs that improve wild land resources and enhance fire defense improvements.

Sincerely,



BRAD HARRIS
Unit Chief

cc: Crystal Jacobsen



DEPARTMENT OF FORESTRY AND FIRE PROTECTION

135 Ridgway Avenue
 Santa Rosa, California 95401
 (707) 576-2275
 www.fire.ca.gov



DATE: 1/30/10

TO: Crystal Jacobsen
 Placer county Planning Department
 3091 County Center Drive
 Auburn, CA 95603

RE: Bunch Creek TPZ Rezone

Dear Ms. Jacobsen,

I am the Cal Fire Battalion Chief for the Colfax area in which the Bunch Creek TPZ Rezone proposal is located. Cal Fire Unit Forester, Matthew Reischman, for the Nevada-Yuba-Placer Unit, has reviewed the Mitigated Negative Declaration (MND) for this project and has sent correspondence to you. In his letters he has stated he has no further comments or concerns regarding the approval of this project. Additionally, he has further recommended that I work with Fred Basquin on any specific fuel break or fire control issues I may have in dealing with this project. It is within these guidelines I am submitting this document to you for your consideration.

The Bunch Creek TPZ Rezone project has within its boundaries the Gillis Hill Ridge. This ridge is approximately five miles in length and is the number one ridge of strategic importance for protecting the community of Colfax and the surrounding area, Interstate-80 and the Union Pacific Rail Road lines along with natural and cultural resources. This ridge has been identified as the top priority fuel break project for the Placer Sierra Fire Safe Council Community Wildfire Protection Plan (CWPP). Of principle concern to me is access and fuel modification and reduction along this ridge with adequate water to suppress fires. A large portion of this ridge line, along with approximately two thirds of the proposed project site was burned over during the Ponderosa Fire of 2001. This fire resulted in high mortality of both conifer and oak woodlands. Subsequently, large areas have been converted to brush due to this fire and no reforestation was attempted after the fire and subsequent salvage logging operations. The accumulated forest fuels from the high tree mortality rate along with the fact that the brush was allowed to generate after the fire passage has created an increase in fuel loading. A subsequent fire on the same

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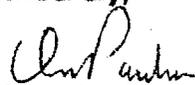
piece of ground will have further devastating affects and will likely result in the mortality of what conifers and oaks did survive.

The project as proposed will provide several advantages to possible fire control and fuel modification and reduction in protecting the public, infrastructure and natural as well as cultural resources. Currently, the road infrastructure to access the ridge are deteriorating due to erosion and brush encroachment and without maintenance will become impassable within a few years. This project will allow for the roads to be maintained ensuring access by fire fighting equipment. The roads themselves will have fuel reduction occurring along them which can serve as alternative fire control lines. Water storage for fire fighting will be part of the mitigation efforts providing water sources where there are currently none. The proposed project parcels of approximately 80 acres per owner increases the likelihood of the property owners of being capable stewards of a smaller parcel of ground for them to manage over what is currently in place or proposed.

I understand there is opposition to this project by both individuals and organizations as it pertains to environmental concerns as further development of what is considered "pristine" wildlands. Unfortunately, the Ponderosa Fire not only left the scars of a "hot" wildfire but also the scars of fire control efforts in the form of control lines. The ground is no longer pristine, but with reforestation and proper fuels management and good stewardship it might be returned to represent what it once was. It is my hope in working with both the developers and the concerned environmentalists we can avoid another damaging fire and reduce the impacts of aggressive fire control that is needed to protect all the resources. Unfortunately, the likelihood of another fire occurring at this same location is substantial given the heavy recreational use of this area and the ease of public access via the Yankee Jims Road to the American River and Shirttail Creek confluence.

If I can be of further assistance please do not hesitate to contact me.

Sincerely,


Chris Paulus
Battalion Chief
Colfax
Nevada-Yuba-Placer Unit

Cc: Matthew Reischman
Gary Brittner

Crystal Jacobsen

From: Crystal Jacobsen
Sent: Monday, March 22, 2010 3:27 PM
To: Loren Clark
Subject: FW: TPZ questions

FYI

From: Robertson, Allen [mailto:Allen.Robertson@fire.ca.gov]
Sent: Monday, March 22, 2010 3:21 PM
To: Crystal Jacobsen
Cc: Reischman, Matthew
Subject: RE: TPZ questions

Crystal,

Happy to help. I have added Matthew Reischman to this email as he is our local CAL FIRE representative.

Some of the pro-development types have argued that they get plenty of logs from 1/4 acre lots and therefore dividing TPZ and timberland parcels into smaller and smaller units does not deplete the resource. However, even without an economic analysis, I think we can safely say that the smaller the parcel the less focused the landowner will be on maximizing timber production, the fewer his/her resources to manage and the less their expertise. The primary purpose of the joint timber management plan found in GC 51119.5 was to maintain the management of timber as a priority where parcels of less than 160 acres were created. And, PRC 4621.2 requires the Board/Department to consider the potential impacts of TPZ rezoning on other TPZ lands up to 1 mile away. Clearly, managing large blocks of timberland collectively was seen as superior to individual, small parcel management.

I can't put my finger on what size parcel becomes economically unviable for timber management; it would depend on the timberland owner's objectives. But clearly, as the parcel size gets smaller timber management becomes less viable. Many of the larger timberland owners in the state would look at a 160 acre parcel, surrounded with residential/non-timber uses, as being unmanageable and better suited for development. The smaller parcel sizes introduce non-timber related uses and provide more opportunities for conflicts over timber harvesting.

CAL FIRE encourages the County to maintain the largest parcels of TPZ possible and to minimize the fragmentation of TPZ and timberlands. Any proposal to rezone TPZ - either immediate or roll out - should be evaluated carefully to identify potential impacts associated with increased fire starts, fire and fuels management hindrances, depletion in wildlife habitat and water quality and declining GHG sequestration.

Allen S. Robertson

Allen S. Robertson, RPF #2394
Deputy Chief for Environmental Protection
California Department of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460
Phone (916) 657-0300
Fax (916) 653-8957
allen.robertson@fire.ca.gov

From: Crystal Jacobsen [mailto:CJacobse@placer.ca.gov]

Sent: Monday, March 22, 2010 1:17 PM

To: Robertson, Allen

Subject: TPZ questions

Hi Allen,

I work for Placer County Planning and I've spoken to you before regarding TPZ lands in Placer County. I seem to be the planner that handles TPZ projects that come our way and I have recently been tasked by our Board to evaluate a couple of issues with regard to TPZ areas and lot sizes. That said, I was hoping that you might be able to provide me with some general information or perspective on the following:

1. Are there potential effects of diminishing economic viability when a large sized TPZ area (~1,200 acres with multiple owners) is decreased in size due to one owner's rezoning of a portion of the TPZ area (~600 acres)? Of the 1,200 TPZ area, there is one active timber harvest operation which would remain, so specifically our Board is wanting to better understand whether or not the economic viability of the remaining TPZ areas (that actively harvest timber) would be lessened.
2. Are there economic viability or land management consequences to TPZ lands if the County's minimum TPZ lot size standard was reduced from 160 acres to 80 acres?

I'm not sure you are the right person to ask these questions, but I thought I could start with you. If you know of someone else who could help to provide some insight on these issues I would greatly appreciate it!

Thank you,
Crystal Jacobsen

Crystal Jacobsen
Supervising Planner | Advanced Planning
Placer County Planning Department
3091 County Center Drive Ste. 140 | Auburn, CA 95603
530.745.3000 (main) | 530.745.3085 (direct)
530.745.3080 (fax) | cjacobse@placer.ca.gov

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County of Placer
WEIMAR/APPLEGATE/COLFAX
MUNICIPAL ADVISORY COUNCIL

175 Fulweiler Avenue

Auburn, CA 95603

County Contact: Administrative Aide (530) 889-4010



May 5, 2010

Placer County Board of Supervisors
175 Fulweiler Avenue
Auburn, CA 95603

Subject: WAC MAC Recommendation on "Bunch Creek Rezone"

Dear Supervisors,

The Weimar-Applegate-Colfax MAC recommended approval of the so-called "Bunch Creek Rezone" at the April 21, 2010 meeting, following extensive presentations by the Planning Division staff, the project proponent, and various parties both in favor of and opposed to the action.

The vote was 3-2 to recommend approval, with one member recused due to a potential conflict of interest.

Thank you for considering the WAC MAC's recommendation in making your decision on this matter.

Yours truly,

David Wiltsee, Chairman (2010)

Kathi Heckert

From: Jim Ricker [jvricker@colfaxnet.com]
Sent: Thursday, May 06, 2010 11:30 AM
To: Kathi Heckert
Subject: Bunch Creek rezone1.doc
Attachments: Bunch Creek rezone11.doc

Hi Kathi,

Thank you for the information regarding comments to the Planning Commission. I will not be able to compose a new letter in time to get it in the Commissioner's staff report package. However, I have attached the comments by North Fork American River Alliance, sent to Peg Rein, of March 12, 2010. Please include this letter in the commissioner's package.

Sincerely,
Jim Ricker

~~~~~  
Jim Ricker

President, North Fork American River Alliance P.O. Box 536 Alta, CA 95701  
530-389-8344

~~~~~



NORTH FORK
AMERICAN
RIVER
ALLIANCE
(NFARA)

P.O. Box 292
Gold Run, CA
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info@nfara.org
www.nfara.org

*To preserve the
wild, scenic and
cultural heritage
within the
watershed of the
North Fork
American River*

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March 12, 2010

County of Placer
Community Development Resources Agency
3091 County Center Drive, Suite 190
Auburn, California 95603
Attention: Peg Rein

Re: Bunch Creek Rezone (PREA T200605621)

Dear Ms. Rein,

The North Fork American River Alliance (NFARA) wishes to comment on the proposed Mitigated Negative Declaration for the Bunch Creek Rezone noted above. We will appreciate your including these comments in the public record.

It is our understanding that the Placer County Planning Commission rejected a request in April, 2008 to rezone the subject 597 acres from TPZ status to RF-BX-80, a zoning that would potentially allow the development of seven home sites within the North Fork drainage and the current proposal does not significantly differ from the one previously denied. We are opposed to future residential development within the steep slopes of the American River Canyon and most particularly on lands that have been historically zoned for timber production.

Please consider our rationale for opposing the rezone.

Topography and Soils

The majority of the property is composed of Mariposa complex soils on 50 to 70 percent slopes. The natural vegetation is conifer-hardwood forest and provides habitat for black bear, black-tailed deer, band-tailed pigeon and wild turkey. Any soil disturbance caused by road construction or grading can be very damaging because of the very high erosion hazard associated with these soils. These facts alone preclude the acceptance of a Mitigated Negative Declaration for the project and significantly more analysis is warranted. Under CEQA the Planning Department must prepare an EIR when there is substantial evidence that a proposed project may have a significant impact on the environment. The significant adverse impacts of development on these soil types is described in detail in the U. S. Soil Conservation Service's study of the soils of western Placer County and these findings must be addressed in determining the viability of the project. This soil survey further points out that the steepness of slope and depth of bedrock are major limitations to be considered in planning home and road construction.

Biology

It is noted that the property has been partially burned, heavily logged and essentially mined of all its natural resources. The Mitigated Negative Declaration concludes that any restoration of the forest resources, including soil stability and wildlife habitat, is economically unfeasible. As noted above, the Soil Conservation Service has stated that the area has adequate soils and is well suited for the production of Ponderosa pine. These soils are capable of producing over 400 board feet (Scribner scale) of merchantable timber per year on a fully stocked stand at 70 years of age. These parameters are well within the guidelines accepted in Sierra Nevada forest management and when the present owners purchased the property they knew full well that this land was designated for forest use. This TPZ land designation not only provides for the production of a forest crop but also promotes a diverse wildlife community. Historically, the lands of the North Fork drainage have maintained the much-needed contiguous habitat for the naturally occurring flora and fauna of the region and we oppose the removal of this resource from the Placer County land base. At a minimum, CEQA requires that the rezone application be accompanied by a plant and animal survey before concluding that there will be no impact on wildlife.

Recreation

The North Fork of the American River canyon at the location of this 597-acre parcel is part of the Auburn State Recreation Area, a 42,000 acre oasis in the heart of Placer County. Any attempt to despoil the scenic qualities of the canyon must be avoided and the potential of home sites on the canyon rim are not in keeping with the federal Wild And Scenic designation of the North Fork. In fact, the County General Plan specifically recognizes the importance of preserving the scenic qualities of the region while the Mitigated Negative Declaration (MND) proffers little evidence that the proposed project will be "fairly benign". Without doubt, the MND is an insufficient instrument in deciding the merits, or lack thereof, for the project.

Fire Protection

Fire is a naturally occurring event associated with the climatic conditions prevalent on the west slope of the Sierra Nevada. Within the past decade we have witnessed the destruction and homes and infrastructure resulting from unplanned, haphazard home site development in the wildland urban interface, the area where houses and wildlands meet.

Protection of lives, homes and infrastructure has been assumed by CalFire, a State agency responsible for fire suppression on all non federal lands outside of established city limits (State Responsibility Area, or SRA). Local fire districts have been overwhelmed by residential development in the wildland urban interface and it is our position that California taxpayers should not be held hostage to additional ranchette type development on the canyon rim of the North Fork. According to the California Legislative Analyst's Office (2005) CalFire's fire protection expenditures increased an average of 10% per year between 1994 and 2004 and much of that increased cost was due to increasing number of homes in wildland areas. According to CalFire statistics, 95% of fires occurring in the State Responsibility Area are human caused.

Following is an excerpt from the California Board of Forestry's policy assessment relating to residential development in the SRA:

Structural development in State Responsibility Areas:

- a. Severely complicates and handicaps the ability of a fire protection agency to control the spread of wildfires, while at the same time trying to protect values of exposed life and property;*
- b. Substantially restricts the ability of fire protection agencies to use certain techniques such as prescribed burning to reduce and control the large volume of flammable vegetation intermingled with the property values;*
- c. Increases the State's expenditure of public funds for fighting wildfires because of the greater number of fire starts and the requirement for more fire protection resources and fire prevention inspections;*
- d. Results in more state involvement in structural fire protection;*
- e. Can result in damage to watersheds from grading of residential and industrial sites and road building, as well as from increased fire incidence;*
- f. Frequently includes a citizenry who does not appreciate or understand the risks from wildfires to themselves and to their property. This lack of awareness in wildland and suburban communities can drastically restrict the ability of fire protection agencies to implement necessary programs risk and hazard reduction;*
- g. Historically, has resulted in the loss of thousands of homes located in and adjacent to these areas by fires originating in the wildlands and spreading into inhabited areas and from fire which originated in urbanized areas and spread into the adjacent wildlands;*
- h. Generally brings an increase in locally supported fire protection resources to protect life and property.*

When conditions are favorable for the spread of fire (high winds, low humidity) the myth of fuel breaks as suitable defense around individual residences is exposed. City streets or county roads did not contain the 2009 fire in North Auburn. The 2001 Gap fire at Emigrant Gap crossed four lanes of the Interstate 80 freeway. Therefore we do not accept the premise that even the currently required 100 clearance around residential buildings is adequate mitigation for the protection of the valuable watershed, biological and recreational resources placed at risk by the development of residences in the North Fork drainage.

It has come to our attention (though not confirmed) that CalFire supports the rezone on the premise that better road access relates to better fire protection. If this is the case we contend that this position does not square with the California Board of Forestry's policy position stated above. The MND does not address this conflict and that document must be rejected until a definitive study is prepared detailing how the valuable resources of the North Fork canyon will be protected.

The designated TPZ zoning does allow for the construction of a caretaker/manager residence on each created parcel; we contend that this is appropriate provided that there is, indeed, forestry related activities planned for the property. We believe that Placer County must insist on meaningful, enforceable provisions that require any residential construction be accompanied by forestry related activities, including, but not limited to, brush clearing and reforestation. Further, we believe that the viewshed of the North Fork Canyon should be protected from any contemplated residential construction.

We believe that Placer County will concur that there are significant environmental consequences to this application that must be addressed and mitigated to a less than significant level.

Thank you for your consideration of our request for denial of this application.

Respectfully,

Robert Suter
Resource chairman, North Fork American River Alliance
Registered Professional Forester No.479

Crystal Jacobsen

From: Michael Garabedian [mikeg@gvn.net]
Sent: Monday, March 01, 2010 4:34 PM
To: Crystal Jacobsen
Subject: Fwd: Board of Forestry Fire Protection Policies re Bunch Creek rezone

Begin forwarded message:

From: Michael Garabedian <mikeg@gvn.net>
Date: March 1, 2010 4:24:01 PM PST
To: cjacobsen@placer.ca.gov
Subject: Board of Forestry Fire Protection Policies re Bunch Creek rezone

From:

http://www.bof.fire.ca.gov/board_joint_policies/board_policies/

0342.5.3.D.

2. Structural development in State Responsibility Areas:
- a. Severely complicates and handicaps the ability of a fire protection agency to control the spread of wildfires, while at the same time trying to protect values of exposed life and property;
 - b. Substantially restricts the ability of fire protection agencies to use certain techniques such as prescribed burning to reduce and control the large volume of flammable vegetation intermingled with the property values;
 - c. Increases the State's expenditure of public funds for fighting wildfires because of the greater number of fire starts and the requirement for more fire protection resources and fire prevention inspections;
 - d. Results in more state involvement in structural fire protection;
 - e. Can result in damage to watersheds from grading of residential and industrial sites and road building, as well as from increased fire incidence;
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Following is a list of all pages removed due to poor print quality:

- Exhibit B
- Exhibit E (last 5 pages)
- Exhibit J (7 various pages)

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Larry Risser
PO Box 11
Colfax, CA 95713
APN 071-330-005-000
APN 071-330-012-00

Supervisor Jennifer Montgomery
Placer County Board of Supervisors
175 Fulweiler Ave.
Auburn, CA 95603

Supervisor Montgomery,

As a landowner in the immediate area, I would like to express my support for the Bunch Creek rezone request from Timber Production Zone (TPZ) to Forest Residential. There are many reasons for permitting the rezone, but the most important is fire safety. As you know, the property was devastated by the 2001 Ponderosa Fire. Since that time, the land has been overtaken by brush and invasive species. It has become an extreme fire hazard. Any fire in the area would tear through the Bunch Creek property quickly, threatening my land and home as well as many others in the Colfax-Weimar area. What took days to burn in 2001 would take only hours to burn in its current state.

In its current state, the property is not being managed as forestland or managed in any practical way. This has allowed the brush and invasive species to grow uncontrolled, with little new growth of trees or native species. It's nice to think of this as forest land, but only a small portion of the 600 acres is actually forested. Without homeowners with a vested interest in preserving the property and preventing fire, I'm afraid it will lie idle until the next fire, which I know will be considerably worse and faster-moving than the one in 2001.

My understanding of the legislation establishing the TPZ zone is that it is a financially-motivated provision to allow forestland owners to continue growing timber without paying the high cost of property taxes on land in California. As such, rezone to TPZ is by request of a landowner and cannot be imposed by the County. The landowner must also meet minimum tree stocking standards to qualify for TPZ zoning. If the Bunch Creek partners requested rezoning to TPZ today, the Board would be forced to deny their request as the land does not come close to minimum stocking standards.

As a tax-sheltering zone that is requested by a landowner, it should also be permissible for the landowner to request removal from the zone when timber production is no longer viable. It would behoove the County and taxpayers to grant such a request to remove the tax shelter it provides when land is no longer in production. Such is the case for this property.

I do not believe allowing 7 homes on 80-acre lots would be a burden on the land or impact the area. In fact, I believe landowners with a vested interest in protecting their property would add enhanced fire protection. Any impacts this few homes would have can be easily mitigated by situating them in areas that will not impact the landscape or viewshed. A look at surrounding properties show parcel sizes of 10, 4 and smaller acreage. Eighty-acre lots are in keeping with the County General Plan and surrounding land uses, including property directly contiguous.

We currently own 120 acres zoned TPZ directly adjacent to the Bunch Creek property. We are actively managing our land, clearing brush and planting trees, but I hope that if timber production is not viable we will also be able to request a rezone. As it is, we may never see the fruits of our labor but as 23-year residents of Placer County we feel it our responsibility to rebuild the land as best we can.

We spend many hours cutting brush, creating shaded fuel brakes and defensible space, planting trees and maintaining the road. Our home was surrounded by the Ponderosa Fire and we were evacuated for 4 days during the fire. Because of our work to create defensible space, the firefighters were able to save our home and found our property safe enough to set up their base camp. It will only be a matter of time before some careless person down at the American River starts another fire similar to Ponderosa and another fire rages through the area. I would much rather have seven property owners working to make the area fire safe.

I believe consideration must be given to safety above all else. In this case, fire safety would be best served by allowing the rezone. I hope you and the Board will consider supporting this rezone and land division. I believe with sufficient mitigations to reduce environmental impacts can be put in place. The greatest threat to the environment and quality of life of the surrounding area is that this land continues to be unmanaged and become an extreme fire hazard.

Sincerely,



Larry Risser

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**PLACER COUNTY DEPARTMENT OF
AGRICULTURE
WEIGHTS AND MEASURES**

11477 E Avenue, Auburn, CA 95603-2799 (530) 889-7372 FAX (530) 823-1698

CHRISTINE E. TURNER
Agricultural Commissioner/
Sealer of Weights and Measures

April 20, 2010

TO: Placer County Board of Supervisors

FROM: Christine E. Turner, Agricultural Commissioner/Sealer

**SUBJECT: Proposed Bunch Creek Rezone of Timberland Production Zone
(PREAT20060521)**

During the Agricultural Commission's April 12, 2010 meeting, the Commission voted unanimously, 7 – 0 (two members, P. Beard and D. Macon, abstained from the vote), to recommend the Board of Supervisors not approve the proposed Bunch Creek Timberland Production Rezoning project (PREAT20060521).

Although the applicants are not requesting an immediate cancellation of their current TPZ designation, rezoning the land to Residential Forest combining an 80-acre minimum would have the same net result at the end of 10 years. The land itself is the critical resource and suitable for continued timber production if managed appropriately. The planned production of trees is defined by the California Food and Agricultural Code as a branch of the agricultural industry of the state. Therefore, consistent with the Placer County General Plan, Section 7, AGRICULTURAL AND FORESTRY RESOURCES, Goal 7.A: "To provide for the long-term conservation and use of agriculturally-designated lands" the Agricultural Commission does not support the modified Bunch Creek Timberland Production Rezoning project.

cc: Placer County Planning Department
Placer County Agricultural Commission

"If you eat food and wear clothes, you ARE involved in agriculture." --CA Women for Agriculture

SHUTE, MIHALY & WEINBERGER LLP
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(415) 552-7272 EXT. 252

March 12, 2010

Via Federal Express and Electronic Mail

Board of Supervisors
Placer County
175 Fulweiler Ave.
Auburn, CA 95603

Re: Rezone -- Bunch Creek Timberland Production Zone Property
(PREAT 20060521)

Dear Chairman Uhler and Honorable Supervisors:

On behalf of the Sierra Club (Placer Group of the Mother Lode Chapter) and the Friends of the North Fork, we submit these comments with regard to your consideration of the removal, either by an immediate rezoning or a 10-year roll out, of the Bunch Creek property from the Timberland Production Zone ("TPZ") in preparation for future development.

I. INTRODUCTION: THE PROPOSED REZONE CONTRAVENES PUBLIC POLICY FAVORING PRESERVATION OF THE STATE'S TIMBERLANDS, AND WOULD RUN AFOUL OF APPLICABLE STATE LAW.

We have reviewed the relevant documents for this project, including, but not limited to, the December 2009 Modified Initial Study/Mitigated Negative Declaration ("Modified MND") and the Staff Report for the March 16, 2010 meeting ("Staff Report"). The applicant is requesting either an immediate rezone or a 10-year "roll out" from the current TPZ to a Residential Forest zone designation, with 80-acre minimum

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parcels. The Staff Report recommends that the Board approve a third option, which is a 10-year roll out from TPZ to a Residential Forest designation, with a 160-acre minimum lot size. However, we conclude that none of these options is advisable from a public policy perspective, and none would comply with State law at this time. We therefore urge the County to deny the requested rezone and retain the Bunch Creek property in TPZ.

As the Planning Commission and the Placer County Agricultural Commission have made clear through their recommendations, the immediate rezoning of the property would be inconsistent with the provisions of the Timberland Productivity Act, Government Code section 51100 *et seq.*, and Forest Practice Act, Public Resources Code section 4511 *et seq.* As set forth in further detail below, neither the Placer County Board of Supervisors ("Board") nor the California Department of Forestry and Fire Protection ("Cal Fire") can make the findings required under these Acts to support an immediate rezone of the property. Therefore, the Board should summarily reject this request.

The applicant's request for a 10-year roll out is also wholly unwarranted. As a preliminary matter, such a rezone is, on its face, inconsistent with the Placer County General Plan, which includes strong mandates to protect timber resources and to avoid conflicts between forestry and other uses. If the County were to approve this rezone, which threatens the County's timber economy by reducing productive forest lands and allowing incompatible residential development, it must require an amendment to the General Plan. While the applicant has sought to downplay the implications of this project – notably, the application includes very few details about where the development will be sited or how it will look – there is no question that the rezone would place new homes on remote forest lands that are rich in biological and scenic resources. Moreover, while threatening the County's vital timber industry, this development would also place new residents in an area prone to wildfires, endangering existing residents and increasing demands on the County's fire protection services. Indeed, any decision to approve this rezone ignores recent studies documenting the growing threat posed by locating development in the urban-wildland interface. The County should develop a Community Wildfire Protection Plan for this area before even considering a development that could line Gillis Hill with houses.

Furthermore, the Board may not approve any rezone of this property to Forest Residential, either by the 10-year roll out or as an immediate rezoning, unless and until the County prepares an environmental impact report ("EIR") in compliance with the California Environmental Quality Act, Public Resources Code sections 21000 *et seq.* ("CEQA"). As explained in more detail below, the County's Modified MND is wholly

insufficient because it fails to adequately analyze many of the potential environmental impacts of the rezoning, instead improperly deferring this analysis to a later date. Pursuant to CEQA, the County must prepare an EIR that thoroughly examines the significant environmental impacts of the development anticipated from the Bunch Creek rezone, and fully explores alternative courses of action, *before* any rezone can be approved.

Finally, the Board may not at this time amend its zoning ordinance to allow residences in TPZ areas, as such an amendment would similarly require compliance with CEQA and the State Planning and Zoning Law, including preparation of an EIR that thoroughly examines the environmental impacts of such increased development in forested areas, and an assessment of the zoning amendment's consistency with the County's General Plan.

II. THE PROPOSED REZONE DOES NOT MEET STATE LAW REQUIREMENTS FOR AN IMMEDIATE REMOVAL FROM TPZ.

TPZs are a zoning classification created pursuant to Timberland Productivity Act of 1976. Under that Act and the Forest Practice Act, both the Board and Cal Fire must make findings before an immediate rezoning out of TPZ may occur. Gov. Code § 51131; Pub. Res. Code § 4621.2. In order to grant the rezone tentative approval, the Board must make the following two findings:

- (a) The immediate rezoning is not inconsistent with the purposes of Article 13, section 3(j) of the California Constitution or the Timberland Productivity Act.
- (b) The immediate rezoning is in the public interest.

Gov. Code § 51133. The Board should not take these findings lightly. As the Court of Appeal cautioned in interpreting the Timberland Productivity Act, a landowner "who had taken advantage of the substantial benefits created by the state in order to achieve the sweeping purpose of forest practice reform" should not be allowed to easily "opt" out of the system. *Clinton v. County of Santa Cruz* (1981) 119 Cal. App. 3d 927, 932.

Further, before granting a Timberland Conversion Permit ("TCP"), which is a prerequisite to the County's final approval of the immediate rezone, Cal Fire must make the following findings:

- (1) The conversion would be in the public interest.
- (2) The conversion would not have a substantial and unmitigated adverse effect upon the continued timber-growing use or open-space use of other land zoned as timberland preserve and situated within one mile of the exterior boundary of the land upon which immediate rezoning is proposed.
- (3) The soils, slopes, and watershed conditions would be suitable for the uses proposed if the conversion were approved.
- (4) There is no proximate and suitable land which is not zoned as timberland production for the alternate use not permitted within a timberland production zone.

Pub. Res. Code § 4621.2. In making its findings and decision, Cal Fire is further constrained by the following mandate: "The uneconomic character of the existing use shall not be sufficient reason for the conditional approval of conversion. The uneconomic character of the existing use may be considered only if there is no other reasonable or comparable timber-growing use to which the land may be put." *Id.*

As set forth below, the findings required for an immediate rezone are not supportable for the Bunch Creek property.

A. An Immediate Rezone Would Be Inconsistent with the Purposes of the Timberland Productivity Act.

California Government Code section 51334 (a)(4) requires the Board, before tentatively approving an immediate rezone, to make written findings "that immediate rezoning is not inconsistent with the purposes of subdivision (j) of Section 3 of Article XIII of the California Constitution and of this chapter [of the Timberland Productivity Act]." Subdivision (j) authorizes the legislature to establish "an alternative system or systems of taxing or exempting forest trees or timber, including a taxation system not based on property valuation." Subdivision (j) further provides that any alternative taxation system for timberlands "shall encourage the continued use of timberlands for the production of trees for timber products, and shall provide for restricting the use of timberland to the production of timber products and compatible uses with provisions for taxation of timberland based on the restrictions." *See also Clinton*, 119 Cal. App. 3d at 934.

While the relevant constitutional provision focuses on providing for the continued use of productive timberlands, the legislative history of the TPZ legislation demonstrates that the purpose of the chapter also encompasses broader environmental and public interest concerns such as watershed protection, wildlife, and recreation. In *Clinton v. Santa Cruz*, the California Court of Appeal noted that the analysis of Assembly Bill 1258 published by the Senate Committee on Revenue and Taxation makes clear that the “State’s intent is to provide a system of taxing timber . . . designed to encourage forest resource management in promotion, generally, of [the] public’s need for timber and other forest products, together with [the] need for watershed protection, fisheries and wildlife, and recreational opportunities.” *Id.* at 934 n.6. Accordingly, any public agency finding that an immediate re-zone is consistent with the purposes of the Timberland Productivity Act must consider the broad array of environmental, wildlife, watershed, and recreational purposes of the Act.

As found by the Planning Commission and the Placer County Agricultural Commission, the Bunch Creek site still has the potential for forestry and timberland uses and therefore conversion of the property for other uses would be inconsistent with the Timberland Productivity Act’s fundamental purpose of encouraging the use of timberlands for producing timber. The applicant argues that the site has not been reforested since the 2001 Ponderosa fire, and therefore further timber operations are uneconomical and unlikely. However, as set forth in Public Resources Code section 4621.2, “The uneconomic character of the existing use shall not be sufficient reason for the conditional approval of conversion. The uneconomic character of the existing use may be considered only if there is no other reasonable or comparable timber-growing use to which the land may be put.” The Planning Commission found “that the land is still suitable for reasonable timber-growing uses.” Planning Commission Report, June 24, 2008, at p. 5. This conclusion was based on substantial evidence, including the fact that the northeastern portion of the property was not burned in the fire, the areas that were burned are beginning to reforest, and that the soils on the property and in the surrounding area are of a type that can support mixed forests of hardwoods and conifers. *See* 14 CCR § 1109.5. The fact that some effort would be required to rehabilitate the site is not sufficient to justify this finding.

Finally, taking this property immediately out of TPZ would contravene the broader environmental, wildlife, watershed, and recreational purposes of the Act. The Bunch Creek site is uniquely situated in the North Fork American River canyon. The property has elevations ranging up to 2631 feet, providing breathtaking views for miles around, including down to and up from the Chamberlain whitewater run of the North Fork American River. The northern end of the five-mile long Gillis Ridge and the parallel

river below it are within a half mile downstream from the beginning of the 38-mile long North Fork American River segment that is a California designated Wild and Scenic River (1972) and a Nationally designated Wild River (1978). The river passing Gillis Ridge is eligible for National Wild and Scenic River status. U.S. Department of Interior, American River Water Resources Investigation Technical Team's Inventory and Recommendations for Wild and Scenic River Eligibility and Preliminary Classification, January 7, 1993; <http://www.rivers.gov/wsr-american-north.html>; *see also* Foresthill Divide Community Plan at p. 4-2. This property has benefited from State protected tax status at least in part due to these scenic, environmental, watershed, and recreational values. An owner should not, then, be able to easily shed the burdens of this protected status and financially profit from these same values, as the current owners are attempting to do. *See* Exhibit 1 (recent Bunch Creek property listing for \$2.3 million dollars, touting "[i]ncredible, 360 degree world class views," the creek that "runs through" and the proximity to "Rollins Lake, American River, Bear River, [and] Stevens trail").

B. An Immediate Rezone Would Not Be In the Public Interest.

As stated above, before granting an immediate removal of the TPZ, both the Board and Cal Fire must make a finding that the rezoning and proposed new use are in the public interest. The following factors are relevant to the public interest determination:

- Whether the project would serve a public need or provide a public benefit;
- Whether the project would have an adverse impact on the environment;
- Whether the project would have an adverse impact on the State's long-term timber supply, including the cumulative impact from conversion of similar properties; and
- Whether land is available for the proposed new use outside the TPZ, or on TPZ land with lower-quality timber than the proposed parcel.

14 CCR § 1109.2.

In addition, in order for an immediate re-zone to be in the public interest, the Board must find that the timberland, recreational, and environmental objectives of the TPZ statute are "substantially outweighed" by some other public interest objective that would be served by the immediate rezone. *See Sierra Club*, 28 Cal.3d at 857 (holding that analogous "public interest" finding for Williamson Act cancellation can only be made if the "open space objectives" of the Williamson Act are "substantially outweighed by other public interest concerns").

Based on the foregoing factors, there is no legally defensible way for the Board to make a finding that an immediate rezone of the Bunch Creek property is in the public interest, much less that the public interest objective substantially outweighs the purposes of the Timberland Productivity Act. First, the proposed project for immediate rezoning of the property to Forest Residential with an 80-acre minimum lot size will not provide affordable housing or serve a critical housing need, or provide some other public benefit. Cf. *Friends of East Willits Valley v. County of Mendocino* (2002) 101 Cal. App. 4th 191, 205-06 (upholding County's finding that the need for low-income housing substantially outweighed the interest in keeping a ranch under the Williamson Act). Second, as explained in further detail below (Part III, *infra*), the proposed immediate rezone, which will involve significant development on a currently undeveloped site, will have numerous adverse environmental impacts, especially given the Bunch Creek site's unique water and viewshed characteristics. Thus, Cal Fire will not be able to make the related required finding for the TCP that "the soils, slopes, and watershed conditions would be suitable for the uses proposed if the conversion were approved." Pub. Res. Code § 4621.2(a)(3); see also 14 CCR § 1109.4.

Third, because, as discussed above, the site is still suitable for timberland production (particularly over the long-term), the proposed project will have an adverse impact on the State's long-term timber supply, especially when considering the cumulative impacts of other conversions in the County and the potential precedential effect that granting this immediate rezone would have on other similarly situated properties. See Part II.C, *infra*. Fourth, as found by the Planning Commission, "there are other suitable lands nearby which are also zoned for residential uses. The properties to the south and west are zoned Farm which allow for residential development. These surrounding zone districts allow for residential lot sizes ranging from one to 20 acres." Planning Commission Report, June 24, 2008, at p. 5. Given this conclusion by the Planning Commission, Cal Fire will also not be able to make the required finding for the TCP that "there is no proximate and suitable land which is not zoned as timberland production for the alternate use not permitted within a timberland production zone." Accordingly, a weighing of the relevant factors demonstrates that an immediate rezone for the Bunch Creek property would not be in the public interest.

The project applicant claims that an immediate rezone would be in the public interest because placing housing in the area would reduce the fire risk to the Colfax community because there would be active fire management strategies in place for the residences. This reasoning defies logic and independent research demonstrating that placing housing in fire prone areas creates even more safety hazards. The wildland-urban interface ("WUI") is the area or zone where structures and other land development meet

or intermingle with wildland or vegetative fuels. According to *Forests on the Edge – Housing Development on America’s Private Forests* (“Forests on the Edge”) (attached hereto as Exhibit 2), as more people move into wildland interface areas, the number of large wildfires impacting homes has escalated dramatically. Residential development results in an increased difficulty in managing wildland fuels, as well as increased costs associated with providing fire protection. With homes and other structures in the forested area, ignition risk is increased (e.g., from homeowner activities such as barbecuing and lawn mowing), firefighting becomes more expensive and more hazardous, property losses increase, and the opportunities to plan for and manage wildfire safety are constrained. See, e.g., Cal Fire Policy 0342.5.3, set forth in Letter from Unit Chief Harris to Placer County Board of Supervisors (March 8, 2010), attached hereto as Exhibit 3.

Although a portion of the Bunch Creek property was already burned in the Ponderosa fire and is not yet reforested, several other factors demonstrate the wildland quality of the project site, including that: (1) there are significant un-burned forested areas remaining on the site, (2) the burned areas have begun to re-vegetate, (3) surrounding properties are forested, and (4) the project site is currently completely undeveloped. Thus, the fire hazards of placing homes in a forested area apply to the Bunch Creek property.

To the extent that the project applicant is arguing that the future residential owners are likely to do a better job at fire management than the prior or current owners, who did not or have not invested the proper resources or effort for this important aspect of land management, the Board should not countenance such an approach. To reward poor fire management by granting an immediate rezone that would result in a financial windfall to those who failed to properly protect against wildfire would surely encourage such mismanagement by others in the future and ultimately result in more wildfires, not fewer. Such an outcome is assuredly not in the public interest.

C. An Immediate Rezone Would Have An Adverse Impact on Other TPZ Properties in the Surrounding Area.

In addition to the findings discussed above, the Public Resources Code requires Cal Fire, before issuing a TCP for the immediate conversion, to make a finding that “the conversion would not have a substantial and unmitigated adverse effect upon the continued timber-growing use or open-space use of other land zoned as timberland preserve and situated within one mile of the exterior boundary of the land upon which immediate rezoning is proposed.” Pub. Res. Code § 4621.2(a)(2). As noted by the Planning Commission, there are lands to the north and east of the Bunch Creek property

that are zoned TPZ. Planning Commission Report, June 24, 2008, at p. 4. The immediate rezone of the Bunch Creek property would have several adverse impacts on the nearby TPZ lands.

As discussed above, the construction of homes on the currently undeveloped parcels would increase the fire risks for timber operations on neighboring properties. *See* 14 CCR § 1109.3 (listing increased fire hazard and risk to other TPZ lands as adverse affect). Moreover, there are numerous other incompatible uses between residential properties and TPZ lands. As set forth in a comment letter by Allen and Nancy Edwards, who have neighboring TPZ land, the following are documented land use conflicts between residential and TPZ uses in the area:

- Residential neighbors objecting to permitted timber harvests
- Residential neighbors objections to harvesting trees that may change their view
- Residential neighbors objecting to logging trucks using the county road
- Residential neighbors living more than 100 feet from the TPZ boundary objecting to the noise and other aspects of harvesting activities
- Residential neighbors' dogs harassing livestock on the TPZ land
- Residential neighbors regularly trespassing on TPZ land
- Lawsuits by neighbors attempting to gain access through TPZ land for development purposes.

Letter from Allen and Nancy Edwards to John Marin, Placer County Community Development Resource Agency (February 5, 2008), at p. 4, attached hereto as Exhibit 4.

Due to these incompatible uses, the approval of the Bunch Creek rezone would place pressure on landowners of similarly designated lands to forego management of working forested lands and convert these lands to urban and other uses. Indeed, the conversion of forestlands to developed uses results from market forces. Each conversion increases the demand for the next, and increases the incentive for yet another forest landowner to convert yet another productive timber parcel. This threat to TPZ lands was explicitly acknowledged by the Legislature in its findings supporting approval of the Timberland Productivity Act: "The state's increasing population threatens to erode the timberland base and diminish forest resource productivity through pressures to divert timberland to urban and other uses and through pressures to restrict or prohibit timber

operations when viewed as being in conflict with nontimberland uses.” Govt. Code § 51101(b).

Placer County, where people are redefining their lifestyle choices by buying second homes or retirement homes, is the ideal setting for this sort of spiral away from forestry. And the crucial placement of the Bunch Creek property will have a compounding effect on the pressure for neighboring TPZ properties to ask for rezones. As the Planning Commission found, “the proposed rezone would result in the fracture of the existing TPZ zone district, creating a ‘pocket’ or ‘island’ of TPZ property located to the east of the project site. Therefore, as a result of the proposed rezoning, this area of the existing TPZ zone district would not remain connected to other areas of the TPZ zone district (the proposed rezoning would split the existing TPZ zone district in two).” Planning Commission Report, June 24, 2008, at p. 4. This “island” effect will place pressure on the isolated TPZ areas to convert out of the TPZ, and will make it easier to do so. As stated by the property owner on the northern boundary of the Bunch Creek site: “[Land use] conflicts have arisen due to the subdivision the county approved on our western boundary. Adding another subdivision that runs along our southern boundary will make the economics of growing timber all the more difficult.” *Id.* at p. 4. The best way to prevent this domino effect is to keep the TPZ zone intact and deny the Bunch Creek application.

The applicant argues that a 100-foot buffer will mitigate any impacts to surrounding TPZ properties. However, this mitigation is entirely insufficient to deal with the conflicts discussed above. As explained by a neighboring TPZ owner, “most of the conflicts between the TPZ owners and the neighboring subdivisions were from subdivision people who lived more than 100 feet from our boundary.” *Id.*, at p. 4. Further, providing a 100-foot buffer will do absolutely nothing to mitigate the fact that this rezoning will create an island of TPZ that will face enormous pressure to convert. Nor is it sufficient to curb the precedential effect that granting an immediate rezone will have for other TPZ properties in the County.

Accordingly, because the application for a rezone of the Bunch Creek property would conflict with the purposes of the Timberland Production Act, would not be in the public interest, and would adversely affect surrounding TPZ properties, the Board should deny the request.

III. REZONE FOR THE BUNCH CREEK PROPERTY BY IMMEDIATE CANCELLATION OR 10-YEAR "ROLL OUT" WILL REQUIRE PREPARATION OF AN EIR.

There is a second and equally compelling reason for the Board to deny the requested rezone of the Bunch Creek site, either by immediate rezoning or through a 10-year rollout, with either 80-acre or 160-acre minimum lot sizes. This is because the Modified MND prepared for the rezoning is wholly insufficient. Before proceeding with the rezoning of the property, the County must prepare an EIR that properly analyzes the environmental impacts from, and alternatives to, the project, as discussed below. Of course, if the County were to deny the rezone altogether, the denial would be exempt from CEQA. Pub. Res. Code § 21080(b)(5). Thus, denial of the project would not only be a sound public policy choice, but it will also save the County much time, expense, and effort in preparation of the required EIR.

CEQA provides that a lead agency may issue a negative declaration and may avoid preparing an EIR only if "[t]here is no substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment." Pub. Res. Code § 21080(c)(1). An initial study must provide the factual basis, with analysis included, for making the determination that no significant impact will result from the project. CEQA Guidelines § 15063(d)(3). In making this determination, the agency must consider the direct and indirect impacts of the project as a whole (CEQA Guidelines § 15064(d)), as well as the project's growth-inducing and cumulative impacts. *See City of Antioch v. City Council of Pittsburg* (1986) 187 Cal. App. 3d 1325, 1333. An agency must prepare an EIR whenever it is presented with a "fair argument" that a project may have a significant effect on the environment, even if there is also substantial evidence to indicate that the impact is not significant. *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75; CEQA Guidelines § 15064(f)(1). Where there are conflicting opinions regarding the significance of an impact, the agency must treat the impact as significant and prepare an EIR. CEQA Guidelines § 15064(f)(1); *Stanislaus Audubon Soc'y v. County of Stanislaus* (1995) 33 Cal. App. 4th 144, 150-51.

The Modified MND first fails to adequately describe the project, which failure pervades the entire document. The Modified MND then claims that there will be no significant impacts from the project, or that the impacts will be mitigated to a less than significant level. However, the analysis and evidence presented in the Modified MND is insufficient to support this conclusion. Rather, the Modified MND reaches the "no significant impact" conclusion by deferring the analysis of many of project's impacts to a later date. Although the MND recognizes that housing development will ultimately result

from the rezone, the document fails to adequately analyze or mitigate the impacts from that development. Yet, longstanding CEQA law states that impacts from future development must be analyzed before the first step is taken towards that development – here, the requested rezone. *Bozung v. Local Agency Formation Com.* (1975) 13 Cal. 3d 263, 279, 282; *see also Christward Ministry v. Superior Court* (1986) 184 Cal. App. 3d 180, 190; *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, 409; *City of Carmel-by-the-Sea v. Bd. Of Supers.* (1986) 183 Cal. App. 3d 229.

As set forth above (Part II.B&C, *supra*), the increased fire hazards, unmitigated land use conflicts, and loss of forested lands that would result from the development anticipated by the rezone are significant impacts that alone would require the preparation of an EIR. Moreover, the residential development anticipated by the rezoning will result in numerous other significant environmental impacts. A report entitled *Forests on the Edge – Housing Development on America's Private Forests* comprehensively addresses the implications of converting private forests and the watersheds in which they occur to developed uses. *See Forests on the Edge*, Exhibit 2. This report explains that increases in housing density and associated development (such as power lines and septic systems) can be linked to a wide variety of environmental impacts, including decreases in native fish and wildlife populations and loss of their habitats, changes in forest health, reduced opportunities for outdoor recreation, poorer water quality, and altered hydrology. Every one of these impacts could potentially affect the rezoned properties and therefore provides a fair argument that an EIR must be prepared. Moreover, these impacts would occur regardless of whether the Board proceeded with an immediate rezone or a 10-year roll out, with either 80-acre or 160-acre minimum parcels, as all of these options would result in the ultimate development of a currently undeveloped site. Below, we describe but a few of the project's impacts and analysis that must be addressed in an EIR.

A. An EIR Must Include An Adequate Project Description.

At the outset, the current Modified MND for the project fails to adequately describe the development that is anticipated from the rezone. “An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.” *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730 (1994), quoting *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193. As a result, the use of a “truncated project concept” violates CEQA and mandates the conclusion that the lead agency did not proceed in a manner required by law. *San Joaquin Raptor*, 27 Cal.App.4th at 729-30. Furthermore, “[a]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity.” *Id.* at 730 [citation omitted]. Thus, an

inaccurate or incomplete project description renders the analysis of significant environmental impacts inherently unreliable.

Here, the description of the project is thoroughly inadequate, especially in light of the fact that the applicant is requesting an "immediate rezone" as one development option, which requires that the applicant have a bona fide project intended for the conversion. Pub. Res. Code §§ 4623 & 4624(c). Additionally, as the applicant admits, even a 10-year "roll out" option is intended to result in development of the property. Any reasonably complete description of the project would have given the public and decision-makers a sense of what this residential subdivision would look like, how it would operate, and how it would mesh with the surrounding uses. The purported project description here does none of this. It is effectively no description at all; it is merely a suggestion of the applicant's general conceptual scheme for development.

There is no discussion of the height and size of the homes, building lot coverage (hard and soft scapes), architectural styles, ancillary uses allowed on residential lots, type of building materials to be used or color schemes, shading of lights, landscaping design, or lot configuration (to comply with requirements to minimize viewshed lots, for example). While the Modified MND implies that building sites have already been cleared and selected, even details regarding these sites are not set forth in the project description. Further, the maps included in the Modified MND are unreadable and give no sense of how the project would be developed. These omissions echo throughout the MND: because the Project is incompletely described, none of its impacts can be fully analyzed.

B. An EIR Must Properly Analyze and Mitigate the Rezone's Significant Impacts to Biological Resources.

The proposed rezone would have several significant impacts to biological resources, which must be analyzed in an EIR. First, when lands are removed from the TPZ classification, there are known, predictable adverse impacts to the forest itself. Nowhere is this clearer than in private forests, such as those proposed to be removed from the TPZ here. Privately-owned forests were originally acquired primarily for the quality of their timber. Consequently, they often contain the best tree-growing lands and some of the most valuable wildlife habitat in California. Alterations in forest structure and function resulting from the rezoning could interrupt ecological processes, adversely affecting biodiversity, increasing the potential for invasive species, disease, and insect infestations. In addition, there can be an increase in edge effects, with concomitant increases in tree mortality and reduction of carbon cycling. (D'Angelo et al., 2004)

Although a portion of the project site has been burned, there is a significant portion that remains with healthy forest. Moreover, the burned portion has good quality soils that can be reforested, and in fact has already begun to revegetate. The project site therefore has many biological benefits both from the forestland within the property, and from lands connecting to neighboring properties with ecologically linked forests. Well-known impacts to these forest resources that result from development must be properly analyzed in an EIR before the County may approve the proposed rezoning.

Moreover, as discussed above (Part II.C, *supra*), the development begun by these rezonings would also affect adjacent timberlands due to increasing conflicts between timber operations and new residents. The TPZ is designed to protect these lands from intrusion by incompatible uses and to separate these areas from a mixture of uses that may be hazardous or unsafe. *See, e.g.*, Cal Fire Policy 0342.5.3 (set forth in Exhibit 3). As set forth above (Part II.C, *supra*), the Modified MND's finding that these impacts will be mitigated by a 100-foot buffer zone is completely unsupported given that the project will have known impacts lasting beyond 100 feet and given that the project will create an island of TPZ zoned lands that will face enormous pressure to develop.

Second, the proposed rezone would impact sensitive habitats and species. Forests furnish diverse habitats for fish and wildlife, providing the key to the conservation of many species. Development of these lands, including housing, roads, and other infrastructure, would result in parcelization, fragmentation, and human disturbance, with a corresponding decrease in populations of native fish and wildlife, and their habitats. The Modified MND's cursory analysis of these impacts is wholly insufficient. While the MND acknowledges that the property contains habitat for two special-status plants – Brandegee's clarkia and oval-leaved viburnum – that may be impacted by the project, the document claims these impacts will be mitigated. Modified MND at p. 11. Yet, the proposed mitigation is to conduct a "botanical survey" for these species. *Id.* Such a survey will not ensure that these special status species will be protected, nor will it provide the public with an *analysis* of the project's potential impacts to these species, as required by CEQA.

Similarly, the Modified MND acknowledges that the site consists of chaparral and foothill woodland intermixed with stands of canyon live oak, blue oak, ponderosa pine, and douglas fir, as well as riparian forest that surrounds the Bunch Creek and Smuthers Ravine drainages, which may serve as habitat for special status wildlife. Modified MND at p. 11. Yet, the MND completely skirts an analysis of the project's impacts to these biological resources based on the cursory reference to the fact that the building sites are "relatively cleared;" the MND nowhere provides a thorough description of these sites or

the surrounding biological resources. Moreover, a simple reference to cleared building sites completely ignores the impacts from the on-going human disturbance associated with development, as well as the well-known impacts from infrastructure associated with development, including the 20-foot paved roadway required by the County, power lines, and septic systems, to name a few. Accordingly, without such a proper analysis, there is no guarantee that the County's setback requirements will mitigate these impacts to a less than significant level.

C. An EIR Must Properly Analyze and Mitigate the Rezone's Significant Impacts to Water Quality.

Forests are critical to protecting water quality by slowing runoff, stabilizing soils, preventing erosion and floods, and filtering pollutants. *See* Forests on the Edge (Exhibit 2); *see also* Cal Fire letter to BOS (Exhibit 3). The planned development for the Bunch Creek property would cause a deterioration in water quality from increased impervious surfaces, erosion, urban land uses, residential road development, and increased non-point source inputs from hydrocarbons, pesticides, herbicides, fertilizers and sanitary facilities.

Equally troubling, rezoning these lands from TPZ would result in altered hydrology. When water moving across the landscape is rerouted by development, basin recharge is reduced and erosion and sedimentation increase. These impacts are especially important for the project site, which contains a tributary to the North Fork American River, a portion of which is listed as a state Wild and Scenic River and federal Wild River. The current Modified MND for the project fails to even mention the special status of the River, much less adequately analyze these water quality impacts. Rather, the MND provides cursory mention of the impacts and then improperly attempts to defer analysis to a later date. Modified MND at p. 12-13. Moreover, the few mitigation measures that are offered for erosion and stormwater runoff impacts do not offer any coherent standards for protection and therefore are inadequate under CEQA.

D. An EIR Must Examine and Mitigate the Project's Significant Contribution to Wildland Fire Risk.

As discussed above (Part II.B, *supra*), the Modified MND prepared for the project fails to evaluate the potential for the project to expose people and structures to a significant risk of loss, injury or death involving wildland fires. This is a potentially significant impact inasmuch as the proposed project would result in the development of residences in a wildland area. Studies illustrate the heightened risk of developing in areas where fire is a natural part of the ecology and flammable vegetation exists. As

development encroaches on the wildland urban interface, it causes an increase in the number of fires and more loss of life. Moreover, as people move into the wildlands, inevitable fires often worsen as firefighters are forced to protect houses instead of stopping the fire's speed. See Exhibit 5 (Foothill Conservancy: Sprawl Increases Sierra Fire Threat, Fall 2007

(http://www.foothillconservancy.org/pages/focus.cgi?magicatid=&magi_detail=407&magid=29); Exhibit 6 (Dangerous Development, Wildfire and Rural Sprawl in the Sierra Nevada, Sierra Nevada Alliance); and Exhibit 3 (letter from Cal Fire to BOS describing potential fire hazards from project).

Sprawl development has also vastly increased the cost of fighting wildland fires, with task forces of urban fire engines needed to protect homes in the urban-wildland interface. *Id.* At the same time, climate change (discussed *infra*) is making summers hotter and drier, leading to an increase in the frequency and severity of catastrophic wildfire. *Dangerous Development, Wildfire and Rural Sprawl in the Sierra Nevada*, at i. The Modified MND is remiss in its failure to address the growing threat posed by this and other low density development in the wildland urban interface. Under CEQA, this issue must be examined in an EIR.

E. An EIR Must Properly Analyze and Mitigate the Rezone's Significant Impacts to Climate Change.

The Modified MND prepared for the project fails altogether to address the project's contribution to global warming. The document does not even acknowledge that the emission of greenhouse gases, primarily carbon dioxide, is presently leading to changes in the earth's climate, and therefore constitutes a potentially significant environmental impact. Because this analysis is not included, the Modified MND is inadequate.

The California Climate Action Team's 2006 Report to Governor Schwarzenegger details the science behind, and the environmental impacts of, global warming. For the Board's reference, the Executive Summary and other excerpts of that report is attached hereto as Exhibit 7. The Climate Action Team report makes clear what the Modified MND ignores altogether: the release of greenhouse gases into the atmosphere leads to global warming, which in turn leads to a myriad of environmental impacts. As stated in AB 32, the California Global Warming Solutions Act:

Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global

warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems.

Because global warming significantly impacts the environment, lead agencies must consider their projects' individual and cumulative contributions to this impact in their CEQA analyses. *See* Governor's Office of Planning and Research, Technical Advisory, *CEQA and Climate Change: Addressing Climate Change through CEQA Review* (June 19, 2008), attached hereto as Exhibit 8. The Modified MND contains no analysis of these potentially significant impacts and thus fails to fulfill the most basic purpose of environmental review: to disclose to the public a project's significant environmental impacts.

It is important to note that the proposed rezoning would contribute to climate change in two distinct ways. First, the planned development will contribute carbon dioxide emissions to the atmosphere, primarily (but not exclusively) through the burning of fossil fuels to meet residents' and visitors' transportation and energy needs. Second, even as various human processes send carbon into the atmosphere, trees take up and store carbon in a process known as carbon sequestration. Climate Action Team Report at 48-49. Carbon that is sequestered is not free in the atmosphere and thus does not contribute to the greenhouse effect. The loss of trees results in less carbon sequestration, which in turn exacerbates the effects of global climate change. Therefore, environmental review of any project, like this one, that will affect large forested areas must analyze the effects of deforestation on global climate change.

Specifically, every acre of forestland has the potential to store between 150 and 230 tons of carbon annually. *Id.* Therefore, the Modified MND should have estimated, conservatively, the loss of carbon sequestration from project-related deforestation by multiplying the number of acres of trees to be removed by 230 tons. This analysis should include an assessment of any direct loss of timber for construction, plus any indirect loss of trees caused by taking the land out of TPZ (and thereby discouraging reforestation on the site) and by placing pressure on other similarly situated TPZ lands in Placer County to do the same. CEQA Guidelines § 15064 (agency must consider direct and indirect impacts of whole project).

F. An EIR Must Properly Analyze and Mitigate the Rezone's Significant Impacts to Aesthetic Resources.

The Modified MND recognizes that the North Fork American River Canyon is a "scenic resource" in need of special protection in the County's General Plan. However, the document's failure to adequately describe the project leads to a similar failure to adequately analyze any potential impacts to this scenic resource. Because the building sites and home features are not particularly described, the Modified MND is forced to deliver what is essentially a wild guess that some of the peaks on the property may shield the residential development, leading to the unsupported conclusion of no significant impacts. Modified MND at p. 6. This approach is entirely inadequate under CEQA, and under the County's General Plan. See General Plan Policy 1.K.1 (policy to protect river canyons and scenic vistas) and General Plan Goal 1.k ("To protect the visual and scenic resources of Placer County as important quality-of-life amenities for county residents and a principal asset in the promotion of recreation and tourism.")

Given that much of the property contains steep slopes and that the flatter areas for development are located on the ridges, there is a fair argument that the project will have significant impacts to scenic and aesthetic resources. An EIR must set forth the location and type of development proposed and that may be generated in the future by the project, and analyze this development's impacts on the scenic resources in the area. This analysis must include a thorough description of the scenic resources at stake, including the fact that a nearby portion of the North Fork American River Canyon has received state Wild and Scenic River Status and federal Wild River status. Further, the analysis must include all potential impacts to scenic resources, such as impacts to hikers on Windy Point-Indian Creek Trail or to visitors coming in by road, and not just the impact to the view from the canyon. Finally, the EIR must provide mitigation for any identified significant impacts to visual resources.

G. An EIR Must Properly Analyze and Mitigate the Rezone's Significant Impacts to Impact Cultural and Historic Resources.

The County must analyze the project's potentially significant impacts to cultural and historic resources. Pub. Res. Code § 5020.1(q). The Modified MND acknowledges that the project site contains "four previously recorded cultural resource sites and two newly recorded sites." Modified MND at p. 12. Yet, the document summarily concludes that the project will not have impacts to cultural or historic resources, citing, but not in any way discussing, a 2008 privately conducted study that concluded there were no artifacts on the site. This wholesale reliance on an outside study, which is not even attached to the MND, is completely inadequate. The County has the duty to provide the

relevant analysis so that the public and decision-makers can weigh the relevant environmental information. Further, the conclusion that there are no artifacts on the site is contradicted by accounts of area residents. *See, e.g.*, letter from Joy and Paul Mergen to Community Development Resource Agency (January 26, 2008). In any event, the presence of artifacts does not end the CEQA analysis. The County must also examine whether the development anticipated by the rezone will alter the historical or cultural significance (*i.e.*, the character-defining features) of the property. Therefore, the project's potential impacts to cultural and historic resources must be examined in an EIR.

H. An EIR Must Properly Analyze and Mitigate the Rezone's Significant Growth-Inducing and Cumulative Impacts.

CEQA requires a discussion of the environmental impacts, both direct and indirect, of the proposed project in combination with all "closely related past, present and reasonably foreseeable probable future projects." Guidelines § 15355(b); *see also* Pub. Res. Code § 21083(b); Guidelines §§ 15021(a)(2), 15130(a), 15358. The discussion of cumulative impacts must "reflect the severity of the impacts and the likelihood of their occurrence" (Guidelines § 15130(b)), and must document its analysis with references to specific scientific and empirical evidence. *Mountain Lion Coalition v. California Fish & Game Comm'n* (1989) 214 Cal.App.3d 1043, 1047, 1052.

Moreover, CEQA requires that an EIR contain a "detailed analysis" of a proposed project's growth-inducing impacts. Public Resources Code § 21100(b)(5). Growth-inducing impacts include aspects of the project that "may encourage and facilitate other activities that could significantly affect the environment." CEQA Guidelines § 15126.2(d). Thus, the EIR must examine "the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly." *Id.* Likewise, CEQA requires analysis of the project's ability to "remove obstacles to population growth." *Id.*

In contravention of the above authorities, the Modified MND provides no discussion of the project's cumulative or growth-inducing impacts. Cumulative impacts of the proposed project in connection with other TPZ rezones in the County and surrounding areas should be considered. Further, an EIR should analyze the project's growth-inducing impacts that will result from the "spiral effect" that occurs from each rezone out of TPZ granted by the County. *See supra*, Part II.C. For example, the County's approval of a rezoning rollout in 1993 of the 2,400-acre Pomfret Estates TPZ (PREA 834) later became a Forest Ranch proposal that was a highly controversial issue

in the recent update of the Foresthill Divide Community Plan. The County should look at the cumulative impact of each TPZ removal.

Furthermore, the 2007 construction of a two-story North Fork Canyon house at 15215 Wild Oak Lane, Auburn, which is over Robber's Roost on the north canyon slope above Clementine Reservoir, reveals the need for an EIR to address the creation of ridge-top lots by parcel merger and lot line adjustment. Parcel Map P-75326 created a new parcel behind the canyon rim in 1991. In 1994, revised conditions for P-75326 and Minor Boundary Line Adjustment MBR-10212 joined the neighboring parcel with the Wild Oak Lane building site behind the rim and created the rim-top parcel.

If the 144-acre non-TPZ Mergen property that is next to rezone property "Parcel 3" came into the same ownership as the rezone property, the merger could create more ridge-top parcels. A similar issue could emerge if the approximately 127-acre TPZ zoned Risser property along the east boundary of "Parcel 1" came into the same ownership. As discussed above, the proposed rezone would add pressure to rezone this property, and Risser has declared his ultimate intent to do so in his letter supporting immediate cancellation in 2008. If the proposed rezone, the Mergen, and the Risser properties came into the same ownership, the merged lots would have about 1 1/4 miles of ridge line that could ultimately be developed. Reconfiguration of the three combined ownerships could create a significant number of rim parcels. We understand that County officials have insisted, regardless of Government Code 66412(d), that it has no discretionary authority over lot mergers and boundary line adjustments that merge the lots. Although we do not concede this non-discretionary authority, given the County's position and precedential construction on Wild Oak Lane, an EIR must address the number and location of lots that could be created by merger and lot line adjustment with properties neighboring the project lands, and the potentially significant impacts created by any such merger.

IV. THE REZONING CANNOT BE APPROVED BECAUSE IT IS INCONSISTENT WITH THE COUNTY'S GENERAL PLAN.

As an additional legal hurdle to this project, the rezoning of the Bunch Creek site would be inconsistent with the County's General Plan. The question of consistency between the rezoning and the General Plan plays two distinct roles in the environmental review and project approval process. First, under CEQA, a conflict between the rezoning and the General Plan is a significant impact that must be disclosed and analyzed in the applicable legal document. *See Pocket Protectors v. City of Sacramento* (2005) 124 Cal. App. 4th 903, 929-36. The document's conclusions regarding these impacts, like those for any other impact, must be supported by substantial evidence.

Second, under separate provisions of state law, the rezoning may not be approved in the face of such an inconsistency. Gov. Code § 65860(a) (“County or city zoning ordinances shall be consistent with the general plan of the county or city . . .”). The General Plan is “a ‘constitution’ for future development.” *Leshar Communciations, Inc. v. City of Walnut Creek* (1990) 52 Cal. 3d 531, 540. Therefore, “[t]he propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 570. Moreover, “no zoning ordinance may be adopted or amended within an area covered by a specific plan unless it is consistent with the adopted specific plan.” Gov. Code § 65455.

The proposed rezoning violates this clear rule, because it is inconsistent with several goals and policies in the Placer County General Plan. For example, rezoning the land to allow development would contravene the General Plan’s goals and policies to protect forest resources, including:

Goal 7.E: To conserve Placer County’s forest resources, enhance the quality and diversity of forest ecosystems, reduce conflicts between forestry and other uses, and encourage a sustained yield of forest products.

Policies

7.E.1. The County shall encourage the sustained productive use of forest land as a means of providing open space and conserving other natural resources.

7.E.2. The County shall discourage development that conflicts with timberland management.

7.E.3. The County shall work closely and coordinate with agencies involved in the regulation of timber harvest operations to ensure that County conservation goals are achieved.

7.E.4. The County shall encourage qualified landowners to enroll in the Timberland Production Zone (TPZ) program.

7.E.5. The County shall review all proposed timber harvest plans (THPs) and shall request that the

Additionally, the proposed rezone would be inconsistent with the General Plan’s designation of the area as a scenic resource, and its goals and policies to protect such scenic resources, including:

Goal 1.K: To protect the visual and scenic resources of Placer County as important quality-of-life amenities for County residents and a principal asset in the promotion of recreation and tourism.

Policy 1.K.1: The County shall require that new development in scenic areas (e.g., river canyons, lake watersheds, scenic highway corridors, ridgelines and steep slopes) is planned and designed in a manner which employs design, construction, and maintenance techniques that *[a]voids locating structures along ridgelines and steep slopes;*

(emphasis added).

Given these plain inconsistencies, the rezonings cannot be approved. Gov. Code §§ 65455; 65860(a). Moreover, CEQA analysis of the rezonings must take these inconsistencies into account before the environmental review may be considered adequate. *See Pocket Protectors*, 124 Cal. App. 4th at 929-36.

V. THE COUNTY CANNOT REVISE THE TIMBER PRODUCTION ZONE REQUIREMENTS WITHOUT COMPLYING WITH CEQA.

The staff report for the March 16, 2010 Board meeting discusses the possibility of an amendment to Section 17.16.010 of the County's zoning ordinance to allow single family residences within TPZs. While this action cannot be taken by the Board without a properly noticed hearing, we take this opportunity to make two brief comments regarding the Board's consideration.

First, such an amendment would clearly bring about potentially significant impacts that must first be analyzed in an EIR. Second, in order to comply with the Timberland Productivity Act, even if the County does amend its ordinance to allow single family homes, it still must require that any homes in TPZ lands be those exclusively necessary for the management of the timberland uses of the site. Gov. Code § 51104(h). Thus, even with the amendment, single-family residences should not be currently allowed on the Bunch Creek site, given that the applicant has made clear in the project proposal that the site will not be used for timberland production.

VI. CONCLUSION.

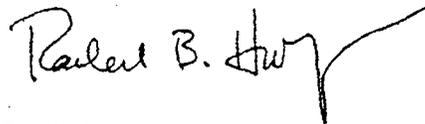
For all of the reasons explained above, the proposed rezoning, either by immediate rezoning or a ten-year roll out (80-acre or 160-acre parcels), contravenes good public policy and does not comply with State law. Neither the Board nor Cal Fire can make the

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required findings for an immediate rezone. Moreover, the Modified MND prepared for the project is wholly inadequate and thus an EIR must be prepared pursuant to CEQA. Finally, the rezone is inconsistent with fundamental policies of the Placer County General Plan. We therefore urge the County to deny the applicant's requested rezone, as well as the Staff Report's suggested modified project.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Rachel B. Hooper
Amy J. Bricker

CC: Unit Chief Brad Harris, Cal Fire

Exhibits

- Exhibit 1: Bunch Creek Property Listing (February 5, 2010)
- Exhibit 2: Susan Stein, *Forests on the Edge, Housing Developments on America's Private Forests*, UDSA Forest Service, 2005
- Exhibit 3: Letter from Unit Chief Harris to Placer County Board of Supervisors (March 8, 2010)
- Exhibit 4: Letter from Allen and Nancy Edwards to John Marin, Placer County Community Development Resource Agency (February 5, 2008)
- Exhibit 5: Foothill Conservancy: Sprawl Increases Sierra Fire Threat, Fall 2007
- Exhibit 6: *Dangerous Development, Wildfire and Rural Sprawl in the Sierra Nevada*, Sierra Nevada Alliance (Sept. 2007)
- Exhibit 7: California Climate Action Team Report (2006)
- Exhibit 8: Governor's Office of Planning and Research, Technical Advisory, *CEQA and Climate Change: Addressing Climate Change through CEQA Review* (June 19, 2008)

Crystal Jacobsen

From: Loren Clark
Sent: Wednesday, April 07, 2010 1:13 PM
To: Crystal Jacobsen; Christine Turner
Subject: FW: Out of Office: Bunch creek rezone
Attachments: tree farm economics A.doc

FYI from Allen Edwards....

From: Allen Edwards [mailto:edtreefarm@gmail.com]
Sent: Wednesday, April 07, 2010 10:54 AM
To: Loren Clark
Subject: Re: Out of Office: Bunch creek rezone

Loren,

I have attached the economic analysis responding to the Supervisor's request (on the Bunch Creek Rezone). The study may still have a few rough edges, but I think it answers the relevant questions.

The two significant findings of this study are:

- Forest management is economically viable on TPZ land -- specifically on the Bunch Creek property.
- Rezoning TPZ to FR 80, or changing the TPZ ordinance to allow houses and 80 acre minimums will effectively destroy the economic viability of working forestry on that land.

Please call if you have questions and feel free to pass the study on to whom ever you wish.

And please let me know that you received a readable copy of the study.

Thanks,

Allen Edwards

On Thu, Apr 1, 2010 at 1:24 PM, Loren Clark <LClark@placer.ca.gov> wrote:

I will be out of the office until Monday, April 5th and will not have access to my e-mail until I return. If you have questions regarding the PCCP, please contact Christina Snow at 530-745-3111. All other questions that need to be addressed, please contact my secretary, Shirlee Herrington at 530-745-3088 and she can direct you to a staff person who can assist you.

Thank you,

Loren Clark

Assistant Planning Director

The Economics of Managing Forest property in Mid-Placer County. Report Summary

Placer County must decide whether to grant or deny a proposal to rezone TPZ land (The Bunch Creek project) in the Colfax area. This analysis is intended to address two crucial economic questions related to that decision, and to the broader questions on the future of TPZ forests in the county. Those questions are:

- First, is it economically viable to manage TPZ land for forest products, particularly land that was partially burned in a wildfire as was the Bunch creek project.
- Second, what would be the economic impact on forest production if TPZ land in the County were allowed houses as a matter of right (rather than the current restrictions on housing) and the minimum parcel size were dropped from 160 acres to 80 acres.

Results

Response to First Question -- The analysis clearly shows that managing TPZ land for forest products is economically viable, even for land partially destroyed by wildfire. The analysis shows that during a 100 year timber crop cycle, the net present value of managing land as a working forest would be a positive \$5,208 per acre. For a 160 acre parcel (the minimum size for TPZ zoning) the net present value is a positive \$833,240. This value, spread over the 100 year period as an annuity, equals an average gain of \$93/acre/year or a total of \$14,880/year for a 160 acre parcel. The analysis also shows that this level of income could be considerably higher with a greater degree of direct management.

Response to Second Question – The analysis shows that the economic viability of forest management is very sensitive to the the price of the land. Parcel prices per acre typically go up as their size goes down, and go up by an order of magnitude if house is allowed as a matter of right (rather than permitted under very restricted conditions, as currently with TPZ). Using a typical price for an 80 acre parcel with housing allowed, the analysis shows that the net present value of managing residential land for its working forest values is a negative \$18,569/acre over the 100 year period. The analysis also shows that, considering that net present value as an annuity, there is an average loss of \$337/acre/year or a loss totaling of \$26,960 per year for the 80 acre parcel.

This analysis indicates that, for the Bunch creek project, rezoning from TPZ to Forest Residential 80 acre will preclude future buyers that are interested in the land for the purpose of forest management.

Policy implications

It is clear from the analysis that working forest management in the mid-Placer County area is economically viable if the parcel sizes are large enough and if housing is restricted. Adding the non-market environmental, aesthetic, and resource values of the forests, it is clearly in the best interests of the County and its citizens to protect its existing TPZ and other forestland.

It is also crystal clear from the analysis that reducing parcel size and allowing housing as a matter of right fundamentally changes the economics of forest management, making it economically illogical to purchase forest residential land for the purpose of forest management.

If the county were to change the TPZ zone ordinance to allow houses as a matter of right and reduce the minimum parcel size to 80 acres, the almost certain result would be the economic destruction of working forestry on on accessible TPZ parcels in the county.

The Economics of Managing Forest Property in Mid-Placer County.

April, 2010

Allen Edwards¹

Introduction

Placer County, California is home to some of the most productive forestland in the world. It is also home to some of the fastest population growth in the U. S. With the rapid population growth has come intense real estate development pressure, and that pressure has recently reached the forested portions of the county. Thus a basic land-planning dilemma has developed concerning what is the best use for the County's forestland – sustainable forest production, or real estate development.

Over one hundred thousand acres of the County's forest are zoned Timber Production Zone (TPZ). This zoning was established by the State of California in 1976 with the recognition that the forest resources of the state were under threat from rapid population growth and the resulting real estate development. The principal objectives of this zoning is to protect forestland from real estate development and encourage good forest management.

At its inception, entering into TPZ zoning was up to the discretion of the landowners. Landowners were willing to accept restrictions on the uses of their land (the zoning is focused on allowing forest and agricultural management and excluding most other uses), in return for a land planning environment and tax structure that encouraged long term protection from real estate development. Since that time, the restrictions on land uses including housing, the 160 acre minimum parcel size, and restrictions on rezoning have been effective in preventing real estate development on TPZ land. That, in turn has been the key reason that the prices of TPZ parcels have stayed in line with their forest resource value rather than their potential development value.

Now the County is faced with a request to rezone a 597 acre TPZ parcel near Colfax (the Bunch Creek Rezone project). This parcel was under forest management for several decades, but was heavily logged in the 1990s, and approximately 400 acres were burned in a wildfire in 2001. The burned area has not been reforested since the fire. The current owners purchased the land after the fire, and, rather than continuing with the long-standing forest management, they seek to rezone the land so they can subdivide it and sell it for large-parcel residential use.

In considering this rezoning decision, the County is considering many factors, including the economic implications of the proposed project. This analysis is intended to address two crucial economic questions related to this decision, and to examine the broader questions on the future of TPZ forests in the county. Those questions are:

- First, is it economically viable to manage TPZ land for forest products, particularly land that was partially burned in a wildfire as was the Bunch creek project.
- Second, what would be the economic impact on forest production if TPZ land in the County were allowed houses as a matter of right (rather than the current permit restrictions) and the minimum parcel size were dropped from 160 acres to 80 acres.

The first section of the study will provide a picture of the direct and indirect economics of managing TPZ land in central Placer county for forest products. This section will study the market micro-economic factors, including revenues and costs. The section will also discuss additional economic

¹ Allen Edwards retired from the California Energy Commission as a Senior Economist. He has owned and managed a 520 acre tree farm near Colfax, CA since 1976.

implications of forest management, such as externalities, and local and regional economic impacts.

The second section of the study will examine the forest management economics of the same land (as the first section), but after the zoning characteristics have been changed to allow housing as a matter of right, and the parcel size reduced to 80 acres.

The third section of the study will examine the land use policy implications of the analysis results in sections one and two, with particular attention to forestland policies. It will also offer overall conclusions.

Section One – The economics of working forestry on TPZ land

This study will use data specific to the land in the proposed Bunch Creek Rezoning project. These data are based on a detailed soils analysis done on the land², and observations of the author of this study on his farm, which has similar soils and is immediately adjacent to the Bunch Creek project.

Revenue Sources

There are many potential sources of revenue from nonindustrial forest ownerships allowed under the Placer County TPZ zoning, including the sale of the following products:

- sawlogs
- processed firewood
- grazing leases
- firewood stumpage
- Christmas trees
- livestock
- lumber processed on site (using a portable sawmill)
- poles and posts
- wood products processed from on-site milled lumber (eg. Furniture)
- agricultural products produced on land niches included in the property (fruit and vegetables)
- other secondary forest products (eg. Ornamentals, herbs, etc.)
- farm visits and recreational enterprises (allowed under conditional use permit)

While many of these products can be major source of revenue, this study is focused on the sale of the top three on the list-- sawlogs, processed firewood, and grazing leases -- since each of these products usually have a stable local market and can be produced with relatively inactive management. Products from the remainder of the list are discussed at the end of this section.

Since forest land products are generally produced using a very long crop cycle (50 to 100 years for sawlogs), it is important to consider the time value of money in this analysis. Accordingly, this study applies a discount rate to all streams of revenues and costs. A conservative, real discount rate of 1.5% is used, partly because forest management is a very conservative, long term enterprise, and partly because recent national economic trends seem to justify low rather than high discount rates when looking at renewable natural resources.

Sawlog revenue: The sawlog crop³ cycle chosen for this study is 100 years. The author is working for a 100 year crop cycle on his forest land, and while a somewhat shorter period is more typical on

2 Soils analysis of Barnes and Edwards tree farm, U.S Department of Agriculture, Soil Conservation Service, 1966.

3 The crop cycle is the time that is allowed for growing a specific stand of sawlog trees from regeneration (natural or planted), through precommercial and commercial thinnings, to the harvest of the final crop trees.

Industrially owned forests, a 100 year cycle is common for the state's nonindustrial tree farmers. Since the Bunch Creek project land was substantially burned, and the remainder is stocked with young and relatively young conifers and oaks, this analysis assumes starting at year 1 of the 100 year cycle.

How fast Ponderosa pine and Douglas Fir (the predominant commercial conifer trees in central Placer County) grow depends on the quality of the site on which they are growing. For simplicity of analysis, this study has chosen a 100 year mixed conifer site index of 110 (a 50 year index of 65)⁴. This site will be the basis for growth projections used in the analysis below.

Analysis of sawlog revenue

The inputs to this analysis are as follows

- The expected mixed conifer timber volume, after 100 years of growth on each acre of land with a site index of 110, is 72,000 board feet.⁵
- The expected value of this timber is \$430 per thousand board feet.⁶
- Yield tax = .029⁷
- The present value factor for a 1.5 % discount rate over the 100 year crop life is .22.⁸ Logging and permit costs are assumed to have been accounted in the Board of Equalization value numbers.

The calculations are as follows:

$((\text{Final board foot volume per acre} \times \text{Value/bf}) - \text{permit costs}) - \text{Yield tax} \times \text{Present value factor} = \text{Net value of 100 year growth/acre}$

or:

$72,000 \times .43 \times .95 \times .971 \times .22 = \$6,283/\text{acre}$

Note that the above analysis assumes that there is little active management of the stand. More active management would enhance the growth in value of this timber stand. As discussed at the end of this section, commercial thinning (along with development of other on-farm enterprises) might substantially increase the overall net present value of sawlog sales.⁹

Firewood: The firewood enterprise analyzed for this property assumes that firewood will be harvestable in this forest for the first 50 years of the conifer crop cycle at an average rate of 1/3 cord per acre per year. This wood would come from trees that are weeded, precommercially thinned, and

4 Site index 110 was chosen based on a 1966 detailed soils survey done for the land owned by this author and his immediate neighbors by the USDA Soil Conservation Service. This index is representative of a composite of indices that ranged from 95 to 120 and above based on the soil survey, and is conservative compared to site index analysis conducted on site by USDA staff in the mid 1980 which ranged as high as 150.

5 California Forestry Handbook, T. F. Alvola, California Department of Forestry, 1978; see table A-50

6 This number is derived from taking the median value for mid-sized sawlogs listed in the winter-spring estimates from California Board of Equalization for the years 1993 through 2010. These are net values after logging and permit costs. These values for Ponderosa Pine and Douglas fir were then averaged. Note: years prior to 1993 were not included because the 1992 change in U.S. Forest Service harvest policies led to a fundamental change in the sawlog market.

7 California State Board of Equalization

8 All discount and annuity factors in this study are derived from Managerial Finance, seventh edition, J. F. Weston & E. F. Brighton, 1978, Appendix A.

9 Principles of Silviculture, T.W. Daniels, J.A. Helms, and F. S. Baker.

salvaged as the forest matures. After 50 years, the dominant stand is assumed to be a mix of pine and Douglas fir crop trees – thus, it is assumed that no firewood is harvested in the latter 50 years of the crop cycle.

This analysis assumes that the landowner purchases the equipment, and hires workers to process and deliver the firewood. The analysis inputs listed below are based on the author's 40 years experience in the firewood business.

Analysis of firewood revenue

The inputs to this analysis are as follows:

- average firewood production – 1/3 cord per acre per year, which is 3/4 oak and 1/4 softwood
- market value of the firewood -- \$300/cord for oak, \$225 per cord for softwood (Average value of \$281.25/cord) Note: these numbers reflect current local market prices for firewood.
- equipment costs (saws, truck, splitter, etc) = \$40/cord
- Labor cost = \$20/hour
- Labor per cord = 7 hours

The calculations are as follows:

(firewood production X market value of firewood) – equipment cost – (labor cost/hour X labor/cord) = net firewood revenue per acre per year.

$$\frac{(\$281.250) - \$40 - (\$20 \times 7)}{3} = \$33.75/\text{acre}/\text{year}$$

Because the firewood revenue is coming in annually over the first 50 years of the 100 year period, it must be treated as an annuity, discounted at 1.5% over 50 years, in order to determine the present value. For this, the annuity factor is 35.

Calculations are as follows:

Firewood revenue/acre/year X annuity factor = present value of firewood revenue/acre

$$\$35.75 \times 35 = \$1251.25/\text{acre}$$

Grazing lease: The grazing lease analyzed for this property assumes that graze and browse are available for livestock for the first 50 years of the 100 year period. It is assumed that the landowner leases the land, and is not involved in livestock management. The lease value is assumed to be \$10 per acre per year.

The calculations are as follows:

Grazing revenues/acre/year X annuity factor for 30 years @ a 1.5 discount rate = present value of grazing revenues/acre

$$\$10 \times 35 = \$350/\text{acre}$$

Note: in the direct experience of the author, livestock grazing has been very effective in controlling brush in newly replanted areas and in established forest (brush is both a fire hazard and a competitor to the crop trees). This value was not taken into account in the analysis.

Total present value of revenues per acre for 100 year period:

Sawlogs	\$6,283
Firewood	1,251.25
Grazing	350
total present value of revenues	\$7,884.25

Costs

The cost factors considered in this part of the study include the following

- debt service on land purchase – the land is assumed to cost \$500/acre (the price the current owners paid in 2004 for the Bunch Creek project land). At 6% interest per year, the debt service is \$30/acre per year. If during the 100 year period, the landowner were to pay off the debt for the land, the \$30/acre would then still apply as an opportunity cost.
- tree planting costs – assume that ½ the land needs to be replanted because of fire. (the Bunch Creek project land was 2/3 burned. Assume approximately 1/4th of the burned land is stocked by oak resprouts or natural reseeding. Assume that the cost of planting preparation and replanting is \$1,000 per acre, and that USDA cost-share programs cover 75% of this cost. For simplicity of discounting, assume that the planting takes place during the first year of the 100 year period
- land management costs – Based on the experience of the author, land management costs are assumed to be \$15/acre/year (this includes vehicle costs, insurance, road maintenance, legal and accounting fees, etc.)
- property tax – based on the experience of the author, the annual tax on TPZ in this area is approximately \$1 per acre per year.

The expenses of the revenue-generating enterprises are incorporated in their present value analysis, as is the yield tax for sawlog sales.

With the exception of tree planting costs, which occur during the first year and thus need no discounting, the other costs are annual costs that are assumed to continue for the entire 100 year period. For this stream of costs, the discounting annuity factor is 52.75

Calculations for the present value of costs:

((annual debt service + annual land management costs + annual property tax) X annuity factor) + tree planting costs = present value of costs/acre over the 100 year period

(((\$30 + \$15 + \$1) X 52.75) + \$250 = \$2676.5 = total present value of costs/acre

Net present value

The net present value of revenues and costs/acre, over the 100 year crop cycle, is as follows:

Present value of revenues	\$7,884.25
minus present value of costs	2,676.50
Net present value/acre over 100 years	<u>\$5,207.75</u>

Discounted average net return per acre/year

To gain a sense of the average annual income producing potential for this land, this analysis treats the net present value calculated above as pool of money in an annuity that will pay over a period of 100 years, with a real rate of return of 1.5%.

Analysis:

Net present value per acre = average discounted net return per acre per year
annuity factor

$$\frac{\$5,207.75}{55} = \underline{\$93/\text{acre}/\text{year}}$$

Discounted net present value returns from an minimum size (160 acre) TPZ parcel for the 100 year period

Total net present value for the entire parcel is:

$$\text{Net present value per acre X 160 acres} = \$5,207.75 \times 160 = \underline{\$833,240}$$

The average net present value/year for the parcel is:

$$\text{Average net present value per acre X 160 acres} = \$93 \times 160 = \underline{\$14,880/\text{year}}$$

Sensitivity Analysis

The two inputs to the above analysis that could most dramatically change the final net present value are sawlog revenues (which make up over 80% of net present value revenues), and debt service on land (which is almost 60% of net present value costs). The following is sensitivity analyses where each of these inputs have been changed.

A 50% reduction in sawlog values – A change in sawlog price from \$.43/board foot to \$.215/board foot -- would change the final net present value as follows:

$$(((\text{Final board foot volume per acre X Value/bf}) - \text{permit costs}) - \text{Yield tax}) \times \text{Present value factor} = \text{Net value of 100 year growth/acre}$$

or:

$72,000 \times .215 \times .95 \times .971 \times .22 = \$3,141.50/\text{acre}$ for present value of sawlog sales

This translates into the following for net present value of total revenues:

Sawlogs	\$3,141.50
Firewood	1,251.25
Grazing	350.00
<hr/>	
total present value of revenues	\$4,742.75

This leads to the final calculation of net present value:

Present value of revenues	\$4,742.75
minus present value of costs	2,676.50
<hr/>	
Net present value/acre over 100 years	<u>\$2,066.25</u> net present value per acre

While this number is considerably lower than that of the main analysis, it is still comfortably positive. Keep in mind that the main analysis was based on sawlog values that are the median for the past 2 decades. However landowners have discretion on when they sell their logs. They can wait until the market is above a target point (many tree farmers won't sell unless the price is in the top 20 to 40 % of historic prices).

50% higher land prices -- A change in the purchase price of the land from \$500/acre to \$750/acre would change the debt service from \$30/acre/year to \$45/acre/year, and would thus change the net present value as follows:

$((\text{annual debt service} + \text{annual land management costs} + \text{annual property tax}) \times \text{annuity factor}) + \text{tree planting costs} = \text{present value of costs/acre over the 100 year period}$

$((\$45 + \$15 + \$1) \times 52.75) + \$250 = \$3,467.75 = \text{total present value of costs/acre.}$

This would change the final net present value as follows:

Present value of revenues	\$7,884.25
minus present value of costs	3,467.75
<hr/>	
Net present value/acre over 100 years	<u>\$4,416.50</u> net present value per acre

In this sensitivity as well, the net present value stays positive.

Additional Possible Sources of Revenue

The beginning of this section contains a long list of products that can be produced from forest land. These products are allowed under TPZ, and are possible from large parcels of forest land, depending on the location and quality of the land, and interest and capabilities of the landowner/manager. Each is an enterprise in its own right; most would require considerable added input of management effort, labor and capital. While access to forest land is necessary for the success of these enterprises, it does not assure success. Never-the-less a combination of these enterprises might increase the revenue substantially.

On this particular piece of land the Bunch Creek project, an active forestland manager could reasonably follow the following enterprise schedule:

- Year one through 5 – Prepare and replant burned areas with commercial conifers.
- Year one through 5 – develop niche plots for small commercial orchard and market garden.
- Year one through 5 – coppice management on oak resprouts (in burned area); managing trees for firewood and oak sawlogs.
- Year one through 10 – harvest firewood for local sales from trees killed by the fire.
- Year one through 10 – plant Christmas trees for harvest in a choose and cut operation.
- Year one through 50 – lease ground (except areas most recently replanted) for livestock grazing.
- Year 5 through 20 – thin and weed oaks in unburned portion of the parcel for local firewood sales .
- year 5 through 20 – thin conifers in unburned portion of the parcel for local firewood and pole sales.
- Year 5 through 100 – produce fruit and vegetables from niche sites and sell to local markets.
- year 10 through 80 – periodic commercial thinning of conifers in the unburned portion of the parcel; either selling sawlogs to commercial mills, or milling the logs on-site with a portable mill and selling lumber to local customers.
- Year 20 through 50 – Thin oaks in burned area for local firewood sales.
- year 20 through 50 – re-thin oaks in unthinned area for local firewood sales.
- Year 50 through 100 – periodic commercial thinning of conifers in burned and replanted portion of the parcel; either selling sawlogs to commercial mills, or milling the logs on-site with a portable mill and selling lumber to local customers.
- Year 50 through 90 – final crop-tree harvest of both conifers and hardwoods in various parts of the unburned portion of the parcel; either selling sawlogs to commercial mills, or milling the logs on-site with a portable mill and selling lumber to local customers.
- Year 90 through 110 -- final crop-tree harvest of both conifers and hardwoods in various parts of the burned portion of the parcel; either selling sawlogs to commercial mills, or milling the logs on-site with a portable mill and selling lumber to local customers.
- Year 51 through 111 – restock harvested areas if necessary (Note: restocking is typically not necessary with single tree selection, and may not be necessary with group selection unless there is a desire to change or diversify commercial species.)

Working the enterprises included in the above schedule could increase the income from the land by 200% to 400% or more. These enterprises would also result in substantial income in the early years of the cycle (rather than waiting until the end of the 100 year cycle for most of the income). However this schedule would require the investment of substantial time. This schedule might be a part of the management plan for a typical full time tree farmer. A typical residential owner, working away from

the land in order to pay for the high cost of the land and the house he or she builds on it, would only have time for the more hands-off management reflected in the analysis of sawlog, firewood, and grazing lease enterprises.

Note that the above schedule did not include a directly managed livestock enterprise, producing finished wood products, sale of other secondary forest products, or farm visits and recreational enterprises. These could be added to the overall management of the land at the owner's discretion.

Additional Economic Implications of Forest Management

Forest land has many values to society, as well as some potential costs, that are not reflected in market economics. Because the values of these externalities are difficult to quantify, they will only be listed here.

Non-market benefits of forest land

- Watershed
- wildlife habitat and biological diversity
- open space recreational
- open space aesthetics
- carbon sequestration

In addition, working forests provide economic benefits to the broader community that go beyond the direct microeconomics of each land ownership. Every job generated on a tree farm leads to 2 – 4 total jobs in the local and regional economy. Since tree farms can be resource-based enterprises that are indefinitely sustainable, they become sustainable generators of area-wide prosperity. In addition, tree farm products produced for the local community have the economic effect of keeping money recycling locally rather than exporting it for the purchase of distant products. This adds a boost to the local economy.

On the other side of the coin, there may be some external costs associated with working forests. These would include the following:

Non-market costs of forest land

- fire protection
- police and other community services

It is fair to say that, although these costs do exist, they are generally much lower than similar costs for land that has been converted from working forests to residential uses.

Section Two -- The Economics of managing 80 acre rural residential property for forest production in mid-Placer county

This portion of the study is intended to provide a general picture of the direct and indirect economics of managing rural residential property for forest production in central Placer county. This section will analyze revenues and costs of producing sawlogs, firewood, and lease grazing on an 80 acre forest residential parcel. This section will use many of the same basic inputs used in section one, but the analysis is tailored to residential rather than TPZ land.

The section will also discuss additional economic implications of converting forest to housing, including:

- external (non-market) benefits
- external costs
- the impacts of managing forest land on the broader economy

Revenues: The value of the forest related products sold from this land is similar to that from the land had it stayed in TPZ and been dedicated to forest production (including sawlogs, firewood, and grazing leases) except that the forest production would be constrained by land development activities (roads, homesites, etc) and by the typical desire of the homeowner to avoid the negative aesthetics of harvest activities within their immediate viewshed (near the homesite and its access roads). Thus the assumption here is that the total revenues from forest related production will be 75% of what it would have been had it stayed in TPZ.

Analysis:

Total present value per acre from forest products X 80 acres X .75

$$\$7884.25 \times 80 \times .75 = \$473,055$$

Costs: The costs associated with this parcel are as follows:

- Debt service on land cost – The cost of the 80 acre parcel is assumed to be \$500,000. At 6% interest rate, the annual debt service cost is \$30,000. If during the 100 year period, the landowner were to pay off the debt for the land, the \$30,000/year would then apply as an annual opportunity cost.
- Tree planting costs – this analysis assumes that the landowner wishes to replant the burned land to gain revenue and for aesthetic reasons. Assume that 35 acres of the land needs to be replanted because of fire. Assume that the cost of planting preparation and planting is \$1,000 per acre, and that USDA cost-share programs cover 75% of this cost. For simplicity, assume that the planting takes place during the first year of the 100 year period. This costs then totals to 35 acres times \$250 = \$8750.
- Land management costs – engineered roads, higher traffic, insurance, and aesthetics will lead to higher land management costs. Assume that they will be \$30/acre per year – a total of \$2,400 per year for the parcel (not including costs associated with home ownership).
- Property tax (not including the house) – In Placer county, property taxes are 1% of the purchase price of the property¹⁰ – \$5,000/year.
- Note: the costs associated with the actual houses is not included in this analysis.
- Note: There are distinct economies of scale in timber harvest permits -- the costs of harvest permits typically go up per unit of trees harvested, as the parcel size (and volume of trees harvested) go down. That cost increase is not reflected in this analysis.

Analysis of the present value of costs:

((debt service+land management costs+property tax -- all for the entire 80 acres) X discounting factor (52.75)) + landowner tree planting cost (\$250 X 35 acres)= Present value of costs

$((\$30,000 + \$2,400 + \$5,000) \times 52.75) + \$8750 = \$1,981,600$ for the entire 80 acre parcel

Net present Value

the net present value of costs and revenues for the entire 80 acre parcel for the 100 year crop cycle is:

Present value of revenues	\$473,055
Present value of costs	<u>\$1,981,600</u>
net present value (loss)	<u>-\$1,508,545</u>

This translates into a net present value (loss) per acre of -\$18,569

For perspective, the average net present value loss per acre/year would be as follows:

$$\frac{-\$18,569}{56} = \underline{\underline{-\$337/\text{acre}/\text{year}}}$$

Sensitivity Analysis

The single input to the above analysis that could most dramatically change the final net present value is land price. The purchase price of the parcel changes the analysis itself, and changes the land tax input. The following sensitivity analysis looks at how raising and lowering the land price will change final net present value. For these sensitivities, prices of \$700,000 (debt service of \$45,000 and taxes of \$7,000 per year) and \$300,000 (debt service of \$18,000 and taxes of \$3,000 per year) will be used rather than the 500,000/acre used in the above analysis.

Land price of \$700,000 for 80 acres

((debt service+land management costs+property tax -- all for the entire 80 acres) X discounting factor (52.75)) + landowner tree planting cost (\$250 X 35 acres)= Present value of costs

$((\$45,000 + \$2,400 + \$7,000) \times 52.75) + \$8750 = \$2,869,600$ for the entire 80 acre parcel

This translates into the following total net present value

Present value of revenues	\$473,055
Present value of costs	- <u>\$2,869,600</u>
net present value (loss)	<u>-\$2,396,545/for the 80 acre parcel</u>

Land price of \$300,000 for 80 acres

((debt service+land management costs+property tax -- all for the entire 80 acres) X discounting factor (52.75)) + landowner tree planting cost (\$250/acre X 35 acres)= Present value of costs

$((\$18,000 + \$2,400 + \$3,000) \times 52.75) + \$8750 = \$1,243,100$ for the entire 80 acre parcel

This translates into the following total net present value

Present value of revenues	\$473,055
Present value of costs	<u>-\$1,243,100</u>
net present value (loss)	<u>- \$770,045/for the 80 acre parcel (9625/acre)</u>

Clearly the total net present value is still very negative even when the land price drops from 500,000 for the 80 acre parcel, to \$300,000. When the price goes up, the net present value becomes even more negative than the original analysis.

An additional, important sensitivity has to do with the question of whether a buyer of the 80 acre residential parcel could, even with optimistic assumptions on revenue, pay for the land with sales from forestry and agricultural products it generates. For this sensitivity, it is assumed that the net present value of revenues is 4 times what is in the above analysis. The costs are the same as the original Section Two analysis, with the land price at \$500,000 for the 80 acres.

Revenues four times higher

Present value of revenues	\$1,892,220
Present value of costs	<u>\$1,981,600</u>
net present value (loss)	<u>-\$89,380 for the 80 acre parcel (-\$1117.25/acre)</u>

So, even if the buyer of this parcel is very successful with forest resource enterprises, working at or near full time on the land, he (she) would not be able to support the land, let alone build a house and support a family.

Additional economic implications of converting forest to housing

Non-market costs: Converting working forest to housing can result in substantial societal costs that are not reflected in the direct market economics of either forestland production or real estate development. Some of these costs are as follows:

- loss of forest resources from the local and regional economy
- loss of forest related habitat
- fragmentation of natural habitat
- loss of watershed
- loss of sequestered carbon
- loss of visual resources
- the negative impacts of housing development on surrounding forest land
- increase in local reliance on imported resources (loss of local renewable energy, food, and building resources)
- increased need for government services to serve widely spread rural housing (roads, fire

and police protection, etc.)

Non-market benefits: Families that occupy houses in low density rural subdivisions typically derive their income from jobs located out of the immediate area (located in urban areas in the low foothills and the Sacramento Valley). They can bring substantial money from those jobs into the local area, and if they spend locally, will support local businesses. However, because these people are traveling into urban areas on a regularly basis, they frequently shop where they work -- particularly as they have access to big-box retail centers located in the valley and low foothills, but not in mid-Placer County.

Section Three – Conclusions and Land use policy implications of the analysis

This study is intended to answer two questions relating to the Bunch Creek project, a TPZ rezoning proposal currently being considered by Placer County.

First Question Is it economically viable to manage TPZ land for forest products, particularly land that was partially burned in a wildfire as was the Bunch creek project. Clearly, the answer is yes. The Section One analysis shows that, over a 100 year crop cycle for softwood sawlogs, the total net present value of producing sawlogs, firewood, and lease grazing is a profit of \$5208/acre. Sensitivity analyses where revenues were lowered and costs were raised also showed a positive net present value. Also, the analysis discussed the potential for substantially raising revenues, particularly in the early years of the period, with more intensive management.

Second Question What would be the economic impact on forest production if TPZ land in the County were allowed houses as a matter of right (rather than the current conditional use permit) and the minimum parcel size were dropped from 160 acres to 80 acres.

Answering this question requires first looking at the Section two analysis of net present value for 80 acre residential forestland. In this analysis shows that, for this property, the total net present value of producing sawlogs, firewood, and lease grazing is a loss of 18,569/acre. Sensitivity analysis where the land price was substantially reduced still showed a loss of almost \$10,000/acre.

What the analysis clearly demonstrates is that the economic viability of forest production is very sensitive to the price of the forest land. In the Section One TPZ parcel analysis, the land price was \$500/acre – the market price for the Bunch Creek property in 2004 when the current owners purchased it. At that price, and at a sensitivity price of \$750/acre, a forest management operation would make a profit. But at forest/residential land prices, a forest management operation would suffer significant losses.

Keep in mind that TPZ zoning is very restrictive. The land can only be used for forestry and agriculture related activities, the minimum parcel size is 160 acres, and houses are only allowed with a conditional use permit – the key condition being that the house must be for a caretaker (who may be the owner) whose presence is necessary for the management of the land and who will work full time on the land. As a result, as long as the county maintains and enforces the current provisions in the TPZ zoning ordinance, TPZ parcels will only attract buyers who intend forest management.

But if the County gives the TPZ landowners more rights – allows the land to be rezoned, or the current zoning requirement are changed to reduce the minimum parcel size and allow houses as a matter of

right, the price will increase significantly. For example, the owners of the Bunch Creek property are anticipating getting additional property rights from the county. The land, which the owners have petitioned to be removed from TPZ, was recently advertised as "Northfork Estates....set in property very similar to the graceful rolling terrain of Winchester Development in Meadow Vista". They were offering a 160 acre portions of their ownership for \$854,000 and up¹¹. With that in mind it seems reasonable to expect that the owners will ask \$500,000 and possibly considerably more per parcel if they succeed in their petition to rezone to 80 acre forest/residential parcels with no building restrictions.

Would a tree farm buyer – someone interested in purchasing land in order to produce a living by sustainably managing the forest resources – would this person buy an 80 acre forest/residential parcel. The analysis in section two above clearly shows that, at a land prices of \$300,000, \$500,000, and \$700,000, forest production is not even close to economically viable on an 80 acre parcel. The analysis also shows that even if the buyer were to work intensively on forest-based enterprises, the income would not pay for the land, let alone build a house and sustain a family. From an economic standpoint, a Potential buyer who is interested in forest management would decline to purchase this parcel, and instead look for a TPZ parcel, which will likely be priced at its forest resource value. After all this buyer can buy 6 to 10 times more TPZ land for the same money.

The 80 acre residential forest parcel is more likely to attract a buyer looking for a Winchester-like trophy homesite. Might the trophy buyer replant and manage the forest? It is possible. But based on the analysis in Section Two above, it would not be an economically viable investment. If the buyer did replant and manage the forest, it would be for reasons other than economics – not something on which the County can rely for sustaining its forests.

All things considered, the above analysis shows that allowing housing and smaller parcel sizes on forest land raises the land price, and so destroys the opportunities for economically viable forest management.

Policy Conclusions

Placer county has over 300,000 acres of commercial forest, and over 100,000 acres of TPZ forestland. This land is an important part of the county's natural resource and agricultural legacy. These forests have taken decades, sometimes centuries to grow, but can be destroyed in a few years by careless land-use policies.

The County's forests are beautiful, and much of this land has relatively easy access. And so, as land in the lower county is developed, and its land prices increase, developer interest in the county's forest land increases. The TPZ zoning in state law and county ordinance anticipated this interest, and established a mechanism to keep the value of forest land closely related to their forest resource value.

But if the County begins to either rezone TPZ parcels (to residential uses) or changes the Zoning ordinance to allow housing as a matter of right, and possibly reduce the parcel size. This decision would change the fundamental economics of those parcels, and effectively destroy working forestry in the county.

¹¹ GoldCountryHomes.com, October 24 & 25, 2008



NORTH FORK
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ALLIANCE
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wild, scenic and
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within the
watershed of the
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March 12, 2010

County of Placer
Community Development Resources Agency
3091 County Center Drive, Suite 190
Auburn, California 95603
Attention: Peg Rein

RECEIVED

MAR 15 2010

ENVIRONMENTAL COORDINATION SERVICES

Re: Bunch Creek Rezone (PREA T200605621)

Dear Ms. Rein,

The North Fork American River Alliance (NFARA) wishes to comment on the proposed Mitigated Negative Declaration for the Bunch Creek Rezone noted above. We will appreciate your including these comments in the public record.

It is our understanding that the Placer County Planning Commission rejected a request in April, 2008 to rezone the subject 597 acres from TPZ status to RF-BX-80, a zoning that would potentially allow the development of seven home sites within the North Fork drainage and the current proposal does not significantly differ from the one previously denied. We are opposed to future residential development within the steep slopes of the American River Canyon and most particularly on lands that have been historically zoned for timber production.

Please consider our rationale for opposing the rezone.

Topography and Soils

The majority of the property is composed of Mariposa complex soils on 50 to 70 percent slopes. The natural vegetation is conifer-hardwood forest and provides habitat for black bear, black-tailed deer, band-tailed pigeon and wild turkey. Any soil disturbance caused by road construction or grading can be very damaging because of the very high erosion hazard associated with these soils. These facts alone preclude the acceptance of a Mitigated Negative Declaration for the project and significantly more analysis is warranted. Under CEQA the Planning Department must prepare an EIR when there is substantial evidence that a proposed project may have a significant impact on the environment. The significant adverse impacts of development on these soil types is described in detail in the U. S. Soil Conservation Service's study of the soils of western Placer County and these findings must be addressed in determining the viability of the project. This soil survey further points out that the steepness of slope and depth of bedrock are major limitations to be considered in planning home and road construction.

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Biology

It is noted that the property has been partially burned, heavily logged and essentially mined of all its natural resources. The Mitigated Negative Declaration concludes that any restoration of the forest resources, including soil stability and wildlife habitat, is economically unfeasible. As noted above, the Soil Conservation Service has stated that the area has adequate soils and is well suited for the production of Ponderosa pine. These soils are capable of producing over 400 board feet (Scribner scale) of merchantable timber per year on a fully stocked stand at 70 years of age. These parameters are well within the guidelines accepted in Sierra Nevada forest management and when the present owners purchased the property they knew full well that this land was designated for forest use. This TPZ land designation not only provides for the production of a forest crop but also promotes a diverse wildlife community. Historically, the lands of the North Fork drainage have maintained the much-needed contiguous habitat for the naturally occurring flora and fauna of the region and we oppose the removal of this resource from the Placer County land base. At a minimum, CEQA requires that the rezone application be accompanied by a plant and animal survey before concluding that there will be no impact on wildlife.

Recreation

The North Fork of the American River canyon at the location of this 597-acre parcel is part of the Auburn State Recreation Area, a 42,000 acre oasis in the heart of Placer County. Any attempt to despoil the scenic qualities of the canyon must be avoided and the potential of home sites on the canyon rim are not in keeping with the federal Wild And Scenic designation of the North Fork. In fact, the County General Plan specifically recognizes the importance of preserving the scenic qualities of the region while the Mitigated Negative Declaration (MND) proffers little evidence that the proposed project will be "fairly benign". Without doubt, the MND is an insufficient instrument in deciding the merits, or lack thereof, for the project.

Fire Protection

Fire is a naturally occurring event associated with the climatic conditions prevalent on the west slope of the Sierra Nevada. Within the past decade we have witnessed the destruction and homes and infrastructure resulting from unplanned, haphazard home site development in the wildland urban interface, the area where houses and wildlands meet.

Protection of lives, homes and infra structure has been assumed by CalFire, a State agency responsible for fire suppression on all non federal lands outside of established city limits (State Responsibility Area, or SRA). Local fire districts have been overwhelmed by residential development in the wildland urban interface and it is our position that California taxpayers should not be held hostage to additional ranchette type development on the canyon rim of the North Fork. According to the California Legislative Analyst's Office (2005) CalFire's fire protection expenditures increased an average of 10% per year between 1994 and 2004 and much of that increased cost was due to increasing number of

homes in wildland areas. According to CalFire statistics, 95% of fires occurring in the State Responsibility Area are human caused.

Following is an excerpt from the California Board of Forestry's policy assessment relating to residential development in the SRA:

Structural development in State Responsibility Areas:

- a. Severely complicates and handicaps the ability of a fire protection agency to control the spread of wildfires, while at the same time trying to protect values of exposed life and property;*
- b. Substantially restricts the ability of fire protection agencies to use certain techniques such as prescribed burning to reduce and control the large volume of flammable vegetation intermingled with the property values;*
- c. Increases the State's expenditure of public funds for fighting wildfires because of the greater number of fire starts and the requirement for more fire protection resources and fire prevention inspections;*
- d. Results in more state involvement in structural fire protection;*
- e. Can result in damage to watersheds from grading of residential and industrial sites and road building, as well as from increased fire incidence;*
- f. Frequently includes a citizenry who does not appreciate or understand the risks from wildfires to themselves and to their property. This lack of awareness in wildland and suburban communities can drastically restrict the ability of fire protection agencies to implement necessary programs risk and hazard reduction;*
- g. Historically, has resulted in the loss of thousands of homes located in and adjacent to these areas by fires originating in the wildlands and spreading into inhabited areas and from fire which originated in urbanized areas and spread into the adjacent wildlands;*
- h. Generally brings an increase in locally supported fire protection resources to protect life and property.*

When conditions are favorable for the spread of fire (high winds, low humidity) the myth of fuel breaks as suitable defense around individual residences is exposed. City streets or county roads did not contain the 2009 fire in North Auburn. The 2001 Gap fire at Emigrant Gap crossed four lanes of the Interstate 80 freeway. Therefore we do not accept the premise that even the currently required 100 clearance around residential buildings is adequate mitigation for the protection of the valuable watershed, biological and recreational resources placed at risk by the development of residences in the North Fork drainage.

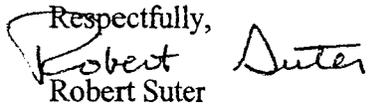
It has come to our attention (though not confirmed) that CalFire supports the rezone on the premise that better road access relates to better fire protection. If this is the case we contend that this position does not square with the California Board of Forestry's policy position stated above. The MND does not address this conflict and that document must be rejected until a definitive, study is prepared detailing how the valuable resources of the North Fork canyon will be protected.

The designated TPZ zoning does allow for the construction of a caretaker/manager residence on each created parcel; we contend that this is appropriate provided that there is, indeed, forestry related activities planned for the property. We believe that Placer County must insist on meaningful, enforceable provisions that require any residential construction be accompanied by forestry related activities, including, but not limited to, brush clearing and reforestation. Further, we believe that the viewshed of the North Fork Canyon should be protected from any contemplated residential construction.

We believe that Placer County will concur that there are significant environmental consequences to this application that must be addressed and mitigated to a less than significant level.

Thank you for your consideration of our request for denial of this application.

Respectfully,

A handwritten signature in cursive script that reads "Robert Suter". The signature is written in dark ink and is positioned to the right of the typed name "Robert Suter".

Robert Suter

Resource chairman, North Fork American River Alliance
Registered Professional Forester No.479

Comments on the Mitigated Negative Declaration for Bunch Creek Rezone (PREA T20060521)
Comments submitted via email on January 4, 2010 by Allen G. Edwards

Overview comments

This draft Mitigated Negative Declaration for the Bunch Creek rezone contains a number of factual errors and omissions as described in detail below. In addition, it fails to provide adequate mitigation for at least the following significant impacts:

- The project would be allowed to develop homesites on the rim of the American River Canyon (considered a scenic resource in the County General plan) – Aesthetic Resources
- The project would allow the conversion of production forest to residential uses – Agricultural Resources and Land Use & Planning
- The project would result in conflicts with surrounding TPZ parcels, which may increase the potential for further conversion surrounding farmable timberland. The mitigations proposed would not adequately mitigate this impact – Agricultural Resources
- The project discusses the installation of fuel breaks and other fire protection measures, but fails to adequately specify these measures – Hazards and Hazardous Materials
- The project would result in the fragmentation of production forest land -- Land Use & Planning
- The project may result in traffic conflicts along Yankee Jim's road. These are not discussed or mitigated – Transportation and Traffic

Overall this draft declaration is inadequate. Further, it appears that this project would create impacts that can not be adequately mitigated.

Specific comments in order of the document

- Page 2, **Project Site**, bullet #2: Factual Error -- The modified Declaration states that the larger partnership was split into two ownerships in the mid-1970s. In fact, the larger ownership was split in 1989.
- Page 2, **Project Site**, bullet #4: Factual Omission -- The Barnes family did harvest in 1994 and, as required by their harvest permit, met stocking standards at the conclusion of the harvest.
- Page 2, **Project Site**, bullet #6: Factual Omission -- The Barnes family conducted a salvage harvest under an emergency notice (in lieu of a harvest permit) after the 2001 Ponderosa fire. While they had cost share funds available, they did not reforest after the fire.
- Page 2/3, **Environmental Setting**, Site: Factual Omission -- The modified Declaration implies that the site is located entirely within the Bunch Creek watershed. In fact, the East end of the site includes a portion of the American River canyon and directly drains into the American River.
- Page 6, **Aesthetics, Discussion**, Paragraphs 2 & 3: Factual Error -- The modified Declaration erroneously states that building sites on the South and East of the property are 5,550 feet to 11,000 feet from the River Canyon, and are screened from the Canyon. In fact, substantial fraction of the land on the property that is < 30% slope is located on the rim of the American River Canyon in the South-East portion of the property (see Attachment D to the hearing packet on this issue for the Placer County Planning Commission, Hearing Date April 24, 2008; specifically see the property slope classification map). This area is adjacent to and in the river canyon, and thus not at all screened from the canyon. As a result, if this portion of the site were to be open to building, the project would have an unmitigated Aesthetic impact.
- Page 7, **Agricultural Resource, Discussion – Items II-1,3**, Paragraph 3: Factual Error -- The modified Declaration states that logging during the years 1994-97 is partially responsible for the

land now not meeting minimum tree stocking standards of the Forest Practice Act. In fact, under the required harvest permit the property was required to and did meet the Act's stocking standards following the logging.

- Page 7, **Agricultural Resource, Discussion Items - II-1,3**, Paragraph 3: Factual Omission – The modified Declaration states that most of the site does not meet minimum stocking standards for the State Forest Practice Act. This conclusion is based on a Forest management plan prepared in 2006. While that plan does make this conclusion, but does not include any data from an actual stocking study of the site property to support the conclusion. Since this conclusion is an important part of the proponents argument that the property should be rezoned to a residential use, it is important for the actual stocking study be made available to reviewers of the modified declaration.
- Page 7, **Agricultural Resource, Discussion Items - II-1,3**, Paragraph 3: Factual Omission – The modified Declaration states that the site will not meet minimum stocking standards for many years unless it is reforested. The discussion fails to say that the U.S. Department of Agriculture (USDA) has had and has money available to cost-share restocking land like this. Carol Rutgens of the Natural Resources Conservation Office in Auburn informed me that the USDA program can provide as much as \$1650/acre for brush clearing, planting, and post-planting brush control. This program could have provided (and could still) the project proponents with significant assistance in restocking their unstocked land.
- Page 7, **Agricultural Resource, Discussion Items - II-1,3**, Paragraph 3: Factual Omission – The modified declaration states that reforesting the site would take a substantial investment, yielding no immediate return. The discussion fails to explain that this is typical of forestland management. The land often requires replanting after harvest or fire; the timber crop always takes decades to mature; there is often an annual outflow of funds for long periods between infrequent harvests. The project proponents knew this was zoned for timber production when they it. They knew a portion of the land had been burned. They have stated (before the Agriculture Commission in 2008) that they purchased the land at a very low price. They have no reason now to object to the economic realities connected with managing forest land, and no reason to use these realities as a excuse justify rezoning the land.
- Page 7, **Agricultural Resource, Discussion - Items II-1,3**, Paragraph 4: Factual Omission – The modified Declaration states that rezoning would not preclude Timber Harvest operations, and so would not result in significant impacts to farmable timberland. In reality, the reduction in parcel size that would ultimately result from the rezoning would cause the following: Cost of management goes up, costs of harvesting goes up, the cost of the land increases significantly. And as the land cost goes up, the market for the land changes – buyers interested in forest management can not, with the revenues generated from timber production, compete with buyers interested in rural estate land. Timber Production Zoning was created to prevent fragmentation of forestland, and to remove forest land from the influences of the real estate development market.

Note: The state California established TPZ Zoning to, among other reasons, “Discourage premature and unnecessary conversion of timberland to urban and other uses”, and “Discourage expansion of urban services into timberland.” California Government Code Section 51102.

Also Note: The Placer County General plan has, as Forest Resources goal 7.E “To conserve Placer County's forest resources, enhance the quality an diversity of the forest ecosystem, reduce conflicts between forestry and other uses, and encourage a sustained yield of forest products.” In order to achieve this goal, the plan has several policies, including 7.E.2 “Placer county shall discourage development that conflicts with timberland management.”

- Page 7, **Agricultural Resource, Discussion Items – II- 2, 4;**, Paragraph 3: Factual Omission – The discussion acknowledges that the proposed rezoning may result in conflicts with surrounding timberland management and production uses; may result in the increased potential for further conversion of surrounding farmable timberland; and there may be potential land use conflicts associated with residential uses and timber management and production activities. The discussion goes on to explain this is not a problem because future conversion proposals would also require rezoning analysis, and that the requirement of a 100 foot setback (in stead of the normal 50' setback) would be applied to this project.

The omissions here include the following:

- If this rezoning project is allowed with the environmental review contained in this document, other rezoning would presumably be allowed with similar review. So requiring this level of environmental review would not mitigate the impact – that this project would pave the way for other conversions – rather, it would seem to encourage this impact. Note: One of the two owners of adjacent TPZ land is on record as also wanting to convert his land.
 - While a setback may help mitigate conflicts, in our experience it falls short in at least two ways
 - First, we have experienced conflicts with owners of adjacent land who could view our forest. Some of these landowners lived several thousand feet away from the forest they were viewing. A 100 foot setback would not mitigate this type of conflict.
 - Second, in our experience traffic conflicts have a very significant impact on our ability to haul our products to market. A setback does nothing to mitigate traffic conflicts.
 - Finally, the discussion states that the 100 foot setback “will ensure that General plan policies pertaining to protection of timberland are implemented”. County Forest resources policies include the following “ 7.E.1. The County shall encourage the sustained productive use of forest land as a means of providing open space and conserving other natural resources.” and “7.E.2. The County shall discourage development that conflicts with Timberland management.” The mere 100' setback will not ensure the implementation of either of these policies.
 - Overall, the mitigations offered to overcome agricultural impacts will not be effective. It is not clear that the Agricultural impacts of this proposed rezone can be mitigated.
- Page 15 & 16, **Hazards and Hazardous materials, Mitigation Measures VII-7: Questions**
 - MM VII.1 – There need to be a map of the proposed fuel breaks, specifications on the breaks, and a plan on how & by whom the breaks will be maintained. In addition, it needs to be specified when these fuel breaks need to be installed – before the rezoning is approved? Before the tentative map is finalized? When?
 - MM VII.3 -- When are these roadside fuel reductions to be met and by whom? Who does the maintenance and when?
 - MM VII.8 – When and by whom is the water storage to be installed? What are the requirements for refilling the storage – well? In-stream reservoir? Other?
 - There needs to be some mechanism established that assures that all if this work is completed before houses are built on the project
- Page 20, **Land Use & Planning, Discussion Item IX-2: Factual Omission** – this discussion states that the proposed Residential Forest Zone District would be consistent with the General Plan designation for the site. The discussion fails to mention that the rezone from TPZ will be

in conflict with the General Plan policy 7.E.1 “the County shall encourage the sustained productive use of forest land as a means of providing open space and conserving other natural resources”. This rezone will discourage sustained productive use of forest land by fragmenting the ownership and introducing housing as the principle economic use of the land.

- Page 20, **Land Use & Planning, Discussion Item IX-3, 4, 5: Factual Error** – The discussion states that the proposed project was last harvested for marketable timber in 1994. In fact, the salvage harvest conducted after the Ponderosa fire in 2001 was a commercial harvest. At the present time, much of the forest on this land has finished one crop cycle and is ready to begin another one. This normal condition of forest management would require reforestation.
- Page 20, **Land Use & Planning, Discussion Item IX-3, 4, 5: Factual omission** – The discussion states that no attempt was made to reforest the site after the timber salvage operation. This incorrectly implies that the opportunity to reforest the site has passed. In fact a detailed restocking survey may reveal that the site has reproduction of oak and conifer trees since the Ponderosa fire. A portion of our land was also burned by that fire – the oaks have resprouted aggressively since the fire, and in some areas conifer seedlings are growing in significant numbers. In addition, the project owners can go through the typical process of restocking their land after a fire. They would need to control their brush, plant the trees, and control brush that reemerges after the planting. For all of this work, the US Department of Agriculture offers cost-share funds that can be as much \$1650 per acre (this information is based on a conversation with Carol Rutgens at the USDA service center in Auburn).
- Page 20, **Land Use & Planning, Discussion Item IX-3, 4, 5: Factual omission** – The discussion acknowledges potential conflicts between the housing uses proposed for the project and surrounding timberland production activities due to machinery noise and dust. While these activities can lead to conflicts, we have found through experience that other conflicts are more significant, including the following:
 - traffic conflicts along the narrow sections of Yankee Jim's road
 - visual conflicts – home owners don't want harvesting in their viewshed, tree farmers don't want houses and the squalor that often surrounds them in their viewshed.
 - Increased trespass problems
 - The attraction of high potential revenue from conversion of neighboring land from timber to housing (encouraging other TPZ landowners to convert).

These impacts are not discussed and not mitigated.

- Page 21, **Land Use & Planning, Mitigation Measures -- Item IX-3, 4, 5:** Despite its inadequacies, the discussion section does point out that this project “...could increase the potential for further conversion of surrounding farmable timberland, thereby creating small islands of the timber production zone district. Due to their size and relative isolation, these areas could face further difficulties in remaining operable.” Translating to the impact on my farm, the impacts of this project may put my tree farm out of business. The mitigations offered – increasing the setback from 50 to 100 feet, and disclosing the location of surrounding TPZ parcels – will not substantively mitigate the impacts, including those included above.
- Page 21, **Land Use & Planning, Discussion Item -- IX-3, 4, 5: Factual error** – The discussion states that timber production would be an allowed use of the project were rezoned, the rezoning “would not result in a substantial alteration of the present and planned use of the site, and would have less than significant impact.” As a result the discussion concludes that no mitigations are required. In fact, the rezoning would change the entire economics of the project land, making housing development the most economically significant use and relegating timber production to a minor factor. By substantially increasing the price of the land, this would significantly discourage potential land buyers whose intent would be to develop the timber resources. In addition, this rezoning would ultimately lead to fragmenting the land into parcel sizes that

discourage timber production. It was this potential for fragmentation that led the state to initially specify that the minimum parcel size of TPZ land be 160 acres. The impact of these facts is not mitigated in the declaration

- Page 25, **Transportation and Traffic, Discussion – Items XV-1, 2: Factual Omission** – The discussion in item XV-3 acknowledges the potential conflict between residential and logging traffic. As a mitigation, it is requiring the developer to install a 20 foot wide paved road through the project. Unfortunately Yankee Jim's road (the county access road) is significantly less of a road than the required on-site road. Portions of the last several hundred feet of Yankee Jim's road are <15 feet wide; the last 50 feet is unpaved. There could be significant traffic impacts from the project if this section of the county road are not improved. And yet this impact was not discussed or mitigated.

RECEIVED

DECEMBER 14,TH 2009

DEC 18 2009

ENVIRONMENTAL COORDINATION SERVICES

CRYSTAL JACOBSEN
SUPERVISING PLANNER
PLACER COUNTY PLANNING
3091 COUNTY CENTER DRIVE STE.140
AUBURN, CA 95603

HI CRYSTAL:

WELL THE TIME HAS COME FOR MORE PAPER WORK ON THE BUNCH CREEK PROJECT.

I HAVE JUST FINISHED MY RESPONSE TO THE MITIGATED NEGITIVE REVIEW AND I HOPE I HAVE CONTRIBUTED SOMETHING TO THE PLANNING PROCESS. I HAVE SPENT 45 YEARS WITH THIS ISSUE AND 40 YEARS ACTIVE IN AND OUT OF THE PROPERTY.

MY DAYS OF HAPPYNESS WAS WHEN I MET BRUCE BARNES THE FATHER OF THE NICE FAMILY HE WAS PROWD OF AND WE HAD A GOOD RELATIONSHIP. HE DIED IN 1978 AND MY NEW ACQUAINTANCE WAS ALLEN EDWARDS WHO SEEMED FRIENDLY IN THE BEGINNING. HOWEVER, FROM THIS POINT ON I WAS ALWAYS IN THE MIDDLE OF COUSINS BARNES AND EDWARDS. YOU MIGHT SAY IT WAS LIKE THE HATTFIELDS & THE MC COYS.. THERE WAS SO MUCH VERBAL ACTION THAT IT MADE ME KEEP A DIARY AND FIELD NOTES THAT I HAVE TURNED IT INTO A STORY. (A LAND-LOCK STORY) I DON'T PLAN TO RELEASE THE STORY UNTIL I HAVE A PROFESSIONAL STORY WRITER REVIEW THE MATERIAL.

HAVING SAID THE FOREGOING I AM SENDING YOU SOME EXCERPTS THAT RELATE TO THE BUSINESS AT HAND.

WHILE I DID NOTICE THE MISPELLING OF A WORD I WILL CONTINUE, WITH SAYING SOME OF THE STATEMENTS IN THE CONCLUSION REMARKS ARE HARD HITTING. I DO FEEL AS AN INVESTOR THIS IS A HIGH RISK DOWN THE LINE. I HOPE THE COUNTY OF PLACER DON'T GET HURT WITH A UNCERTAIN REAL ESTATE MOVEMENT.

THE GRANITE STONE IN THE PICTURE IS REAL AND OTHER THAN JESSICA TAVARAS WHO I HAND CARRIED DETAILS ABOUT MY DISCOVERY AFTER THE FIRE. THE TWO CIRCLE AREAS IN SECTION 24 NO ½ APPEAR TO BE THE LOCATION OF A LARGE ENCAMPMENT.

THANKS FOR BEING A DEDICATED COUNTY MEMBER OF PLACER. AS ALWAYS, PAUL MERGEN.



Subj: **easement**
 Date: 09.07.2002 11:27:42 Pacific Standard Time
 From: rob@gv.net (Owen Barnes)
 To: prmergen@aol.com (paul mergen)

7/09/02

E-MAIL

Paul –

We have heard from Allen and Nancy – they want to buy our property. On the face of it, it seems like a good deal for us, since our property is permanently locked into TPZ (Placer County will never allow it to be rolled out), but since it has been heavily logged and then burned, it is now timber land without timber, and no development potential. We have had it on the market, on and off, for several years, with essentially no interest expressed. Selling to Allen and Nancy seems to be the only way we could realize any profit from the land. And considering that my brother is autistic, and his future needs to be provided for, Allen's offer becomes even more tempting.

However, Allen asked a couple of questions that revealed what he is really up to. His biggest concern was the status of any pending sale of an easement to you, and he also wanted to see a copy of the license agreement that we have with you. He doesn't want our land – he wants the access that it controls to your property. After he bought our property, he would revoke your license, deny you any future chance of an easement, and make you an obscenely low offer for your land. He, then, would develop it himself. The man's a lizard.

Your property, without the restrictions of TPZ, has immense development potential, if it has an easement. I sat down with the map the other night, and assuming a 10 acre minimum (I suspect that the zoning would actually allow for less than that) I was able to Gerrymander ten parcels, all with breathtaking views, and each with at least 100 yards of ridgetop. God only knows what the market value of those parcels would be, with abundant groundwater, power already on the ridge, and an easement.

I spoke with our attorney, Dan Frost in Redding, who does only property law, and he agrees that there is tremendous potential for you and your family to realize a huge appreciation in value of your property. But he also says that since your property has very little value without access, most of that appreciation would come from the value of the easement that we provide. I had no idea that the easement had that much worth.

We are very interested in selling you an easement, but in consideration of it's true market value, it is important that we put the sale together in a legally watertight fashion. Obviously, we wouldn't expect to be paid upfront – the easements could be paid for as the property is divided, developed and sold.

Anyway, considering what Allen has in mind, we don't want to sell to him if there is a more ethical way to realize some return from our property. Please let me know what you think so that we can begin to work on the agreement.

Owen

E-MAIL

Main Identity

From: "PRMERGEN" <PMERGEN@SUREWEST.NET>
 To: "Dorothy Mozden" <dotmozden@yahoo.com>
 Cc: "Joy Mergen" <jmergen@worldnet.att.net>
 Sent: Tuesday, October 05, 2004 5:59 PM
 Subject: Re: Colfax property (from Dorothy Mozden (Ward))

10/5/04

HI DOROTHY: YES THOUGHTS DO CROSS SOMETIMES IN A STRANGE WAY...MY DAUGHTER AND I WOULD LIKE TO BUY THE ACRES OF YOURS NEXT TO LARRY...I FEEL THAT FROM THE RECORDINGS I HAVE VIEWED THE PURCHASE WOULD GIVE ME AND HER A WAY INTO OUR PROPERTY...I COULD WRITE A BOOK ON THE EXPERIENCE THAT MY WIFE AND I ENDURED OVER THE 40 YEARS...HAVING SAID THAT WE WILL BE HAPPY TO DISCUSS THE ARRANGEMENTS ETC..LET ME KNOW...SINCERELY, P AUL MERGEN...I HAVE A FAX 1-916-771-5559 IF NEEDED...BYE

— Original Message —

From: Dorothy Mozden
 To: pmergen@surewest.net
 Sent: Tuesday, October 05, 2004 8:20 AM
 Subject: Colfax property (from Dorothy Mozden (Ward))

Hi Paul -

Larry Risser sent me your contact info. There must be some mental telepathy going on here... Yesterday I sent a note to Larry to tell him that (with great reluctance) I have agreed with Joe Ward that selling our property is the only rational choice given the extreme unlikelihood that I will ever be able to move back. I told Larry that I was reluctant to put that parcel on the open market and asked if he knew of anyone he would like to have as a neighbor. He replied saying that by chance you had just inquired. Believe me when I say that if Joe and I are to sell that wonderful parcel, YOU are by far the person we would most like to sell it to! We have always HATED the way Edwards has kept you landlocked and this would be wonderful resolution.

Please reply and let me know if you are interested..

Also, for your reference, my phone numbers are:
 207-637-3273 - Home. After 8:00PM eastern time M - F. Or weekends.
 207-939-3709 - Cell.

Best regards,
 Dot

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8. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan? (PLN)				X
--	--	--	--	---

Discussion- Item IV-1:

The project includes the rezoning of the site from Timberland Production to Residential Forest and a modification to a previously approved tentative parcel map that created three parcels. With the approval of the project, the project site could result in the initial development of three residences. In addition, under the RF-BX-80 Acre Minimum zoning district, the site could be further subdivided in the future and under a separate entitlement permit, to create four additional residential lots, totaling seven.

A biological resources study was conducted in November 2008 for the project by Miriam Green Associates Environmental Consultants. Said study notes that the subject property contains potential habitat for two special-status plants: Brandegee's clarkia and oval-leaved viburnum. However, this impact is considered less than significant with the implementation of mitigation as follows.

N/A

Mitigation Measures – Item IV-1:

MM I.V.1 A botanical survey shall be conducted in May for both the Brandegee's clarkia and oval-leaved viburnum species. The field survey should include the disturbance footprint on each of the seven potential building sites and any other areas that are proposed for disturbance. Said study shall be undertaken prior to the final recordation of the previously approved tentative map and prior to any construction on the individual parcels.

Discussion- Item IV-2,3,4,5,6,7,8:

The project includes the rezoning of the site from Timberland Production to Residential Forest, and a modification to a previously approved tentative parcel map that created three parcels. With the approval of the rezoning, the project site could result in the initial development of three residences on the tentatively approved three-lot parcel map. In addition, under the RF-BX-80 Acre Minimum zoning district, the site could be further subdivided in the future and under a separate entitlement permit, to create four additional residential lots, totaling seven.

A biological resources study was conducted in November 2008 for the project by Miriam Green Associates Environmental Consultants. Said study reports that the majority of the site consists of chaparral and foothill woodland intermixed with isolated stands of canyon live oak, blue oak, ponderosa pine, and douglas fir. In addition the study notes that riparian forest is present along the Bunch Creek and Smuthers Ravine drainages and that non-native annual grassland is intermixed within the chaparral and woodland. No regulated waters or wetlands were identified on the project site. This study reports that the habitat on site may support special status wildlife and species. However, the proposed rezoning is not expected to result in adverse impacts to special status wildlife and species due to the large parcel sizes associated with the project and because the road cuts to the seven potential building sites already exist and those sites are located in relatively cleared areas. In addition, based on the County's General Plan Policy 6.A.1., the County requires the provision of sensitive habitat buffers, which include all structures be setback 100 feet from centerline of perennial streams, 50 feet from intermittent streams, and 50 feet from the edge of sensitive habitats to be protected, including riparian zones. Therefore there would be no impact to these biological resources and no mitigation is required.

V. CULTURAL RESOURCES – Would the project:

Environmental Issue	Potentially Significant Impact	Less Than Significant with Mitigation Measures	Less Than Significant Impact	No Impact
1. Substantially cause adverse change in the significance of a historical resource as defined in CEQA Guidelines, Section 15064.5? (PLN)				X
2. Substantially cause adverse change in the significance of a unique archaeological resource pursuant to CEQA Guidelines, Section 15064.5? (PLN)				X
3. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature? (PLN)				X
4. Have the potential to cause a physical change, which would affect unique ethnic cultural values? (PLN)				X

X

X

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Bunch Creek Initial Study & Checklist continued

5. Restrict existing religious or sacred uses within the potential impact area? (PLN)				X
6. Disturb any human remains, including those interred outside of formal cemeteries? (PLN)				X

Discussion- All Items: The project includes the rezoning of the site from Timberland Production to Residential Forest, and a modification to a previously approved tentative parcel map that created three parcels. With the approval of the rezone, the project site could result in the initial development of three residences on the tentatively approved three-lot parcel map. In addition, under the RF-BX-80 Acre Minimum zoning district, the site could be further subdivided in the future and under a separate entitlement permit, to create four additional residential lots, totaling seven.

A cultural resource assessment was prepared for the project site in December 2008, by Peak & Associates, Inc. Said study reports that the site contains four previously recorded cultural resource sites and two newly recorded sites, however none of the sites have associated artifacts. The study concludes that the proposed project will have no impact to cultural resources and therefore, no mitigation is required.

VI. GEOLOGY & SOILS – Would the project:

Environmental Issue	Potentially Significant Impact	Less Than Significant with Mitigation Measures	Less Than Significant Impact	No Impact
1. Expose people or structures to unstable earth conditions or changes in geologic substructures? (ESD)		X		
2. Result in significant disruptions, displacements, compaction or overcrowding of the soil? (ESD)		X		
3. Result in substantial change in topography or ground surface relief features? (ESD)	X	X		
4. Result in the destruction, covering or modification of any unique geologic or physical features? (ESD)		X		
5. Result in any significant increase in wind or water erosion of soils, either on or off the site? (ESD)	X	X		
6. Result in changes in deposition or erosion or changes in siltation which may modify the channel of a river, stream, or lake? (ESD)	X	X		
7. Result in exposure of people or property to geologic and geomorphological (i.e. Avalanches) hazards such as earthquakes, landslides, mudslides, ground failure, or similar hazards? (ESD)		X		
8. Be located on a geological unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse? (ESD)		X		
9. Be located on expansive soils, as defined in Section 1802.3.2 of the California Building Code (2007), creating substantial risks to life or property? (ESD)		X		

Discussion- All Items:

This proposed rezone from Timberland Production to Residential Forest could cause the three subject parcels as created through the 2005 Minor Land Division to be further subdivided with the potential of ultimately creating four new parcels, resulting in a total of seven parcels. The development of seven residential parcels would require an on-site engineered 20-foot wide paved roadway (Placer County Land Development Manual Standard Plate R-1) with a crossing at Bunch Creek as well as paving off-site Gillis Hill Road to the minimum 20-foot wide paved standard road section (Plate R-1). With a seven parcel land division, the fire protection district would require fire water suppression tanks, fire hydrants, and the construction of a secondary access roadway. The construction of

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Christine E. Barnes
208 Hill Street
Grass Valley, CA 95945



Paul Morgan
7089 Firefly Green Lane
Roseville, CA

95747

9574746106



MARJORIE J. BARNES
DONALD B. BARNES
R. OWEN BARNES

126

11-36/1210
845

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ORDER OF

Paul Morgan *June 1, 1998*

\$ 400.00

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FOR

Colfax road work

Marjorie J. Barnes MP

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DUE TO POOR PRINT QUALITY, THIS PAGE HAS BEEN REMOVED AND IS
AVAILABLE AT THE CLERK OF THE BOARD'S OFFICE

Following is a list of all pages removed due to poor print quality:

- Exhibit B
- Exhibit E (last 5 pages)
- Exhibit J (7 various pages)

1 DECEMBER 7TH 2009
2 ENVIRONMENTAL COORDINATION SERVICES
3 PLACER COUNTY
4 COMMUNITY DEVELOPMENT RESOURCE AGENCY
5 3091 COUNTY CENTER DRIVE, SUITE 190
6 AUBURN CA 95603

7 MITIGATED NEGATIVE DECLARATION
8 FOR PUBLIC REVIEW

9 PLACER COUNTY ENVIRONMENTAL REVIEW COMMITTEE:

10 PROJECT: BUNCH CREEK REZONE (PREA T20060521)

11 TIMBERLAND PRODUCTION TO RESIDENTIAL FOREST (80-ACRE MINIMUM)

12 OPPONENT: PAUL M MERGEN & JOY E MERGEN- (DTR) 6362 N WILLOWHAVEN DR. TUCSON
13 ARIZONA 85704 (520) 855-7660

14 PROPERTY OWNERS: ADJACENT OWNERS GILLIS HILL BOUNDING SEC.24 (MAP ATTACHED)

15 INITIAL STUDY & CHECKLIST (MODIFIED)

16 THE BOARD OF SUPERVISORS ARE BEING REQUESTED TO CONSIDER EITHER REZONING/CONVERSION
17 OPTION. (QUESTION OF PENALTY ACTION IN CODE SECTIONS)

18 PROJECT DESCRIPTION

19 PAGE 2 OF 29---SECTION 4621 THE FOLLOWING FINDINGS MUST BE MADE BY THE BOARD OF
20 SUPERVISORS—

21 1) THE CONVERSION WOULD BE IN THE PUBLIC INTEREST

22 ANS: THE TAXES AS SHOWN TODAY THE TPZ TAXES ARE .10CT ON THE

23 THE DOLLAR VALUATION VS .90CT RESIDENTIAL FOREST ON THE

24 THE DOLLAR

25 2) NO COMMENT (N/C)

26 3) SEE OTHER COMMENTS LATER IN THIS STUDY

27 PROJECT SITE

28 PAGE 2. CONTINUED PAGE 2 & 29

29 PROPERTY NOTES ARE GIVEN ON THE BARNES & EDWARDS PROPERTY SO IT IS
30 ONLY FAIR TO INCLUDE SOME FACTS OF THE MERGEN HISTORY ALSO STATED BY LETTER IN THE MARCH
31 2006 FOREST MANAGEMENT PLAN.

32 PAUL MERGEN HAS TRAVELED AROUND AND OVER THE WHOLE AREA OF THE
33 BARNES & EDWARDS PROPERTIES FOR FORTY YEARS (40) LONGER THAN MOST OF THE FAMILY
34 OWNERSHIPS. (1964)-2004) HE VIEWED AND WORKED ON THE ROADS IN AND OUT OF THE SUBJECT
35 PRESENT OWNERS, AKA BASQUIN & PARKER MAINTAINING THE ROAD AND GOOD CONDITION WITH
36 THE APPROVAL OF THE BARNES FAMILY.. HE HAS ALSO WITNESSED THE ARCHAEOLOGICAL (NO
37 IMPACT ON PAGE 11 OF 29) THAT INCLUDED THE NON HARVEST AREA OF FOUR (4 zones) THAT WERE
38 EXCLUDED FROM THE 1994 HARVEST PLAN (SEE ATTACHED) SEE PAGE 11 OF 29 (NO IMPACT) AND
39 ALSO 12 OF 29 A CULTURAL RESOURCE --(NONE OF THE SITES HAVE ASSOCIATED ARTIFACTS0 NOT
40 TRUE THERE ARE TWO IN SECTION 24. (PICTURES CAN BE SHOWN ON REQUEST0 BY COMMITTEE)

41 ENVIRONMENTAL SETTING

42 PAGE 2 OF 29---THE SITE IS LOCATED TO THE EAST AND STARTS WITH THE SE CORNER TO THE SOUTH.
43 NOTE IF YOU WERE TO BUILD ON THE RIDGE THE LINE OF THE PROPERTY WOULD BE IN THE CENTER OF
44 THE TOP OF THE RIDGE.. WITH A 100 FOOT SET BACK YOU WOULD BE DOWN THE WEST SLOPE OF THE
45 RIDGE.

46 ON PAGE 12 OF 29 TO ATTACH TO LINE MARGINAL # 39 IS ADDED AS SHOWN

47 # 5 RESTRICT EXISING RELIGIOUS OR SACRED USES WITHIN THE IMPACT AREA (PLN) QUESTION?

48 ENVIRONMENTAL ISSUE

49 PAGE 23 OF 29 # 1 FIRE PROTECTION (EHS,ESD,PLN) --LESS IMPACT. THE PROBLEM THAT THE
50 OPPONET SEES IS THE FACT THAT FIRE HAZARD BARROMTER IS VERY HIGHT IN THIS 1200 ACRE BOWEL
51 THAT IS ENCLOSED BY ONE ENTRY GATE AND IN ONLY ONE ENTRY OF ESCAPE TO SAFETY..

52 ON THE FIRST MITIGATED STUDY MERGEN GAVE A DETAIL OF THE IN AND OUT
53 FACTOR OF ESCAPING A FIRE SHOULD IT HAPPEN. (INCLUDING A TAPE) AS OF NOW I AM SENDING A
54 TAPE (DVD) TO YOUR COUNTY TO VIEW THE SUBJECT AREA OF THE ROADS AND CONDITIONS THAT ARE
55 NOW IN THE PLANNED DEVELOPMENT. YOU WILL ALSO SEE THE CALAMITY OF THE FIRE TRUCKS GOING
56 IN AND OUT OF THE AREA ON THE GIVEN DVD FILM.

57 TO CONTINUE ON PAGES 26 OF 29 AND PAGE 27 THE FIRE PROTECTION UNDER
58 CDF STATE DEPARTMENT OF FORESTRY PROPOSES AND SECOND ENTRY ROAD TO THE AREA... MERGEN
59 SAYS IT IS ALMOST IMPOSSIBLE FOR A SECOND WAY OUT UNLESS YOU GO THRU THE GATE NORTH OF
60 THE ALLEN PROPERTY TO THE CITY OF COLFAX CITY LIMITS STREETS... ITS DOUBTFULL THIS COULD EVER
61 HAPPEN AS SUCH..

62 PAGE 3. OF BUNCH CREEK LAST PAGE OF RESPONSE TO THE MITAGATED INFORMATION OF DECEMBER
63 4TH 2009

64 OPPONETS VIEW (MERGEN) CONCLUSION REMARKS

- 65 1. IT HAS BEEN NOTED THAT ALLEN EDWARDS FLOOD PROBLEMS FROM THE SEPTIC
66 POND RELEASES ABOVE HIS HOME AND DOWN SMUGGERS REVINE WASN'T
67 ADDRESSED. THE FOREGOING HAS AN AFFECT ON THE BASQUIN OWNERSHIP
68 PARCEL INCLUDED IN THIS REPORT.
- 69 2. THE INCREASE OF 4 PARCELS PLUS 3 PARCELS SHOWN ON PAGE 25 OF 29 MAY HAVE
70 AN AFFECT ON THE MARCH 2, 1972 NEW RULINGS LISTED IN PART OF THE
71 ADDEMDUM. ALSO PAGE 25 OF 29 # 3 & #4 PRESENT A SERIOUS IN AND OUT
72 STATUTE BLOCKADE AS SHOWN IN THE DVD TAPE SENT.
- 73 3. I DID FEEL A LOT OF GOOD WORK WENT INTO THE MITIGATED DECLARATION VERY
74 COMPLEX AND THE OVERSEEOR'S HAVE THEIR WORK CUT OUT FOR THEM.
- 75 4. MY PERSONAL VIEW IS: IT MAY BE WISE TO HAVE A "PERFORMANCE BOND IN AFF
76 ECT DUE TO THE HIGH RISK OR REBOUND OF
77 5. THIS PROJECT.

78

79

ADDENDUMS:

80

PAGE__1__ SUBDIVISION MAP ACT 2005

81

PAGE__2__ BARNES 2/2/94 HARVEST PLAN TIMBER

82

PAGE__3__ OWNERS PARCELS - IN TOPOG. CIRCLES

83

LOCATIONS OF ARCHAEOLOGICAL SITES

84

PAGE__3-A SAME AS NUMBER 3

85

PAGE__4__ BASQUIN & PARKER MAP OF STUDY AREA

86

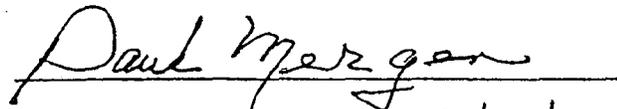
PAGE__5__ CULTURAL RESOURCES ARCHAEOLOGICAL

87

PAGE__6__ CULTURAL RESOURCES ARCHAEOLOGICAL

88 BUNCH CREEK STUDY # 2

89


PAUL MERGEN SIGNED 12/14/09

90

91

92

COPY

2005 Addendum
to the 2003
edition

Subdivision Map Act Manual

A Desk Reference Covering
California's Subdivision
Laws and Processes

PREPARED BY DANIEL J. CURTIN, JR.
AND ROBERT E. MERRITT

FEBRUARY 2006

This addendum replaces the 2003 supplement and is the only valid one in print. It is an addendum to the book entitled *The Subdivision Map Act Manual*, 2003 edition, initially published by Solano Press in December 2002.

Solano Press Books
Point Arena, California

PAGE 1 345

Certificates of Compliance *page 74***Presumption
of Legal Parcels** *page 82*

The court of appeal interpreted the 1937 and 1943 versions of the Map Act in *Fishback v. County of Ventura*, __ Cal. App. 4th __ (2005), where the court held that the landowners were not entitled to certificates of compliance for ten parcels located in an unincorporated area of Simi Valley. The landowners argued that the parcels in question were legally created through the "annual quartering exception" to the definition of a "subdivision." The Map Act defined a subdivision as "any land or portion thereof, shown on the last preceding tax roll as a unit or as contiguous units, which is divided for the purpose of sale, whether immediate or future, by any subdivider into five or more parcels within any one year period." Because the definition of a subdivision required a division of a unit of land into five or more parcels in a single year, under the "annual quartering exception" a division of a parcel into four or fewer parcels within a year was not governed by the Map Act.

The court concluded that in less than one year, 10 parcels were conveyed from the parent parcel. Those 10 conveyances divided the original parcel into 14 parcels, including four parcels left in possession of the subdivider. On appeal, the landowners argued that under the annual quartering exception, the first four parcels conveyed are legal. The appellate court did not agree based the plain language of the Map Act, which defined a subdivision as a division of a unit of land into five or more parcels in any one year period. Once the fifth parcel was created within a one year period, all the parcels created within that year constituted a subdivision. Because the 10 parcels were part of an illegal subdivision, they were not entitled to certificates of compliance or conditional certificates of compliance.

**Presumption
of Legal Parcels** *page 82***Land "divisions"** *page 5*

The California Attorney General opined that an agency's exercise of eminent domain to acquire land for a reservoir resulted in a subdivision that created two lawful parcels because the pre-1972 division met the conclusive presumption under Gov't Code section 66412.6. 86 Op. Atty. Gen. Cal. 70 (2003).

An irrigation district condemned most of a 640-acre parcel to create a reservoir in 1965. The condemnation action left the landowner with two remainder parcels that were separated by 700 feet of water. Because the division occurred prior to March 4, 1972, and there was no local subdivision ordinance in effect at the time for four or fewer parcels, the Attorney General concluded the parcels were legally created under Gov't Code section 66412.6. The Attorney General also found that the legal status of the two parcels was unaffected by the owner later obtaining a timberland production zone classification over the parcels, which required them to be managed contiguously as a single unit. *Id.*

NOTICE OF INTENT TO HARVEST TIMBER

*Call# 3627
1-20-94
m added
pm*

A Timber Harvesting Plan or an amendment to an existing plan that may be of interest to you has been submitted to the California Department of Forestry & Fire Protection. The Department will be reviewing the proposed timber operation for compliance with various laws and rules. This review requires the addressing any concerns you may have with what is being proposed. The following briefly describes the proposed timber operation and where and how to get more information.

The review times given to the Department to review the proposed timber operation are variable in length, but limited. To ensure the Department receives your comments please note the following:

The earliest date the Department may approve the plan or amendment is: 2/2/94
This is 15 days from the date of receipt of the plan by the Department.
The plan or amendment was sent to the Department on: 1/14/94

The actual review required by the Department will determine the length of the review period beyond the noted minimum, normally it is longer. Please check with the Department to determine the date when public comment closes.

Questions about the proposed timber operation or laws and rules governing timber operations should be directed to:

California Department of Forestry
Forest Practice Program
6105 Airport Road
Redding, CA 96002
(916) 224-2445

*Last Harvest
pm*

The public may review the plan or amendment at the above Department office or purchase a copy of the plan or amendment. The cost to obtain a copy is \$2.50 for the first 20 pages and 12 cents for each additional page. (To be completed by the Department upon receipt. The cost to obtain a copy of the plan or amendment is: 2.50.)

Information about the plan or amendment follows:

1. Timberland Owner where the timber operation is to occur: Christine Barnes, etal
2. Registered Professional Forester who prepared the plan or amendment: Richard A. Wheeler, RPF #207
3. Name of individual who submitted the plan or amendment: Richard A. Wheeler, RPF for C. Barnes, etal
4. Location of the proposed timber operation (county, legal description, & approximate distance of the timber operation from the nearest community or well-known landmark):
SW 1/4, S 1/4 NW 1/4, Sec. 13; SE 1/4 Sec. 14; & N 1/4 Sec. 24, T14N, R9E, MDBM.

Approx. 3 mis. SE of Colfax, Placer County California

5. The name of and distance from the nearest perennial stream and major watercourse flowing through or downstream from the timber operation:

Bunch Canyon Creek flows through the SE 1/4 Sec. 14.
North Fork of the American River is 1/2 mile to the East.

6. Acres proposed to be harvested: 235

7. The regeneration methods and/or intermediate treatments to be used:
Shelterwood-Removal Step, Clear Cut, Alternative Prescription, Rehabilitation of Understocked Areas

A map is attached to help in locating where the proposed timber operation is to occur.

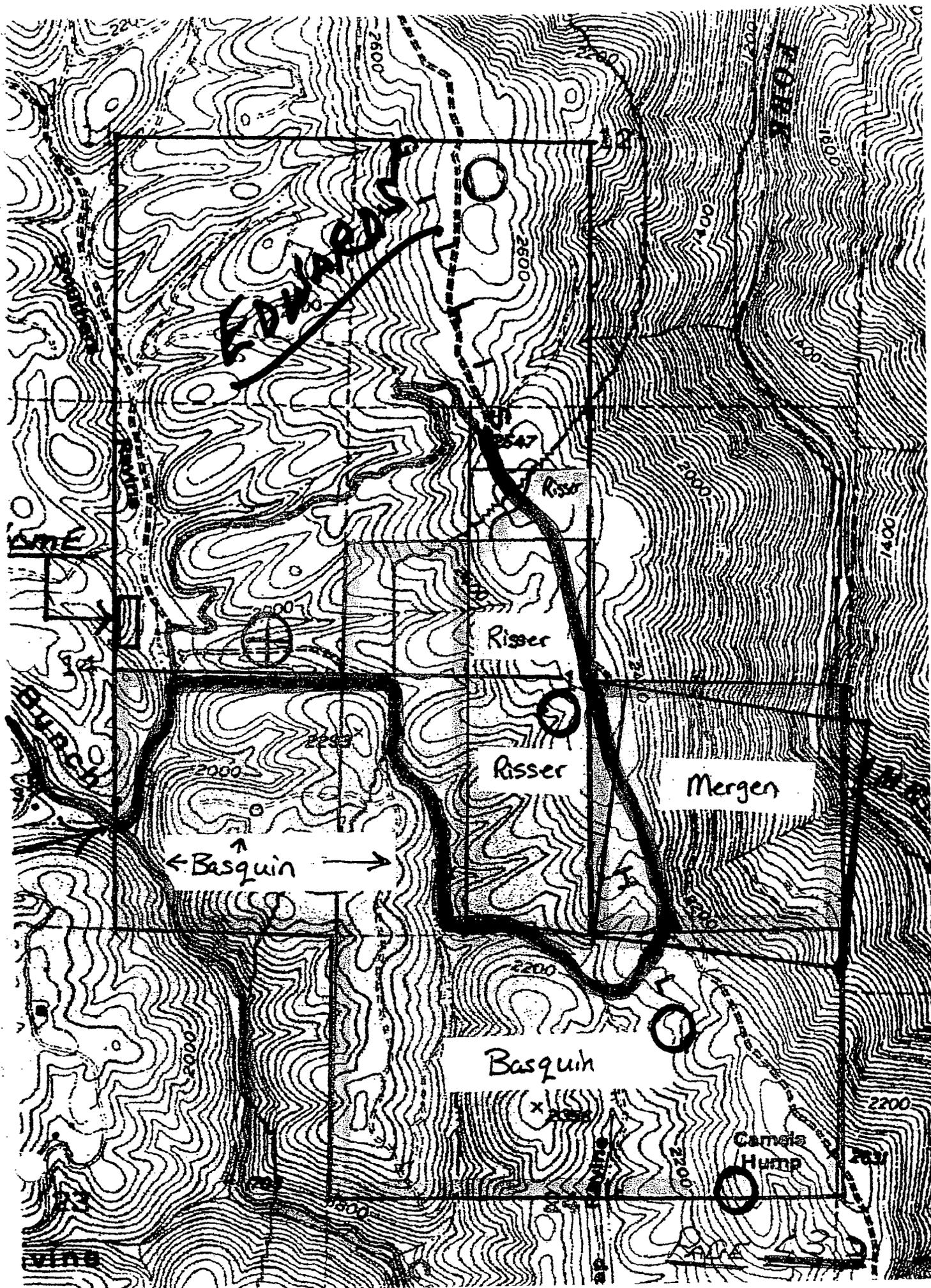
FOR DEPARTMENT USE ONLY

2-94-29 -- PLA (S)

TIMBER HARVESTING PLAN NO. _____ DATE OF RECEIPT JAN 18 1994

Region IV, September 1, 1992

COPY



LELAND

BURKH LANE

MERRIN

RISSE

DAVIDS HILL FARM I HP

TIER 1 WEST PLAN MAP
Sections 13, 14 & 24 T14N, R2E NEEN

NORTH

Scale 1" = 1000'

Collax 7.5
USGS Quad.
(Enlarged 2X)

LEGEND

Permanent: [Symbol]

Seasonal: [Symbol]

Seasonal: [Symbol] With 15' construction

Watercourse Class I

Watercourse Class II

Watercourse Class III

Spring [Symbol]

LEGEND

Harvesting Area Boundary [Symbol]

Rehabilitation of Understocked Area = [Symbol 1]

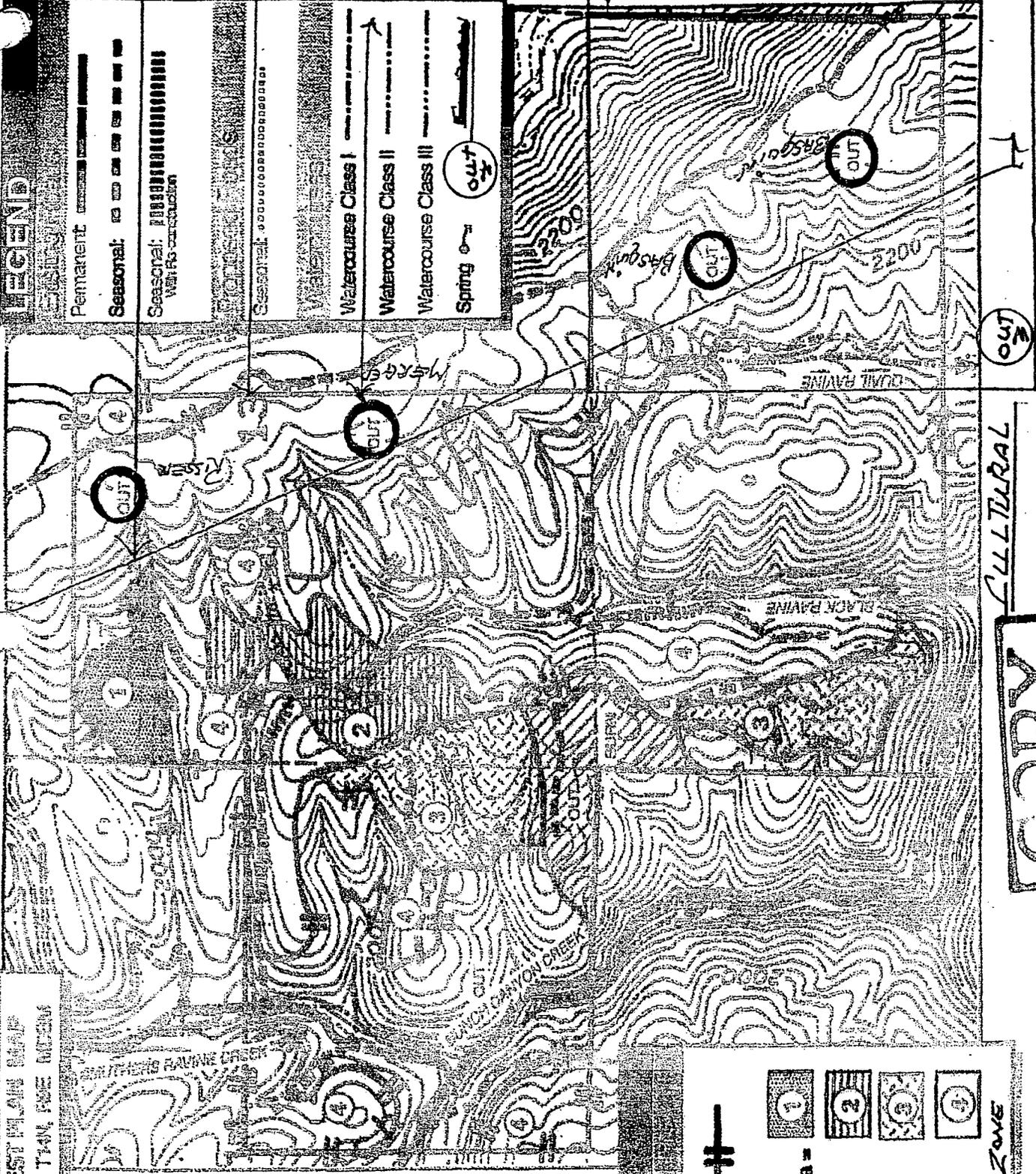
Clearcut Site = [Symbol 2]

Alternative Prescription = [Symbol 3]

Shelterwood (Removal Step) = [Symbol 4]

SITE II

CULTURAL ZONE



COPY

349

43. Yes No Directional felling of trees within the zone away from the watercourse or lake?

44. Yes No Increase or decrease of width(s) of the zone(s)?

45. Yes No Protection of watercourses which conduct class IV waters?

46. Yes No Exclusion of heavy equipment from the zone? (See Addendum - Item # 41)

47. Yes No Retention of 50% of the overstory canopy in the zone?

48. Yes No Retention of 50% of the understory in the zone?

If any of items 41 through 48 are answered yes, explain and justify if required by the rules and provide necessary information in an addendum.

49. Yes No Are residual trees or harvest trees going to be marked within the watercourse or lake protection zone? If no, explain:

(See Addendum, Item #50 for marking practices used in WLPZ's)

50. In an addendum describe the protective measures and zone widths for the watercourse and lake protection zones that are in the plan area. (See Addendum, Item # 50)

WILDLIFE

51. Yes No Are any known rare or endangered species or species of special concern, including key habitat, associated with the THP area? If yes, in an addendum identify the species and the provisions to be taken for protection of the species.

52. Yes No Are there any snags which must be felled for fire protection or other reasons? If yes, describe which snags are going to be felled:

(1) Snags that may pose a danger to the logging crew.

(2) Snags in the portion of the burned area which is proposed for planting. Falling of these snags is necessary for site preparation and worker safety.

53. Yes No Are any other provisions for wildlife protection required by the rules? If yes, describe provisions:

CULTURAL RESOURCES

54.a. Yes No Has an archaeological survey been made of the areas to be harvested?

b. Yes No Have the California Archaeological Inventory records been checked for any recorded archaeological or historical sites located in the area to be harvested?

55. Yes No Are there any archaeological or historical sites located in the area to be harvested? If yes, describe in an addendum how the sites are to be protected.

(See Addendum, Item #55)

32

ADDENDUM

ITEM # 55 - CULTURAL RESOURCES

NOTE

The landowner has requested that the results of the archaeological survey be kept confidential. The report is provided under separate cover.

PAGE 6

DUE TO POOR PRINT QUALITY, THIS PAGE HAS BEEN REMOVED AND IS
AVAILABLE AT THE CLERK OF THE BOARD'S OFFICE

Following is a list of all pages removed due to poor print quality:

- Exhibit B
- Exhibit E (last 5 pages)
- Exhibit J (7 various pages)



DEPARTMENT OF FORESTRY AND FIRE PROTECTION

P.O. Box 944246
SACRAMENTO, CA 94244-2460
(916) 653-7772
Website: www.fire.ca.gov



December 11, 2009

Crystal Jacobsen
Placer County Planning Department
3091 County Center Drive
Auburn, CA 95603

RECEIVED
DEC 15 2009
PLANNING DEPT.

RE: Bunch Creek Rezone (PREA T20060521)

Dear Ms. Rein,

Thank you for the opportunity to review the recently submitted Mitigated Negative Declaration for the Bunch Creek Rezone project. The procedural Timberland Production Zone requirements as referenced in my original letter dated 2/5/08 have been included and subsequently addressed. Additionally, I concur with the fire control and fuel reduction mitigations provided. I have no further comment or concerns regarding the approval of this project. Thank you again for the opportunity to comment. Please contact me with any questions at (530) 265-2603.

Sincerely,

MATTHEW S. REISCHMAN
Unit Forester
Nevada-Yuba-Placer Unit

From: Michael Garabedian
To: Placer County Environmental Coordination Services;
Subject: Fwd: Bunch Creek Rezone (PREA T20060521) Comment on Dec. 4, 2009 MND Notice
Date: Monday, January 04, 2010 4:59:16 PM

Please note correction in paragraph two.

Begin forwarded message:

From: Michael Garabedian <mikeg@gvn.net>
Date: January 4, 2010 4:53:28 PM PST
To: cdraecs@placer.ca.gov
Subject: **Bunch Creek Rezone (PREA T20060521) Comment on Dec. 4, 2009 MND Notice**

To:
cdraecs@placer.ca.gov
County of Placer Community Development Resource Agency
3091 County Center Drive, Suite 190
Auburn, California 95603

Friends of the North Fork is a group dedicated to protecting the natural resources and beauty of the North Fork American River watershed. We began forming in May, 2004 and organized a year later. Among our board members and activists are those who hike, raft and mountain bike in and lead others on excursions into the watershed, who live in the watershed, and who own property in it.

The drafter and signer of this e-mail has a B.S. in Forestry and Conservation, has forestry employment experience, and has over four years of Staff Counsel experience working for the State of California on Williamson Act issues.

We are opposed to county actions on this project that could contribute to creating new parcels now or in the future. Enough have already been created, though prior minor division approval may not be valid.

An EIR must be prepared for this project. No amount of mitigation can mitigate impacts until they are accurately identified and analyzed. The EIR must deal before this rezoning is acted upon with future actions that this project could enable or contribute to, including future land division. A fair argument exists that this project may have a significant negative impact on each of and together, the county; the project area; forest, forest management and forest conversion; the visual, and the canyon environments,

and the environment.

The MND contains statements that and demonstrates actual and intended failure to accurately implement, interpret and understand the county ordinances including but not limited to the zoning ordinance and County General Plan, including but not limited to the meaning and practice of forestry and forest management.

The MND contains statements and demonstrates county actual and intended failure to implement, interpret and understand state forest conversion law and regulations, specifically, Public Resources Code sections 4621-4628, Government Code sections 51100-51155, and Title 14 CCR Sections 1100 et seq. on conversion of timberland, and the CEQA requirement that CEQA documents address project environmental impacts pertaining to these statutes and regulations.

The MND and record demonstrate Cal Fire's failure to perform its responsible agency duties to assure that the CEQA documents contain the necessary CEQA analysis for it and the State Board of Forestry to carry out their a statutory and delegated responsible agency duties regarding both forest conversion and forest management.

The MND contains statements and demonstrates county actual and intended failure to implement, interpret and understand the California Subdivision Map Act, including in regard to actions and CEQA needs of the minor division committee and subdivision practices of the county.

The MND fails to describe and assess the following matters and related factors.

1. Placer County is the number one county destroying rural California, starting with itself, even during the recession. State Department of Finance July 2009 figures show Placer County with the highest growth rate 2008 to 2009 of 1.79%, at almost twice the state's growth rate of .93%. Census figures also show that it is the fastest growing county with 37.7% growth 2000-2008 compared to 8.5% statewide.

2. Placer County policy and actions are busy creating suburban and urban population growth that is overwhelming the county's rural population, rural values, and rural environment. The county is

making its rural residents a rapidly shrinking minority of its citizens. It is busy urbanizing its lands and is shrinking the voice of its rural citizens in land use decisions. We are on the verge of a reapportionment that will institutionalize this political and rural landscape change that the county has been hell-bent to bring about for the last 10 years.

3. The county's actions make it the state's leading exponent that California must follow the State of Nevada model by decimating the political clout and self-determination of rural California. Nevada has only one truly rural state Senate district remaining due to the growth of southern Nevada. The one-man-one-vote requirement means that Placer County is tipping its own county political balance in favor of suburbanizing and urban areas and their new residents. Having the whole county in state Assembly and Senate districts mean that its rural residents lose out both in the county dynamic and in the statewide dynamic. The fact that this is county policy does not mean that CEQA documents can fail to assume away significant environmental impacts

4. The MND is a document containing extreme hostility to the county's highly economically and environmentally valuable natural resource base. The economic is derisive of the value of its natural resource based economy to the county. This is a project pell mell bent to needlessly destroy the county's forest resource base. The MND condones and excuses away the fragmentation and cumulative destruction off the forest resource base. The MND is a model of how to carelessly dismiss the value of the county's private forest lands without the necessary analysis of their importance.

5. The MND contains virtually no necessary analysis of the factors the county will have to consider when evaluation the question of county cancellation of the TPZ contract versus its approval of a TPZ rollout.

6. The MND fails to recognize that income from forestry practices and management is one of the most important aspects of continuing the economic viability of the forest resource base and that this is a vital source of income enabling forest owners to continue in forest use.

7. The project is yet one more growing example of the convoluted manner in which key landowners, surveyors, realtors, and developers create parcels with significant potential to visually blight

the county's river canyons, especially the North Fork of the American River and its public lands. We call these actions the county's program by default, "CLEVERR", Creating Lots & Environmental Visual Erosion Run Rampant." One important element of this is that the county allows minor parcel division that is a loophole mania that like swiss cheese is full of holes. The county has not seen fit to create and define a minor division process that has integrity. Instead, the minor division process is a program that increases the dollar value of land by creating lots both with a view of river canyons and within view of canyon users. This is in effect a view for value program where the county manufactures private value with its scenic resources -- a welfare program, if you will. As a result of county policy and implementation, the only avenue left for the public is CEQA, and it requires more than MND language excusing any visual impact analysis with anecdotal comments that are unpersuasive in light of any look at a topography map.

8. The North Fork canyon is one of the most magnificent canyons in the world historically and presently, and the county has up to now abdicated both its planning, zoning and other stewardship and CEQA responsibilities for the canyon.

We challenge as incorrect and inadequate following statements and facts in the MND.

There is no map or APN identification of TPZ parcels within one mile or the forestry impact zone of the project, and no accompanying analysis keyed to this mapping or identification.

Pages 2-3 are unhelpful and inadequate in this regard. The absence of an area TPZ property map means the MND is useless for TPZ-related, forest conversion, and cumulative impact related purposes and issues, including as the basis for public CEQA comment on the MND.

Page 7 of 29 is a page of forest-related misunderstandings or fictions. Forestry is long-term land management and a 50-60 year time frame leading up to harvesting is well within the meaning of forest use. Landowner failure to invest in reforestation including but not limited to the adequacy of seed trees and restocking and other compliance with other state forest practice requirements and violations needs to be addressed in the MND. II-1,3.

Page 7 of 29 and other locations are among the mitigation measures that rely on a 100-foot buffer. There is no discussion about why a 100-foot buffer is suitable to address the half-dozen and more impacts identified in II-2-4. A 100-foot buffer is meaningless for nearly all forest management purposes and is virtually totally useless regarding the six impacts specifically listed: residential conversion, subsequent conflicts with surrounding timber uses and management, increased potential for conversion of surround timber lands, reduction of TPZ lands in the area, leaving small islands of TPZ, residential land use conflicts, and incompatibility of residential uses with timberland management and production activities. The letters in the record from people opposing logging on the Edwards property demonstrate the hazard this project is to continued forest use and the ridiculous inadequacy of a 100-foot buffer to address any of the identified timberland conversion issues.

Item IX-3, 4, 5, page 20 to 21 of 29 identifies the same impacts as those in the immediate prior paragraph. The 100-foot buffer of MM IX. 1 fails here in the same manner as is described above. The MM IX.2. only draws attention to the absence of a map of TPZ properties (as identified three paragraphs above) not just adjacent, but within at least one mile of the project property, but a larger area if TPZ parcels in the larger area could be affected.

I have used USGS topo maps for many years, including for locating points on the ground. From my many years of experience using maps and identifying project locations on the ground, from three months of using topo maps in conjunction with aerial photos to locate pin pricked points on the ground for the national continuous forest inventory in Mendocino County, the paragraph 3 discussion of building visibility of the property is decidedly wrong. Further, the "building sites" are not identified and there is no statement about how the five building sites referred to are the ones that would actually be used and how the building site use is legally binding.

Building sites identified at the time of Placer County minor division approval have no meaning whatsoever and are worthless as demonstrated by the visually destructive 15215 Wild Oak Lane house built around 2007, even though the minor division approval has a house location down behind the North Fork canyon rim.

There is no statement about how the parcel visibility conclusion was reached using what methods or computer program. Friends did a computer program study of parcels in the canyon, and canyon parcels with canyon rims are nearly universally visible from the the

river bed. We would like to meet with the county to discuss our study, map and list of parcels affected. There is no basis in the MND for the conclusion that this visual conclusion and the small scale of potential residential development mean aesthetic impacts are "fairly benign." I, page 6 of 29.

Discussion Item IX-17, page 21 of 39, first paragraph, documents the county's failure of the CEQA necessity to include in this CEQA document, analysis for the four additional lots that this project would facilitate.

Discussion Item IX-17 second paragraph along with the first paragraph reads that Timber Production Zones are an integral part of forest management which TPZ purpose is to encourage prudent and responsible forest management, forest product production and compatible uses. This paragraph and elsewhere in the MND contain no facts whatsoever to justify the conclusion that an increase of four building units would not substantially alter the present and planned use of the TPZ property and that the change would have less than significant effect on the project property, and surrounding property or TPZ properties in the area. More than doubling the potential housing units on the property is a major increase in residential density, a major direct and cumulative impact on surrounding forest and TPZ properties. It is not just a timber conversion it is a major density change and residential location and intrusion compared both to what is on the ground now and what is now permitted by zoning.

The mitigation of impacts of the mining site completely omits the status of the mine and mining area under the Surface Mining and Reclamation Act of 1975 administered by the California Department of Conservation. VII-9, page 16 of 29, X, page 21 of 29.

The last paragraph of II-1,3 (page 7 of 29), the last sentence of II-2,4 (page 7 of 29) and the last sentence of IX-7 (page 21 of 29) demonstrate that the authors of the MND are either not qualified to address forest, forestry and TPZ CEQA issues including CEQA impacts of this project, that they have not sought the necessary input, or that their input or input has not been incorporated into or addressed the document. The county must assemble an expanded team with appropriate input for or oversight of the creation of a DEIR to circulate to the public.

We request a CEQA hearing on the MND separate from and prior to any rezoning, minor division or other county or other government hearing.

Michael Garabedian, President
Friends of the North Fork
7143 Gardenvine Ave.
Citrus Heights CA 95621
916-719-7296



January 4, 2010

County of Placer
Community Development Resources Agency
3091 County Center Drive, Suite 190
Auburn CA 95603
FAX 530-745-3003
Attention: Peg Rein

Re: Bunch Creek Rezone (PREA T20060521)

Dear Ms. Rein:

Please consider and include in the public record the following comments on the Mitigated Negative Declaration for the proposed Bunch Creek Rezone, submitted on behalf of Protect American River Canyons (PARC). As set forth below, we disagree with the Planning Department's conclusion that the subject mitigated negative declaration includes legally sufficient mitigation measures; instead we believe the proposed project continues to have potentially significant environmental impacts. As a result, unless additional legally adequate mitigation measures are incorporated into the proposed mitigated negative declaration (MND), preparation of an environmental impact report (EIR) will be mandated by the California Environmental Quality Act (CEQA).

As you are aware, this project proposes rezoning a 597 acre parcel that lies within the North Fork American River Canyon from TPZ (Timberland Production) to RF-BX-80 (Residential Forest with 80 acre minimum lot sizes). If approved, the project will result in the creation of seven buildable parcels on historically forested canyon slopes that are surrounded by other forested, undeveloped lands within the pristine North Fork American River Canyon.

The subject proposal is identical to a rezone request that was rejected by the Placer County Planning Commission in April 2008. The only discernible difference is the project proponent's addition of an alternative request for approval of a "10-year rollout" should his application for immediate rezoning be denied.

Unfortunately, this "new" proposal has not been modified in any manner that would tend to lessen the very real environmental impacts the contemplated rezone and subsequent residential development will have on the North Forth Canyon. Like its predecessor, this

P.O. Box 9312 · Auburn, CA 95604 · www.parc-auburn.org

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MND consistently avoids any meaningful consideration of the likely impacts of the proposed project. Such a skirting of the obligation to analyze and adequately mitigate potential impacts of a rezone request such as this violates CEQA requirements.

Under CEQA, a lead agency (in this case, the Planning Department) must prepare an EIR whenever substantial evidence in light of the entire record supports a "fair argument" that a proposed project may have a significant adverse impact on the environment. [Pub. Resources Code, §21080, subds. (c) & (d); CEQA Guidelines, §§15064 subd. (a)(1); 15070, subd. (a); *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151.]

Preparation of an EIR may be avoided under such circumstances only if: 1) a mitigated negative declaration is prepared that includes revisions agreed to by the project applicant that avoid the impacts to the environment or mitigate those impacts to the point where clearly no significant effects on the environment will occur, and 2) there is no substantial evidence in light of the entire record that the project, as revised, may still have a significant effect on the environment. (Public Resources Code section 21064.5)

If there is substantial evidence in the record that the proposed project, even as modified, may have a significant effect on the environment, the lead agency must either further modify the project to eliminate or reduce the potential significant environmental effect or prepare an EIR for the proposed project prior to approving or carrying out the project. (CEQA Guidelines, section 15070.subd. (b)(2).)

Moreover, mitigated negative declarations cannot be used when they rely upon the presumed success of future mitigation measures that have not been formulated at the time of project approval (*Sundstrom v. County of Mendocino* (1988) 202 Cal App 3d 296,306-314.)

Because the construction of seven homes is a reasonably foreseeable consequence of the proposed project (indeed, it is the very reason for the rezone request), an analysis of the potential impacts of such construction, along with legally adequate mitigation measures, must be included in the MND.

What follows is a discussion of some of the proposed MND's deficiencies.

AESTHETICS

In what can only be described as a misleading, simplistic, and incomplete analysis, the MND concludes that despite its creation of seven parcels approved for residential development within the North Fork American River Canyon, the project will have no potentially significant impacts on the scenic resources of the canyon.

As noted above, the 597 acres in question lie within the North Fork American River Canyon. The North Fork canyon in this location is part of the Auburn State Recreation Area (ASRA), a 42,000 acre wilderness and recreational treasure comprising nearly 50 miles of the canyons of the North and Middle Forks of the American River. The North

Fork canyon is particularly pristine, having been found eligible for federal Wild and Scenic River status as well as National Recreation Area designation, in no small measure due to its outstanding and largely unspoiled scenic qualities.

Fortunately, the Placer County Board of Supervisors recognized the value of preserving the scenic qualities of places like the North Fork canyon when it adopted the current county general plan in 1994. General Plan Policy I.K.1 reads as follows:

“The County shall require that new development in scenic areas (e.g., river canyons, lake watersheds, scenic highway corridors, ridgelines and steep slopes) is planned and designed in a manner which employs design, construction, and maintenance techniques that:

- a. Avoids locating structures along ridgelines and steep slopes;
- b. Incorporates design and screening measures to minimize the visibility of structures and graded areas;
- c. Maintains the character and visual quality of the area.”

General Plan Policy I.K.1 was enacted to help achieve General Plan Goal I.K, which states as its goal:

“To protect the visual and scenic resources of Placer County as important quality-of-life amenities for county residents and a principal asset in the promotion of recreation and tourism.”

Thus the General Plan expressly recognizes the value of preserving Placer County’s scenic resources, and mandates the application of clear and specific guidelines when considering development proposals that may impact those resources.

Much of the acreage on the seven parcels to be created under this proposal are on steep canyon-facing slopes. As a practical matter, the only relatively flat, accessible, and buildable land on these proposed parcels is located on the ridge tops. Homes built in those locations have the potential to cause substantial visual impacts, particularly for members of the public using the river, hiking the Windy Point-Indian Creek Trail, or driving into or out of the canyon on Yankee Jim Road or Ponderosa Way.

The MND’s conclusion that the “small scale” of the contemplated residential development will result in “fairly benign” impacts is a wild guess at best. Even a single poorly placed home in a visually prominent canyon rim location can have a devastating impact on scenic qualities, as a number of canyon rim homes built in recent years attest.

The MND’s finding of no significant impacts appears to be based entirely on the representation that a “review” of five “potential” building site locations (out of a total of seven buildable parcels) makes it “unlikely” that homes constructed in these locations will have a negative aesthetic impact on North Fork American River canyon viewsheds.

This proffered justification for a no impact finding is woefully short on detail. Where exactly are these five “potential” building sites? Where is the legally enforceable

guarantee that other, more visually prominent building sites will not ultimately be presented and approved? Where are the "potential" building sites on the other two parcels?

To pass legal muster, a thorough, detailed analysis of potential impacts to the viewshed is necessary, and specific, detailed mitigation measures must be articulated. The proposed MND contains neither.

AGRICULTURAL AND BIOLOGICAL RESOURCES

Because this land has been extensively logged, burned, subsequently salvage-logged and firewood-logged, it is in desperate need of a restoration plan that includes replanting of the conifer species and selection for the hardwood oak species on the property. To allow the owners to rezone this land without a restoration plan that addresses wildlife habitat loss and forest agricultural loss would reward the current owners for years of mismanagement. Their apparent agenda, to deplete the land of its wilderness and timber values in exchange for conversion to residential home sites, sets a dangerous precedent in the American River canyon and could lead to the conversion of other TPZ lands to residential uses.

The MND's conclusion that reforestation of the project site is not economically viable is also suspect. That conclusion appears to be based solely on a Forest Management Plan prepared for the project proponent in 2006 that apparently relied heavily on the erroneous assumption that the site had poor soils and poor growing conditions. In fact, a 1966 soils analysis by the U.S. Department of Agriculture showed that the project site had excellent timber-growing soils, a fact confirmed by the project site's history of timber production.

Historically, the land in question has provided much needed contiguous habitat refuge for forest flora and fauna as well as producing high quality pine and Douglas Fir timber. Current mismanagement practices have reduced much of the area to brushland that makes it difficult for conifers to reforest naturally. The rezone application offers no mitigation for the agricultural and environmental impacts that will result from subdividing. Taking this land out of agricultural production and into residential home sites will likely result in the permanent loss of the land's wildlife and timberland values. The land will become too expensive to manage for wildlife habitat and timber production. This rezone plan could have adverse impacts on surrounding properties such that neighboring property owners may also try to convert to residential subdivisions resulting in an even greater loss of wildlife habitat and mixed conifer forest.

The rezone application offers no survey of sensitive species or their habitats yet concludes that there will be no impacts to wildlife. Forest dependent species, especially those in need of large tracts of land to hunt and forage, will experience fragmentation. Other species of plants and animals that rely on sensitive macro-ecosystems may disappear entirely. Certainly, to meet CEQA requirements, a study or baseline survey must accompany such a statement of no impacts.

CONCLUSION

As noted, the project as proposed may have significant environmental impacts that have not been adequately mitigated. To meet CEQA requirements, the MND must include specific, meaningful mitigation measures that will reduce the potential impacts to a less than significant level. Unless the MND is revised to include such measures, California law compels the preparation of an EIR for this proposed project.

Sincerely,

A handwritten signature in black ink that reads "Tim Woodall". The signature is written in a cursive style with a large, sweeping initial "T" and "W".

Tim Woodall
Board President
Protect American River Canyons



SIERRA
CLUB
FOUNDED 1892

PLACER GROUP
P.O. BOX 7167, AUBURN, CA 95604

January 4, 2010

Placer Co. Comm. Development
Resource Agency
3091 County Center Dr.
Auburn, CA 95603

Ladies and Gentlemen:

RE: Bunch Creek Rezone-PREA T20060521

Thank you for the opportunity to comment on the Bunch Creek Rezone.

First, we request a time extension on the comment deadline for two reasons. The contact name (Peg Rein) is no longer available, and the telephone number in the Notice of Availability (NOA) is not operative. Thus, the opportunity for "Additional information..." as stated was incorrect and non-existent.

More disturbing is the fact that our informal poll (of others who submitted comments on or about February 2008 for the previous Bunch Creek Bunch Creek Rezone [PREA T20060521] Mitigated Negative Declaration) indicates that none were notified of this new "Modified Mitigated Negative Declaration" (MND) circulation. Possibly property owners were noticed, but to date we have not found anyone who submitted comments in 2008 that was also noticed. A good faith effort to notice all who submitted comments previously must be conducted and the comment deadline appropriately extended.

In addition, as a partial rectification of this possible noticing oversight, we are requesting that all previous comments be included in the administrative record for this current MND and all further MND's. To do otherwise creates a perception of deception and suggests a circumvention of California Environmental Quality Act (CEQA) by way of circulating a MND and then discarding the public's comments under the shield of a new or subsequent "modified" MND without notifying those who submitted previously.

Last, we have not been able to confirm that the appropriate notice was indeed published in the December 4, 2009 issue of the SACRAMENTO BEE as stated. For now, until/unless proven otherwise, we assume that may have been the only public notice.

Second, we submit that a Mitigated Negative Declaration (MND) is inappropriate and that a full Environmental Impact Report (EIR) is warranted and should be required for this Bunch Creek rezone. Although the previous Bunch Creek Rezone (PREA T20060521) MND was circulated with a comment period closing (deadline) of February 7, 2008, apparently it was set aside. If any public comments submitted in February 08 identified environmental impacts, they should be made available to the public as a part of this current MND.

To circulate a "modified" MND, suggests that the previous public comments submitted may have been substantial enough to have required an EIR. The public should have access to all the comments from the February 2008 MND circulation, especially since part of CEQA's intent is to encourage public participation with a sharing of expertise being a strong component of that public participation. A MND does not fulfill that CEQA obligation, and lack of availability of previously submitted comments hinders the public process.

Additionally, CEQA requires a full EIR if there is sufficient evidence that an effect "may" (not "will") have a significant adverse impact. The MND is appropriate only if there is no substantial evidence that the project or any of its aspects may cause a significant effect on the

environment. Clearly, this Bunch Creek proposal does not meet the threshold for a MND; CEQA compliance can only be obtained with preparation and circulation of an EIR.¹

It is well established that CEQA has a “low threshold” for initial preparation of an EIR, especially in the face of conflicting assertions concerning the possible effects of a proposed project.² An EIR is required whenever substantial evidence in the administrative record supports a “fair argument” that significant impacts *may* occur, even if other substantial evidence supports the opposite conclusion.³ An impact need not be momentous or of a long enduring nature; the “word ‘significant’ covers a spectrum ranging from ‘not trivial’ through ‘appreciable’ to ‘important’ and even ‘momentous.’”⁴ The fair argument test thus reflects a “low threshold requirement for initial preparation of an EIR” and expresses “a preference for resolving doubts in favor of environmental review.”⁵

Further, where the agency fails to study an entire area of environmental impacts, deficiencies in the record “enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.”⁶ In marginal cases, where it is not clear whether there is substantial evidence that a project may have a significant impact and there is a disagreement among experts over the significance of the effect on the environment, the agency “must treat the effect as significant” and prepare an EIR.⁷

The Bunch Creek project does not follow the intent and concerns of CEQA with regard to changes in the environment brought about by the project or with a good-faith effort at full disclosure. A project’s economic bottom line is not CEQA’s concern. CEQA establishes a duty for public agencies to avoid or minimize environmental damage, with an emphasis on prevention. The public agency is entrusted to enforce CEQA and not to foist that duty on to citizens or organizations.

Initial Study

A. Background, Project Description

The Public Resource Code, Section 4621 gives clear direction to not approve this TPZ conversion with the three stated required findings (public interest, no adverse effect on other timberlands within one mile of project, and suitable soil, slope, and watershed conditions for the conversion). None of these conditions has been met; in fact, the opposite is true: This conversion benefits private parties only, has foreseeable and likely adverse impacts on surrounding TPZ lands, and has the potential to impact two watersheds.

The code section specifically spells out that “opportunity” for alternative use shall not alone be sufficient reason to approve the conversion. It emphasizes that the “uneconomic character of the existing use shall not be sufficient reason for the conditional approval of conversion,” and that conversion “may be considered ONLY [emphasis added] if there is no other reasonable or comparable timber-growing use to which the land may be put.” Because the 597 acres can and should be put to timber-growing use, it should not be converted from its TPZ designation.

¹ Although CEQA may allow a MND by incorporating specific mitigation measures to reduce impacts to less than significant, CEQA also very clearly states that an Environmental Impact Report (EIR) is required if any aspect of the project, “...either individually or cumulatively, may have a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial...” An EIR must be prepared when in light of the entire record substantial evidence exists that a project may have a significant environmental effect. (CEQA Guidelines § 15064 (f)). We believe this project easily meets the threshold to require that a full EIR be prepared.

² *The Pocket Protectors v. City of Sacramento* (2005) 124 Cal App.4th 903, 928.

³ CEQA Guidelines §§ 15064(a)(1), (f)(1).

⁴ *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83 n. 16.

⁵ *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 151.

⁶ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

⁷ Guidelines § 15064(g); *City of Carmel-By-The-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 245.

D. Evaluation of Environmental Impacts:

If, as stated, "Earlier analyses used" includes identifying "...earlier analyses and state where they are available for review" includes the MND circulated in early 2008 from which this MND is "Modified," then this Initial Study is lacking because the comments submitted are not readily available. All comments submitted, both pro and con, should have been made available on the county's website and should be a part of the administrative record for this MND. We request that all previous comments submitted on the 2008 Bunch Creek MND be a part of the administrative record.

I. Aesthetics

Although the Initial Study & Checklist (IS) dismisses the scenic importance of the project site, it does acknowledge that "portions of the site are located along ridges...considered a scenic resource..." in Placer County. Further upstream from the project site, in 1978 the North Fork American River (NFAR) was granted Wild and Scenic status, helping to preserve the nearly untouched canyon from logging, damming, and development. This rezone project will not only encourage further development (IS: "...potential for future residential development...") that will degrade the beauty of the canyon from Camel's Hump (part of project) but also will negatively impact all who hike the multitude of canyon trails. The outdoor/hiking public will be subjected to a destroyed viewshed. The IS statement that it is "unlikely that such development...would have a negative aesthetic impact to the NFAR canyon viewsheds" is neither reassuring or realistic.

A great deal of community effort has been undertaken to reject any residential building on scenic ridges of the canyons of the American River and its forks. These types of structures have been referred to as "vulture houses." The Bunch Creek Rezone *may* have a significant impact on the scenic resources of the NFAR. Thus, especially with community concerns already expressed on other scenic ridges, this potential impact of structures or fuel breaks on any ridges along the NFAR would be significant and requires the preparation of an EIR.

The fact that the proposed rezoning will result in the potential for eventually creating seven future residential developments (where now there are none), which would in turn degrade the existing visual character or quality of the site, also meets the CEQA threshold for preparation of an EIR as this is certainly a significant future impact.

Although the IS refers to the impacts as being "fairly benign" due to the "scale" (and erroneous claims of "screening" of the project from the canyon), scale is not justification to lessen the impact. In fact, it brings up significant cumulative impact concerns: Which parcels and how many will be next to ask for TPZ land use rezoning? Will the residences be 6,000 square feet monoliths, four stories tall, yet still claim to not impact the viewshed due to "scale"?

We strongly disagree with the final statement in the Aesthetics section. Camel's Hump, as shown on the map and overlooking the NFAR, is obviously a critical site in the scenic viewshed. The impacts to the scenic resources and viewsheds are quite significant; only an EIR can fully address the impacts and inform the public as CEQA was meant to do. Please require, prepare and circulate an EIR.

II. Agricultural Resource

Rezoning should not be dictated or decided on the basis of a natural disaster (fire), unless it was further restrictive for public health and safety (in which case, with the fire potential being what it is, changing the zoning from TPZ to residential cannot be supported). The fact that a fire did occur in TPZ lands simply means that the site could/should have been managed for continued timberland use and replanted.

It is our understanding that governmental forestry agencies provide the necessary resources for replanting. A land owner's decision not to replant should not open any doors for changing the zoning. Replanting can result in commercial harvesting of timber on the project site, and replanting is standard operating procedure after a fire. To choose not to replant and to then use that decision as grounds for a rezone is unacceptable and not justifiable. If the soils were good enough to allow a TPZ designation, surely a replanting is called for. A natural disaster should not be an impetus to allow rezoning (especially to residential zoning in such a high fire prone area).

IV. Biological Resources

Item IV-1 states that the site could be further subdivided in the future, resulting in four additional residential lots, totaling seven eventually. This potential for growth will have a major impact on all the wildlife in the project area, from migration to residential "nuisance" animals. The impacts that this proposal will have on existing wildlife and/or wildlife habitat appear to not have been addressed at all.

One purpose of CEQA is to provide individuals with the opportunity to participate effectively in all steps of the environmental review process. We request that an EIR be prepared for this zoning change, and that all the potential biological impacts (especially with regard to wildlife) inherent in changing from timberland production to residential forestry be analyzed. With "Defensible Space" or "Fire Safe" prescribed clearances around structures (100 to 300 feet or more), all wildlife will be affected. With road improvements (including widening, paving, clearance, etc.) plus added traffic, impacts to wildlife will be significant.

Although imposing setbacks and buffers is desirable, enforcement is problematic and non-existent in some areas of the county. With personnel cuts and budgetary problems, most likely county enforcement of any such requirements will either be lax and/or variances will be granted.

We submit that there will indeed be impacts to wildlife; that under CEQA the lead agency has a mandate to inform the public; and that the public has a right to know what those impacts are and to comment on them. This must be accomplished via circulation of an EIR.

VI. Geology & Soils

With nine significant adverse impacts, it is disappointing to see mitigation measures that fall back on terms such as "located as far as possible," which can and is interpreted to be whatever the applicant decides. The term is literally unenforceable.

MMVI.4 prescribes the revegetation measures of disturbed areas. Although the letter of credit or cash deposit of 110% of an approved engineer's estimate is better than no provision at all, it is grossly inadequate. Also, the revegetation must be monitored and assured for more than one year. Five years is a more scientifically sound and reasonable time period, and a bond or a cash deposit covering the five years must secure the performance and monitoring costs. Otherwise, the MM is meaningless.

VII. Hazards & Hazardous Materials

We strongly agree that the zoning will result in exposing new residents and structures to wildfire hazards and place them in harm's way. We also believe that a shaded fuel break on ridge tops or anywhere else on steep-sloped landscapes will have to be of such a magnitude as to create a variety of impacts with erosion, wildlife corridors, etc. Whether fuel breaks are 100' wide, 200' or 300,' they will have tremendous environmental impacts and must be analyzed in an EIR. Grading for secondary roads will also have environmental impacts.

Requiring the fuel reductions on both sides of roadways 50' to 100' from centerline, 15' vertical clearances, and defensible space would help mitigate the fire hazard, but who will finance enforcement for maintenance of these measures? When they are not maintained and a fire brings havoc to the residents and/or their property, what liability exposure will the county encumber?

IX Land Use & Planning

Because any owner chooses not to reforest a site after a timber salvage operation, a fire, or any harvest, is not grounds for a zoning change especially in the "exclusive areas for the growing and harvesting of timber and those uses that are an integral part of timber management." As stated in the IS, "The purpose of the TPZ is to encourage prudent and responsible forest resource management and the continued use of timberlands...." To allow rezoning changes, based on arbitrary decisions to not revegetate, could potentially provide incentives, if not encouragement, for intentional refusals to revegetate or ignition of timberland. If a residence burns, and the homeowner chooses not to rebuild, that is his/her choice. It should not trigger a zoning change based upon speculative opportunities.

Any "future development of incompatible uses," potential conflicts, and impacts on surrounding timber harvest operations must be thoroughly analyzed and the public informed. Once conflicts materialize, what will be the cumulative impacts when additional conversions are requested? With fragmented TPZ's, legitimate, sustainable timber harvest operations will face hardships due to the unnecessary rezoning.

Buffers look great on paper, but application and enforcement is often lacking. Civil lawsuits too often are the only remedy. The applicants purchased the TPZ lands knowing full well what the restrictions are. With all due respect, Mitigation Measure (MM) IX2 sets new standards for meaningless mitigation. An explanation as to how an "information sheet" will lessen the impact of changing the present land use would be appreciated.

We submit that the TPZ land use language is perfectly clear: "Exclusive area for growing and harvesting of timber...encourage prudent and responsible forest resource management and the continued use of timberlands...and compatible uses." That language must be upheld and the current TPZ zoning remain as is.

The incompatible uses and subsequent conflicts with existing surrounding timberland logging practices and operations create impacts that must be studied in more depth. The fair argument here is that this zoning change will potentially create significant compatibility and cumulative growth-inducing impacts in an area that is not conducive to such development. To avoid a discussion of the inherent growth-inducing impacts this zoning change will create is to avoid the true scope and purpose of CEQA. An EIR must be prepared that allows the public to review the impacts and make meaningful comments.

XV. Transportation & Traffic

Although the development of seven residential parcels on this property would supposedly require the on-site private roadway to be improved for safe passage, the county is known to either issue variances and/or not enforce such private road improvements. An analysis of transportation and traffic impacts must be conducted with an eye toward the new array of activities that will be allowed as soon as the TPZ is converted and rezoned.

When one landowner plants a few grapes on one acre, builds a winery, meets the provisions in the county's winery ordinance, opens a public wine/beer tasting/activity center, the traffic impacts will be substantial. Since it will be legal to establish a public winery with tasting and event capacities, the traffic and transportation issues, created when wine/beer tasters meet loggers on private 20-foot wide roads, must be addressed.

MANDATORY FINDINGS OF SIGNIFICANCE

We disagree that this zoning change has no impacts. It is a growth-inducing project that creates the potential for any other TPZ parcel that has burned or been damaged due to natural or man-made causes to abandon revegetation and rezone. There is a reasonable probability that this Bunch Creek rezone proposal will trigger additional proposal/requests to change other TPZ's, resulting in more land splits and leap frog development. Placer County's timberlands will be fragmented and fraught with land use conflicts. This rezone needs to be denied or analyzed for public review in an EIR.

This zoning change proposal represents a piecemeal approach to further zoning changes, with each subsequent request citing another's approval as precedence. CEQA encompasses growth-inducing impacts (which is the essence of this zoning change) and requires that impacts must be addressed if there is a potential for adverse impacts on the environment. Thus we request that an EIR be prepared for the Bunch Creek Rezone proposal.

Cordially,



Marilyn Jasper, Chair

Email: marilyn.jasper@mlc.sierraclub.org

Loren
Crystal

Edwards Family Farm
22801 Gillis Hill Rd.
Colfax, CA 95713

RECEIVED
JUN 30 2008
PLANNING DEPT.

June 26, 2008

Anthony J. La Bouff
Placer County Council
175 Fulweider Ave.
Auburn, CA 96903

Dear Mr La Bouff,

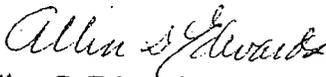
I attended the Supervisors meeting in June 24, 2008 and was present for the item regarding the Bunch Creek Rezone. During the discussion on that item, I understood you to say that, if owners of TPZ parcels elect to proceed with a 10 year roll-out (delayed rezoning), Supervisors would vote on the issue, but they don't have any choice but to approve.

I checked within the California government code. It seems to disagree with your conclusion. Code section 51120 seems to specify that the supervisors have discretion in this decision; they "may" remove a parcel in a 10 year roll-out by majority vote of the full board.

I further checked with Alan Robertson, CalFire's CEQA coordinator. According to him, a 10 year roll-out is similar to any other rezoning in that it is a discretionary decision by the Board of Supervisors, requiring a majority vote of the full Board for approval. In addition it is the position of CalFire that the application for a roll-out must go through a CEQA review before coming to the Supervisors.

Please let me know if my information is not correct.

Thank you for your attention.



Allen G. Edwards

cc: Jim Holmes
Michael Johnson
Alan Robertson

From: [unclear]
- [unclear]
- [unclear]
- [unclear]

Kathi Heckert

From: Allen Edwards [edtreefarm@gmail.com]
Sent: Wednesday, April 28, 2010 11:38 AM
To: Kathi Heckert
Subject: Bunch creek rezone

Dear Kathy,

As we discussed on the telephone yesterday, would you please forward the message below to the Planning Commissioners.

Thank you

Allen Edwards

Dear Planning Commissioners,

You are scheduled to hear the Bunch Creek Rezone on May 13, 2010. This is a request to rezone approximately 600 acres of TPZ forest land to residential uses. I live and farm on TPZ land adjacent to this project. I believe the project, if approved, will not only adversely affect my farm, but will be in conflict with County-wide forestland policies and could set a precedent for future TPZ rezoning decisions. An approval of this project could ultimately jeopardize the County's longstanding efforts to protect and enhance its forest resources.

I would like the opportunity to talk with each of you about this project. I would like to meet with you in person, or discuss the project over the telephone. I would also be happy to give you a tour of my forest – with the intent of giving you a perspective of what working forests can offer the county.

Please call me at 530-637-4211 (home) or 530-906-1532 (cell), or email me at edtreefarm@gmail.com

Thank you for your consideration,

Allen G. Edwards