

**WILLIAM J. BANKA  
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January 28, 2015

**TO: Duane Shintaku  
Deputy Director, Resource Management  
California Department of Forestry and Fire Protection  
1416 9th Street  
P.O. Box 944246  
Sacramento, CA 94244-2460**

**RE; Proposed TPZ ZONING TEXT AMENDMENT to allow Ski Trails and Ski Lifts in TPZ.  
Northstar Mountain Master Plan - DEIR & FEIR; State Clearing House # 2012112020.**

Duane,

I am writing to follow-up on the phone conversation we had during the week of Sept. 15, 2014, and your letter of Sept. 4, 2014, regarding the Northstar Mountain Master Plan project, in Placer County, which includes a proposed Zoning Text Amendment to allow ski trail and ski lift construction in TPZ. It's been a busy Fall/Winter season, and I was unable to follow-up on this TPZ issue, until now.

In the DEIR Chapter 3.0 Project Description, Section 3.9. Zoning Text Amendment, pg. 3-45, a Placer County Zoning Text Amendment is proposed to allow the; "...development and implementation of ski facilities and ski runs on Timberland Production Zone (TPZ) lands....".

As defined by Article XIII, section 3, subdivision (j) of the California Constitution, Timberland Production Zone (TPZ) is timberland that is devoted to, and used for, growing and harvesting timber, and compatible uses, and California Code Chapter 6.7. Timberland. Article 1. General Provisions, section 51104, subdivision (h), a "Compatible Use" is any use which does not significantly detract from the use of the property for, or inhibit, growing and harvesting timber.

I asked five (5) questions in an Aug. 27, 2014 letter to J. Keith Gilles, Bd. of Forestry, and a July 7, 2014 letter to Keith Larkin (you were sent copies of both letters), seeking an explanation for Eric Huff's Feb. 18, 2014 e-mail to Gerry Haas, Senior Planner, Placer County, also referred to as (Huff 2014) in the DEIR, which says,

*"Following review of the Draft EIR for the Northstar Mountain Master Plan and the associated correspondence from RPF William Banka, CAL FIRE has no objection to the proposed zoning text amendment to allow ski lift/trail development as a conditional compatible use for Timber Production-zoned lands in the designated area outside of the Tahoe Basin. CAL FIRE's position on this matter is primarily based on the Draft EIR's clear and appropriate articulation of the requirements for Timberland Conversion and Timber Harvest permitting through CAL FIRE as a component of any ski lift/run development on timberland."*

Your Sept. 4, 2014 response did not answer my questions, or address my concerns about "non-compatible uses" in TPZ. My questions in my Aug. 27, 2014 letter to J. Keith Gilles, Bd. of Forestry were the following;

1. Does Cal Fire officially have "...no objection.." to a proposed TPZ Zoning Text Amendment to allow ski lifts/runs as a "compatible use" in TPZ zoned timberlands?
2. Does Cal Fire accept that ski lift and ski run development, which will require Timberland Conversion Permits converting timberland to non-timberland uses, is now a "compatible use" in TPZ which does not significantly detract from the use of the property for, or inhibit, growing and harvesting timber?
3. Is the opinion stated in (Huff 2014), to allow ski lift/run development as a compatible use for TPZ lands, the official position of Cal Fire and the State of California?;
4. What was Cal Fire's method of analysis to come to this conclusion?
5. What resources, rules, regulations, or laws can be referenced? What other staff at Cal Fire were consulted?

In your Sept. 4, 2014 letter you say that CAL FIRE "understands" how Ski Lifts and Ski Trails may be viewed as an incompatible use in TPZ, which is equivocal, and when contrasted with Huff's Feb. 18, 2014 e-mail, and actually does nothing to clarify what CAL FIRE's official position is on whether-or-not Ski lifts and Ski Trails are a "compatible use" in TPZ zoning.

So, with this letter, I am requesting, again, that you provide answers to my questions. My questions to CAL FIRE are reasonable, clear, and are being asked in good faith as a member of the Public, and as an RPF, who is requesting clarification on CAL FIRE's position regarding the TPZ "compatible use" issue.

On January 9, 2014 I submitted written public comments on the Northstar Mountain Master Plan-DEIR, and spoke briefly at the public hearing on the DEIR, as part of the CEQA process. My Jan. 9, 2014 comments to Placer County are part of the public record, but I'll provide you a written copy for reference through the US mail. According to Eric Huff's Feb. 18, 2014 e-mail, he reviewed my written public comments, apparently at the request of Placer County, prior to providing his Feb. 18, 2014 e-mail to Jerry Haas, Senior Planner, at Placer County.

Because CAL FIRE's Huff used my CEQA public comments in his analysis, I am also requesting that CAL FIRE provide information how my Jan. 9, 2014 public comments, specifically comments 1, 3, 4, 5, 6, 7, 8, 9, and 10, were interpreted, and used, by CAL FIRE as part of Huff's analysis.

Incidentally, the juxtaposition of my name in Eric Huff's Feb. 18, 2014 e-mail, alongside Huff's polemic opinion, is ironic at best, and is at worst, a bad mischaracterization of my position, since I entirely disagree with his conclusions.

Also, in your Sept. 4, 2014 response you say that, "Placer County has jurisdiction over local land use decisions, and this includes interpretation of compatible uses within Timberland Production Zone lands." And, you state, "...CAL FIRE's role is not to "second guess" the local land use zoning decisions of the Placer County Board of Supervisors".

The proposed Northstar Mountain Master Plan project has not been approved by Placer County Board of Supervisors, as the project has apparently been impacted, and delayed, by some other issues. Therefore no decision regarding the TPZ Zoning Text Amendment has been made yet.

Based on the comments in your Sept. 4, 2014 letter regarding the TPZ Zoning Text Amendment, CAL FIRE has chosen to focus on only one detail of the Timber Yield Tax Law, (i.e.; the Co. Bd. of Supervisors can add "compatible uses"), instead of considering the overall intent of the Timber Yield Tax Law passed by the California Legislature in 1976 to completely revise the system for taxation for growing timber, and preserving timberlands in California. The reason for the kind of approach you describe in your Sept. 4, 2014 letter is unclear. Even though the Timber Yield Tax Law does allow the Co. Bd. of Supervisors to add "compatible uses" in TPZ, why does CAL FIRE not fully take into account the requirements of the Law which say a "compatible use" must not significantly detract from the use of the property for, or inhibit, growing and harvesting timber?

It seems more likely that the intent of the CA Legislature would be; the Co. Bd. Of Supervisor's could add a "compatible use" in TPZ if the additional use does not significantly detract from the use of the property for, or inhibit, growing and harvesting timber; *versus* your current reasoning that; the Co. Bd. Of Supervisor's has jurisdiction over local land use decisions, and can add any additional uses they choose in TPZ, and CAL FIRE will not "second guess" local land use decisions of the county.

The historic development of ski facilities on non-TPZ land in Placer County has been the "industry standard" since 1976, i.e.; the entire time that the Timber Yield Tax Law has been in existence. Current Placer County Zoning Code, Section 17.16.010(D) Allowable Uses - Timberland Production (TPZ) does not allow the construction of ski lift facilities and ski runs in TPZ timberland. How did the 1976 Timber Yield Tax Law influence the Placer Co. Bd. of Supervisor's original decision to not allow ski lift facilities and ski runs in Timberland Production Zone (TPZ) timberlands? What would justify a reversal of the Placer Co. Bd. of Supervisor's original decision of not allowing ski lift facilities and ski runs as a "compatible use" in TPZ?

The only statement I know to exist that declares that ski lift/trail development is a compatible use in TPZ, is Huff's Feb. 18, 2014 e-mail to Placer County. To my knowledge there are no other CA policies, rules, regulations, laws, or precedent, which allow large timberland conversions in TPZ, such as the 30 acres of ski lift and ski trails associated with Lift C in the Northstar project, as a "compatible use". It seems that due diligence in reviewing the DEIR would have certainly revealed the existence of any such policies, rules, regulations, or laws. So, if there are any, please let me know. But even your Sept. 4, 2014 letter isn't clear about whether-or-not ski lifts & ski trails are "compatible uses" in TPZ. Did CAL FIRE include a review the Timber Yield Tax Law of 1976 when preparing their comment (Huff 2014) for the Northstar Mountain Master Plan DEIR?

The following is from the Timber and Timberland Values Manual, July 2007, CA State Board Of Equalization, Chapter 1: Overview of the Timber Yield Tax Law ;

*“Prior to 1976 timber and timberlands were subject to an ad valorem tax....The ad valorem tax system inherently discouraged maximum timber production in two ways. The first was a consequence of the highest and best use valuation factor. As population growth encroached on forested areas, the highest value use of land often shifted from timber production to commercial, residential, or recreational use. Land that formerly yielded its greatest financial return when used for timber production was found to yield an even greater return when used as a **ski resort** (emphasis added) or vacation home. It was found that continued use of land for timber production was no longer profitable, and that timber did not generate enough revenue to offset the increasing tax. Thus, growers were induced to convert land from timber production to a higher valued use.*

The CA State Board Of Equalization (above) makes a **distinction** between ski resort development and timber management, and even chooses to use ski resort development as a primary example of why the Timber Yield Tax Law and TPZ Zoning were established by the California Legislature in 1976. This stands in stark contrast with Huff's Feb. 18, 2014 e-mail which states, “...CAL FIRE has no objection to the proposed zoning text amendment to allow ski lift/trail development as a conditional compatible use for Timber Production-zoned lands...”.

The **Northstar Mountain Master Plan-Draft EIR** did not adequately address how ski development on TPZ timberland could be a “Compatible Use” as defined by **California Code Chapter 6.7. Timberland. Article 1. General Provisions, section 51104, subdivision (h)**, as a use which does not significantly detract from the use of the property for, or inhibit, growing and harvesting timber. Nor did the DEIR discuss what conditions have changed that would suddenly justify ski facilities development on TPZ timberland for the first time ever in Placer County.

Subsequently, the **Northstar Mountain Master Plan-Final EIR** was released by Placer County on June 9, 2014, and includes a reference to (Huff 2014) of Cal Fire. Like the DEIR, the FEIR also fails to adequately address how ski development on TPZ timberland could be a “Compatible Use” as defined by **California Code Chapter 6.7. Timberland. Article 1. General Provisions, section 51104, subdivision (h)**. However, the FEIR now includes Huff's Feb. 18, 2014 e-mail (Huff 2014) almost verbatim, and heavily relies on the statement that,“...CAL FIRE has no objection to the proposed zoning text amendment to allow ski lift/trail development as a conditional compatible use for Timber Production-zoned lands...”., as a primary argument to justify the TPZ Zoning Text Amendment.

The reference to (Huff 2014) is located in **FEIR Chapter 1.0 Introduction, Section 1.4 Comments and Responses, Master Response 5 – Timberland Production Zone Text Amendment and Forest Resource Impacts, pgs. 1-27 to 1-29**. You should already have a copy of this, if you kept my previous July 7, 2014, and August 27, 2014 correspondence.

I would like to request that CAL FIRE re-evaluate the contents and conclusion of the Huff Feb. 18, 2014 e-mail, in particular how it relates to The Timber Yield Tax law, and TPZ Zoning, passed by the California Legislature in 1976.

Also, I look forward to hearing from you soon with answers to my “original” five (5) questions.

And because CAL FIRE's Huff used my CEQA public comments to develop the content of his Feb. 18, 2014 e-mail, I also request that CAL FIRE provide information how my Jan. 9, 2014 public comments were interpreted, and used, by Huff, specifically regarding my DEIR public comments 1, and 3 through 10.

Sincerely,

  
William J. Banka,  
RPF #1999

Enclosures (2)

cc: Dennis Hall CAL FIRE, Forest Practice  
J. Keith Gilles, Bd. Of Forestry, and all current Bd. Of Forestry Members  
George Gentry, Bd. Staff



## DEPARTMENT OF FORESTRY AND FIRE PROTECTION

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Website: [www.fire.ca.gov](http://www.fire.ca.gov)



September 4, 2014

Bill Banka  
97946 Panoramic Road  
Portola, California 96122

Dear Mr. Banka:

I am writing you to explain CAL FIRE's position and role in providing comment to Placer County regarding their TPZ Zoning Text Amendment for the Northstar Ski Resort. In your August 27, 2014 letter to me, you expressed your disappointment that I had not returned your telephone calls. Unfortunately, I wasn't able to reach you in person, but I did in fact return your call, and left a voice-mail message on your home phone. Nonetheless, I realize you are seeking clarification on this particular issue, so rather than risk another missed telephone call, I thought it would be best for me to articulate CAL FIRE's position in writing.

I understand that you strongly disagree with the County's interpretation of what constitutes a *compatible use* in regards to the Northstar Mountain Master Plan expansion of ski lifts and ski trails. CAL FIRE understands how you may view this special use as an incompatible use of timberland, but CAL FIRE does not have authority to overrule the County's decision. Placer County has jurisdiction over local land use decisions, and this includes interpretation of compatible uses within Timber Production Zoned lands.

You have asked in previous conversations with me that the Department publicly oppose Placer County's compatible use decision, but as I have previously explained, this is beyond our legal mandate without substantial evidence that the proposed land use may result in a significant adverse impact. In such cases where the County's projects or decisions might result in a significant adverse impact, CAL FIRE would exercise its legal role as lead or responsible agency in evaluating those potential significant adverse impacts. However, in this case, CAL FIRE's role is not to "second guess" the local land use zoning decisions of the Placer County Board of Supervisors.

Sincerely,

A handwritten signature in blue ink that reads "Duane Shintaku".

Duane Shintaku  
Deputy Director  
Resource Management

cc: George Gentry, Board of Forestry  
Dennis Hall, Forest Practice

**Gerry Haas**

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**From:** Huff, Eric@CALFIRE <Eric.Huff@fire.ca.gov>  
**Sent:** Tuesday, February 18, 2014 12:14 PM  
**To:** Gerry Haas  
**Subject:** RE: Placer County TPZ Zoning Change

Gerry,

Following review of the Draft EIR for the Northstar Mountain Master Plan and the associated correspondence from RPF William Banka, CAL FIRE has no objection to the proposed zoning text amendment to allow ski lift/run development as a conditional compatible use for Timber Production-zoned lands in the designated area outside the Tahoe Basin. CAL FIRE's position on this matter is primarily based upon the Draft EIR's clear and appropriate articulation of the requirements for Timber Conversion and Timber Harvest permitting through CAL FIRE as a component of any ski lift/run development on timberland.

Eric K. Huff, RPF No. 2544  
Forester II - Forest Practice Project Review Coordinator  
**CAL FIRE**  
California Department of Forestry &  
Fire Protection  
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**From:** Gerry Haas [<mailto:GHaas@placer.ca.gov>]  
**Sent:** Friday, February 14, 2014 4:20 PM  
**To:** Huff, Eric@CALFIRE  
**Subject:** Placer County TPZ Zoning Change

Hello Eric,

We are nearing completion of the Final EIR for the Northstar Mountain Master Plan. I just wanted to check and see when I might hear from you regarding your input on ski lifts and runs in TPZ land. Again, I sure appreciate any help you can provide.

Have a great three day weekend.

**Gerry Haas**  
**Senior Planner**  
**530.745.3084**  
[ghaas@placer.ca.gov](mailto:ghaas@placer.ca.gov)