STATE OF CALIFORNIA

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Executive Director

September 15, 1998

Mr.
P.O. Box

Re: Whether timberland owners may appeal TPZ site classifications used by an assessor to value timberlands zoned TPZ

Dear Mr. :

In our telephone conversation of September 3, 1998, you provided additional information regarding your request to Gary Platz for a legal opinion as to whether a timberland owner may appeal the TPZ site classifications used by the assessor to value timberlands zoned as TPZ. In his letter of June 8, 1998, Mr. Platz had responded to your letter of May 24, 1998, in which you asked several questions regarding the valuation of timberland, however, you have requested further clarification on the above stated issue.

As will be discussed below, a statutory right to appeal an assessor's grading of timberland in his county, pursuant to Board Property Tax Rule 1021 and on or before March 1, 1978, was provided to property owners in section 434.1 of the Revenue and Taxation Code.[1] Thereafter, changes to TPZ lands may occur, for various reasons; and such changes may give rise to changes in TPZ site classifications and, at the same time, TPZ land values, which are based upon site classifications. In our view, TPZ site classifications and values used by assessors for valuation purposes are, like assessors' other value judgments, appealable annually to the assessment appeals board or county board of supervisors meeting as a county board of equalization. (Secs. 1601 et. seq.)

LAW AND ANALYSIS

The provisions of Sections 434 and 434.1 are the starting point for this matter. Section 434 provides that instructions for grading timberland on the basis of its site quality and operability were to be prepared the State Board of Equalization on or before September 1, 1976 after consultation with the Timber Advisory Committee. Five general site quality classes were to be established, and within each of the five site quality classes, appropriate classes of operability

[1] All section references are to the Revenue and Taxation Code unless otherwise indicated.

were to be designated, based on factors such as accessibility, topography, and legislative or administrative restraints.

Section 434.1 provides that a rule setting forth final procedures for grading timberland on the basis of its site quality and operability, and in the Section 434 format, was to be adopted by the Board on or before March 1, 1997, after consultation with the Committee. As required by Section 434.1, the Board on January 6, 1977, adopted Property Tax Rule 1021, to provide instructions for grading timberland. Rule 1021 states that timberland is to be rated for productivity based on its ability to produce wood growth on trees, and provides a site classification table for this purpose, with site I denoting the areas of highest productivity and site V denoting the areas of lowest productivity. Section 434.1 also required the assessor to grade all timberland within the county on the basis of this rule on or before March 1, 1978. In addition, section 434.1 provided that the assessor's grading was subject to the appeals procedure established by law for other assessments (Secs. 1601 et. seq.). Thus, the assessor's grading could, in 1978, be appealed to an assessment appeals board or the county board of supervisors meeting as a county board of equalization, subject to timely filing of the appeals application and other relevant statutory requirements that govern the appeal process. The reason for this specific provision was, probably, that grading was not a "value judgment" of the kind typically appealable to an assessment appeals board, and the Legislature wanted to provide some review mechanism for the grading process.

The question then is, is the appeals provision in Section 434.1 applicable only in 1978 or applicable in 1978 and in subsequent years? Or, alternatively, is the appeals provision in Section 434.1 applicable to appeals of TPZ site classifications used by assessors for valuation purposes in years subsequent to 1978? We believe that that appeals provision in Section 434.1 is applicable only in 1978 to the assessor's 1978 grading of timberland in his county.

Initially, this is so because that is what the section says:

> "(b) . . . The assessor's grading is subject to the appeals procedure established by law for other assessments as provided . . ."

As indicated in Section 434 and Section 434.1(a), it is the grading of timberland that was the focus of those sections.

In addition, this aspect of the section pertains to a 1978 event:

> "(b) On or before March 1, 1978, each assessor . . . shall grade all timberland in his county. . . ."

The grading was for 1978. Consistent with Sections 1601 et. seq. appeal statutes and requirements, annual filing of appeals, 1978 for 1978 assessment matters, was necessary.

In addition, Section 434.1(b) states neither "on or before March 1, 1978, and each March 1 thereafter," nor "the assessor's grading is subject to the appeals procedure established by law for other assessments as provided in 1978 and in subsequent years," one or both of which would be necessary, in our view, in order to support a conclusion that the appeals provision in Section 434.1 is applicable for years other than 1978.

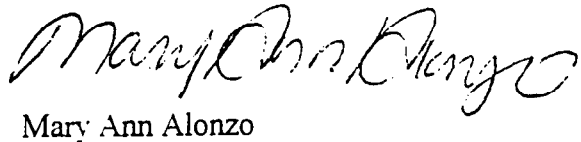
In our view, however, this does not mean that a timberland owner cannot appeal the TPZ site classifications and values used by the assessor for valuation purposes. While assessors' grading of timberland has been completed, thereafter, changes to TPZ lands may occur, for various reasons. Such changes may give rise to changes in TPZ site classifications and, at the same time, TPZ land values, which are based upon site classifications. Thus, TPZ site classifications and values used by assessors for valuation purposes are, like assessors' other value judgments, appealable annually to the assessment appeals board or county board of supervisors meeting as a county board of equalization. (Secs. 1601 et. seq.)

You stated that the assessor's position is that the statute of limitations has expired for an appeal based on timberland site classifications which he has used to value timberlands zoned TPZ, and that such an appeal should have occurred within two years of the establishment of the site classifications in 1976. An appeal of your case was held on April 24, 1998 before the County Board of Supervisors meeting as the county board of equalization. You provided a photocopy of the minutes of the appeal hearing to Mr. Platz. The minutes state that you contended that your taxes should be lower based on the "mixed conifer" soil type on your property. By discussing the mixed conifer soil type, you were not raising the issue of site classification within a region but rather, the issue of the region in which your property is located. The board upheld the assessor's opinion of value for your property, apparently based on his interpretation of applicable law that the statute of limitations had expired for an appeal based on the assessor's site classification of your property. Mr. Platz is correct that the three regions have been established by the legislature and are not subject to appeal, however, as indicated, in our view, the TPZ site classifications and values used by the assessor for valuation purposes are appealable annually.

As we discussed, Property Tax Rule 326 (Title 18, California Code of Regulations, section 326) is applicable to the 1998 hearing before the County Board of Equalization and states that an assessment appeals board cannot rehear an application. However, you also own other parcels of TPZ land which were not the subject of the appeal; therefore you stated you plan to appeal the TPZ issue of the site classifications and values used by the assessor for valuation purposes for those parcels. As the 1998 hearing pertained to a 1997 appeal, or to a prior year's appeal, the time for appealing 1997 values or values for years prior to 1997 has expired. The time for appealing 1998 values expires on September 15, 1998.

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

Very truly yours,



Mary Ann Alonzo
Tax Counsel

MAA:jd
h:/property/precednt/timberlx/1998/98013.maa

Enclosure (Rule 1021)

cc: Honorable
County Assessor

Mr. Richard Johnson, MIC: 64
Mr. Bill Jackson, MIC: 62
Mr. Gary Platz, MIC: 60
Mr. Frank Wilson, MIC: 60
Ms. Jennifer Willis, MIC: 70

State of California

BOARD OF EQUALIZATION

PROPERTY TAX RULES

Chapter 1. State Board of Equalization — Property Tax
Subchapter 11. Timber Yield Tax
Article 1. Valuation of Timberland and Timber

Rule 1021. TIMBERLAND GRADING RULE.

Reference: Sections 434.1, 38204, Revenue and Taxation Code.

(a) GENERAL. Beginning with the 1977-78 fiscal year, privately owned land and land acquired for state forest purposes which is primarily devoted to and used for growing and harvesting timber and is zoned for a minimum 10-year period as timberland production zone (TPZ) will be valued for property taxation on the basis of its use for growing and harvesting timber, plus the value, if any, attributable to existing, compatible, nonexclusive uses of the land.

(b) SITE QUALITY. Timberland is rated for productivity based upon its ability to produce wood growth on trees. Five general site classes are established wherein Site I denotes areas of highest productivity, Site II and Site III denote areas of intermediate productivity, and Site IV and Site V denote areas of lowest productivity. The five site quality classes are set forth within each of three general forest types: redwood, Douglas fir, and mixed conifers.

Land zoned as timberland production zone (TPZ) shall be graded by the assessor using the following site classification table as a measure of land productivity.

TIMBERLAND PRODUCTION ZONE SITE CLASSIFICATION TABLE

PRODUCTIVITY POTENTIAL	YOUNG-GROWTH REDWOOD[1]		DOUGLAS FIR[2]		PONDEROSA PINE, JEFFREY PINE, MIXED CONIFER & TRUE FIR[3]		
	SITE CLASS	SITE INDEX FEET @ 100 YEARS	SITE CLASS	SITE INDEX FEET @ 100 YEARS	SITE CLASS	SITE INDEX FEET @ 100 YEARS	SITE INDEX FEET @ 300 YEARS
HIGHEST	I	180 OR MORE	I	194 OR MORE	I	114 OR MORE	163 OR MORE
INTERMEDIATE	II	155-179	II	164-193	II	93-113	138-162
	III	130-154	III	134-163	III	75-92	113-137
LOWEST	IV	105-129	IV	103-133	IV	60-74	88-112
	V	LESS THAN 105	V	LESS THAN 103	V	LESS THAN 60	LESS THAN 88

[1] Linquist, James L., and Marshall N. Palley. Empirical yield tables for young-growth redwood. Calif. Agr. Exp. Stn. Bull. 796, 47 pp., 1963.

[2] McArdle, Richard E., and Walter H. Meyer. The yield of Douglas fir in the Pacific Northwest. USDA Tech. Bull. 201, 74 pp., Rev. 1961. Adjusted to average height of dominant trees after Forest Research Note No. 44, Pacific Northwest Forest and Range Experiment Station, by Forest Survey, Calif. Forest and Range Exp. Stn., 1948.

[3] Dunning, Duncan. A site classification for the mixed conifer selection forests of the Sierra Nevada. USDA Forest Serv. Calif. Forest and Range Exp. Stn. For. Res. Note 28, 21 pp., 1942.

Rule 1021. TIMBERLAND GRADING RULE. (Continued)

YOUNG—GROWTH REDWOOD. Site index based on average height of dominant trees at breast height age of 100 years. Use in young-growth redwood stands in which more than 20 percent of the stand by basal area is redwood and when sufficient dominant redwood trees are available to determine site index.

DOUGLAS FIR. Site index based on average height of dominant trees at age 100 years. Use in young-growth redwood stands in which 20 percent or less of the stand by basal area is redwood or when sufficient dominant redwood trees are not available to determine site index. Use also in old-growth redwood stands. In such cases, measure Douglas fir trees for determining site index. Also use for Sitka spruce, grand fir, hemlock, bishop's pine, and Monterey pine stands.

PONDEROSA PINE, JEFFREY PINE, MIXED CONIFER, AND TRUE FIR. Site index based on average height of dominant trees at age 100 and 300 years. Use also for lodgepole pine stands. For old-growth stands, use height of dominants at age 300 years.

(c) **OPERABILITY.** Timberland shall be rated for operability based upon such factors as accessibility, topography, and legislative or administrative restraints. On or before December 31, 1979, two classes of operability shall be used by the assessor and designated as operable or inoperable. Areas of inoperable land must be identified by the assessor. For the purpose of land site classification, inoperable means that any of the following circumstances are applicable:

(1) Extreme physical barriers prevent access.

(2) Legal or administrative restraints prevent access or harvest.

(3) Rocky ground, steep slopes, or sterile soil prevent growing or harvesting merchantable timber.

History: Adopted January 6, 1977, effective March 3, 1977.
Amended June 21, 1983, effective October 7, 1983.