

## **TIMBERLAND CONVERSION PERMIT--WHEN REQUIRED** **5471** (No. 3 June 1991)

The Forest Practice Act requires owners of nonfederal timberland to apply for a Timberland Conversion Permit (TCP) form RM-56, from the Director of CDF for the following:

- Immediate rezoning of three acres or more from Timberland Production Zone (TPZ) to another zoning classification, whether or not timber operations are involved. TPZ rezoning requests merely for a less-restrictive zoning classification, without a bona fide proposed change to a nontimber growing use within a short time, will seldom meet the criteria in law for rezoning and the related conversion permit issuance (see Section 5471.6).
- Changing three acres or more of non-TPZ timberland to a nontimber growing use when timber operations are involved.
- Subdividing these acres or some of non-TPZ timberland into ownerships of less than three acres when there is constructive notice and the subdivision involves timber operations. Constructive notice in the case of subdivision includes, but is not necessarily limited to, subdivision maps filed with applications to local government for development and use permits (see Sections 5471.2 and 5471.5). Most subdivisions will qualify for the exemption for subdivision if they document to CDF by submitting an RM-91 that they meet the CEQA requirements for conversion at the county level (see Section 5471.5).

## **NONCOMMERCIAL SPECIES** **5471.1** (No. 3 June 1991)

A TCP is required for a change to nonforest land use for removal of "noncommercial" species, including hardwoods from timberland for commercial purposes. This comes about as follows:

- "Timber operations" mean the cutting or removal or both of solid wood products for commercial purposes from timberland (PRC §4527).
- "Timberland" means (nonfederal) land available for and capable of growing a crop of trees of commercial species (PRC §4526).

Therefore, timber operations include the cutting and/or removing of solid wood products of any species for commercial purposes from land capable of growing commercial species as specified by board rule. The rules in each district define other species that may be considered as commercial when designated (stipulated) for management in the THP as submitted.

The following are indicators of timberland:

- Presence of designated commercial species regardless of size or density.
- Presence of stumps of designated commercial species.
- Soil and growing conditions similar to nearby areas supporting stands of designated commercial species.
- Presence of soils primarily suited to growing designated commercial species.
- Aerial photos, cruise records, assessor's records, land office survey notes, or other documentary records showing the site once had stands of designated commercial species.

Use good judgment to keep a sense of perspective in administering conversion requirements for hardwood and minor conifer operations.

## **GOVERNING LAW AND POLICY**

**5471.2**

(No. 3 June 1991)

Issuance of a Timberland Conversion Permit exempts the timberland owner from forest practice cutting and stocking requirements in order to allow a nontimber growing land use. Timber operations must otherwise comply with forest practice requirements.

The board's maintenance of timber supply policy states that it is in the public interest to oppose diversion of prime timberland and TPZ land to uses precluding timber growing, except when the public values of such diversion exceed those derived from timber growing. The board and the Director intend that the timberland conversion requirements be administered strictly.

If CDF personnel concerned have constructive notice (substantive prior knowledge) that there is to be a change to a nontimber growing use, the landowner and other parties concerned should be informed that a conversion permit will be required in order for the THP to be accepted for filing and review. Meeting stocking standards upon completion of timber operations alone does not eliminate the conversion permit requirement.

Constructive notice includes clear statements of the landowner or other parties involved, documents filed with local and other government agencies, and other means that show the landowner's clear intent to use the land for a nontimber growing use following completion of timber operations (see Sections 5471 and 5471.5).

In fact, when there is reasonable cause to believe that a timber operation may be for the purpose of land conversion, the CDF representative has a responsibility to raise questions about future land use intentions. Both public and private parties concerned should remember that if a THP involving a possible conversion should be denied by the Director and appealed to the Board of Forestry, the submitter would be in the position of making his/her intentions clear or else committing perjury.

Some have suggested that requiring a conversion permit forces a timber owner to destroy a resource by noncommercial disposal methods to avoid the delay of the conversion permit process and related CEQA procedures. This is not a persuasive rationale, because the destruction is not "forced." It is the owner's choice as a tradeoff for other potential (presumably greater) gain.

At any rate, CDF personnel should not put themselves in the position of advising private parties how to circumvent the law (conversion requirements) and, above all, must not do so, even by implication, in writing. To do so could imply CDF's collusion in evading legal requirements, with possible consequent embarrassment or worse.

The permit application and issuance procedure must comply with the following:

- The Forest Practice Act and related board regulations.
- The California Environmental Quality Act (CEQA) and related regulations.
- Local zoning and use permit requirements.
- Additional special requirements for TPZ immediate rezoning.
- Additional special requirements for conversions in coastal zones.
- Sections of the Government Code on time limits, public records, and planning.
- Other applicable laws and regulations.

## **REFERENCES TO LAW AND REGULATIONS**

**5471.3**

(No. 3 June 1991)

Following is a listing of references to sections of laws and regulations that govern or concern timberland conversion.

- The Forest Practice Act (FPA), beginning with PRC § 4621.
- Board of Forestry Regulations, 14 CCR, beginning with § 1100.
- California Coastal Act, PRC § 30243 and Board of Forestry Regulations (14 CCR § 1108). Conversions in coastal zones (see also Section 5471.7).

- Forest Taxation Reform Act (as amended). TPZ immediate rezoning: conversion permit required, GC § 51133; conversion permit not required, GC § 51134.
- GC § 65943 setting time limits for action on project applications.
- California Environmental Quality Act (CEQA), beginning with PRC § 21000.
- Secretary for Resource CEQA regulations (state EIR guidelines), beginning with 14 CCR § 15000.
- The Public Records Act, beginning with GC § 6250.
- Local zoning and use-permit ordinances.

The FPA and related board regulations require the timberland owner to provide proof of bona fide intent to carry out the stated purpose of the conversion. The board, by regulation, has delegated the administration of timberland conversion to the director. This authority includes adopting conversion forms and other supplemental information the Director deems necessary to constitute the proof of bona fide intents.

## **TIMBERLAND CONVERSION PERMIT EXEMPTION**

**5471.4**

(No. 3 June 1991)

A Timberland Conversion Permit (TCP) is not required for noncommercial removal of solid wood products from non-TPZ land. Noncommercial removal means that the products are neither sold nor exchanged for other goods or services. Noncommercial disposal includes the timberland owner's personal use of the products, disposal by piling and burning, and hauling away and dumping without processing. These operations are not timber operations under the FPA definition.

Timberland owners are exempt from TCP requirements, from stocking regulations, and from certain silvicultural regulations for a single one-time conversion to nontimber growing use of less than three acres, whether or not it is part of a larger parcel under one contiguous ownership [14 CCR § 1104.1(a)]. "Contiguous" means two or more parcels of land that are adjoining, neighboring, or sufficiently near each other to be manageable as a single unit [14 CCR § 1100(f)].

The following instructions apply to the exemption of less than three acres of timberland [14 CCR § 1104.1(a)] from TCP requirements. This will be termed and "exempted conversion."

### **NOTE:**

Some departmental personnel use the term "minor conversion," but the process is actually an exemption from portions of law requiring a permit for timberland conversion.

- The only two ways to notify the department of an exempted conversion is with a THP (RM-63) if timberland acreage in the contiguous parcel is three acres or more, or with a Notice of Timber Operations that are Exempt (RM-73) if the timberland holding is less than three acres. Harvesting plans for conversions need not be prepared by an RPF.
- Any timberland conversion, whether subject to or exempt from a permit requires actual conversion to a nontimber growing use. Local government will require that both permitted and exempted conversions conform to local zoning and general plan requirements.
- A single exempted conversion is allowed for each parcel or group of contiguous parcels. If a timberland owner has noncontiguous parcels, he/she can qualify for additional, single exempted conversions on these noncontiguous parcels [14 CCR § 1100(f) and 1104.1(a)].
- The single exempted conversion is allowed for up to three acres. While notification is not required for this exemption, per se, in filing the applicable THP (RM-63) or the THP exemption (RM-73), the applicant should not be routinely advised to file for the three acres. Regional personnel should attempt to determine actual acreage needed and appropriate for the conversion use. For example, it would seem unusual for the average residential site to require more than one-half acre or the average farmstead to exceed one and one-half acres.
- CDF foresters responsible for timberland conversion administration should be alert to attempts to use the exempted conversion process to avoid harvesting and stocking requirements of the FPA rules. Of particular concern is THP submitters who routinely indicate a conversion exemption when submitting a THP.
- Exempted conversions are also valid for coastal zone areas. However, additional coastal zone, county, and state permits may also be required.

Timberland owners are exempt from TCP requirements in specific situations involving development as subdivision on non-TPZ lands. In these instances, the owner must file the comprehensive Notice of Exemption, form RM-91, with the department.

## SUBDIVISIONS

(No. 3 June 1991)

5471.5

In this context, "subdivision" means dividing timberland into smaller parcels for various types of residential or commercial use. Subdivision is subject to the Subdivision Map Act (commencing at GC § 66410) when more than four parcels are created, and where the divided parcels are less than 20 acres in size. In these instances, county or city government will be the lead agency in the environmental process of CEQA. The following criteria and procedures shall be used for subdivision in connection with conversion:

- A conversion permit or notice of exemption on non-TPZ lands is required only when timber operations are involved.
- A conversion permit or notice of exemption is required for all cases when there is constructive notice that non-TPZ land will be subdivided into parcels of less than three acres in connection with timber operations.
- By definition in board regulations [14 CCR § 1100 (g)(1)(C)], timberland conversion includes a division of timberland into ownerships of less than three acres. Therefore, creation of these smaller parcels constitutes a conversion to nontimberland use. Constructive notice is a positive, identifiable declaration that an owner is going to subdivide his/her property. Constructive notice might be, for example, a statement in the THP, a tentative subdivision map, a statement by the timberland owner, the physical construction of subdivision facilities, etc.
- A conversion permit or notice of exemption on non-TPZ land should usually be required in timber operations when road and housing density will prevent meeting stocking requirements and make timber growing and harvesting impractical.
- A conversion permit application or notice of exemption should include all of the acreage within the area of timber operations that will be subdivided into lots of less than three acres and should include the access road system. This applies even if all or part of the area containing the lots will meet stocking after timber operations. Normally, a conversion permit application should not be for subdivision road right-of-way only.
- Sizable areas reserved for open space uses, such as commons, greenbelts, and recreation areas, may be excluded from the conversion area, provided such areas meet stocking requirements and are otherwise feasible.

- A conversion permit on non-TPZ lands usually should not be required under the following circumstances:
  1. When the road system and openings are such as normally required for timber operations.
  2. When stocking requirements will be met.
  3. When there is no constructive notice to divide and sell the land in parcels of less than three acres.
  4. When there is no land-use change making infeasible or preventing future timber harvests [14 CCR § 1100 (g)(1)(A)].
  
- Proposed subdivision of an ownership into parcels of 10 acres or less involving timber operations should be evaluated with particular attention to determine whether timberland conversion requirements apply. The CDF forester responsible should record the requirements for meeting stocking standards with the county recorder as a notice to future purchasers.
  
- The following procedures apply to fire protection considerations:
  - Conversion plan and EIR or Negative Declaration should name the fire protection jurisdiction and clearly state that when final subdivision maps are filed for approval, fire protection standards of the county general plan safety element and of the fire protection jurisdiction will be met. For a Negative Declaration, this information should be on the sheet attached to the environmental checklist describing mitigating measures.

The resource manager responsible for conversions should be certain that fire protection considerations for the conversion plan and EIR or Negative Declaration are coordinated with the unit concerned, in consultation with the unit's firesafe planning officer and the county fire warden.

- Under CEQA, a responsible agency can require mitigation only for matters under its jurisdiction. Fire originating from a subdivision can spread to forest and watershed lands that are CDF protection responsibilities.

Therefore, firesafe standards can be required to mitigate an impact subject to CDF jurisdiction or concern. See "A Report to the California Legislature Regarding Fire Prevention Programs of Counties and Cities with a Wildland Fire Potential," Department of Forestry and Fire Protection, February 16, 1980; the CEQA flow chart in Exhibit 5140-A (not available in electronic format); the state EIR guidelines, and the State Forest and Fire Laws.

- Timberland owners intending subdivision development on non-TPZ lands are exempt from TCP requirements when (1) the county board of supervisors or city council having jurisdiction has approved a tentative subdivision map pursuant to the Subdivision Map Act, commencing with GC § 66410; (2) the said board or council has granted required use permits and other necessary approvals and the owner has filed a notice of exemption for a timberland conversion permit for subdivision on form RM-91, as prescribed by the director. In the interest of uniformity of interpretation, form RM-91 shall be forwarded to Sacramento to review the situation's suitability for exemption and the adequacy of the supporting data.

## **TPZ IMMEDIATE REZONING CONVERSIONS**

**5471.6**

(No. 3 June 1991)

A conversion permit is required for any TPZ rezoning of three acres or more, whether or not timber operations are involved. [14 CCR § 1100(g)(2)]. The Director will deny most conversion permits for immediate TPZ rezoning that are merely for change to a less restrictive zoning without a bona fide proposed change to nontimber growing use within a short time. Such rezoning requests usually will not meet the criteria in law, regulations, and board policy for immediate TPZ rezoning with related conversion permit issuance. State law and board policy is aimed at preventing diversion of TPZ lands to nontimber growing uses. Therefore, rezoning from TPZ has deliberately been made difficult.

The prescribed procedures for timberland conversion of areas within TPZs and the required immediate rezoning are set forth in 14 CCR § 1109 - 1110 of the board's timberland conversion regulations.

These regulations prescribe further the procedures for implementing GC § 51133 which requires the immediate rezoning request to be submitted to the appropriate local government body for tentative approval in accordance with required findings before the timberland conversion application is submitted to the Director. As lead agency, local government is required to submit the environmental documentation (EIR or Negative Declaration) to the State Clearinghouse for appropriate input from CDF before the Director will consider the timberland conversion application.

The process is prescribed in 14 CCR § 1109 of the board's timberland conversion regulations. Region and local CDF staffs will do as much as possible in consultation with the appropriate Director's office staff to ensure that the environmental documentation is carefully reviewed and that CDF has the opportunity to make appropriate inputs and comments. It is especially important that CDF be informed of and have copies of environmental documents at the beginning of the review period required under CEQA so that CDF comments can be presented before the review period expires. This will avoid the need to shift lead agency responsibilities (14 CCR § 150252) or the filing of a subsequent EIR [14 CCR § 15162(c)]. At the very least, an initial study should be required for immediate rezoning of TPZ areas involving TCPs, especially the initiation and development of environmental (CEQA) procedures. The environmental coordinator can obtain help from the State Clearinghouse to be sure that counties follow proper procedures.

## **COASTAL ZONE CONVERSION**

**5471.7**

(No. 3 June 1991)

Timberland conversions in coastal zones have special restrictions and conditions derived from the California Coastal Conservation Act (PRC § 30243) and implementation of board regulations (14 CCR § 1108).

The board regulations set the conditions under which the Director can issue conversion permits in coastal zones. Accordingly, the following standards apply to coastal zone conversions:

- No conversion permit is required for a one-time conversion of less than three acres on a single ownership.
- No conversion permit is required for change to a nonforest land use in non-TPZ areas where there is no commercial timber operation.
- Coastal zone conversions on non-TPZ areas for other than timber processing and related facilities must not introduce new uses or significantly intensify existing uses that are incompatible with timber growing on areas adjacent to the parcel proposed for conversion, or that have a substantial adverse impact on coastal resources as determined by the Director. The parcel proposed for conversion must be in a unit of noncommercial size as determined by the coastal commission, and the conversion complies with all other applicable laws, rules, and regulations including local coastal plans.
- For immediate rezoning from TPZ, both the coastal zone conditions and the TPZ conversion regulations apply.

The appropriate CDF forester should be sure that the CEQA processes and coastal zone aspects of conversion requirements are coordinated locally with the county and the regional coastal commission, commensurate with lead agency and coastal commission responsibilities.

**FORMS AND/OR FORMS SAMPLES: RETURN TO ISSUANCE HOME PAGE FOR FORMS/FORMS SAMPLES SITE LINK.**

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