

# Memorandum

**To:** Region Chiefs  
Unit Chiefs  
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**From:**   
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**Subject: Cost Share Roads**

Recently the California Department of Forestry and Fire Protection (CDF) authority for applying forest practice regulations on roads listed under cost share road agreements (also referred to as *coop roads*) between industrial timberland owners and the federal government has been questioned. Arguments have been raised by company representatives indicating that the roads in question should not be regulated by CDF because they fall under the definition of a *Public Road* as described in 14 CCR 895.1.

[14 CCR § 895.1]

**Public Road** means a road open to the general public which is: (a) in the State or County road system, or (b) a road on which a public agency has **deeded, unlimited easement**.

Recent discussions focused on whether or not the federal government (e.g. US Forest Service (USFS)) holds a *deeded, unlimited easement* for the cost share roads in Shasta, Trinity and Siskiyou Counties in cooperation with Sierra Pacific Industries (SPI). SPI has provided a legal argument in which they contend that the USFS/SPI road in question is a cost share road which falls under the definition of a public road for the following reasons:

1. The cost share roads are open to the public and there are no restrictions placed on the public.
2. Through a Master Road Use Agreement, SPI has granted an unlimited easement for public use.
3. Members of the public may use the road for any lawful purpose in the same way they would use any other federal government forest service road.

CDF believes the argument could be raised that the easement in question between SPI and the Forest Service is not unrestricted since the Master Agreement contains the following statement as part of the cost share agreement:

*Anticipated use of the roads by the public for noncommercial purposes and for public service traffic will be allocated to the Government. [Section 5 - Basis for Cost Sharing for roads, subsection (a)]*

However, CDF recognizes that a fair argument can be made that a cost share road agreement may provide public road status (deeded, unlimited easement) to the federal government. Nevertheless, while the road may be considered a public road, CDF will evaluate whether or not private timberland owners (e.g. Sierra Pacific Industries, Roseburg Resources Inc., Timber Products Company) retain the right to use the road and can extend the right of road use to its contractors, and has an ownership share of the cost of the original value of the road or subsequent maintenance. These concepts are key to a long held understanding of what constitutes an appurtenant road, which is subject to forest practice regulations.

CDF recognizes the legal rights of timberland owners who desire to enter into road use agreements with neighboring landowners, whether that is other private parties or public entities. However, CDF does not believe that entering into such agreements enables individuals to supersede state law governing timber operations, including the use and maintenance of logging roads on private land.

Public Resources Code (PRC) § 4526 includes a provision under the definition of "timberland" as *land, other than land owned by the federal government*. Consequently, this language would preclude CDF from applying forest practice regulations on federally owned land as it pertains to cost share roads. However the definition of "timber operations" as defined under PRC § 4527 clearly indicates that the legislative intent was to regulate certain activities on non-federally owned lands, including the construction of roads, maintenance of roads, installation of stream crossings, and landing construction. The area where *timber operations* are conducted is defined under the definition of "Logging Area" [14 CCR § 895.1]. In developing rules governing use and maintenance of logging roads and landings, the Board of Forestry and Fire Protection (BOF) pursuant to the Act, adopted regulation beginning under 14 CCR § 923 [§ 943, § 963] et. seq. states that "*All logging roads and landings in the logging area shall be planned, located, constructed, reconstructed, used, and maintained in a manner which is consistent with the long term enhancement and maintenance of the forest resource.....*". Therefore, CDF contends that the BOF's regulations were enacted to fulfill the legislative intent that roads used for timber operations on non-federal timberland would be regulated. CDF will operate under the premise that the legislature never intended to allow the circumventing of state law and regulation through private cost share agreement or contracts.

In recognition of the practical benefits to the public agencies and private timberland owners in exercising a cost share road agreement, CDF recognizes that company representatives may need to negotiate with federal partners in the timing and execution of road activities (including maintenance) to fairly apportion costs. However, CDF considers these roads *appurtenant roads* for the purposes of mapping and expects that maintenance will occur on these roads in conformance with the maintenance provisions of 14 CCR §§ 923, 943 and 963 (et. seq.).

For those types of activities which require more than maintenance, CDF recognizes that cost share road agreements may preclude unilateral action for road maintenance, but CDF does not accept the argument that an agreement cannot be reached between a timber company and their federal partner during the life of a Timber Harvesting Plan (THP). CDF will work with both federal and company representatives to assist in executing planned activities under a cost share road agreement while also complying with State laws, regulations, and pertinent Regional Water Quality Control board basin plan objectives.

As stated above, CDF has no authority to impose state law or regulation on federally owned timberland. However when roads are located on federally owned land and are directly linked to a proposed timber harvest project, it is incumbent upon CDF to evaluate use of such "public roads" within the context of the California Environmental Quality Act (CEQA). CEQA requires the lead agency in approving a project to consider the "*entire project*" for possible significant adverse impacts resulting from project implementation. Therefore, in dealing with cost share roads used to facilitate timber operations, CDF will evaluate federally owned portions of these roads according to the CEQA Guidelines and will consider other governing laws such as the California Endangered Species Act (CESA) that may have bearing on the Director's decision to approve a THP.