

Less Than 3-Acre Conversion Exemptions

PRC Section 4584(g) and 14 CCR Section 1104.1

Timberland

- ▶ Timberland is defined within PRC § 4526 as “land, other than land owned by the federal government and land designated by the board as experimental forest land, which is available for, and capable of, growing a crop of trees of a commercial species used to produce lumber and other forest products, including Christmas trees. Commercial species shall be determined by the board on a district basis.”

Definition of Timberland

- ▶ With this established, and current, definition, the status of land as timberland is solely dependent on 3 facts:
 1. It is land not owned by the Federal Government
 2. It is land available for and capable of growing a crop of trees
 3. The crop of trees is a commercial species which can be used to produce lumber and other forest products
- ▶ If the all three of these conditions are satisfied then the land is Timberland, subject to the Forest Practice Act and Rules.
- ▶ Aside from experimental forestland, the Act and Rules do not identify any other metric by which land may excluded from Timberland, provided that it meets these descriptions.

General Regulatory Purpose of Forest Practice Act and Rules

- ▶ Per PRC Section 4551.5, the Forest Practice Act Rules are intended to regulate, in part, Timber Operations
- ▶ Timber Operations “means the cutting or removal, or both, of timber or other solid wood forest products...from Timberlands for commercial purposes, together with all the incidental work...” (Per PRC Section 4527)
 - ▶ Included in this definition is the cutting and removal of trees during the conversion of timberlands to uses other than the growing of timber (PRC § 4527(a)(2)(B))

Timberland Conversion

- ▶ When Timberlands are to be devoted to uses other than the growing of timber, the owner must file an application for conversion. (PRC § 4621)
 - ▶ The Rules further define Timberland Conversion as “transforming Timberland to a non-timber growing use through Timber Operations where both: “Future timber harvests will be prevented or infeasible because of land occupancy and activities thereon; or where stocking will not be met within 5 years after completion of Timber Operations”, as well as certain subdivision activities. (14 CCR Section 1100(g))

Conversion Permitting

- ▶ Any application for conversion must be accompanied by an affidavit by the applicant that the applicant has a present bona fide intent to convert the land to a use other than timber growing. (PRC 4623).
- ▶ An approved application for conversion authorizes the applicant to cut and remove any and all trees, provided that this otherwise complies with the Act and Rules (PRC § 4625).

Less Than 3-acre Conversion Exemption

- ▶ PRC § 4584(g)(1) allows the Board to exempt from all, or a portion, of the act, the “one-time conversion of less than three acres to a non-timber use.”
- ▶ The authorization of this exemption also includes numerous conditions related to, among other items, limitations on when a person may be eligible to obtain such an exemption.
- ▶ The Board has amended these regulations numerous times with substantive revisions occurring in 1981, 1983, 1990, 1993, 1994, 1996, 1997, 2000, 2001, 2002, 2010, 2014, 2017, and 2018, most recently to allow the Department to refuse to accept a less than 3-acre conversion exemption where prior, unpermitted conversion had occurred.

Statutory Requirements for a Less Than 3-acre Conversion Exemption

- ▶ Though the Forest Practice Act generally provides the Board broad discretion in adopting regulations, the authorization of a less than 3-acre conversion exemption within PRC Section 4584(g) has certain conditions which are required of any regulation adopted pursuant to the subsection:
 - ▶ Only provides for the one-time conversion of less than three acres to a nontimber use.
 - ▶ Require documentation of the bona fide intent to convert the land to a use other than the growing of timber.
 - ▶ An application form must be submitted
 - ▶ Require that the exemption expire if there is a change in ownership.
 - ▶ No Person (in any form) may obtain more than one exemption in a five-year period (exceptions for hardship notwithstanding).

Options for Revision

- ▶ SEE DRAFT RULE TEXT