

March 14, 2012

Mike Howe, Chief
California Department of Forestry and Fire Protection
Humboldt-Del Norte Unit
118 South Fortuna Blvd.
Fortuna, CA 95540-0425

Subject: Information Request In re: Alleged Timber Production Zone "Violation" and Intent for Immediate TPZ Rezoning of Assessor Parcel Number 126-180-27, SE¼ Sec. 24, T15N, R2E, HB&M, James Baskin and Julia Green, Owners-of Record, County of Del Norte

Dear Chief Howe:

I. INTRODUCTION

By way of introduction, my name is James R. Baskin. Together with my wife, Julia L. Green, we are owners of the above-encaptioned timberland property.

I have been in telephone contact with the Giny Chandler, Chief Counsel, California Department of Forestry and Fire Protection (CALFIRE) regarding this matter. Ms. Chandler informed me that, CALFIRE does not render legal opinions per se, but would respond to any information request regarding the role conservation easements play in the review and approval of Timber Harvest Plans pursuant to the Z'berg-Nejedly Forest Practice Act, and the processes relating to the rezoning of Timber Production Zone lands pursuant to the California Timber Productivity Act. Ms. Chandler then indicated that I should direct any such an inquiry initially to the Humboldt-Del Norte Unit for your response. This letter of inquiry requests clarification as to three issues:

1. **What role do conservation easements play in the review and authorization of Timber Harvest Plans and Timberland Conversions pursuant to the Z'berg-Nejedly Forest Practice Act?**
2. **What is the intent and scope of the "immediate TPZ rezoning" provisions of the California Timber Productivity Act, including but not limited to, California Government Code sections 51130, 51142, and 51155?**
3. **May a County Board of Supervisor's unilaterally immediately rezone a TPZ property that is not the subject of a public acquisition without the consent of the landowner and/or the final adoption of the replacement zoning and the adoption of specific public interest findings by the Board of Forestry?**

II. BACKGROUND INFORMATION

A. Subject Property

The property that is the subject of this inquiry comprises a 148.35-acre in-holding within the Smith River National Recreation Area, located near the confluence of Jones Creek with South Fork Smith River in central Del Norte County (see Attachment 1). The property lies at elevations on between 800 and 1,300 feet above sea level, on a generally north-facing lower flanks of northernmost Lem's Ridge, above the right bank of the South Fork, across from the Big Flat landform. The currently unimproved property is composed of a mixture of lightly forested, open grassland clearings and grade into heavily forested, steep hillside. An unnamed year-round, "blue-line" creek runs through the property's western side. As further detailed in the attached timber rights valuation report (*Timber Rights Valuation for the Baskin Smith River Property in Del Norte County California*, NRM Corp., April 25, 2005) (Attachment 2), the roughly 105-acre, mature timber covered portions of the property are underlain by a variety of alluvial and colluvial timberland soils, as further described in the enclosed soils report (Attachment 3).

Based on the 2005 timber rights valuation report, there is presently approximately 609 MBF of standing timber on the property.

B. Assessor's Assertion of TPZ Violation Requiring Rezoning Remedy

By correspondence received from County Assessor Louise Wilson, dated December 1, 2011, and from the non-serialized Board Packet, dated December 3, 2011, emailed copy received December 10, 2011, copies attached as Attachments 4 and 5) I was informed that it was Ms. Wilson's intent to request the Board of Supervisors to undertake an "immediate TPZ rezoning" of our property. The rationale for this action, as stated in Ms. Wilson's December 1st letter, is the allegation that the scope of the conservation easement recorded on the property and the associated conveyance of development rights "has violated the Timberland Protection Zoning (TPZ) by restricting the Harvesting and Growing (*sic*) of timber with a reasonable expectation of harvest for a long term stability of local resource-based economies." In addition, as stated within the Board Packet, Ms. Wilson contends that "[b]y restricting the Timber Production Zone with a deeded easement, the property is in violation of Government Codes which requires (*sic*) the properties (*sic*) to be available for growing and harvesting timber." Upon meeting with the Assessor prior to the then-scheduled December 13, 2011 rezoning hearing, agreement was reached that, by March 1, 2012 (later extended to April 10, 2012), if substantive amendments were made to the conservation easement to clarify that the conservation easement does not preclude nor unduly encumbers the ability to harvest timber on the property no such immediate rezoning would be initiated by the Assessor. The Assessor subsequently withdrew the request for the December 13, 2011 rezoning hearing and Grantors and Grantee are currently working with the Assessors Office to provide clarifying language in the form of a recorded amended/restated easement to hopefully alleviate the Assessor's concerns.

Notwithstanding these efforts, residual concerns were raised by the Assessor as to whether the mere existence of a conservation easement over the property containing certain specified limitations on silvicultural practices and directing how the proceeds from any timber harvesting must be applied (towards onsite future land restoration efforts rather than taken as income by the Grantors) would, in and of itself, prohibit CALFIRE from accepting, processing, or granting approval to a Timber Harvest Plan. Which leads to the first question:

1. What role do conservation easements play in the review and authorization of Timber Harvest Plans and Timberland Conversions pursuant to the Z'berg-Nejedly Forest Practice Act?

More precisely, other than being a possible factor in ascertaining the identity of the “timber owner” qualified to apply for and obtain a Timber Harvest Plan approval pursuant to Public Resources Code section 4581, what effect does a contractual conservation easement have in the Department’s review and consideration of a given timber harvesting and/or conversion proposal?

C. Assessor’s Chosen Remedy

As indicated in the enclosed materials and disclosed herein, the Del Norte County assessor has indicated that, if satisfactory accommodation is not forthcoming via amending the easement to clearly establish that timber harvesting is not precluded or unduly encumbered such that deferred timber yield tax would never be realized by the County, an immediate rezoning of the property from its TPZ designation to another *ad valorem*-based assessment accommodating designation would be undertaken. The Assessor cites provisions within the California Timber Productivity Act, specifically Government Code sections 51130, 51142¹, and 51155, as the authority under which such an immediate rezoning could be processed.

However, in reading the cited sections, such immediate rezoning appears to be limited to instances where: (1) the property owner is requesting to be so rezoned as part of a proposed conversion of timberland to another intended use; (2) the rezoning is predicated upon the making of specific findings; and (3) the County’s rezoning action is tentative and, with the sole exception of incidents of public acquisitions of timberland, final approval is under the purview of the Board of Forestry. Thus:

¹ Although the Assessor refers to PRC § 51142 as an authority under which an immediate TPZ rezoning would be undertaken, the citation is somewhat tangential, insofar as the section addresses the Assessor’s ability to retroactively recoup tax revenue between the TPZ-based assessment rate and that of the “new” assessment rate for a ten-year slide-out period, rather than providing procedural criteria for effectuating the rezoning per se.

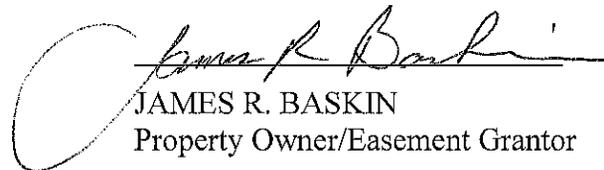
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2. **What is the intent and scope of the “immediate TPZ rezoning” provisions of the California Timber Productivity Act, including but not limited to, California Government Code sections 51130, 51142, and 51155?**
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III. CLOSING

Thank you for your time and efforts in providing a response to these questions. Please feel free to contact me by phone or email if you have any questions regarding this information request.

Sincerely Yours,


JAMES R. BASKIN
Property Owner/Easement Grantor

- Encl: Attachment 1: Property Map
Attachment 2: Excerpt, *Timber Rights Valuation for the Baskin Smith River Property in Del Norte County California*, NRM Corp., April 25, 2005)
Attachment 3: *Custom Soil Resources Report for Six Rivers National Forest Area - Baskin-Green Timberland Soils*, NRCS, March 13, 2012)
Attachment 4: Letter of Intent from Del Norte County Assessor, dated November 30, 2011
Attachment 5: Board Packet for TPZ Immediate Rezoning Hearing, dated December 3, 2011

Cc: Giny Chandler, Chief Counsel, CALFIRE
Paul Warner, Attorney-at-Law



COUNTY OF DEL NORTE
OFFICE OF THE ASSESSOR

FPC 3.0

981 "H" Street, Suite 120
Crescent City, California 95531

Phone (707) 464-72
Fax (707) 464-31

November 30, 2011

Mr. James Baskins/Mrs. Julia Green
1454 Hilfiker Drive
Arcata, CA 95521-5113

RE: Rezoning APN 126-180-27

Dear Mr. Baskins and Mrs. Green:

The Del Norte County Assessor has initiated a Rezoning of your parcel APN 126-180-27, containing 148.13 acres. It has been determined that with the recording of your "Deed and Covenants for Natural Resources Conservation Easement" has violated the Timberland Protection Zoning (TPZ) by restricting the Harvesting and Growing of timber with a reasonable expectation of harvest for a long term stability of local resource-based economies.

We have asked the County Board of Supervisors to set December 13, 2011, for a Public Hearing. We have also asked that the new zoning designation be "Agriculture-Forestry". The private property owners within one mile of your parcel will be notified that your parcel will be rezoned.

In addition, your parcel will be "Immediately Rezoned" per Government Code (GC) Section 51155, GC Section 51130 and GC Section 51142. You will be required to pay a tax recoupment fee which will be calculated after the rezone has been affirmed by the County Board of Supervisors. The Assessor will certify to you the new value in the rezoned use within 90 days of the rezone. There will also be escaped assessments for those years that the property has been restricted by the Easement for those years allowed by the statute of limitations.

If you should have questions prior to the Public Hearing, you may call me at (707) 464-7200.

Sincerely,

Louise Wilson
Assessor
County of Del Norte