

Board of Forestry and Fire Protection

Timberland Availability and Conversion Policy Considerations

December 7, 2021 Management Committee Meeting

Recently, the Board of Forestry and Fire Protection's Management Committee has been discussing provisions of the Z'Berg-Nejedly Forest Practice Act of 1973¹ (Act) and the Forest Practice Rules² (Rules) related to the conversion of timberland. Specifically, the Committee has been discussing potential mechanisms which could maximize landowner flexibility while still maintaining consistency with the Board's statutory authority and obligations. During these discussions, issues pertaining to consistency of conversion activities within existing Board policy have been raised and may merit consideration before embarking on any regulatory action in order to promote harmony between all aspects of forest policy under the Board's authority. Below, please find a brief, policy-level overview of timberland conversion, followed by potential Board Policy considerations.

Forest Practice Act

The Act identifies a public interest in the utilization, restoration, and protection of forest resources and timberlands in the state³. The Act functions, generally, to ensure that the productivity of those resources are enhanced, restored, and maintained⁴. One of the mechanisms by which these goals are achieved is the resource conservation standards, or stocking standards, which identify minimum requirements for tree retention or planting which must occur following timber harvesting⁵.

The Act also recognizes that a person who owns timberlands may wish to devote them to uses other than growing timber and accommodates that activity through the conversion processes⁶ so long as that person has a *bona fide* intent to convert the land to those other uses⁷ and, for timberland production zones (TPZ), that the conversion is in the public interest⁸. The conversion process provides this accommodation by allowing timber harvesting to occur without achieving resource conservation standards or stocking requirements⁹.

Additionally, PRC 4584(g) authorizes the Board to adopt a regulatory exemption from portions of the Act for the one-time conversion of less than three acres to a non-timber use, so long as the exemption incorporates several statutorily mandated conditions is consistent with the purposes of the Act.

¹ Chapter 8, Part 2, Division 4, Public Resources Code

² Chapter 4, Division 1.5, Title 14, California Code of Regulations

³ PRC 4512

⁴ PRC 4513

⁵ Article 5, Chapter 8, Part 2, Division 4, Public Resources Code, 14 CCR §§ 913, 933, 953 *et seq.*

⁶ Article 9, Chapter 8, Part 2, Division 4, Public Resources Code

⁷ PRC 4623

⁸ PRC 4621.2(a)(1)

⁹ PRC 4622

Forest Practice Rules

The Rules implement the requirements of the Act regarding *bona fide* intent for all conversion activities and the requirement that TPZ conversions be in the public interest¹⁰.

Additionally, the Board has adopted regulations which implement the one time conversion of less than three acres to a non-timber use and has interpreted the spatial/temporal limitation implied by the phrase “one time conversion” to mean that the exemption may only be used once per contiguous land ownership¹¹.

Board Policy

Currently, the Board of Forestry and Fire Protection’s Policy regarding Land Availability identifies a public interest in the opposition of conversion of timberlands¹² to uses which preclude timber growing and harvesting, “...except where the public values to be achieved by such conversion exceed the public values derivable from timber growing.”¹³

Issues for Consideration

While the Act and Rules authorize conversion activities on timberland based upon a *bona fide* intent to convert the land to a use other than timber growing, Board Policy 0334.3 opposes conversion activities which do not result in a net increase in public values. These considerations should be harmonized.

While the Act requires that TPZ conversion activities be in the public interest and the Rules further describe elements the Director shall consider when making a determination related to this public interest, the rules do not require a net analysis related to such interest as described by Board Policy. These considerations should be harmonized.

Opportunities to provide maximum land-management flexibility with regard to conversion activities may not be consistent with the categorical opposition to conversion activities within Board Policy. Flexibility and adaptive management opportunities may be weighed and considered in regards to any public values that could be provided related to increased opportunity for conversion activities. Any resulting determinations or analysis may be considered for incorporation into Board Policy.

¹⁰ 14 CCR §§ 1104.1(a)(1)(E)2., 1105.2, 1109.2

¹¹ 14 CCR § 1104.1(a)

¹² Both Timberland as defined by PRC 4526 and Timberland Production Zones as identified within GOV 51100 *et seq.*

¹³ Board of Forestry and Fire Protection Policy 0334.3.A.