



# Sierra Pacific Industries

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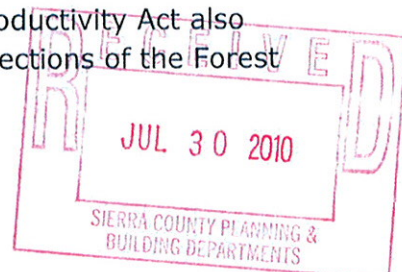
Dave Goicoechea, Chairman  
Sierra County Board of Supervisors  
P. O. Drawer D  
100 Courthouse Square, Suite 11  
Downieville, CA 95936

Mr. Goicoechea,

This letter is a request for you and your Board to consider a couple of issues that Sierra Pacific Industries has with the proposed TPZ Ordinance update. As a point of beginning I think that it would be useful to review the legislative history of the Timber Production Zone district so that your Board of Supervisors can adequately weigh its responsibilities and discretionary authority relating to the Timber Production Zone district (TPZ).

There are two legislative acts that dictate how the TPZ is to be administered by the County. The first legislation is the Forest Taxation Reform Act 1976 (Government codes 51110-51155), which required that each county assessor compile a list of parcels, regardless of their size, which the State Board of Equalization had assessed for timber production as its highest and best use, this became the (A-list). The assessors were then suppose to compile a list of all parcels, regardless of size, which in their judgment met the criteria of timberland, but had not been previously assessed as its highest and best use as timber production, this became the B-list. Next, the Forest Taxation Reform Act required the Board of Supervisors of each county, to adopt by ordinance, a Timber Preserve Zone district. The parcel owner could contest their parcels inclusion into the zone district if they could demonstrate to the majority of the full Board of Supervisors that it was not in the public interest for that parcel to be zoned TPZ. The Forest Taxation Reform Act also included criteria and protocol for the inclusion of additional parcels into the TPZ (C-list) and for their removal from TPZ. This legislation also included criteria or adding additional parcels to the TPZ and the removal of parcels from TPZ.

The next legislation that dictates how the TPZ is to be administered by the County is the Timber Productivity Act 1982. The Timber Productivity Act subsumed the Forest Taxation Reform Act and added policy statements, and includes the intent by which those policies were to be carried out. The Timber Productivity Act also defined many of the terms found in the government code sections of the Forest Taxation Reform Act.



The following are Sierra Pacific Industries comments relating to the Sierra County TPZ ordinance.

1) The TPZ ordinance uses extensively the definitions and wording from the Timber Productivity Act and Forest Taxation Reform Act, however the consistency of that usage relative to these legislative acts is incomplete or taken out of context in a manner that is misleading and therefore fails to convey the intent of the State law. This occurs in the following excerpts from the proposed zone ordinance.

*(c) Compatible Uses: The following shall be compatible uses within a timberland production zone unless such use can be found to be contrary to the definition of compatible use as defined herein: so long as such use or uses do not significantly detract from the use of the property for or inhibit the growing and harvesting of timber:*

The above definition is an attempt to paraphrase the actual definition of the term "compatible uses". The definition above is in conflict with the Timber Productivity Act. The following excerpts of GC 51104(g) and 51104(h) shows this inconsistency.

GC 51104(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).

With respect to the general plans of cities and counties, "timberland preserve zone" means "timberland production zone."

The definition above contemplates that the timberland production zone (TPZ); which the state compelled the county to adopt by ordinance to satisfy 51112 or 51113, would necessarily be considered by the county general plan with respect to both the growing and harvesting of timber and compatible uses defined in 51104(h) and the TPZ will be referred to as timber production not timber preserve zone. The definition of compatible uses in 51104(h) read:

(h) "Compatible use" is any use which does not significantly detract from the use of the property for, or inhibit, growing and harvesting timber, and shall include, but not be limited to, any of the following, unless in a specific instance such a use would be contrary to the preceding definition of compatible use:

Please have the Sierra County TPZ ordinance define compatible uses consistently with those uses provided under State law.

2) The second item to address is qualifying a residence as a permitted uses only if it is necessary for the management of the land. The planning staff has interpreted the definition of GC 51104 (h)6 incorrectly. Under 51104(h)6 the definition reads:

**A residence or other structure necessary for the management of land zoned as timberland production.**

This definition provides for a residence by right. The construction of this sentence indicates that a residence is a use by right since the definition of "or" when considered logically is: "the connective used in disjunction". As a disjunctive "or" is separating two alternatives. The first alternative is "A residence" the second alternative is "other structures", which includes the qualifier that necessitating that those other structures must be necessary for the management of the land. If the legislature wanted a residence to be attached to the qualifier the legislation could simply read, "A structure necessary for the management of the land" since a residence is a structure. The legislation did not due that but made a provision for a residence specifically identifying it in the definition. This also makes sense in regards to the compatible use definition in 51104 which allows "any use" so long as it does not inhibit the growing or harvesting of timber. So intuitively a residence would not inhibit the growing or harvesting of trees but other structures should be qualified since that term is vague and could cover a broad array of structures that might bring with them uses that are incompatible. Please delete "necessary for the management of land zoned TPZ" from Permitted Uses (d)1 of the TPZ ordinance. Please note that even with a residence permitted without qualification the residence will still require review for compatibility with the growing of timber and timber production in Permitted Uses (d) and for the Special Requirements for a single family residence in section (f).

3) The third issue that needs clarification in the Sierra County TPZ ordinance is in regards to the review process by staff relative to a permitted use meeting the requirement that "such use or uses do not significantly detract from the use of the property for or inhibit growing or and harvesting of timber".

*(d) Permitted Uses: The following shall be permitted uses within a "Timberland Production Zone" provided that such uses are compatible uses and so long as such use or uses do not significantly detract from the use of the property for or inhibit growing or and harvesting of timber:*

I would suggest that the ordinance include a statement that requires the review, relative to whether the permitted uses are compatible with the growing and

harvesting of timber, be conducted and certified by a California Registered Professional Forester (RPF). Because the evaluation would be on a forested landscape and would involve making judgments relative to forestry and timber operations the California Foresters Law compels this evaluation be done by a RPF. A licensed professional Forester is uniquely qualified to make the certification required in (d) of the proposed Sierra County TPZ ordinance since RPFs understand among other things the California Forest Practice Rules, forest ecology, soil site classifications, timber harvest engineering, fire prevention, fuels management, timber growth and can evaluate and mitigate for forestry related watershed and biological impacts. Registered Professional Foresters can also be held civilly and criminally accountable through the California Foresters Law, which should give staff solace that the evaluation is complete and the facts accurately conveyed. This evaluation and certification could be in letter form. Please modify the Sierra County TPZ ordinance to provide for the evaluation of compatible uses; relative the growing and harvesting of timber, to be conducted and certified by a California Registered Professional Forester.

4) The county ordinance should delete the last sentence in permitted use item #14 below since it is in conflict with the exemption provided under the State Mines and Reclamation Act (SMARA).

*14. Excavations or grading for the exclusive purpose of obtaining materials for roadbed construction and maintenance conducted in connection with timber operation or forest management on land owned by the same person or entity, and transported no further than Counties bordering or immediately adjacent to Sierra County. Limited to excavation and grading that is conducted adjacent to timber operation or forest management roads and shall not apply to onsite excavation or grading that occurs within 100 feet of a Class One watercourse or 75 feet of a Class Two watercourse, or to excavation for materials that are, or have been, sold for commercial purposes. Permitted only if slope stability and erosion are controlled in accordance with subdivision (f) of Section 3704 and subdivision (d) of Section 3706 of Title 14 of the California Code of Regulations and, upon closure of the site, the person closing the site implements, where necessary, revegetation measures and postclosure uses in consultation with the Department of Forestry and Fire Protection. Subject to the issuance of a grading permit.*

The exemption from the SMARA permitting process for forest management activities relating to roadbed construction and maintenance, was in recognition that forest roads are the primary source of sediment entering watercourses during timber operations and that by rocking roads and in particular watercourse crossings the potential for sediment transport is greatly reduced if not eliminated. The State exemption from the SMARA permit process is an incentive for landowners to rock more roads and road crossings, recognizing that Timber Harvest Plans are subject to CEQA, and by eliminating an additional time consuming and expensive permitting procedure the landowner can spend more money on rock and less on the paperwork. The SMARA permit exemption requires that slope stability and erosion

is controlled and that the reclamation of the pit be done in consultation with the Department of Forestry and Fire Protection (CAL FIRE). The Permitted Use Item #14 first recognizes the exemption by SMARA appropriately and then makes the excavation subject to a grading permit if it is more than ten dump trucks of rock (1,000yds). Ten dump trucks of rock may be sufficient for a single crossing on a forest road but it would not be sufficient material for most timber harvest plans. The State recognized the need for ready access to large quantities of gravel and rocks as part of timber management activities and therefore the exemption to a SMARA permit was provided. There have been no complaints, either by state and federal agencies or private individuals relating to our gravel operations for forest management activities in Sierra County. It is disappointing that staff seems to think it is better these beneficial gravel activities be stymied by requiring the issuance of a grading permit. A grading permit would necessitate essentially all the requirements of creating a commercial gravel operation under the State Mines and Reclamation Act permitting process, which the State exempted timber management from. To illustrate this point I have attached a portion of the Sierra County Grading Ordinance that the gravel operations relating to our forest management activities would be subject to.

#### **S12.08.290 Grading plans—Engineered Grading requirements.**

*Grading plans and specifications shall be prepared and signed by a civil engineer, as provided herein.*

*(a) The plans shall include everything required in section 12.08.270(a) and the following:*

*(1) All plans shall be on twenty-four (24) inch by thirty-six (36) inch sheets unless otherwise approved, and shall be drawn at a scale no less than one inch equals one hundred (100) feet. An identical electronic copy of the plans shall also be furnished to the Planning Department in Adobe Acrobat (.pdf) format or as otherwise approved, to facilitate routing and sharing of comments and requested revisions;*

*(2) A title block. Plans shall be entitled "grading plan" and state the purpose of the proposed grading and the name of the engineer or firm by whom this plan is prepared, owner's name and address, site address, date of preparation and draft or revision number;*

*(3) A vicinity sketch (not at map scale) indicating the location of the site relative to the principal roads, lakes, watercourses and wet meadow areas in the vicinity;*

*(4) North arrow and scale;*

*(5) A site plan indicating the extent of the work and any proposed divisions of land;*

*(6) The complete site boundaries (i.e., property lines) and locations of any existing utilities, easements and rights-of-way traversing or adjacent to the property which may potentially affect, or be affected by, the proposed project;*

- (7) The location of all existing or proposed roads, culverts, buildings, wells, pipelines, tree-lines, wetlands, watercourses, septic systems or areas reserved for on-site sewage disposal, and any other structures, facilities, and features of the site, as well as the location of all improvements on lots within one hundred fifty (150) feet of the proposed work;
- (8) Location and nature of known or suspected soil or geologic hazard areas, including but not limited to serpentine rock areas, landslides, etc.;
- (9) Accurate contour lines of the existing terrain and proposed finished grade at intervals not greater than two (2) feet (unless otherwise approved by the County), showing all topographic features and drainage patterns throughout the area where the proposed grading is to occur relative to a bench mark established on site (to-be-shown on the plan). The contour lines shall be extended to a minimum of one hundred fifty (150) feet beyond the affected area, and further, if needed, to define intercepted drainage, and shall be extended a minimum of one hundred (100) feet outside of any future road right-of-way;
- (10) Approximate location of cut and fill lines extent (top of slope and toe of slope), and finished slopes of all proposed grading, and the limits of grading for all proposed grading work, including borrow and stockpile areas;
- (11) Location, width, direction of flow and approximate location of any watercourses including tops and toes of banks;
- (12) Approximate boundaries of any Special Flood Hazard Area as depicted on the latest adopted Flood Information Rate Map or other known flood study, or any areas with histories of flooding based on local information;
- (13) Cross sections, profiles, elevations, dimensions, and construction details based on accurate field data as may be required after initial review of plans;
- (14) Construction details for roads, easements, watercourses, culverts, ditches, bridges and drainage devices, retaining walls, cribbing, dams, and other improvements existing or to be constructed, together with supporting calculations and maps as may be required after initial review of plans;
- (15) Proposed provisions for storm drainage control and any existing or proposed flood control facilities or septic tank disposal fields or areas reserved for on-site sewage disposal near the grading;
- (16) A detailed erosion and sediment control plan including specific locations, construction details, and supporting calculations for temporary and permanent sediment control structures and facilities. NOI and SWPPP references must be noted on the plan;
- (17) A revegetation plan, including temporary erosion control plantings, permanent slope plantings, replacement of temporary groundcover, and irrigation facilities.



(b) Additional supporting information which may be required includes, but is not necessarily limited to:

(1) The location of any borrow site or location for disposal of surplus material;

(2) A projected schedule of operations, including, as a minimum, the dates of:

a. Commencement of work,

b. Start and finish of rough grading,

c. Completion of drainage facilities,

d. Completion of work in any watercourse,

e. Completion of erosion and sediment control facilities,

f. Completion of hydromulching and other landscaping. If rough grading is proposed between October 15th and May 1st, a more detailed schedule of grading activities and use of erosion and sediment control facilities may be required;

(3) Itemized cost estimate of the proposed grading and related work;

(4) A complete drainage study;

(5) Geotechnical investigation report and recommendations addressing the proposed work;

(6) Biological resources, sensitive habitat and potential wetlands studies;

(7) Cultural resources assessment.

As you can see this evaluation is extensive and not in keeping with the exemption provided in the State Mines and Reclamation Act. Please strike the requirement for a grading permit in Permitted Uses Item #14 of the TPZ ordinance.

5) The fifth item to address is found in (g) Findings Required for any grant, lease, permit, license or other form of entitlement. The item #4 in (g) needs to be changed to read:

The issuance of grant of entitlement involves a use of the parcel which has been located and designed to minimize negative impacts ~~to~~ **on the management of timber production.** ~~removal of timber has been located and uses existing cleared or open-space areas incidental to forest production.~~

This change in wording recognizes that some TPZ parcels may not have open areas or areas already cleared. Some parcels may have uniformly productive soils or the lower site areas may be topographically isolated or infeasible to utilize. If the review of the compatibility of the proposed use was reviewed by a Registered Professional Forester under (d) of Permitted uses the particular circumstances relating to the management of timber production and the likelihood of inhibiting timber growth would be evaluated sufficiently and the use designed to minimize the negative impacts **on the management of timber production.** Making a specific

requirement that the compatible use be located on existing or areas incidental to forest production is too restrictive given the variability of conditions found on individual TPZ properties. In recognition of the variability of TPZ land in Sierra County please adopt the proposed language above.

6) The next item that needs to be addressed is under (i) Parcel Qualifications in to TPZ. The Forest Taxation Reform Act GC 51113 sets out specific criteria for the inclusion of parcels into TPZ. The County Ordinance departs from this criteria when it excludes site quality class IV and class IV ground, which may meet the definition of timberland. Whether or not a site IV or site V parcel qualifies as timberland by definition should be evaluated on a parcel by parcel basis by an RPF. The definition of timberland in 51104(f) 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.

The County defining the site quality of site III or better as the criteria for inclusion into the TPZ with disregard to the definition of timberland found in 51104(f) is in conflict with 51103 which reads:

It is the intent of the Legislature to implement the policies of this chapter by including all qualifying timberland in timberland production zones.

Sierra Pacific Industries suggests using GC 51113 verbatim for the criteria for including parcels into the Timber Production Zone District.

7) The seventh and final item that needs to be addressed is found in k, item #2, the Effect of Zoning and Removal from Zone. Item #2 states that:

*2. Parcels zoned as Timberland Production Zone shall be restricted as to their use of growing and harvesting of timber and compatible uses. This zoning shall give rise to the presumption that timber operations may reasonably be expected to and will occur on the parcel(s). If it is determined by the County that such property is not being managed consistent with this part and/or the Act, the County may initiate proceedings to rezone the property out of Timberland Production Zone.*

This item infers that by virtue of a parcel being in the timber production zone it somehow requires that timber operations will occur in a specific time frame. This



item infers that it is county staff who would best know how frequently to perform timber operations on the parcel. The item then states that by virtue of the County authority to judge whether or not timber operations are being adequately performed it can initiate a rezone action on the parcel. All three of these assumptions are incorrect and misinterpret the relevant sections of the Timber Productivity Act paraphrased in the item #2.

The Timber Productivity Act encourages future investment in timberlands such that recovery of those investments may be realized based on a reasonable expectation of harvest. The relevant Government Code is 51102(a)4 which reads:

Encourage investment in timberlands based on reasonable expectation of harvest.

Note that the reasonable expectation of harvest does not allude to the timing of such a harvest only that there is an expectation a harvest will be permitted. The assurance of a reasonable right to harvest is found in the subsequent section under 51102(b).

51102 (b) The Legislature further declares that it is the policy of this state that timber operations conducted in a manner consistent with forest practice rules adopted by the State Board of Forestry and Fire Protection shall not be or become restricted or prohibited due to any land use in or around the locality of those operations.

Another section that item #2 alludes to is section 51115.1 that reads:

51115.1. (a) The zoning of a parcel pursuant to this chapter shall give rise to a presumption that timber operations, as defined in Section 4527 of the Public Resources Code, may reasonably be expected to and will occur on that parcel.

(b) The Legislature hereby declares that the enactment of this section is intended to make clear that the zoning of a parcel pursuant to this chapter is an indication that timber operations are expected to occur on that parcel at a future date.

Note there is no reference to a harvest schedule only that harvesting will occur in the future, date uncertain. Given that the Timber Productivity Act code sections 51102(a)4 and 51102(b), 51115.1(a) (b) alluded to in the Sierra County TPZ ordinance in k, item #2, do not require a timing for harvest, a harvest intensity, or management style, what consistency with the Act is staff referring to in the Ordinance that would trigger a rezone initiated by the County? Will the criteria be

based on forestry principles and sustainability? That would not work since that would run afoul of the California Forest Practice Act which is the sole authority by which Timber Harvesting shall be regulated.

If the desire to rezone a TPZ parcel is to remove a perceived tax benefit on a parcel that may have for instance some compatible uses on it, consider the balancing act the Timber Productivity Act is attempting given that is the intent of the Legislature to including all qualifying timberland in timberland production zones, while on the other hand recognizing that the enrollment of lands in TPZ is not mandatory. What the Timber Productivity Act has done is strike a balance between incentivizing the enrollment in TPZ by limiting the taxation of the portion of a parcel not containing compatible uses to a rate tied to the productivity of the soils, while also not restricting the ability to have a residence as a compatible use, since there would be much less incentive to remain in TPZ without the benefit of a residential use. As for taxation on compatible uses, the assessor can tax all improvements based on there assessed values and increase those assessments according to Proposition 13, including the land area utilized by that compatible use.

The following is an example from the Timber and Timberland Values Manual (2007):

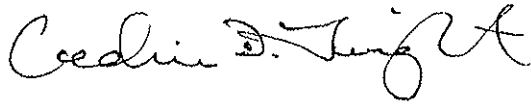
*Assume that a 160-acre TPZ property, with no improvements, transferred in September 2003. In July 2005, construction is completed on a new residence and the appraiser determines that the appropriate size for the site is one acre.*

*In this example, the base year value of the newly created site should be established based on the value of comparable one-acre homesites in 2003. If it is determined that the proper 2003 value is \$100,000, this becomes the base year value for the homesite. The value of any new construction ---such as driveways, grading, domestic wells, etc -- should be added to the \$100,000 (plus appropriate factoring) to establish the site value. If this property later sells the portion designated as a compatible use area will receive a new base year value and subject to supplemental assessment statues.*

This means that there really is no "tax break" for the residential site, but the pressure to convert the remainder of the timberland to another higher use is avoided since the assessor cannot assess that portion of the land for a "higher and better use" other than for the production of timber. The balance struck by the Timber Productivity Act is a very progressive method of incentivizing land use for a larger social and economic benefit for the public without stripping rights from landowners unnecessarily. In consideration of the above, please strike item #2 in (k) Effect of Zoning and Removal from Zone because it is not supported by the Timber Productivity Act sections alluded to in the TPZ ordinance and the taxation of compatible uses is sufficiently addressed in the Yield Tax Law.

Thank you for your time evaluating these rather extensive comments. We appreciate your support in these matters.

Sincerely,

A handwritten signature in black ink, reading "Cedric D. Twight". The signature is fluid and cursive, with the first name "Cedric" being the most prominent.

Cedric Twight  
Land Forester  
Sierra Pacific Industries

Cc Board of Supervisors  
Tim Beals