

Memorandum

To: George Gentry, Executive Officer
Board of Forestry and Fire Protection

Date: August 30, 2013

Telephone: (916) 653-4298

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

Subject: Proposed Department Revisions to 14 CCR 1052

Background

Current Forest Practice Rule requirements associated with notification of planned timber operations under Emergency Notices are not adequate to provide tribes sufficient time to review and respond to the notification and interact with landowners and Registered Professional Foresters regarding concerns the tribe(s) may have regarding the potential to adversely impact archaeological resources.

Shortcomings of the current process were most recently illustrated in regards to an emergency Notice submitted by Pacific Gas and Electric Company to conduct fire salvage operations on their Humbug Valley parcel. As described in the attached briefing paper prepared by Senior State Archaeologist Rich Jenkins, issues identified by the tribe regarding the noticing process are legitimate and should be addressed.

Proposed Solution

The Department is proposing a change to 14 CCR 1052 noticing requirements to clarify the contents of the notice sent to tribes and allow for at least a 10 day period for the tribe to respond prior to the notice. Proposed rule change language is included in the attachments.

cc: Duane Shintaku
Dennis Hall
Chris Zimny

Attachments

Briefing Paper

Topic: Requested modification of 1052 Emergency Notice rule section

Background: The current 1052 rules outline and discuss the information required in a Notice of Emergency Timber Operations. Of pertinence to this discussion is 1052(a)(10) which requires the RPF to perform an archaeological survey and prepare a Confidential Archaeological Letter (CAL) for projects three acres or more in size. There is no requirement for Native American consultation; the rules simply require the RPF to send a copy of the emergency notice to local Native American groups prior to submitting a copy of same to the Director.

Recent Event: In October of 2012 Pacific Gas and Electric Company (PG&E) filed an Emergency Notice on a parcel in Humbug Valley located in Plumas County. Local Native American groups known as the Maidu Summit became upset with PG&E and the Department because they had no opportunity to comment on the project before the timber felling had begun. They had knowledge of additional cultural resources in the harvest area that were subsequently added to the archaeological site protection plan. Several negative press releases discussing the situation have been posted in local Plumas County newspapers and in the Sacramento Bee over the past 6 months.

Shortly after Emergency Notice submittal Mr. Mike DeSpain of the Mechoopda Tribe met with the CAL FIRE Northern Region Archaeologist Richard Jenkins to discuss the issue. He recommended that the Forest Practice Rules for 1052 Emergency Notices be changed to contain the same Native American notification/consultation process that is currently in place in Section 929 for Timber Harvesting Plans. This rule section allows a minimum 10 day Native American review/response period. Mr. DeSpain stated that the 10 day response period works well for THPs and would have prevented the situation that arose on the Humbug Emergency Notice discussed above.

Recommendation: It is recommended that the Board of Forestry consider the rule revision recommended above. Note that little hardship to Emergency Notice submitters would be anticipated with a 10 day Native American notification response period as 1) most RPFs must wait 10 to 14 days anyway for the required archaeological records check results from the Archaeological Information Centers and 2) most RPFs are already familiar with such a notification process through their work on THPs and in fact already have notification letter templates in their computers.

Note that the Department adopted a Native American Tribal Communities Relations Policy in 2012 that advocates such interaction with Native American groups in rule making, project review, and other aspects of the CAL FIRE mission. A draft revised 1052 rule section prepared by Northern Region Forest Practice Program staff is attached.

1052 Emergency Notice

(a) Before cutting or removing timber on an emergency basis, an RPF on behalf of a timber owner or operator shall submit a Notice of Emergency Timber Operations to the Director, on form RM-67 (1/1/10), or form RM-65 (1052.4)(1/1/10) for a Fuel Hazard Reduction emergency, or form RM-66 (1052.5) (2/1/11) for a Sudden Oak Death emergency, herein incorporated by reference, as prescribed by the Director. The notice shall include, but not be limited to, the following:

(1) Names and addresses of all timberland owner(s), timber owner(s), and timber operator(s) for the area on which timber will be cut or removed.

(2) A description of the specific conditions that constitute the emergency, its cause, extent and reason for immediate commencement of timber operations.

(3) Legal description of the area from which timber will be cut or removed.

(4) A titled USGS (if available) or equivalent topographic map(s) of scale not less than 2" to the mile, or larger scale, showing the area from which timber will be cut or removed, the legal description, roads and Class I, II, III and IV watercourses, and yarding systems if more than one will be used.

(5) Yarding system to be used.

(6) The expected dates of commencement and completion of timber operations.

(7) A declaration by the RPF, made under penalty of perjury, that a bona fide emergency exists which requires emergency timber operations.

(8) A declaration by the timber owner, made under penalty of perjury, that any applicable timber yield taxes will be paid pursuant to Section 38115 of the Revenue and Taxation Code.

(9) Name, address, license number, and signature of the RPF who prepares the notice and submits it to the Director on behalf of the timber owner or operator.

(10) ~~Shall provide written notification to Native Americans similar to that required during the preparation of a plan. This notification shall include all information required by 14 CCR §929.1 [949.1, 969.1] (a)(2)(A-C) and information concerning the available time for response (10 days) and 14 CCR §929.1 [949.1, 969.1] (b).~~

(11) For Emergency Notices covering three acres or more in size, the RPF shall include a Confidential Archaeological Letter with the Emergency Notice submitted to the Director. The Confidential Archaeological Letter shall include all information required by 14 CCR §929.1 [949.1, 969.1](c)(2), (3), (4), (7), (8), (9), (10) and (11), including site records, if required pursuant to 14 CCR §929.1 [949.1, 969.1](g) and 929.5 [949.5, 969.5]. The Director shall also submit a complete copy of the Confidential Archaeological Letter and two copies of any required archaeological or historical site records, to the appropriate Information Center of the California Historical Resource Information System within 30 days from the date of Emergency Notice submittal to the Director. ~~Prior to submitting the emergency notice to the Director the RPF shall send a copy of the emergency notice to Native Americans as defined in 14 CCR §895.1.~~

(A) For projects filing an emergency notice for fuel hazard reduction under 14 CCR § 1052.4, archaeology requirements shall be conducted by a person possessing current certification pursuant to 14 CCR § 929.4 [949.4, 969.4].

(b) Timber operations pursuant to an emergency notice shall comply with the rules and regulations of the Board. A person conducting timber operations under an Emergency Notice shall comply with all operational provisions of the Forest Practice Act and District Forest Practice Rules applicable to "Timber Harvest Plan", "THP", and "plan".

(c) In-lieu practices for watercourse and lake protection zones as specified under Article 6 of the rules, exceptions to rules, and alternative practices are not allowed unless necessary to protect public health and safety.

(d) Timber operations pursuant to an Emergency Notice may not commence for five working days or 15 days for a fuel hazard emergency per 14 CCR §§ 1052.1(e) and 1052.4, from the date of the Director's receipt of the Emergency Notice unless such waiting period is waived by the

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Comment [DS1]: Added this minor change to avoid confusion that we are dealing with a Notice and only asking for similar notice.

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Director. The Director shall determine whether the emergency notice is complete. If it is found to be complete the Director shall send a copy of a notice of acceptance to the timberland owner. If the Emergency Notice is not complete it shall be returned to the submitter. If the Director does not act within five working days, 15 days for a fuel hazard emergency per 14 CCR §§ 1052.1(e) and 1052.4, of receipt of the Emergency Notice, timber operations may commence.

(e) Timber operations shall not continue beyond 1 year from the date the Emergency Notice is accepted by the Director unless a plan is submitted to the Director and found to be in conformance with the rules and regulations of the Board, except for burning operations to treat fuels in accordance with § 1052.4(d)(6) which shall be completed by April 1 of the year following fuel creation.