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# California Native Plant Society, Forestry Program



**Date:** July 19, 2002

**To:** Brad Valentine  
California Department of Fish and Game (DFG)  
Post Office Box 47  
Yountville, CA 94599

**From:** Greg Jirak  
California Native Plant Society (CNPS), Forestry Program Coordinator

**Subject:** Scoping comments for the Mendocino Redwoods Company's (MRC) proposed Natural Community Conservation Plan (NCCP) as announced in the June 6, 2002, Federal Register (the "Project") by the California Department of Fish and Game (DFG)

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## ***Introduction***

The Project is proposed to cover almost 250,000 acres, for a period of 80 years.<sup>1</sup>

This document contains scoping issues that the California Native Plant Society (CNPS) Forestry Program wishes to introduce as part of the scoping process for the Project.

This document addresses NCCP-specific issues which were not included as part of the comment letter submitted by CNPS on July 8, 2002, which addressed HCP-specific issues and joint HCP/NCCP issues. With respect to the NCCP, this letter should be considered in addition to the July 8, 2002, letter.

CNPS respectfully requests that DFG make this document, and all documents referenced herein, part of the administrative record for the Project, and the associated CEQA public review processes.

## ***Issues***

### **1. NCCP To Be Developed Pursuant to SB 107**

Senate bill 107, approved by California Governor Gray Davis on February 2, 2002, and filed with the California Secretary of State on February 4, 2002, repeals a prior version of the Natural Community Conservation Planning Act, and enacts a new version instead. In this document, NCCPA will be used to denote such newly enacted version, and, since the Project meets none of the conditions of NCCPA §2830, CNPS understands that the Project will conform to the NCCPA as enacted by senate bill 107.

CNPS would appreciate DFG's explicit confirmation of this understanding, or an

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<sup>1</sup> Federal Register, June 6, 2002, p. 38932.

explanation of why this interpretation is incorrect.

## 2. **Monitoring Program**

Monitoring of botanical resources must be conducted properly, or the results will be invalid or incomplete. At a minimum, all botanical surveys conducted for the Project should conform to the then current standards set by the California Department of Forestry and Fire Protection<sup>2</sup> and DFG<sup>3</sup>. Given the scope and magnitude of the Project, CNPS recommends that such botanical surveys also conform to the then current botanical survey guidelines promulgated by CNPS.<sup>4</sup>

CNPS would appreciate knowing:

- a. What time interval will be used between the monitoring program's periodic evaluations, and how will this interval be adjusted throughout the term of the Project to reflect the then current best available science?<sup>5</sup>
- b. How will the periodic evaluations be scheduled<sup>6</sup> throughout the term of the Project so as to adequately survey all covered species (e.g., to deal with biennial taxa) and to reflect the then current best available science?
- c. What standards will be used for botanical surveys<sup>7</sup> and how will these survey standards be adjusted throughout the term of the Project to reflect the then current best available science?
- d. Since it is reasonably foreseeable that the standards for botanical surveys will change during the term of the Project, how will DFG ensure that such changes are considered changed circumstances rather than unforeseen circumstances?
- e. To whom will the monitoring program reports<sup>8,9</sup> be distributed, and will there be opportunity for public review and comment on such reports?

## 3. **DFG Compensation**

Throughout the state, DFG is seriously understaffed with respect to botanical professionals. DFG currently has staff sufficient to review less than 25% of all THPs, and this percentage may well drop due to California's current budget crisis.

Given the large size and long term of the Project, it is essential that the DFG staff resources required by the Project are fully funded by the Project, and that the Project not

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<sup>2</sup> "CDF Guidelines for Species Surveys and Mitigations", 7/2/99, memorandum from Andrea Tuttle, Director of the California Department of Forestry and Fire Protection, Sacramento, California.

<sup>3</sup> "Guidelines for Assessing the Effects of Proposed Projects on Rare, Threatened, and Endangered Plants and Natural Communities", 5/8/00, California Department of Fish and Game, Sacramento, California.

<sup>4</sup> "CNPS Botanical Survey Guidelines", 6/2/01, California Native Plant Society, Sacramento, California.

<sup>5</sup> NCCPA §2805(f)

<sup>6</sup> NCCPA §2805(f)(4)

<sup>7</sup> NCCPA §2805(f)(1)

<sup>8</sup> NCCPA §2805(f)(3)

<sup>9</sup> NCCPA §2820(b)(7)

negatively impact DFG's already inadequate botanical staffing.

CNPS would appreciate knowing:

- a. Will MRC *fully* compensate DFG for DFG's actual costs incurred by DFG's participation in the preparation and implementation of the Project?<sup>10</sup>
  - b. How will the compensation paid by MRC to DFG be computed, and in what increments will it be paid?
  - c. Since it is reasonably foreseeable that DFG staff expenses will increase during the term of the Project, how will DFG ensure that such increases are changed circumstances rather than unforeseen circumstances?
  - d. How will such compensation be adjusted to accommodate changed circumstances<sup>11</sup> and adaptive management<sup>12</sup> during the entire term of the Project?
  - e. How will MRC guarantee that funds will be available to pay all such compensation to DFG during the entire term of the Project?
4. **Preliminary List of Covered Species and Natural Communities**

CNPS is concerned that few, if any, sensitive taxa occurring on the Project area currently have sufficient data or management information so that they can be considered covered species, yet produce no unforeseen circumstances during the entire term of the Project.

CNPS would appreciate knowing:

- a. What process will be used to identify the preliminary list of covered species and natural communities?<sup>13</sup>
  - b. What minimum set of data and management information will be required to add each taxon or natural community to this list?
  - c. Who will compile this list, and what public review and comment will be provided for this list?
  - d. How DFG ensure that no take of any covered species occurs before management information sufficient to meet the conservation and restoration mandates?
5. **Preliminary Conservation Objectives**

CNPS would appreciate knowing:

- a. Through what process will the preliminary conservation objectives<sup>14</sup> be established?
- b. How will these preliminary conservation objectives address the restoration

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<sup>10</sup> NCCPA §2829.

<sup>11</sup> NCCPA §2805(b)

<sup>12</sup> NCCPA §2805(a)

<sup>13</sup> NCCPA §2810(b)(3)

<sup>14</sup> NCCPA §2810(b)(4)

mandate for covered species?<sup>15</sup>

- c. How will DFG ensure that then current best available science will be used to establish the preliminary conservation objectives?
- d. Who will be involved in establishing the preliminary conservation objectives?
- e. What public review and comment will be used when establishing the preliminary conservation objectives?

## 6. Independent Scientific Input

CNPS is concerned that scientific input to the NCCP process can be dominated by either industry affiliated experts or professional pundits, seriously compromising the quality and independence of the resulting scientific information. CNPS feels that DFG needs to ensure that the scientific input is *truly* independent, and that such input reflects qualified local expertise rather than big name pundits and industry-affiliated consultants.

CNPS would appreciate knowing:

- a. How will the process for including independent scientific input<sup>16</sup> be established, and how will it be maintained during the entire term of the Project?
- b. From whom will such independent scientific input be obtained?
- c. How will DFG insure that *quality*, site-specific independent scientific input be obtained?
- d. What public review and comment will be used for such independent scientific input?
- e. What funding will be provided by MRC to ensure adequate scientific input over the entire term of the Project?

## 7. Habitat Reserves and Equivalent Conservation Measures

Establishment of habitat reserves is an integral part of the NCCP process, but other measures can be used instead if they can be shown to provide “equivalent” conservation.<sup>17</sup>

CNPS is concerned that habitat reserves, unless properly designed and managed, may fail to meet the conservation and restoration mandate of the NCCPA.<sup>18</sup> CNPS is also concerned about how equivalency of other conservation measures to properly designed and managed habitat reserves will be accomplished.

CNPS would appreciate knowing:

- a. If reserves are contemplated as part of the NCCP:
  - i. What criteria would be used to determine the location, size, and protection of

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<sup>15</sup> NCCPA §2801(i)

<sup>16</sup> NCCPA §2810(b)(5)

<sup>17</sup> NCCPA §2820(a)(3)

<sup>18</sup> NCCPA §2801(i)

- such reserves so that they achieve the conservation and restoration mandate?
- ii. Upon what principles would reserve design be based?
  - iii. How would the reserves be modified if future monitoring and adaptive management showed that the conservation goals were not being met by the reserves as then configured and managed?
  - iv. How would such reserves be maintained, managed, and funded throughout the entire term of the Project, and how would such reserves be affected by a change in ownership of the reserve area or the Project area?
  - v. What public or independent scientific access would be provided to such reserves?
  - vi. What is the time frame for establishment of such reserves<sup>19</sup>, and will such reserves be established before, or after, the reserve area is logged?
  - vii. What happens to previously established reserves if the NCCP is suspended or revoked?
- b. If “equivalent conservation” measures<sup>20</sup> are contemplated as part of the NCCP:
    - i. What metrics will DFG use to establish the “equivalency” of such conservation measures to conservation and restoration through properly configured and managed reserves?
    - ii. If equivalent conservation measures are used exclusively, how will such measures promote “conservation of unfragmented habitat areas”?<sup>21</sup>
    - iii. If such equivalent conservation measures subsequently fail to provide conservation and restoration equivalent to reserves, will reserves then be created, and if so, how will DFG ensure that suitable area, and sufficient funding, will be available at that time to create a reserve?
  - c. How will the proportionality of impact and conservation measures be determined, and what metrics will be used to do so?<sup>22,23</sup>
  - d. How will DFG ensure that no take of covered species occurs before establishment of the necessary preserves or equivalent conservation measures?
  - e. Given that timber management normally disrupts ecosystems, and disturbs historic relative population densities of botanical taxa, how will the proposed conservation measures provide “protection of habitat, natural communities, and species diversity on a landscape or ecosystem level”?<sup>24</sup>

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<sup>19</sup> NCCPA §2820(a)(9)

<sup>20</sup> NCCPA §2820(a)(3)

<sup>21</sup> NCCPA §2801(d)

<sup>22</sup> NCCPA §2820(b)(3)(B)

<sup>23</sup> NCCPA §2820(b)(9)

<sup>24</sup> NCCPA §2820(a)(3)

- f. Concurrent with timber management, how will DFG ensure that the Project:
  - i. Conserves and restores large habitat blocks with intact ecosystem function and biological diversity?<sup>25</sup>
  - ii. Maintains connectivity between such blocks and similar habitat areas outside the Project area, such as those in the local state parks and in JDSF?
  - iii. Maintains suitable environmental gradients and habitat diversity sufficient to ensure shifting taxa distributions due to changed circumstances?<sup>26</sup>
- g. Since timber management will be conducted pursuant to a set of THPs conducted through time, how will DFG ensure that such THPs will be coordinated so as to collectively conform with all terms of the implementation agreement during the entire term of the Project?<sup>27</sup>

## 8. Adaptive Management

CNPS would appreciate knowing:

- a. What management principles and conservation goals will DFG recommend to develop the monitoring and adaptive management framework?<sup>28</sup>
- b. How will DFG ensure that the then currently available best science and local expertise is used to create the monitoring and adaptive management framework and how will DFG ensure that the then current best science be used to modify adaptive management strategies during the entire term of the Project?<sup>29</sup>
- c. How often will the adaptive management strategies be evaluated and modified, and by whom will it be evaluated?<sup>30</sup>
- d. What opportunity will the public have to review and comment on the proposed adaptive management framework and its subsequent modifications?
- e. How will DFG ensure that MRC will provide adequate funding, over the entire term of the Project, for those modifications to adaptive management strategies as indicated by the monitoring program?
- f. How will DFG use adaptive management to eliminate or minimize the number of unforeseen circumstances?

## 9. Data Gaps and Risk Factors

According to the California Department of Forestry and Fire Protection (CDF), for most sensitive botanical taxa found proximate to the Project area, population status and distribution is uncertain, but presumed declining, and further study is needed for adequate

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<sup>25</sup> NCCPA §2820(a)(4)(A)

<sup>26</sup> NCCPA §2820(a)(4)(D)

<sup>27</sup> NCCPA §2820(a)(5)

<sup>28</sup> NCCPA §2810(b)(6)(C)

<sup>29</sup> NCCPA §2820(a)(2)

<sup>30</sup> NCCPA §2820(a)(2)

conservation management.<sup>31</sup>

At the same time, Sudden Oak Death (SOD), Pine Pitch Canker, and Gall Rust are invading the forests of northern California. Global warming is also subjecting these forests to additional stress. Significant negative impacts from these causative agents are reasonably foreseeable.

Given these complications, CNPS would appreciate knowing:

- a. What is the state of MRC's botanical knowledge of the Project area, and does MRC have a complete floristic survey for the Project Area?
- b. How was MRC's botanical information compiled, by whom, and has it been reviewed by independent botanical experts with local botanical knowledge?
- c. Of what other data gaps and risk factors is MRC aware?
- d. Does MRC have a plan to eliminate the botanical data gaps and minimize the botanical risk factors?
- e. For each covered species, how will DFG determine the minimum size of habitat areas that are large enough to support sustainable populations of such taxa, and upon what data will this determination be made?<sup>32</sup>
- f. For each covered species, how will DFG determine suitable environmental gradients and habitat diversity to accommodate shifting distribution of such species due to changed circumstances?<sup>33</sup>
- g. For each covered species, how will DFG determine the "biological needs"<sup>34</sup> of such species that conservation measures need to meet, and upon what data will this determination be based?
- h. How will DFG address the very significant data gaps and risk factors<sup>35</sup> so as to avoid unforeseen circumstances over the entire term of the Project?
- i. Since it is a reasonably foreseeable circumstance that SOD may drive certain plants currently common in the forest, e.g., *Lithocarpus densiflorus* or some ericaceous taxa, to the brink of extinction during the term of the Project, how will DFG design the NCCP so that such events are considered changed circumstances instead of unforeseen circumstances?
- j. Since global warming is a reasonably foreseeable circumstance, does this mean that reasonably foreseeable consequences of global warming, such as significant changes in botanical populations, will be considered changed circumstances instead

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<sup>31</sup> "Draft Environmental Impact report For The Comprehensive Update to the Jackson Demonstration State Forest Draft Management Plan", Appendix 8-D-1, May, 2002, California Department of Forestry and Fire Protection, Sacramento, California.

<sup>32</sup> NCCPA §2820(a)(4)(C)

<sup>33</sup> NCCPA §2820(a)(4)(D)

<sup>34</sup> NCCPA §2820(a)(6)

<sup>35</sup> NCCPA §2810(b)(6)(D)

of unforeseen circumstances?

## 10. Wetlands

CNPS would appreciate knowing:

- a. What wetlands and waterways planning<sup>36</sup> will be conducted as part of the Project?
- b. Who will conduct such planning, and what public review and comment will be provided on such planning?
- c. Given the significant disruption of local hydrology that often accompanies logging operations, how will the Project protect the hydrologic integrity of sensitive habitat?
- d. How will wetlands planning deal with the fact that in certain cases, the Project area does not encompass an entire watershed, but shares ownership with other parties?
- e. How will wetlands, including those disconnected from navigable waterways and the ocean, be classified for the purposes of the NCCP?

## 11. Interim Process

CNPS would appreciate knowing:

- a. What interim process<sup>37</sup> will be used to deal with discretionary projects, e.g., THPs, that potentially conflict with the preliminary conservation objectives.
- b. Will this interim process apply to THPs in the Albion watershed?

## 12. Public Participation

When will the public participation process be established,<sup>38</sup> how will DFG structure this process to ensure quality scientific participation, and how can CNPS ensure that it is included in this process? CNPS believes that the public should be given adequate time to review, and comment upon, the draft planning and implementation agreements. CNPS also feels that environmental groups should be represented on the steering committee in proportion equal to that of industry.

## 13. Covered Species

While recognizing that the NCCP process has the potential to provide superior protection for individual species as well as entire ecosystems, CNPS is concerned that lack of knowledge about the sensitive botanical taxa on north coast forests may cause unforeseen circumstances to occur.

CNPS would appreciate knowing:

- a. What process will be used to determine the set of covered species?<sup>39</sup>

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<sup>36</sup> NCCPA §2810(b)(7)

<sup>37</sup> NCCPA §2810(b)(8)

<sup>38</sup> NCCPA §2810(b)(10)

<sup>39</sup> NCCPA §2820(b)(1)

- b. Who will decide the set of covered species?
- c. What objective criteria will be used to determine which taxa become covered species?
- d. Upon what data will this decision be made?
- e. For each covered species, what additional data will be used to determine conditions of coverage?
- f. For each covered species how will the restoration mandate be achieved?<sup>40</sup>
- g. If the conditions of coverage for a given taxon is modified:
  - i. What process will be followed to effect such modification?
  - ii. Who will make the decision to allow such modification?
  - iii. Will consultation within DFG, or with other agencies, be required prior to such modification?
  - iv. Will the public have a chance to review and comment on any such proposed modification?

#### **14. Suspension, Revocation or Transfer of the NCCP**

CNPS would appreciate knowing:

- a. Will failure to adopt modifications to the adaptive management strategies, or failure to fund such modifications, constitute sufficient reason for the NCCP to be suspended or revoked?<sup>41</sup>
- b. How will transfer of ownership of all, or a portion of, the Project area affect the NCCP?
- c. What environmental review process will be followed for such transfers, and will the public have the opportunity to review and comment upon all such transfers?

#### **15. Amendment of the Plan and Implementation Agreement**

Will the public review and comment upon all amendments to the plan and implementation agreement, and how will DFG ensure that all such amendments are based upon the then current best science?

### ***CNPS Participation***

CNPS would enthusiastically join in development of an NCCP that actually realized the potential benefit this program holds. Accordingly, CNPS requests that it be kept informed of opportunities for public participation in the NCCP process, including:

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<sup>40</sup> NCCPA §2801(i)

<sup>41</sup> NCCPA §2820(b)(3)

- a. Notification of the formation of working groups and advisory committees.<sup>42</sup>
- b. Notification of release for public review of draft documents.<sup>43</sup>
- c. Release for public review of the NPPCA planning agreement<sup>44</sup>
- d. DFG and MRC to add CNPS to all mailing lists for notices regarding the Project

Given that CNPS is the generally recognized conservation organization for California's native flora, and given CNPS's historic record of productive cooperation with the agencies, CNPS respectfully requests that it be given at least one seat on the steering committee for the NCCP.

CNPS also requests that it be given at least one seat on the scientific advisory committee for the NCCP.

At a minimum, all CNPS notifications regarding the Project should be sent to:

Greg Jirak  
CNPS Forestry Program Coordinator  
PO Box 985  
Point Arena, CA 95468

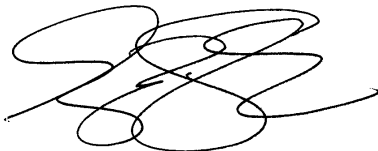
## **Summary**

CNPS is very concerned about the potential for a poorly crafted NCCP to significantly damage the environment. CNPS expects that DFG will require that the project fully implement both the letter and the intent of the NCCPA.

CNPS has a history of working productively with DFG on similar issues, and hopes to work productively with DFG to make the MRC NCCP environmentally friendly, and to truly protect the botanical resources on the Project area.

CNPS respectfully requests that DFG make this document, and all documents referenced herein, part of the administrative record for the Project, and the associated CEQA public review processes.

Sincerely,



Gregory A. Jirak, CNPS, State Forestry Issues Coordinator

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<sup>42</sup> NPPCA §2815

<sup>43</sup> NPPCA §2815(a)

<sup>44</sup> NPPCA §2810(d)

Cc: Austin McNerny, Project Manager, Jones and Stokes  
Eric Shott, National Marine Fisheries Service  
John Hunter, United States Fish and Wildlife Service  
Sue Britting, President, California Native Plant Society  
David Chipping, Conservation Director, California Native Plant Society