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April 16, 2009

Dr. Eric Loft, Wildlife Branch Chief  
California Department of Fish and Game  
1812 9<sup>th</sup> Street  
Sacramento, CA 95811

RE: Los Padres ForestWatch Comments on the Initial Study/Negative Declaration on the Proposed Regulatory Action to Expand the Southern California Black Bear Hunting Area to Include San Luis Obispo County and Eliminate the In-season Closure Mechanism for Ending the Black Bear Season Early.

Dear Dr. Loft:

On behalf of our client Los Padres ForestWatch, we are providing comments on the Initial Study/Negative Declaration ("IS/ND") prepared by the California Department of Fish and Game ("CDFG") on the proposed changes to the black bear hunting regulations: (1) to expand bear hunting into San Luis Obispo County; and, (2) to eliminate the statewide in-season closure mechanism for ending the bear season early when CDFG receives notice that 1,700 black bears have been killed. Los Padres ForestWatch also retained Dr. Rick Hopkins of Live Oak Associates to review the methodology used by CDFG in determining that the proposal will have no significant effect on the environment. Dr. Hopkins' critique is attached to this letter as Exhibit A.

**I. CDFG FAILS TO PROVIDE ANY BASELINE INFORMATION ABOUT AFFECTED ENVIRONMENT.**

As Dr. Hopkins points out in his letter, there is no baseline information regarding the black bear population in San Luis Obispo. In order to evaluate the environmental consequences of a proposed discretionary action, the public and public decision-makers need baseline environmental information to evaluate the significance of the proposed change against the existing environment, or in this case the change to the existing black bear population in San Luis Obispo based on the proposed quota of black bears to be hunted and killed.<sup>1</sup>

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<sup>1</sup> CEQA Guidelines, §§ 15125, 15126, subd. (a); *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.

The IS/ND includes a map titled “Project Area Map #1 – Bear Habitat Map” with the following caption or explanation underneath.

In addition to San Luis Obispo County, this map shows the southern portion of Monterey County and the northern portion of Santa Barbara County. The Department has developed a habitat suitability model for black bears in San Luis Obispo County. That model is based on the habitat preferences of bears for feeding, resting and breeding. Vegetation types containing large trees are preferred by bears for breeding and escape cover. Also, moist areas are preferred for drinking and for production of young, digestible grasses and forbs as forage. The compilation of these and other preferred habitat elements are shown in the model, below. Plotted on the model are the locations of scent stations which were established during the summers of 2007 and 2008, bears killed on depredation permits and bears killed on the roads in San Luis Obispo County.

(IS/ND, p. 4.)

The habitat suitability model is not included with the IS/ND, nor is any further summary of the model included in the document. The next page following Map #1 begins the standard CEQA Initial Study Checklist taken from Appendix G of the state CEQA Guidelines.<sup>2</sup> There is no estimation of the bear population within San Luis Obispo, which is the affected environmental area for one of the proposed changes in the black bear hunting regulations. At the conclusion of the checklist under the subheading “Discussion” CDFG states:

The project is expected to result in the harvest of 20 – 50 bears from San Luis Obispo County. This level of harvest is approximately 0.0015 of the total population of bears estimated in California (30,000).

As Dr. Hopkins pointed out this compares the take of 20-50 bears in San Luis Obispo County to the statewide population. However, the affected environment is San Luis Obispo County and the existing bear population in San Luis Obispo County. The public and public decisions makers have no frame of reference to compare the killing of up to 50 bears in San Luis Obispo County, leaving the public to question whether the proposed hunt levels are sustainable.

The Court of Appeal has stressed “the importance of an adequate baseline description, for without such a description, analysis of impacts, mitigation measures and project alternatives becomes impossible.”<sup>3</sup> As Dr. Hopkins points out in his review, the absence of adequate baseline data makes it impossible for an independent wildlife biologist like himself to adequately evaluate the environmental consequences of the proposed action.

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<sup>2</sup> Cal. Code Regs., tit. 14, ch. 3, § 15000, et seq.

<sup>3</sup> *County of Amador, supra*, 76 Cal.App.4th at p. 953.

**A. REFERENCED MATERIAL WAS NOT MADE PUBLICLY AVAILABLE**

The lack of baseline environmental information and the failure to provide any information about the habitat suitability model used for San Luis Obispo brings up another problem with CDFG's IS/ND – the referenced materials were not made available to the public.

From the outset of the “Discussion” that begins on page 28 of the IS/ND and continues through page 38 there are various referenced studies, along with references in the text to the Black Bear Management Plan prepared by CDFG. Dr. Hopkins was knowledgeable enough to know that the Black Bear Management Plan could be found on CDFG's website, but none of the other documents referenced in this 11-page Discussion following the Checklist were on CDFG's website or made publicly available. Except for experienced wildlife biologists, like Dr. Hopkins, who are familiar with working with CDFG, the lay public cannot be expected to know to find the Black Bear Management Plan on CDFG's website. The text of the Discussion does not advise the reader that the Black Bear Management Plan can be found on CDFG's website.

Beginning at page 39 of the IS/ND is a four-page list of the referenced documents that support the conclusions reached in the IS/ND. None of these documents were made publicly available at the time the IS/ND was released for public review and comment.

Despite requesting public notice of the CDFG's intent to open a black bear hunting season in the Los Padres Forest in San Luis Obispo County in 2007, Los Padres ForestWatch was not provided written notice when CDFG filed its Notice of Intent with the State Clearinghouse on February 17, 2009, although some interests were provided a separate “Interested Parties” letter announcing the proposed changes to the black bear hunting regulations. It was not until March 17, 2009, that CDFG published a notice in the San Luis Obispo Tribune of the proposal to open black bear hunting in San Luis Obispo County. When Los Padres ForestWatch sought the opportunity to review the referenced documents in the IS/ND, CDFG informed Los Padres ForestWatch that it would cost the organization \$139.35 to receive copies of these documents. Then on April 14, 2009, CDFG informed Los Padres ForestWatch that the documents would be available at CDFG's Los Alamitos office. (Copies of the correspondence between Los Padres ForestWatch and CDFG about the referenced documents are attached at Exhibit B.)

Subdivision (b) of section 15150 of the CEQA Guidelines states:

Where part of another document is incorporated by reference, such other document shall be made available to the public for inspection at a public place or public building. The . . . negative declaration shall state where the incorporated documents will be available for inspection. At a minimum, the incorporated documents shall be made available to the public in an office of the lead agency in the county where the project would be carried out or in one or more public buildings such as county offices or public libraries if the lead agency does not have an office in the county.

In 2007 when expanding black bear hunting in San Luis Obispo was first being considered, Los Padres ForestWatch made it clear to CDFG that the organization was very interested in this

proposed action. Pursuant to CEQA, the public review period for CDFG's IS/ND "shall be at least 30 days."<sup>4</sup> Moreover, "the public review period shall be at least as long as the period of review and comment by state agencies as established by the State Clearinghouse."<sup>5</sup> The State Clearinghouse received the proposed Negative Declaration on February 17, 2009. ForestWatch and other interested parties should have received notice directly from CDFG this same time.

CDFG has made it impossible for Los Padres ForestWatch, its expert consultant, and the rest of the public to meaningfully review the environmental consequences of opening a black bear hunting season in San Luis Obispo County. CDFG's failure to comply with CEQA's public review requirements is reminiscent of CDFG's actions during the agency's consideration of re-opening a statewide mountain lion sport hunting season in the late 1980s. In invalidating CDFG's environmental document for the mountain lion hunting season for failing to provide the public a meaningful opportunity to review important information inserted after the public comment period, the Court of Appeal stated:

If we were to allow the deficient analysis in the draft EID to be bolstered by a document that was never circulated for public comment, . . . we would be subverting the important public purposes of CEQA.<sup>6</sup>

Such is the case here, as CDFG has failed to make the referenced documents incorporated in the IS/ND available for public review. CDFG does not hold California wildlife resources in trust for the hunting and fishing interests of the State of California, but for the entire public, who may benefit from simply knowing that California's natural heritage is being protected and not necessarily made available for sport.<sup>7</sup> CEQA places the duty on CDFG to make these referenced documents available for public review.<sup>8</sup>

**B. SINCE CDFG FAILED TO PROVIDE REQUIRED BASELINE INFORMATION ABOUT THE BLACK BEAR POPULATION IN SAN LUIS OBISPO COUNTY IT IS REASONABLE TO DETERMINE THAT THE HUNTING AND KILLING OF UP TO 50 BLACK BEARS MAY HAVE A SIGNIFICANT EFFECT ON THE EXISTING ENVIRONMENT, NECESSITATING PREPARATION OF AN EIR.**

The California Supreme Court has stated that "an agency should prepare an EIR whenever it perceives 'some substantial evidence that a project' may have a significant effect environmentally."<sup>9</sup>

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<sup>4</sup> Pub. Resources Code, § 21091, subd. (b).

<sup>5</sup> Pub. Resources Code, § 21091, subd. (c).

<sup>6</sup> *Mountain Lion Coalition v. California Fish and Game Commission* (1989) 214 Cal.App.3d 1043, 1052.

<sup>7</sup> Fish & G. Code, § 1801, subs. (c) & (d).

<sup>8</sup> CEQA Guidelines, § 15150, subd. (b); see also *Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1236.

<sup>9</sup> *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 85.

In his critique of CDFG's IS/ND, Dr. Hopkins points out the following dilemma in trying to ascertain the impacts of the proposed on the existing environment:

This ND is specific to the expansion of bear hunting into San Luis Obispo County, yet the majority of the discussion justifying this action is at the scale of the statewide population. While information regarding bear ecology and hunting across the species range is certainly relevant, this ND fails to provide adequate discussion on how this basic information applies to the action being considered by this ND.

(Exhibit A, p. 2.)

The California Fish and Game Commission's ("Commission") Initial Statement of Reasons for Regulatory Action ("Initial Statement of Reasons") adds no additional information about the black bear population or San Luis Obispo's affected environment. Relying on CDFG's conclusions based on the habitat suitability model that was not appended to the IS/ND and the identical Map #1 attached to the IS/ND, the Commission's Initial Statement of Reasons concludes:

Many areas lying in Santa Barbara County, south of San Luis Obispo County, provide high quality bear habitat capable of supporting self sustaining bear populations. Areas in the Los Padres National Forest in particular support habitat mosaics comprised of dense conifer, oak woodland, riparian forest, chaparral and meadows. These habitats sustain year-round bear populations because they provide sufficient food, cover and water. Bear habitat located in San Luis Obispo County is similar in composition and quality to the bear habitat located in Santa Barbara County.

(Initial Statement of Reasons, p. 3.)

This cursory comparison of bear habitat in Santa Barbara County to similar habitat is not the type of detailed information required by CEQA. There are notable differences just for the lay person to observe. The landscapes in Santa Barbara County are much more remote and unfragmented than the landscapes within San Luis Obispo County. Similarity in habitat does not mean that the bear populations and densities are the same.

**i. EXPANDING BLACK BEAR HUNTING INTO SAN LUIS OBISPO COUNTY IS THE PROJECT UNDER CEQA REVIEW.**

Expanding black bear hunting into San Luis Obispo is one of the proposed changes to the black bear hunting regulations. (Initial Statement of Reasons, pp. 1-3.) This proposed change in the black bear hunting area is a "discretionary project" under CEQA.<sup>10</sup> A "project" is an activity undertaken by a public agency which may cause a physical change in the environment.<sup>11</sup>

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<sup>10</sup> *Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 112.

<sup>11</sup> *Ibid.*; Pub. Resources Code, § 21065.

"Environment" is defined as the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, and objects of historic or aesthetic significance.<sup>12</sup>

As Dr. Hopkins pointed out, rather than providing a description of the affected physical conditions within San Luis Obispo, including the existing black bear population, CDFG relied upon a habitat suitability model to support its claim that adequate black bear habitat exists in San Luis Obispo County. Yet, CDFG provided no information about the model or a summary that allowed an expert like Dr. Hopkins to verify the validity of the model or the accuracy of its conclusion.<sup>13</sup> Even if the model does provide a means to determine black bear habitat suitability, CDFG provides no estimate regarding the size of the black bear population within the affected environment – San Luis Obispo County.

## ii. CDFG HAS THE BURDEN OF INVESTIGATION

To satisfy CEQA's requirements "the impacts of the project must be measured against the 'real conditions on the ground.'"<sup>14</sup> CDFG's environmental review "must focus on impacts to the existing environment, not hypothetical situations."<sup>15</sup> CDFG's failure to describe the existing physical environmental conditions and reliance, instead, on an ill-defined and publicly-unreviewable habitat suitability model precludes meaningful environmental review of the environmental consequences of the proposed regulatory action. Meaningful environmental review must begin at the outset from a determination of the existing physical conditions of the existing environment, which in this situation has to include a determination of the existing black bear population.<sup>16</sup> CDFG's failure to provide this baseline information about the existing environment thwarts CEQA mandatory public review requirements.<sup>17</sup>

"CEQA places the burden of environmental investigation on government rather than the public."<sup>18</sup> Where the government fails to meet this burden, a wider range of inferences may be made regarding the project's potential for adverse environmental consequences. As explained by the Court of Appeal in *Sundstrom v. County of Mendocino*:

While a fair argument of environmental impact must be based on substantial evidence, mechanical application of this rule would defeat the purpose of CEQA where the local agency has failed to undertake an adequate initial study. The agency should not be allowed to hide behind its own failure to gather relevant data. . . . CEQA places the burden of environmental investigation on government rather than the public. If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the

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<sup>12</sup> *Id.* at p. 113; Pub. Resources Code, § 21060.5.

<sup>13</sup> Exhibit A, p. 2.

<sup>14</sup> *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 121.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Id.* at p. 127.

<sup>17</sup> *Id.* at p. 128; accord *Sierra Club v. State Board of Forestry*, *supra*, 7 Cal.4th at p. 1236.

<sup>18</sup> *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311 ("*Sundstrom*").

limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.<sup>19</sup>

CDFG's failure to provide the necessary baseline environmental information requires Los Padres ForestWatch and its expert to consider a wider range of inferences regarding the significant effect of hunting and killing up to 50 black bears in San Luis Obispo for the first time.

**iii. HUNTING AND KILLING UP TO 50 BLACK BEARS MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT.**

As Dr. Hopkins acknowledges in his letter, the killing of up to 50 black bears in San Luis Obispo may have a significant effect on the existing environment. Since no black bears in San Luis Obispo have previously been killed for sport in San Luis Obispo County and CDFG has failed to provide any baseline information about the existing condition of the black bear population in San Luis Obispo County, increasing the killing of black bears for sport from zero to 50 bears is a substantial adverse change to the environment.<sup>20</sup> Therefore, the killing of up to 50 bears in San Luis Obispo may have a significant effect on the environment requiring CDFG to prepare and circulate for public comment an environmental impact report (EIR") prior to submitting the proposed regulatory package to the Commission for approval.

As the California Supreme Court concluded over three decades ago,

the setting of hunting and fishing seasons has the potential for a significant environmental impact, both favorable and unfavorable. There inheres in the fixing of hunting seasons and the issuance of hunting permits a serious risk of overkill and depletion of the affected species. When the impact may be either adverse or beneficial, it is particularly appropriate to apply CEQA which is carefully conceived for the purpose of increasing the likelihood that the environmental effects will be beneficial rather than adverse. As previously indicated, we have consistently held that CEQA must be interpreted so as to afford the 'fullest possible protection' to the environment.<sup>21</sup>

In fact, CDFG was directed by the court in 1987 to prepare the functional equivalent of an EIR for the proposed mountain lion hunt that proposed to kill 200 mountain lions statewide for the first time in sixteen years.<sup>22</sup> Here we have CDFG proposing to expand the Southern California hunting area for black bears to allow the killing of up to 50 black bears for sport in just one county – San Luis Obispo – for the first time.

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<sup>19</sup> *Ibid.*

<sup>20</sup> See Pub. Resources Code, § 21068.

<sup>21</sup> *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 206.

<sup>22</sup> *Mountain Lion Coalition, supra*, 214 Cal.App.3d at p. 1045.

**iv. THE SERIOUS PUBLIC CONTROVERSY OVER THE INTRODUCTION OF BLACK BEAR HUNTING IN SAN LUIS OBISPO COUNTY REQUIRES THE PREPARATION OF AN EIR.**

The *San Luis Obispo Tribune*, the county's principal newspaper, has covered the black bear hunting issue in three news articles and written two editorials opposing the introduction of black bear hunting into the county. The weekly newspaper, the *San Luis Obispo New Times*, has joined the *Tribune* in editorializing against the black bear hunt. Two county supervisors, two city council members, and several dozen local residents have written letters critical of CDFG's analysis and opposing the hunt. In addition, the Commission recently received a letter signed by 36 conservation, animal welfare, and other organizations expressing opposition to the proposals. (Copies of the editorials, news articles, and correspondence are attached at Exhibit C.)

As the California Supreme Court has stated,

the existence of serious public controversy concerning the environmental effect of a project in itself indicates that preparation of an EIR is desirable. One major purpose of an EIR is to inform other government agencies, and the public generally, of the environmental impact of a proposed project (citations omitted) and to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its action. A simple resolution or Negative Declaration, stating that the project will have no significant environmental effect, cannot serve this function.<sup>23</sup>

Such is the case here, as the lack of information in CDFG's IS/ND makes the environmental analysis woefully inadequate in addressing the serious public concerns raised about introducing black bear hunting into San Luis Obispo County.<sup>24</sup>

**v. THE EIR'S WRITTEN RESPONSE REQUIREMENT ADDS ACCOUNTABILITY TO THE PUBLIC REVIEW PROCESS THAT IS LACKING**

In dismissing a claim by the Commission that the delisting of a species protected under the California Endangered Species Act has no effect on the existing environment, the California Supreme Court explained the importance of the EIR's requirement that the public agency respond to environmental criticism of its proposed action:

The written response requirement ensures that members of the Commission will fully consider the information necessary to render decisions that intelligently take into account the environmental consequences. (citations omitted.) It also promotes the policy of citizen input underlying CEQA. (citation omitted.) When the written responses are prepared and issued after a decision has been made, however, the purpose served by such a requirement cannot be achieved.<sup>25</sup>

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<sup>23</sup> *No Oil, Inc. v. City of Los Angeles*, *supra*, 13 Cal.3d at pp. 85-86.

<sup>24</sup> See *Mountain Lion Coalition*, *supra*, 214 Cal.3d at pp. 1052-1053

**vi. CDFG MUST PREPARE AN EIR BEFORE SUBMITTING THE PROPOSED CHANGES TO THE BLACK BEAR HUNTING REGULATIONS TO THE COMMISSION.**

Under the circumstances, since no black bears in San Luis Obispo have been killed for sport and the proposed regulatory action proposes to kill up to 50 black bears for sport by expanding the Southern California hunting area, the proposed killing of up to 50 black bears for sport may have a significant adverse effect on the environment warranting the preparation of an EIR. The more comprehensive environmental review afforded by an EIR would provide all interested public agencies and the public with “detailed information about the effect” the proposed introduction of black bear hunting into San Luis Obispo County and the killing of up to 50 black bears will have on the existing environment.

**C. IS/ND FAILS TO PROVIDE ANY INFORMATION ABOUT CDFG’S CAPABILITY OF ENFORCING BLACK BEAR REGULATIONS.**

At page 28 under “Discussion” CDFG states:

Several regulatory safeguards assure that no significant impacts to the bear population occur as a result of the project. The hunting bag limit of one bear per season restricts the take of bears and equitably allocates the take among the interested public. The prohibition against the take of cubs and females accompanied by cubs insures recruitment of young into the population and protects reproductive females from hunting mortality. The general bear season for San Luis Obispo County will open concurrently with deer season in the A zone deer hunting area. The use of more than one dog for the pursuit and take of bear will be prohibited until the close of the general deer season.

How many wardens does CDFG employ during the hunting season to enforce these prohibitions in San Luis Obispo County and statewide? How does this compare to five years ago, ten years ago, fifteen years ago? There is no information on whether expanding black bear hunting into San Luis Obispo adds to existing enforcement personnel’s requirements, and whether CDFG’s wardens – who are already stretched thin – can adequately monitor and enforce this additional activity. To quote in relevant part from the jacket of the late Mark Reisner’s book, Game Wars: The Undercover Pursuit of Wildlife Poachers,

Because of an enormously lucrative black market in wildlife and wildlife parts, poaching – of . . . black . . . bears . . . – has become as serious a threat to the animal’s survival as the relentless destruction of their habitat.

In addition to Reisner’s book, reading the fascinating stories of former CDFG Warden Terry Grosz in his book, Wildlife Wars: The Life and Times of a Fish and Game Warden, not only

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<sup>25</sup> *Mountain Lion Foundation, supra*, 16 Cal.4th at p. 133.

highlights the importance of CDFG wardens in protecting California's wildlife resources, but also the relentless pursuit of wildlife outside the Commission's hunting regulations.

The IS/ND states:

Under the proposed project, approximately 1,900 bears are expected to be taken by hunters, statewide. Illegal kill of bears is estimated at approximately 25 percent of legal harvest (approximately 525 bears) and natural mortality (all mortality that is not a result of legal or illegal hunting) is expected to be held at approximately 10 percent.

Other than these statements there is no information referenced in the IS/ND to support these statements. Interestingly, last year there 2038 black bears killed even with the 1,700 limit in place. Since poachers do not buy bear permits/tags or provide hunter success interviews to CDFG personnel, what is the basis for claiming that approximately 525 bears will be taken illegally in 2009? Moreover, this statement conflicts with others made by CDFG estimating that the number of bears killed by poachers is *equal to* the legal take.<sup>26</sup>

How does the declining economic situation in California not only affect CDFG's enforcement capabilities, but also provide economic incentive to kill black bears for their gall bladders to sell on the lucrative black market? (See AP news article attached as Exhibit D.)

In light of declining agency budgets, there is just no information in the IS/ND about CDFG's capability of implementing and enforcing the regulatory safeguards the wildlife agency claims will protect California's black bear population from overhunting.<sup>27</sup>

## **II. THE CUMULATIVE EFFECT OF EXPANDING BLACK BEAR HUNTING INTO SAN LUIS OBISPO COUNTY AND ELIMINATING THE STATEWIDE IN-SEASON CLOSURE MECHANISM WAS INADEQUATELY ANALYZED.**

The following cryptic cumulative impacts analysis in the IS/ND does not satisfy CEQA's requirements:

The project will not have impacts that are cumulatively considerable. Hunting of bears has occurred throughout most of California since prehistoric time. The long term effects of hunting on bears might be expected to show effects to the genetics or social structure of the bear populations.

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<sup>26</sup> See Tietje, W. (Central Coast Natural Resource Specialist, UCCE), D. Kock (Big Game Program, CDFG) and S. Rae (Hardwood Coordinator, CDFG), "The Bear Facts" at <http://danr.ucop.edu/ihrmp/oak43.htm> ("The CDFG feels that poaching may account for as many bears as the legal harvest.").

<sup>27</sup> See *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261-62.

**A. NO SUBSTANTIAL EVIDENCE SUPPORTS CDFG'S DETERMINATION THAT CHANGES TO BLACK BEAR HUNTING REGULATIONS WILL HAVE NO IMPACTS THAT ARE CUMULATIVELY CONSIDERABLE.**

While CDFG can determine in its IS/ND that the proposed bear hunting regulatory changes may not have cumulatively considerable impacts, CEQA requires more than a bare conclusion, even from the state's wildlife trustee agency. CDFG's determination must be based upon substantial evidence.<sup>28</sup> "Substantial evidence" includes "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts."<sup>29</sup> CDFG has provided no facts to support its bare conclusion about the project's cumulative considerable effect; and, unsubstantiated opinion and narrative by the state's wildlife agency does not rise to substantial evidence.<sup>30</sup>

**B. CDFG CONCEDES HUNTING MAY HAVE CUMULATIVE LONG TERM EFFECTS ON BLACK BEAR SOCIAL STRUCTURE AND GENETICS.**

By stating "[t]he long term effects of hunting on bears might be expected to show effects to the genetics or social structure of the bear populations," CDFG is conceding that the long-term effects of hunting may have a cumulative considerable impact on the black bear population. It is state policy to "[d]evelop and maintain a high-quality environment now and in the future, and take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state."<sup>31</sup> Under these circumstances if there is a potential that the long-term effects of hunting will have adverse effects on the genetics or social structure of black bear populations, CEQA would require CDFG to prepare an EIR prior to the Commission acting on the proposed changes to the bear hunting regulations.<sup>32</sup>

**C. IS/ND FAILED TO CONSIDER CUMULATIVE EFFECT OF GLOBAL WARMING ON BLACK BEAR POPULATION.**

The IS/ND fails to acknowledge the potential cumulative impact of global warming on the state's black bear population.

The importance of considering a project's environmental effects within a cumulative impact context has been stressed repeatedly by the California courts.

The significance of a comprehensive cumulative impacts evaluation is stressed in CEQA. (citation omitted.) Proper cumulative impact analysis is vital 'because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned

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<sup>28</sup> Pub. Resources Code, § 21080, subd. (c)(1).

<sup>29</sup> CEQA Guidelines, § 15384, subd. (b).

<sup>30</sup> CEQA Guidelines, § 15384, subd. (a).

<sup>31</sup> Pub. Resources Code, § 21001, subd. (a).

<sup>32</sup> See *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 448-449.

is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but

assume threatening dimensions when considered collectively with other sources with which they interact.’ (citations omitted) ‘[C]onsideration of the effects of a project or projects as if no others existed would encourage the piecemeal approval of several projects that, taken together, could overwhelm the natural environment . . . . This would effectively defeat CEQA's mandate to review the actual effect of the projects upon the environment.’<sup>33</sup>

California’s Climate Change Center acknowledged that California is particularly vulnerable to effects of global warming.<sup>34</sup> Since the Climate Change Center’s report came out the California Legislature passed and the Governor Schwarzenegger signed into law AB 32, California Global Warming Solutions Act of 2006, which requires the state to reduce the generation of greenhouse gases that contribute to global warming to 1990 levels by 2020. The predicted effects of global warming in California include:

- Rising temperatures;
- Decreasing snowpack in Sierra Nevada mountains;
- Decreasing precipitation;
- Shifting vegetation like dominant oak forests; and,
- Increase wildfires by 55%.<sup>35</sup>

The IS/ND fails to even consider the cumulative effects of expanding bear hunting into San Luis Obispo and eliminating the statewide in-season closure mechanism for ending the bear season early when CDFG receives notice that 1,700 black bears have been killed along with the predicted effects of global warming, which may also substantially, adversely affect the long-term black bear population regionally or statewide. It is state policy to:

Prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.

As we noted above, “CEQA places the burden of environmental investigation on government rather than the public.”<sup>36</sup> The California Attorney General has recently acknowledged, “there is

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<sup>33</sup> *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214-1215.

<sup>34</sup> Exhibit E.

<sup>35</sup> Ibid.

<sup>36</sup> *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311 (“*Sundstrom*”).

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a growing recognition of the importance of addressing climate change at the programmatic level.”<sup>37</sup> CEQA requires CDFG to address the environmental consequences of climate change

on the long-term black bear population, when it proposes discretionary action that may significantly affect the existing environment.<sup>38</sup>

### **III. CONCLUSION**

For the reasons stated above, Los Padres ForestWatch opposes the proposed changes to the black bear hunting regulations until CDFG prepares a legally adequate environmental impact report that provides detailed information about the environmental consequences of the proposed regulations, and until CDFG circulates the EIR and supporting documentation to the public with a meaningful opportunity to review and comment.

Sincerely,

Bill Yeates,  
On behalf of Los Padres ForestWatch

Attachments (Exhibits A through E.)

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<sup>37</sup> <http://www.ag.ca.gov/globalwarming/ceqa.php>

<sup>38</sup> Pub. Resources Code, § 21166, subs. (b) & (c); see *Vineyard Area Citizens, supra*, 40 Cal.4<sup>th</sup> at p. 438.