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June 4, 1990

Mr. Gerald D. Cochran
Del Norte County Assessor
Courthouse
Crescent City, CA 95531

Attention: Mr. Richard L. McKinnon, Deputy Assessor

Dear Mr. Cochran:

This is in response to your April 2, 1990 letter to Mr. Paul Crebbin wherein you requested our opinion concerning the interpretation of Government Code section 51119.5, which sets forth the requirements for the preparation of joint timber management plans in conjunction with divisions of parcels zoned as timberland production, and Government Code sections 51120-51121 and 51130-51134, which pertain to rezoning of parcels zoned as timberland production.

According to your letter, the owner of a 20.6 acre parcel, with a house on it, zoned as timberland production also owns a contiguous 21.32 acre parcel also zoned as timberland production. A Del Norte County ordinance has established a minimum lot size for land zoned as timberland production of 20 acres. At the owner's request, the Del Norte County Planning Department is considering moving the boundary line between the two parcels to create a two-acre parcel with the existing house and a 39.92 acre parcel. "The Planning Department justifies this by their 'Density Zoning' regulations*."

* Per the enclosed March 29, 1990 Staff Report Addendum, the "D" combining zoning district (chapter 20.45 DNCC) when combined with a basic zoning district will not allow further subdivision of lots created by a subdivision which in turn allows varied lot sizes which would best utilize unique site situations found compatible with the general plan; and Planning Department staff proposes to permit the "D" combining zoning district to be combined with the TP2 zoning district to provide for varied lot size within the constraint of the 20-acre parcel/house density already established. (Pg. 119)

With respect to section 51119.5, in providing that "parcels zoned as timberland production under this chapter may not be divided into parcels containing less than 160 acres unless the original owner prepares a joint timber management plan, etc.," the Legislature has made no attempt to make the application of the section dependent upon why parcels zoned as timberland production are divided. Thus, it has been our opinion that the section requires preparation of joint timber management plans for all parcels zoned as timberland production when they are divided into parcels containing less than 160 acres, for whatever the reason. See our August 23, 1989 letter to Mr. Stephen R. Nielson, Deputy Humboldt County Counsel, in this regard, copy enclosed.

Were it considered necessary or desirable that divisions of parcels as proposed be excluded from the requirements of section 51119.5, it would seem that such would be a matter for the Legislature through an appropriate amendment(s) to section 51119.5.

Our reading of your letter and of the March 29, 1990 Staff Report Addendum, however, is not that the parcels are being further divided for continued timberland production, but that the division is intended to remove the "newly created" two-acre parcel from timberland production:

"...As a result, it is staff's recommendation that a specific policy be considered which would focus only on situations such as Cline's where the intent is to divide a residence which pre-dates the TPZ program from the larger parcel. This could allow the creation of a smaller lot (i.e. 2-3 acres) for the pre-existing residence with a larger parcel (38-39 acres) upon which 37-38 acres of timberland could be managed as one unit under one owner with no further subdivision possible while in the TPZ program. (Staff Report Addendum, pg. 119)"

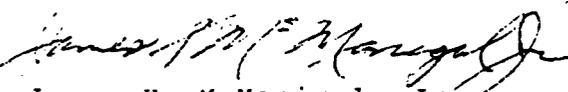
As you are aware, AB 1258/Statutes 1976, chapter 176 changed the existing system of taxing timber and land on which timber is growing. Beginning with the 1977-78 fiscal year, privately owned land primarily devoted to and used for growing and harvesting timber is zoned for minimum ten-year period as timberland 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 timberland production pursuant to Government Code sections 51110 et seq. results from the enactment of a zoning ordinance and completion of other zoning-related matters. Land zoned as timberland production 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).

Included in sections 51100-51155 are the various sections pursuant to which land zoned as timberland production may be removed therefrom/rezoned. Section 51121 is the primary section and the one by which a board of supervisors can rezone property which has been zoned as timberland production. 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. Review of these sections will disclose results peculiar to each method of rezoning. However, these are the only methods the Legislature has provided for rezoning land zoned as timberland production; and in our view, any attempt to rezone land zoned as timberland production other than as provided for in sections 51121, 51133 and 51134, and 51155 is void and of no effect.

In conclusion, our intention is to provide prompt, courteous, and helpful responses to inquiries such as yours. Suggestions that help us accomplish this are appreciated.

Very truly yours,


James K. McManigal, Jr.
Tax Counsel

JKM:mw
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Enclosure

cc: Mr. John Hagerty
Mr. Paul Crebbin
Mr. Earle Gutman