

## **NOTIFICATION STANDARDS FOR IMPLEMENTATION OF FISH AND GAME CODE SECTION 1606**

Fish and Game Code section 1603<sup>1</sup> requires any person to notify the Department of Fish and Game (“DFG”) and, if necessary, to obtain a streambed alteration agreement (“agreement”) before commencing specified activities. Section 1606 provides that any person who submits a timber harvesting plan (“THP”) satisfies the notification requirement in section 1603 if the THP includes specified information.

DFG has developed a process, described below, to integrate the timelines and information requirements under sections 1603 and 1606 and various provisions in the FPA, the FPR, the California Environmental Quality Act (“CEQA”), and the CEQA Guidelines (“Guidelines”) that govern the California Department of Forestry’s (“CDF”) review and approval of plans. While part of the process is voluntary (i.e., not legally required), DFG believes that by following it, a person submitting a plan (“applicant”) will obtain an agreement in a timely manner and the agreement will be more consistent with the plan approved by CDF. This process shall apply to THPs, Nonindustrial Timber Management Plans, Program THPs, and Modified THPs (“plan”) as described in the Forest Practices Act (“FPA”), the Forest Practices Rules (“FPR”).

CDF requires a person to include certain information in a plan in accordance with the FPA and FPR. As mentioned above, under section 1606, a person may satisfy the notification requirement in section 1603 by including specified information in the plan. The information required under section 1606, which CDF does not normally require as part of a plan, includes all of the following:

1. The volume, type, and equipment to be used in removing or displacing any one or combination of soil, sand, gravel or boulders.
2. The volume of water, intended use, and equipment to be used in any water diversion or impoundment, if applicable.
3. The equipment to be used in road or bridge construction.
4. The type and density of vegetation to be affected and an estimate of the area involved.
5. A diagram or sketch of the location of the operation which clearly indicates the stream or other water and access from a named public road. Locked gates shall be indicated. The compass direction must be shown.

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<sup>1</sup>All section references are to the Fish and Game Code unless otherwise specified.

6. A description of the period of time in which operations will be carried out.

In order to avoid having to separately notify DFG under section 1603, which is the current first step to obtain an agreement, the applicant will need to include all of the above-listed information in a plan. If the applicant does so, DFG must accept the notification as complete. (The result is that the 30-day timeline under section 1603 will begin at that time unless, as discussed below, the applicant agrees to extend it.)

Notwithstanding that an applicant satisfies the notification requirement by providing all of the information listed in section 1606 (i.e., the above-listed information), DFG may, and normally does, request additional information. DFG normally requests additional information after CDF begins its first review of the plan. Because DFG will ultimately request additional information, the applicant can expedite the review process by providing that information with the plan along with the required information listed in section 1606 ("required information"), rather than after first review begins. The additional information is described below.

#### Step 1: Submittal of Notification Information and Plan

To indicate that the applicant is using section 1606 to notify DFG, the applicant should check "yes" in item 26d in the plan and include a statement that indicates the plan will be used for purposes of notification pursuant to section 1606. Also, the applicant should compile and label the required information and the additional information described below in Section III of the plan, along with any other addendums. The additional information the applicant should submit with the plan (along with the required information) includes all of the following:

1. Basic data, including all the following:
  - a. A map that depicts all crossing locations, with the crossings numbered and classified by stream type, i.e., Class I, II, or III.
  - b. The township, range, and section number of the work location.
  - c. The name and telephone number of the applicant's contact person.
  - d. The names of all streams and rivers the work will affect.
  - e. A description of the fish and wildlife resources the work could adversely affect, including riparian resources and special status species (i.e., species listed under the California Endangered Species Act ("CESA") and/or the Endangered Species Act ("ESA"), species fully protected under state law, and/or species of special concern.) If the work could adversely affect any listed species, the

applicant should indicate whether consultation under CESA or ESA has commenced and, if so, the current status of the consultation.

2. A description of the type of crossing the applicant intends to construct or install (e.g., a culvert, rocked wet crossing, bridge, and temporary or permanent), which includes the following information:
  - a. Construction plans, including typical details, cross sections, and dimensions.
  - b. The volume of water and sediment to be used or removed.
  - c. The materials and volumes that will be used or removed for the crossing (e.g., soil, gravel, rock armor, or rip-rap).
  - d. The type of equipment to be used, specifying any unusual equipment needs.
  - e. Proposed work periods including date of temporary crossing removal.
  - f. Measures the applicant intends to incorporate into the work to protect fish and wildlife resources (e.g., sediment control measures; construction time periods; methods to divert water around or away from the work site, if necessary; special measures necessary to protect special status species; and/or a post-work action plan, e.g., example to replant and mulch).
  - g. If multiple crossings are proposed, the applicant should include a table that lists each crossing, type of crossing (e.g., permanent culvert, temporary bridge, etc.), watercourse classification, culvert size, and protective measures.
3. A description of any special or unusual circumstances that might require special measures to protect fish and wildlife resources.

The standard forms normally required for notification for a 1603 agreement (2023 and 2023 forms) may be used, however, all the above information must be included as well as what is specified on these forms. If the 1606 notification information is incomplete, the DFG will request the additional information through first review comments, which are normally received by the RPF in CDF's prescreen report.

## Step 2: Confirmation, Fee Submittal, and Agreement to Extend Timeline

After the applicant submits the plan which includes the required and additional information described above, the RPF will receive a form letter from DFG attached with CDF's notice of filing and prescreen report. This form letter will: 1) state that DFG has received the 1606 notification in the plan, 2) request any missing information required for notification (as listed above) be submitted prior to the PHI, 3) request the RPF or submitter to send in the required notification fee set forth in DFG's fee schedule (the fee schedule is listed in section 699.5 of title 14 of the California Code of Regulations), and 4) request that the RPF or submitter sign an extension of the 1603 timeline to match the plan's public comment period.

### **The deadline for complete 1606 notification is the date of the PHI.**

After this date, if the DFG does not have all the required and additional information, the notification will be deemed incomplete. The DFG will notify the RPF via a letter stating this, and the RPF or plan submitter must then apply for the 1603 agreement via the normal notification process.

As mentioned above, if an applicant provides the information required in section 1606, the 30-day timeline under section 1603 begins at the time DFG determines the notification is complete. This means that DFG would need to provide the applicant a draft agreement within 30 calendar days of that determination. However, if DFG were required to meet that 30-day timeline, it is more likely that the terms and conditions in the draft agreement would be inconsistent with the plan approved by CDF. Also, the applicant does not benefit from receiving a draft agreement within that 30-day time period because DFG cannot execute the draft agreement (thereby making it final) until after CDF approves the plan. Hence, DFG believes it is to the applicant's advantage to mutually agree to extend the 30-day timeline to coincide with the date the public comment period ends on the plan.

In order to document the applicant's agreement to extend the 30-day deadline, the person who submits the plan/notification will need to sign and mail a DFG extension form letter ("extension letter"). The extension letter will be provided by DFG and sent to the RPF with the notice of filing letter and prescreen report. DFG recommends that the applicant submit the notification fee and extension letter at the same time by the beginning of the public comment period (i.e., the date of the pre-harvest inspection). If the applicant does not send in the notification fee, the DFG will still process the notification, but may not issue a final agreement until the fee is received.

If the applicant does not send the signed extension letter to DFG by the beginning of the public comment period, DFG will conclude that the applicant has not agreed to extend the 30-day timeline, and therefore will provide the applicant a draft agreement within 30 days of CDF's notice of filing. If this occurs, as

mentioned above, it is possible that the terms and conditions of the final agreement and the plan approved by CDF will not be consistent. Also, DFG may need to amend the draft agreement later, delaying DFG's execution of the agreement, and therefore the ability of the applicant to begin the work authorized in the plan.

For plans that do not require a PHI and normally have a 15-day public comment period (pursuant to FPA section 4582.7), the RPF or submitter must agree to extend the public comment period to 30 days for the 1606 notification to be accepted by DFG.

### Step 3: Applicant Submits Notification Fee and Signed Extension Letter to DFG

Assuming the applicant agrees to extend the 30-day timeline by submitting a signed extension letter to DFG by the beginning of the public comment period (i.e., the date of the pre-harvest inspection), DFG will submit a draft agreement to the applicant by the date the public comment period on the plan ends. Usually, a DFG Warden or Environmental Scientist and the RPF will develop the draft agreement on the ground. This will normally be separate from the pre-harvest inspection. As described in section 1603, subdivision (b), the applicant will then have 14 calendar days from the receipt date either to sign and return the draft agreement to DFG, or notify DFG that the applicant disagrees with some or all of the terms and conditions of the draft agreement and request a meeting to resolve the disagreement. The applicant may request DFG to extend the 14-day timeline, which, in most cases, DFG would agree to do.

### Step 4: Final Agreement

After the applicant submits a signed draft agreement to DFG, DFG is required to execute the agreement (thereby making it final) within 180 days from the date CDF approves the plan. Although DFG may take up to 180 days, as specified, to execute the agreement, DFG will make every effort to execute and submit to the applicant the signed agreement immediately after CDF approves the plan and files a notice of determination ("NOD") with the Office of Planning and Research's State Clearinghouse (provided the applicant previously submitted the required notification fee).