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November 3, 2008

**By Overnight and Facsimile**

Ruth E. LaTourelle  
Assistant Planner  
Siskiyou County Planning Department  
806 Main Street  
Yreka, CA 96097

RE: Sierra Pacific Industries Zone Change (Z-08-02, Z-08-03)

Dear Ms. LaTourelle:

The Attorney General submits these comments pursuant to the California Environmental Quality Act ("CEQA") on the Sierra Pacific Industries Zone Change ("Zone Change") (Z-08-02, Z-08-03) Initial Study/Negative Declaration for the Zone Change.<sup>1</sup>

The Zone Change seeks to re-zone 3,846 acres of land (the "Site") currently zoned for timber production to non-prime agricultural land, 40 acre minimum parcel size. The proposed project is located on the southern slope of Mount Shasta in the vicinity of State Route 89 and Ski Park Highway and is surrounded by land in timber production and other state-administered forested land. (Initial Study/Negative Declaration at p. 1.) The Site's current habitat supports hundreds of important Sierra species, including the spotted owl, fisher and pine marten. (*Id.*)

According to the Initial Study/Negative Declaration, the Zone Change will allow a range of potential new uses of the land, including farm labor housing, single family dwellings, agricultural uses and elderly housing. (*Id.* at p. 4.) It appears, although it is not entirely clear, that these uses would be allowed without need for a conditional use permit. Additional uses that may be allowed, but would be subject to obtaining a conditional use permit, include churches,

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<sup>1</sup>The Attorney General provides these comments pursuant to his independent power and duty to protect the natural resources of the State from pollution, impairment, or destruction in furtherance of the public interest. (See Cal. Const., art. V, § 13; Cal. Govt. Code, §§ 12511, 12600-12; *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.) These comments are made on behalf of the Attorney General and not on behalf of any other California agency or office.

schools, parks, playgrounds, private airports, dairies, commercial feedlots, golf courses. (*Id.*)

On our review, the cursory discussion in the Initial Study/Negative Declaration is not sufficient to support a conclusion that the Zone Change has no potential to cause significant impacts to the environment.

The Initial Study/Negative Declaration is extremely vague about the anticipated impacts from the Zone Change. The document repeatedly states that no impacts are anticipated at this time, since any plan to alter the land's current use or density will be subject to further CEQA review at a later date.<sup>2</sup> In support of this assertion, the document cites Article XIII of the Constitution, Section 3(j) which requires that the deed restriction to timberland continue to run with the land and remain in force for ten years from the date any zone change is approved by the Board of Supervisors. (Initial Study/Negative Declaration at p.3).<sup>3</sup> The Negative Declaration relies heavily on the fact that potential changes in density after the ten-year period will require additional analysis under CEQA at the time and must be approved by the County. (*Id.*)

The facts and the law do not support this conclusion. As a factual matter, it appears that many potential uses that are likely to have environmental impacts will be allowed without any further review. And, even assuming that these uses will be subject to some additional review, CEQA case law does not support the Planning Commission's interpretation that the delay between the Zone Change and allowed changes in use, permits the County to defer analysis of the environmental impacts of the Zone Change to the future. (See *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263., 268.) In *Bozung*, the City of Camarillo annexed 677 acres of agricultural land with the intention of using it for residential, commercial and recreational uses. (*Id.* at p. 268.) The Court concluded that an EIR was required to analyze the environmental impacts of the annexation, even though there was a chance that the proposed development would not ultimately materialize. The Court rejected the contention that preparing an EIR on the annexation was premature since an additional EIR would be required before Camarillo could actually rezone the project area. In *Bozung*, the Court held that "an annexation approval is a reality, not a 'possible future action.'" (*Id.*) The annexation of land in *Bozung* is

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<sup>2</sup> For example, when considering the impacts to aesthetic resources, biological resources (p. 13), cultural resources (p. 14), and hydrology and water quality (pp. 19-20), the document states generally that no change in density will result and therefore no impacts are expected.

<sup>3</sup>The Initial Study/Negative Declaration goes on to state that Section 51114 of the Government Code requires parcels zoned as timberland production to be zoned as such for an initial term of 10 years. (*Id.* at pp. 6-7.) On the first and each subsequent anniversary date of the initial zoning, a year shall be added to the initial term of 10 years, unless a notice of rezoning is given as provided in Section 51120. Approval of this application will start the 10 year mandatory period. The AG-2-B-40 zoning designation will become effective 10 years from the date of the approval. (*Id.*)

analogous to the Zone Change at issue here. When the County's Board of Supervisors affirms the Zone Change, the Zone Change becomes a reality that is certain to take effect in ten years.

Moreover, CEQA generally requires government agencies at all levels to consider environmental factors at the earliest possible stage. The CEQA Guidelines provide that "EIR's should be prepared as early in the planning process as possible to enable environmental considerations to influence project, program or design." (Cal.Code Regs, tit. 14, § 15013.) Early review ensures CEQA serves its purpose of sounding an "environmental 'alarm bell' ... before the project has taken on overwhelming bureaucratic and financial momentum." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho* (2007) 40 Cal.4th 412, 441 [internal quotation omitted].) The likely and potential use for the rezoned land should be disclosed and the potential impacts of the Zone Change should be analyzed now, when the decision to allow the rezoning is being made.<sup>4</sup>

Finally, and of particular interest to the Attorney General, is that the Zone Change makes it more likely that this approximately 3,800 acres of land will move out of timber production and into another use, resulting in the loss of forested land in the State. The environmental review document does not address how this rezoning may affect the net carbon balance in California. With our increasing awareness of the seriousness of the problem of climate change, climate protection strategies, including forest conservation, are acknowledged as being increasingly important in California. The loss of forest land is the second largest cause of greenhouse gas emissions globally, and forests are the most expandable long-term sink for carbon dioxide.<sup>5</sup> The County's Initial Study/Negative Declaration addresses air quality among the environmental impacts, but it does not address emissions of greenhouse gasses which contribute to global warming. (See Initial Study/Negative Declaration at p. 10 (Air Quality).) We believe that the environmental review should explore and discuss the impact on global warming of the loss of forested land that could result from approval of this Project.

If the County determines that the impacts from the loss of forested land on global warming are potentially significant, it must impose requirements to mitigate the impacts of those emissions to the extent feasible.

We would be happy to discuss these or any other issues concerning this project with

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<sup>4</sup> It does not appear that the applicant has identified or disclosed the purpose and need for this Zone Change or its intended use of the land after rezoning. Not knowing the intended use of the land after the Zone Change is approved makes it difficult for the County to meaningfully evaluate the Zone Change's impacts to the environment and leads to our concern that there may not be sufficient evidence to support the County's conclusion that no impacts are anticipated.

<sup>5</sup> See <http://www.pacificforest.org/publications/pubpdfs/ForestCarbonReport-07Update.pdf>, at p. 3.

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representatives of the County. We look forward to working with you to ensure that the environmental review for the Zone Change fully complies with the requirements of the law.

Sincerely,

/S/

MEGAN ACEVEDO  
JAMIE JEFFERSON  
Deputy Attorneys General

For EDMUND G. BROWN JR.  
Attorney General