

TIMBER HARVESTING PLAN EXTENSIONS

Questions/Answers Pertaining to Assembly Bill 2163 (Mendoza, 2010)

[This document supersedes CAL FIRE AB 1066 Q&A, 12/22/2009]

An act to amend 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 Public Resources Code (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) 2163 now allows for the “reopening” and extension of a THP that expired or was extended in 2008 or 2009 through a plan amendment for up to a maximum of four 1-year extensions (including extensions secured before January 1, 2010); with the maximum number of extensions, the effective period of a THP could be 7 years. AB 2163 also specifically addresses THPs approved between January 1, 2010 and December 31, 2011 and allows up to a maximum of two, 2-year extensions. In either case, AB 2163 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 2163 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 first a substantial deviation (i.e. major 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 plan expiration date.

Questions and Answers:

Question #1: When will the provisions of AB 2163 go into effect?

Answer #1: The bill was signed by Governor Schwarzenegger September 25, 2010 and filed with the Secretary of State September 27, 2010. The provisions of the bill became effective immediately since Section 3 of the bill identified AB 2163 as an Urgency Statute.

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

Answer #2: Section 1 of the new law will remain in effect until January 1, 2012 and as of that date, Section 1 will be repealed unless the law is extended. THP amendment requests to reopen or extend a Plan, received by CAL FIRE prior to January 1, 2012 will be accepted. If and when the sunset provision becomes effective Plan Submitters will no longer be able to request up to four, one-year THP extensions. Nevertheless, Section 2 of the new law was written to allow for two, two-year extensions of plans approved between January 1, 2010 and December 31, 2011 even if Section 1 of the law sunsets.

Question #3: How does Assemblyman Mendoza’s bill, AB 2163 (2010) differ from AB 1066 (2009) in regard to THPs that expired or have been extended in 2008 or 2009?

Answer #3: The provisions of AB 2163 supersede AB 1066. No changes were enacted under AB 2163 in regard to plans that **expired** in 2008 or 2009; the allowance for a maximum number of extensions of up to 7 years had applied only to plans that had **expired** in 2008 or 2009. The new law now allows for up to a maximum of four, one-year extensions if the plan expired or was **extended** in 2008 or 2009. However, if the statutory allowances under Section 1 of AB 2163 are allowed to sunset, the number of one-year extensions for plans that expire or are extended may be limited (see attached chart). For example, a plan that was set to expire in 2009, but was extended to 2010, could conceivably benefit from the new bill language and could be extended for one year, three more times; however, if the bill language sunsets, the plan would only be allowed one additional one-year extension to 2011. If Section 1 of the new law sunsets on January 1, 2012, only those plans approved in 2003, 2004, 2005, 2010, and 2011 would be eligible for more than a maximum of two one-year extensions. For example, a 2003 THP would normally expire in 2006 and with two, one-year extensions would expire in 2008; if the plan were then reopened in 2010, two additional one-year extensions could conceivably be granted prior the sunset date.

Question #4: Are any Plans excluded from reopening under the new law?

Answer #4: Those plans that had completion reports submitted and approved prior December 31, 2007 would not be allowed to be reopened and extended because they would not have **expired** in 2008 or 2009. Section 1 of the new law specifically restricts reopening Plans to only those that expired or were extended in 2008 or 2009; however, if Section 1 is allowed to

sunset on January 1, 2012, no plans will be reopened if a completion report has been submitted and approved by the Department.

Question #5: How does the new law apply to THPs that have not been previously extended?

Answer #5: There is no special disqualification for THPs which have not been previously extended. The law makes a distinction between plans that have expired and those that have been extended, but the benefits under Section 1 of the law apply equally to both. In either case, the new law only allows for a maximum number of four one-year extensions.

Question #6: Can a THP that expired between January 1, 2008 and December 31, 2009, or received an extension during the same period regardless of the earlier expiration date, be reopened and/or 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 areas adjacent to the harvest area since the THP's cumulative impacts were originally assessed?

Answer # 6: Section 1 of AB 2163 under PRC § 4590(d) allows a THP that expired or was extended in 2008 or 2009 to be reopened and/or extended if certain conditions are met. While subdivision (d)(3) prohibits a Plan to be reopened or 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 areas adjacent to the harvest area since the THP's cumulative impacts were originally assessed, subdivision (g) provides an exception. Subdivision (g) allows for the submission of an extension request if a substantial deviation is prepared that also addresses the conditions specified in subdivision (f). The substantial deviation is treated and reviewed as any other major amendment (i.e. in accordance with Subchapter 7, Article 2 of the Forest Practice Rules where the review team process is followed and potential impacts of timber operations are mitigated to less than significant).

Question #7: Is the notification time frame for a THP extension request different in situations where listed species have been discovered in the plan since approval or there have been significant physical changes to the harvest area since the time of the cumulative impacts assessment?

Answer #7 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. PRC § 4590(g) provides that notification to CAL FIRE can be provided no 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) where 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 December 31, 2011?

Answer # 8: Pursuant to PRC § 4590(e) (Section 1), THPs approved by CAL FIRE between January 1, 2010 and December 31, 2011 are eligible for up to two two-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 in the THP area or there has been a significant change in physical conditions in the THP area, the plan submitter may amend the THP to address these issues. As stated above, 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.

Question #9: What are the specific requirements for extending THPs two years at a time?

Answer #9: 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. In short, a THP may be extended if (1) good cause is shown, (2) all timber operations are in conformance with the plan, the Act and the Rules, and (3) the notice of extension includes written certification by an RPF that no listed species have been discovered in the plan area since approval of the THP and no significant physical changes to the harvest area or adjacent areas have occurred since the timber harvesting plan's cumulative impacts were originally assessed. If subdivision (e) sunsets on January 1, 2012, then subdivision (d) included in Section 2 of the bill will still allow for two, two-year extensions if all these necessary requirements are satisfied.

Question #10: 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 #10: 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 the THP. Due to a protracted delay in review, this may result in less than a full year extension pursuant to PRC § 4590(d) or less than the full two-year extension pursuant to PRC § 4590(e).

Question #11: If Section 1 of AB 2163 is repealed (sunsets) on January 1, 2012 and subdivision (f) is no longer in effect, will CAL FIRE be able to grant extensions even if there is evidence that conditions of the repealed subdivision (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 #11: If Section 1 of AB 2163 sunsets on January 1, 2012, Section 2 will become effective and will continue to address those plans approved in 2010 or 2011. Although the

language occurs in different subdivisions of Section 2, extensions will be granted essentially the same as described for plan extensions up to January 1, 2012,

Question #12: 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 #12: A plan submitter has until December 31, 2011 before the reopening/extension provisions of AB 2163 sunset. After that date, the reopening provision of AB 2163 is repealed, unless another statute is enacted which deletes or extends the sunset date.

Question #13: If a THP expired on February 15, 2009, and the plan submitter requested an extension on December 15, 2010, what would the new expiration date be?

Answer #13: 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 the request to reopen the expired THP was received and date stamped by CAL FIRE. In the example noted above, the (first) 1-year extension would be added to the date CAL FIRE accepted the December 15th request to reopen, and the new expiration date would be recorded in CAL FIRE's forest practice system (FPS) database as December 15, 2011.

Question #14: Can a THP that has been reopened, extended, and allowed to expire be reopened again?

Answer #14: No. There is no specific mention of this scenario in the new law, so CAL FIRE will not honor such requests in the future.

Question #15: If a completion report has already been submitted to CAL FIRE, can the THP be reopened and extended?

Answer #15: 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, one-year extensions, including any other extension granted prior to January 1, 2010". The option of reopening a THP is tied with compliance to PRC § 4590(d)(1-3), not the amount of time that has passed since CAL FIRE approved the completion report. However, those plans that had completion reports submitted and approved prior to the end of 2007 would not be allowed to be "reopened" and extended because they would not have "expired" in 2008 or 2009.

Question #16: 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 #16: 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 (e.g. only ½ of the area in a clearcut unit, approved as part of the original plan, was logged). 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.

AB 2163 (PRC § 4590 et. seq) THP Extension Summary Chart

THP Approval Date	Possible Effective Period																
	2003	2004	2005	2006	2007	2008	2009	2010	2011	Sunset Clause	2012	2013	2014	2015	2016	2017	2018
2003					Ext #1	Ext #2		Re-Open (Ext #3)	Ext #4 or Re-Open (Ext #3)								
2004					Ext #1	Ext #2		Re-Open (Ext #3)	Ext #4 or Re-Open (Ext #3)								
2005					Ext #1	Ext #2	Ext #1	Ext #2	Ext #3								
2006					Ext #1	Ext #2	Ext #1	Ext #2									
2007						Ext #1	Ext #2	Ext #1		Ext #2							
2008							Ext #1	Ext #2		Ext #1	Ext #2						
2009								Ext #1	Ext #2		Ext #1	Ext #2					
2010									Ext #1				Ext #1	Ext #2			
2011													Ext #1	Ext #2			
2012															Ext #1	Ext #2	

Legend	
	Where PRC § 4590(a)(1) Applies (i.e. 3 year effective period)
	Where PRC § 4590(a)(2) Applies (i.e. 2 one-year extensions)
	Where PRC § 4590(d) Applies (i.e. reopening/extension of 2008 or 2009 THPs)
	Where PRC § 4590(e) Applies (i.e. 2, two-year extensions)