

TIMBERLAND CONVERSION - ISSUE PAPER

Timberland Conversion Permit Process

When a California timberland owner makes the decision to convert their timberland to other non-timber growing uses, or wishes to change the zoning of their land from Timberland Production Zone (TPZ) to another zoning class to allow for an alternate use, they are required to submit an *Application for Timberland Conversion Permit* to CAL FIRE, unless otherwise exempt (CCR §1104.1). CAL FIRE has the responsibility, as delegated by the Board of Forestry (Board), for the approval of Timberland Conversion Permits (TCP) in accordance with PRC §§ 4621- 4628, California Code of Regulations (CCR) §§ 1100 – 1110 and Government Code (GC) 51100 – 51155 (Timberland Productivity Act of 1982). A TCP exempts the timberland owner from the timber stocking requirements of the forest practice rules or, where immediate rezoning of TPZ is sought, the right to obtain final rezoning by local government. Timberland conversion also occurs under the “less than three acre conversion exemption” (CCR §1104.1), the right-of-way exemption, the exemption for subdivision (PRC §4628; CCR §1104.2) and rezoning in accordance with GC §51120 (rollout of TPZ). Under these exemptions the Department’s discretion is extremely limited.

On average (based on data from 2003 through 2007, see table below), CAL FIRE annually received 13 TCP applications totaling 416 acres. In addition, during this same time period, CAL FIRE received an average of 13 *Notices of Exemption from Timberland Conversion for Subdivision Development* (Sub-Division Exemptions) totaling 1,157 acres of timberland conversion. These subdivision exemptions which are approved by local government result in over twice the conversion acreage approved by the Department. The Department also received an average of 666 *Less than 3 acre Conversion Exemptions* for 1,230 acres.

Timberland Conversion 2003-2007

Year	TCP Applications		Subdivision Exemptions		< 3 Acre Exemptions	
	# Submitted	Acres	# Submitted	Acres	# Submitted	Acres
2003	13	330	10	1196	679	1210
2004	16	439	15	2909	731	1383
2005	13	174	17	601	732	1332
2006	17	987	14	620	678	1273
2007	4	151	11	461	508	951
Total	63	2,081	67	5,787	3,328	6,149
Average	13	416	13	1,157	666	1,230

CAL FIRE’s approval of a TCP for the purpose of converting timberland is a “project” subject to the California Environmental Quality Act (CEQA; CCR § 15378) and is not covered by the functional equivalency of the Forest Practice Rules or THP process. Therefore, timberland owners and their consultants are required to prepare the necessary environmental documents (negative declarations, environmental impact reports) for review and action by CAL FIRE as CEQA lead agency. In the event that a conversion project involves local government acting as CEQA lead agency, CAL FIRE may approve the TCP and THP by tiering to the lead agency’s final CEQA document.

The Department's Environmental Protection Program staff is responsible for overseeing all procedural matters associated with issuing permits, reviewing subdivision exemptions and ensuring CEQA compliance. The Department's Forest Practice Program staff is responsible for procedural matters associated with the *Less Than 3 Acre Conversion Exemptions* and the review of conversion THPs.

Issues

There is increasing pressure for timberland owners to find economically attractive uses for their property. Timber management has become less profitable for a number of reasons and landowners often see increasing opportunities to develop rural subdivisions or establish vineyards. There has been a substantial increase in timberland owners seeking to rezone TPZ timberlands in order to increase their future management options (see table below). This is largely being accomplished through the ten-year-roll-out process wherein, local government's rezone approval to a new zoning class does not become effective for ten years and a TCP is not required. Generally, the new zoning class's restrictions are similar to TPZ and permit timber management; however, such timberlands may be rezoned again, without Board or CAL FIRE approval, to allow uses that are in conflict with timber management.

Added to this is the recent requirement to address the effects of project approvals on climate change under CEQA. The changes in land use that occur following: the Department's approval of a TCP; local government's approval of a forest subdivision or parcel map; or a Board of Supervisor's approval of a TPZ rollout, must be considered in light of both the increases in greenhouse gas emissions that may occur and the lost opportunity to sequester carbon through forest management.

Large TPZ Rezone (roll out) Applications (2006 - 2008) ¹

<u>County</u>	<u>Parcel/App #</u>	<u>Acres</u>	<u>New Zoning</u>	<u>CEQA and Status</u>
Butte				
	5 parcels	1,661.0	Timber Mountain (TM-160)	application in review
	6 parcels	1,679.0		
	Total	3,340.0		
Lassen				
	2006-059A	865.9	Agriculture-Forestry (A-F)	MND - approved
	2006-059B	1,723.0	A-F	"
	2006-059C	638.0	Upland Conservation/Natural Habitat	"
	2006-059D	2,271.0	A-F	"
	Total	5,497.9		Approved
Placer				
		597.5	Residential Forest	MND - pending
	Total	597.5		
Plumas				
	ZC 4-05/06-03	4,735.0	Timber - Forestry (T-F)	Initial Study - pending

	ZC 4-05/06-02	3,091.0	T-F	"
	ZC 11-06/07-02	970.0	T-F	"
Total		8,796.0		
Shasta				
	06-042	4,199.0	Timberland (T)	Neg Dec; 1,490 ac
	06-043	1,229.0	"	Neg Dec; 280 ac
	06-044	949.0	"	Neg Dec; 949 ac
Total		6,377.0		2,179 approved
Sierra				
	14 parcels	7,083.0	General Forest (GF)	Statutory Exemption
Total		7,083.0		Approved
Siskiyou				
	11 parcels	4,335.0	Non-Prime Agriculture (AG-2-B-40)	Neg Dec – public review
Total		4,335.0		
Tehama				
	7 parcels	2,537.0	Natural Resources and Recreation	application in review
Total		2,537.0		
Trinity				
	24 parcels	3,620.0	Open Space	Neg Dec - Adopted
Total		3,620.0		Approved
Grand Total		42,183.4		

CONVERSION OF TIMBERLAND OCCURS WITHOUT DEPARTMENT OVERSIGHT

Background: The Department has complete discretionary approval authority over timberland conversions, and is thus the CEQA lead agency where a TCP and THP are the only permits required. However, in those cases where: a zoning change is required; a parcel split is approved; a subdivision is proposed; local government approval is required (special or conditional use permit); or conversion is otherwise exempted under the Act or Rules, the landowner typically seeks local government approval of the project before submitting a TCP application or Notice of Exemption for Subdivision. On occasion, local government approves those changes in land use without giving consideration to the effects of their decision on timberland.

The FPA states that a TCP is required when timberlands “are to be devoted to a uses other than the growing of timber”. It is unclear when a change in zoning and land use results in timberland no longer being “devoted” to growing timber. CCR §§1100(g)(1)(C) and 1104.1 indicate the Board considers that timberland divided into parcels of less than three acres is no longer devoted to timber growing. However, other land use decisions are not as clear. Consequently, large acreages of timberland are converted annually with little, or no, Department oversight. These cases include:

- **Zoning Changes** – Where a proposed “nontimber growing use” (outside of TPZ) or “alternate use” (within TPZ) is not compatible with the current zoning the landowner must seek a change in zoning from local government. Since rezoning is a “project” subject to CEQA the local agency acts as the CEQA lead agency responsible for preparing the appropriate environmental document, consulting with responsible agencies and identifying mitigations for all potentially significant project effects. It is up to the local agency, either on their own or through consultation with the Department, to recognize and address the impacts to forest resources, including adjoining timberlands, associated with their land use decisions. The Department, acting as a responsible agency, is limited to areas within its authority and expertise in identifying significant project impacts to forest resources and requiring mitigation.

When TPZ is being rezoned the Department’s authority is as follows:

- **Rezoning of TPZ in accordance with GC §51120 (“Ten-Year-Roll-Out of TPZ”)** – The Department has no authority to approve, permit or otherwise restrict the rezoning of TPZ in accordance with this code section. The Department does routinely comment, when notified of the rezoning by the local lead agency, reminding them of their responsibilities under the *Timberland Productivity Act of 1982* (Government Code §51100 et. seq.) to maintain timberland. However, since CAL FIRE does not “permit” the roll out of TPZ local government is under no obligation to notify or consult with the Department prior to making their decision. In the event the rezoned TPZ is later approved for development requiring conversion the requirement to obtain a TCP (and THP) would apply. The Department and Board’s ability to influence decisions with regard to maintaining TPZ are severely curtailed when “roll out” is proposed.
- **Rezoning of TPZ in accordance with GC §§51133 and 51134 (“Immediate Rezone of TPZ”)** – GC §51133 requires local government to seek Board (CAL FIRE) approval of a TCP before finalizing a TPZ immediate rezone. The only immediate rezoning exempt from a TCP and subject to GC §51134, is where the conversion activity is exempt under CCR § 1104.1. However, on occasion local government and landowners have argued, based upon their reading of GC §51134 and PRC §4621, that a TCP is not required where there is no change in use proposed (i.e., an alternate use). This has on occasion resulted in the immediate rezoning of TPZ without a TCP being approved by the Department. Those parcels are frequently rezoned again to allow various forms of development to occur, including sub-divisions which are also exempt from CAL FIRE oversight. The result is that the Board and Department have limited oversight of TPZ rezoning where there is no immediate plan to conduct timber operations that leads to an alternate or non-timber growing use.
- **Division of Timberland-** CCR §1100(g)(1)(C) states that “Timberland Conversion” occurs where, “*There is a clear intent to divide timberland into ownerships of less than three acres (1.214 ha.)*”. However, this is difficult to enforce as local government is often not aware of this regulation and the division of land into four or fewer parcels (parcel map v. tentative map) is often exempt from CEQA (CCR §15315). In the last ten years CAL FIRE has not been notified of such actions by local government and therefore has not had the opportunity to identify timberland issues.

- **Subdivision Exemption** – PRC §4628(b) states that the Board *may* exempt timber operations, for the purpose of converting timberland for subdivision development, from the requirement to obtain a TCP. The Board has thus far chosen to grant this exemption but has the authority to remove the subdivision exemption by amending its regulations. Where a tentative map has been approved under the *Sub-division Map Act* the landowner must submit a *Notice of Exemption from Timberland Conversion Permit for Subdivision Development* to the Department prior to submitting a THP for approval (CCR §1104.2). The Department’s authority is limited to confirming that the exemption is valid. The intent of this exemption was to relieve the applicant from the burden of having to undergo redundant review of the change in land use (once for the sub-division approval and again for the TCP). In the period from 2003 through 2007 CAL FIRE received over 60 subdivision exemption notices totaling close to 6000 acres. The Board and Department’s ability to influence decisions over the state’s timberlands is significantly diminished under this exemption.
- **Local Government is Lead Agency** – When a local permit or approval (e.g., special use or conditional use permit) is required to carry out a project resulting in the conversion of timberland the local government agency is frequently the lead agency for CEQA compliance. This has typically included commercial developments, ski areas, quarries and educational or recreational facilities. If the lead agency does not seek consultation with CAL FIRE during the development of the project forestry issues are often not addressed.
- **Miscellaneous Projects** - Annually, the State Clearinghouse (Governor’s Office of Planning and Research) sends CAL FIRE up to 600 environmental documents prepared by state and local government agencies for projects they intend to approve. In some cases, those projects, in order to be implemented, require a permit from CAL FIRE (THP or TCP), review for compliance with CAL FIRE regulations (Fire Safe Regulations – §4290), or, adversely impact with CAL FIRE’s operations or ability to meet its mission. These documents are screened by Headquarters (HQ) staff and forwarded to the units for review and comment; however, if the documents do not explicitly state that timberlands may be affected the State Clearinghouse will not route the documents to CAL FIRE for review and comment.
- **Administrative Changes in Use** - The acquisition of timberland by government agencies for parks or the establishment of conservation easements or deed restrictions that preclude timber management are actions that result in timberlands that are no longer devoted to growing timber. These changes in use are not insignificant; according to the 2003 FRAP Assessment, 171,000 acres of non-federal timberland was transferred into various forms of reserve status (parks, wilderness, open space) between 1984 and 1994.

The Problem: Conversion is occurring without Department notice and review.

- On occasion, local government has proposed that the “ten-year-roll-out” of TPZ is an approval that is categorically exempt from CEQA. They claim that it is merely a zoning change without any associated impact. This approach fails to consider the potential for future, indirect impacts that will arise from later development proposals.

Where there is an acknowledgement that the rezoning is subject to CEQA, the environmental analysis tends to focus on issues that are of local importance and rarely addresses the project's impacts to the timberland base or adjacent TPZ lands.

- Subdivisions, exempted from the TCP requirement, are often approved without consideration of the impacts to the region's timberland base. On occasion, subdivisions are approved with large parcel sizes (i.e., 10 to 80 acres) without recognition of the difficulty in managing such parcels for timber production and the eventual further subdivision and parcel splits that will likely occur resulting in a subsequent decline in forest health, loss of forest stocks and wildlife habitat, increased runoff with reduced water quality and elevated emissions. Lead agencies frequently fail to route environmental documents for subdivision projects to CAL FIRE for comment prior to approval. CAL FIRE often has no input into these projects until the THP review stage. Thus, as the regulatory framework exists there is little opportunity to comment on the loss of timberland from subdivisions. The loss of timberland that occurs under this subdivision exemption is significant, on average totaling approximately 1,200 acres, over twice the rate of conversions permitted by the Department.
- Local lead agencies for projects that impact timberland (golf courses, ski facilities, educational facilities) generally acknowledge CAL FIRE's permitting authority but routinely approve their projects without any meaningful input from CAL FIRE. CAL FIRE is then in the awkward position of having to consider approval of a TCP for a project that has already completed the environmental review process and is theoretically fully mitigated. At that point CAL FIRE's approval of a TCP is redundant. The Department could assume a lead agency role in those cases.
- Occasionally, projects involving the conversion of timberland are approved by local government without recognition of the timberland conversion permitting requirements. Not all agencies recognize the loss of timberland as being a potentially significant environmental impact that is distinct from the biological or aesthetic impacts of a project. Other agencies are unaware of CAL FIRE's conversion permitting authority. And some agencies fail to recognize their responsibility to forward environmental documents to the State Clearinghouse when state agency permits are required or trust resources may be impacted. As such, CAL FIRE's concerns about the proposed project are never identified or addressed by the lead agency.
- Significant acreages of timberland have been set aside in parks and conservation easements without any input from the Board or CAL FIRE. The Board may wish to consider whether this removal of significant amounts of timberland from production is consistent with the intent of the PRC or whether a change in the rules is required.

Alternatives for Consideration by the Board:

- *Trustee Agency status for CAL FIRE*- Currently there are four state agencies (Department of Fish and Game, State Lands Commission, State Parks, University of California) officially recognized in CEQA as having "Trustee Agency" status with responsibilities for holding natural resources in trust for the state (CCR §15386). CAL FIRE should have the same status with respect to protecting the state's forests and watersheds as DFG has for protecting wildlife habitat. This will make it clearer to

other agencies that consultation with CAL FIRE is required, even where no CAL FIRE permits or approvals are required.

- *Elimination of the subdivision exemption* – As discussed above, no other agency's regulations or permitting authorities are waived for projects approved under the Subdivision Map Act; so why TCPs? It is unclear (and inconsistent) why a subdivision project is any different than any other local project approved under CEQA. PRC §4628(b) states that the Board *may* exempt subdivisions with an approved tentative map. The Board's elimination of this exemption will provide CAL FIRE, through its TCP approval authority, greater authority in the subdivision development process on over 1,200 acres annually, through required consultation and permitting. CAL FIRE will have the opportunity to suggest smaller development footprints through reduced parcel sizes and greater concentration of development.
- *Loss of timberland a potentially significant effect* –The CEQA *Environmental Checklist* requires consideration of whether the loss of "prime or unique farmland", conflicts with agricultural zoning or Williamson Act contracts or the potential for future conversion to non-agricultural use are potentially significant impacts. In addition, CEQA requires consideration of the potential for impacts to oak woodlands and specifies mitigations (PRC §21083.4). The Board could consider seeking similar consideration under CEQA and the Guidelines requiring lead agencies to make findings as to the potentially significant impacts of their projects on timberlands and lands zoned for forest management (including TPZ).