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OFFICE OF THE ATTORNEY GENERAL
State of California

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| OPINION | : | No. 81-710 |
| of | : | DECEMBER 3, 1981 |
| GEORGE DEUKMEJIAN<br>Attorney General | : | |
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THE HONORABLE DAVID E. PESONEN, DIRECTOR OF THE DEPARTMENT OF FORESTRY, has requested an opinion on the following question:

May the Department of Forestry lawfully charge a filing fee to cover the cost of processing Timber Harvesting Plans?

CONCLUSION

The Department of Forestry may not lawfully charge a filing fee to cover its cost in processing Timber Harvesting Plans.

## ANALYSIS

We are asked whether the Department of Forestry ("department") may lawfully charge a fee to cover the cost of processing timber harvesting plans.[1]

It has been suggested that Public Resources Code section 21089 authorizes a fee to cover the cost of processing timber harvesting plans ("THPs"). Section 21089[2] states:

> "A public agency may charge and collect a reasonable fee from any person proposing a project subject to the provisions of this division in order to recover the estimated costs incurred by the public agency in preparing a negative declaration or an environmental impact report for such project."

The California Environmental Quality Act (CEQA) requires all state agencies, boards, and commissions to prepare, or cause to be prepared by contract, and certify completion of an environmental impact report (EIR), on any project they propose to carry our or approve which may have a significant effect on the environment. (§ 21100.) Timber harvesting operations are subject to CEQA requirements. (*Gallegos* v. *State Bd. of Forestry* (1978) 76 Cal. App. 3d 945, 952; *Natural Resources Defense Council,* Inc. v.

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[1]As part of the background information on the question, we were informed that a provision of the Budget Act of 1981 (Proviso No. 7 to items 354-001-001 through 354-001-965; Stats. 1981, ch. 99) provided for the financing of $253,537 in expenditures for support of timber harvest plan review activities "through a system of graduated permit fees established and administered by the Department of Forestry."

Such proviso could not grant the department the authority to impose permit fees. As we stated in 27 Ops. Cal. Atty. Gen. 345, 346 (1956):

> "We recognize that the Budget Act may not constitutionally be used to grant authority to a state agency that the agency does not otherwise possess (Cal. Const., Art IV, [former] sec. 24 [now § 9]; see 27 Ops. Cal. Atty. Gen. 111)."

We explained our rationale for the foregoing in 29 Ops. Cal. Atty. Gen. 161, 167 (1957) as follows:

> "Annual budget acts, like all other enactments of the Legislature, are subject to the provisions of [former] section 24, Article IV, of the California Constitution, which prescribes that every act of the Legislature 'shall embrace but one subject, which subject shall be expressed in its title.' [See Cal. Const., art. IV, § 9.] While the so-called Budget Act amendment to the California Constitution, [former] section 34 [now § 12(d)]. Article IV, authorizes an annual budget bill containing multiple items of appropriation, nonetheless, the budget bill may deal only with the one subject of appropriations to support the annual budget consistently with [former] section 24 . . . a restriction on the manner in which an appropriation may be spent for an *already authorized* State purpose is clearly distinguishable from the impropriety of a budget act substantively authorizing a new activity as well as making an appropriation for such purpose . . ." (Emphasis added.)

[2]Section references are to the Public Resources Code unless otherwise indicated.

*Arcata Nat. Corp.* (1976) 59 Cal. App. 3d 959, 963–969.) However, in 1976 the Legislature amended CEQA by enacting section 21080.5 which states in part:

> "(a) When the regulatory program of a state agency, board, or commission requires a plan or other written documentation, containing environmental information and complying with the requirements of paragraph (3) of subdivision (d) of this section, to be submitted in support of any of the activities listed in subdivision (b), such plan or other written documentation may be submitted *in lieu of the environmental impact report required by this division*; provided, that the Secretary of the Resources Agency has certified the regulatory program pursuant to this section.
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> ". . . . . .
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> "(d) *In order to qualify* for certification pursuant to this section, *a regulatory program shall* require utilization of an interdisciplinary approach which will ensure the integrated use of the natural and social sciences in decision-making and *shall meet all of the following criteria*;
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> ". . . . . .
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> "(2) The rules and regulations adopted by the administering agency shall:
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> "(iii) Require the administering agency to consult with all public agencies which have jurisdiction, by law, with respect to the proposed activity.
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> "(iv) Require that final action on the proposed activity include the written responses of the issuing authority to significant environmental points raised during the evaluation process.
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> ". . . . . .
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> (Emphases added.)

The regulatory program requiring a THP was certified as meeting the requirements of section 21080.5. (14 C.A.C. § 15 192(a) and (e); *City of Coronado* v. *California Coastal Zone Conservation Com.* (1977) 69 Cal. App. 3d 570, 580–583.)

In determining whether the department may charge a fee pursuant to section 21089 for the filing and processing of a THP, we take cognizance of well-established rules of statutory construction. As stated in *California Teachers Assn.* v. *San Diego Community College Dist.* (1981) 28 Cal. 3d 692, 698:

> "In construing a statute 'we begin with the fundamental rule that a court "should ascertain the intent of the Legislature so as to effectuate the purpose of the law." "An equally basic rule of statutory construction is, however, that courts are bound to give effect to statutes according to the usual, ordinary import of the language employed in framing them.' Although a court may properly rely on extrinsic aids, it should first turn to the words of the statute to determine the intent of the Legislature. 'If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history.' " (Citations omitted.)

The plain meaning of the language of section 21089 is to limit its application, with respect to charging a reasonable fee, to the recovery of estimated costs incurred "in *preparing* a negative declaration or *an environmental impact report*." (Emphases added.) While the certified regulatory program may be thought of as the functional equivalent of an EIR (see *City of Coronado* v. *California Coastal Zone Conservation Com.*, *supra*, 69 Cal. App. 3d at pp. 579, 581), section 21089 is limited in its application to the preparation of a negative declaration or an EIR, not the functional equivalent thereof. In support of this narrow interpretation, we note that the section was amended in 1976 to allow a reasonable fee to recover the costs incurred in preparing a negative declaration. (Stats. 1976, ch. 1312, § 13.) A negative declaration is similar in content to an EIR (14 C.A.C. §§ 1686.3, 1688–1688.8) but states that the proposed project will have no significant impact on the environment. The 1976 amendment to section 21089 indicates that the Legislature believed the section as originally enacted (Stats. 1972, ch. 1154, § 2.3) only provided for the recovery of costs incurred in preparing an EIR and not for preparing a document similar in content thereto. Since the certified regulatory program is to be submitted *in lieu* of an EIR (§ 21089.3), it is something different than an EIR and therefore does not come within the provisions of section 21089.

We turn to the statute which requires the filing of the THPs in our search for authority to impose a fee for the processing of such plans, the Z'berg-Nejedly Forest Practice Act of 1973. (§ 4511 *et seq*.). Section 4571 provides: "No person shall engage in timber operations until he has obtained a license from the board." Section 4572 provides: "The board shall by regulation prescribe the form and content of the application for a license and establish the procedures therefor, *and shall require a reasonable filing fee*."

(Emphasis added.) The board referred to in these sections is the State Board of Forestry. (§ 4521.3.) Section 4577 provides: "The board may delegate its authority under this article to the director." Such authority has been so delegated. (Tit. 14, Cal. Admin. Code, § 1020.) Section 4581 provides: "No person shall conduct timber operations unless a timber harvesting plan prepared by a registered professional forester has been submitted for such operations to the department pursuant to this article. Such plan shall be required in addition to the license required in Section 4571."

It is well settled that the power to regulate a business may be exercised by means of a license fee or charge in such amount as is reasonably necessary for the purpose sought, i.e., the regulation of the business. (*County of Plumas* v. *Wheeler* (1906) 149 Cal. 758, 763; *John Rapp & Son* v. *Kiel* (1911) 159 Cal. 702, 706.) Such a license fee is expressly authorized in section 4572, *supra*. Prior to the enactment of section 4572, former section 4601 (added by Stats. 1965, ch. 1144, § 9.6; amended by Stats. 1971, ch. 645, § 1; repealed by Stats. 1973, ch. 880, § 3) stated:

> "The license fee for an original timber operator's permit is fifty dollars ($50)."

We are informed that the director has interpreted section 4572 to be applicable in the same manner as former section 4601, i.e., he has charged a flat rate as a license fee no matter how extensive the timber operator's harvesting operations. Such administrative construction is entitled to great weight and generally will not be departed from unless clearly erroneous or unauthorized. (*Wotton* v. *Bush* (1953) 41 Cal. 2d 460, 466; *City of Walnut Creek* v. *County of Contra Costa* (1980) 101 Cal. App. 3d 1012, 1021.) We do not find such construction to be "clearly erroneous or unauthorized." It is therefore our view that a charge to defray the costs of processing THPs may not be included in the filing fee for licenses authorized by section 4572 since to include such charge would impose a variable license fee contrary to the foregoing administrative construction.

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