

**TIMBERLAND CONVERSION - ISSUE PAPER**

**Introduction:** The intent of this document is to outline the current timberland conversion permitting process as carried out by the California Department of Forestry and Fire Protection (CAL FIRE), discuss some recent trends, describe some complications and problems that arise and propose some alternative actions for consideration by the Board of Forestry and Fire Protection (Board).

**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
<b>Total</b>	<b>63</b>	<b>2,081</b>	<b>67</b>	<b>5,787</b>	<b>3,328</b>	<b>6,149</b>
<b>Average</b>	<b>13</b>	<b>416</b>	<b>13</b>	<b>1,157</b>	<b>666</b>	<b>1,230</b>

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.

The Department has identified the following issues, to be discussed in detail, and proposes several alternative approaches for the Board's consideration:

- 1) Increased litigation and controversy over timberland conversions
- 2) Complications with concurrent review of TCPs and THPs
- 3) Conversion of timberland occurs without Department notice and review
- 4) Complexity and workload have increased substantially
- 5) Confusion over lead agency role on conversions
- 6) Standard mitigations for loss of timberland

**Large TPZ Rezone (roll out) Applications (2006 - 2008) <sup>1</sup>**

<u>County</u>	<u>Parcel/App #</u>	<u>Acres</u>	<u>New Zoning</u>	<u>CEQA and Status</u>
<b>Butte</b>				
	5 parcels	1,661.0	Timber Mountain (TM-160)	application in review
	6 parcels	1,679.0		
	<b>Total</b>	<b>3,340.0</b>		
<b>Lassen</b>				
	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	"
	<b>Total</b>	<b>5,497.9</b>		Approved
<b>Placer</b>				
		597.5	Residential Forest	MND - pending
	<b>Total</b>	<b>597.5</b>		
<b>Plumas</b>				
	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	"
	<b>Total</b>	<b>8,796.0</b>		
<b>Shasta</b>				
	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
	<b>Total</b>	<b>6,377.0</b>		2,179 approved
<b>Sierra</b>				
	14 parcels	7,083.0	General Forest (GF)	Statutory Exemption
	<b>Total</b>	<b>7,083.0</b>		Approved
<b>Siskiyou</b>				
	11 parcels	4,335.0	Non-Prime Agriculture (AG-2-B-40)	Neg Dec – public review
	<b>Total</b>	<b>4,335.0</b>		
<b>Tehama</b>				
	7 parcels	2,537.0	Natural Resources and Recreation	application in review
	<b>Total</b>	<b>2,537.0</b>		
<b>Trinity</b>				
	24 parcels	3,620.0	Open Space	Neg Dec - Adopted
	<b>Total</b>	<b>3,620.0</b>		Approved
<b>Grand Total</b>		<b>42,183.4</b>		

<sup>1</sup> Summary results from informal polling of northern California Counties with regard to recent (2006 – 2008) TPZ rezoning applications received in accordance with Government Code §51120 (TPZ roll out).

**1) INCREASED LITIGATION AND CONTROVERSY OVER TIMBERLAND CONVERSIONS**

**Background:** In the past CAL FIRE adopted negative declarations, in compliance with CEQA, for the approval of TCPs. Standard THP mitigations were included in the conversion plan to avoid significant environmental impacts. More recently, TCP approvals have been made following the adoption of *mitigated* negative declarations in order to highlight the measures taken to protect the environment, both during and following conversion operations. However, there has been increasing public interest in whether CAL FIRE should require EIRs, CEQA’s most rigorous and legally defensible environmental document. Several projects in the last few years have been challenged. Court decisions have increasingly supported preparation of Environmental Impact Reports (EIR) where fair arguments regarding potential for significant impacts are advanced by the public or responsible agencies or in instances where experts differ regarding potential impacts. As a result, the trend has been to require TCP applicants to bear the cost of preparing EIRs. Three EIRs are currently under development for proposed conversion projects and several more are being considered.

**Problem:** Since 2000, there have been numerous timberland conversion applications and permits that have been delayed and/or cancelled due to litigation (see table below). The legal challenges have generally centered on a difference of opinion between CAL FIRE’s experts and the plaintiff’s experts as to whether a potentially significant effect exists. Per CEQA, where a fair argument is made that a potentially significant effect may exist the lead agency is required to prepare an EIR. The determination by the court that an EIR is required leaves the applicant faced with the difficult decision of whether to abandon the

Permit #	Application Date	Acres	Status	Attorneys Fees
469	2000	98	Six years in development and review; Lawsuit lost in 2006; Permit Canceled; EIR required	Attorney fees requested of over \$200,000
514	2002	4	Litigation in 2004; application withdrawn	Attorney fees totaling \$50,000
502	2002	105	Threat of litigation in 2004; Application withdrawn and resubmitted; five years in development; EIR being prepared	None
530 531 533	2004	16 25 8	Joint lawsuit lost in 2005; EIR being prepared	Attorney fees totaling \$44,000
554	2005	17	Extensive comments from attorney; considering EIR	None yet
557	2006	17	Extensive comments; change in lead agency to county; EIR probable	None
560	2006	11	Extensive comments from attorney; EIR being drafted	None, MND abandoned before litigated

project or prepare a costly EIR. In addition, the costs associated with losing a lawsuit, to both the applicant and CAL FIRE, in terms of attorney's fees and staff time, are increasing. However, the applicants for TCPs are generally unconvinced that EIRs are necessary as the FPRs do not specify any significance thresholds or criteria for determining when an EIR is required.

### **Alternatives for Consideration by the Board:**

- Since the THP tiers to the CEQA document for TCP approval, and THPs are the “functional equivalent” of an EIR then, by policy, require EIRs for all conversions.
- The Board or Department could develop criteria for determining whether an EIR was required based upon acreage, proposed new use, conversion area characteristics, etc. In other words, establish thresholds that identify when a potentially significant effect will occur. Setting thresholds is at best a difficult objective and, while recommended, is not often used in the CEQA process.

## **2) COMPLICATIONS WITH CONCURRENT REVIEW OF TCPS AND THPS**

**Background:** A Timberland Conversion Permit (TCP) is required (unless otherwise exempt under CCR 1104.1) to convert timberland to a non-timber growing use or to immediately rezone timberland zoned Timberland Production Zone to allow for an alternate use. When timber operations are necessary to implement the conversion a Timber Harvesting Plan (THP) is also required. CCR 1106.2 authorizes the timberland owner to submit a THP concurrent with a TCP application and requires the Director's issuance of the TCP prior to THP approval.

While THPs are reviewed by the Department under the functional equivalency process, a TCP's approval is a “project” subject to CEQA. The Department generally prepares mitigated negative declarations, and on occasion Environmental Impact Reports (EIRs), and relies upon that analysis in determining whether to approve a TCP. The Department also goes through a similar, and somewhat redundant, review of the associated THP under the Forest Practice Rules.

In the past (prior to 2003) the development and review of the TCP CEQA document and the THP were handled independently; the TCP in Sacramento under the Environmental Protection Program and the THP at the respective Regional Office. The only coordination that occurred was in the timing of TCP and THP approvals per CCR §1106.2. The apparent disconnect between the conversion permit and the timber harvesting permit lead to charges that the Department was “piece-mealing” its approval process in violation of CEQA.

In 2003 the Department initiated an effort to coordinate the concurrent review of the THP and TCP-CEQA document. This required a shift in the Department's recognition of the relative importance to the two processes; the TCP-CEQA document, focusing on the impacts associated with conversion, was of primary importance while the THP, the operational document, was secondary. The TCP-CEQA document addressed questions on: loss of timberland; forest fragmentation; land use issues; changes in hydrology; cumulative effects, etc. The THP focused on operational details such as skid trail

placement, stream crossings, access, etc. It was to be a tiered approach, with the THP relying on the broad impact analysis in the CEQA document and the TCP relying on the site specific detail found in the THP. This process manifests itself in the development of joint CEQA/THP documents where the THP was an appendix to the CEQA document.

At present, joint CEQA/THP documents undergo concurrent review; the document circulated to the public and responsible agencies through both the State Clearinghouse (in compliance with CEQA) and the THP review process (in compliance with the FPRs). All comments received, either on the TCP or the THP, are addressed in a jointly prepared Official Response/Response to Comments.

**The Problem:** The environmental review of a project under two concurrent processes has lead to many difficulties:

- The public and some agencies are confused by the redundant review and they are unsure whether they are commenting on the TCP-CEQA document or THP.
- The review of conversion projects under two CEQA processes has continued to raise accusations of piecemealing.
- Questions have been raised about the Department's use of mitigated negative declarations for the approval of a TCP while the THP is the functional equivalent of an EIR.
- PHIs, while not mandatory, are generally required due to the controversial nature of conversions. This leads to problems when the timberland owner or RPF has already held on site pre-application consultations with the various responsible agencies and developed the TCP application, conversion plan and CEQA document based upon the recommendations received. New PHI recommendations incorporated in the THP result in the need to change and possibly recirculate the CEQA document.
- Similar, but slightly different comment periods lead to confusion. When the THP is reopened for public comment or the CEQA document is recirculated additional confusion arises.
- Changes made to the THP during the THP review process result in the THP "drifting away" from what was analyzed the CEQA document. This then requires adopting those changes into the CEQA documents and possibly leading to the need to recirculate. Since the "Joy Road" decision the need to reopen comment or recirculate both the THP and CEQA document is more likely.
- When another agency is CEQA lead agency for a conversion project (i.e., Sonoma County for the Preservation Ranch Conversion) they are responsible for considering the impacts associated with all other permits necessary to complete the project. Thus, they request the draft THP that the Department will be approving. This is problematic since the typical THP approved by the Department is often substantially modified during the THP review process and would not be in its final form at the time the lead agency is considering their approval of the project as a whole.
- Responsible agencies have, on occasion, used the THP process to raise environmental issues and propose mitigations which were not raised as part of the TCP process.

### **Alternatives for Consideration by the Board:**

- Exempt timberland conversions from the requirement to submit a THP where a TCP had been approved by the Department and the CEQA document had considered the operational details typically found in a THP. It may be necessary to require EIRs for all conversions and may require the Board to develop rules specifying the operational details required in the EIR and the administrative processes (i.e., inspections, noticing, etc.) unique to timber operations without an approved THP.
- The Board could adopt a “Conversion THP” (similar to the Modified THP in concept) that would rely substantially on the disclosure and analysis found in the associated TCP-CEQA document. This could serve to reduce Preharvest Inspection (PHI) requirements in favor of more thorough pre-consultation and rely on noticing and public review requirements more in line with what is found in CEQA.
- Specify a format and procedure for conversion CEQA documents such that they could be “called” THPs.
- Require TCP approval prior to THP submittal rather than allowing concurrent review. Following TCP approval the THP should be developed to conform to the provisions in the TCP and rely on the environmental analysis found in the TCP CEQA document. The THP could be required to comply with the requirements of the “Conversion THP” described above. This approach could be criticized for piecemealing once again; however, the Rules should clearly specify that the THP is to focus on the impacts associated with timber operations and tier to the TCP CEQA document that addresses the general impacts associated with conversion.
- As part of any “solution”, establish a single office of record for TCPs and the associated THPs and move all administrative functions associated with conversion THPs (or other operational document) to that same location. This would preferably be Sacramento Headquarters where a staff experienced in both CEQA and conversion permit processing could be concentrated. Headquarters would continue to rely on Unit Forest Practice staff in the administration of timber operations and conversion.

### **3) 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).

#### **4) COMPLEXITY AND WORKLOAD HAVE INCREASED SUBSTANTIALLY**

##### **Background:**

The review and development of environmental documents for timberland conversions, the review of sub-division exemptions and the screening of local government CEQA documents for conversion related activities is currently managed by the Department’s Environmental Protection Program.

##### **The Problem:**

- Pressure has been increasing for the conversion of working forests to non-timber growing uses. Sawmill closures and consolidation within the forest products industry have reduced the number of options a landowner has to market logs and often results in having to truck logs over increasingly longer distances. In addition log supply dynamics within the Pacific rim have put downward pricing pressure on log values. As a result of these factors as well as other market driven dynamics, landowner opportunities for marketing saw logs is more limited, log values have declined and compliance with regulatory costs have increased. In light of escalating property values, many timberland owners are under pressure to convert their property to higher value uses and are selling their lands to developers or pursuing development opportunities of their own. Where CAL FIRE permits or approvals are required for such development to go forward, the Department must have the staff and expertise to respond appropriately and require consideration of alternative proposals that have less impact on the timberland resource.
- Due to the increasing public’s concern over environmental issues, and particularly in light of increased awareness of climate change and deforestation, it is inevitable that the conversion of timberland is an issue that warrants more oversight.

- Recent litigation over timberland conversions and the trend toward higher levels of CEQA review create significant workload demands and requires a staff that is knowledgeable, experienced and capable of meeting CEQA's procedural and substantive requirements, thereby protecting CAL FIRE, as well as protecting the state's forested environments.
- The Department's costs associated with environmental compliance have increased substantially. Since the institution of Timberland Conversion Permit fees in 1983, costs and the time spent in developing and reviewing environmental documents has increased as the requirements of CEQA and the Forest Practice Rules have escalated. The increased costs and time requirements associated with CAL FIRE's conversion permitting responsibilities have never been addressed through adjustments to fees.
- In addition to the timberland conversions that CAL FIRE permits, there are numerous Notices of Exemption from Timberland Conversion Permit for Subdivision (CCR 1104.2) received. These Notices require considerable staff review time to confirm exempt status and compliance with the FPRs and other state laws.

### **Alternatives for Consideration by the Board:**

The Board may consider raising the TCP Application fees in accordance with PRC §4621(b) and CCR §1104.3. The following TCP Application fee scenarios are presented to the Board for their consideration:

- Fees could be based upon the acreage proposed for conversion in the application, thereby accounting for the increasing workload and complexity inherent in larger projects.
- Fees could be based upon the "value" of the project, thereby placing the cost of conversion on the project applicants that are most able to bear the cost.
- Fees could be based upon a progress schedule, thereby relieving applicants that withdraw their application from bearing unnecessary expense.
- Fees could be based upon the Department's actual costs associated with TCP approval, thereby having each applicant bear actual review cost.

Currently, the Forest Practice Rules (FPR) require applicants for TCPs to pay an application fee of \$600 (14CCR 1104.3) (or \$700 for immediate rezones). These fees are extraordinarily low compared to other agency permitting fees, and do not remotely cover CAL FIRE's personnel time and costs associated with administering this program. In comparison, the Department of Fish and Game (DFG) collects a fee of \$2,606 for every Environmental Impact Report prepared. DFG Lake and Streambed Alteration Agreements (LSAA) cost up to \$4,000 per individual activity and has long-term fees of \$10,000 to \$30,000. TCPs are similar to long-term LSAA's in that they are for projects occurring over multiple years, requiring substantial environmental review and analysis. At a minimum, factoring in the inflation that has occurred since the establishment of Timberland Conversion Application fees in 1983 (113%), the fee today should be over \$1200 with additional charges that are reflective of the project's scale, complexity and Department's processing and review costs.

Each of the scenarios proposed has challenges which include:

- annual variability in applications received and fees collected;
- uncertainty for applicants as to the total cost for obtaining a TCP;
- difficulty in determining the “value” of a project; and,
- Department costs associated with tracking and billing for work completed.

In addition to the timberland conversion that CAL FIRE permits, there are, on average 13 *Notices of Exemption from Timberland Conversion Permit for Subdivision Development* (CCR 1104.2) received totaling over 1000 acres. These Notices require considerable staff review time to confirm exempt status and compliance with the FPRs and other state laws. CAL FIRE collects no fees for this required review. The Board may wish to consider eliminating the subdivision exemption, establishing a fee for this review, and/or considering other funding mechanisms.

## **5) CONFUSION OVER LEAD AGENCY ROLE ON CONVERSIONS**

**Background:** Typically, CAL FIRE is the CEQA lead agency on timberland conversion projects and requires the preparation of the appropriate CEQA document for adoption by the Department. This is generally the case when there are no other permits necessary for project completion or the other permits are of minor, secondary importance compared with the conversion itself. Vineyards and other agricultural developments generally have no, or limited, local approval requirements and therefore CAL FIRE becomes the lead agency. Where there is local approval required - generally a grading permit – the local agency acts in a responsible agency role and relies on CAL FIRE’s CEQA document for their approval.

Frequently, another public agency has been the lead where there are identified zoning, land use or permitting requirements which are fundamental to project approval. In these cases, the local government lead agency has prepared the appropriate CEQA document and approves the project. CAL FIRE, as a responsible agency, has relied on the CEQA document prepared by the lead agency in the approval of the TCP. CAL FIRE has generally been the responsible agency for projects involving: ski area development; quarries subject to SMARA; recreational facilities built by a public agency; educational facility construction; and commercial developments.

**The Problem:** For some conversion projects it is not clear what agency is the lead. Occasionally, it is the project proponent that facilitates that determination by which agency they first approach for approval. Some agencies attempt to avoid controversy by letting another agency take the lead role. A few years ago there was confusion over whether a county’s erosion control plan (ECP) and special use permits put the county in the lead agency role or whether they were even triggered when a TCP was required. Eventually it was settled that when only an ECP was required then CAL FIRE was lead and when a special use permit was required the county was lead.

Recently, CAL FIRE assumed the lead agency role for a conversion project in the coastal zone and required the preparation of a mitigated negative declaration that was circulated for public comment. It wasn’t until immediately prior to TCP approval that CAL FIRE discovered that the project would have been in violation of the county’s Local Coastal Plan, would require a coastal Development Permit and that the county should have been lead

agency. It would have been entirely inappropriate for CAL FIRE to approve a TCP for a project that the county had not, and could not, approve.

Some of this confusion stems from PRC §4622 where it states in part, “ *Approval of an application for conversion shall be conditioned upon the granting of the necessary rezoning or use permit if rezoning or use permit is required.*” This statement indicates that the approval of a TCP is to occur prior to other (secondary) approvals. The permit to change the land use, from timber production to some other use, should be approved before local government changes the zoning or permits the new use.

However, where local government is the lead agency for a project that will result in a change in the use of timberland CAL FIRE’s role shifts to that of a responsible agency. Once the local lead agency has completed their CEQA analysis and approved the project, an application to convert is submitted to the Department. This sometimes leaves CAL FIRE in the difficult position of: 1) approving the conversion as proposed, 2) requiring mitigation that is over and above that required by the lead agency or, 3) denying the permit.

The fundamental question that must be addressed is, should the Board, and CAL FIRE by delegation, be the lead agency and have primary permitting authority for all land use decisions affecting timberland or, should some or all of that responsibility be handled by local government?

**Alternatives for Consideration by the Board:** The Board may wish to consider the following alternatives:

- The Department would have primary permitting responsibility where there is any change in the use of timberland proposed:
  - The Department would always be the CEQA lead agency and approve the TCP prior to all other approvals, if necessary, or
  - The Department could approve the TCP tiering to another lead agency’s CEQA document prior to the lead agency’s final approval of the project (similar to TPZ tentative rezoning by local government).
  - The Department could remain a responsible agency on those projects where another local agency has permitting authority.

## **6) STANDARD MITIGATIONS FOR LOSS OF TIMBERLAND**

**Background:** Historically, the loss of timberland associated with a particular conversion project has been found to result in a less than significant impact.

**The Problem:** With increasing development, placement of timberland in reserves and parks, restrictions on harvest due to conservation easements and deed restrictions it is time to reconsider this approach. Recently, Sonoma County established new ordinances that require the two-for-one replacement of converted (TPZ) timberland. Similarly, the U.S. Army Corps of Engineers has long required the replacement of wetlands lost due to

development or “wetlands” banking to mitigate the loss off-site. In light of recent legislation requiring reductions in emissions of greenhouse gases (AB 32) and the state’s efforts to find new opportunities for sequestering carbon it is probably time to consider mitigations that offset both the timberland base reductions and climate change effects associated with conversion.

When landowners applying for a conversion permit are faced with the prospect of having to mitigate the loss of timberland they question the Department’s authority to require this mitigation since it is not required in the Forest Practice Rules. However, CEQA (PRC §21002.1, CCR §15370) provides clear authority to require feasible mitigation related to the impacts of the project and some guidance on the desired types of mitigation. Potential impacts to other resources associated with logging are mitigated through the rules (WLPZs, buffers, ELZ, stocking requirements, etc.) Likewise, it would be appropriate for conversion impacts to be addressed in the rules as well.

**Alternatives for Consideration by the Board:** One or more of the following approaches may be employed in addressing this issue:

- Where a landowner proposing conversion has other timberland available, require deed restrictions and/or easements on the remaining timberland to offset the loss. Replacement ratios, site class equivalency, forest fragmentation and future management will need to be considered.
- Restoring unproductive timberlands through planting, thinning, fuels treatments, treatment of competitive vegetation, etc., either on or off site.
- Establish a system for mitigation banking wherein fees could be paid by landowners proposing conversion such that replacement timberlands could be purchased elsewhere. Purchased lands could be added to existing or future state forests. A schedule of fees would need to be developed and a fund identified, or established, to accept and expend fees. This is similar to the mitigation found under PRC §21083.4 relating to the conversion of oak woodlands.