

## TIMBER HARVESTING PLAN EXTENSIONS

### Questions/Answers Pertaining to Assembly Bill 1066 (Mendoza, 2009)

### An Act to amend, repeal and add to Public Resources Code Section 4590 of the Z' Berg-Nejedly Forest Practice Act.

#### **Summary:**

The Forest Practice Act (Act) states that a timber harvesting plan (THP) is effective for a period of not more than 3 years, unless extended pursuant to PRC § 4590. Under PRC § 4590, a THP, on which timber operations have commenced but not been completed, may be extended by amendment for a one-year period in order to complete the work, up to a maximum of two 1-year extensions. With the maximum number of extensions, the effective period of a THP previously could be no more than 5 years. The Act requires the notice of extension to be submitted not sooner than 30 days, but at least 10 days prior to the expiration date of the THP, and shall include the circumstances that prevented a timely completion of timber operations and an agreement to comply with any laws and regulations in effect on the date the extension notice is filed.

Assembly Bill (AB) 1066 now allows for the “reopening” and extension of a THP that expired in 2008 or 2009 for up to a maximum of four 1-year extensions. In this case, with the maximum number of extensions, the effective period of a THP could be no more than 7 years. AB 1066 further allows for an extension of a THP approved between January 1, 2010 and December 31, 2011 of up to a maximum of two 2-year extensions. In this case, with the maximum number of extensions, the effective period of a THP, as above, can be no more than 7 years. In either case, AB 1066 adds the requirement that the notice includes written certification by an RPF that listed species have not been discovered in the logging area since THP approval and significant physical changes to the harvest area or adjacent areas have not occurred since the THP's cumulative impacts were originally assessed.

AB 1066 prohibits CAL FIRE from approving an extension request if listed species have been discovered or significant physical changes have occurred in the area (as noted above), unless a substantial amendment to the THP has been submitted, pursuant to existing regulations. In such cases, the notice of extension must be submitted no sooner than 140 days, but at least 10 days prior to the expiration date.

**Questions and Answers:**

**Question #1:** When will the provisions of AB 1066 go into effect?

**Answer #1:** The provisions of the bill will go into effect on January 1, 2010.

**Question #2:** Will this new law remain in effect indefinitely, or is a “sunset” clause included?

**Answer #2:** The new law will remain in effect until January 1, 2012 and as of that date, will be repealed (“sunset”) unless another statute is enacted which deletes or extends the date. AB 1066 provides for the reinstatement of the previous extension language under PRC § 4590 on January 1, 2012. What this means is that any THP approved after December 31, 2011 will not be affected by AB 1066, and only two 1-year extensions may be granted for these THPs in accordance with PRC § 4590; subsections (a), (b) and (c).

**Question #3:** If the law sunsets on January 1, 2012, how will CAL FIRE handle requests for 2-year extensions of THPs approved between January 1, 2010 and December 31, 2011? These THPs will not expire for 3 years and subsequently are not eligible to be extended for approximately 3 years following approval; therefore, these THPs could not be extended until after the changes allowed under AB 1066 have expired.

**Answer #3:** Because the language in AB 1066 states that THPs approved in 2010 and 2011 will be eligible for up to two 2-year extensions, this provision shall remain in effect for eligible THPs even after the provision sunsets. THPs that otherwise meet all the requirements for an extension, will be eligible for two 2-year extensions.

**Question #4:** How does the new law apply to THPs that have not been previously extended?

**Answer #4:** All THPs in which the “original” expiration date occurred between January 1, 2008 and December 31, 2009, with no previous extensions, may be reopened and extended pursuant to PRC § 4590(d). These THPs are eligible for four 1-year extensions, providing they meet all the requirements.

**Question #5:** How does the new law apply to THPs that have been previously extended?

**Answer #5:** The opportunity for extension may also apply to THPs that were previously extended pursuant to PRC § 4590 for one or two years if the “final” expiration date occurred in 2008 or 2009. A THP with previous extensions where the THP expired in 2008 or 2009 may be granted additional extensions providing that no more than four extensions are granted in total. In all cases, no more than a total of four 1-year extensions may be granted.

**Question #6:** Can a THP that expired between January 1, 2008 and December 31, 2009 be reopened and extended if listed species have been discovered in the logging area since

approval of the THP or there have been significant changes to the harvest area or adjacent to the harvest area since the THP's cumulative impacts were originally assessed?

**Answer # 6:** Yes, the plan submitter may amend the THP to address these issues.

The new language under PRC § 4590(d) allows a THP that expired in 2008 or 2009 to be reopened and extended if certain conditions have been met. While subdivision (d)(3) specifies that neither of the conditions in subdivision (f) can have occurred, subdivision (g) allows for the extension of a THP on which either of the conditions of subdivision (f) has occurred if a substantial deviation is submitted to CAL FIRE which addresses the conditions specified in subdivision (f) in accordance with Subchapter 7, Article 2 of the Forest Practice Rules (e.g. review team process is followed and potential impacts of timber operations are mitigated to less than significant).

**Question #7:** What provisions apply to the extension of a THP that will expire 2010, 2011, or 2012?

**Answer #7:** The extension of THPs that will expire 2010, 2011, or 2012 will be subject to the provisions of PRC § 4590(a) (1) and (2), (b), and (c). In addition, if either of the conditions of PRC § 4590(f)(1) or (2) have occurred, the plan submitter has been provided a longer period of time to notify CAL FIRE of the extension and submit a substantial deviation to address either the listed species or significant change in physical conditions. In this circumstance, PRC § 4590(g) provides that notification to CAL FIRE can be provided not sooner than 140 days but at least 10 days, prior to the expiration of the THP. Where neither of the conditions in PRC § 4590 (f) are applicable, extension requests will be subject to the notification and timing requirements of PRC § 4590(b). In this circumstance, the plan submitter must notify CAL FIRE no sooner than 30 days, but at least 10 days, prior to the expiration date of the THP.

**Question #8:** What provisions apply to the extension of a THP that is approved between January 1, 2010 and January 1, 2012?

**Answer # 8:** Pursuant to PRC § 4590(2)(e), THPs approved by CAL FIRE between January 1, 2010 and January 1, 2012 are eligible for up to two 2-year extensions. The conditions set forth in PRC § 4590(f)(1) and (2) still apply, but in those situations where there is a listed species discovered on the THP or there has been a significant change in physical conditions of the THP, the plan submitter may amend the THP to address these issues. The plan submitter has been provided a longer period of time to notify CAL FIRE of the extension and submit a substantial deviation to address these conditions. In this circumstance, PRC § 4590(g) provides that notification to CAL FIRE can be provided not sooner than 140 days but at least 10 days, prior to the expiration of the THP. Where neither of the conditions in PRC § 4590(f) are applicable, extension requests will be subject to the notification and timing requirements of PRC § 4590(b). In this circumstance, the plan submitter must notify CAL FIRE no sooner than 30 days, but at least 10 days, prior to the expiration date of the THP.

**Question #9:** How many times can a THP be extended under the new law?

**Answer #9:** Pursuant to AB 1066, THPs that expire between January 1, 2008 and December 31, 2009 can be granted no more than a total of four 1-year extensions.

For THPs (with or without extensions) that expire in 2010, 2011, or 2012, the law allows for up to a maximum of two 1-year extensions in accordance with PRC § 4590(a)(2) and (b).

For THPs approved in between January 1, 2010 and December 31, 2011, no more than a total of two 2-year extensions shall be granted.

**Question #10:** What are the specific requirements for extending THPs two years at a time?

**Answer #10:** THPs which are approved between January 1, 2010 and December 31, 2011 may be extended with a maximum of two 2-year extensions if all provisions of PRC § 4590(e) are met.

**Question #11:** How does one amend an expired THP? For example, when a listed species has been discovered in the logging area, or a substantial physical change has occurred in the harvest area or adjacent areas, the new law requires that a substantial deviation (major amendment) be submitted in order to extend the THP.

**Answer #11:** For the specific purpose of extensions, expired THPs can be amended. However, PRC § 4590(f) prohibits the granting of any extension for THPs which are approved between January 1, 2010 and December 31, 2011 if listed species have been discovered in the logging area since THP approval, or where significant physical changes to the harvest area or adjacent areas have occurred since the THP's cumulative impacts were originally assessed unless a substantial deviation is submitted to CAL FIRE which addresses the conditions specified in PRC § 4590(f).

Subsection (g) places the same requirements on any other THP approved prior to 2010 in which an extension is sought. Subsection (g) prohibits CAL FIRE from granting any extension unless the conditions outlined in subsection (f) are addressed in accordance with Subchapter 7, Article 2 of the Forest Practice Rules (e.g. review team process is followed and potential impacts of timber operations are mitigated to less than significant).

**Question #12:** How will CAL FIRE handle a substantial deviation to address listed species pursuant to PRC § 4590(f) and an associated extension request in accordance with PRC § 4590(g) which gets caught up in a protracted review period that extends beyond the expiration date of the THP, especially if the amendment is submitted near the end of the 140 days?

**Answer #12:** If a substantial deviation is submitted to address the conditions outlined in PRC § 4590(f), the review team shall treat the substantial deviation as any other major amendment in accordance with 14 CCR § 1039. Pursuant to 14 CCR § 1039, operations under the substantial

deviation shall not be undertaken until the Director approves the amendment and grants the extension. If the amendment is approved by the Director, one year shall be added to the last expiration date for THPs which were approved prior to January 1, 2010. Up to two years shall be added to the last expiration date for those THPs approved in 2010 and 2011.

**Question #13:** If AB 1066 is repealed (sunsets) in 2012 and subsection (f) is no longer in effect, will CAL FIRE be able to grant extensions even if there is evidence that conditions of the repealed subsection (f) are met (e.g. a listed species has been discovered in the logging area that has not been previously addressed in the approved THP)?

**Answer #13:** If CAL FIRE obtains substantial evidence that there is a potential for “take” or significant adverse effects not previously identified or mitigated, staff will exercise CAL FIRE’s lead agency authority under CEQA Guidelines § 15162 and require the plan submitter to file a substantial deviation.

**Question #14:** How long does a plan submitter have to submit a notice for reopening and extending a THP that has expired in 2008 or 2009?

**Answer #14:** A plan submitter has until December 31, 2011 to submit a notice for reopening and extending a THP that has expired in 2008 or 2009. After that date, the provisions of AB 1066 expire, unless another statute is enacted which deletes or extends the date.

**Question #15:** For those THPs that expire in 2008 and 2009 and that are “reopened” under AB 1066 (i.e they have already expired), what is the start date of the extension? For example, if a THP expired on February 15, 2009, and an RPF requests an extension on January 15, 2010, does the 1<sup>st</sup> AB 1066 1-year extension start on February 16, 2009 (in which case the 1<sup>st</sup> extension is only good for 1 month) or on January 15, 2010, the date the extension was requested?

**Answer #15:** If a THP was officially closed as a result of an earlier submission, acceptance, and approval of a completion report, and then *reopened* again pursuant to the new law [PRC § 4590(d)], the 1-year extension shall be added to the date of the notification by CAL FIRE of acceptance of the request to reopen an expired THP. In the example noted above, the (first) 1-year extension would be added to the date CAL FIRE accepted the January 15<sup>th</sup> request to reopen and the new expiration date would be recorded in CAL FIRE’s forest practice system (FPS) database as of that date of acceptance.

**Question #16:** Can a THP that has been reopened, extended, and allowed to expire be reopened again?

**Answer #16:** No.

**Question #17:** If a completion report has already been submitted to CAL FIRE, can the THP be reopened and extended?

**Answer #17:** Yes. For THPs or extensions expiring in 2008 or 2009, per PRC § 4590(d) "...a timber harvesting plan, on which timber operations have commenced but not been completed, may be reopened and extended by amendment for up to a maximum of four 1-year extensions". The option of reopening a THP is tied to the year of expiration (2008 or 2009) and compliance with PRC § 4590(d)(1-3), not how long it's been since CAL FIRE approved the completion report.

**Question #18:** Will a plan submitter who requests to reopen and extend a THP, or simply request an extension of an approved THP, be able to conduct timber operations on areas already completed?

**Answer #18:** PRC § 4590 states that a THP on which timber operations have commenced but not been completed, may be extended by amendment in order to complete the timber operations. Only those operations that are not complete will be allowed to proceed under the extension request. For example, additional tree removal from areas which have been completed will not be permitted, except in those instances where timber falling was not finished. Use of roads, reopening of closed roads, use of skid trails and landings, etc. necessary to facilitate removal of trees from uncompleted areas of the THP subject to the extension will be permitted. Since an extension of an approved THP is only granted to facilitate completion of timber operations, substantial deviations which propose to change silvicultural systems or add acreage will not be accepted by CAL FIRE during the period covered by the extension unless necessary to mitigate potential impacts to listed species discovered in the logging area since THP approval or to address significant physical changes to the harvest area that have occurred since the THP's cumulative impacts were originally assessed.