

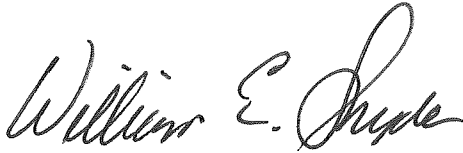
Memorandum

To: Assistant Region Chiefs
Unit Chiefs
Unit Foresters
Regions Forest Practice Managers
Department of Forestry & Fire Protection

Date: November 13, 2006

R1

Telephone: (916) 653-4298



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

Subject: Policy Guidelines for Use with County, State, or Federal Agency or Native American Advisors to the Review Team per 14 CCR § 1037.5(a)

Recently a question has been raised as to the role and specific identification of "advisors" within the context of 14 CCR §1037.5(a). The word "advisor" is used in the following way:

The Director may request other federal, state or county agencies, or Native Americans as defined in 14 CCR § 895.1, when appropriate, to assist as advisors in the review team process.

Please use the following guidance relative to the use and role of advisors within the THP/NTMP review process:

1. The request for federal, state or county agencies, Native American Heritage Commission (NAHC) or local tribal groups identified by the NAHC to act as advisors will be made by the Review Team Chairperson in consultation with the Regional Forest Practice Deputy Chief and Forest Practice Inspector.
2. Advisor status shall be limited to those entities listed in 14 CCR § 1037.5(a). Native Americans, as defined in 14 CCR § 895.1, includes a broader definition than the guidance in 1037.5(a). Therefore, 14 CCR § 895.1 should be viewed as the operative direction when considering whether or not a request by a Native American group to serve in an advisory role to the California Department Of Forestry and Fire Protection (CDF) should be considered.
3. When requesting assistance from an advisor pursuant to 14 CCR § 1037.5(a), the Review Team Chairperson shall explicitly describe to the advisor those areas of concern CDF would like assistance in addressing. Advisors should limit their advice to substantive comments regarding those activities involved in the plan that are within their agency's area of expertise and statutory mandate. For

example, a county water district should limit comments in an advisory capacity to CDF to those areas regarding operations that could result in impacts to water supplies for which they are directly responsible. Comments from advisors on other aspects of the projects will be accepted and addressed as public comments in conformance with the State Board of Forestry and Fire Protection (BOF) rules and California Environmental Quality Act (CEQA).

4. If the advisor does not attend the PHI, then he or she may submit a comment letter that will be treated per the guidance provided in 14 CCR § 1037.3.
5. If the advisor attends the PHI, then he or she will be allowed to submit a PHI report, which may contain site specific recommendations relative to the advisor's area of expertise. Since the advisor is meant to provide assistance to CDF, any recommendations included in the PHI report will be evaluated consistent with 14 CCR §§ 1037.3, 1037.4 and 1037.5(f). CDF will only forward to the plan submitter those recommendations CDF has determined need to be addressed to ensure the plan conforms to the rules or will assist in significantly lessening adverse impacts of the timber operations.

It must be understood that there is a clear distinction between review team members engaged in the review team process and advisors within the context of the 14 CCR § 1037.5(a) rule section. As described under PRC § 4582.6(b), review team agencies have special status under the Act and Rules requiring CDF to consider all comments and considerations raised by these agencies during the review of a plan. The Review Team agency representatives may submit a written non-concurrence in the event there is professional disagreement over the final content of a plan recommended for approval by the Review Team Chair. Advisors have not been granted similar legal recourse pursuant to the Forest Practice Act or the BOF rules.

In addition, it must be kept in mind that this guidance is directed at clarifying the role of advisors under the BOF rules. CEQA also directs CDF to seek information and advice from persons or organizations referenced under CEQA Guidelines 14 CCR §15083; these persons may be engaged with CDF during the public comment period (scoping process). This section states:

....the lead agency may also consult directly with any person or organization it believes will be concerned with environmental effects of the project.

CDF's Review Team Chairs are responsible to consider the relevancy of information as to the potential effects on the environment [PRC § 21002.1(e)]. Thus, information provided by the public or other public agencies not specified under §1037.3(a) must also be considered by CDF if supported by substantial evidence in light of the whole record.

Specific guidance regarding the role of advisors consistent with this memo will be incorporated as additions to the Forest Practice Handbook and can be found in Sections 5450 - 5456.