

NONCONCURRENCES

5455

(No. 3 June 1991)

If a member of the review team does not concur with the recommendation of the review team chairperson, that member may submit in writing the specific reasons why the recommendation does not adequately protect the resources for which his/her agency has responsibility. A nonconcurrency should be filed with CDF by the dissenting agency within five working days of the review team meeting or two days before the date of decision, whichever comes first. This statement should also include recommendations on measures or actions the Director should take to address the alleged deficiency, as provided by the rules of the board.

If a review team member files a nonconcurrency on a THP, the review team chairperson shall prepare a report explaining how the concerns expressed in the nonconcurrency have been addressed. If the concerns expressed in the nonconcurrency were not raised at the meeting, the report should so indicate. This report will enable the Director (or a designee) to better evaluate all of the concerns being expressed during the plan review. The review team chairperson should give the nonconcurrency all due consideration, but except as noted below, the nonconcurrency does not bind the chairperson to reject the practice being called into question.

There are two kinds of exceptions to this role of nonconformance. Certain rules contain options for an RPF to propose alternatives to the standard that provide equal or better protection. Some of these rules place unusual weight on the opinions of review team members designated in 14 CCR §1037.5.

In the article of the rules dealing with harvesting practices and erosion control, written nonconformance filed by two or more members who have conducted on-site inspections and analyses automatically veto the alternative practice. If the alternative practice is not removed or rewritten to make it acceptable, the plan or amendment must be denied.

In those articles of the rules dealing with watercourse, lake protection, and with Coastal Commission STAs, written nonconcurrences filed by two or more members who have conducted on-site inspections and analyses are powerful arguments but will not automatically veto the alternative. In effect, such nonconcurrences should be treated as a "refutable presumption" that the alternative should not receive approval. If the alternative is not removed or rewritten to make it acceptable and if the review team chairperson disagrees with the two nonconcurrences, he/she must prepare and submit a written report setting forth for the Director's designee, the evidence supporting and opposing the nonconcurrences. The report also must include the reasoning used by the review team chairperson in reaching a contrary recommendation. The RPF preparing the plan should be encouraged to submit evidence in support of the proposed alternative practice when such nonconcurrences are filed. With adequate evidence and reasoning, the Director's designee may overrule the nonconcurrences and approve the plan. The test is whether the nonconformance led the Director's designee to the conclusion that the proposed alternative provides less protection than the standard rules.

The watercourse and lake protection rules also provide for in-lieu practices which would normally be site-specific variations of standard rules, as opposed to the broader changes of an alternative practice. An example of an in-lieu practice would be the use of heavy equipment for yarding in a watercourse protection zone when few trees are involved and are located on a flat bench.

Copies of nonconcurrences shall be sent to the Director's office and those parties as required by 14 CCR § 1037.5(i). It is essential that these documents and the department's written response to the nonconcurrences be forwarded to the Director's office following the department's decision on the plan. Copies of nonconcurrences pertaining to water quality matters and the department's response will be forwarded by the Director's office to the Board of Forestry and to the State Water Resources Control Board.

The Nonconcurrency Form (not available in e-format) provides a format for use by review team members when submitting nonconcurrences.

FORMS AND/OR FORMS SAMPLES: RETURN TO ISSUANCE HOME PAGE FOR FORMS/FORMS SAMPLES SITE LINK.

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