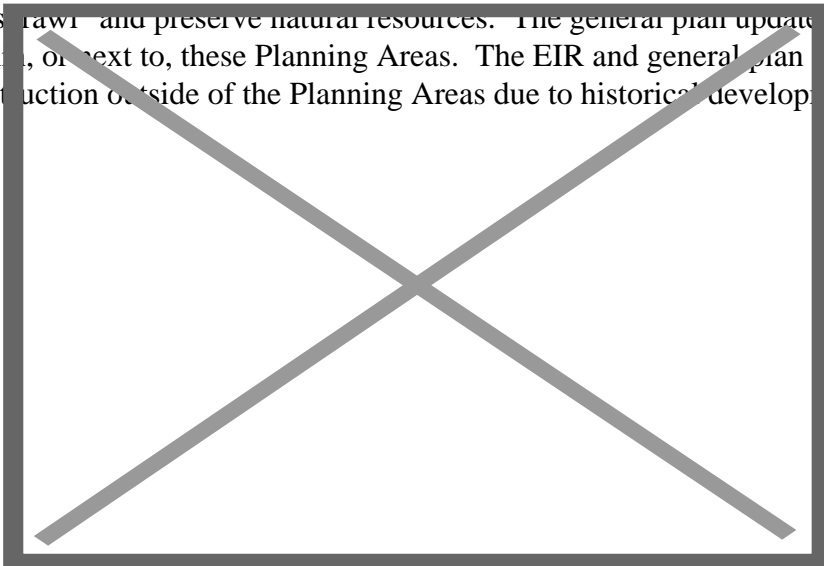


Determinations Regarding Compatibility of Residential Uses with Timberland Production are Ministerial and Hence Exempt from CEQA Review

The Third District Court of Appeal rejected a CEQA challenge to a county's general plan update, holding that a county's California Timberland Productivity Act finding that a residence or structure is necessary for timberland production zone management is not a discretionary act for CEQA purposes. *High Sierra Rural Alliance v. County of Plumas*, 29 Cal. App. 5th 102 (2018). In December 2013, the County prepared a comprehensive update to its 1984 General Plan, along with an accompanying "first-tier" programmatic environmental impact report. The general plan focused on new population growth within specific geographic "Planning Areas" to prevent "rural sprawl" and preserve natural resources. The general plan update called for all new development to take place within, or next to, these Planning Areas. The EIR and general plan anticipated little population growth or construction outside of the Planning Areas due to historical development patterns and the new general

plan policies.



Petitioner contended that the

general plan update conflicted with the Timberland Act because the general plan determined that any residence on timberland production zone land is a compatible use with timberland production, so long as the parcel is at least 160 acres. It also claimed that CEQA review was required each time the County determined whether proposed residences were compatible with timberland use. The Court of Appeal rejected both arguments. The Timberland Act imposes mandatory restrictions on parcels zoned for timberland production, limiting the permitted uses to "growing and harvesting timber and to compatible uses." Gov. Code § 51110 et. seq. Timberland production zones are regulated by state statutes, but local governments are required to enforce the zoning restrictions. Petitioner argued that the general plan update impermissibly determined that all residences are compatible with timberland production zoned land by including a policy confirming that any residence or structure on a parcel zoned for timberland production that is at least 160 acres is a compatible use. Petitioner contended that Government Code Section 51104 requires the County to make case-by-case compatibility determinations based on whether a residence is (1) necessary for management of timberland, and (2) not otherwise incompatible with underlying timber operations. The court found that the County had been aware of the above Section 51104 requirements and had applied them to previous compatibility determinations. It concluded that the updated general plan policies concerning timberland production did not conflict with state law

merely because they did not repeat Section 51104 in its entirety, and that the general plan policy requiring a finding that a residence or structure was compatible with the Timberland Act was sufficient. The court also disagreed with petitioner's contention that the County engages in discretionary review under CEQA when determining whether proposed residences or structures are compatible with timberland production. Instead, the determination is classified as ministerial because the statutory guidance provided to local governments by the Timberland Act do not allow an agency to deny or condition a building permit to mitigate environmental damage. The court also noted that the Timberland Act expressly exempts the County's decisions to put parcels in timberland production zones from CEQA review because the decision "involves the state law's authorization of residences and structures necessary for the management of these parcels" and the compatibility findings are governed solely by the Timberland Act. Thus, the court concluded that the County is not required to engage in discretionary review under CEQA each time it approves proposed structures that are compatible with timberland.

Blog series

California Land Use & Development Law Report

California Land Use & Development Law Report offers insights into legal issues relating to development and use of land and federal, state and local permitting and approval processes.

[View the blog](#)