

83



830.0050



TE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
916/323-7715

WILLIAM M. BENNETT
First District, Kentfield

CONWAY H. COLLIS
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

PAUL CARPENTER
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

CINDY RAMBO
Executive Secretary

RECEIVED

MAY 25 1988

Member Tax Division
Board of Equalization

May 20, 1988

Mr. R. J. Sanford
Ventura County Assessor
Government Center
800 South Victoria Avenue
Ventura, CA 93009

Attention: Mr. Jim Dodd, Appraiser Analyst

Dear Mr. Sanford:

This is in response to your May 2, 1988, letter to Mr. Richard Ochsner wherein you stated that several Christmas tree farm parcels in Ventura County have been placed in Timberland Production Zone (TPZ), one of the parcels has been converted to non-TPZ and noncompatible row crop use, you have asked the county planning division to review the zoning on the parcel in light of the change in use, and the planning division has ignored the situation. Under such circumstances, you asked the following questions:

- 1. As the parcel is in TPZ, does it continue to be valued as TPZ, or do you have the authority to value the parcel according to its use (row crop use at substantially higher "unrestricted" base year value)?

As the parcel is in TPZ, it continues to be valued as TPZ.

As you are aware, AB 1258/Statutes 1986, chapter 176 changed the existing system of taxing timber and land on which timber is growing. Beginning with the 1977-78 fiscal year, privately owned land primarily devoted to and used for growing and harvesting timber is zoned for minimum ten-year period as timberland production, and it is to be valued for property tax purposes, in general, on the basis of its use for growing and harvesting timber only. These changes were accomplished by additions to the Government Code, sections 51100-51155, and by additions to the Revenue and Taxation Code, sections 431-437.

The zoning of parcels as TPZ pursuant to Government Code sections 51110 et seq. results from the enactment of a zoning ordinance and completion of other zoning-related matters. The enactment of a zoning ordinance is solely a legislative act

and a governmental function. As stated by the court in Tandy v. City of Oakland, 208 Cal.App.2d 609:

"The determination of whether or not to enact a zoning ordinance and the determination of its provisions and terms are entirely within the discretion of the municipal legislative body or other zoning legislative authority, subject to such requirements as may exist relative to study and recommendation by zoning commissions, notices, hearings and initiative and referendum. Such municipal discretion will not be interfered with by the courts except for clear abuse of the discretion or excess of power, and in case of doubt or if the question is fairly debatable, a court cannot substitute its judgment for that of the municipality. In other words, a municipal corporation has a right to determine whether conditions or the public interests demand an exercise of the power to pass a zoning ordinance and to select the measures that are necessary for that purpose. A fortiori, the wisdom or good policy of a zoning ordinance is for a municipality to determine and the courts have nothing to do with it."

Land zoned as TPZ is enforceably restricted within the meaning of article XIII, section 3(j) of the California Constitution and the restriction is to be enforced by the city or county in a manner to accomplish the purposes of sections 51110 et seq. and other related Government Code sections (Gov. Code, § 51118). Thus, such parcels are valued pursuant to Revenue and Taxation Code sections 434.5 and 435; and there is no provision for valuing such parcels on any other basis and, hence, no authority that allows you to value a TPZ parcel according to its use.

As provided by Government Code section 51116, where a parcel has been zoned as TPZ and thereafter, use not permitted with respect to land zoned as TPZ occurs on the parcel, the county or city is empowered to end such use by any court action including, but not limited to, an action to enforce the zoning restrictions by specific performance or injunction. Thus, while you have asked the county planning division to review the zoning on the parcel without success, resort to the County Board of Supervisors and/or County Counsel to request pursuit of the County's section 51116 legal remedies would be the appropriate way to end such use.

2. Is Government Code section 51121 the only procedure for cancellation/rezoning of parcels from TPZ?

Section 51121 is the primary section and the one by which a board of supervisors can rezone property which has been zoned

May 20, 1988

as TPZ. Sections 51133 and 51134 pertain to immediate rezoning pursuant to a request of the landowner, and section 51155 pertains to immediate rezoning upon acquisition by a public agency.


3. Is the presumption in Government Code section 51115.1, that timber operations may reasonably be expected to and will occur on parcels zoned as TPZ, a conclusive presumption?

No. Conclusive presumptions are only those declared by law to be conclusive:

"The presumptions established by this article, and all other presumptions declared by law to be conclusive, are conclusive presumptions." (Evid. Code § 620)

As section 51115.1 does not state that the presumption set forth therein is conclusive, it does not meet the definition of Evidence Code section 620 as to what is a conclusive presumption.

Very truly yours,



James K. McManigal, Jr.
Tax Counsel

JKM/rz

cc: Mr. Richard H. Ochsner