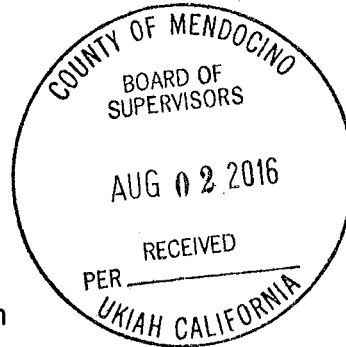


**DEPARTMENT OF FORESTRY AND FIRE PROTECTION**

17501 North Highway 101  
Willits, CA 95490  
(707) 459-7440  
Website: [www.fire.ca.gov](http://www.fire.ca.gov)



Mendocino County Board of Supervisors  
501 Low Gap Road  
Ukiah, CA 95482

Re: Medical Cannabis Cultivation Compliance Program

Dear Board Members:

I was contacted by Mendocino County staff prior to the July 8, 2016, Board of Supervisors General Government Committee meeting. They informed me they were working on a County ordinance to address *cannabis* cultivation. They had questions regarding CAL FIRE processes for conversion of lands zoned as Timberland Production Zone (TPZ) or Forestland; in particular, how a previously illegally converted timberland ownership could be "brought into compliance" with laws related to CAL FIRE's authority. I explained that CAL FIRE does not utilize zoning to determine the necessity of a harvest document. The key elements that trigger the necessity of a harvest document are the presence of timberland and proposed or anticipated timber operations. As a result of our discussion, staff requested I attend the July 8, 2016, meeting to address how CAL FIRE may or may not fit into the permitting process for the proposed ordinance.

CAL FIRE is providing the following comments in an effort to ensure all interested parties have a clear understanding of the process for legal conversion of timberlands and the enforcement actions available should CAL FIRE become aware of potentially illegal timber operations.

It is important to memorialize what I described during the July 8, 2016 meeting. The legislature, the Board of Forestry and Fire Protection, and CAL FIRE encourage prudent and responsible forest resource management to maintain timberland productivity and discourage conversion to uses other than growing timber.

CAL FIRE has the statutory authority when timber operations are conducted on non-federal timberlands. Determination of timberlands requires the judgement of a Registered Professional Forester. Pertinent Public Resources Code and California Code of Regulations sections include, but are not limited to, those listed below:

**Excerpts from the  
Z'berg-Nejedly Forest Practice Act  
Division 4, Chapter 8, Public Resources Code  
Effective January 1, 2016**

**Article 1. General Provisions**

**4512. Forest resources and timberlands; utilization, restoration, and protection; legislative findings and declarations.**

(a) The Legislature hereby finds and declares that the forest resources and timberlands of the state are

among the most valuable of the natural resources of the state and that there is great concern throughout the state relating to their utilization, restoration, and protection [emphasis added].

(b) The Legislature further finds and declares that the forest resources and timberlands of the state furnish high-quality timber, recreational opportunities, and aesthetic enjoyment while providing watershed protection and maintaining fisheries and wildlife.

(c) The Legislature thus declares that it is the policy of this state to encourage prudent and responsible forest resource management calculated to serve the public's need for timber and other forest products, while giving consideration to the public's need for watershed protection, fisheries and wildlife, sequestration of carbon dioxide, and recreational opportunities alike in this and future generations [emphasis added].

**4513. Timberlands; creation and maintenance of system of regulation and use; legislative intent.**

It is the intent of the Legislature to create and maintain an effective and comprehensive system of regulation and use of all timberlands so as to ensure both of the following:

(a) Where feasible, the productivity of timberlands is restored, enhanced, and maintained.

(b) The goal of maximum sustained production of high-quality timber products is achieved while giving consideration to values relating to sequestration of carbon dioxide, recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment, and aesthetic enjoyment.

**4526. Timberland.** "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 a 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.

**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 road flagging.

(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 [emphasis added], recreational developments, ski developments, water development projects, and transportation projects.

**Article 9.5. Timber Regulation and Forest Restoration Fund.**

**4629. Legislative findings and declarations**

The Legislature finds and declares all of the following:

(a) A thriving in-state forest products sector provides public benefits, including employment opportunities in both rural and urban areas, and economic development for rural communities.

(b) Enabling continued economically viable production of forest products can help to protect the state's forest lands from conversion to other uses.

*The legislation creating the Timber Regulation and Forest Restoration Fund was signed by Governor Brown on September 11, 2012 and went into effect immediately.*

**Excerpts from the California Forest Practice Rules  
California Code of Regulations**

**California Code of Regulations section 895.1. Definitions**

**Commercial Species** (For the Coast Forest District:) means those species found in group A and those in group B that are found on lands where the species in Group A are now growing naturally or have grown naturally in the recorded past.

**Group A:**

- |                                                |                                                        |
|------------------------------------------------|--------------------------------------------------------|
| -coast redwood ( <i>Sequoia sempervirens</i> ) | -incense cedar ( <i>Calocedrus decurrens</i> )         |
| -Douglas-fir ( <i>Pseudotsuga menziesii</i> )  | -Port Orford cedar ( <i>Chamaecyparis lawsoniana</i> ) |
| -grand fir ( <i>Abies grandis</i> )            | -California red fir ( <i>Abies magnifica</i> )         |
| -western hemlock ( <i>Tsuga heterophylla</i> ) | -white fir ( <i>Abies concolor</i> )                   |
| -western redcedar ( <i>Thuja plicata</i> )     | -Jeffrey pine ( <i>Pinus jeffreyi</i> )                |
| -bishop pine ( <i>Pinus muricata</i> )         | -ponderosa pine ( <i>Pinus ponderosa</i> )             |
| -Sitka spruce ( <i>Picea sitchensis</i> )      | -sugar pine ( <i>Pinus lambertiana</i> )               |
| -western white pine ( <i>Pinus monticola</i> ) |                                                        |

**Group B:**

- |                                                    |                                                 |
|----------------------------------------------------|-------------------------------------------------|
| -tanoak ( <i>Notholithocarpus densiflorus</i> )    | -golden chinkapin ( <i>Castanopsis</i>          |
| <i>chrysophylla</i> )                              |                                                 |
| -red alder ( <i>Alnus rubra</i> )                  | -pepperwood ( <i>Umbellularia californica</i> ) |
| -white alder ( <i>Alnus rhombifolia</i> )          | -Oregon white oak ( <i>Quercus garryana</i> )   |
| -California black oak ( <i>Quercus kelloggii</i> ) | -Pacific madrone ( <i>Arbutus menziesii</i> )   |
| -Monterey pine ( <i>Pinus radiata</i> )            |                                                 |

**Commercial Species** (For the Northern Forest District:) means those species found in group A and those in group B that are found on lands where the species in group A are now growing naturally or have grown naturally in the recorded past.

**Group A:**

- |                                                |                                                        |
|------------------------------------------------|--------------------------------------------------------|
| -sugar pine ( <i>Pinus lambertiana</i> )       | -white fir ( <i>Abies concolor</i> )                   |
| -coast redwood ( <i>Sequoia sempervirens</i> ) | -California red fir ( <i>Abies magnifica</i> )         |
| -ponderosa pine ( <i>Pinus ponderosa</i> )     | -noble fir ( <i>Abies procera</i> )                    |
| -Jeffrey pine ( <i>Pinus jeffreyi</i> )        | -Douglas-fir ( <i>Pseudotsuga menziesii</i> )          |
| -western white pine ( <i>Pinus monticola</i> ) | -incense cedar ( <i>Calocedrus decurrens</i> )         |
| -lodgepole pine ( <i>Pinus contorta</i> )      | -Port Orford cedar ( <i>Chamaecyparis lawsoniana</i> ) |

**Group B:**

- |                                                    |                                                        |
|----------------------------------------------------|--------------------------------------------------------|
| -knobcone pine ( <i>Pinus attenuata</i> )          | -Sierra redwood ( <i>Sequoiadendron giganteum</i> )    |
| -gray pine ( <i>Pinus sabiniana</i> )              | -golden chinkapin ( <i>Castanopsis chrysophylla</i> )  |
| -California black oak ( <i>Quercus kelloggii</i> ) | -foxtail pine ( <i>Pinus balfouriana</i> )             |
| -Oregon white oak ( <i>Quercus garryana</i> )      | -white alder ( <i>Alnus rhombifolia</i> )              |
| -tanoak ( <i>Notholithocarpus densiflorus</i> )    | -Monterey pine ( <i>Pinus radiata</i> )                |
| -mountain hemlock ( <i>Tsuga mertensiana</i> )     | -Pacific madrone ( <i>Arbutus menziesii</i> )          |
| -Brewer spruce ( <i>Picea breweriana</i> )         | -California laurel ( <i>Umbellularia californica</i> ) |
| -Englemann spruce ( <i>Picea engelmannii</i> )     | -western juniper ( <i>Juniperus</i>                    |
| <i>occidentalis</i> )                              |                                                        |

Given the aforementioned, **regardless of the parcel size or zoning classification, a timber harvest document from CAL FIRE would be required prior to timber operations on timberland with the applicable commercial species.**

For less than 3 acre conversion exemption applications, timberland owners are required to incorporate a statement certifying that there is a "bona fide intent" to convert after considering the owners' own economic ability to carry out the proposed conversion and the required feasibility evaluation. They are also required to specify what the non-timberland use will be after conversion.

CAL FIRE recommends the following changes and additions to the proposed ordinance and review process to ensure compatibility with the Public Resource Code and Forest Practice Regulations under CAL FIRE authority which addresses, via functional equivalency, associated California Environmental Quality Act requirements:

1. *Proposed Ordinance Section 10A.17.090 recommended revisions:*

*"... (T) If the legal parcel is zoned FL or TPZ and the application would include the conversion of timberland as defined under Public Resources Code section 4526, a copy of a less-than-3-acre conversion exemption or timberland conversion permit, approved by the California Department of Forestry and Fire Protection ("CalFire"). Alternately, for existing operations occupying sites created through prior unauthorized conversion of timberland, the applicant must provide evidence showing that they have completed a civil or criminal process and/or entered into a negotiated settlement with CalFire." that environmental impacts have been mitigated to the extent feasible as required by resource protection agencies such as CAL FIRE, Regional Water Quality Control Board, and the Department of Fish and Wildlife.*

CAL FIRE comments:

- a) As noted previously, any timber operations on timberland requires a harvest document from CAL FIRE regardless of zoning.
- b) It is my understanding from discussion with County staff that the paragraph addressing unauthorized conversion was included to "bring the property into conformance". CAL FIRE does not issue after-the-fact harvest documents. Evidence of adjudication through the criminal or civil process does not "bring the property into conformance". An illegal conversion cannot be brought into conformance once the trees have been cut.

Regarding the process of County review of applications, the following comment relates to a situation that would include timberland conversions (thus included here):

- c) The Board of Supervisors is encouraged to appoint a County Authorized Designee to review any proposed timberland conversion and certify that the conversion conforms with all County regulatory requirements prior to submittal of a harvest document to CAL FIRE for the following reasons:
  - 1) The conversion of timberland to an alternate use is a land use planning issue that is best addressed by the Planning and Building Services staff. Pre-review and approval by County staff would provide CAL FIRE the assurance the proposal is consistent with the County Plan.

- 2) The County is the lead agency for the cultivation permit and the pre-review and approval of the alternate use (bona fide intent) is appropriately the County's authority and responsibility. The County would clearly be "approving" the cultivation activity. CAL FIRE would then ensure the harvest document complies with the Forest Practice Rules and Act for the timber operations component. Requiring the CAL FIRE document first may constitute "piecemealing" (CEQA Section 21159.27).
- 3) The proposed ordinance language under (T) above could result in the conversion of timberlands in areas that ultimately may not fall within the permitting criteria. For example: the proposed site is encroaches a setback, proposed type of permit is not consistent with parcel restrictions, etc. Only the County Planning and Building Services staff can make those determinations.

2. *Proposed Ordinance Section 10A.17.030 recommended revisions:*

*"... (D) Qualified patients or primary caregivers cultivating medical cannabis are exempt from the permit requirements of paragraph (B) of this Section ..."*

CAL FIRE comment:

- a) This section should include an advisement that any proposed timberland conversion necessary to cultivate under the exemption would still require a harvest document from CAL FIRE.

CHRISTOPHER P. ROWNEY  
Unit Chief, Mendocino Unit

by: Craig Pedersen, RPF #2489  
Forest Practice Program Manager  
Forester III, Mendocino Unit

cc: Mendocino County Staff

