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March 1, 2017

Dr. J. Keith Gilliss
Chairman,
California Board of Forestry and Fire Protection
P.O. Box 944246 SACRAMENTO, CA 94244-2460

Dear Chairman Gilliss,

During the committee meeting held on January 24, 2017, the Forest Practice Committee (FPC) discussed the proposed Associated California Loggers (ACL) submitted draft, "RPF AND LTO RESPONSIBILITIES AMENDMENTS, 2017." These proposed rule revisions can be reviewed at the following web link:
http://bofdata.fire.ca.gov/board_business/binder_materials/2016/dec_2016/fpc_mgmt/fpc_mgmt_1.0_rpf_lto_responsibilities_draft_rule_text_12_06_16.pdf

ACL cited the letter from the BOF to the Director of CAL FIRE as evidence of this as an issue needing to be addressed by the Board. See pages 12-13 at the following link:
http://bofdata.fire.ca.gov/board_business/binder_materials/2017/jan_2017/full/full_11_10_0_c_2_comments_with_highlights_annual_call_for_regulatory_review.pdf

The FPC reviewed the ACL proposal line by line and made the following determinations and changes¹ to the ACL proposal:

1. After the Board of Forestry and Fire Protection (BOF) legal weighed in and stated that the proposed appeal process as proposed in 14 CCR 1035.5, if passed, could be challenged as being beyond the authority of the BOF, the FPC nixed that portion of the proposal. ACL stated during the discussion that they were willing to separate the appeals process language (proposed 14 CCR1035.5) from the rest of the ACL proposal.
2. BOF staff stated that the ACL proposal to add "preparatory work" to 14 CCR 895.1, as defined, was in conflict with the existing definition in PRC 4527(a). The FPC removed this term from the proposed language revisions to 14 CCR 1035.1 and 1035.3 that were submitted in the ACL proposal.
3. CAL FIRE suggested that the FPC might want to pursue changes to 14 CCR 1035.2 (Interaction between RPF and LTO) as an alternative to the ACL proposal. Additionally, policy guidance could be part of the solution.

¹ See attachment A for the modifications made by the FPC to the ACL proposed revisions of 14 CCR 1035.1 and 1035.3



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With the above as background, CLFA and ACL have taken up the challenge of making revisions to 14 CCR 1035.2², as suggested by CAL FIRE in the concluding minutes of the FPC meeting on January 24th. The revisions to 14 CCR 1035.2 were undertaken in the spirit of the discussion and revisions of ACLs proposal at the FPC meeting and address those points made by members of the FPC. After review by both organizations, we would like to present our new proposal to address the issue of RPF/LTO Responsibilities. This new proposal would supersede the original proposal by ACL on this issue and includes the following:

1. Revisions to 14 CCR 1035.2 and 1035.3 as shown on attachment B
2. ACL has agreed to drop the proposed regulatory appeal process as proposed in 14 CCR 1035.5, and seek a non regulatory approach where CAL FIRE incorporates the proposed language into binding policy. Both ACL and CLFA would like CAL FIRE to address the issue of how an Inspector applies discretion and how responsibility is assigned in the issuance of violations.

During the discussion of this point, the FPC wanted to know if the CAL FIRE Issuance Handbook (5000 manual) or Code of Conduct had a specific policy or policies to address these issues in inspector training. The answer from CAL FIRE was that they presently teach and discuss these issues in inspector training.

Both organizations applaud CAL FIRE for their program in Forest Practice Inspector training, but we would like to see a written policy that the public can reference when there is a dispute regarding RPF/LTO Responsibilities and assignment of a violation on a Plan. As such, we are asking the Board to recommend that CAL FIRE address this issue by written policy by January 1, 2018. Both organizations have taken on the challenge of supplying the Board and CAL Fire with a draft written policy³ statement that we believe can be used by the Board and CAL FIRE to address this important issue.

Thank you for your time in addressing this very important issue. Both CLFA and ACL will have representatives at the March FPC meeting to address any questions or concerns regarding this proposal. Board members, board staff and members of the

² See attachment B for the modifications proposed by CLFA and ACL to 14 CCR 1035.2.

³ Attachment C - draft written policy to address appealing a violation or proposed violation and assignment of responsibilities.



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PFEC have invested valuable time, effort and insights into formulating solutions to this important problem. Those solutions now appear to be in sight and have been brought this close to fruition because of these dedicated people, for that we thank you.

Sincerely,

Jay Fazio
President
California Licensed Foresters Association

Hardie Tatum
President
Associated California Loggers



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Attachment A

§ 1035.1. Registered Professional Forester Responsibility.

(e) A RPF retained by the plan submitter to provide professional advice throughout timber operations, or their designee, shall prior to the commencement of operations in a given area, or upon taking responsibility of a Plan, perform an on-site inspection of the Logging Area scheduled for operations in a given year, to ensure the work required by an RPF is accurate and in conformance with the approved Plan.

Note: Authority cited: Sections 4551 and 4552, Public Resources Code.

Reference: Sections 4583.2 and 4583.5, Public Resources Code.

§ 1035.3. Licensed Timber Operator Responsibility.

(d) Comply with all provisions of the Act, Board rules and regulations, for timber operations, the applicable approved Plan and any approved amendments to the Plan. An LTO shall not be held responsible for violations that result from inaccurate or inadequate work that requires an RPF in Board Rules and Regulations.



Attachment B

1035.2 Interaction Between RPF and LTO

After the approval of the Plan but before commencement of operations in a given area of the Plan, the responsible RPF or the RPF's supervised designee familiar with on-site conditions, shall meet with either the LTO, or the LTO's supervised designee, who will be on the ground and directly responsible for the harvesting operation. In this meeting, the RPF shall attest that the work requiring an RPF in that given operational area of the Plan is accurate and in conformance with the approved Plan. The meeting shall be on-site if requested by either the RPF or LTO. An on-site meeting is required between the RPF or RPF's supervised designee familiar with on-site conditions and the LTO or the LTO's supervised designee to discuss protection of any archaeological or historical sites requiring protection if any such sites exist within the site survey area pursuant to Section 929.2[949.2,969.2](b). Additional meetings, if necessary and as outlined above, between the RPF and the LTO or their designees, will be scheduled before the commencement of operations in additional areas of the Plan until the entire operational area of the Plan has been reviewed. If there is more than one LTO amended into the Plan, then the RPF or RPFs designee shall meet with each LTO or LTO designee as outlined above. The intent of any such meeting is to assure that the LTO:

- (a) Is advised that all work requiring an RPF has been completed, and is accurate and in conformance with the approved Plan, in a given operational area of the Plan, and the LTO can commence operations in that area.
- (b) Is advised of any sensitive on-site conditions requiring special care during operations.
- (c) Is advised regarding the intent and applicable provisions of the approved Plan.
- (d) Is advised of how any amendment will change the operational provisions of the plan

If any amendment is incorporated into the Plan by an RPF after the first meeting, the RPF or RPF's supervised designee familiar with on-site conditions shall comply with the intent of this section by explaining relevant changes to the LTO; if requested by either that RPF or LTO, another on-site meeting shall take place.



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Attachment B (cont.)

§ 1035.3. Licensed Timber Operator Responsibility.

(d) Comply with all provisions of the Act, Board rules and regulations for timber operations in the applicable approved Plan and any approved amendments to the Plan. An LTO shall not be held responsible for violations that result from inaccurate or inadequate work that requires an RPF in Board rules and regulations.⁴

⁴ § 1035.3 with revisions as proposed by ACL and as modified by the FPC on 1.24.17



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Attachment C

SUGGESTED POLICY LANGUAGE FOR COMMUNICATION WITH RECIPIENT PRIOR TO ISSUING A NOTICE OF VIOLATION

Before a Notice of Violation is issued by a Cal Fire Inspector, the Inspector shall contact the intended recipient (Recipient) in any reasonable manner and notify them of the intent to issue the Notice of Violation, describing the alleged violations warranting the Notice of Violation. If the Recipient disagrees with the factual or legal basis for the Notice of Violation, the Inspector shall inform the Recipient that they have the right to proceed as follows:

- a. Within five (5) business days, or within a reasonable period of time prior to the issuance of the Notice of Violation, the Recipient may request a meeting with the issuing officer and the Unit Forester or Unit Chief to discuss the recipient's reasons for disagreement with the issuance of the Notice of Violation; and,
- b. Within five (5) business days following the meeting referred to in (a) above, the Recipient may submit a written comment to the Unit Forester, and to the Unit Chief or the Director, identifying 1) the THP at issue, 2) the issuing officer, 3) the alleged violation, and 4) setting forth the recipient's factual and/or legal bases for disagreeing with the issuance of the Notice of Violation. The time frames stated above shall be tolled, or may be modified by agreement of the parties, if the Inspector or Unit Forester, or both, is involved in an emergency response situation and unavailable or if weather makes a site visit within the time frame impossible and a site visit is required to verify ground conditions related to the potential violation on the plan.



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Attachment C (cont.)

Following a meeting with the Inspector and the Unit Forester or Unit Chief, or receipt of a written statement, or both, the Unit Forester shall, within ten business days issue a written decision,

- a. Ratifying the decision for issuing a Notice of Violation; describing the reasons supporting the Unit Forester's ratification; or,
- b. Modify the proposed Notice of Violation, setting forth the factual and/or legal reasons for ordering a modifying the proposed Notice of Violation; or,
- c. Notifying the Recipient that a Notice of Violation will not be issued; or,
- d. Refer the matter to the Director for further consideration.

The Unit Forester, Unit Chief, or the Director shall consider the extent of harm or significance of environmental damage at issue, the history of the Recipient's pattern of conduct of operations, the ease of mitigating any damage or potential damage to the environment, and other equitable reasons before issuing a decision.