



STATE BOARD OF EQUALIZATION

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JOHN CHIANG
State Controller

CYNTHIA BRIDGES
Executive Director

November 21, 2012

Re: *Timberland Production Zone*
Assignment No.: 12-063

Dear Mr. _____,

This is in response to your letter requesting our response to several questions you raised regarding the California Timberland Productivity Act of 1982 (Gov. Code, § 51100 et seq.) (the Act) and timber taxation involving your _____ County property, which is currently zoned as timberland production, or "TPZ".¹ You state that the _____ County Assessor's Office (Assessor) intended to undertake an "immediate TPZ rezoning" of the property due to the office's allegation that a conservation easement you recorded on your property, along with the associated development rights violated the TPZ restrictions. After discussions with the Assessor, an agreement was reached that if you made substantive amendments to the easement to ensure that timber harvesting is not precluded or unduly encumbered, the Assessor would not initiate immediate rezoning procedures. You ask several questions with regards to an assessors' ability to initiate immediate rezoning procedures pursuant to the Act.

Your first three questions relate to the statutory provisions governing the classification of property as TPZ and the procedures that must be followed to immediately rezone that property to some other use. As explained in Annotation² 830.0070 and the back-up letter on which it is based, the Board of Equalization advises county boards of equalization when equalizing and county assessors when assessing, but does not advise boards of supervisors when making decisions about zoning and land use. Pursuant to the provisions of the Act, it is the county board of supervisors or the city council that zones property as TPZ (Gov. Code, §§ 51112 - 51113) and makes decisions on immediate rezoning requests made by a landowner (Gov. Code, §§ 51133 - 51134). We are aware of no provision in the Act that grants such authority to a county assessor.

¹ Timberland Production Zones are also referred to as Timberland Preserve Zones.

² Property Tax Annotations are summaries of the conclusions reached in selected legal rulings of Board legal counsel published in the Board's Property Tax Law Guide and on the Board's website. See Cal. Code Regs., titl. 18, § 5700 for more information regarding annotations.

We also note in response to your questions 1 and 2 regarding the intent of the immediate rezoning procedures set forth in Chapter 6.7, article 4 of the Government Code, sections 51130 and 51131 state as follows:

51130. The purpose of this article is to provide relief from zoning as timberland production pursuant to this chapter only when the continued use of land in the timberland production zone is neither necessary nor desirable to accomplish the purposes of Section 3(j) of Article XIII of the Constitution and of this chapter.

51131. A timberland production zone may not be immediately rezoned except pursuant to a request by a landowner, and as provided in this article.

We turn to your final question which is quoted and answered below.

May a County Assessor impose a tax recoupment fee pursuant to California Government Code Section 51142 for an immediate rezoning of TPZ land undertaken pursuant to the California Timberland Productivity Act that does not entail a property owner-requested immediate rezoning?

Section 51142, subdivision (a) provides that:

Upon immediate rezoning of a parcel in a timberland production zone, a tax recoupment fee shall be imposed on the owner of the land. *Within 90 days following rezoning of land in the timberland production zone the county assessor shall reassess the rezoned parcels on the basis of the value of the property in its rezoned use.* The assessor shall certify this value to the owner of the land and to the county auditor. The owner may appeal this new valuation in the same manner as an assessment appeal. The application for an appeal shall be filed with the clerk no later than 60 days after the date of the mailing of the notice certifying the new valuation. Except when under an appeal, after the certification *the auditor shall, in cases of immediate rezoning, within 10 days compute the tax recoupment fee and certify the amount to the tax collector.* The tax collector shall notify the owner in writing of the amount and due date of the fee. Fees shall be due 60 days after mailing of the notification. (Emphases added.)

We first note that section 51142, subdivision (a), makes clear that the county auditor and not the county assessor computes the tax recoupment fee, although an assessor's valuation of rezoned property is required for such calculation. The auditor then certifies that amount to the county tax collector who collects it. The tax recoupment fee is imposed when land set aside as a TPZ is rezoned for immediate, non-timberland production use. (Gov. Code, § 51142, subd. (a).) Calculation of the tax recoupment fee requires the county assessor to reassess the rezoned parcels on the basis of the value of the property in its rezoned use. Section 51142, subdivision (a), however, makes clear that an assessor may undertake such reassessment only "following rezoning of land in the timberland production zone." No other authorization to reassess TPZ property is given in the statute. Therefore, the county assessor is required to reassess your property only if your property is immediately rezoned by approval of the county board of supervisors pursuant to Government Code sections 51130 through 51134.

The views expressed in this letter are only advisory. They represent the analysis of the Board staff based on present law and the facts set forth herein. Therefore, they are not binding on any person or public entity.

Sincerely,

/s/ Neha Duggal

Neha Duggal
Tax Counsel

ND:mcb

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cc: Honorable
County Assessor
County

Mr. David Gau MIC:63
Mr. Dean Kinnee MIC:64
Mr. Todd Gilman MIC:70