CQ405

ASSOCIATED CALIFORNIA LOGGERS

555 CAPITOL MALL, SUITE 745 • SACRAMENTO, CALIFORNIA 95814 • (916) 441-7940 • FAX 441-7942 • www.calog.com

FAX Transmittal

September 18, 2002

Council On Environmental Quality
NEPA Task Force

FAX # (801) 517-1021

Our association of family-owned logging and log trucking businesses offers the following comments regarding your review of the NEPA process and it's requirements:

The objective of the Council's revision of its policies and procedures should be to simplify them, structure them so they do not promote or encourage litigation, avoid the implication that endless planning and analysis is required and provide an exemption or exclusion for projects of little or no impact on the environment.

With regard to forest management projects on public lands that respond to natural disasters, there are a couple of examples that point the direction toward more expeditious recovery efforts and the avoidance of greater environmental harm from following events. On private land in California we are able to respond almost immediately to the destruction caused by fires, insects and other natural disasters under the provisions of California's Forest Practice Act and Rules. A Registered Professional Forester (RPF) certifies that an emergency exists and files a brief notice that the emergency has occurred and provides an outline of the restoration work that is to begin. A copy of the rule language covering this emergency action is attached for your information.

California's emergency procedures permit the landowner to began work immediately to salvage dead and dying timber, protect watercourses from damage by following events such as rainfall and expedite replanting. There has been little litigation over the use of this process.

Consideration should also be given to institutionalizing the alternate NEPA process that was used in 1998 by the National Forests and Grasslands in Texas (NFGT). In this case the Forest Service proposed an alternate NEPA process to your Council which served as the basis for the approval of the alternate process and permitted work to begin within about 30 days. Copies of the exchange between CEQ and the Forest Service are attached. These projects should not have a required public comment component and should rely more fully on the technical capabilities of staff or contractors to prepare a NFGT-type document and provide it's approval.

CQ405

Clearly, there is a need for a simple, short time frame process to let public land managers initiating recovery actions which, although they may be considered disturbing to the environment, produce such large offsetting benefits as to merit having approvals carried out on a routine basis and isolated from the threats of delaying appeals and litigation. As seen in the California experience, early recovery efforts tend to reduce the potential for further loss, help stabilize the site and speed final recovery. Characteristically, following a sizable fire the Forest Service misses the opportunity to do substantial pre-first winter erosion control work and generally two planting seasons while it deals with paperwork and public involvement.

The current guidelines for NEPA compliance have been so distorted by appeals and litigation that small, almost ministerial, projects have become nearly impossible. The removal of hazard trees, improving roads and their erosion control facilities and the harvesting of small volumes of timber to achieve forest health purposes, for example, have too often in many forests become as cumbersome to bring to fruition as major timber sales. To bring the work required for these projects back into proper perspective, revisions are needed that explicitly limit the amount of study and analysis required and provide some categorical exclusion for at least an initial list of projects that can be carried out without significant amounts of paperwork. Greater reliance should be placed on certification by professional managers.

At a much larger scale, the requirement for the development of an Environmental Impact Statement (EIS) should be reserved to one level of planning with the objective of minimizing the number of on-the-ground projects that need an EIS. Rather, rely on the certification of a qualified professional. Again, some well constructed guidelines are necessary so those instances that merit the preparation of an EIS do not also result in an endless planning and analysis effort as well. The conception of and commencement of harvest work on the projects such as a timber sale should take a year or less while still identifying any meritorious environmental adjustments.

While we realize the development and adoption of improved processes involves difficult politics, some substantial improvements are needed to reduce the amount of work thought to be required, exclude projects of little or no environmental consequence, dramatically improve responses to emergencies, shortening the time required for project preparation and diminish the susceptibility of the rules and process to delays from appeals and litigation.

Sincerely,

Ed Ehlers

Ed Ehlers, Executive Director
For the Association

Enclosures

CQ405

(d) Certify that a meeting will be held at the THP site before timber operations commence with the RPF responsible for the plan or supervised designee and the licensed timber operator who will be operating on the THP where the contents and implementation of the plan have been reviewed and discussed. Operations pursuant to this section shall use an alternative to the cumulative impacts assessment specified in 14 CCR 898, 912.9 [932.9, 952.9], and Technical Rule Addendum No.2. Operations conducted according to this section are presumed to be unlikely to cause a significant adverse impact to the environment due to the specific restrictive mitigations required in (1)-(15) above.

This presumption of unlikely impacts shall not apply to THPs for which: 1) the Director determines it does not meet the criteria of subsection (a), or 2) the Director determines in consultation with trustee or responsible agencies, or upon review of public comments that a fair argument exists that significant individual or cumulative impacts will result from timber operations. Where issues (a fair argument) are raised the RPF shall complete the appropriate portion of Technical Rule Addendum No. 2 and submit that information for the Director's review.

1051.2 Review of Modified THP

The Director shall require a preharvest inspection of modified timber harvest plans when substantial question by Review Team members exist on plan contents or environmental impacts, and where winter operations are proposed according to 914.7 (a) and (b) [934.7(a) and (b), 954.7 (a) and (b)].

[NOTE: Barclays official record for Sections 1052 (g) and (h) were incorrectly changed in 1996, Register 96, Number 48, and in 1997, Register 97 Number 48, and should read as follows. This correct language has always been printed by CDF. CDF will be working with the Board, Barclays and OAL this year so the official record is corrected.]

1052 Emergency Notice

Before cutting or removing timber on an emergency basis, an RPF on behalf of a timber owner or operator shall submit a Notice of Emergency Timber Operations to the Director, in a form prescribed by the Director. Said notice shall contain a declaration, made under penalty of perjury, that a bona fide emergency exists which requires emergency timber operations. The notice shall include, but not be limited to, the following:

(a) Names and addresses of timberland owner(s), timber owner(s), and timber operator(s) for the area on which timber will be cut or removed.

(b) A description of the specific conditions that constitute the emergency, its cause, extent and reason for immediate commencement of timber operations.

(c) Legal description of the area from which timber will be cut or removed.

(d) A map of suitable scale showing the area from which timber will be cut or removed, the legal description, roads and Class I, II, III and IV watercourses.

(e) Harvesting method to be followed.

(f) The expected dates of commencement and completion of timber operations.

(g) Name, address, license number, and signature of the RPF who prepares the notice and submits it to the Director on behalf of the timber owner or operator.

(h) For Emergency Notices covering three acres or more in size, a Confidential Archaeological Letter that includes all information required by Section 929.1 [949.1,969.1] (b)(2),(6),(7),(8) and (10), including site records, if required pursuant to 929.1 [949.1, 969.1](f). This Confidential Archaeological Letter shall be included with the submittal of the Emergency Notice to the Director. The RPF or supervised designee shall also submit a complete copy of the Confidential Archaeological Letter and two copies of any required archaeological or historical site records, to the appropriate Information Center of the California Historical Resource Information System within 30 days from the date of Emergency Notice submittal to the Director.

Timber operations pursuant to an emergency notice shall otherwise comply with the rules and regulations of the Board except where, upon agreement between the RPF and the Department, waiver of a rule would better mitigate the causes of a nonfinancial emergency. A person conducting timber operations under an Emergency Notice shall comply with all operational provisions of the Forest Practice Act and District Forest Practice Rules applicable to "Timber Harvest Plan", "THP", and "plan".

CQ405

Timber operations pursuant to an Emergency Notice may not commence for five working days from the date of the Director's receipt of the Emergency Notice unless such waiting period is waived by the Director. The Director shall determine whether the emergency notice is complete. If it is found to be complete the Director shall send a copy of a notice of acceptance to the timberland owner. If the Emergency Notice is not complete it shall be returned to the submitter. If the Director does not act within five working days of receipt of the Emergency Notice, timber operations may commence. Timber operations shall not continue beyond 120 days after the Emergency Notice is accepted by the Director unless a plan is submitted to the Director and found to be in conformance with the rules and regulations of the Board.

1052.1 Emergency Conditions

The following are conditions that constitute an emergency pursuant to 14 CCR 895.1 "Emergency (a)":

(a) Trees that are dead or dying as a result of insects, disease, parasites, or animal damage.

(b) Trees that are fallen, damaged, dead or dying as a result of wind, snow, freezing weather, fire, flood, landslide or earthquake.

(c) Trees that are dead or dying as a result of air or water pollution.

(d) Cutting or removing trees required for emergency construction or repair of roads.

The following are conditions that constitute a financial emergency as defined in 14 CCR 895.1 "Emergency (b)":

Potential financial loss of timber previously inoperable or unmerchantable due to one or more of the following factors: access, location, condition, or timber volume that has unexpectedly become feasible to harvest provided that the harvest opportunity will not be economically feasible for more than 120 days and provided that such operations meet the conditions specified in 1038(b)(1)-(10) and meet minimum stocking requirements at the completion of timber operations.

1052.2 Emergency Substantiated by RPF

The RPF preparing the Notice of Emergency Timber Operations shall describe the nature of the emergency and the need for immediate cutting in sufficient detail so that the reason for the emergency is clear. Where tree killing insects have killed and are likely to kill trees within one year on timberland an emergency is presumed to exist. Trees will be considered likely to die when they are determined, by an RPF, to be high risk by either:

(a) Risk classification systems including Smith et al., 1981; *The California Pine Risk-Rating System: Its Development, Use, and Relationship to Other Systems; In Hazard-Rating Systems in Forest Insect Pest Management*, Hedden et al, eds. USDA Forest Service General Technical Report WO - 27, pp. 53-69; Ferrell. 1989; *Ten-Year Risk-Rating Systems for California Red Fir and White Fir: Development and Use*; USDA Forest Service General Technical Report PSW-115, 12p.; or similar risk-rating systems recognized by the profession; or

(b) Where evidence of a current beetle attack exists (i.e., existence of boring dust, woodpecker feeding, or recent top kill) and these trees are within 100 feet of multiple tree kills. Such trees shall be marked by an RPF or the supervised designee before felling.

1052.3 Emergency Notice For Insect Damaged Timberlands

Emergency timber operations, under the presumed emergency standard of 14 CCR 1052.2, may be commenced provided an RPF is responsible for an on-site inspection, and tree marking when required by subsection (a):

(a) The emergency notice used with this section is to be used only for the harvesting of dead trees and those dying because of insect attack. Trees with green crowns that are to be harvested must be under insect attack which is likely to lead to mortality within one year, and shall be stump marked or otherwise designated by an RPF prior to cutting.

(b) A 60-day extension of an existing emergency notice may be submitted by a RPF where expanded or subsequent insect attack is occurring and it is explained and justified why the timber operation could not be completed during the first 60-day period. *[NOTE: Section 1052.3 (b) was made invalid by changes operative 1-1-98, Register 97, Number 48, to Section 1052.]*

CQ405

INTRODUCTION

On February 10, 1998, a fierce storm packing hurricane-force winds struck the rain-soaked forests of deep east Texas. The storm front passage lasted only 20 minutes, but in its path from near Houston until it crossed Toledo Bend Reservoir into Louisiana (a distance of 150 miles), it left a swath of woodland destruction reminiscent of Hurricanes Hugo and Opal. Fortunately, no lives were lost and damage to private residences and businesses was scattered. However, over 103,000 acres of the Sabine, Angelina, and Sam Houston National Forests (NFs) were damaged severely enough that emergency response is needed. Twelve thousand of those damaged acres have lost so many existing trees that extensive restoration efforts are needed.

The National Forests and Grasslands in Texas (NFGT), responsible for management of the three impacted forests, must act quickly to abate further damage to this Coastal Plains Pine-Forested Ecosystem. Paramount to this effort are: (1) reduction of extensive downed fuel loadings before spring and summer fires grow into potential conflagrations in an area of intermingled private property; (2) stabilization of active red-cockaded woodpecker (RCW) clusters and foraging habitat to prevent declines of a RCW population needed to recover this endangered species; and (3) reduction of risk from bark beetle attack to remaining trees to prevent further damage to RCW habitat, bald eagle habitat, and private timber resources.

Failure to act expediently can result in: (1) major wildland fires that threaten private residences, even rural subdivisions along Toledo Bend Reservoir; (2) loss of a sub-population of RCW critical to the survival of this endangered bird; and (3) widespread bark beetle infestations that can kill additional RCW and bald eagle habitat, as well as spread to private timber resources. The results of any or all of these occurrences will seriously compromise forest health on the impacted areas for many years.

U. S. Forest Service experience dealing with the environmental effects of Hurricane Hugo on the Francis Marion National Forest shows that not removing the large woody debris blown down by that storm has contributed to a decline in one of the nation's largest RCW populations. Where downed trees were left following Hugo, the Francis Marion NF is unable to use prescribed fire needed to maintain and perpetuate a healthy coastal plains pine ecosystem. The lack of prescribed fire use has resulted in significant mid-story encroachment which is detrimental to the RCW.

Normal timeframes required to comply with the National Environmental Policy Act (NEPA) would delay needed abatement efforts and could adversely impact human life, private property, and endangered species. Therefore, the NFGT requests alternative arrangements from the Council of Environmental Quality (CEQ) for NEPA compliance for immediate tree removal actions, and that will also provide public input, documented environmental analysis, on-site effects monitoring, and full NEPA compliance for longer-term restoration actions. Arrangements agreed to must allow adaptation to meet changing site conditions as well as capitalize on new information gathered as the emergency response unfolds.

CQ405

PROPOSED ACTION

The proposed actions for which we seek alternative arrangements is the immediate removal of dead, damaged, and severely root-sprung trees along approximately 150 miles of road ways and on approximately 23,000 acres of the NFGT for RCW habitat protection and fuels reduction (Priority 1, 2, and 3). In addition, we seek concurrence for use of an environmental assessment in lieu of an environmental impact statement for approximately 70,000 acres for bark beetle risk reduction (Priority 4). This paper explains the actions to be taken and the reasons for these actions.

DAMAGE ASSESSMENT

The February 10, 1998 windstorm damaged over 103,000 acres of the Sabine, Angelina, and Sam Houston NFs. The storm contained hurricane-force winds recorded in excess of 130 miles per hour at one recording station and struck an area saturated by above-average rainfall. The national forest damage occurred in areas of heavily intermingled public-private ownership where over 50 percent of the land base within each of the national forest proclamation boundaries is privately owned *(see attachment A maps)*.

These areas consist of scattered private residences, concentrations of private residences in rural subdivisions and small towns, private wood lots, and larger areas of forest product industry lands. The areas impacted are highly roaded with a combination of NFGT forest development roads, state maintained farm-to-market roads, county maintained rural routes, federal highways, and industry-constructed roads. Road densities for the impacted areas of the three national forests are 7.0 miles of federal, state, and county roads per 1,000 acres on the Sabine National Forest (NF); 4.8 miles per 1,000 acres on the Angelina NF; and 6.6 miles per 1,000 acres on the Sam Houston NF. Damage to the national forest timber resource appears to be more extensive on timber stands that are predominately southern yellow pine greater than 60 years old. Younger stands resulting from more recent even-aged management exhibit little to no damage.

Damage to the federal timber resource includes trees that have been uprooted and now are lying on the ground, that have been broken off at varying heights above the ground, and that have been so severely root-sprung that they cannot reasonably be expected to survive (see attachment B photos). To characterize the varying degrees of damage to the timber resource, the NFGT chose the following damage descriptors:

- Extensive damage: Loss of greater than 60 percent of the existing trees within a stand and will require significant reforestation efforts.
- Moderate damage: Loss of 30 to 60 percent of the existing trees within a stand and must be evaluated for appropriate reforestation efforts.
- Light damage: Loss of 10 to 30 percent of the existing trees within a stand. These stands will be evaluated but will not likely require reforestation efforts. However, these stands will require action to minimize risks from bark beetle activity.

CQ405

The NFGT received minor damage to trees across a much larger area than the 103,000 acres identified below. However, damage on many of the additional acres involves only a few trees per acre and will require no action.

Table 1. Summary of Preliminary National Forest Timber Damage by Forest and Damage Class in Acres.

National Forest	Extensive Damage	Moderate Damage	Light Damage	Total
Sabine	10,000	54,200	5,800	70,000
Angelina	1,500	10,700	17,300	29,500
Sam Houston	100	500	2,900	3,500
Total	11,600	65,400	26,000	103,000

The NFGT estimates that approximately 297,000,000 board feet of timber have been killed, enough material to provide the wood products needed to construct approximately 25,000 new homes.

The Federal forest resource is habitat to the endangered RCW, a woodpecker that drills its cavity in live pine trees. Twenty-one active RCW clusters spanning the three national forests were damaged by the storm. Two active clusters on the Sabine NF were totally destroyed when all cavity trees were downed. RCW mortality was observed. Emergency installation of artificial cavity inserts has been completed by an RCW Assessment Team in hopes of temporarily stabilizing active RCW clusters. Thousands of acres of RCW habitat designated by the NFGT 1996 Revised Land and Resource Management Plan (RLRMP) to be managed in accordance with guidelines agreed to by U.S. Fish and Wildlife Service (USFWS) for the recovery of the RCW have been extensively damaged. Approximately 10,700 acres out of the total 11,600 acres of extensive damage occurred within RCW Habitat Management Areas (HMAs), while some 45,000 acres of the 65,000 acres receiving moderate damage occurred within RCW HMAs. Both USFWS and National Forest Research Scientists are urging immediate removal of damaged trees from portions of RCW habitat to minimize further impacts to the endangered species *(see attachments D, E, & J)*.

Although downed trees will exhibit significant decay and deterioration over the next two to four months, they will not disappear completely. Downed trees not removed in a timely manner will create prescribed fire problems similar to the problems experienced on the Francis Marion NF following Hurricane Hugo. It is imperative that as many trees as possible be physically removed from the three impacted forests. Failure to remove these trees will create adverse impacts that limit fire control within an area of intermingled private/public ownership, eliminate cost-effective methods for maintaining habitat crucial to the recovery of an endangered species and overall have a negative effect on forest health of the NFGT as previously discussed *(see attachment G)*.

There are many miles of common boundary lines between national forests and private property

CQ405

in the impacted area. Dozens of miles of these boundary lines have been extensively damaged where national forest trees have fallen onto private property. National Forest Law Enforcement Officers have investigated dozens of claims of damage to private property by fallen federal timber. Of much greater concern is the potential that greatly increased fuel loadings along common public-private boundaries will create disastrous wildland fire situations. Fuel loadings have increased five to twenty-five fold over normal fuel loadings associated with southern yellow pine ecosystems. Fire suppression equipment normally used by state and federal wildland fire suppression agencies cannot effectively stop wildfire spread in such heavy fuel concentrations. Committing fire suppression personnel and equipment into the storm-created fuel loadings would endanger human life *(see attachment I)*.

NFGT OBJECTIVES FOR EMERGENCY RESPONSE

There are three objectives that will guide any actions taken to respond to this windstorm emergency. Any emergency action taken must:

1. Reduce the potential for high intensity wildland fires spreading into the intermingled private ownerships that include individual homes, subdivisions, and rural communities;

2. Minimize further damage to RCW and bald eagle habitat; and/or

3. Reduce the risk of anticipated bark beetle attack to living trees that could kill additional federal and private timber, and RCW and bald eagle habitat.

SHORT-TERM ACTIONS NEEDED TO ADDRESS EMERGENCY RESPONSE OBJECTIVES

There are four short-term actions that must be initiated in the near future to meet the emergency response objectives. The NFGT has prioritized these actions as follows:

Priority 1. Remove fallen and hazard trees from existing forest development roadways to serve as primary fire control lines, facilitate further damage assessment access to RCW areas, and provide increased safety for personnel working on this emergency. Approximately 150 miles of existing roadways are blocked by fallen trees and require tree removal. Some existing roadways (state, county, and forest development) that access private property have received limited work to allow for vehicular traffic. However, trees sawn out of these roadways have simply been pushed to the side of the road right-of-way but not physically removed. These sawn trees need removal to reduce fire hazard.

Actions to clear roadways must begin immediately. The NFGT's most severe fire weather occurs in the spring and summer. Fire suppression equipment currently used by both the NFGT and State of Texas Forest