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RE: RPF/LTO Responsibilities for Preparation and Implementation of Timber Operations and Compliance with the California Forest Practice Rules

Director Pimlott,

The purpose of this letter is to highlight for CAL FIRE's continued consideration, a longstanding concern of Licensed Timber Operators (LTO) regarding the roles and responsibilities of Registered Professional Foresters (RPF) and LTOs for compliance with the Forest Practice Rules (FPRs).

In 2013, Associated California Loggers (ACL) responded to the Board of Forestry and Fire Protection (Board) annual call for regulatory review with a request to have the Board investigate RPF/LTO responsibilities, and the perceived inequitable treatment of LTO's by the Department in the issuances of violations of the Forest Practice Rules (FPR) as they relate to the responsibilities of these licensed professionals. Public testimony has made it clear that the ACL, and LTO community in general, take issued FPR violations very seriously as violations can affect reputation, working relationships, and ultimately the bottom line of an LTO's business. 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.

Over the period of many months, the PFEC reviewed available data on violations, relevant existing Forest Practice Rules and Public Resources Code, and heard testimony from both the Department and other affected stakeholders. As a result, the PFEC developed the following problem statement:

> *"Issues arise when RPFs do not complete their field work correctly and thoroughly, putting the LTO in a position to be cited by CALFIRE for violating the Forest Practice Rules (FPRs). In some cases, LTOs are being issued violations for following incomplete or inaccurate field work that was performed by a RPF. The RPF should be responsible for their work, along with any ramifications that occur if their work is not performed correctly. "*

The PFEC also provided recommendations for addressing this problem. These recommendations focused primarily on the integration of LTOs and private practicing RPFs into Departmental Forest Practice trainings, and collaboration between the ACL, the California Licensed Foresters Association (CLFA), and CAL FIRE in review of regulation and policies and procedures applicable to active inspections, investigations, and issuances of violations.

The Board recognizes and commends the Department's response to date regarding these recommendations, including the recent inclusion of RPF and LTO communities in CAL FIRE trainings. Where feasible and appropriate, such integrated training between LTOs, RPFs, and the Department is likely to foster an improved working relationship and result in greater FPR compliance and environmental protection. The Board supports the PFEC's recommendation that further integration of LTOs and RPFs into Departmental education opportunities should continue to be considered by the Department during the planning of future training courses such as:

- Forest Practice Enforcement;
- Forest Pest Identification and Management;
- Growth and Yield, Mensuration and Silvicuture; and
- Workshops in response to new or revised Board regulatory standards.

It is important to note the PFEC did find during its review that not all LTOs and RPFs are aware of, or fully understand, the Department's forest practice enforcement policies, such as what distinguishes between a 'warning' and a 'violation', or 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 this, it would be helpful if the Department can identify or establish for reference, written policy examining these and other specifics, as requested by ACL and CLFA.

The Board recognizes the existing discretion the Department has and applies in the assignment of responsibility for violations of the FPRs. Recent testimony by the Assistant Deputy Director, Forest Practices, has made it clear current policy does not require a timber operation violation resulting from inaccurate or inadequate THP preparatory work performed by an RPF, or their designee, be issued to the LTO, but rather the Department *can and should*, *where evidence warrants*, issue the violation to the RPF responsible for the preparatory work. The Board supports this approach. However, it has also been made clear to the Board that both the LTO and RPF community believe current regulatory language found in the FPRs (i.e. 1035.1, 1035.2, and 1035.3) regarding roles and responsibilities for timber operations can and should be further clarified. To this end, ACL and CLFA have committed to engaging with each other and CAL FIRE in potential rule revisions, which if collectively agreed upon by these parties, will be brought back to the Board for consideration.

It is the Board's desire to be responsive to the concerns brought forth by the LTO community, and substantiated by the PFEC. The Board appreciates any directive or confirming message the Director might provide to CAL FIRE forest practice inspectors regarding use of appropriate discretion when assigning responsibility for a forest practice violation to ensure the most responsible party is held accountable. The Board also appreciates and encourages the Department's continued integration of LTOs and RPFs into relevant training courses as recommended by the PFEC; and continued collaboration with ACL and CLFA in regulatory and policy review, and refinement as necessary, to promote clarity, consistency, and fairness in responsibilities and enforcement related to timber operations.

The Board will continue to monitor this issue and make time for a future update from the ACL, California Licensed Foresters Association (CLFA), and the Department upon request, as necessary to ensure progress is being made in addressing this important matter.

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Respectfully,

J. Keith Gilless
Chairman
Board of Forestry and Fire Protection

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