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Board of Forestry and Fire Protection
Attn: George Gentry
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

RE: Hardwood Retention - 2003

Dear Board Members:

The California Licensed Foresters Association (CLFA) submits the following comments to the record for the consideration and review of the Board of Forestry (BOF) on the proposed rule making package titled "Hardwood Retention - 2003". Although we recognize the important ecological role deciduous oak trees play in California's forested ecosystems, CLFA strongly opposes the proposed package. The rest of the comments in this letter provide the basis for this opposition.

Comment 1

Lines 5-6 on page 1 and lines 1-2 on page 3 of the proposed package appear to state an intent that is potentially in conflict with the goal of Maximum Sustained Production of high quality timber products referenced throughout the Forest Practice Rules. In addition, by requiring the enhancement of deciduous hardwoods, lines 5-6 on page 1 and lines 1-2 on page 3 may be setting up a conflict with 14 CCR 932.7(d), [952.7(d)] since this rule section requires that site occupancy of Group A species not be reduced relative to Group B species. CLFA recognizes that subsection 939(a)(1)(E) [959(a)(1)(E)] of the proposed package appears to address this potential conflict if CLFA's assumption that there is a typographical error in the subsection is correct (see Comment 9 below). However, it should be noted that subsection 939(a)(1)(E) [959(a)(1)(E)] only applies, if it is "appropriate to achieve the intent of this section" (see lines 10-11 on page 1 and lines 6-7 on page 3 of the proposed package). Since the intent of the section is to "enhance...deciduous hardwoods", it could be argued that subsection 939(a)(1)(E) [959(a)(1)(E)] is not appropriate and therefore does not apply. Thus, subsection 939(a)(1)(E) [959(a)(1)(E)] does not resolve the conflict between language in the proposed package and that of 14 CCR 932.7(d), [952.7(d)].

Comment 2

There is a real question of regulatory necessity for the proposed package. Existing regulation within 14 CCR 897(b)(1)(B), 14 CCR 1037.5, and the biological resources portion of the Appendix Technical Rule Addendum #2 of 14 CCR 932[952].9, among other regulations,

provide for the protection of deciduous oak habitat. In fact, the hardwood cover subsection of the biological resources portion of the Appendix Technical Rule Addendum #2 of 14 CCR 932[952].9 directly addresses specific requirements for deciduous oak habitats.

Comment 3

Language contained within the proposed package appears to be duplicative of current Forest Practice Rules. For example, lines 12-14 on page 1 and lines 8-10 on page 3 of the proposed package require a plan be developed which provides for a full range of deciduous oak sizes and conditions across the biological assessment area. This language is very similar to existing regulation in the hardwood cover subsection of the biological resources portion of the Appendix Technical Rule Addendum #2 of 14 CCR 932[952].9. The existing regulation requires the retention of “a diversity of stand structural and seral conditions, and tree size and age classes of deciduous oaks” within the biological assessment area. Requiring a duplicative analysis places an unjustified economic burden on landowners in regards to costs associated with preparation of Timber Harvest Plans, Nonindustrial Timber Management Plans, etc. As costs for preparation of THPs grow, the incentive to manage timberland diminishes. Timber product markets are currently at historic lows while timber harvest plan preparation costs are at an all-time high.

Comment 4

The existing regulation in the hardwood cover subsection of the biological resources portion of the Appendix Technical Rule Addendum #2 of 14 CCR 932[952].9 provides a more complete approach to deciduous oak retention than the proposed package since it requires an assessment of the existing condition of the biological assessment area prior to the formulation of appropriate mitigation measures in the THP. In addition, the existing regulation requires an assessment of the effect of the proposed timber operations on deciduous oak habitat within the biological assessment area prior to the formulation of appropriate mitigation measures in the THP. In contrast, lines 12-14 on page 1 and lines 8-10 on page 3 of the proposed package require a plan for deciduous oak retention (mitigation) regardless of the condition of the biological assessment area and regardless of the effect of the proposed timber operations. The process outlined in the existing regulation provides the appropriate framework to conduct analysis of the impacts of proposed timber operations upon deciduous oak habitats.

Comment 5

As the BOF is aware, amendments to the hardwood cover subsection of the biological resources portion of the Appendix Technical Rule Addendum #2 of 14 CCR 932[952].9 went into effect approximately nine months ago. These amendments specifically address deciduous oak retention measures. Nine months is not a long enough period to evaluate the effectiveness of the amendments in retaining oaks and preventing a significant adverse effect on wildlife. During BOF Forest Practice Committee discussions of the proposed package, issues were raised by the California Department of Fish and Game concerning a lack of disclosure from RPFs within the cumulative impacts portion of THPs, even after the 2003 amendments. CLFA believes improving disclosure is, first and foremost, an educational issue. On its website, CLFA maintains a direct link to the “Natural Resources Events Calendar” on the University of California Integrated Hardwood Range Management Program’s website. The “Natural Resources Events Calendar” contains an extensive list of educational opportunities for natural

resource professionals. CLFA will continue to explore opportunities for education regarding deciduous oaks. In addition, CLFA is willing to discuss opportunities for further education/outreach to RPFs with reviewing agencies such as the California Department of Fish and Game.

Comment 6

The sentences on lines 8-9 on page 1 and on lines 4-5 on page 3 of the proposed package appear to require a similar mitigation effort to that outlined in lines 12-14 on page 1 and lines 8-10 on page 3 by requiring restoration and enhancement even where these efforts may not be necessary given the conditions of the biological assessment area.

Comment 7

While lines 8-9 on page 2 and lines 3-4 on page 4 of the proposed package appear to allow for retention standard flexibility when supporting wildlife habitat management activities, there appears to be no such flexibility for areas where significant adverse insect or disease buildups are identified by the RPF (see 14 CCR 917.9, 937.9, 957.9). For example, *Armillaria mellea* is a well-known forest pathogen which infects both conifer and hardwood tree species, including oaks. In fact, the pathogen generally has its greatest impact in mixed hardwood-conifer stands.

Comment 8

Lines 5-6 on page 1 and lines 1-2 on page 3 of the proposed package appear to state an intent that is inconsistent with the authority cited. Sections 4551 and 4561 of the Public Resources Code are listed as the authority cited for the proposed package. Section 4551 requires the BOF to adopt rules which "...protect...wildlife..." Lines 5-6 on page 1 and lines 1-2 on page 3 of the proposed package state that the intent of the subsections is to "...enhance...deciduous hardwoods in order to provide quality habitat for wildlife." This intent appears to exceed the authority of protecting wildlife as mandated in Section 4551. The intent also goes beyond the common standard within the Forest Practice Rules and the California Environmental Quality Act of preventing significant adverse impacts to wildlife.

Comment 9

Line 7 on page 2 and line 2 on page 4 of the proposed package both appear to have typographical errors. Given the context of the sentence, it appears that the rule reference should be 932.7(d) [952.7(d)] and not 932.7(c) [952.7(c)], as it currently is worded.

In summary, CLFA asks that the BOF not approve the proposed package. Please consider these comments on behalf of our members who represent the majority of the professional expertise used to enforce and comply with our State's Forest Practice Regulations.

Very truly yours,

Gary F. Howard, RPF #1017
President, CLFA