

September 27, 2011

Funding Timber Harvest Regulation

LEGISLATIVE ANALYST'S OFFICE

Presented to:
Assembly Accountability and Administrative Review Committee
Hon. Roger Dickinson, Chair





The Forest Practice Act

- ☑ **Purpose.** The stated purpose of California's Forest Practice Act, enacted in 1973, is to establish a comprehensive regulatory system that assures:
 - The productivity of timberlands is restored, enhanced, and maintained.
 - The goal of maximum sustained production of high-quality timber products is achieved while giving consideration to values relating to recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment, and aesthetic enjoyment.

- ☑ **Legal Authority.** The timber harvest plan (THP) review process is established in statute to implement the Forest Practice Act.

- ☑ **Requirements.** The Forest Practice Act prohibits timber harvesting unless harvest operations comply with a THP prepared by a registered professional forester and approved by the Director of the California Department of Forestry and Fire Protection (CalFire). Once approved, the plan is valid for three years, with possible extensions.

- ☑ **Agency Review.** In addition to CalFire, THPs are reviewed by multiple state agencies, including the Department of Conservation, Department of Fish and Game (DFG), and the State Water Resources Control Board (SWRCB). For example, SWRCB is responsible for reviewing the impact of a THP on water quality. The review process can include initial desk reviews, pre-harvest inspections, inspections during harvesting, and inspections and monitoring after harvesting is completed.

- ☑ **Subjects Covered by THPs.** The THPs are required to cover such matters as harvest volume, cutting method, erosion control measures, and special provisions for unique areas or wildlife that would be affected by harvesting operations.



The Forest Practice Act

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- ☑ **CEQA Equivalency.** The regulation of timber harvesting is exempt from meeting certain California Environmental Quality Act (CEQA) requirements, including the preparation of an environmental impact report, based on the certification by the Secretary of Natural Resources that this process is sufficiently equivalent to the CEQA process.

 - ☑ **Other Exemptions.** The Forest Practice Act provides for exemptions from, or alternatives to, the THP process in specified circumstances:
 - **Non-Industrial Timber Management Plan.** This alternative process is used for timber owners with less than 2,500 acres and who are in the business of manufacturing forest products. The owner must choose habitat-friendly timber management methods, such as leaving varying ages and sizes of trees standing after harvest, and plan for sustainable yield over time. These plans are heavily scrutinized through a public process, but have no expiration date, although CalFire performs ongoing compliance monitoring.
 - **Emergencies.** Emergencies that qualify for exemption from the THP process include tree removal in the case of tree death or damage from insects, disease, wind, snow, pollution, or natural disaster (fire, flood, earthquakes), or tree removal for emergency construction or road repair.
 - **Other Exemptions, Including Conversion Exemption.** Some harvesting activities are exempt from the THP process including, but not limited to, Christmas tree harvesting, harvests on less than three acres when the land will be converted to another use, and harvesting dead or dying trees.



California Timber Industry— Background Information

- ☑ **Total Timberland Acreage.** There are about 8 million acres of private timberlands in California. About one-half of this total reflects larger, industrial land holdings.
- ☑ **THP Workload.** In 2009 and 2010, between 200 and 300 THPs were approved annually, covering a total of about 90,000 acres.
- ☑ **Other Required Permits.** In addition to an approved THP which serves as a permit issued under the Forest Practice Act, there are typically other state environmental permits issued in connection with timber harvesting operations:
 - Streambed Alteration (“Section 1600”) Permits—issued by DFG.
 - Incidental Take Permits—issued by DFG.
 - Waste Discharge Requirements or waivers—issued by SWRCB.
- ☑ **Timber Yield Tax.** The timber yield tax is a tax in lieu of ad valorem property taxes on timber paid by timber owners when they harvest timber. The current tax rate is 2.9 percent applied to the value of the harvest. Most of the revenues are allocated to the counties where the timber was harvested.
- ☑ **Property Tax Break.** When timberlands are zoned as Timberland Protection Zones (TPZs), the assessed value of the land for property tax purposes is based on its value for the cultivation of timber, not its “highest and best” use. In return for the lower tax assessment, the landowner commits to managing the property for timber uses for a minimum of ten years. Close to 80 percent of the state’s private timberland is zoned TPZ.



How Is State Timber Harvest Regulation Funded?

Timber Harvest Regulation Expenditures

2011-12 (In Thousands)

Department	General Fund	Environmental License Plate Fund	Fish and Game Preservation Fund ^a	PRA ^b	Timber Tax Fund	Reimburse-ments	Total
Fish and Game	\$500	\$275	\$125	—	—	—	\$900
Forestry and Fire Protection	11,111	—	—	\$356	\$35	\$174	11,676
Water Board	4,542	—	—	—	—	—	4,542
Conservation	1,742	—	—	—	—	—	1,742
Totals	\$17,895	\$275	\$125	\$356	\$35	\$174	\$18,860

^a Fees from timber industry.
^b Public Resources Account, Cigarette and Tobacco Products Surtax Fund.



Major General Fund Role. As shown in the figure, state expenditures to regulate timber harvesting under the Forest Practice Act total about \$19 million, mostly funded from the General Fund. While the bulk of this total is for THP review and enforcement, it also includes expenditures for other timber regulatory activities, including the review and enforcement of non-industrial management plans and emergency plans.



LAO Fee Recommendation

- ☑ ***Fee Adoption Recommended.*** We have recommended in past analyses the enactment of legislation imposing fees on timber operators to cover the state's cost of administering the Forest Practice Act.

- ☑ ***Rationale for Fee.*** The policy basis for our fee recommendation is the following:
 - The harvesting of timber on private lands has impacts on watersheds that go beyond the bounds of the timber harvesting area and affect the state's natural resources as a whole. These impacts can be mitigated or avoided by use of THPs as a regulatory document. As the primary beneficiaries of timber harvesting, the timber industry should be held responsible for ecological impacts caused by timber harvesting, and thus should pay for the state's THP activities which prevent or lessen these impacts.
 - In addition, timber harvesters benefit from the review and approval of THPs and related plans because the approval allows timber harvesters to begin revenue-generating timber harvesting.
 - Enacting a timber harvest regulatory fee would be consistent with the Legislature's general policy to require the costs of similar regulatory programs in other state agencies to be reimbursed through industry fees and assessments. For example, almost all the costs of regulating waste discharge into water is covered by fees charged by SWRCB. (Annual revenues from these fees total about \$80 million.) The Department of Conservation charges industry fees to cover the cost of regulating oil and gas production activities. (The annual revenues from these fees total about \$27 million.)



LAO Fee Recommendation

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- Fee Options.** As discussed on the following pages, there are a variety of fee structures that could be used to recover state regulatory agency costs related to THPs—such as a flat fee per THP application, a fee based on the number of acres proposed for harvesting, or a fee based on the value of timber to be harvested (the “yield”). We recommend the Legislature enact a fee based on timber yield—making fees paid proportional to the benefit gained. Such a fee could be collected by the state Board of Equalization (BOE), which already collects the timber yield tax. If a fee were enacted, we would recommend that the fee be lower for the timber operators submitting plans that are not subject to the full-fledged THP process.

- Legislative Proposals.** There have been a number of legislative proposals over the past several years to enact a fee to cover the state’s costs for timber harvest regulation. These include:
 - Assembly Bill 1005 (Dickinson), as introduced February 18, 2011.
 - Assembly Bill 1764 (Committee on Budget), as amended June 30, 2003.
 - Assembly Bill 1172 (Keeley), as amended June 17, 2002.



Timber Harvest Fee Options

Option 1: Fee per Plan



Pros:

- Everyone pays the same fee; easy to administer.



Cons:

- Not equitable. Big and small owners pay the same regardless of workload to state agencies to review the plan. Small owners in particular could be assessed fees that exceed state costs and that make it unprofitable for them to harvest.
- Does not consider complexity or size of plan, including necessary reviews and inspections due to variation in terrain, type of habitat, or Endangered Species Act compliance.
- Does not consider harvesting methods (clear cutting, selective, et cetera) and may create incentive for more aggressive harvesting of acreage to maximize profit from one plan.
- New administrative process would have to be developed to collect and process fees.



Timber Harvest Fee Options

(Continued)

Option 2: Fee per Acre



Pros:

- Reflects harvest size (measured by acres)—smaller land owners pay less than larger ones.



Cons:

- Does not take into account the complexity of plan, including necessary reviews and inspections due to variation in terrain, type of habitat, or Endangered Species Act compliance.
- Does not consider harvesting methods (clear cutting, selective, et cetera) and may create incentive for more aggressive harvesting of acreage to maximize profit from one plan.
- Large THPs could be assessed fees which exceed actual costs of department for review (although fees could be charged a lower rate for acreage above a certain threshold).
- New administrative process would have to be developed to collect and process fees.



Timber Harvest Fee Options

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Option 3: Fee per Board Foot



Pros:

- Reflects harvest size (measured by actual trees harvested)—smaller harvest operations pay less than larger ones.
- Relative ease of administration. Fees could be collected at the same time the timber yield tax is collected by the BOE. (The BOE's costs to collect the fee would be paid from the fee revenues.)



Cons:

- Does not consider harvesting methods (clear cutting, selective, et cetera).
- Does not *fully* take into account the complexity of plan, including necessary reviews and inspections due to variation in terrain, type of habitat, or Endangered Species Act compliance. (The BOE's method to value timber does account for the location and tree species harvested.)



Programmatic Reforms Proposed by Others

- ☑ ***Increased Collaboration Among Regulating Agencies.*** The regulatory process could potentially be made more efficient, less costly (for both the regulated and the regulator), and shorter by:
 - Gathering representatives from all involved state agencies together for initial THP review, including those issuing related permits.
 - Reviewing THP content requirements for redundancies in information to be submitted in the plan, and consolidating related permits into the THP.
 - Having a single pre-harvest inspection for each THP with all involved agencies.

- ☑ ***Taking a Longer-Range or Broader Approach to THPs.*** This could make THP preparation costs less burdensome and shorten review time, and potentially better measure the environmental cumulative impacts of timber harvesting. This could involve:
 - Accepting an adjustable 10- or 20-year timber harvest planning document that covers an entire timberland property in lieu of multiple shorter-term THPs being prepared, with annual notices of timber harvesting activities.
 - Creating watershed plans that map the environmental issues within a watershed or whole habitat area (that covers multiple timberland properties) to be used during THP review. CalFire and other regulatory agencies could better and more quickly identify environmental issues and cumulative impacts in THPs if there was a base document that showed watershed and habitat issues for each region that could guide the review process.