



**Management Committee**  
**Timberland Definitions Review**  
**March 3, 2015**

● PROBLEM OVERVIEW

Definitions describing “Timberland” are very subjective in statute. A wide range of interpretation can be applied to them. The Board’s regulations do not go very far in making them implementable, nor do they make them more specific. This definition is important, as it relates to what, specifically the Board is regulating pursuant to its authority. For example, the Board regulates “Timber operations”, which are defined in statute as “the cutting or removal, or both, of timber or other solid wood forest products, including Christmas trees, from **timberlands** ...”.

PRC §4526 states:

*"Timberland" means 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 any 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 after consultation with the district committees and others.*

PRC §4621 states:

*(a) Any person who owns timberlands **which are to be devoted to uses other than the growing of timber** shall file an application for conversion with the board. The board shall, by regulation, prescribe the procedures for, form, and content of, the application. An application for a timberland conversion permit shall be accompanied by an application fee, payable to the department, in an amount determined by the board pursuant to subdivision (b).*

As mentioned above, the regulations that currently exist generally reference the statutes mentioned here. This can, and has, led to some disagreement, as it is susceptible to wide interpretation.

A letter received from the public illustrates this point and offers suggestions:

*“Under current interpretation, there is virtually no true 'conversion' of timberland. Despite having received regulatory approval for 'conversion', no land is 'converted' so long as a tree of a commercial species is allowed to grow.”*

*“Since 'Timberland' has a statutory definition, I would suggest that the Board consider defining what 'available for, and capable of means. Specifically, I would suggest that the Board specifically exclude any developed (those with an existing permitted residence) residential parcels less than a given size - say 3 acres. Practically, how can such parcels reasonably be considered 'available for' production of forest products?”*

*“What is a 'crop of trees'? Can the removal of a single merchantable tree constitute a 'crop of trees'? For example, if a residential landowner has obtained the services of a licensed tree service to remove a single tree from their backyard, can such activities reasonably be construed as 'timber operations' on 'timberland'? I would suggest the Board consider defining a 'crop of*

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*trees' as harvest of two or more trees that result in a load or more of logs on commercial log truck. This could be further refined as 25 tons, 10 cords or 4 thousand board feet.”*

- RELEVANT LEGAL INFORMATION.

Authority: PRC §740, §4552, §4621

Reference: PRC §4526, §4584.

Consistency: GC §51100, Clinton v. County of Santa Cruz (1981) 119 Cal.App.3d 927, 174 Cal.Rptr. 296

- RELEVANT FACTUAL INFORMATION.

As seen above, several terms define timberland: “available”, “capable”, “crop”, and “devoted to”. “Crop” and “Commercial species” are already defined by the Board.

**1. Capable:** Generally, this can be defined as capacity to produce trees. Merriam-Webster (MW): able to do something : having the qualities or abilities that are needed to do something

**Possible descriptions:** Capable could mean land that has the potential for 15 cu ft per acre of wood production per year (this comports with GC for TPZ lands). It could also mean land that can be re-stocked (per FPRs) within 5 years. It could be further defined as pertaining only to commercial species as defined by the Board.

The above meets the criteria of defining the capacity of the land to produce (and re-produce) timber of commercial species. One possible drawback (or not) is in areas of high intensity wildfire, which may result in soils incapable of being re-habilitated within 5 years.

**2. Available:** This can be defined as whether harvesting is an allowable use. MW: easy or possible to get or use : present or ready for use

**Possible descriptions:** One possible way would be whether County Zoning has determined that harvesting is an allowable use. This would mean that TPZ would be “available for”. For non-TPZ, it could mean that the county has determined that the zone in question (examples: AG or Forestland) has timber management as a compatible or allowed use.

Under this scenario, lands that are put under an easement that prohibits harvesting would be “converted” from timberland. Lands that have zoning restrictions placed upon harvest would likewise be converted.

One possibility is to tie the definition to the “devoted to” aspect of TPZ zoning, and to further define “devoted to”

**3. Crop of Trees:** MW: a plant or plant product that is grown by farmers : the amount of a crop that is gathered at one time or in one season

At the inception of the Z’Berg-Nejedly Forest Practice Act, The Board defined in Title 14 §1021 a crop of trees as “3 acres or larger in a single ownership”. This was eliminated in 1979 and the definition in §895.1 “within the meaning of PRC 4526, means any number of trees which can be harvested commercially” was left as the

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sole definition. This was due to the advent of AB 1111 which called upon bodies to review their regulations for consistency.

## 4. Timberland Productivity Act

GC § 51104 states:

(e) "Timber" means trees of any species maintained for eventual harvest for forest products purposes, whether planted or of natural growth, standing or down, on privately or publicly owned land, including Christmas trees, but does not mean nursery stock.

(f) "Timberland" means privately owned land, or land acquired for state forest purposes, which is devoted to and used for growing and harvesting timber, or for growing and harvesting timber and compatible uses, and which is capable of growing an average annual volume of wood fiber of at least 15 cubic feet per acre.

(g) "Timberland production zone" or "TPZ" means an area which has been zoned pursuant to Section 51112 or 51113 and is devoted to and used for growing and harvesting timber, or for growing and harvesting timber and compatible uses, as defined in subdivision (h).

## 5. Forest Practice Rules

PRC §754 states:

"Forested landscapes" means those tree dominated landscape and their associated vegetation types on which there is growing a significant stand of tree species, or which are naturally capable of growing a significant stand of native trees in perpetuity, and is not otherwise devoted to nonforestry commercial, urban, or farming uses.

PRC §4621 states, in part:

Any person who owns timberlands which are to be devoted to uses other than the growing of timber shall file an application for conversion with the board.

"Devoted to uses other than the growing of timber" occurs where timberland has been cleared and another, non-timber growing, use established. What about local government land use decisions that prohibit, discourage or otherwise substantially interfere with timber harvesting (see "available for" discussion above)? This might include actions such as favoring or allowing other land uses through zoning changes, making timber harvesting infeasible through reduced parcel sizes or introducing uses on adjoining lands that are in conflict with growing timber. Do such actions result in timberland that is no longer devoted to timber growing?

The Forest Practice Rules (FPR) definition of Timberland Conversion in non-TPZ timberland (CCR 1100(g)), includes reference to changes in land use that would conceivably interfere with growing timber (thought it ties the Department's permitting authority to only those actions that require timber operations, i.e., a THP):

*Future timber harvests will be prevented or infeasible because of land occupancy and activities thereon*

*There is a clear intent to divide timberland into ownerships of less than three acres.*

**(g) "Timberland Conversion":**

**(1) Within non-Timberland Production Zone (TPZ) timberland, transforming timberland to a non-timber**

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growing use through timber operations where:

(A) Future timber harvests will be prevented or infeasible because of land occupancy and activities thereon; or

(B) Stocking requirements of the applicable district forest practice rules will not be met within five years after completion of timber operations; or

(C) There is a clear intent to divide timberland into ownerships of less than three acres (1.214 ha.).

(2) Within TPZ lands, the immediate rezoning of TPZ lands, whether timber operations are involved or not except as exempt from a timberland conversion permit under 14 CCR 1104.1.

## PRC 4527. Timber operations.

(a) (1) "Timber operations" means the cutting or removal, or both, of timber or other solid wood forest products, including Christmas trees, from timberlands for commercial purposes, together with all the incidental work, including, but not limited to, construction and maintenance of roads, fuel breaks, firebreaks, stream crossings, landings, skid trails, and beds for the falling of trees, fire hazard abatement, and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities, but excluding preparatory work such as treemarking, surveying, or roadflagging.

(2) "Commercial purposes" includes (A) the cutting or removal of trees that are processed into logs, lumber, or other wood products and offered for sale, barter, exchange, or trade, or (B) the cutting or removal of trees or other forest products during the conversion of timberlands to land uses other than the growing of timber that are subject to the provisions of Section 4621, including, but not limited to, residential or commercial developments, production of other agricultural crops, recreational developments, ski developments, water development projects, and transportation projects.

The FPA and the FPRs, appear to give consideration to both direct and indirect actions which may result in timberland no longer being devoted to timber production. However, it is not altogether clear or well defined. It is further complicated by the requirement that all conversions, both those occurring through timber operations and those resulting from land use decisions, require the same permit.

In addition, all references to "timberland" and "growing timber" have a commercial intent. "Timber growing" is not synonymous with "tree growing" nor is "timberland" synonymous with "forested land". It is expected that "timberland" is devoted to growing "timber" for "cutting and removal" for "commercial purposes". While a parcel may contain commercial species that are subject to the FPRs it may not be "devoted" to growing timber if the zoning or other land use restrictions preclude, discourage or interfere with harvesting in favor of another use or uses.

**Devoted:** MW: characterized by loyalty and devotion (: the use of time, money, energy, etc., for a particular purpose)

"Devoted to uses other than the growing of timber" might be defined by the Board to include:

- Any rezoning of TPZ, in accordance with GC §51133 (immediate rezone) and GC §51120 (ten year roll out).
- Changes in zoning from classes such as Forest Land, General Forest, and Agriculture, where the Purpose and Uses clearly allow for forestry, forest management, tree farming, timber harvesting and other compatible uses, to zoning classes where the intent is to clearly encourage other uses such as rural residential, commercial, non-forest agricultural, etc.
- Dividing timberland into parcels of less than 160 acres, unless timber management is supported by a Joint Timber Management Plan prepared by an RPF.
- Administrative withdrawals of timberland for parks, reserves, open space, or conservation easements

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or recorded deed restrictions where the lands will no longer be devoted to growing timber.

- Any zoning change that would not allow harvesting to occur on timberlands.

**Possible descriptions:** The term “any” is somewhat all encompassing. “Harvested commercially” might imply economic return. One problem with trying to define via economics is that when there is market downturn, what was previously “economic” may cease to be viable.

## 6. Clinton v. County of Santa Cruz

“In our view, the definitions of “timber” and “**timberland**” contained in section 51100, subdivisions (e) and (f), respectively, ought not to be measured by any one owner's past forest practices or subjective intent. Rather, we conclude that land is “maintained for eventual harvest for forest product purposes” and “devoted to and used for growing and harvesting timber,” for purposes of subdivisions (e) and (f) of section 51100, when it is inherently capable of being so used or maintained and has not, by prior activity, been rendered unsuitable for forest product purposes. Such an interpretation not only comports with the legislative intent, but also harmonizes section 51100 with the entire legislative scheme envisioned by the FTRA.”

## 7. Oregon

(11) “Commercial” means of or pertaining to the exchange or buying and selling of commodities or services. This includes any activity undertaken with the intent of generating income or profit; any activity in which a landowner, operator or timber owner receives payment from a purchaser of forest products; any activity in which an operator or timber owner receives payment or barter from a landowner for services that require notification under OAR 629-605-0140; or any activity in which the landowner, operator, or timber owner barter or exchanges forest products for goods or services. This does not include firewood cutting or timber milling for personal use.

(26) “Forestland” means land which is used for the growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

(28) “Forest tree species” means any tree species capable of producing logs, fiber or other wood materials suitable for the production of lumber, sheeting, pulp, firewood or other commercial forest products except trees grown to be Christmas trees as defined in ORS 571.505 on land used solely for the production of Christmas trees.

## 8. Washington

“Forest land” means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. For small forest landowner road maintenance and abandonment planning only, the term “forest land” excludes the following:

- (a) Residential home sites. A residential home site may be up to five acres in size, and must have an existing structure in use as a residence;
- (b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

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"Forest trees" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than 15 years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

"Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, timber does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

## 9. FIA

21. Forest Land. Federal, state and private land growing forest tree species which are, or could be at maturity, capable of furnishing raw material used in the manufacture of lumber or other forest products. The term includes federal, state and private land from which forest tree species have been removed but have not yet been restocked. It does not include land affirmatively converted to uses other than the growing of forest tree species.

38. Noncommercial Forest Land. Habitat types not capable of producing twenty (20) cubic feet per acre per year

- PROPOSED TEXT OF THE REGULATION. **TBD**
- ALTERNATIVES.
  1. Leave the standard as-is. Allow the interpretation to continue to be made on a case by case basis. This has led, however, to uneven application in the past.
  2. Apply prescriptive standards. These can include productivity, size of ownership, and zoning laws.
  3. RPF Evaluation. The Board could allow, as is done under the Timberland Productivity Act, to allow for an RPF evaluation of the land to determine if the subject property is timberland.
  4. Utilize thresholds. Under a Senate bill in 2005, which was not approved, the definition would have become:

*Timberland does not include a parcel of land less than one acre; or a parcel of land less than three acres that was created under lead agency authority of a county or city and the approval of which was subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000)), and where a residential or commercial use is a permitted or conditional use under a county or city general plan.*

The Board could adopt a threshold under its definitions that mirrored this approach, as it did previously under §1021.

**Performance Standard v. Prescriptive Standard:** "In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative." (Gov. Code, §

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11346.2, subds. (b)(1) & (b)(4)(A))

- **PURPOSE AND NECESSITY FOR THE DRAFTED REGULATIONS. TBD**

**Purpose:** The purpose of the proposed regulations should reflect the intent of the statute(s) being implemented, interpreted, or made specific in the rulemaking. How do the proposed regulations address the problem identified by the agency? To find the purpose of a statute, look first to the words of the pertinent statute(s). Sometimes the purpose is set out at the beginning of the chapter or article, or maybe in un-codified statutory provisions. If the purpose is not set out in the language of the statute, purpose may be gleaned from legislative history materials. If you can't identify the purpose from either the words or the legislative history, sometimes the purpose is obvious from what the statute addresses. You may sometimes find the purpose of a statute stated in a court decision.

**Benefits:** Describe the benefits of the regulation. The purpose of the statute may be to achieve some benefit or goal. (For example, the purposes of the APA are to provide a meaningful opportunity for public participation and to create a record for judicial review.) So, think about and state the benefits and goals of the statute you are planning to implement, interpret, or make specific.

**Necessity:** An agency must be able to demonstrate why each provision of the regulation is reasonably necessary to effectuate the purposes of the statute(s) or other provisions of law the regulation implements, interprets or makes specific, AND is reasonably necessary to address the problem the agency intends to address. In other words, explain why the agency is addressing the problem and effectuating the purpose of the statute in this particular way.

**Documents Relied Upon:** Identify each technical, theoretical, empirical study, report, or similar document, if any, the agency is relying upon to support the necessity for the regulation. Sometimes an explanatory statement will itself be adequate. Other times the statement or one or more of its parts will have to be demonstrated by the use of studies, reports, documents or other material relied upon by the agency. The bottom line is that the rulemaking record must contain substantial evidence to demonstrate that the regulation is reasonably necessary to effectuate the purposes of the statute(s) or other provisions of law the regulation implements, interprets or makes specific, AND address the problem the agency intends to address.

- **FISCAL /ECONOMIC EFFECTS OF THE REGULATION. TBD**

**Economic Impact Assessment (EIA):** Except for major regulations (discussed above), the agency must prepare an Economic Impact Analysis/Assessment (EIA) that analyzes whether and to what extent the regulation will affect:

- the creation or elimination of jobs within the State of California,
- the creation of new businesses or the elimination of existing businesses within the State of California,

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- the expansion of businesses currently doing business within the State of California, and
- the benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

This assessment must be based upon adequate information concerning the consequences of the proposed regulation. (See Gov. Code, § 11346.3, subd. (e)). In other words, the BIA must contain sufficient information to explain how the agency reached the stated results.

**Cost Impacts On Representative Person or Business:** Describe the cost impacts known to the agency that a representative private person or business would incur to comply with the proposed regulation. This is "the amount of reasonable range of direct costs, or a description of the type and extent of direct costs, that a representative private person or business necessarily incurs in reasonable compliance with the proposed action." (Gov. Code, §

**Reporting Requirement:** Determine whether the proposed regulation establishes a reporting requirement that applies to business. If a reporting requirement created by the regulation does apply to business, your agency must include a finding the NOPA that the requirement "is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses."

**Warning:** If you do not include this finding, the reporting requirement does not apply to business. (Gov. Code, § 11346.3 subd. (d))

**Effects on Small Business:** Determine whether the selected alternative affects small business using the definition of "small business" in the APA at section Government Code section 11342.610. If you decide the selected alternative does not affect small business, prepare a brief explanation of the reasons for that decision. (1CCR 4)

- **ADDITIONAL CONSIDERATIONS. TBD**

**Consistency With Existing State Regulations:** The agency must evaluate whether the proposed regulation is inconsistent or incompatible with existing state regulations. (Gov. Code, § 11346.5, subd. (a)(3)(D))

1. PRC 4712. As used in this article:

(a) "Owner" includes any individual, partnership, corporation, or association.

(b) "Timberland" means any land which has enough timber, standing or down, to constitute, in the judgment of the board, an insect or pine beetle infestation breeding ground or plant disease hazard of a nature to constitute a menace, injurious and dangerous to timber or forest growth.

**Federal Conformity:** Determine whether the proposed regulation differs substantially from an existing comparable federal regulation or statute. If it does, draft a brief description of the significant differences and identify the full citation of the federal regulations or statutes. This information will be used when drafting the NOPA. (Gov. Code, § 11346.5, subd. (a)(3)(B))

**Identical to Existing Federal Regulation:** Determine whether the proposed regulation is

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identical to previously adopted /amended federal regulation. If so, then include a statement to that effect in the NOPA along with a citation to where an explanation of the provisions of the regulation can be found. If applicable, this is sufficient to satisfy the ISOR and FSOR requirements. (Gov. Code §§ 11346.2, subd. (c) and 11346.9, subd. (c))

**Efforts to Avoid Duplication or Conflict with Federal Regulations:** This evaluation applies only to a department, board, or commission within the Environmental Protection Agency, the Natural Resources Agency, or the Office of the State Fire Marshal. Draft a description of your efforts to avoid unnecessary duplication or conflict with federal regulations addressing the same issues. You may adopt differing regulations "upon a finding of one or more of the following justifications:

- a) The differing state regulations are authorized by law; or b) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment. This evaluation must be made available to the public. (Gov. Code, § 11346.2, subd. (b)(6))