

BOARD OF FORESTRY AND FIRE PROTECTION

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**MEMO**

Date: February 8, 2007

From: State Board of Forestry and Fire Protection

To: Secretary Chrisman, Resources Agency; Department Directors; Regional Water Quality Control Boards; other Review Team participants; other interested parties.

Subject: **An Explanation of the Forest Practice Rules for Program EIRs and THPs (Title 14, Article 6.8, California Code of Regulations).**

In 1996 the Board recognized environmental and social benefits from long-term comprehensive forest planning such as the Sustained Yield Plan (SYP) and the Non-Industrial Timber Management Plan (NTMP) and adopted a set of rules authorizing the use of another long-term comprehensive forest management plan that would incorporate the use of a Program Timber Environmental Impact Report (PTEIR) and a Program Timber Harvesting Plan (PTHP). (See, Rulemaking Record, Initial Statement of Reasons, p. 226.)

The new rules were to "establish a type of THP that, where applicable, would reduce the level of effort required to prepare THPs by relying to the extent possible on the environmental assessment and planning embodied in a previously prepared PTEIR." (Ibid.) The purpose was to provide an alternative and streamlined THP process that meets the requirements of both CEQA and the Forest Practice Act. (Id. at 227.) The Board proposed the new rules to "provide greater management flexibility to timberland owners, to enable timberland owners to avoid redundant repetition of environmental assessment for timber operations, and to similarly avoid effort on the part of agencies to review practices that have previously been determined to be environmentally sound." (Ibid.)

The Board listed several advantages of the proposed program over project-level planning. They include:

1. The opportunity for more comprehensive consideration of impacts and alternatives than would be practical in an individual THP;
2. A focus on cumulative impacts that could be more easily overlooked in a case by case analysis;
3. The avoidance of continual reconsideration of previously-resolved environmental issues;

4. The ability to consider broad policy alternatives and programmatic mitigation measures at an early stage when the plan submitters and agencies have greater flexibility to adopt such alternatives and measures and;
5. The reduction of THP-related workload and paperwork by encouraging the reuse of relevant data and analysis.

(Id. at 227-228.)

Thus, the Board intended the program to provide timberland owners an opportunity to provide a long term comprehensive program for protecting public resources over a large ownership area rather than parcel by parcel. The Board intended that those who used the program would adopt broad approaches, alternatives and mitigation measures for the larger ownership area and thereby reduce the need to make changes plan area by plan area. This is in conformance with the intent of the Forest Practice Act and the Legislature's mandate to the Board to adopt rules to provide for protection of public resources while also assuring the continuous growing and harvesting of commercial forest tree species. (See, Pub. Resources Code §§ 4512, 4513 and 4541.)

To implement this long-term comprehensive forest management planning process, the Board adopted various rules setting forth the requirements for participation in the program. Among these are the requirements that certified PTEIRs meet the resource protection goals of the Forest Practice Act and any goals required by CEQA; assess impacts and provide mitigation for on and off site impacts resulting from timber operations; indicate mitigations to be applied in all areas of resource protection for individual and cumulative effects, including but not limited to air, wildlife, water, soil, recreation, hazard reduction, pest protection, noise, aesthetics, cultural resources and areas regulated by the Board in Sections 4513, 4551, 4551.5, 4561, and 4581 of the Public Resources Code; address the planning (performance) standards within Division 1.5, Chapter 4, subchapters, 1, and 3-6 of the Forest Practice Rules (FPRs); demonstrate how resource protection set forth in the intent of the Forest Practice Act is provided for on the area encompassed by the PTEIR; and address all the operational (specific prescriptive) standards of the FPRs (specifically California Code of Regulation, Title 14, Division 1.5, Chapter 4, Subchapters 4-6, Articles 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, and 14). (Cal. Code Regs, tit. 14, §1092, subds (b) and (d); 1092.02, 1092.01, subds. (b) and (c)).

How does a PTHP relate to the PTEIR and how is it different than a THP?

A certified PTEIR by itself does not and cannot authorize timber operations. Timber operations are authorized through a PTHP, which, like THPs, must demonstrate that timber operations conducted pursuant to the PTHP meet the requirements of CEQA, the FPA and the rules of the Board. (Cal. Code Regs., tit.14 §1092.01, subd. (b).) But, unlike THPs, PTHPs meet these requirements by relying upon the environmental analysis contained in the PTEIR. (Ibid.) In addition to section 1092.01 (b), the Board's Initial Statement of Reasons indicates that this is just what the Board intended. Without reliance on the PTEIR, PTHPs could not be streamlined, there would be no avoidance of redundant repetition of environmental analyses, the program would be no different than the THP program and the purposes of the Board in enacting the program would not be served.

The Board intends that PTHPs must meet the requirements of the Forest Practice Act and the rules of the Board. (Cal. Code Regs. tit. 14 §1092.01, subd. (b).) PTHPs must comply with Section 4583 of the Public Resources Code. Section 4583 states that a, "timber harvesting plan shall conform to all standards and rules which are in effect at the time the plan becomes effective." Thus, a PTHP, through the analyses, mitigations, alternate operational standards and other requirements in its PTEIR, must conform to all standards and rules which are in effect at the time the PTHP becomes effective. (See also, Cal. Code Regs., tit. 14 §1092.01, subd. (c), 1092.22 and 1092.23.)

If a rule changes after a PTEIR is certified but before the PTHP becomes effective, the PTHP must conform to the new rule. And, if a rule changes after a PTHP becomes effective the PTHP must conform to the new rule unless the timberland owner has already incurred substantial liabilities in good faith for the timber operations and adherence to the new rules or modifications would cause unreasonable additional expense. (Pub. Resources Code § 4583.) Thus, all timber operations including those already authorized by a PTHP must conform to new rules unless the stated exception applies.

Can a submitter rely upon alternate standards set forth in a PTEIR to demonstrate compliance with new operational rules?

The FPRs include a rule that timberland owners may develop *alternate* operational standards in a PTEIR provided that the owners demonstrate that proposed alternate operational standards provide equal or better protection to the resource which may be impacted by the timber operations. (Cal. Code Regs., tit. 14 §1092, subd. (b).) A timberland owner who utilizes alternate standards in a PTEIR may already provide equal or greater protections for the resource than the new operational rule provides. Thus, when the Board passes a new operational rule, it is appropriate for the PTEIR to be evaluated by the Director to determine whether the PTEIR already addresses the impacts the new rule is designed to address and whether the protections in the PTEIR are equal to or better than the protection provided by the new rule. If the PTEIR provides such protections, the PTHP submitter shall identify in the PTHP, those provisions of the underlying PTEIR which provide protection equal to or better than the protection called for in any new operational rules. (See, Cal. Code Regs., tit. 14 §1092.09, subd. (n).)

If the Director determines that the analysis in the PTEIR demonstrates that the alternate standard does provide protection equal to or better than the new rule, then the PTHP conforms to the protection requirements of the new rule (see, Cal. Code Regs., tit. 14 §1092, subd. (b).) If, after referring to the PTEIR analysis, the Director determines that the PTHP will not be in conformance with a new rule, the Director must inform the submitter of the changes and reasonable conditions that are needed to bring the PTHP into conformance with the new rule. (Cal. Code Regs., tit. 14 §1092.22).