

HERBICIDES AND THE THP PROCESS

Forest Vegetation Management Conference

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Forestry and Fire Protection



THP/NTMP Disclosure

- ❖ Cumulative impacts
- ❖ Site specific impacts

Background

- o California Environmental Quality Act (CEQA)
- o Forest Practice Act (FPA) and Forest Practice Rules (FPRs)
- o Case Law

California Environmental Quality Act

- PRC 21080.5-Functional Equivalency of the THP Process
 - Requires enabling legislation with environmental protection among its principles.
 - Requires that rules of the BOF will provide for:
 - Evaluation and mitigation to substantially lessen a significant adverse impact.
 - Preparation of a plan and orderly review.
 - Consultation with public agencies.
 - Response to significant comments raised during the evaluation.
 - That the plan 1) includes a description of the proposed activity and 2) there is reasonable time for public review and comment.

Forest Practice Act

- PRC 4581 Necessity of a Timber Harvesting Plan
- PRC 4582.6 Availability of Timber harvesting plan
- PRC 4582.7 Review of Plan; public comment
- PRC 4582.75 Rules of the Board

Forest Practice Regulations

- FPR 896 FPRs to be applied in a manner consistent with other laws.
- FPR 897 Implementation of Act intent.
- FPR 897(a)(3) plans must contain clear and sufficient information to assure that adverse cumulative impacts are avoided.

Forest Practice Regulations

- FPR 912.9 Necessity for a Cumulative Impacts Checklist
- FPR 912.9(5) Necessity for description of Assessment Areas.
- Technical Rule Addendum #2-Contents of a Cumulative Impacts Assessment

Recent Case Law

- Ebbetts Pass Forest Watch vs CDF and SPI-Third Appellate District
- Ebbetts Pass Forest Watch vs CDF and SPI-Fifth Appellate District
- Joy Road Area Forest and Watershed Association vs CDF and Harmony Forest and Land Company, LLC- First Appellate District

Ebbetts Pass-Third Appellate District

- o Cumulative Impacts & selection of Biological Assessment Area
- o Consideration of Information from Federal Agencies
- o Response to Public Comment
- o Assessment of local Cumulative Impacts
- o Herbicide Use

Ebbetts Pass Fifth Appellate District

- o Cumulative Impacts
- o Biological Assessment Areas
- o CDF application of Technical Rule Addendum No. 2
- o Herbicide Use
 - Project vs. activity
 - Speculative nature of use
 - Relationship to DPR registration process

Joy Road

- o New information and public notice
- o “fog drip” not supported by substantial evidence.
- o Future development potential not adequately addressed
- o Northern spotted owl

Herbicides and THPs

- o Herbicide use is a related activity
- o Use of herbicides requires disclosure, evaluation and mitigation of impacts.
 - Project level analysis
 - Cumulative impacts analysis

Herbicides-Project Level Considerations

- Step 1-recognize the potential need
- Step 2-Describe and disclose the nature of the activity (why, where, when, how and frequency).
- Step 3-Evaluate the potential impacts to water, wildlife, plants, people, etc.
- Step 4-Describe the mitigations to be applied to avoid adverse impacts.

Herbicides and Cumulative Impacts

- Step 1-Analysis should be keyed to Assessment Area(s)
- Step 2-Describe and disclose potential for impacts to combine with other projects or activities in the assessment area
- Step 3-Mitigate as necessary

Questions

