

Less Than 3-acre Conversion Exemption Concern Feasibility Analysis

Prepared by Board Staff, March 1, 2022.

On February 7, 2022, the Board of Forestry and Fire Protection (Board) conducted a workshop to discuss land management issues related to existing laws surrounding the conversion of Timberland¹, including the Forest Practice Act² (Act), the Forest Practice Rules³ (Rules) and the California Timberland Productivity Act of 1982⁴. During this workshop, several letters from stakeholders were considered which raised various concerns. At the conclusion of this workshop, members of the Board's Management Committee directed Board staff to prepare an analysis of the feasibility of addressing stakeholder concerns as described in those letters such that a solution might be in place no later than January 1, 2023.

Board staff have prepared such an analysis based on several factors, including the Board's authority to address each concern, the logistical ability of Board staff to handle workload associated with the concern, the Board's statutory deadline for the effectiveness of regulations adopted pursuant to the Act⁵, and any potential fiscal impact to the state or local agencies that may result from addressing the concern. The analysis does not represent an endorsement or support for any stakeholder concern, merely the potential viability of addressing the concern by the end of the year.

It should be noted that any amendment to regulations which would result in a fiscal impact to CAL FIRE (such as new staff required to enforce regulatory changes), may require a budget change proposal (BCP) to address said impact. Navigation of the BCP process is unlikely to be achievable during the Board's 2022 rulemaking timeline, and the Board should work closely with the Department to ensure that any potential rulemaking to address this issue remains feasible within the 2022 rulemaking cycle.

Potentially Feasible Actions by the Board

Comment: Where the 3-Acre Conversion is still applicable, revise the expiration period as one year is often insufficient to complete work. (Contractor/Builder Coalition, County of Nevada)

Feasibility: The one-year limitation on conversion exemption Timber Operations⁶ and two-year limitation on completion of conversion activities⁷ are regulatory constructions of the Board and subject to amendment at the discretion of the Board, provided that

¹ PRC 4526

² Chapter 8, Part 2, Division 4, Public Resources Code

³ Chapter 4, Division 1.5, Title 14, California Code of Regulations

⁴ Chapter 6.7, Part 1, Division 1, Title 5, Government Code

⁵ PRC 4554.5

⁶ 14 CCR Sec. 1104.1(a)(2)(A)

⁷ 14 CCR Sec. 1104.1(a)(2)(B)

those amendments are consistent with the purposes of the Act. If the Board were motivated, it is likely that regulatory amendment of these provisions could be accomplished within the Board's 2022 rulemaking schedule.

Comment: Better educate jurisdictions and the development industry on requirements. (Contractor/Builder Coalition & Nevada County)

Feasibility: Recently, CAL FIRE has been creating media materials for the purposes of educating the general public on timberland conversion issues, including information on when and where conversion permits may be required. It is hoped that these materials will be available for distribution prior to the end of 2022.

In addition to these recent efforts, currently each CAL FIRE administrative unit provides the counties within their jurisdiction information and documentation related to conversions to provide to landowners. These education and outreach efforts have been a continuing and ongoing process and the Department intends to continue these efforts into the future. Furthermore, The Board and CAL FIRE have been conducting formal outreach to every county in the state since 2017 to provide information on the less than 3-acre conversion exemption and the role that counties may play in these land use issues through the appointment of an Authorized Designee⁸.

Comment: Modify 1100(g)(1) to add a subparagraph (D): Except that land within 30 feet of existing legally permitted structures shall not be considered timberland for the purposes of this section. (Lofthus)/ Amend the definition of "Crop of Trees" to omit properties of less than 3-acres in incorporated or urban areas. It is not realistic to require a conversion exemption on these properties when they are not large enough for commercial timber operations to occur.(Contractor/Builder Coalition)

Feasibility: The Board generally maintains the authority to clarify certain key terms within the Act, so long as the clarification is consistent with both the commonly-understood meaning of the term and the Act itself. It is likely that this authority extends to certain terms within the regulatory definition of Timberland⁹ which can be used to exclude certain areas which are not "available for and capable of" growing a crop of commercial trees. It would be beneficial to confer with Board legal counsel to confirm that any proposed changes are consistent with Act and within the Board's authority. If the Board were motivated, it is likely that regulatory amendment of these provisions could be accomplished within the Board's 2022 rulemaking schedule.

Comment: Instead of an exemption process, revise the [regulations] so that applicants are not required to spend significant time and money filling out an exemption request that ends up being approved administratively. It is unnecessary and provides no value

⁸ 14 CCR Sec. 1104.1(a)(1)(D)

⁹ 14 CCR Sec. 895.1

to require a Registered Professional Forester and Licensed Timber Operator to fill out the exemption form. (Contractor/Builders Coalition).

Feasibility: The requirement that an RPF prepare the form for a less than 3-acre exemption is a regulatory construction of the Board¹⁰ and is subject to amendment at the discretion of the Board, provided that the amendment is consistent with the purposes of the Act. If the Board were motivated, it is likely that regulatory amendment of this provision could be accomplished within the Board's 2022 rulemaking schedule.

The requirement that a license pursuant to the Act (LTO) is necessary to conduct Timber Operations exists within Act¹¹, however the authority for the Board to regulate the less than 3-acre exemption¹² allows the Board to exempt those less than 3-acre conversion activities from all, or portions of, the Act. Provided this authority, the applicability of this provision to conversion exemption Timber Operations is subject to amendment at the discretion of the Board, provided that the amendment is consistent with the purposes of the Act. If the Board were motivated, it is likely that regulatory amendment of this provision could be accomplished within the Board's 2022 rulemaking schedule.

Comment: Simplify the ... exemption processes and improve the applications and available information. (Contractor/Builders Coalition, County of Nevada)

Feasibility: While many of the provisions of the less than 3-acre conversion exemption are explicit within statute, there always exists an opportunity to improve the clarity of regulations where questions or multiple interpretations exist. An exercise in improving the clarity and consistency of conversion exemption regulations related to the less than 3-acre conversion exemption was begun by the Management Committee in late 2020 which may be used as a starting-point for future improvements. If the Board were motivated, it is likely that regulatory adoption of this type of provision could be accomplished within the Board's 2022 rulemaking schedule.

Furthermore, in addition to the current and ongoing outreach to counties and the public which CAL FIRE conducts at the administrative unit level and which is described above, CAL FIRE has been creating media materials for the purposes of educating the general public on timberland conversion issues, including information on when and where conversion permits may be required. It is hoped that these materials will be available for distribution prior to the end of 2022.

Comment: Routing the Conversion applications to the County for approval is helpful for large projects where grading might occur and helps eliminate conflicts between the two. (County of Nevada).

¹⁰ 14 CCR Sec 1104.1(a)(1)

¹¹ PRC 4571

¹² PRC 4584(g)

Feasibility: Existing regulations require that the notice for a less than 3-acre conversion exemption incorporate a signed and dated statement from the authorized designee of a county Board of Supervisors which indicates that the conversion is in conformance with all county regulatory requirements¹³, providing county officials an opportunity to review the proposed activities. The distribution of the notices of exemption following acceptance of those notices to various agencies exists within current regulatory requirements¹⁴ and the Board maintains discretion to adopt similar measures if necessary to implement the less than 3-acre conversion exemption. If the Board were motivated, it is likely that regulatory adoption of this type of provision could be accomplished within the Board's 2022 rulemaking schedule.

It should be noted that existing Conversion Permit processes require that a Conversion Permit be submitted to the County Recorder where each property in the Conversion Permit is located prior to the commencement of timber operations¹⁵.

Non-Feasible Requests

Comment: Expand the definition of "site preparation" to include local jurisdiction approved projects of less than 3 acres where there is no timber operation or commercial use for the timber as the one-time conversion process is too onerous and costly. (Contractor/Builder Coalition, County of Nevada).

Feasibility: Site preparation activities are those which are performed to facilitate the establishment of trees and, as considered by the Forest Practice Act (Act), follow timber harvesting activities¹⁶. Interpreting the term as recommended falls outside the scope of the Act. Acting upon this recommendation is outside the scope of the Act and therefore outside of the authority of the Board.

Comment: While the Forest Practice Act was meant to protect natural resources from logging activities, its application today does not always make sense and the Less than 3 Acre Conversion Exemption and Timber Harvest Permit processes are too onerous, responses take too long, and the process is too costly. (County of Nevada).

Feasibility: While there may be opportunity to improve existing regulatory processes for conversion activities (see above), the application of the Act outside of exemptions is not discretionary on the part of the Board and exemptions from the act are explicitly and narrowly enumerated within the Act itself¹⁷. The protection of forest resources is one of the primary purposes of the Act¹⁸ and the Board's authority to exempt those provisions

¹³ 14 CCR Sec 1104.1(a)(1)(D)

¹⁴ 14 CCR Sec. 1038.1(b)(2), 1038.3(v)(1)

¹⁵ 14 CCR Sec 1106.3(a)

¹⁶ PRC 4527(a)(1)

¹⁷ PRC 4584, 4628

¹⁸ PRC 4512, 4513

which are explicit within the Act are conditioned upon their consistency with the purposes of the Act itself¹⁹.

Comment: Add an exemption for incorporated and urban areas. It doesn't make sense to require a Conversion Exemption for these types of areas. (County of Nevada)

Feasibility: Timber Operations throughout the state occur in areas which are incorporated. Exemptions from the act are explicitly and narrowly enumerated within the Act itself²⁰. The Board does not have the authority to authorize exemptions from any portion of the Act based on land use designations.

Comment: Simplify the Timber Harvest Permit and conversion ...processes and improve the applications and available information. (Contractor/Builders Coalition, County of Nevada)

Feasibility: While there may be opportunity to amend existing regulations related to the requirements of a Timberland Conversion Permit and associated Timber Harvesting Plan, such an undertaking would likely represent a multi-year regulatory development process, based upon the amount of scoping, research, outreach, and general workload associated with those regulatory schemes. To the extent certain requirements are imposed by statute directly by the Act, amending those requirements would be outside of the authority of the Board. It is not likely that amendment of these provisions is achievable by the end of 2022.

¹⁹ PRC 4584

²⁰ PRC 4584, 4628