

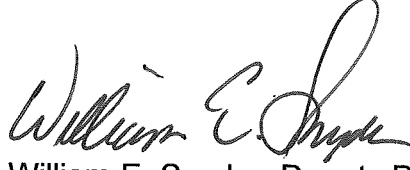
**M e m o r a n d u m**

**To:** Assistant Region Chiefs  
Unit Chiefs  
Unit Foresters  
Regions Forest Practice Managers

**Date:** November 17, 2006

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**From:** William E. Snyder, Deputy Director  
Resource Management  
Department of Forestry and Fire Protection

**Subject:** Closeout of Expired or Soon to Expire Timber Harvesting Plans (THPs)

Questions have arisen regarding how to deal with scenarios involving the California Department of Forestry and Fire Protection (CDF) options for handling outstanding work items in plans which will expire. Three potential scenarios are listed below along with a discussion of appropriate enforcement actions which are available.

*Scenario 1 – THP expired and mitigation work has not been completed, or the plan is not in conformance with the rules.*

In this case, the appropriate course of action would be to issue a notice of violation and pursue civil penalties. Work would be completed as part of the civil penalties action under a Settlement Agreement. Keep in mind that if the work requires issuance of a separate permit from another agency or department, and the work was not included under the original THP (e.g. replacement of a culvert on an appurtenant road), California Environmental Quality Act (CEQA) requirements will need to be addressed by the agency issuing the permit.

*Scenario 2 - THP not expired and mitigation work has not been completed, or the plan is not in conformance with the rules*

More flexibility exists under this scenario. If the work needed can be completed prior to the expiration of the THP, then the plan submitter should be contacted through an inspection report and follow up verbal contact if possible, reminding them to complete the work. If, however, the THP will expire before the work can be completed and the THP can be extended, then such an extension should be requested by the plan submitter. If no extensions remain and/or the time runs out before the work is completed, then Scenario 1 (above) applies. If the corrective work involves a plan amendment, sufficient time would be needed to process the amendment and complete the work. Again, if CEQA coverage is necessary under our functional equivalency process, sufficient time would be needed to process a

major amendment. An example would be a stream crossing that needs substantial repair not previously covered by the THP. The Department of Fish and Game would rely on the THP amendment process in order to cover CEQA for the new 1603 permit.

In the event that a completion report was filed and rejected and this is a reoccurring problem with the submitter of the completion report who is an RPF, inspectors should consider filing a complaint with Professional Foresters Licensing through the Sacramento Forest Practice Enforcement office.

*Scenario 3 - THP not expired and mitigation work has not been completed or the plan is not in conformance with the rules, but there appears to be insufficient time to complete the work required.*

In this case, CDF should issue an inspection report noting the possible violation and directing corrective actions by the expiration date of the plan. Where plan amendments are necessary, we should reject those amendments which can not be processed within the applicable statutory timelines. We should not engage in speculation about additional time it may take to process the amendment. Upon expiration of the THP, a violation could be issued if work remained to be completed and a civil penalties case pursued. Remaining corrections needed beyond the correction date could only be completed through a Settlement Agreement resulting from a Civil Penalty. When crafting the Settlement Agreement, timelines for obtaining any necessary state, federal or other permits, including CEQA required processing by those other agencies, should be considered.

In any of the above scenarios where proposed maintenance on logging roads is not within the scope of the approved THP and requires amendment of the plan, or if this option is not available and correction will occur under a settlement agreement, our inspectors should not hesitate to recommend technical assistance from other agencies in developing corrective actions to be taken. It is also appropriate to ask the plan submitter to provide the appropriate expertise when necessary to determine if a proposed corrective action will accomplish the objective.

There will be instances when corrective action within the THP area, including appurtenant roads, is necessary on an emergency basis to prevent or minimize either actual or potential adverse impacts to resources or public health and safety. However, in those cases where a THP has not yet been closed out through the completion report submittal and approval process, any actions still fall under the Forest Practice Rules. The rules available to deal with such situations [14 CCR §§ 916.9, 936.9, or 956.9 (e)(1)(C) and (s); and 14 CCR §§ 923.4, 943.4, or 963.4(o)] are very limited. In those cases where the THP has been closed out, the Forest Practice Act does not apply unless the owner is removing and selling trees as part of the emergency procedure.

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Where trees will be removed, an Emergency Notice should be filed by the landowner. In all cases, the landowner must work closely with other State and Federal Agencies who may also have jurisdiction over any such activities. Avoiding environmental impacts and providing for public health and safety should always be the primary goal. However, work under this provision should be the exception rather than the rule and should be limited to cover only work needed to stabilize the current problem until a permanent fix can be proposed and reviewed by responsible agencies.