Memorandum

To: Region Chiefs
   Assistant Region Chiefs
   Unit Chiefs
   Forest Practice Inspectors
   Unit Foresters

From: HELGE ENG
   Deputy Director, Resource Management
   California Department of Forestry and Fire Protection (CAL FIRE)

Date: July 14, 2017
Telephone: (916) 653-5000
Website: www.fire.ca.gov

Subject: Review of Forest Practice Enforcement Policy and Program Expectations

In March of 2016, the Chairman of Board of Forestry and Fire Protection (Board) issued a letter (attached) to Director Pimlott "... to highlight for CAL FIRE's continued consideration, a longstanding concern of Licensed Timber Operators (LTOs) regarding the roles and responsibilities of Registered Professional Foresters (RPFs) and LTOs for compliance with the Forest Practice Rules (FPRs)." The issue was prioritized by the Board's Forest Practice Committee, and subsequently delegated to the Professional Foresters Examining Committee (PFEC) for review and recommendation. PFEC found during its review that "...not all LTOs and RPFs are aware of, or fully understand, the Department's forest practice enforcement policies, such as...the opportunity to appeal or otherwise request review of an enforcement action, when the party receiving the violation or citation believes CAL FIRE acted in err or without consideration of all available information."

To address these issues, the Board requested that CAL FIRE provide its Forest Practice Inspectors guidance regarding use of appropriate discretion when assigning responsibility for a forest practice violation to ensure the most responsible party is held accountable. In this context, it is appropriate to review the Department's expectations for communication related to Forest Practice inspections and enforcement actions.

The goal of Forest Practice Act inspections is to prevent or mitigate violations of the Forest Practice Act and Rules. The Forest Practice inspector at the Unit level is charged with the responsibility for determining the level of enforcement action appropriate to the situation. Forest Practice inspections are conducted to evaluate LTO, RPF, Timber and Timberland Owner, and Plan Submitter compliance with the terms of an approved harvest document, and the Forest Practice Act and Rules. Inspectors are expected to administer enforcement to achieve the best possible level of compliance, beginning with clear identification of the party(ies) responsible for any violation of the Act and Rules. The Department’s expectation is that inspectors will use procedures for enforcement of the forest and fire laws that will best prevent further violations, or repetition of violations, while ensuring due process under the law.

Central to achievement of this expectation is clear communication with the RPF and LTO who share responsibility for the plan being inspected. For this reason, inspections should always be considered an opportunity for the Forest Practice inspectors to discuss observations and recommendations regarding the conduct of the operation with the responsible LTO or lead person on-site, and the RPF.
In every case where an inspector is considering issuing a Notice of Violation or citation, the lead person on-site must be informed of this possibility, and the inspector's observations and recommendations discussed with that individual. If the inspector leaves the site without contacting the lead person on-site, or later determines that a Notice of Violation or citation should be issued, the inspector must contact the licensed timber operator by telephone as soon as possible to discuss the impending violation or citation. The inspection report must document that contact with the lead person was made, or, if not made, document at least two attempts at contact. Such contacts, or attempts at contact, shall occur prior to mailing the Notice of Violation or citation.” (Ref. HB Section 5507.4.5 of the Resource Management Handbook.)

Even when communication between CAL FIRE inspectors and the party(ies) responsible for activities on a harvest plan occur as intended by Handbook Policy and the guidance contained herein, disagreements may occasionally arise. Such disagreements may be associated with an enforcement action being considered by an inspector. They may also be the result of a difference of opinion between professionals. Whatever the reason, when conflict occurs and is beyond the ability of the immediately involved parties to resolve, it is important to communicate the Department’s existing public complaint process. As specified in the Resource Management Handbook, Section 5529, any member of the public, including but not limited to an LTO, RPF, or government agency representative, may file a "public complaint." The purpose of a such a complaint is to express dissatisfaction or concern with the Department’s administration of the Forest Practice Program. Complaints may be filed with any Unit, Region, or Sacramento Headquarters’ Forest Practice Program representative. In addition to the more formal public complaint process, LTOs and RPFs should always be advised to express their concerns to an immediate supervisor or the Unit Chief.

In summary, forest practice inspections are intended to ensure the protection of the resources of the State by preventing or mitigating violations of the Forest Practice Act and Rules through responsive enforcement. Clear articulation of field observations and any identified concerns in-person with the parties responsible for harvest operations is a fundamental element of any inspection. CAL FIRE inspectors are expected, by policy, to ensure positive contact with the lead person on the site of operations, and to follow up with the LTO (and/or RPF as appropriate) when a Notice of Violation may be issued. It is expected disagreements will arise from time to time between CAL FIRE inspectors and LTOs or RPFs. Where resolution of disagreements is not possible between the inspector and the LTO and/or RPF, the affected party should be invited to speak with the immediate supervisor of the inspector or the Unit Chief. The LTO or RPF should also be advised of the opportunity to file a “public complaint” to express their dissatisfaction or concerns.

Questions related to this memo should be directed to Forest Practice Assistant Deputy Director Dennis Hall at (916) 653-9422 or dennis.hall@fire.ca.gov.

cc: Ken Pimlott, Director
    Janet Barentson, Chief Deputy Director