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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

FOREST PRESERVATION SOCIETY, Plaintiff and Appellant, v. DEPARTMENT OF FORESTRY AND FIRE PROTECTION et al., Defendants and Respondents; MENDOCINO REDWOOD COMPANY, LLC, Real Party in Interest.	A148182 (Mendocino County Super. Ct. No. SCUK-CVPT-15-66284)

Plaintiff Forest Preservation Society appeals from the judgment entered after the trial court denied its petition for writ of mandate (petition) challenging a timber harvesting plan proposed by real party in interest, Mendocino Redwood Company (MRC), as a violation of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (CEQA), the Z'Berg-Nejedly Forest Practice Act of 1973 (Pub. Resources Code, § 4511 et seq.) (the Act), and the Forest Practice Rules (Cal. Code Regs., tit. 14, § 895 et seq.) (FP Rules).[1] Plaintiff argues this timber harvesting plan is deficient and that defendant California Department of Forestry and Fire Protection (CDF

[1] Unless otherwise stated herein, all statutory citations are to the Public Resources Code.

or department) failed to proceed in the manner required by law in its assessment and subsequent approval of the plan's cumulative impacts on greenhouse gas emissions. For the reasons set forth below, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On July 23, 2014, MRC submitted to CDF its Timber Harvest Plan 1-14-080 MEN (THP 80). About a week later, CDF instigated an extensive review of THP 80, which ultimately included gathering input from other natural resources agencies, undertaking several rounds of revisions and providing two opportunities for public comment. In particular, CDF's first review included its receipt of input from the North Coast Regional Water Quality Control Board (Water Board), the California Geological Survey (CGS) and the California Department of Fish and Wildlife (CDFW), after which CDF officially filed THP 80, posted it on its public website, and invited public comment.

Thereafter, in September and October 2014, CDF and the other natural resources agencies conducted three pre-harvest inspections of the THP 80 site. These agencies subsequently prepared field reports based upon their inspections, which became part of the administrative record for THP 80, as did comments and recommendations submitted by other agencies. Based on, among other things, these reports, comments and recommendations, CDF recommended revisions to THP 80 and communicated them to MRC's Registered Professional Forester (RPF), who was responsible for the plan's revisions.

On February 5, 2015, a review team meeting was attended by CDF, Water Board, CGS, CDFW and MRC's RPF. At this meeting, additional recommendations for THP 80 were made by the group and communicated to the RPF. The end of the public comment period was then set for 10 days after CDF's receipt of the RPF's responses to the group's recommendations. Ultimately, the initial public comment period ran from July 23, 2014, to March 16, 2015, and resulted in CDF's receipt of 114 e-mails and letters.

Based on the public comments and agencies' recommendations, the RPF made significant revisions to the original THP 80. CDF thus recirculated the revised THP 80 on March 24, 2015, and provided the public an additional 30 days to submit further

comments. Ultimately, CDF received 12 additional e-mails and letters in conjunction with the second comment period.

On July 28, 2015, CDF issued a 265-page Official Response to Significant Environmental Points Raised During the Timber Harvesting Evaluation Process (OR) for THP 80. CDF's director then issued an Official Notice of Determination of Conformance regarding THP 80, which was filed with the California Natural Resources Agency on July 30, 2015.

Thereafter, on August 28, 2015, plaintiff filed its petition challenging THP 80 in Mendocino County Superior Court. In this petition, plaintiff alleged violations of CEQA, the Act and the FP Rules. More specifically, plaintiff alleged THP 80 was deficient in the following ways: (1) assessing cumulative impacts on Northern Spotted Owls, (2) assessing cumulative impacts on greenhouse gas emissions, and (3) failing to comply with FP Rules, section 916.9, as it relates to MRC's Planning Agreement and protection for watersheds with listed anadromous salmonids.

After a contested hearing, the trial court denied plaintiff's petition on April 18, 2016, determining that CDF, in approving THP 80, had proceeded in the manner required by law and relied upon substantial evidence. Accordingly, judgment was entered in defendants' favor.

On April 29, 2016, plaintiff filed a timely notice of appeal. On the same date, plaintiff also filed a petition in this court for a stay of timber harvesting and for writ of supersedeas, again alleging deficiencies in CDF's assessment of cumulative impacts on Northern Spotted Owls and greenhouse gas emissions. After first granting a temporary stay, this court denied plaintiff's petition and dissolved the stay on June 9, 2016. This appeal thus proceeded.

DISCUSSION

A. Mandamus Proceedings: CEQA.

Plaintiff's challenge in this court is one of mandamus, available to correct a public

agency's prejudicial abuse of discretion.[2] Such prejudicial abuse occurs in this context when an agency commits an action that was arbitrary, capricious, in excess of its jurisdiction, entirely lacking in evidentiary support, or without reasonable or rational basis as a matter of law. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1132–1133; see also Code Civ. Proc., § 1094.5, subds. (b), (c).)

In this case, as will be discussed, we are concerned with the reasonableness of an action taken by CDF, the public agency charged with administering the certified regulatory program for timber harvesting operations in accordance with CEQA and the Act.[3] (Cal. Code Regs., tit. 14, § 15000 et seq. (hereinafter, Guidelines).)[4] On review, in " ' "determining whether an abuse of discretion has occurred, a court may not substitute its judgment for that of the administrative board [citation], and if reasonable minds may disagree as to the wisdom of the board's action, its determination must be upheld [citation]." [Citation.]' [Citation]. ' "In general . . . the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support . . . ." [Citation.]' [Citation.]" (*California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 247 (*California Oak*).)

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[2] On appeal, plaintiff challenges only CDF's assessment to the project's greenhouse gas emissions, and thus has abandoned its previous challenges to CDF's assessment of cumulative impacts on Northern Spotted Owls and compliance with FP Rules, section 916.9, as it relates to MRC's Planning Agreement and protection for watersheds with listed anadromous salmonids.

[3] "While CEQA is the general environmental statutory scheme in this state an exception to certain provisions of CEQA—notably its requirements for EIR's for projects at the state and local level and their review—has been created for regulatory programs of state entities which require submission of plans containing environmental information. (Pub. Resources Code, § 21080.5, subd. (a); [citation].) The timber harvest review process used by CDF to assess logging operations on private land has been certified as such a program." (*East Bay Mun. Utility Dist. v. Department of Forestry & Fire Protection* (1996) 43 Cal.App.4th 1113, 1126–1127.)

[4] The Guidelines are promulgated by the California Natural Resources Agency and, as referenced above, are found in title 14 of the California Code of Regulations, section 15000 et seq.

Because trial and appellate courts perform the same function in mandamus actions, the reviewing court reviews the agency's action de novo: "Like the trial court, we review the agency's actions and decisions to determine whether they were in compliance with the procedures required by law and were supported by findings which themselves were supported by substantial evidence in light of the entire administrative record. In so doing, our review is de novo, and not bound by the trial court's conclusions. The decisions of the agency are nevertheless given substantial deference and presumed correct. The parties seeking mandamus bear the burden of proving otherwise, and the reviewing court must resolve reasonable doubts in favor of the administrative findings and determination. (Pub. Resources Code, § 21167.3; [*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 393 (*Laurel Heights I*)]; [citations].)" (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 674 (*San Franciscans*).)

"In the context of an administrative mandamus action challenging an agency's determination under CEQA or the applicable general plan, 'substantial evidence' means 'enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.' ([Guidelines], § 15384, subd. (a); *Laurel Heights I*, *supra*, 47 Cal.3d at p. 393.) Such substantial evidence may include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts, but not argument, speculation, unsubstantiated opinion, or clearly erroneous evidence. (Pub. Resources Code, §§ 21080, subd. (e), 21082.2, subd. (c).)" (*San Franciscans*, *supra*, 102 Cal.App.4th at p. 675; accord, *O.W.L. Foundation v. City of Rohnert Park* (2008) 168 Cal.App.4th 568, 585–586 [where petitioner in a mandamus action challenges the sufficiency of evidence, appellate court lacks power to judge the evidence's intrinsic value or to reweigh it].)

B. Forest Practices Act.

The particular agency action under challenge on appeal—approval of THP 80—comes under the Act, the provisions of which, " 'together with implementing rules and regulations promulgated by the State Board of Forestry . . . ([Pub. Resources Code,]

§§ 4521.3, 4551), provide a comprehensive scheme regulating timber operations in a way which promotes the legislative "goal of [achieving] maximum sustained production of high-quality timber products . . . while giving consideration to values relating to recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment, and aesthetic enjoyment" ([Pub. Resources Code,] §§ 4513, subd. (b), 4512, subd. (c)). The heart of the scheme is its requirement that logging be carried out only in conformance with a timber harvesting plan (THP or plan) submitted by the timber owner or operator and approved by the department after determining, with an opportunity for input from state and county agencies and the general public, that the proposed operations conform to the Act and rules and regulations. ([Pub. Resources Code,] §§ 4581–4582.75, 4583; [citations].)' " (*Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 481 (*EPIC v. CDF*).)

" 'Since 1976, the THP preparation and approval process developed under the Act has been certified as the functional equivalent to, and hence an adequate substitute for, the full environmental impact report (EIR) process required by CEQA. [Citations.]' [Citation.]" (*EPIC v. CDF*, *supra*, 44 Cal.4th at p. 481.) As such, a THP must "provide public and governmental decisionmakers with detailed information on the project's likely effect on the environment, describe ways of minimizing any significant impacts, point out mitigation measures, and identify any alternatives that are less environmentally destructive." (*County of Santa Cruz v. State Bd. of Forestry* (1998) 64 Cal.App.4th 826, 830.)

Here, plaintiff argues CDF abused its discretion by approving THP 80 without properly assessing its cumulative impacts on climate change in California. As plaintiff notes, CEQA and the FP Rules require THP's to contain sufficient information regarding the plan's cumulative impacts in recognition of the fact that, while a particular forestry project may not, considered alone, have significant environmental impacts, when related past, present and future projects are collectively considered, the total cumulative impact can indeed be significant. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 722.) The FP Rules also require CDF to supplement as needed a plan's

cumulative impacts information in order to ensure "all relevant information" is considered during the approval process. (FP Rules, § 898.) According to plaintiff, these requirements were not met with respect to THP 80 because, first, CDF prejudicially abused its discretion by accepting as the "threshold of significance" for purposes of assessing cumulative impacts the California Air Resources Board's Climate Change Scoping Plan, as revised in May 2014 (Scoping Plan), rather than the state's 2020 and 2050 greenhouse gas emission reduction targets, as established by Executive Order (EO) in 2006 (2020 and 2050 targets).[5] (See Health & Saf. Code, § 38500 et seq.) Second, plaintiff, joined by amici, further argues that CDF improperly accepted unenforceable and unsupported projections in THP 80 regarding future forest growth in MRC's overall parcel in order to conclude the project's cumulative greenhouse gas emissions, although net positive during the plan's five-year period of validity, would ultimately be insignificant in light of overall forest carbon sequestration. We address each argument in turn below.[6]

C. Use of the Scoping Plan as the Threshold of Significance.

Turning first to CDF's use of the Scoping Plan as the threshold of significance for purposes of complying with CEQA's mandate to assess THP 80's cumulative

[5] EO S-3-05 and B-30-15 establish greenhouse gas emission reduction targets for the entire state. Specifically, EO S-3-05 sets a target of reducing California's emissions to (year) 2000 levels by 2010, to 1990 levels by 2020, and to 80 percent below 1990 levels by 2050. EO B-30-15, in turn, sets a target of reducing these emissions to 40 percent below 1990 levels by 2030 in order to meet EO S-3-05's goal of 80 percent below 1990 levels by 2050.

[6] We agree with defendants that amici, in their brief, have inappropriately relied on matters outside the administrative record, including certain climate change studies and materials relating to legal and scientific developments in the area of climate change made after the department's review and final approval of THP 80. Given the untimeliness and questionable relevance of these extra-record materials, we decline to consider them for purposes of this appeal. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571 [appellate review is confined to matters in the administrative record]; *San Franciscans*, *supra*, 102 Cal.App.4th at p. 707 ["If amici had wished to include this evidence in the record, they should have done so during the lengthy administrative process. They did not then, and it is too late to do so now"].)

environmental impacts, the following standards apply. Under Guidelines, section 15064.4, subdivision (a), a lead agency has discretion to determine, in the context of a particular project, whether to "(1) [u]se a model or methodology to quantify greenhouse gas emissions resulting from a project, and which model or methodology to use . . . ; and/or [¶] (2) [r]ely on a qualitative analysis or performance based standards." (Guidelines, § 15064.4, subdivision (a)(1), (2).) On appeal, "[a]s a general matter, courts will be deferential to government agency interpretations of their own regulations, particularly when the interpretation involves matters within the agency's expertise and does not plainly conflict with a statutory mandate." (*EPIC v. CDF*, *supra*, 44 Cal.4th at p. 490.)

Here, in arguing CDF should have used the EO's 2020 and 2050 targets instead of the Scoping Plan, plaintiff argues "public agencies routinely and properly use California's time-limited 2020 and 2050 emissions reduction targets as thresholds of significance when assessing GHG impacts under CEQA . . . ." (Italics omitted.) Not using these targets here, plaintiff then insists, was illogical. To support this argument, plaintiff directs us to a recent California Supreme Court decision: "Guidelines section 15064.4, subdivision (b)(3) . . . does not expressly or impliedly prohibit a lead agency from using the Assembly Bill 32 goals themselves to determine whether the project's projected greenhouse gas emissions are significant. As noted by the Natural Resources Agency in its amicus curiae brief, 'a discussion of the project's consistency with the State's long-term climate stabilization objectives . . . will often be appropriate . . . under CEQA,' provided the analysis is 'tailored . . . specifically to a particular project.' " (*Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 223 (*Newhall Ranch*).)

Contrary to plaintiff's suggestion, nowhere in this decision does the California Supreme Court hold that the lead agency must use the 2020 and 2050 targets; rather, the court simply states the agency may do so, "provided the analysis is 'tailored . . . specifically to a particular project.' " (See *Newhall Ranch*, *supra*, 62 Cal.4th at p. 223 ["neither Assembly Bill 32 nor the Scoping Plan establishes regulations implementing,

for specific projects, the Legislature's statewide goals for reducing greenhouse gas emissions. Neither constitutes a set of 'regulations or requirements adopted to implement' a statewide reduction plan within the meaning of Guidelines section 15064.4, subdivision (b)(3)"]; accord, *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 504 [concluding the agency "did not abuse its discretion by declining to explicitly engage in an analysis of the consistency of projected 2050 greenhouse gas emissions with the goals in the executive order" where "[t]he EIR sufficiently informed the public, based on the information available at the time, about the regional plan's greenhouse gas impacts and its potential inconsistency with state climate change goals"].)

In our case, the record reflects CDF found the Scoping Plan was a more appropriate guidepost than these targets and, in doing so, explained why. Specifically, CDF explained the Scoping Plan, adopted by the California Air Resources Board to comply with Assembly Bill 32, requires California's greenhouse gas emissions to be reduced to the 1990 level by 2020 (consistent with the 2020 target) and also includes a numerical carbon sequestration target for the forest sector that would provide superior guidance regarding significant criteria for greenhouse gas emissions specifically for THP's (like THP 80). (See Health & Saf. Code, §§ 38510, 38550, 38551.) And as CDF notes in its brief, the Scoping Plan also recognizes the unique role California forests play in combatting climate change, given the ability of trees to function as "carbon sinks" that absorb more greenhouse gases than they emit. (Scoping Plan, pp. 64–65; 2014 Scoping Plan Update, p. 70.) In fact, the Scoping Plan outlines how the forest sector can meet the state's 2020 target through carbon sequestration at the rate of 5 million metric tons of carbon dioxide equivalent ($MMTCO_2E$), notwithstanding greenhouse gas emission reductions. (Scoping Plan, pp. 64–65; 2014 Scoping Plan Update, pp. 70–71.) In light of CDF's reasoned explanation, we decline to second guess its judgment that the Scoping Plan had particular relevance in the case of THP 80. It goes without saying CDF possesses vastly greater understanding and expertise on the interplay among forests, timber harvesting and climate change than this court and, as such, deserves our deference.

(Guidelines, § 15064.4, subd. (a)(1), (2); see *Newhall Ranch*, *supra*, 62 Cal.4th at p. 236 ["We consider an agency's interpretation of statutes and regulations in light of the circumstances, giving greater weight where the interpretation concerns technical and complex matters within the scope of the agency's expertise"].)

In so concluding, we acknowledge the conflicting views in the record as to whether adherence to the Scoping Plan's targets and strategies or the EO's 2020 and 2050 targets would better promote the Act's objective of achieving maximum sustained production of high-quality timber products while giving due consideration to environmental and economic values. (See FP Rules, § 1091.1, subd. (b).) However, for the reasons stated above, we cannot say CDF's reliance on the former rather than on the latter was an arbitrary or capricious act. " 'Differences of opinion, no matter how strongly presented, do not warrant rejection of [public agencies'] action, where it has been demonstrated that [the agencies] were presented with opposing viewpoints, considered them extensively and on the basis of evidence [made their decision]. [Citation.]' [Citation.]" (*San Franciscans*, *supra*, 102 Cal.App.4th at pp. 708–709.) Accordingly, plaintiff's first argument fails.

D. The Adequacy of the Project's Climate Change Impacts Assessment.

Turning to plaintiff's next argument, we note as an initial matter that, given our previous conclusion that CDF acted reasonably in using the Scoping Plan as the threshold of significance, we need not specifically address plaintiff's argument that CDF's approval of THP 80 is illegal simply because its assessment of the project's cumulative climate change impacts is inconsistent with the EO's 2020 and 2050 emission targets.[7] As stated above, California law does not mandate THP consistency with these targets. An issue remains, however, notwithstanding the 2020 and 2050 targets, whether substantial evidence supports CDF's assessment that THP 80 would not significantly impact the

[7] Specifically, plaintiff argues that THP 80 is based on time frames for moving from net positive to net negative emissions that, while varying among silviculture units, "all are at least five years and most are much longer (i.e., 14, 17, 5, 18, and 6 years)," and thus are inconsistent with the 2020 and 2050 targets.

environment by its discharge of greenhouse gases. In this regard, plaintiff raises two interrelated arguments, each of which we address below—first, whether the cumulative impact assessment for THP 80 provides sufficient information for purposes of CEQA's disclosure requirements and, second, whether the assessment's proposed mitigation measures are legally enforceable.

1. Adequacy of THP 80's Informational Content.

We review only for substantial evidence plaintiff's challenge to the adequacy of information supporting CDF's conclusion that THP 80 will not cause significant greenhouse gas impacts, keeping in mind the standard is whether inclusion of information in a THP is reasonable and practical, not whether it is perfect or even preferable. (*Laurel Heights I*, *supra*, 47 Cal.3d at pp. 392–393; *Kings County Farm Bureau v. City of Hanford*, *supra*, 221 Cal.App.3d at p. 723.) Moreover, " '[n]oncompliance with CEQA's information disclosure requirements is not per se reversible; prejudice must be shown. [Citation.]' [Citation.]" (*Sunnyvale West Neighborhood Assn. v. City of Sunnyvale City Council* (2010) 190 Cal.App.4th 1351, 1384–1385, fn. omitted, overruled on other grounds as stated in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 457.)

Here, when accepting THP 80's cumulative impact assessment as to climate change, CDF found: "While this THP may result in a short-term increase in [greenhouse gas] emissions from the THP area, this increase will be more than made up for by the [forest] growth elsewhere on MRC's property." Plaintiff (and amici) challenge this conclusion for several reasons. First, they argue that THP 80's method of comparing projected future carbon sequestering from tree growth across MRC's entire ownership (228,780 acres), on the one hand, and greenhouse gas emissions for only THP 80's geographical assessment area (758 acres), on the other hand, is not a meaningful (or reasonable) comparison and should have been rejected by CDF. Further, they argue CDF's ultimate conclusion that the project's climate change impacts will be insignificant is based on unsupported assumptions that total forestry operations on MRC's ownership will emit less greenhouse gas in the short term (i.e., by 2020, 2030, or 2050) than is

absorbed by additional forest growth in that time period. In so arguing, they point out that once certain "tipping points" are reached with respect to greenhouse gas concentrations in the atmosphere, environmental harm becomes irreversible. As such, they argue, "near term positive net carbon emissions represent significant environmental harm regardless of whether long-term sequestration exceeds short term emissions."

Relevant to plaintiff's arguments is the following legal framework: "Regulations governing THP's require that the plan submitted include consideration of the cumulative impacts of the plan upon the environment. (Tit. 14, §§ 898, 912.9.) The regulations also require CDF to supplement as needed the cumulative impacts information supplied to ensure that 'all relevant information is considered.' (Tit. 14, § 898.) The registered professional forester (RPF) who prepares the THP on behalf of the logging company is directed to consider both on- and off-site interactions of the plan 'with the impacts of past and reasonably foreseeable future projects.' (Tit. 14, § 912.9, Tech. Rule Addendum No. 2.) [¶] The most specific rules governing analysis of cumulative . . . impacts are those contained in regulations which took effect in 1991. (Tit. 14, § 912.9.) Title 14, section 912.9 sets out criteria imposed for cumulative impact assessment paralleling the criteria developed for EIR's in CEQA cases. Under the new regulations THP's must include information not only about the pending project but about past, present and reasonably foreseeable future projects. (Tit. 14, §§ 898, 912.9; see *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 72-77 [198 Cal.Rptr. 634].) *However, in THP's, just as in EIR's prepared under CEQA, assessment of cumulative impacts [is] guided by standards of practicality and reasonableness; there is no one prescribed mode of analysis.* (Tit. 14, §§ 898, 15130, subd. (b)(3); *Laupheimer v. State of California* (1988) 200 Cal.App.3d 440, 465-466 [246 Cal.Rptr. 82].)" (*East Bay Mun. Utility Dist. v. Department of Forestry & Fire Protection* (1996) 43 Cal.App.4th 1113, 1127 (*East Bay Mun. Utility Dist. v. CDF*), italics added; accord, Guidelines, § 15355, subd. (a) [defining "cumulative impact from several projects" as "the change in the environment which results from the incremental

impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects"].)

Here, to comply with these rules and regulations, MRC provided CDF information on the project's cumulative impacts on climate change in both THP 80 and a so-called "Option A" document.[8] The Option A document contains several tables illustrating, among other things, projected inventory, growth and harvest for MRC's ownership for certain tree types. Plaintiff and amici condemn MRC's (and CDF's) reliance on MRC's Option A document, claiming the analysis contained therein is unreasonably based on too broad a geographical area and too long a time period (and suggesting, in turn, the analysis is intended to dilute the project's climate change impact.) However, the record reflects that MRC, in its cumulative impact assessment and Option A document, relied on the 100-year planning horizon that has been embraced by the FP Rules. (See FP Rules, § 895.1 [defining "Long Term Sustained Yield" as "the average annual growth sustainable by the inventory predicted at the end of a 100 year planning period"].)[9] The Option A tables then break this 100-year planning period into 20 five-year periods, with THP 80's harvest occurring within the third five-year period, from 2016 to 2020, a period

[8] Briefly stated, Option A is one of three available voluntary means identified by the FP Rules for a logging company to make the requisite showing that a THP is designed to meet the Act's requirement of achieving maximum sustained production (MSP) of high-quality timber products. (FP Rules, § 913.11, subd. (a).) Further, when, as here, a logging company choses to follow Option A, then FP Rules, section 913.11, subdivision (a) governs and, like the regulations described above, requires the company to provide information about a project sufficient to demonstrate the balance of growth and harvest over time for the assessment area. As before, the level of detail required in a company's Option A document "shall be guided by the principles of practicality and reasonableness in light of the size of the ownership and the time since adoption of this section using the best information available." (FP Rules, § 913.11, subd. (a)(2).)

[9] FP Rules, section 913.11, subdivision (a), provides: "The projected inventory resulting from harvesting over time shall be capable of sustaining the average annual yield achieved during the last decade of the planning horizon. The average annual projected yield over any rolling 10-year period, or over appropriately longer time periods for ownerships which Project harvesting at intervals less frequently than once every ten years, shall not exceed the projected long-term Sustained Yield."

already underway. According to Table 1, during this third five-year period, THP 80's harvest is projected to be 74 percent of its growth. At the same time (years 2016–2020), MRC's Option A document discloses that the conifer inventory for the company's entire ownership is projected to be 3,205,570 thousand board feet (hereinafter, mbf), with conifer growth expected to be 567,561 mbf and conifer harvest to be 417,485 mbf. Thus, Option A illustrates that the difference between growth and harvest for MRC's entire ownership is projected to be 150,076 mbf, a net gain of tree growth.

While plaintiff claims Option A and THP 80 collectively provide inadequate information on the project's cumulative impacts to climate change, CDF concluded otherwise: "At the ownership level sequestration exceeds the emissions continuously, including those short periods following harvest[s] such as this one . . . . MRC demonstrates its commitment to sustainability through its Option A plan, which mandates the use of specific silvicultures across MRC's property at regular intervals to ensure MRC always harvests substantially less volume than it grows in a given year. This THP is a small part of this larger plan for ownership-wide sustainability, and as such, it is part of MRC's net annual carbon sink."

CDF also pointed out from the Option A information that MRC's carbon sequestration projections for its entire ownership, including THP 80, were consistent with the rate of carbon sequestration outlined in the Scoping Plan in the short and long term, further supporting the conclusion that the project's climate change impacts would not be significant: "[T]his THP, when viewed as part of MRC's management of its entire ownership, will result in increased carbon sequestration over the long term. This increase in carbon sequestered is consistent with both [Executive Orders], which call for a net reduction in emissions, a goal furthered by increased carbon sequestration. [¶] . . . This THP will obviously not, in itself, contribute significantly to global, national, or State emissions. Conversely, establishing too small an assessment area would magnify the impacts of the project on climate change beyond reason. If, for instance, any project that would result in a temporary reduction of carbon sequestration were to be compared in a vacuum to the threshold of significance of hindering or delaying achievement of the AB

32 Scoping Plan's goals, such a project would necessarily be found to be inconsistent with the Scoping Plan, because the project will result in increased emissions and the Scoping Plan calls for a decrease in emissions. The Department does not believe that this is a reasonable approach to evaluating the cumulative impacts of the project on climate change[.]"

Challenging CDF's analysis as unreasonable and unsupported, plaintiff and amici accurately point out neither THP 80 nor MRC's Option A document includes actual calculations or numerical measurements of the greenhouse gas emissions associated with any timber harvesting plan other than THP 80 that is planned or projected in the near or long term on MRC's ownership. (See Amicus Brief, p. 49 ["An adequate cumulative effects analysis in terms of climate change, at a minimum, would have addressed the [greenhouse gas] emissions from other THPs in relation to THP 080 to understand the collective significance of [these] emissions from related projects"].)

In response, defendants first raise a forfeiture argument, claiming that during CDF's review and approval process, plaintiff never challenged THP 80 or MRC's Option A document based on MRC's failure to quantify carbon sequestration or greenhouse gas emissions for its total ownership parcel or for any THP besides THP 80. Plaintiff counters that, at several points during these proceedings, it did in fact raise issues regarding the lack of information in MRC's Option A document relating to climate change. Having reviewed the relevant record, we need not reverse here on forfeiture grounds because, on a more substantive level, we find several flaws in plaintiff's appellate arguments.

Most importantly, applying the governing rules and regulations set forth above, we disagree with plaintiff's underlying assumption that respondents had a legal duty to provide the public with numerical calculations or information to support the carbon sequestration projections in THP 80 or MRC's Option A document. Nowhere does CEQA or the Act require a THP to contain a *quantitative* analysis of a plan's anticipated carbon sequestering capability as compared to its anticipated greenhouse gas emissions. While such information about a given harvesting plan may of course be included in a

THP, we know of no law requiring it. Instead, California law leaves to the agency's judgment the level of detail required in any particular cumulative impact assessment unless a showing is made that its exercise of judgment was clearly speculative or otherwise unreasonable. (See *EPIC v. DFP*, *supra*, 44 Cal.4th at p. 525 [noting that "courts have grappled with the abuse-of-discretion issue" with respect to what information about related or future projects must reasonably be included in an EIR or THP to enable proper understanding of the cumulative environmental impacts with respect to the present project]; *East Bay Mun. Utility Dist. v. CDF*, *supra*, 43 Cal.App.4th at p. 1129 ["While [plaintiff] would prefer that CDF use a different way of assessing the significance of cumulative impacts, it has failed to demonstrate the legal inadequacy of how CDF goes about determining that mitigation measures reduce the significance of such impacts"]; accord, *Cleveland National Forest Foundation v. San Diego Assn. of Governments*, *supra*, 3 Cal.5th at p. 504 [agency's failure "to explicitly engage in an analysis of the consistency of projected 2050 greenhouse gas emissions with the goals in the executive order" was not an abuse of discretion where the EIR, considered as a whole, sufficiently addressed the plan's greenhouse gas impacts].) Here, for several reasons, we do not believe this showing of conjecture or unreasonableness has been made.

Firstly, as defendants correctly note, the science relating to climate change and, more specifically, the carbon sequestration capacity of forests, is not fully understood. As a result, methods for assessing climate change impacts from harvesting timber are still being developed. In fact, several of the scientific studies and theories referred to or relied upon by amici and plaintiff in their briefs were not written or publicly available until after CDF reviewed and approved THP 80.[10] We decline to question CDF's judgment

[10] We grant defendants' amended request for judicial notice, filed March 1, 2017, of the following two publicly available documents, released January 20, 2017: (1) the California Air Resource Board's draft 2017 Scoping Plan Update, and (2) the California Environmental Protection Agency's draft California Forest Carbon Plan. However, we deny MRC's request for judicial notice, filed January 9, 2018, as the documents are not pertinent to the issues at hand.

regarding the significance of THP 80's climate change impacts on the basis of any publication, study or theory not available to the agency during the approval process. (Code Civ. Proc., § 1094.5, subd. (e); Pub. Resources Code, § 21168; *Friends of the Old Trees v. Department of Forestry & Fire Protection* (1997) 52 Cal.App.4th 1383, 1392.)

In addition, we disagree that defendants' approach to assessing the cumulative impacts of THP 80's greenhouse gas emissions was flawed because it relied upon carbon levels on MRC's total ownership rather than only on the THP 80 site. As CDF logically explained in its OR, because climate change is a global phenomenon, it makes little sense to focus on the emissions of an isolated parcel of land without reference (as here) to carbon levels existing or obtainable in the broader surrounding geographic area. (See *Newhall Ranch*, *supra*, 62 Cal.4th at p. 219 [" 'With respect to climate change, an individual project's emissions will most likely not have any appreciable impact on the global problem by themselves, but they will contribute to the significant cumulative impact caused by greenhouse gas emissions from other sources around the globe. The question therefore becomes whether the project's incremental addition of greenhouse gases is "cumulatively considerable" in light of the global problem, and thus significant.' (Crockett, *Addressing the Significance of Greenhouse Gas Emissions Under CEQA: California's Search for Regulatory Certainty in an Uncertain World* (July 2011) 4 Golden Gate U. Envtl. L.J. 203, 207–208"].) Reflecting this reality, information set forth in MRC's Option A document demonstrates that, for the reasonably foreseeable future, MRC will stagger its harvest of specific tree stands within its ownership in 20-year intervals in order to ensure a long-term sustained yield over the 100-year planning period. (See FP Rules, § 895.1; 2014 Scoping Plan Update.) By doing so, MRC will be able to maintain and enhance carbon sequestration in its forests. As reflected in Table 1 (pp. 13–14, *ante*), during the years of THP 80's harvest (2016–2020) and beyond, the amount of board feet grown on MRC's ownership parcel will greatly exceed the amount of board feet removed by MRC. Thus, as THP 80 explains (and plaintiff does not dispute), although the carbon stored in growing trees in the THP 80 area would be reduced post-harvest, carbon from trees would begin to be sequestered once "newly planted, sprouting,

and growing crop trees occupy and grow on the site." Moreover, "[c]arbon from trees harvested w[ould] be sequestered for decades or longer in the form of the wood products cut from the logs."

This information and analysis provides a reasonable basis for CDF's conclusion that, given the expected carbon sequestration that will occur on MRC's ownership at the Scoping Plan's (and its 2014 Update's) target rate of 5 $MMTCO_2E$, THP 80's greenhouse gas emissions will not significantly impact climate change. As CDF explained (again, quite logically), by assessing cumulative impacts based on MRC's entire ownership, "[the assessment] neither understates the THP's cumulative climate change impacts through a meaningless comparison to global, national, State, or even sector emissions, nor does it overstate the effects of the THP by limiting the assessment area too much." We conclude CDF's explanation in this regard reflects that the department was appropriately guided by standards of practicality and reasonableness, given the state of relevant scientific knowledge, when it accepted THP 80's cumulative impacts assessment. While perhaps another approach or methodology could have been employed, the law did not require it. Not only does a "lead agency enjoy[] substantial discretion in its choice of methodology" (*Newhall Ranch*, *supra*, 62 Cal.4th at p. 228), but case law reminds us to "be careful not to interpret the provisions of either CEQA or the Guidelines 'in a manner which imposes procedural or substantive requirements beyond those explicitly stated' in CEQA and the Guidelines. (§ 21083.1)" (*San Franciscans*, *supra*, 102 Cal.App.4th at p. 688.) We thus decline plaintiff's (and amici's) request to hold CDF to a more stringent standard.

Lastly, we address plaintiff's contention that CDF acted "outside the norm" in focusing on future net carbon conditions rather than on existing or short-term carbon conditions. (See *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority*, *supra*, 57 Cal.4th at p. 454 ["the burden of justification . . . applies when an agency *substitutes* a future conditions analysis for one based on existing conditions, omitting the latter, and not to an agency's decision to examine project impacts on *both* existing and future conditions"].) The record proves otherwise. As discussed already at

length (pp. 13–18, *ante*), MRC's Option A document and CDF's OR reflect their consideration of both existing *and* future climate-related conditions on MRC's overall ownership (including THP 80's geographic area). In short, the administrative record demonstrates that the ongoing annual growth throughout MRC's timberlands, as documented in Option A, makes it a "net annual carbon sink," notwithstanding the short-term increase in greenhouse gas emissions on THP 80, a geographical area representing less than 1 percent of MRC's total ownership.

Accordingly, we reject plaintiff's contention that there is insufficient evidence supporting CDF's conclusion that the cumulative impacts of this project on global warming are not significant. (See Guidelines, § 15064, subd. (f)(5) [substantial evidence to support a finding on significance includes "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts," but not "[a]rgument, speculation, [or] unsubstantiated opinion"].) As explained above, so long as an agency's determination is not *entirely lacking* in evidentiary support or *without reasonable or rational basis* as a matter of law, we must affirm. (*Laurel Heights Improvement Assn. v. Regents of University of California, supra,* 6 Cal.4th at pp. 1132–1133; Code Civ. Proc., § 1094.5, subds. (b), (c).)

2. Enforceability.

Plaintiff raises one final argument for our review—that reversal is required because, even assuming future tree growth across MRC's ownership will eventually offset the increased emissions from THP 80, MRC's projected growth "is not part of the THP as approved, nor is such growth required by enforceable mitigation measures or other legal requirements incorporated into the THP." In so arguing, plaintiff cites section 21081.6, subdivision (b), which requires mitigation measures intended to mitigate environmental impacts to be "fully enforceable through permit conditions, agreements, or other measures." We again reject plaintiff's premise.

As an initial matter, plaintiff's argument appears to rely on the legal duty of a public agency to mitigate environmental impacts, which, in this case, has not been triggered. As the California Supreme Court has explained, where the lead agency finds

"significant greenhouse gas emission impacts," CEQA requires it to "adopt feasible mitigation measures or project alternatives to reduce the effect to insignificance; to the extent significant impacts remain after mitigation, the agency may still approve the project with a statement of overriding considerations. (§§ 21002, 21002.1, subd. (b), 21081; Guidelines, §§ 15091, 15093, 15126.6.)" (*Newhall Ranch*, *supra*, 62 Cal.4th at p. 231.) Here, of course, we have already affirmed CDF's determination that THP 80 will *not* result in significant greenhouse gas emissions, releasing the agency from any mandatory duty to adopt enforceable mitigation measures with respect to THP 80.

Second, and in any event, we reject plaintiff's more general claim that there is no mechanism in this case for enforcing MRC's legal responsibility to protect the environment with respect to its timber holdings as a whole. As clearly explained in CDF's OR: "All future timber harvesting plans will be reviewed by the Department to determine their consistency with the Option A plan." CDF's statement is based upon section 4513, subdivision (b), which requires every THP to achieve maximum sustained production (MSP) of high quality timber products. (See also FP Rules, §§ 913.11, 1034, subd. (m)(2).) In addition, any substantial deviation from an original THP requires the forester to seek approval of an amended THP after a public comment period and environmental review. (§§ 4582.7, 4583.2.) And, as MRC points out, Option A also includes a monitoring process, which, among other things, requires a logging company to give notice of certain circumstances that would trigger review by CDF and possible revision of its Option A submission. And finally, while plaintiff speculates MRC could in the future convert certain contiguous acres to uses other than timber growth, the Act is quite clear that to do so would require the company to seek and obtain a timberland conversion permit after CEQA review. (§ 4621, subd. (a); FP Rules, § 1103.)

Thus, in the absence of any statutory, regulatory or evidentiary basis for disturbing the department's approval of THP 80, we must affirm. (*San Franciscans*, *supra*, 102 Cal.App.4th at p. 689 ["declin[ing] appellants' invitation to interpret the explicit statutory language in the manner which they urge on this court, and thereby impose a new procedural and substantive requirement on the preparation of an EIR that is clearly

beyond those already prescribed"].) California law is clear. When assessing the adequacy of a THP as an informative document, we look "not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." (Guidelines, § 15151.) Not only does THP 80 satisfy the legislative mandate to identify and reasonably discuss cumulative impacts, the administrative record contains ample evidence and analysis by CDF of the impacts from greenhouse gas emissions that are likely to result from this harvesting plan. The judgment against plaintiff therefore stands.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to respondents.

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Jenkins, J.

We concur:

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Siggins, P. J.

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Pollak, J.