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April 15, 2002

Honorable Gerald D. Cochran
Assessor, County of Del Norte
981 H Street, Suite 120
Crescent City, CA 95531

**RE:** ***Application of Government Code Section 51155 – Sale of TPZ Property***

Dear Mr. Cochran,

This is in reply to your letter of February 7, 2002 addressed to Tax Counsel IV Kenneth McManigal in which you request our opinion concerning the application of Government Code section 51155 to the sale of property located in a Timberland Production Zone (TPZ) by a private landowner to the (SRL) which subsequently conveyed the property to the State of California. As further explained below, section 51155 would not be applicable to TPZ land acquired by a private group, such as SRL, because that section does not pertain to purchases by a private group or to acquisitions by the State for a public purpose. Additionally, immediate rezoning would not occur upon purchase by SRL or the State, unless the private landowner or SRL previously made such a request and eminent domain procedures were initiated.

## Law and Analysis

Chapter 6.7, Article 1 of the Government Code (Section 51100 and following sections) set forth the provisions of the California Timberland Productivity Act of 1982 ("the Act"). The general purpose of the Act is to maintain timberland resources for "the long-term economic viability of the forest products industry and the long-term stability of local resource-based economies." Section 51101, subdivision (c). To fulfill that purpose, the Legislature created the Act "to implement the policies of this chapter by including all qualifying timberland in timberland production zones." Section 51103. Section 51104, subdivision (g) defines "timberland production zone" ("TPZ") as "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)." Subdivision (h) provides that compatible uses include management for watershed and management for fish and wildlife habitat or for hunting and fishing.

Sections 51112 and 51113 set forth the procedures for zoning land as timberland production. Section 51118 provides that land zoned as timberland production is subject to enforceable government restrictions which are to be enforced and administered by the city or county in a manner to accomplish the purposes of the constitution and the Act. Notwithstanding the foregoing zoning provisions, section 51155 provides that TPZ land shall be deemed immediately rezoned

> When any action in eminent domain for the condemnation of the fee title of an entire parcel of land zoned as timberland production is filed or when that land is acquired in lieu of eminent domain for a public agency or person or whenever there is any such action or acquisition by the federal government or any person, instrumentality or agency acting under authority or power of the federal government, . . . and for the purposes of establishing the value of the land, the timberland production zone (TPZ) shall be deemed never to have existed.

Thus, the immediate rezoning provisions of section 51155 are operative only when land is acquired by eminent domain or in lieu of eminent domain by a public agency of the State or a local government, or the federal government or one of its instrumentality's or agencies.

Under the facts presented, section 51155 would not apply to these two transactions because the state did not acquire the land under its power of eminent domain, and there is no indication that the conveyances were made in lieu of the state exercising its power.[1] Rather, SRL purchased the land for the purpose of transferring it to the State for use in a state park or preserve. In its mission statement, SRL states that it offers timberland for sale to the government for use as parkland.[2] The state may acquire property for public use without exercising the power of eminent domain pursuant to the authority of Code of Civil Procedure section 1230.030 which provides that

> Nothing in this title requires that the power of eminent domain be exercised to acquire property necessary for public use. Whether property necessary for public use is to be acquired by purchase or other means or by eminent domain is a decision left to the discretion of the person authorized to acquire the property.

Pursuant to that authority, the state acquired the subject land for public use as a state park by purchase and not "in lieu of eminent domain." Consequently, the transfers did not result in immediate rezoning of the property at the time of its sale to SRL or the subsequent transfer to the

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[1] SRL is a nongovernmental organization and has no right to exercise the power of eminent domain unless a statute authorizes such power. CCP § 1240.020.

[2] The homepage of the website (last updated 3/15/02) for the includes a statement by President in which he explains the organization's purpose as follows: "[W]e buy redwood forest land. Then we turn the land over to one of the thirty-seven California Redwood State Parks, to Redwood or Sequoia National Park, or to another public park or reserve."

state, assuming that SRL did not request immediate rezoning pursuant to Government Code section 51130 and following sections.

You state in your letter that eminent domain is "merely the power of the state to take private property for public use." You suggest that, in order to acquire land, the state is required to exercise its power of eminent domain and, thus, the subject purchase constituted an acquisition "in lieu of eminent domain." However, as stated above, the state has independent statutory authority to acquire property by purchase or other means.

In our view, the phrase "in lieu of eminent domain" as used in section 51155 refers to situations where a public entity proposes to acquire property with the intention of exercising the power of eminent domain in the event the property owner is unwilling to sell the property at reasonable price based on the fair market value. The public entity may first tender a purchase offer. If the offer is rejected by the owner, the public entity proceeds to exercise the power of eminent domain under the statutory procedures. If the offer is accepted, either initially or at a later stage of the process, then the public entity purchases the property directly "in lieu of eminent domain." As you have presented the facts of the transaction, the state simply accepted a sale offer from SRL and no eminent domain action was ever contemplated.

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 public entity.

Very truly yours,

*/s/ Lou Ambrose*

Lou Ambrose
Senior Tax Counsel

LA:tr
prop/prec/emdomain/02/03lou

cc: Mr. David Gau, MIC:63
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