

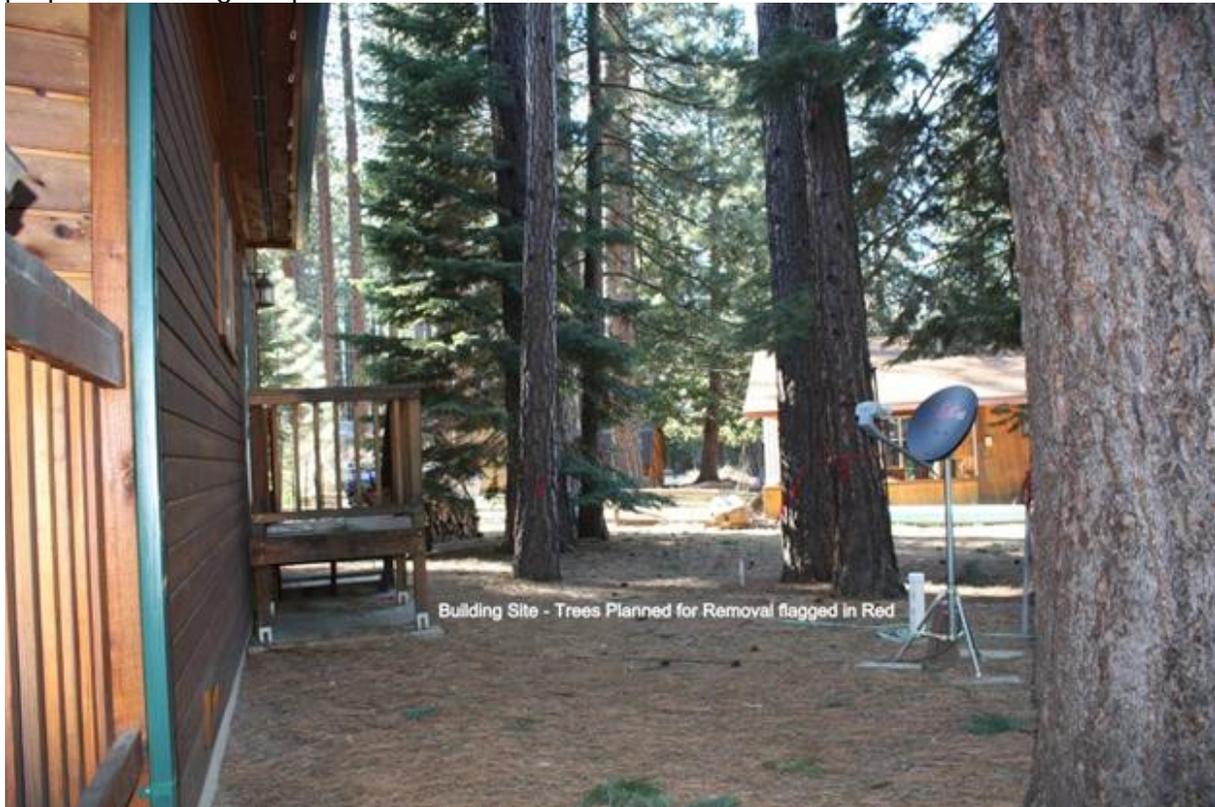
# BOARD OF FORESTRY AND FIRE PROTECTION



## Case Study: Rasmussen Property

Les and Penny Rasmussen own a 0.29 acre residential lot in the golf resort town of Graeagle, Plumas County, California. The lot and entire subdivision is zoned 7R (Single Family Residential 1/7 acre), and is part of a large subdivision created in 1959.

In order to construct a detached garage on their parcel, the Rasmussen's sought an RPF to prepare a Less Than 3-Acre Conversion Exemption to facilitate removal of 7 trees within the proposed building footprint.



Upon the RPF's site inspection, basalt flakes were noted on the surface of the lot, and the RPF required that the site be formally surveyed an Archaeologist prior to any additional work being done regarding the Conversion Exemption. During May and June 2013, an Archeologist conducted a formal site evaluation including excavation. The RPA's report indicates the site is considered significant as per 14 CCR 895.10, and likely extends throughout the subdivision according to the RPA. The presence of the significant archaeological resource negates the Rasmussen property's eligibility for a Less Than 3-Acre Conversion Exemption. Discussions with the Department during the summer of 2013 indicated a full THP would be necessary to legally remove the 7 trees from the residential lot.

Since the exemption is disallowed, a Timberland Conversion Permit (TCP) must also be prepared and submitted, as well as a CEQA document to support the TCP.

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According to Plumas County Planning Department, a Mitigated Negative Declaration (MND) would be required due to the presence of the archaeological site. An MND, if prepared by the County, or by a Consultant on behalf of the County, would cost a flat rate of \$2695 to \$5152 (including Environmental Health, Public Works, and Engineering costs) *PLUS* \$101.00 per hour.

If the MND were prepared by the State, the costs would very likely be higher.

The Plumas County Planning Department indicated they do not have time to prepare the MND prior to the onset of winter 2014/2015.

They do not typically prepare MNDs for a timberland conversion. Since the proposed construction/land use is in accordance with the zoning of the lot, a timberland conversion would be considered ministerial in nature, and they have never conducted an MND for such purposes.

The initial cost of the archaeological survey and report, plus the anticipated costs of the THP, TCP, and MND, the Rasmussen's are faced with potentially paying upwards of \$25,000 in permitting fees in order to build a garage next to their existing home.

Mr. and Mrs. Rasmussen have made the decision to not proceed with their planned construction at this time.

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The Archeologist's suggested mitigation for the archaeological resource was that the garage construction **site be overlain with geotextile fabric and "capped" with fill prior to construction. The Rasmussen's have no issue with carrying out the suggested mitigation measures:**

*"Re-locating the really an option since the site is present throughout their property. Reducing the size of the garage would probably not significantly reduce its impacts to the archaeological site. The capping of the site with geotechnical cloth and fill has been discussed and the landowners are receptive to this as a mitigation measure."*

"Timberland" as per PRC 4526, the term refers to "...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."

It is questionable that a residential lot, zoned by the County for residential purposes, should be concurrently defined as "timberland" by the State.

Moreover is a Cumulative Impacts Assessment or MND necessary regarding removal of 7 trees from a 0.29 acre residential subdivision lot that is zoned according to the County's General Plan, and for which residential uses are the highest and best use?



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## Discussion of Potential Resolutions

The instant problem arises from the regulations for conversion exemptions in Title 14 CCR that states:

“(I) No timber operations on significant historical or archeological sites”

The initial or preliminary determination of significance was made by a private archeologist working for the landowner. No significance determination has been formally made by the Department. Such determination is **NOT** necessary in all cases:

### **Title 14 CCR § 949.7. Determination of Significance.**

(a ) A determination of significance shall be made for an identified archaeological or historical site within the site survey area on a THP, or Emergency Notice by a person who satisfies the requirements specified in 14 CCR 949.4 **if damaging effects from timber operations cannot be avoided.**

If damaging effects are avoided, no determination is necessary. What constitutes avoiding damaging effects? Under CEQA, which informs the Board’s regulations, Public Resources Code states:

### **PRC 21083.2.**

(a) As part of the determination made pursuant to Section 21080.1, the lead agency shall determine whether the project may have a significant effect on archaeological resources. If the lead agency determines that the project may have a significant effect on unique archaeological resources, the environmental impact report shall address the issue of those resources. An environmental impact report, if otherwise necessary, shall not address the issue of nonunique archaeological resources. A negative declaration shall be issued with respect to a project if, but for the issue of nonunique archaeological resources, the negative declaration would be otherwise issued.

(b) If it can be demonstrated that a project will cause damage to a unique archaeological resource, the lead agency may require reasonable efforts to be made to **permit any or all of these resources to be preserved in place or left in an undisturbed state**. Examples of that treatment, in no order of preference, may include, but are not limited to, any of the following:

- (1) Planning construction to avoid archaeological sites.
- (2) Deeding archaeological sites into permanent conservation easements.

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**(3) Capping or covering archaeological sites with a layer of soil before building on the sites.**

(4) Planning parks, greenspace, or other open space to incorporate archaeological sites.

(c) ) To the extent that unique archaeological resources are not preserved in place or not left in an undisturbed state, mitigation measures shall be required as provided in this subdivision.

CEQA provides a mechanism for leaving resources in an **undisturbed state**. One of the ways was proposed and agreed to by the archeologist and the property owner. If the site is undisturbed, significance determination would be a moot point since such a state would have no significant adverse effects. CEQA goes on from this point to talk about mitigations should the undisturbed state not be achievable.

Therefore, one possible solution suggested here is that a conversion exemption is the appropriate choice for this situation.

A second, and longer term solution, is to amend the Forest Practice Rules in Title 14 CCR read:

(I) No timber operations on significant historical or archeological sites, unless the site will be left in an undisturbed state pursuant to PRC 21083.2.

Finally, the Board should examine whether subdivisions that are already approved by the county and zoned for residential uses, require the use of a conversion exemption.

The most equitable solution would appear to be agree that the capping of the site, which leaves it in an undisturbed state, would allow for the exemption to move forward. Spending another 25,000 dollars to achieve the exact same outcome seems unnecessary.

In summary:

1. The Lead Agency makes the significance determination.
2. The determination isn't needed if the site is left undisturbed.
3. Under CEQA capping a site is considered to be undisturbed (by extension, no significant impact).
4. With no significance determination, an exemption can be used.

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PRC 5020.1 (q) "Substantial adverse change" means demolition, destruction, relocation, or alteration such that the significance of an historical resource would be impaired.

## **Appendix: Applicable statutes and regulations** **Public Resources Code, Timberland Conversion Exemption**

### **(ARTICLE 7. Timber Harvesting [4581 - 4592]**

*( Article 7 added by Stats. 1973, Ch. 880. )*

#### **4584.**

Upon determining that the exemption is consistent with the purposes of this chapter, the board may exempt from this chapter, or portions of this chapter, a person engaged in forest management whose activities are limited to any of the following:

(g) (1) The one-time conversion of less than three acres to a nontimber use. A person, whether acting as an individual or as a member of a partnership, or as an officer or employee of a corporation or other legal entity, shall not obtain more than one exemption pursuant to this subdivision in a five-year period. If a partnership has as a member, or if a corporation or other legal entity has as an officer or employee, a person who has received this exemption within the past five years, whether as an individual or as a member of a partnership, or as an officer or employee of a corporation or other legal entity, then that partnership, corporation, or other legal entity is not eligible for this exemption. "Person," for purposes of this subdivision, means an individual, partnership, corporation, or other legal entity.

(2) (A) Notwithstanding Section 4554.5, the board shall adopt regulations that do all of the following:

(i) Identify the required documentation of a bona fide intent to complete the conversion that an applicant will need to submit in order to be eligible for the exemption in paragraph (1).

(ii) ) Authorize the department to inspect the sites approved in conversion applications that have been approved on or after January 1, 2002, in order to determine that the conversion was completed within the two-year period described in subparagraph (B) of paragraph (2) of subdivision (a) of Section 1104.1 of Title 14 of the California Code of Regulations.

(iii) Require the exemption pursuant to this subdivision to expire if there is a change in timberland ownership. The person who originally submitted an application for an exemption pursuant to this subdivision shall notify the department of a change in timberland ownership on or before five calendar days after a change in ownership.

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(iv) ) The board may adopt regulations allowing a waiver of the five-year limitation described in paragraph (1) upon finding that the imposition of the five-year limitation would impose an undue hardship on the applicant for the exemption. The board may adopt a process for an appeal of a denial of a waiver.

(B) The application form for the exemption pursuant to paragraph (1) shall prominently advise the public that a violation of the conversion exemption, including a conversion applied for in the name of someone other than the person or entity implementing the conversion in bona fide good faith, is a violation of this chapter and penalties may accrue up to ten thousand dollars (\$10,000) for each violation pursuant to Article 8 (commencing with Section 4601).

*Amended by Stats. 1984, Ch. 636, Sec. 1.)*

## **Title 14 Forest Practice Rules**

14 CCR § 949.7

§ 949.7. Determination of Significance.

(a) ) A determination of significance shall be made for an identified archaeological or historical site within the site survey area on a THP, or Emergency Notice by a person who satisfies the requirements specified in 14 CCR 949.4 if damaging effects from timber operations cannot be avoided.

(b) The determination of significance shall:

(1) Be based upon criteria defined for significant archaeological or historical sites in 14 CCR 895.1

(2) Utilize any information provided by Native Americans, archaeological, historical or ethnographic data pertinent to the region and to the cultural resource, and the physical characteristics of the archaeological or historical site.

(c) If required by subsection (a), a preliminary determination of significance shall be made by the RPF or the RPF's supervised designee and provided in the Confidential Archaeological Addendum.

(d) Where the Director determines that timber operations may cause a substantial adverse change to a significant archaeological or historical site and the RPF and the Director cannot agree upon protection measures, a professional archaeologist provided by the THP submitter shall make a survey and prepare a report on the potentially affected site or sites and the potential impacts of the proposed timber operations. The part of the report that relates to archaeological sites is confidential. This report, if it discusses impacts on Native American archaeological sites, shall be provided by the Director to Native American and the NAHC. This report shall contain recommendations for mitigation, the elimination of impacts, or for the reduction of impacts to avoid or prevent substantial adverse change to significant archaeological or historical resources. The report shall meet the standards of the Preservation Planning Bulletin, Number 4, December 1989 (Office of Historic Preservation), entitled Archaeological Resource Management Reports (ARMR): Recommended Contents and Format. The Director

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shall make the final determination of significance and substantial adverse change based on advice of a professional archaeologist.

Note: Authority cited: Sections 4551 and 4551.5, Public Resources Code. Reference: Sections 4582(f), 21002 and 21060.5, Public Resources Code.

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14 CCR § 1104.1

## § 1104.1. Conversion Exemptions.

Timber operations conducted under this subsection shall be exempt from conversion permit and timber harvesting plan requirements of this article except no tree that existed before 1800 A.D and is greater than sixty (60) inches in diameter at stump height for Sierra or Coastal Redwoods, and forty-eight (48) inches in diameter at stump height for all other tree species shall be harvested unless done so under the conditions or criteria set forth in subsection 1104.1(j). Timber operations shall comply with all other applicable provisions of the Z'berg-Nejedly Forest Practice Act, regulations of the Board and currently effective provisions of county general plans, zoning ordinances and any implementing ordinances. The Notice of Conversion Exemption Timber Operations shall be considered synonymous with the term "plan" as defined in 14 CCR 895.1 when applying the operational rules and regulations of the Board.

(a) ) This conversion exemption is applicable to a conversion of timberland to a non-timber use only, of less than three acres in one contiguous ownership, whether or not it is a portion of a larger land parcel and shall not be part of a THP. This conversion exemption may only be used once per contiguous land ownership. No person, whether acting as an individual, acting as a member of a partnership, or acting as an officer or employee of a corporation or other legal entity, may obtain more than one exemption pursuant to this section in a five-year period. If a partnership has as a member, or if a corporation or any other legal entity has as an officer or employee, a person who has received this exemption within the past five years, whether as an individual or as a member of a partnership, or as an officer or employee of a corporation or other legal entity, then that partnership, corporation, or other legal entity is not eligible for this exemption. "Person," for purposes of this section, means an individual, partnership, corporation, or any other legal entity.

(1) ) A Notice of Conversion Exemption Timber Operations (notice) must be prepared by an RPF and submitted to the Director. The notice shall contain the following:

(A) the names, addresses, and telephone numbers of the timber owner, owner of the timberland to be converted, RPF, timber operator, and the submitter of the Notice of Conversion Exemption Timber Operations;

(B) ) legal description of the area where the timber operation is to be conducted, showing section, township, range, county and assessor parcel number;

(C) maps showing the ownership boundaries, the location of the timber operation, boundaries of the conversion, access routes to operation, location and classification of all watercourses, and landing locations;

(D) ) incorporation of a signed and dated statement from the authorized designee of the County Board of Supervisors stating that the conversion is in conformance with all county regulatory requirements, including county public notice requirements. When counties do not have an authorized designee, the RPF shall certify that the county has been contacted and the conversion is in conformance with county regulatory requirements (this may be incorporated into the notice);

(E) incorporation of a statement by the owner of the timberland to be converted:

1. certifying that this is a one-time conversion to non-timberland use,

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2. certifying that after considering the owner's own economic ability to carry out the proposed conversion and the feasibility evaluation required by 14CCR 1104.1(a)(6) that there is "bona fide intent", as defined in CCR 1100(b), to convert,

3. specifying what the non-timberland use will be after conversion, and

4. certifying and declaring under penalty of perjury that he/she whether acting as an individual, acting as a member of a partnership, or acting as an officer or employee of a corporation or other legal entity, has not obtained an exemption pursuant to this section in the last five years unless a waiver has been granted pursuant to 1104.1(a)(9); and

(F) signature of the submitter, timberland owner responsible for the conversion, the timber operator, and the RPF.

(2) ) The following conditions apply to conversion exemption timber operations:

(A) ) All timber operations shall be complete within one year from the date of acceptance by the Director.

(B) ) All conversion activities shall be complete within two years from the date of acceptance by the Director unless under permit by local jurisdiction. Failure to timely complete the conversion shall require compliance with stocking standards of PRC 4561 and stocking report requirements of Forest Practice Act and Board regulations.

(C) ) The RPF or supervised designee shall visit the site and flag the boundary of the conversion exemption timber operation and flag any applicable WLPZs and equipment limitation zones.

(D) ) This section refers to slash and woody debris resulting from timber operations associated with conversion exemptions. The timber operator shall be the responsible party for the treatment of logging slash and woody debris. Responsibility for treatment of logging slash and woody debris may be assumed by the landowner, provided that the landowner acknowledges in writing to the Director at the time of notice such responsibility and specific slash and woody debris treatment requirements and timing.

1. Unless otherwise required, slash greater than one inch in diameter and greater than two feet long, and woody debris, except pine, shall receive full treatment no later than April 1 of the year following its creation, or within one year from the date of acceptance of the conversion exemption by the Director, whichever comes first.

2. All pine slash three inches and greater in diameter and longer than four feet must receive initial treatment if it is still on the parcel, within 7 days of its creation.

3. All pine woody debris longer than four feet must receive an initial treatment prior to full treatment.

4. Initial treatment shall include limbing woody debris and cutting slash and woody debris into lengths of less than four feet, and leaving the pieces exposed to solar radiation to aid in rapid drying.

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5. Full treatment of all pine slash and woody debris must be completed by March 1 of the year following its creation, or within one year from the date of acceptance of the conversion exemption by the Director, whichever comes first.

6. Full slash and woody debris treatment may include any of the following:

- a. burying;
- b. chipping and spreading;
- c. piling and burning; or
- d. removing slash and woody debris from the site for treatment in compliance with (a)-(b).

Slash and woody debris may not be burned by open outdoor fires except under permit from the appropriate fire protection agency, if required, the local air pollution control district or air quality management district. The burning must occur on the property where the slash and woody debris originated.

7. Slash and woody debris, except for pine, which is cut up for firewood shall be cut to lengths 24 inches or less and set aside for drying by April 1 of the year following its creation. Pine slash and woody debris which is cut up for firewood shall be cut to lengths 24 inches or less and set aside for drying within seven days of its creation. All treatment work must be completed prior to the expiration date for the conversion exemption.

8. Any treatment which involves burning of slash or woody debris shall comply with all state and local fire and air quality rules.

9. This section does not supersede more restrictive treatments or time frames within a Forest district or subdistrict.

(E) Timber operations may be conducted during the winter period. Tractor operations in the winter period are allowed under any of the following conditions:

1. During dry, rainless periods but shall not be conducted on saturated soil conditions that may produce significant sediment discharge. Erosion control structures shall be installed on all constructed skid trails and tractor roads prior to sunset if the National Weather Service forecast is a "chance" (30% or more) of rain within the next 24 hours.

2. When ground conditions in the conversion exemption area and appurtenant roads satisfy the "hard frozen" definitions in 14 CCR 895.1.

3. Over-snow operations where no soil disturbance occurs.

(F) No timber operations within a WLPZ unless specifically approved by local permit (e.g. County, City).

(G) ) The timber operator shall not conduct timber operations until receipt of the Director's notice of acceptance. Timber operations shall not be conducted without a valid on-site copy of the Director's notice of acceptance of operations and a copy of the Notice of Conversion Exemption Timber Operations as filed with the Director.

(H) No sites of rare, threatened or endangered plants or animals shall be disturbed, threatened or damaged and no timber operations shall occur within the buffer zone of a sensitive species as defined in 14 CCR 895.1.

(I) No timber operations on significant historical or archeological sites.

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(J) ) The RPF and the timber operator shall meet (on-site, or off-site) if requested by either party to ensure that sensitive on-site conditions and the intent of the conversion regulations such as, but not limited to, slash disposal, will be complied with during the conduct of timber operations.

(3) ) A neighborhood notification of conversion exemption timber operations shall be posted on the ownership visible to the public by the RPF or supervised designee, at least 5 days prior to the postmark date of submission of the Notice of Conversion Exemption Timber Operations to the Director. The date of posting shall be shown on the neighborhood notice. In addition, immediately prior to the submission of the exemption to the Director, the landowner shall mail a letter to adjacent landowners within 300 feet of the boundaries of the exemption, and to Native Americans, as defined in 895.1 notifying them of the intent to harvest timber. The mailed letter of notice and the posted notice shall contain the following information on a form prepared by the RPF:

(A) the name, address and telephone number of the timberland owner, the timber operator, the agency of the county responsible for land use changes and the designated representative; if any, and the RPF;

(B) the location of the project, parcel number, street address, section, township and range, and;

(C) ) A statement explaining that this is a conversion from timberland use to a new land use, what the new land use will be, and that the maximum size is less than three acres.

(4) ) The Director shall determine if the Notice of Conversion Exemption Timber Operations is complete and accurate within fifteen days from the date of receipt.

(A) If the Notice of Conversion Exemption Timber Operations is not complete and accurate it shall be returned to the submitter identifying the specific information required. When found complete and accurate, the Director shall immediately send a notice of acceptance of operations to the submitter.

(5) ) The timberland owner shall, within one month from the completion of conversion exemption timber operations, which includes all slash disposal work, submit a work completion report to the Director.

(6) ) The timberland owner shall, using the services of an RPF to the extent the information required is within the scope of professional forestry practice, provide information documenting that the conversion to the stated non-timber use is feasible based upon, at a minimum, the following:

(A) the extent of the vegetation removal and site preparation required for the conversion;

(B) the suitability of soils, slope, aspect, and microclimate for the stated non-timber use;

(7) ) The Department shall provide for inspections, as needed, to determine that the conversion was completed.

(8) ) The notice shall expire if there is any change in timberland ownership.

(A) If the conversion has not been completed, the timberland owner on the notice shall notify the Department of the change in timberland ownership on or before 5 calendar days after a change in ownership.

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(B) If operations have been conducted, but not completed under the exemption, the timberland owner on the notice shall notify the new timberland owner at least 15 days prior to the sale of the timberland of the requirements under 14CCR 1104.1(a)(8)(C).

(C) If operations have been conducted, but not completed under the exemption, the new timberland owner shall:

1. submit a new notice, or
2. comply with the following:
  - a. harvest no additional timber;
  - b. meet stocking requirements of 14CCR 1104.1(a)(2)(B);
  - c. dispose of the slash created under the exemption activities according to 14CCR 1104.1(a)(2)(D);
  - d. provide erosion control for skid trails, roads, landings, and disturbed areas as required by the Forest Practice Rules.
  - e. submit a report within 90 days of the change of timberland ownership that items a through d above were completed.

(9) ) A timberland owner may request a waiver to the five-year limitation described in 14 CCR 1104.1(a). The Director may grant the waiver upon finding that one of the following conditions exist:

(A) 1. the construction of a building approved by the appropriate county/city permitting process is listed in the accepted Notice of Conversion Exemption Timber Operations as the non-timberland use after the conversion, and

2. the timberland owner demonstrates to the Director that substantial liabilities for building construction have been incurred on each conversion exemption that the timberland owner has received in the last 5 years at the time the waiver is requested, and

3. operations conducted on all exemptions issued to the timberland owner within the past 5 years, prior to the time the waiver is requested, have been conducted in a manner that meets or exceeds the intent of the Act and rules or any corrective work required by the Director has been satisfactorily completed.

(B) the change of ownership which caused the previous notice to expire was not the result of the sale of the timberland and the new timberland owner provides information demonstrating that the imposition of the 5-year limitation described in 14 CCR 1104.1(a) would impose an undue hardship on the timberland owner.

(C) the notice has expired and no operations have been conducted.

(D) ) The timberland owner provides an explanation and justification for the need of a waiver that demonstrates that the imposition of the 5-year limitation described in 14 CCR 1104.1(a) would impose an undue hardship on the timberland owner.

(b) Construction or maintenance of right-of-way by a public agency on its own or any other public property.

(c) ) The clearing of trees from timberland by a private or public utility .....