

## **DETERMINATION**

**5457**

(No. 3 June 1991)

The region chief shall allow 15 calendar days from the date of the PHI (if such an inspection was made), or 15 calendar days from the date of filing, or such longer period as may be mutually agreed to by the region chief and the submitter to determine if the plan is in conformance with board rules. If the 15th day falls on a Saturday, Sunday, or a legal holiday, the determination shall be made on the next regular workday. This period is mandatory to provide reasonable time for public review.

The region chief or his/her designee shall consider all written comments submitted regarding a THP before making a determination of approval or denial. The designee must be an RPF, preferably of a civil service class higher than the review team chairperson who prepared the recommendation on the plan. Under no circumstances shall the review team chairperson sign the plan to signify conformance as the chief's designee.

The region chief or a designee shall prepare a written response to significant issues received concerning a THP. An Issue Response Form (not available in e-format) provides a format to use for this response which should be attached to the Notice of Conformance.

## **CONFORMANCE OF PLAN**

**5457.1**

(No. 3 June 1991)

The submitter should be contacted if any problems exist with the THP before the date for decision. The purpose is to encourage the submitter to revise the THP and bring it into conformance. When the THP is found to be in conformance, the region chief or designee shall acknowledge it by affixing his/her signature, title, and date in the appropriate space on the THP.

The region chief shall promptly notify the submitter that timber operations may begin within the time specified in the plan. The signed THP shall be placed in the THP file at the region office. Send a copy to the Resource Management Section of the Director's office and any other appropriate department office. A copy of the Notice of Conformance shall be sent to each of the reviewing agencies.

The region chief shall immediately send a photocopy of the signed THP to the submitter with a letter authorizing timber operations to commence. The RPF preparing the plan and the timber operator should also be provided copies of the signed THP. An Authorization Notification (not available in e-format) provides a format for making this notification.

If additional material must be added or included in a plan by the submitter for a plan to be found in conformance, the plan shall not be found in conformance until this material is attached. This may be done by the RPF agreeing in writing to the review team recommendations (14 CCR § 1035).

## **NONCONFORMANCE OF PLAN**

**5457.2**

(No. 3 June 1991)

When the region chief or his/her designee determines that a THP is not in conformance with the rules of the board, the THP will be returned to the submitter, and the submitter should be contacted personally on the date of this determination to explain the reasons and changes needed to bring the plan into conformance. The submitter will be notified in writing of the reasons for finding the THP not in conformance within two working days of the Director's decision. The submitter will also be informed of his/her rights to appeal the determination to the board within 10 calendar days from the receipt of the returned plan (14 CCR § 1053-1059). The original THP or amendment will be returned to the submitter or agent, but a copy will be retained in the official THP file.

A copy of the entire THP file will at the same time be forwarded to the Resource Management Section of the Director's office.

If the board finds the THP is in conformance with the rules and regulations of the board, the procedures in Section 5457.1 and 5457.4 of this handbook shall be followed.

If the board finds the THP is not in conformance with the rules and regulations of the board, one of two actions may occur: The THP submitter may decide to defer any further action on the THP and the issue is closed, or the THP submitter may choose to bring the THP into conformance with the rules and regulations of the board. This must be done within ten days of the board's action. If the submitter brings the THP into conformance within ten days of the board's action, the procedures of Sections 5457.1 and 5457.4 of this handbook shall be followed.

## **DELAY OF DETERMINATION**

**5457.3**

(No. 3 June 1991)

When the region chief determines that the board's rules do not provide needed resource protection in a particular situation described by a THP, a decision must be made whether or not to delay determination on a THP and refer the problem to the board. The Resource Management Section of the Director's office shall be contacted before making a final decision to withhold determination on a THP.

## **NOTICE OF CONFORMANCE**

**5457.4**

(No. 3 June 1991)

Within 10 working days of the date a THP is found in conformance, the region chief shall transmit a notice (see Notice of Conformance I and II-not available in e-format) thereof to the following:

- The Department of Fish and Game.
- The appropriate regional water quality control board.
- The Department of Parks and Recreation.
- The county planning agency.
- If the THP area is within their respective jurisdictions, to the Tahoe Regional Planning Agency and/or the Coastal Commission.
- The county clerk of the county in which the timber operation will be located, to be posted in an appropriate public place.
- Each appropriate office of the department of the same county, to be posted on a public bulletin board.
- Each public agency having custodial responsibility within 300 feet of the THP area.
- Any person as required by PRC § 4582.4 and 4582.6 or deemed appropriate.
- Any other location deemed appropriate.

A copy of the notice shall be filed by the region office through the Resource Management Section of the Director's office with the Secretary for Resources, and copies shall be provided for the region office files and the resource management section of the Director's office, where they shall be available for public review.

The notice shall include a written response by the Director to each significant environmental point raised during the THP evaluation process. The responses must be definitive and not unsubstantiated conclusive statements. A rationale for the response shall be in language that will help a person who is unfamiliar with forestry and the rules understand how we reach our conclusions. The department must avoid projecting the message, "I'm the expert; trust me!"

## CONFORMANCE TO RULE CHANGES

5457.5

(No. 3 June 1991)

PRC § 4583 requires that all timber operations conform to changes or modifications of standards or rules made after a plan becomes effective, except that the stocking standards in effect at the commencement of operations shall apply. Additionally, the changes in standards or rules will not apply if substantial liabilities for timber operations have been incurred in good faith and in reliance upon the standards in effect at the time the plan became effective and such if adherence would cause unreasonable expense.

This section of the act is complex and will have to be applied to rule changes occurring during the effective plan period on a case-by-case basis. The section appears to address three types of rules that may be changed:

- Those requiring certain preliminary actions before the THP filing or preharvest inspection.
- Those pertaining to the plan content.
- Those that constitute rules for operation that have no effect until after the plan is approved.

The first type addresses rule changes that affect THP preparatory work occurring between the date of submission and the date of approval of the plan. In this instance, the preparatory work required by the rules in effect at the date of submission shall apply.

The second type addresses rule changes that affect the plan contents between the date of submission and the date of approval of the plan. The plan contents shall comply with the old rule if the plan was submitted before the rule change date. The plan contents shall comply with the new rules if the plan was submitted after the effective date of the rule changes. An amendment to bring the plan contents into compliance with the rule change will not be required since a plan is a permit that cannot be conditioned retroactively.

The third type addresses rule changes that affect active operations under the plan, thus creating the following possible situations: If the plan was submitted but not approved before the new rule became effective, the new rule generally will apply. If the plan was submitted and approved before the effective date of a new rule, but timber operations had not commenced, the plan contents will comply with the old rule, but timber operations generally will comply with the new rule. This is where an exception to compliance with the new rule may occur: if the plan principals have incurred substantial liability and compliance with the new rule would cause unreasonable additional expense. The determination of substantial liability is a determination made by the Director under authority delegated by the Board of Forestry.

## **Substantial Liability**

When a substantial deviation must be filed modifying a plan to bring it into conformance with the new rules. When a timber sale contract or other legally binding obligation having significant financial consequences has been made based upon the requirements of an approved THP before the new rules went into effect.

When significant field work, such as marking of timber or road flagging, has occurred in plan preparation or implementation and where significant changes would have to be made in this field work to comply with the new rule.

When the timberland owner, timber owner, their agents, or the operator can show that a substantial liability for timber operations has been incurred and adherence to new rules or operational modification would cause unreasonable additional expense.

Exception to new rule compliance shall not be granted unless a written statement describing the liability and unreasonable expenses is submitted to the Director (or a designee). A copy of this request shall be forwarded to the Director's office.

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

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