



# Sierra Pacific Industries

---

P.O. Box 496028 • Redding, California 96049-6028 • (530) 378-8000

July 17, 2013

Terry Swofford, Chairman  
Plumas County Board of Supervisors  
555 Main Street  
Quincy, CA 95971

Dear Chairman Swofford;

This letter addresses a change in the wording of Policy AG/FOR 8.9.1 in the Final Environmental Impact Report (FEIR) that degrades the private property rights of the owners of Timber Production property in Plumas County. The new policy language strips the right to a residence on Timber Production by right and instead makes it a discretionary. A discretionary use requires a conditional use permit and is considered a project under CEQA. CEQA projects require an environmental analysis and public hearing. A discretionary permit may be withheld by the county and not granted. It is our request that Policy AG/FOR 8.9.1 is retained as it was originally worded in the Draft General Plan that after public debate was approved by the Board of Supervisors, supported by the DEIR and congruent with the Timber Productivity Act.

This letter includes discussion on the following: 1) Previous public debate regarding language in Policy AG/FOR 8.9.1. 2) Reasons the FEIR provides for the change in Policy AG/FOR 8.9.1. 3) How the DEIR analysis addresses the "loss of forest" relative to AG/FOR 8.9.1. 4) Acreage analysis for projected residences on Timber Production. 5) Why the change in policy language is harmful. 6) Timber Productivity Act review that supports a Residence by right on Timber Production land. 7) Conclusions

## 1) Previous public debate regarding language in Policy AG/FOR 8.9.1.

On November 15, 2011, the Draft General Plan dated, October 14, 2011; amended by the Plumas County Planning Commission October 20, 2011 was discussed as part of the agenda at the regularly scheduled Board of Supervisors meeting. At that meeting Policy AG/FOR 8.9.1 was discussed and at that time had nearly identical language as is proposed in the FEIR. The October 21, 2011 Draft General Plan had the following language in Policy AG/FOR 8.9.1:

"The minimum parcel size for Timber Resource lands shall be 40 acres. Timber Resource Lands include those lands identified as General Forest and as Timberland Production Zone. Limitations provided by the zoning include a restriction of the allowable density of dwelling units in the Timberland Production Zone. Only parcels 160 acres in size or greater are allowed a residence or structure *if necessary for management of the parcel.*"

During the November 15 meeting the language “if necessary for management of the parcel” was removed after receiving public testimony, agreement from the Planning Director, and concurrence from the Board of Supervisors. County Counsel was present at the Board of Supervisors meeting. The Draft General Plan Policy AG/FOR 8.9.1, which resulted of the Board of Supervisors meeting and which the DEIR studied read:

“The minimum parcel size for Timber Resource lands shall be 40 acres. Timber Resource Lands include those lands identified as General Forest and as Timberland Production Zone. Limitations provided by the zoning include a restriction of the allowable density of dwelling units in the Timberland Production Zone. Only parcels 160 acres in size or greater are allowed a residence or structure.”

Now inexplicably the revised language in the FEIR again reads:

**Policy AG/FOR-8.9.1 Minimal Parcel Size for Timber Resource Lands.** The minimum parcel size for Timber Resource lands shall be 40 acres. Timber Resource Lands include those lands identified as General Forest and as Timberland Production Zone. Limitations provided by the zoning include a restriction of the allowable density of dwelling units in the Timberland Production Zone. Only parcels 160 acres in size or greater are allowed a residence or structure *as necessary for the management of the timber resource.*”

## 2) Reasons FEIR provides for the change in Policy AG/FOR 8.9.1.

It is difficult to understand why the consultant and staff decided to change the policy language back to the nearly identical language that was debated and rejected previously, since little explanation is included in the FEIR. The FEIR (pg. 3-70) explanation is limited and vague. The extent of it rational for the change is as follows; “Commenter suggests that Agriculture and Forestry Element Policy AG/FOR-8.9.1- “Minimal Parcel Size for Timber Resource Lands”, be clarified to address the management of timber resources. In consideration of the suggestion described by the commenter, the County shall make the following revisions to Policy AG/FOR-8.9.1 “Minimal Parcel Size for Timber Resource Lands” (identified as mitigation in the Draft EIR) from the Agriculture and Forestry Element of the Goals and Policies Report”. The FEIR lists the change as a mitigation to impact 4.10-1 and 4.10-3.

The vagueness of the language provided in the FEIR leaves many questions unanswered such as: What is being “clarified to address the management of timber resources”? What exactly is the “suggestion described by the commenter”? Does the change in language reduce the levels of significance for impacts 4.10-1 or 4.10-3? In what way and by how much does the suggested change in policy language alter the levels of impacts 4.10-1 and 4.10-3?

The FEIR description of what the “suggestion described by the commenter” is unclear. Neither commenter I-16’s letter nor the FEIR provides a discussion explaining the intent or efficacy of the proposed policy language change, vis-à-vis the significance assessment for the impacts identified in section 4.10 of the DEIR.

Furthermore in the FEIR (pgs. 3-66 & 3-67), responding to the same commenter that “suggested” the change to AG/FOR 8.9.1 the FEIR states in its reply regarding a requested change in the definition of “development” the FEIR provides the following rationale for rejecting the “suggested” change: “There have been no specific comments submitted as to how the definition is problematic or why it should be changed. The definition was previously accepted by the Board of Supervisors after much public input.” This same rationale can be said for the policy language in Policy AG/FOR 8.9.1. The language has already been discussed in a previous draft of the General Plan, received much public input, and had been discussed and rejected by the Board of Supervisors. So what compelling argument makes this “suggestion” for as AG/FOR 8.9.1 acceptable? What new information or analysis caused the FEIR authors to reject the policy direction provided by the Board of Supervisors?

So what is the “suggestion described by the commenter”, which the FEIR alludes and which compels this change in policy to mitigate impacts identified in the DEIR 4.10-1 and 4.10-3? Review of comment letter I-16 (pg. 2-349) indicates what the suggestion is: “Why can the County not prohibit residential development on important farmland/forest land? Is that not the purpose of a General Plan?” Therefore, by inference, relative to the impacts identified in the DEIR 4.10-1 and 4.10-3 (the loss or conversion of forest to non-forest use), the change in Policy AG/FOR 8.9.1 is intended to “prohibit residential development on forest land”.

Because there is no analysis in comment letter I-16 or the FEIR regarding how significant this “mitigation” is for alleviating impacts 4.10-1 and 4.10-3 the public is left uninformed and is contrary to the rationale provided in the, 2035 Plumas County General Plan Update: CEQA Findings and Statement of Overriding Considerations. In the section, Findings on Rejected Mitigation Measures & Alternatives (pg. 73), the rationale for not making suggested additional changes is provided and states:

Numerous comments on the Draft EIR suggested additional changes to policies and mitigation measures. In some instances commenters did not explain how their suggestions would reduce or avoid an environmental impact and should not be considered a mitigation measures under CEQA.

Because neither the FEIR or the commenter I-16 explained how the suggested change in Policy AG/FOR 8.9.1 would reduce or avoid any environmental impact, the suggested change to AG/FOR 8.9.1 cannot be considered mitigation by the FEIR’s own rationale.

By not explaining or analyzing the significance of the change in policy language, the public is misled and prevents the decision making body from making an informed decision.

### **3) DEIR analysis addressing AG/FOR 8.9.1 relative to impacts 4.10-1 – 4.10-3.**

The DEIR provides an impact analysis in section 4.10 Agricultural and Timber Resources for the proposed project. The DEIR analysis indicates the impacts identified, the required additional mitigating policies and implementation measures, and the resultant level of significance of impacts. In developing the list of potential impacts the DEIR provided the list of significance criteria. The list of significance criteria represents effects that if they occurred as a result of

the project, would be considered for a significance assessment. The significance assessment does not include a significance threshold for the criteria listed, thus significance must be inferred from the analysis provided in the DEIR.

The significance criteria stated in the DEIR (pg. 4.10-6) are stated below:

### **Significance Criteria**

- Convert Prime, Unique, or Farmland of Statewide Importance (collectively Important Farmland) to non-agricultural use;
- Conflict with existing zoning for agricultural use, or a Williamson Act contract;
- Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g));
- Result in the loss of forest land or conversion of forest land to non-forest use;

The inclusion of the significance criteria, “Result in the loss of forest land or conversion of forest land to non-forest use” indicates that there are two alternative criteria for the significance evaluation related to forest land. The first is the “loss of forest land” and the second is the “conversion of forest to a non-forest use”.

The amount of residential growth that is estimated to result from the project is estimated in the Draft General Plan (pg. 3-31) which used the following assumption to estimate residential growth; “Residential growth was estimated using allowed densities for each land use for the primary generating land uses (those associated with single family residential development)”. The population and housing build-out assumptions are found in Tables 3-5, 3-6, and 3-9 in Chapter 3, Project Description of the Draft EIR. While not stated explicitly in the DEIR it is our opinion that the purpose of analyzing the single family residential land use designations primarily is because that is where the vast majority of the residential development impact will come from; and the contribution from the low density land use designations would be statistically insignificant by comparison. The land uses associated with single family residential development are listed in the DEIR Table 3-10, pg. 3-32 and range from 1 – 7 units/acre for detached residences and 21.8 units/acre in multi-family residential. The land uses associated with single family residential development are projected to contribute 65,548 total units. In contrast the Timber Resource and Agricultural land uses permit an individual residence (DEIR Table 3-1, pg. 3-7 & 3-8) at densities that range from 1unit/40 acres in General Forest & AG/Grazing, to 1 unit/80acres in Agricultural Preserve, to 1unit/160 acres in Timber Production.

The definition of development is stated in the Draft General Plan (pg. 35) as:

**Development:** The term “development” in the General Plan means lot creation, condominium projects, or utilization of commercial, multi-family residential or industrial parcels.

The definition of conversion is stated in the Draft General Plan (pg. 194) as:

**Conversion:** To change from one use type to another. As in: to convert agricultural lands to secondary suburban residential use. Clustering of homesites or parcels in Agricultural Preserve or Agriculture and Grazing lands is not defined as “conversion”.

The above definitions do not include an individual residence being built on an individual lot, but more intensive uses.

Considering the land use assumptions in the DEIR, together with the fact that the DEIR must identify impacts, assess their significance and develop mitigations when feasible, the reader must assume that if there was a potential impact, separate from “developments” or “conversions” that could result from placement of an individual residence on either Timber Resource or Agricultural land use designations, the DEIR would have raised that issue from the perspective of “loss of forest land” or “loss of Agricultural land” and included feasible additional required mitigations.

Impacts 4-10.1, 4-10.2, and 4-10.3 were identified during the notice of preparation and as part of the DEIR analysis. These impacts are listed in section 4.10 Agricultural and Timber Resources. The first impact 4.10-1 (pg. 4.10-6) is as follows:

<b>Impact 4.10-1: Loss of Important Farmland or Timber Resource Lands</b>	
<b>SU</b>	<b>The proposed project could result in the conversion of Important Farmland or Timber Resource Lands to non-agricultural use.</b>
	<b>Level of Significance Before Mitigation:</b> <i>Potentially Significant</i>
	<b>Required Additional Mitigating Policies and Implementation Measures:</b> <i>No Additional Mitigation Available</i>
	<b>Resultant Level of Significance:</b> <i>Significant and Unavoidable</i>

The discussion regarding this impact (pg. 4.10-6) relates to the net loss of forest land through the conversion of Agricultural and Timberland and states, “It is expected that most of the conversion of Important Farmland in the unincorporated county could occur within the Sierra Valley Geographic Area, with some loss of Forest Land within (or adjacent to) the various Planning Areas located within the remaining Geographic Areas of the County.” The discussion specifically indicates many other policies found in the Draft General Plan that act to minimize the impact of future development on Agricultural or Timberland. In particular there is discussion regarding how AG/FOR 8.12.1 restricts discretionary developments on Timber Resource land, which in the context of the policy language being analyzed in the DEIR are more intensive developments than a single residential unit on a parcel that is 40 acres (General Forest) or 160 acres or larger (Timber Production). Policy AG/FOR 8.12.1 requires certain findings that provide a limiting effect on the intensity of development, such that timber

production is not impeded either on the property or on adjacent properties. The DEIR does not recommend that a single residence on 40 acres (General Forest) or 160 acres or larger (Timber Production) should become a discretionary permit under Policy AG/FOR 8.12.1 to limit the conversion or loss of forest.

The DEIR then states that all of the mitigating policies are found in Table 4.10-3 (pg. 4.10-8). Policy AG/FOR 8.9.1 is listed as a mitigating policy. The significance discussion in the DEIR does not indicate or suggest that a residence on a Timber Production parcel, which is 160 acres or larger, contributes significantly to the conversion or loss of forest and thus should be subject to the issuance of a discretionary permit.

The DEIR then states in the significance Determination (pg. 4.10-8), “Additional development would occur on individual lots, but on a more limited basis which could result in some conversion of Important Farmlands or Timber Resource Land to non-production uses”. The DEIR significance determination does not consider or describe a new residence at the density prescribed in the Draft General Plan, in any of the Agricultural or Timber Resource land use designations as a conversion from “one use type to another” or a “loss of forest land” or “conversion of important farmland”. The focus of the significance determination discussion is on “development” or “conversion”, which can result in residential densities or development intensities far beyond the densities permitted in the Timber Resource or Agricultural land use designation (DEIR, pg. 47-48, Table 1.3). This infers that the minimal land area devoted to a residence on either a Timber Resource or Agricultural land use designation is an insignificant impact to the timber or agricultural production on these large parcels. The DEIR did not identify a single residence on a parcel 160 acres and larger in Timber Production as significant to the “loss of forest”.

The DEIR states for impact 4.10-1 in the section Significance Conclusion (pg. 4.10-9), “However, the possible conversion of some important farmlands/timber lands adjacent to or outside of County growth areas would be an irreversible consequence associated with implementation of the proposed project through the 2035 Planning Horizon.” Again the stated impact identified is the conversion of Agricultural or Timberlands to another use. The DEIR discussion does not identify building a residence on a Timber Production parcel that is 160 acres or larger, as either a conversion from one type to another or “loss of forest land”, or a significant contributor to the impact 4.10-1. The DEIR analysis does not suggest changing the right to a residence on a Timber Production parcel 160 acres or larger to one subject to a discretionary permit as a required additional mitigation.

The second impact to Agricultural and Timber Resources is 4-10.2 (FEIR, pg. 4.10-9) and is as follows:

<b>Impact 4.10-2: Agricultural Use Zoning, Williamson Act Contracts, or Timberland Production Zones</b>	
<b>LTS</b>	<b>The proposed project could result in conflicts with existing zoning for agricultural use, Williamson Act contracts or Timberland Production Zones.</b>

	<b>Level of Significance Before Mitigation:</b> <i>Less than Significant</i>
	<b>Required Additional Mitigating Policies and Implementation Measures:</b> <i>None</i>
	<b>Resultant Level of Significance:</b> <i>Less than Significant</i>

The discussion begins by stating that, “It can be assumed that some future development subsequent to the proposed project will occur on lands currently subject to a Williamson Act contract or a Timberland Production Zone. Implementation of the proposed project could result in a conflict with existing zoning, a Williamson Act contract, or a Timberland Production Zone if incompatible uses are considered for these lands”. This statement means that there is not conflict unless “incompatible uses are considered for these lands.” A residence is a compatible use on Timber Production and Williamson Act contract lands, so impact 4.10-2 is discussing developments and conversions that are higher intensity developments than residential use.

The DEIR then goes on to explain that incompatible uses are not allowed on parcels in a Williamson Act contract. The DEIR then makes a general statement about how all the policies listed in Table 4.10-3 together minimize the impact of the conversion of timberland and important farmland. What appears to be missing from section 4.10-2 is discussion regarding Policy AG/FOR-8.12.1 of the Draft General Plan (pg. 204-205) which specifically restricts discretionary (more intensive) developments on Timber Resource land as a means of limiting development intensities on Timber Resource land such that timber production is not inhibited and in particular requires certain findings that protect Timber Production zoned land from incompatible uses. The Timber Productivity Act is a California State law that prohibits incompatible uses on Timber Production parcels.

In addition the DEIR needed to include a discussion regarding Agriculture and Forestry Element Implementation Measure 15 of the Draft General Plan (pg.213) which implements Policy AG/FOR-8.9.2. (*Note that it seems Implementation 15 implements Policy AG/FOR 8.8.3, this may have been a typographical error.*) Agriculture and Forestry Element Implementation Measure 15 specifically limits parcel size in developments adjacent to Timber Resource lands, such that the Timber Resource lands benefit from a varying degree of “buffering” of larger parcels depending on the type of Planning Area the development is located within. Implementation 15 clearly helps minimize conflict between residential developments and timber resource uses. The FEIR should include a discussion regarding Agriculture and Forestry Element Implementation Measure 15 since it helps explain the significance conclusion for impact 4.10-2.

Further along in the discussion of impact 4.10-2 the DEIR contemplates a significance determination. The DEIR in this section does not render a conclusion of whether the project would result in conflicts with existing zoning for agricultural use, Williamson Act contracts or Timber Production zoned land, but instead determines (Pg. 4.10-10) that due to the land use concepts adopted, including the policies and implementation measures, conversion of those lands are minimized to the greatest extent possible and determines:

Development resulting from implementation of the proposed project would result in the eventual conversion of agricultural zoned or timberland areas to nonagricultural uses. This is

expected to occur where future planned development would be in close proximity to agricultural lands, including areas in or around the Planning Areas of the County or on individual lots. Adoption and implementation of the policies and implementation measures under the proposed project would ensure that conversion of agriculturally zoned land, timberland areas or Williamson Act farmland to nonagricultural uses is minimized to the greatest extent possible through the use of land use concepts...”

The DEIR then provides a statement of significance that concludes (Pg. 4.10-10):

Implementation of the proposed project would not result in significant impacts to agriculturally zoned, Williamson Act, or Timberland Production Zone lands and therefore associated impacts would be *less than significant*.

The statement rendered in the significance determination for 4.10-2 seems to conflict with the significance determination of impact 4.10-1 which stated that the conversion and loss of forest is significant and unavoidable.

The DEIR in section 4.10-2 does not indicate that a residence on a Timber Production parcel, which is 160 acres or larger, would create conflicts with existing zoning for agricultural use, Williamson Act contracts or other Timberland Production Zoned land. The DEIR discussion does not suggest that changing the right to a residence on a Timber Production parcel that is 160 acres or larger should become discretionary to mitigate potential conflicts with Timber Production zoned land.

The third impact to Agricultural and Timber Resources is 4-10.3 (pg. 4.10-9) and is as follows:

<b>Impact 4.10-3: Conversion of Farmland/Timber Resource Lands to Non-Agricultural Use</b>	
SU	<b>The proposed project could involve other changes in the existing environment which, due to their location or nature, would result in the conversion of farmland to nonagricultural use.</b>
	<b>Level of Significance Before Mitigation:</b> <i>Potentially Significant</i>
	<b>Required Additional Mitigating Policies and Implementation Measures:</b> <i>No Additional Mitigation Available</i>
	<b>Resultant Level of Significance:</b> <i>Significant and Unavoidable</i>

The discussion in this section raises the issue that the project would increase the pressure on Agricultural and Timber Resource land use designations to convert to a use other than Agriculture or Timber Production and indicates that the pressure to convert to a secondary use would be greatest in Planning Areas. The discussion points out the mitigations previously discussed for impact 4.10-1 and states that all of the mitigating policies are found in Table 4.10-3. The discussion then points out several of the policies from Table 4.10-3 and explains their intended effect.

The DEIR discussion does not identify building a residence on a Timber Production parcel that is 160 acres or larger, as exacerbating the conversion of Timberland to a non-timber use. The analysis does not suggest that changing the right to a residence on a Timber Production parcel 160 acres or larger should become discretionary and subject to a conditional permit.

#### 4) Acreage analysis for projected residences on Timber Production

As previously discussed, none of the impacts identified (DEIR 4.10-1–4.10-3) or their significance determination identified a residential use by right on Timber Production zoned parcels as contributing significantly to those impacts. The DEIR impacts 4.10-1–4.10-3 continually pointed out “conversion” or “development” as significant and unavoidable not an individual residence on a Timber Production parcel that is larger than 160 acres. The rationale the DEIR used for focusing on “conversion” and “development” as a means of assessing the significance of the impacts 4.10-1–4.10-3 is similar to the DEIR’s residential growth estimate, which focused mainly on the land uses that allow residential development at much higher densities. Both evaluations focus on analyzing where and from what the vast majority of the impact would come from; knowing that the remaining contribution from the lesser land use designations, while occurring, would be statistically insignificant. The following demonstrates why the DEIR rationale is sound and the “loss of forest” in Timber Production that might result from residential units relating to the project is statistically insignificant.

Since the DEIR and FEIR lacks a specific acreage analysis for the amount of “loss of forest” the change in Policy AG/FOR 8.9.1 is addressing, the following analysis for the estimated amount of forest acreage impacted by new residences on Timber Production has been developed. Providing an acreage estimate will allow weighing the benefit of the policy change “loss of forest” against the reduction in individual property rights (use by right versus discretionary permit). The assumptions regarding the demand for a residential permit on Timber Production land uses the same logic provided in the FEIR response to comments I8-8 (pg. 3-31). The FEIR response to comments I8-8, on page 3-31, is as follows:

“Based on historic land use data gathered and summarized by the Plumas County Planning Department, only 88 parcels were created outside of designated Planning Areas between the years 2000 and 2010. Of the total number of building permits for dwelling units during that same period (1,656 permits), only 55 permits were issued outside designated Planning Areas. With this recent historic information on County growth (from a time period that included both “boom” and recession real estate development patterns), goals and policies developed for the General Plan Update reflected this land use pattern; and the growth projections developed for the proposed project reflected a continued focus on growth within County Planning Areas (see Chapter 2 “Project Description” of the Draft EIR. There was no evidentiary basis or reason to assume an abrupt change in consumer preferences favoring a growth shift outside of identified County Planning Areas going forward, with new policies from the Land Use Element of the General Plan Update (see Goal 1.1 “General Land Use”) reinforcing these preferences.”

The Draft General Plan (pg.8) is intended to, “reflects the current and future needs of the people and resources over the next 20 years”. As was used in the DEIR for the estimates associated with single family residential land use designations this analysis will use the historical

residential permit information on Timber Production, to project the likely number to residences to be built over the next 20 years. Other assumptions and facts for calculating the expected "loss of forest" resulting from new residential building permits on Timber Production in the next 30 years on parcels 160 acres and larger include:

a) Personal communication with Plumas County Planning Staff that indicates that an estimate of the number of building permits issued on Timber Production land during the last 30 years is approximately 5-8.

b) The DEIR (Pg.3-6) reports that 1,413,780 acres are Timber Resource.

c) A conservative foot print for a residence would be one-acre (43,560 sq.ft.). The average median home in the west as reported by the US Census from 2005-2010 was 2,216 sq.ft., therefore an additional 41,344 sq.ft. of excess residential footprint has been included in this estimate for each estimated new building permit.

d) Reviewing the "Opportunity Maps" distributed in November 2010, which depicts parcels, zone districts and the preliminary Planning Area boundaries, then scaling off the size of parcels and comparing those maps to the final Planning Area boundaries, the estimated amount of Timber Production in the Planning Areas is 4,219 acres and 676 acres of General Forest.

e) The Draft General Plan (pg. 33) states 4,894.65 acres of Timber Resource land is within Planning Areas

f) The total acres of Timber Production zoned land in Planning areas is 0.003% of the total amount of Timber Resource land in Plumas County.

Using the values above and assuming the rate of building permits issued remains similar over the next 20 years (as suggested in the DEIR response to comments I8-8, pg. 3-31) yields a rate for a new residence on a Timber Production parcel, 160 acres or larger, once every 3-4 years or 5-8 total new residences. The amount of "forest loss" in acres is estimated to be between 5 - 8 acres or between 3.5- 5.7 ten-thousandths of one percent (.00035% - .00057%) of the Timber Resource land in Plumas County, which could be considered "statistically insignificant". Note that all of the estimated 4, 219 acres of Timber Production land in the Planning Areas represents 0.0030% (3.0 thousandths of one percent) of the Timber Resource lands in Plumas County.

Based on the historical permit demand for a residence on Timber Production and the incredibly small fraction of Plumas County forest that could be impacted by a residence on a Timber Production parcel 160 acres or larger means that the change to AG/FOR 8.9.1 is unwarranted since it does not provide any significant mitigation.

5) Why the change in policy language is harmful.

The problem with the language in this policy is the statement; "*as necessary for the management of the timber resource.*" The words "as necessary" means that the use must be qualified "as necessary" and therefore conditional. A residence on a 160 acre parcel is

currently a use by right in Plumas County. Changing the residential use by right to conditional use represents a down zoning. Plumas County staff has assured a concerned public repeatedly; during the General Plan workshops and public meetings, that down zoning was not an objective of the Plumas County General Plan update. At the November 15, 2011 Board of Supervisors meeting the Planning Director restated that there will be no down zoning when recommending to strike the language *if necessary for management of the parcel.*”

While the amount of “forest loss” that the change in AG/FOR 8.9.1 will affect is extremely small (.00035-.00057%) the negative effects are large. By down zoning the Timber Production parcels the value of those land assets are diminished. Sierra Pacific Industries uses its land assets as collateral to finance capital improvements at its manufacturing facilities or purchase other forest lands to help secure the supply of raw materials to run those facilities. Reducing the value of those assets diminishes Sierra Pacific Industries ability to raise capital and thus its strength to survive the ups and downs of the business cycle.

For non-industrial Timber Production owners this change in policy at best costs them 10’s of thousands of dollars in unnecessary permitting expenses and at worst will prevents them from being allowed to build a family cabin or residence.

The loss of the right to build a cabin or residence even conditionally could come about because the General Plan Policy that states that a residence is permitted only “as necessary for the management of the timber resource” will force the Plumas County zone ordinance to conform to that specific General Plan language. The zone ordinance will be required to have criteria for when a residence is “necessary” for the management of the timber resource. However, is a residence every really necessary for the management of timber? As you can see the “as necessary” language is only the first step in prohibiting owners of Timber Production land from being excluded from building a residence under any circumstances.

#### 6) Timber Productivity Act and its support of a residence by right.

The suggestion by commenter I-16 that the Timber Productivity Act compels Plumas County to adopt specific language into the General Plan that requires a residential use on a Timber Production parcel to be qualified as “necessary for the management of the land” is absolutely incorrect.

The Timber Productivity Act (G.C. 51112 & 51113) requires that Counties adopt a zone ordinance that will apply to lands designated Timber Production. The zone ordinance is to restrict parcels zoned Timber Production to growing and harvesting timber and to compatible uses (G.C 51115). The General Plan only requires language that is consistent with and supports the Timber Production Zone.

The Timber Productivity Act (GC 51104(h)) defines a compatible use as “any use” that does not significantly detract from the growing and harvesting of timber. The term “any use” is very broad and leaves the county a great deal of latitude to decide what uses it considers compatible with the “growing and harvesting” of timber. That means that Plumas County has the discretion to assign “any use” as allowed in Timber Production so long as it is “does not significantly

detract from the use of the property for, or inhibit, growing and harvesting timber”. No qualifications are required as to their “necessity” for the management of the timberlands only that they do not “significantly detract from...or inhibit, growing and harvesting timber.”

So for instance Plumas County could find that a residence is a compatible use and permitted by right and could also provide the same accommodation for Day Care Facility if it so chose. As a matter of fact the current Plumas County Timber Production Zone ordinance does both.

A recent example of how another neighboring jurisdiction handled the Timber Production land use designation can be found in Butte County. In December 2012 the Butte County General Plan and new Zone Ordinance became effective. The Butte County General Plan has a land use matrix similar to the Plumas County General Plan (Table 1.3) and has no language in its General Plan that requires a residence to be “necessary” for the management of the land. The zone ordinance also does not require a residence on TPZ parcels 160 acres and larger be “necessary” for management of the land.

The Butte County Zone ordinance also includes other uses in Timber Production such as a lodges, fishing clubs, home occupation – major, and recreation facilities. These other uses were treated differently than the right to a residence, because those uses are not specifically identified as compatible in the Timber Productivity Act. There is also no language in the zone ordinance that makes these other uses need to qualify “as necessary” for the management of the timber resource. The Butte County zone ordinance did make these potentially more intensive uses discretionary and they will require a conditional use permit (CEQA) for their approval. The Butte County zone ordinance also requires that a Register Professional Forester certify that these more intensive uses are compatible with and do not inhibit or restrict the growing and harvesting of timber. The requirement to use a Registered Professional Forester (RPF) to make those assessments is in recognition of a RPF’s expertise in environmental laws, logging engineering, soils, wildlife, hydrology, and the economics of timber production and how the constraints each unique parcel may have relative to its compatibility or incompatibility with the propose use.

That said the language that commenter I-16 refers to in the Timber Productivity Act which they believe is included to place conditions or qualify a residential use on a Timber Production parcel is actually included to prevent a county from excluding a residence as a compatible use. The Timber Productivity Act protects a limited number of uses as compatible, which the County can not infringe upon. Those uses are listed in GC 51104(h) and include a right to a residence. The right to a residence is not qualified in the Timber Productivity Act and therefore it is not necessary to qualify in the General Plan, to do so would be incongruent with State Law. The following discussion will help further explain these facts.

TPZ zones in California are intended for timber protection and compatible uses. 15 of 24 surveyed Northern California counties with forests allow a residence by right on TPZ parcels ranging from 40 acres to 160 acres minimum parcel size. Of the remaining 8 counties, all but a few allow a residence with a permit based generally on a finding that a residence would not interfere with timber production. A few counties require a nexus of necessity of some degree between the residence and timber production.

Plumas County TPZ lands are regulated by the same states laws as the 23 surveyed counties, including the 15 counties that allow residences by right.

The Plumas County timber production zone (TPZ) is subservient to the California State laws governing TPZ. The timber production zone district was originally created by the California State Legislature in 1976 as the Forest Taxation Reform Act. The Yield Tax Law changed timber from being taxed annually on an ad valorem basis, to being taxed on its value when it is felled. The Yield Tax is collected by the State and returned to the County of origin in the year the timber is harvested. The Forest Taxation Reform Act did compelled counties to enact a timber production zone (TPZ) by ordinance, since these lands would be taxed under the Yield Tax Law and it was necessary to distinguish these parcels from other rural parcels. The Yield Tax Law states that TPZ land is solely taxed on its soil productivity and compatible uses. The tax on compatible uses will include a reasonable land area surrounding the compatible use. The TPZ requires a 10-year restriction to growing and harvesting timber and compatible uses, this restriction is extended annually at the anniversary date of enrollment. Removal from the TPZ is at the discretion of the land owner and the Board of Supervisors.

In 1982 the Timber Productivity Act was enacted. The Timber Productivity Act subsumed the Forest Taxation Reform Act and added policy statements, and includes the intent by which those policies were to be carried out. The Timber Productivity Act also defined many of the terms in the government code sections of the Forest Taxation Reform Act. One definition clarified in the Timber Productivity Act, which is of consequence to the Plumas General Plan is found in GC 51104(g):

"Timberland production zone" or "TPZ" means an area which has been zoned pursuant to Section 51112 or 51113 and is devoted to and used for growing and harvesting timber, or for growing and harvesting timber and **compatible uses**, as defined in subdivision (h).

With respect to the general plans of cities and counties, "timberland preserve zone" means "timberland production zone."

This definition of timberland production zone (TPZ) states that specific to the TPZ established, pursuant to 51112 or 51113, there will be certain uses provided, and that the general plan will refer to the timber preserve zone as timber production.

Another definition that is of consequence to the Plumas General Plan is found in GC 51104(h):

(h) "Compatible use" is **any use** which does not significantly detract from the use of the property for, or inhibit, growing and harvesting timber, **and shall include**, but not be limited to, any of the following, unless in a specific instance such a use would be contrary to the preceding definition of compatible use:

(1) Management for watershed.

(2) Management for fish and wildlife habitat or hunting and fishing.

(3) A use integrally related to the growing, harvesting and processing of forest products, including but not limited to roads, log landings, and log storage areas.

(4) The erection, construction, alteration, or maintenance of gas, electric, water, or communication transmission facilities.

(5) Grazing.

(6) **A residence** or other structure necessary for the management of land zoned as timberland production.

The definition above clearly shows that a residence is a compatible use in the timberland production zone and that the Plumas General Plan shall accommodate such compatible uses.

Regarding the interpretation of GC 51104 (h)6 as compelling a requirement that a residence is a permitted use only if it is necessary for the management timber resource is an incorrect reading of the statute. Under 51104(h)6 the definition provides for a residence by right. The construction of this sentence indicates that a residence is a use by right since the definition of "or" when considered logically is: "the connective used in disjunction". As a disjunctive "or" is separating two alternatives. The first alternative is "A residence" the second alternative is "other structures", which includes the qualifier necessitating that those other structures must be necessary for the management of the land. If the legislature wanted a residence to be attached to the qualifier the legislation could have simply read, "A structure necessary for the management of the land" since a residence is a structure. The legislation did not do that but made a provision for a residence specifically identifying it in the definition. This also makes sense in regards to the compatible use definition in 51104(h) which allows "any use" so long as it does not inhibit the growing or harvesting of timber, without qualification as "necessary". Logically a residence, which impedes very little of the overall growing space on the parcel, would not significantly inhibit the growing or harvesting of trees. On the other hand, other structures is qualified, since it is vague and could mean any number and types of structures that could lead to a conflict with the growing and harvesting of timber.

In California 66% of privately owned forests are owned by non-industrial owners, while only 33% is owned by industrial owners (FRAP Assessment 2010, Pg. 68). Because most of the private forest is held by small non-industrial owners the Timber Productivity Act's inclusion of these basic compatible uses by right strikes a balance between the legislative intent for the implementation of the policies (G.C. 51103) to "including all qualifying timberland" in timberland production zones, and the recognition that continued enrollment in TPZ is not mandatory (G.C. 51120 & 51130), and for the majority of private forest landowners there is much less incentive to remain in TPZ without the benefit of a residential use. The Timber Productivity Act also balanced the tax incentive between the individual and the County for the enrollment in TPZ, by limiting the taxation to a rate tied to the productivity of the soils, but allowing local tax assessment of any improvements and the portion of a parcel containing compatible uses.

For the taxation of compatible uses, the assessor can tax all improvements based on their assessed values and increase those assessments according to Proposition 13, including the land area utilized by that compatible use. The following is an example from the Timber and Timberland Values Manual (2007):

*Assume that a 160-acre TPZ property, with no improvements, transferred in September 2003.*

*In July 2005, construction is completed on a new residence and the appraiser determines that the appropriate size for the site is one acre.*

*In this example, the base year value of the newly created site should be established based on the value of comparable one-acre homesites in 2003. If it is determined that the proper 2003 value is \$100,000, this becomes the base year value for the homesite. The value of any new construction --- such as driveways, grading, domestic wells, etc – should be added to the \$100,000 (plus appropriate factoring) to establish the site value. If this property later sells the portion designated as a compatible use area will receive a new base year value and subject to supplemental assessment statutes.*

This means that there really is no “tax break” for any residential component in TPZ, but the pressure to convert the remainder of the timberland to another higher use is avoided since the assessor cannot assess that portion of the land for a “higher and better use” other than for the production of timber. The balance struck by the Timber Productivity Act is a very progressive method of incentivizing land use for a larger social and economic benefit for the public without stripping rights from landowners unnecessarily or starving local jurisdictions of potential tax revenue.

#### 7) Conclusion

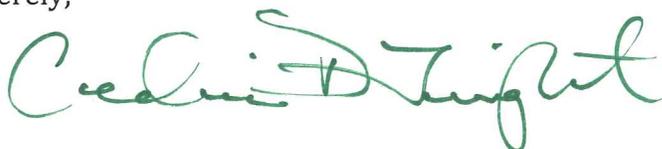
1. A residence on TPZ by right is supported by the Timber Productivity Act and does not need to be qualified as “necessary” in the Plumas General Plan.
2. The issue regarding a residence on TPZ as being required to be necessary for the management of the timber resource has been considered by the Board of Supervisors and rejected.
3. There is no compelling evidence provided in the DEIR to support the change in Policy AG/FOR 8.9.1.
4. The acreage analysis in this letter provided an estimate of the quantity of residential units on Timber Production parcels that may result from the Draft Plumas County General Plan. The estimate indicates that the “loss of forest” that could result from the estimated new residential building on Timber Production parcels 160 and larger is statistically insignificant.
5. Policy AG/FOR 8.9.1 should remain as previously approved by the Plumas Board of Supervisors and read:

“The minimum parcel size for Timber Resource lands shall be 40 acres. Timber Resource Lands include those lands identified as General Forest and as Timberland Production Zone. Limitations provided by the zoning include a restriction of the allowable density of dwelling units in the Timberland Production Zone. Only parcels 160 acres in size or greater are allowed a residence or structure.”

6. The change to AG/FOR 8.9.1 does not mitigate the impacts 4.10-1 and 4.10-3 identified and analyzed in the DEIR. Neither the FEIR nor the commenter I-16 explained how the suggested change in Policy AG/FOR 8.9.1 would reduce or avoid any environmental impact, therefore the suggested change to AG/FOR 8.9.1 cannot be considered mitigation by the FEIR's own rationale.
7. The findings in the FEIR need to strike the reference to the change to AG/FOR 8.9.1.
8. The existing Plumas Zoning code has incorporated Government Code 51104(h)(6) verbatim. The existing zoning code is in conformance with the wording of Policy AG/FOR 8.9.1 in item 5 above and the Timber Productivity Act.

Thank you for your time reviewing these comments. Please retain Policy AG/FOR 8.9.1 as it was originally recommended by Plumas County Planning Staff, approved by the Board of Supervisors, supported by the DEIR and in compliance with the Timber Productivity Act.

Sincerely,



Cedric Twight, RPF #2469  
Sierra Pacific Industries

Cc Board of Supervisors  
Planning Commission  
Plumas County Planning Department