Developments

California's Timber Yield Tax

William C. Unkel*
Dean Cromwell**

INTRODUCTION

In May of 1976, the California legislature enacted the Z'berg-Warren-Collier-Keane Forest Taxation Reform Act (FTRA). Aimed at promoting sound timber management and conservation, the FTRA forms the cornerstone of the state's forest policy. In its final form, the FTRA is a unique blend of tax and land use planning law which may provide a useful model for the protection of other natural resources.

The FTRA responds to the growing shortage of wood fiber facing Californians. Based on figures compiled in 1973 by the United States Forest Service, demand for wood fiber is expected to double by the year 2000. Failure to meet this rising demand will lead to major price increases, and in turn, to reduced use of wood and wood products in residential construction and consumer goods packaging. Increased use of wood substitutes, such as plastics, can be expected. The production of harmful pollutants and the expenditure of large amounts of energy in the manufacture of plastics and other materials make the increased use of these substitutes an undesirable alternative.

To satisfy this growing demand for wood fiber, the FTRA seeks to promote timber production on private lands within California. At the present time, the productive capacity of California timberlands is greatly under-utilized. Evidence suggests that current growth is less than one-third the
potential. The FTRA encourages realization of this potential by removing tax disincentives to investment in commercial timberlands.

This Article explores the impact of the pre-FTRA system on timber production and explains some of the problems the FTRA was designed to solve. The Article is divided into four sections. The first section examines the ad valorem tax levied in the past on timber and timberlands, and analyzes its resulting impact on timber production. The second section recounts the legislative development of the FTRA and the rationale for the decision to adopt a yield tax on timber. The third section analyzes the specific yield tax mechanism adopted in the FTRA. The fourth section describes the land use restriction imposed on property included in the FTRA's novel "Timberland Preserve Zone."

I

IMPACT OF THE AD VALOREM TAX ON TIMBER PRODUCTION

In California, timber and timberlands were subject to an annual ad valorem tax. In an unmodified form, an ad valorem tax uses the "market value" of a commodity as a base for assessment of the tax. Simply put, a market value is the price a willing buyer will pay a willing seller for the use of a given commodity. Under this system of taxation, however, the market value of timberland is not restricted to what one timber owner would pay another for the use of his land to grow trees. Instead, the market value of timberland is computed on the basis of what any buyer would pay to put the land to its "highest and best use," regardless of whether or not that use is timber production. Thus, the timber owner pays taxes based on the "highest and best use" value of his land plus the market value of his trees.

An unmodified ad valorem tax system inherently discourages maximum timber production in two ways. The first is a consequence of the "highest and best use" valuation factor. As population growth encroaches on forested areas, the highest valued use of land often shifts from timber production to commercial, residential, or recreational use. Land that formerly yielded its greatest financial return when used for timber production may yield an even greater return when used as a ski resort or vacation home. When reassessment of the property occurs, the timber grower's tax bill increases to reflect the increased value of the property. At some point, continued use of the land for timber production is no longer profitable. The timber does not generate enough revenue to offset the

3. PUBLIC POLICY FOR CALIFORNIA FOREST LANDS, supra note 2, at 77.
4. All property in California was (and still is) subject to an ad valorem tax, unless specifically exempted from taxation by the state constitution, a state law pursuant to a state constitutional exemption, or a federal law. Timberlands were not specifically exempted. See CAL. CONST. art. 13, § 1 (West 1954) (amended 1974); CAL. REV. & TAX. CODE § 201 (West 1970). Consequently, the timber owner paid an annual ad valorem tax on both his lands and his trees. See NIAR, supra note 2, at 8.
5. NIAR, supra note 2, at 8.
increased tax. Thus, growers are induced to convert land from timber production to a higher valued use.

The second disincentive results from the imposition of an annual tax on a commodity with a long production period. Trees require many years of growth to reach maturity. For example, a tree planted on bare forestland in California will not usually reach a merchantable size for several decades and normally does not even reach its maximum average growth for at least fifty years.\(^6\) By assessing immature timber annually under an unmodified ad valorem tax, timber owners are taxed before they realize any income from their investment from which to pay such taxes. Without any income to pay these taxes, the timber owner must carry the annual payments as an out-of-pocket expense until harvest. This out-of-pocket expense represents money that could be invested for a return elsewhere at the prevailing interest rate. By foregoing such potential returns, timber owners pay a higher percentage of income as taxes than investors in other industries with shorter income cycles (e.g., agriculture). This effect has been termed "time bias," and has long been viewed as a disincentive to investment in timber production.\(^7\)

Although time bias generally discourages investment in timber production, the effect on the smaller timberland owner may be particularly severe. A large ownership usually contains trees of different sizes and ages. Because the trees reach maturity at different times, an owner may harvest the timber at frequent intervals. This partial harvest might provide an income stream from which to pay annual tax liabilities and silvicultural expenses. A smaller ownership is less likely to enjoy this age distribution and corresponding cash-flow advantage. Intervals between partial harvest on smaller holdings are likely to be longer, and therefore, the disincentive to investment in timber production will be greater.

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\(^6\) See note 15 infra.

\(^7\) The classic treatment of this conclusion is F. Fairchild, Forest Taxation in the United States (U.S. Dep't of Agriculture Misc. Pub. No. 218, 1935). Recently, the discriminatory impact of property taxes has been the source of considerable discussion. See, e.g., Trestrail, Forests and the Property Tax—Unsound Accepted Theory, 22 Nat. Tax J. 347 (1969). For a different view, see Klemperer, Forests and the Property Tax—A Re-examination, 27 Nat. Tax J. 645 (1974).

It is difficult to define an "equitable" distribution of property tax burdens among varying types of land users. Different property tax systems employing alternate measures of "equity" have been suggested: a system where the tax burden on each user would reflect a given percentage of the property's market value; a system where the tax burden on each user would reflect a given percentage of the user's net business income (thus reducing the disadvantages to land-intensive industries in a property tax system); and a system where the tax burden on each user would reduce the overall value of the land to the user (i.e., the value of the land if maintained in its existing use) by a given percentage. See generally D. Klemperer, Evaluating Forest Tax Alternatives for Oregon 57-70 (1975). The FTRA does not produce a shift in tax burdens from timber owners to other land users. Those who proposed adoption of a yield tax system in California "felt that any new system of timber taxation for California [initially would have to] generate as much revenue as the old." NIAR, supra note 2, at 5. The emphasis in the FTRA is on the removal of disincentives to timber growing, leaving redefinition of "equitable" burdens to the future. Id. at 6.
A. Modifications of California’s Ad Valorem Tax, Lessening the Impact of Time Bias and “Highest and Best Use” Valuation

Two major modifications in the tax system occurred in California prior to the enactment of the FTTRA. The first diminished the problem of time bias; the second eased the impact of the “highest and best use” valuation factor.8

Some relief from time bias occurred as an indirect result of a 1926 amendment to the state constitution. In that year, California voters approved an initiative measure to exempt timber from property taxation under certain circumstances. Article 13, Section 12-3/4,9 the resulting constitutional provision, exempted from taxation the timber remaining after a harvest of seventy percent or more of an owner's stock. The exemption was to be available to the timber owner for a period of forty years following a harvest, or until such time as the residual reached maturity, whichever was longer. The major purpose of this amendment was to increase timber production by encouraging owners to retain title to their property after they harvested their timber.10 Previously, taxation of immature trees had given owners an incentive to permit their lands to revert to the state rather than pay taxes.11 By guarantying timber owners tax-free growth on a portion of their trees for at least forty years, this provision lessened the impact of time bias. Furthermore, natural seeding from the remaining trees promoted reforestation of the harvested areas.

In the late 1960’s, the legislature addressed the “highest and best use” assessment problem. At that time, the state offered counties an option to place timberland under “open space contracts” pursuant to the Williamson Act.12 The intent of this option was to provide a mechanism whereby timber owners could limit the basis for tax assessment of their property to the value of the land in its current timber-related use. Once a Williamson contract was in effect, the value of the land was determined by the income it could generate through timber production. Assessed values that resulted from this approach often were lower than those based on the “highest and best use.” Thus, in exchange for dedication of his land to timber production, the timber owner obtained relief from prohibitively high taxes.

8. The discussion in this section follows NIAR, supra note 2, at 40-64; H. VAUX, YOUNG-GROWTH TIMBER TAXATION IN MENDOCINO COUNTY 66-86 (University of California, California Agricultural Experiment Station Bulletin No. 780, 1961).
10. See Amendments to Constitution and Proposed Statutes with Arguments Respecting the Same 27-28 (California Secretary of State, 1926) (ballot arguments).
11. See id. at 27.
B. Problems Created by the Modifications to the Ad Valorem Tax

Although these modifications mitigated some of the adverse impacts of the ad valorem property tax, they also created problems of major magnitude.\(^\text{13}\) Two unforeseen adverse impacts on timber management resulted from the Section 12-3/4 exemption. First, eventual reclassification of exempted timber as "mature" usually produced a sudden increase in an owner's tax bill and created an incentive to harvest his timber earlier than he otherwise might.\(^\text{14}\) Such action reduced growing stock, often before it reached its fastest growing age.\(^\text{15}\) Second, the seventy percent harvest figure dictated a low stocking level which did not necessarily correspond to those levels conducive to high growth and yield. Under some silvicultural systems, for example, frequent harvests of fifty percent or less of the volume constituted optimum management,\(^\text{16}\) but the resulting stocking level would not have qualified for the Section 12-3/4 exemption.

The Section 12-3/4 exemption also did not encourage maintenance of timber stands for non-harvesting uses. Occasionally, trees should be left standing as a buffer strip along roads and streams, or as a habitat for wildlife. With growing public awareness of the importance of such "non-timber" values, there was concern that owners should economically be able to leave trees standing for such reasons.\(^\text{17}\) However, unless trees qualified for the Section 12-3/4 exemption, owners were required to pay taxes on the trees, a fact which discouraged promotion of non-timber values.

The provisions of the Williamson Act also presented problems. The

13. See NIAR, supra note 2, at 40-64; D. TEEGUARDEN, A YIELD TAX SYSTEM FOR CALIFORNIA TIMBER 18-24 (1974); CALIFORNIA SENATE SELECT COMMITTEE ON TAXATION OF TIMBER AND TIMBERLAND, PRELIMINARY REPORT 50-56 (1975) [hereinafter cited as SENATE SELECT COMMITTEE PRELIMINARY REPORT]; PUBLIC POLICY FOR CALIFORNIA TIMBERLANDS, supra note 2, at 99-104.

14. One empirical study found timber owners to be "moderately sensitive" to these sudden increases. NIAR, supra note 2, at 14-15. The dramatic impact of the maturity reclassification was demonstrated in an example developed by another study, in which the reclassification of exempt timber on an hypothetical hundred-acre parcel would have increased the timber owner's tax bill sixteen-fold. PUBLIC POLICY FOR CALIFORNIA TIMBERLANDS, supra note 2, at 100.

15. On timber growing sites that are medium to highly productive, growth per acre is most rapid when the trees are fifty to one hundred years old. PUBLIC POLICY FOR CALIFORNIA TIMBERLANDS, supra note 2, at 100.

16. See NIAR, supra note 2, at 57. Historically, it was necessary in California to harvest a large amount of standing timber per acre logged to make logging economical. Further, the market for small logs was limited, so timber stands could not be harvested frequently. Id. at 53.

Conditions have changed since then. Large diameter trees are becoming scarce; prices for small diameter trees have increased and logging equipment has become available that can efficiently remove volumes of small logs from a given area. The feasibility of intensively managing on a selection basis is enhanced by these conditions. Intensive selection management implies larger residual volumes and shorter cutting cycles.

17. See id. at 17.
modified assessment procedures permitted by the Williamson Act were available to property owners only at the option of the county.18 Not all counties decided to make this option available to timber owners. As a result, varying tax levies arose for timber owners in different counties, with some timber owners unable to obtain limits on land values.19

Furthermore, the complexity of assessment procedures under the contract mechanism lessened the desirability of the Williamson option.20 Under the Williamson option, the assessed value of the timberland was limited to the value of the land as used for timber production. The value of timber parcels for their timber-related uses could often be determined by reference to price data on sales of other timberlands limited to timber-related uses. However, such sales data were not always available.

Alternatively, the value of timberland property restricted under the Williamson Act was determined by use of the "capitalized value," the price a willing investor would pay presently for the property, based on the income expected from this investment. The capitalized value was computed by "capitalization," a process whereby the anticipated income from the property was estimated and discounted to its present value. Thus, the capitalized value took into account the income anticipated from the future harvest of timber. Yet, standing timber on the property might qualify for the Section 12-3/4 timber exemption.21 The existence of the timber exemption meant that the value of the timber had to be removed from the future income figure used to help determine the value of the taxable property.22 Land and timber values had to be separated. The timber appraiser was required to make a difficult subjective judgment as to the valuation determination. Appraisal among counties varied, and caused major court action in one instance.23 As a result of this uncertainty, timber owners became wary of Williamson contracts.

19. SENATE SELECT COMMITTEE PRELIMINARY REPORT, supra note 13, at 54-55. Out of the twenty-three timber producing counties in California having 60,000 acres or more of commercial timberlands, see D. Teeguarden, supra note 13, at 64, only three counties had open space contracts covering 50,000 acres or more. NIAR, supra note 2, at 19.
21. In an opinion, the California Attorney General declared that open space assessment methods could apply to the land, and that, at the same time, timber could be exempted under Section 12-3/4. 55 Op. ATT'Y GEN. 220 (1972).
22. A special rule was developed by the State Board of Equalization to guide assessment practices in such cases. Open Space Value of Timberland, 18 Cal. Adm. Code § 53 (1975). For a technical explanation of the origin and provisions of this rule, see Zivnuska & Teeguarden, Appraisal of Timberland Through Capitalization of the Value of Average Annual Growth: Two Rebuttals, ASSESSOR'S J., April, 1972, at 29.
23. Georgia-Pacific Corp. v. County of Butte, 37 Cal. App. 3d 461, 112 Cal. Rptr. 327 (1974). The court held that the capitalization process used to determine the value of the property illegally factored into the assessment the value of immature trees that were exempt under Section 12-3/4.
C. Inequities in the Pre-FTRA System

The pre-FTRA system also created various inequities among individual owners within the class of timber owners. Because of non-uniform valuation, timber producing properties did not bear similar tax burdens. Under the pre-FTRA system, non-uniform valuations arose for three reasons: (1) the use of a market valuation factor; (2) the optional nature of open-space contracts; (3) the differences in accuracy and judgment employed in appraisal techniques.

The market valuation factor caused a major discrepancy between tax bills of owners with large tracts of timber and those with small tracts. Typically, a large tract of timberland containing large volumes of timber is worth less per acre than a smaller parcel of similar quality timberland. The value of larger parcels of timberland is discounted in the market because large volumes of timber typically have to be harvested over a longer period of time than smaller volumes. Thus, the buyer of a large parcel rarely recognizes the return on his investment as quickly as smaller owners. The tract is worth less today because the owner pays interest, taxes, and other costs until his timber can be harvested. Assessed values upon which property taxes were based were adjusted for larger holdings by applying a valuation factor which compensated for the length of time over which the owner might be expected to harvest the timber. As a result, assessed value per acre for a large holding was lower than the value per acre for smaller holdings. This disparity was recognized as one of the major problems with the pre-FTRA system of forest taxation.

The second source of uneven tax burdens resulted from the optional nature of the Williamson contract. As already indicated, the decision to grant these contracts rested with the counties. Consequently, timber owners with similar tracts of timber in two counties might have quite different tax bills. This imbalance of tax liabilities caused considerable criticism of the

24. This discussion of inequities in the distribution of tax burdens among classes of timber owners follows the observations set forth in NIAR, supra note 2, at 18-20. A more politically sensitive policy issue is the proper definition of an “equitable” distribution of tax burdens among various classes of land users, discussed in note 7 supra.

25. Senate Select Committee Report, supra note 13, at 46-47. See also J. Rothery, A Study of Forest Taxation in the Pacific Northwest 15-32 (1952). Note that there may be other reasons for the discounted value of large tracts: (1) accessibility of timber for harvesting might be less than that afforded by smaller tracts; (2) the large tract might have sizeable “thin spots;” and (3) since there are fewer potential buyers for large tracts, bidding competition might be less keen than for smaller tracts. J. Rothery, supra at 38.


27. Senate Select Committee Preliminary Report, supra note 13, at 55; NIAR, supra note 2, at 18.
pre-FTRA system, especially from companies with timber in more than one county.28

The third cause of uneven tax burdens was the overall complexity of assessing timberland. Properties could be appraised differently as a result of the accuracy of data gathered and the degree of subjectivity exercised in a complicated appraisal. For example, data on the volume of timber in standing forests were quickly rendered obsolete by changes due to tree growth, mortality, and timber harvest. At best, such data were approximate, and the failure to update the data reduced the accuracy of the estimated volumes. Since the quality of the data varied both in different areas within a county and among the several counties, uneven tax burdens inevitably arose. This led to criticism of pre-FTRA assessments as inequitable and further supported the call for change.29

II

LEGISLATIVE HISTORY OF THE FTRA

A. Background

Prior to the enactment of the FTRA, the pre-existing system of forest taxation had been the object of both considerable criticism and study. The California legislature studied the matter in the mid-1960's, but could not reach agreement on needed changes.30 The California Constitution Revision Commission also examined the pre-existing system in the late 1960's.31 Although the Commission concluded that all immature forest trees should be exempted from taxation,32 nothing came of the Commission's recommendations.

In 1972, the defects of the pre-FTRA system were brought to the attention of the Assembly Committee on Natural Resources and Conservation, in a report prepared for the Committee as a part of its review of California's forest policy.33 After briefly reviewing the ad valorem tax structure, the report concluded that the tax system should be revised. It specifically suggested that a yield tax replace the property tax on timber and

28. SENATE SELECT COMMITTEE PRELIMINARY REPORT, supra note 13, at 56; NIAR, supra note 2, at 19.
29. SENATE SELECT COMMITTEE PRELIMINARY REPORT, supra note 13, at 56; NIAR, supra note 2, at 19-20.
30. See 6 CALIFORNIA SENATE FACT FINDING COMMITTEE ON REVENUE AND TAXATION, TAXES ON EX extractive Industries 43-72 (1965); Conradus, Problems in the Application of the Property Tax to California Private Forestland and Standing Timber, in 4 ASSEMBLY INTERIM COMMITTEE ON REVENUE AND TAXATION, TAXATION OF PROPERTY IN CALIFORNIA—A MAJOR TAX STUDY (1964).
33. PUBLIC POLICY FOR CALIFORNIA FOREST LANDS, supra note 2, at 96-109.
that the legislature investigate such a change.\textsuperscript{34}

During forest practice hearings held in late 1972 by the Assembly Committee on Natural Resources and Conservation, complaints surfaced concerning the system of forest taxation.\textsuperscript{35} At the request of the Committee, the Assembly contracted for a detailed study of the system of forest taxation in California. This study was published in 1974.\textsuperscript{36} After noting an urgent need to encourage investment in timber growing, the report recommended adoption of the yield tax system of forest taxation as the best mechanism to encourage such investment.\textsuperscript{37}

During 1973, the California State Senate appointed the Select Committee on Taxation of Timber and Timberland, chaired by Senator Randolph Collier. This committee held numerous hearings on the forest taxation system. Based on the problems delineated in these hearings and on findings of its study of European forest taxation systems, the Committee published a preliminary report in 1975.\textsuperscript{38} Although the specifics of the proposal differed from those of the 1974 Assembly report, the Senate report strongly supported adoption of a yield tax system of forest taxation.\textsuperscript{39}

Finally, the timber industry was concerned with the problems of the forest taxation system. In an effort to obtain a perspective on the problem, the California Forest Protective Association (CFPA) sponsored an independent analysis of the forest tax system during 1973-74.\textsuperscript{40} Similar to the legislative studies, this analysis also called for adoption of a yield tax system of forest taxation.\textsuperscript{41}

\textbf{B. Rationale for the Yield Tax}

Despite significant disagreement over the mechanics, the 1974 report to the Assembly, the 1975 Senate report, and the CFPA's independent analysis clearly agreed that some form of a yield tax should be adopted. Broadly speaking, these studies supported a yield tax system for three reasons: (1) the yield tax would not affect timber management decisions as much as an ad valorem property tax;\textsuperscript{42} (2) the yield tax would correct some major inequities present in the pre-FTRA system;\textsuperscript{43} and (3) by including

\begin{itemize}
\item \textsuperscript{34} \textit{Id.} at 108-109.
\item \textsuperscript{35} See, e.g., 2 \textit{Hearings on Logging Practices in the Sierra Before the California Assembly Committee on Natural Resources and Conservation} 56-73, 181-91, 192-212 (Oct. 2-3, 1972) (complainants representing large timberland owners, small timberland owners, and the State Board of Equalization).
\item \textsuperscript{36} NIAR, \textit{supra} note 2.
\item \textsuperscript{37} \textit{Id.} at 29-30.
\item \textsuperscript{38} \textit{Senate Select Committee Preliminary Report, supra} note 13.
\item \textsuperscript{39} \textit{Id.} at 100.
\item \textsuperscript{40} D. TEEGUARDEN, \textit{supra} note 13.
\item \textsuperscript{41} \textit{Id.} at 56.
\item \textsuperscript{42} \textit{Id.} at 33-34. See NIAR, \textit{supra} note 2, at 13-17; \textit{Senate Select Committee Preliminary Report, supra} note 13, at 50-55, 78-79.
\item \textsuperscript{43} D. TEEGUARDEN, \textit{supra} note 13, at 35-38; NIAR, \textit{supra} note 2, at 2-3.
\end{itemize}
collection and distribution mechanisms, careful draftsmanship could dispel the historical concern over the instability of revenue generated by such a system.\textsuperscript{44} Moreover, taxes on timber and timberlands were found to be of relatively minor importance as a source of county government revenues.\textsuperscript{45}

1. Decreased Interference with Timber Management Decisions

Because a yield tax is a percentage tax levied only against the value of \textit{harvested} timber, all three studies concluded that this system of taxation would not influence management decisions as much as the pre-existing system of taxation.\textsuperscript{46} First, a yield tax would not induce an owner to cut trees simply to raise cash to pay annually assessed fees. Rather, tax liability would coincide with cash availability. Second, a yield tax would not condition tax relief on a particular harvesting intensity, as did Section 12-3/4. Third, a yield tax would not penalize owners who, for non-commercial reasons, decide not to harvest their timber.

By neutralizing the influence exerted by tax considerations on many key management decisions, especially the selection of a harvest date, the yield tax would permit the owner to leave his trees standing for a longer period of time. Longer rotations or cutting cycles usually bring the timber growth rate closer to its biological maximum.\textsuperscript{47} One report estimated that on some timber stands in the redwood region of California, output under the longer rotations promoted by the yield tax could be twenty-four percent higher than under the pre-FTRA system, and up to four times greater than under an \textit{ad valorem} system unmodified by Section 12-3/4 exemptions.\textsuperscript{48} Longer rotations could also dramatically increase average annual growth on lower quality sites.\textsuperscript{49} Accordingly, a yield tax could increase growing stock on California timberlands by eliminating many of the previous disincentives to timber production.\textsuperscript{50}

In and of itself, a yield tax on timber would not neutralize an owner's decision to convert timberland to uses compatible with the "highest and best use" valuation. For this reason, most of the suggestions for yield tax legislation called for a limit on the assessed value of timberland, provided the owner agreed not to convert the land to other uses.\textsuperscript{51} By limiting the

\textsuperscript{44} D. TEEGUARDEN, \textit{supra} note 13, at 40, 86-88; NIAR, \textit{supra} note 2, at 6-7. \textit{See} Senate Select Committee Preliminary Report, \textit{supra} note 13, at 86-88.

\textsuperscript{45} \textit{See} text accompanying notes 58-61 \textit{infra}.

\textsuperscript{46} D. TEEGUARDEN, \textit{supra} note 13, at 33-34. \textit{See} NIAR, \textit{supra} note 2, at 13-17; Senate Select Committee Preliminary Report, \textit{supra} note 13, at 50-55, 78-79.

\textsuperscript{47} \textit{See} note 15 \textit{supra}.

\textsuperscript{48} NIAR, \textit{supra} note 2, at 12.

\textsuperscript{49} One estimate was that average annual output on these sites would be up to ninety-four percent greater under the yield tax system than under an \textit{ad valorem} system. NIAR, \textit{supra} note 2, at 12.

\textsuperscript{50} The fundamental goal of forest taxation reform proposals was the removal of obstacles to timber production investments. \textit{See}, e.g., NIAR, \textit{supra} note 2, at 2.

\textsuperscript{51} \textit{See}, e.g., D. TEEGUARDEN, \textit{supra} note 13, at 71-73; NIAR, \textit{supra} note 2, at 33-34. The mechanism for restricting assessed values which was incorporated into the FTRA is known as
assessed value of timberland to the income it could produce from timber production, growers would not be induced to convert their land to other uses solely for tax reasons.

2. An Equitable Distribution of Tax Burdens Among Timber Owners

The studies also concluded that tax burdens among timber owners would be more equitably distributed under a yield tax.\textsuperscript{52} Imposition of a single tax rate and centralized administration would eliminate many of the inequities associated with local assessment procedures. Under a yield tax, the market valuation factor would be simplified.\textsuperscript{53} The confusing modified assessment procedures under the Williamson Act would no longer be necessary.\textsuperscript{54} Although the yield tax would present administrative problems, such problems would be of lesser overall magnitude than those presented under the pre-FTRA structure.\textsuperscript{55}

3. Minimizing Fear Concerning Stability of Tax Revenues

In recommending a yield tax, the three studies recognized that local revenue problems popularly associated with a yield tax need not be considered severe.\textsuperscript{56} Traditionally, there was concern that revenue generated by a yield tax was too unstable to guarantee an acceptable annual income to local governments.\textsuperscript{57} This concern did not prevail in California for several reasons. First, counties did not rely on taxes from timber and timberlands for a major portion of their total revenue. One report estimated that in counties with 60,000 acres or more of private commercial timberlands, taxes levied against timber and timberlands amounted, on average, to only four percent of the counties' revenue.\textsuperscript{58} Surveys showed that school and other special local districts were slightly more dependent on this source of

the "Timberland Preserve Zone," or "TPZ," discussed in the text accompanying notes 105-146 infra.

\textsuperscript{52} D. TEEGUARDEN, supra note 13, at 35-38; NIAR, supra note 2, at 2-3.

\textsuperscript{53} It is easier to determine the immediate harvest value of timber than to calculate (by use of a discount factor) the present value of standing timber that will go unharvested for a number of years, as is necessary under an annual ad valorem tax system. See text accompanying notes 25-26 supra; D. TEEGUARDEN, supra note 13, at 38. See also NIAR, supra note 2, at 34-36.

\textsuperscript{54} See text accompanying notes 20-23 supra.

\textsuperscript{55} See D. TEEGUARDEN, supra note 13, at 42; NIAR, supra note 2, at 33.

\textsuperscript{56} D. TEEGUARDEN, supra note 13, at 40, 86-88; NIAR, supra note 2, at 6-7. See Senate Select Committee Preliminary Report, supra note 13, at 86-88.

\textsuperscript{57} See R. MARQUIS, FOREST YIELD TAXES 10 (U.S. Dep't of Agriculture Circular No. 899, 1952). This fear arose because yield tax receipts are directly related to annual timber harvests. Annual timber harvests fluctuate significantly, particularly at a county-wide level. Together with periodic fluctuations in the price of timber, the instability of county harvests makes yield tax collections unpredictable.

\textsuperscript{58} NIAR, supra note 2, at 22. See also D. TEEGUARDEN, supra note 13, at 87 (indicating that the yield tax system would affect only 5.2 percent of county revenues in the three counties studied). While there were wide variations in the percentages reported in the NIAR study, only one county received more than ten percent of its income from timber taxes. NIAR, supra note 2, at 22.
income. One report suggested, however, that the negative impact of the yield tax on individual school districts could be rectified by statewide apportionment of yield tax revenues for distribution to the affected districts. Moreover, the decision of the California Supreme Court in *Serrano v. Priest* effectively shifted the primary responsibility for raising school funds from the school districts to the state, by requiring the latter to equalize funding among all the districts in the state.

Second, and perhaps more important, counties had witnessed a steady decline in the volume of taxable timber. This decline resulted in part from the continual harvest of old growth across the state. In addition, Section 12-3/4 removed thirty percent of an owner’s trees from the tax rolls, if the owner harvested the requisite seventy percent of the stock. One report noted that taxable inventory in 1973 was approximately twenty-six billion board feet, but would decrease to about seventeen billion board feet in 1980. The yield tax would present a useful method of taxing timber which would otherwise have remained exempt under Section 12-3/4. For this reason, some local officials tended to favor the adoption of the yield tax.

Finally, the studies further recognized that any fear of revenue loss could be minimized by a pooling and collection arrangement. The state would collect the tax and then would distribute the revenue to local governments by a formula which would reflect the average revenue raised by the yield tax in the local unit over a longer period.

**C. Proposition 8 and the Form of the FTRA**

Amendment of the state constitution was a prerequisite to enactment of a yield tax in California. The California Constitution required that all real property be taxed unless exempted by the California Constitution or by the

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59. About one-half of the limited number of school districts studied were twenty percent or more dependent. NIAR, *supra* note 2, at 22.

60. *Senate Select Committee Preliminary Report, supra* note 13, at 87.


63. *Id.* at 22. In 1980, the total volume of standing timber would exceed this figure of seventeen billion board feet, but part of the total volume would qualify for exemption under Section 12-3/4. *Id.*


65. See *NIAR, supra* note 2, at 38-39; D. *Teeguarden, supra* note 13, at 67-68; *Senate Select Committee Preliminary Report, supra* note 13, at 86-88.

66. The scheme would include a reserve fund supported by a surtax on harvested timber, from which distributions would be made by the state in those years in which statewide harvests were poor. See text accompanying notes 99-104 infra.
TIMBER YIELD TAX

laws of the United States.\textsuperscript{67}

During 1974, the state legislature took the first step in the constitutional amendment procedure.\textsuperscript{68} The legislators approved\textsuperscript{69} Assembly Constitutional Amendment 32 (ACA 32).\textsuperscript{70} ACA 32 slated certain recommended state constitutional amendments for a vote on the 1974 state ballot.\textsuperscript{71} Among these recommended amendments to the constitution was a specific provision enabling the legislature to adopt an alternative form of timber tax.\textsuperscript{72} In discussions over the proposed timber tax changes, the timber industry pushed for language to encourage timber production and to exempt immature forest trees. County assessors, however, insisted that if timberlands were to receive special tax considerations, then the lands must be restricted by law to producing timber, or to compatible uses. The product of ACA 32 was Proposition 8 on the 1974 state ballot.

Proposition 8 was not designed solely with a yield tax in mind. Approved by the voters, Proposition 8 altered the state constitution to permit the legislature to develop a new system of forest taxation not based on property valuation.\textsuperscript{73} The amendment took the form of Article 13, Section 3 of the state constitution, which authorized the legislature to supersede the Section 12-3/4 exemption “with an alternate system or systems of taxing or

\begin{tabular}{l}
\textsuperscript{67} CAL. CONST. art. 13, § 1 (West 1954) (amended 1974). \\
\textsuperscript{68} CAL. CONST. art. 18, § 1 (West Supp. 1977) provides:  \\
\hspace{1cm} The Legislature by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, may propose an amendment or revision of the Constitution and in the same manner may amend or withdraw its proposal. Each amendment shall be so prepared and submitted that it can be voted on separately. \\
\textsuperscript{69} CALIFORNIA ASSEMBLY, FINAL HISTORY 2480 (1973-74). \\
\textsuperscript{71} \textit{Id.} at 1. \\
\textsuperscript{72} \textit{Id.} at 4 (enacted as CAL. CONST. art. 13, § 3(j) (West Supp. 1977) (quoted in note 73 infra)). \\
\textsuperscript{73} CAL. CONST. art. 13, § 3(j) (West Supp. 1977) provides:  \\
\hspace{1cm} [The following are exempt from property taxation:] \\
\hspace{1cm} Immature forest trees planted on lands not previously bearing merchantable timber or planted or of natural growth on lands from which the merchantable original growth timber stand to the extent of 70 percent of all trees over 16 inches in diameter has been removed. Forest trees or timber shall be considered mature at such time after 40 years from the time of planting or removal of the original timber when so declared by a majority vote of a board consisting of a representative from the State Board of Forestry, a representative from the State Board of Equalization, and the assessor of the county in which the trees are located. \\
\hspace{1cm} The Legislature may supersede the foregoing provisions with an alternative system or systems of taxing or exempting forest trees or timber, including a taxation system not based on property valuation. Any alternative system or systems shall provide for exemption of unharvested immature trees, shall encourage the continued use of timberlands for the production of trees for timber products, and shall provide for restricting the use of timberland to the production of timber products and compatible uses with provisions for taxation of timberland based on the restrictions.
\end{tabular}
exempting forest trees or timber, including a taxation system not based on property valuation. It mandated that immature forest trees be exempted from taxation and that timber production be encouraged by a new timber tax system. More important, Section 3(j) required that benefited timberland be restricted to timber growing and compatible uses.

Early in 1975, and subsequent to the passage of Proposition 8, the late Assemblyman Edwin Z’Berg, Chairman of the Assembly Committee on Natural Resources and Conservation, introduced Assembly Bill 1258 (AB 1258), the predecessor of the FTRA. This bill proposed a yield tax on timber, together with the local zoning of all timberlands into a special category within the county general plan. The yield tax was to be levied on timber harvested from all private lands in California, but did not tax timber from federal lands. The yield tax was to be assessed at a rate which would raise the same statewide revenue as was generated, on average, from timber taxation under the ad valorem system. The bill proposed a three-year period during which the yield tax system was to be phased in.

AB 1258 was referred to the Assembly Revenue and Taxation Committee for extensive study. The Committee appointed a special task force to analyze the yield tax concept and to make recommendations to the Committee. Based largely on the recommendations of the Task Force, the Committee held an interim hearing in 1975. Testimony at this hearing strongly favored the yield tax concept.

As a result of the hearings and of the interim study, a number of amendments were made to AB 1258. These amendments, which became part of the final version of the FTRA, included: (1) extension of the yield tax to timber harvested from both private and public land; (2) creation of a ten-year, enforceable zoning restriction limiting use of the land to timber production; and (3) elimination of the “phase-in” period, including the immediate establishment of a single specified yield tax rate.

74. Id.
75. Id.
76. Id. The land restriction mechanism which resulted from this language is discussed in detail in Section IV of this Article. See text accompanying notes 105-146 infra.
78. Id. § 13, at 16. The bill was amended in the Assembly early in 1976 to include timber standing on public lands as within the definition of taxable “timber.” See AB 1258, Cal. Reg. Sess. § 13, at 52-53 (amended Jan. 12, 1976) (enacted as CAL. GOV’T CODE § 51100(e) (West Supp. 1977)).
79. See AB 1258, Cal. Reg. Sess. § 13, at 18 (Mar. 20, 1975). The base period for determination of the average revenue from the ad valorem system was fiscal years 1973-74 to 1975-76. Id. § 4, at 5.
80. See id. § 13, at 18.
81. See CALIFORNIA ASSEMBLY, FINAL HISTORY 755 (1975-76).
82. Interim Hearing on Timber Yield Taxes and Preferential Assessment of Timberland (AB 1258) Before the Assembly Committee on Revenue Taxation (Oct. 20-21, 1975).
83. See note 78 supra, and accompanying text.
85. See id. § 13, at 55-56 (enacted as CAL. REV. & TAX. CODE § 38115 (West Supp. 1977)).
The law that resulted is complex. It represents a consensus that a yield tax is needed and a compromise about how it should be structured. The provisions are designed to promote investment in timber production and to provide revenue stability to local government. Section III of this Article discusses the yield tax mechanism of the FTRA. This mechanism replaces only the timber component of the former property tax. The timberland component is subject to a different tax structure, as part of a zoning plan called Timberland Preserve Zone (TPZ). In the event that land is restricted under timberland preserve zoning, a property tax is assessed based only on the value of the land for timber production. If the land from which the timber is harvested is not in a TPZ, the traditional ad valorem tax is assessed. Section IV of this Article discusses this land use restriction aspect of the FTRA.

III
THE YIELD TAX MECHANISM OF THE FTRA

The FTRA authorizes the California State Board of Equalization and the State Controller to administer most of the provisions of the yield tax. The appeal of a centralized system of administration lies in its capacity to foster uniform administration of the tax, to facilitate mechanisms needed to stabilize local revenue, and to gather efficiently the data necessary to implement the yield tax.

Establishing the value of the taxable timber is the first step the Board of Equalization must undertake in levying the yield tax. This value is termed the "immediate harvest value," and is established semi-annually by the Board. Among the factors the Board considers in calculating this value are

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86. See CAL. REV. & TAX. CODE § 434.5 (West Supp. 1977). The specifics of the new assessment procedures are discussed in the text accompanying notes 107-111 infra.


88. In essence, the State Board of Equalization makes necessary adjustments in the yield tax rate, determines harvest values of the timber, and collects the taxes. See CAL. REV. & TAX. CODE §§ 38202-38204, 38401-38705 (West Supp. 1977), and the State Controller determines and distributes the share of yield taxes to be awarded county governments. See id. §§ 38905-38907; CAL. GOV'T CODE § 27423 (West Supp. 1977). The State Superintendent of Public Instruction administers certain provisions in the FTRA adjusting revenues lost by school districts as a result of the loss of annual property taxes paid directly to county governments. See CAL. EDUC. CODE §§ 17701.4, 20905(k) (West Supp. 1977).

89. CAL. REV. & TAX. CODE § 38204 (West Supp. 1977). The Board is to divide the state’s timberlands into designated "timber value areas" "containing timber having similar growing, harvesting and marketing conditions." Id. Schedules of values for each species of timber within each area are to be drawn up. Id.
market fluctuations, accessibility of the processing mill to the timber site, and variations in costs of harvest site operations. Because of the technical nature of this information, the FTRA creates a Timber Advisory Committee to assist the Board in determining a schedule of values.\(^90\)

Once the value of timber is determined, the taxpayer computes his taxes by applying a yield tax rate of six percent.\(^91\) Thus, if a taxpayer

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\(^90\) The Timber Advisory Committee consists of one representative of the Board of Equalization, one representative of the Board of Forestry, five county assessors, one member representing small-scale timber owners, and one member representing large-scale timber owners. \textit{Cal. Rev. & Tax. Code} § 431(c) (West Supp. 1977).

\(^91\) \textit{Id.} § 38115. The rate of six percent was adopted by the legislature after considerable debate. Ultimately, the six percent rate reflected a public policy choice in favor of a concept of "replacement revenue," so titled because the rate chosen hopefully will generate the same amount of income as formerly raised by the timber component of the ad valorem property tax. An implicit assumption in this choice is that timber owners, as a class of taxpayers, were paying an "equitable" share of local taxes under the pre-FTRA system. See note 7 supra.

Within the class of timber owners, however, the FTRA shifts tax burdens in two ways. First, companies harvesting large amounts of timber previously exempt under Section 12-3/4 will obviously pay an increased share of the burden under a yield tax. Companies harvesting from an inventory of timber that paid an annual property tax will ordinarily decrease their share of the total tax burden under a yield tax system, as yield taxes are to be paid only on the trees harvested, not on the entire standing inventory.

Second, there is a shift in the tax burden from harvesters of private timber to harvesters of public timber. Prior to the FTRA, local governments taxed the possessory interest in federal timber. In effect, a "possessory interest tax" is a levy against the value of an individual's right to harvest timber on federal lands. The value of this right under the ad valorem tax system was the value of timber under contract to the timber producer from the federal government. The possessory interest tax was levied against this value. The yield tax is predicated on the same legal basis as the possessory interest tax, but the yield tax levies a six percent tax on the value of timber actually harvested from federal land. The uniform six percent tax on harvested timber represents a higher percentage of harvest income paid as taxes by public timber harvesters than under the old ad valorem tax system. Previously, harvesters of federal timber enjoyed certain tax advantages over the private timber owners. The amount of federal timber to be harvested under contract, and upon which possessory interest taxes were paid, was far less than the total inventory of federal timber. In contrast, private timber producers were taxed under the ad valorem system on more than just the value of the timber to be harvested. They were taxed on the value of their entire stock, save that which qualified for exemption under Section 12-3/4. If a greater percentage of the standing federal timber inventory had been taxable, the tax burden on harvesters of federal timber would have been nearer that borne by the private owners. According to data provided by the Board of Equalization to the authors, ad valorem property taxes on possessory interests for the fiscal year 1972-73 equalled only 2.4% of the total value of federal timber actually harvested in that year (taxes of $3,768,000 were paid on possessory interests; $154,982,000 worth of timber was harvested), while a rate comparably calculated on privately owned timber would have been 7.6% of the value of harvested timber (taxes of $18,221,000 were paid on timber stocks; $239,311,000 worth of timber was harvested). Consequently a six percent tax on the value of harvested timber will lower the effective rate for harvesters of private timber and raise the effective rate on harvesters of public timber.

It is interesting to note the question of the legal propriety of taxing federal timber, an issue which arose in debate over the yield tax rate. According to the federal statute which admitted California to the Union, the admission was "upon the express condition that the people of said state, through their legislature or otherwise, . . . shall never lay any tax or assessment of any description whatsoever upon the public domain of the United States." An Act for the Admission of the State of California into the Union, ch. 50, § 3, Stat. 452 (1850). The key to resolution of the tax question lay in a determination of the ownership of the timber at the time of its taxation: was it owned by the federal government, or by the harvester who had a contract
harvests 5,000 board feet of timber worth an "immediate harvest value" of $50 per thousand board feet, his gross income is estimated to be in the neighborhood of $250, and his tax bill will be six percent of $250, or $15.

In adopting a statewide rate, the legislature recognized the possibility that a statutory rate would not be responsive to local adjustments in property taxation. Although local voters could be expected in the future to set a higher (or lower) tax rate on private property, the yield tax on timber would be fixed. The legislature resolved this potential disparity by including a rate adjustment mechanism in the FTRA, under which the six percent rate can be made to respond to changes in the rate of general property taxation.

Taxes are paid by timber operators to the State Board of Equalization. The statutory scheme for revenue distribution is complex. First, the state allocates part of the revenue to those state agencies charged with administration of the tax, to reimburse them for costs incurred in administration. Second, the state distributes the yield tax revenues pro rata to the counties, cities, special districts, and school districts, in accordance with an annual yield tax revenue guarantee formula. This revenue guarantee equals a three-year average of the total local property tax revenues attributable to timber. As discussed previously, the legislature instituted this guarantee to provide a degree of revenue stability to local government in this rather abrupt transition period.

Since timber harvests may vary from year to year, the FTRA establishes a revenue reserve fund, out of which the Controller can distribute the minimum guarantee in years in which the yield tax raises insufficient revenue. The legislature added a 0.5% surtax to the six percent yield tax rate to provide moneys for this fund. In addition to this source, the FTRA places in reserve that part of the six percent yield tax revenues in excess of the amount necessary to pay local governments the minimum revenue

with the government? An opinion of the state's legislative counsel concluded that the possessor interest tax is not imposed directly on federal property, but rather "it is imposed on the privately held possessory right to cut and remove timber." CAL. LEGIS. COUNSEL OP. NO. 14881, at 3 (June 18, 1975) (unpublished) (citing Georgia Pacific Corp. v. County of Mendocino, 340 F. Supp. 1061, 1066 (N.D. Cal. 1972)).

Real timber values (those discounting the effects of inflation) would have to be double the 1968-1971 values by 1980 if the yield tax, maintained at a steady rate of six percent, were to produce the same revenue an ad valorem tax on timber would have produced in 1980. NIAR, supra note 2, at 32. If real timber values fail to climb so rapidly, it follows that the yield tax rate would have to be adjusted upward to maintain "replacement revenues."

Changes in the yield tax rate were pegged to changes in the average rate of general property taxation for seventeen counties. CAL. REV. & TAX. CODE § 38202 (West Supp. 1977). This method was suggested by D. TEEGUARDEN, supra note 13, at 66.

The surtax rate may be adjusted by the Board of Equalization if the six percent rate will not restore the moneys paid out of the reserve fund to meet the minimum annual guarantee. Id. §§ 38303, 38907.
guarantee, until the reserve fund totals eight million dollars. Once the reserve fund reaches eight million dollars, the state distributes any excess in the fund to the taxing agencies based on their average proportional share of the total revenue collected. The surtax expires in 1982, the reserve fund remains, with excess yield tax revenues as the only source of funding.

While the yield tax mechanism postpones taxation on the value of growing timber until harvested, the timberland itself continues to be taxed under the FTRA on the basis of an annual ad valorem tax. However, the FTRA recognizes that continued assessment of the value of the timberland based on the "highest and best use" of the land could lead, in the face of encroaching development, to tax burdens that would make timber production uneconomic. As a result, the FTRA incorporates some land use provisions which relieve the timberland owner of the economic pressure of "highest and best use" assessments, and insure the future preservation of timberlands for timber production. These provisions are discussed in Section IV.

IV

THE TIMBERLAND PRESERVE ZONE

One of the most important and unique elements of the FTRA is the creation of the Timberland Preserve Zone, or "TPZ." Applied independently of the yield tax, the TPZ is designed to insure that land will continue to be available for timber production. Until the adoption of the TPZ, neither state nor local government had addressed, to any significant degree, the impact of political and economic pressures on the timberland base of the state. The creation of a special land use category for the state's timberlands established a firm commitment to the preservation of a private resource base for timber production and compatible uses.

The origin of this policy of resource protection can be traced to Proposition 8, enacted in 1974. Article 13, Section 3(j), the resulting amendment to the California Constitution, provides in part that "any alternative system [of forest taxation] . . . shall provide for restricting the use of timberland to the production of timber products and compatible uses and provisions for taxation of timberland based on the restrictions."

A. Valuation of TPZ Lands for Tax Purposes

Under the constitutional mandate of Section 3(j), the value of TPZ parcels, for purposes of taxation, is limited to the land's ability to produce timber and to support compatible uses. The FTRA follows this mandate.

101. Id. § 38905(b).
102. Id. §§ 38905(b), 38906, 38908.
103. Id. § 38301.
104. See id. § 38305(b).
105. See text accompanying notes 68-78 supra.
Inasmuch as land values which result from restrictive zoning are often much lower than those of surrounding parcels assessed for some "higher and better use," the FTRA provides tax relief to timber owners with land zoned as TPZ.

Land zoned as TPZ is first classified by the assessor according to its productivity, or "site class." Based on the value the state assigns to a specific site class, the total land value of the property is calculated and the value listed on the assessment role. The valuation procedure is centralized to provide for uniform administration and application throughout the state. The values are developed primarily through analysis of the sale prices of timberlands. Such analysis, however, is limited to consideration of those values derived from sales of property with potential income generating ability similar to that of the productivity class.

B. The Meaning of "Restriction"

The mandate of Section 3(j) also required the imposition of a "restriction" on the use of timberland. It remained for the legislature to: (1) adopt an acceptable and sufficient form of "restriction" on timberland; and (2) determine which timberlands were intended to be restricted.

1. Early Attempts to Draft a Restriction Plan

Early drafts of the FTRA attempted to meet the requirements of Section 3(j) by authorizing county zoning of timberland consistent with the county general plan. The early plans required the parcels so zoned to be lands determined by the county assessor to be actually used for timber production and harvesting.

In a written opinion, the California legislative counsel concluded that this plan did not constitute an adequate "restriction" within the meaning of section 3(j). This conclusion found support in an earlier opinion submit-
ted by the state Attorney General, specifically addressing the definition of enforceable restrictions. There, the Attorney General stated that a use restriction "must be enforceable and of lasting duration rather than transitory in nature" if it is to satisfy the requirements of Section 3(j). The early plan failed in part because it amounted to nothing more than ordinary zoning. Such a system could not guarantee the requisite permanence. As the Attorney General pointed out in his opinion, "the problem with zoning restrictions is that they are not long-lasting and frequently change in response to the local political climate."

Another major defect in the early plan stemmed from the discretion lodged in the owner to remove the classification. As drafted, the plan permitted the owner to declassify a parcel simply by filing a written request. As the landowner was able to alter the use of the land in this manner, the restriction was not strictly enforceable, and was thus arguably invalid. Consequently, the legislature sought a more restrictive method of zoning. The mechanism eventually chosen, the TPZ, is, in its basic structure, modeled after the Williamson Act and is both enforceable and long-lasting.

2. Restrictions on Land Use in the FTRA

Under the FTRA, land zoned as timberland preserve is restricted to timber growing and harvesting or some other harmonious activity. Local city or county governments are required to establish a list of acceptable "compatible" uses that conform to the limited statutory definition of that term.

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116. \textit{Id.} at 6. The Attorney General noted further that such zoning ordinances had failed in the past to restrict agricultural land to compatible uses under the Williamson Act. The Williamson Act is discussed in the text accompanying note 12 supra. In support of this assertion, the Attorney General cited Alden & Shockro, \textit{Preferential Assessment of Agricultural Lands: Preservation or Disaster?} 42 \textit{So. CAL. L. REV.} 59 (1969). According to Alden and Shockro, ordinary zoning restrictions had little effect on local assessors. They explained:

Zoning for exclusive agricultural use has been adopted in an attempt to deter the withdrawal of agricultural land, since the assessor is directed to consider the effect of publicly imposed restrictions on the use of the land and since the assessor can only assess property at its value for those uses permitted by law. However, if there is a reasonable probability that the agricultural zoning will be removed or substantially modified in the near future, the assessor may take into consideration not only those uses which are presently permitted, but also those to which the land could be devoted. Since zoning is noted for its lack of permanence in the urban fringe areas, zoning restrictions are typically ignored by the assessor. Therefore, zoning offers neither the motivating tax relief nor the assurance of continued agricultural productivity.

\textit{Id.} at 61. For a full discussion of zoning as a tool for agricultural land preservation, see \textit{ASSEMBLY TASK FORCE ON THE PREFERENTIAL ASSESSMENT OF PROPERTY, ASSEMBLY REPORT No. 426} (1975).
118. See text accompanying note 12 supra.
120. \textit{Id.} \$ 51111. A "compatible use" is defined as 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, the...
The TPZ restriction on land is enforceable for an initial period of ten years. For every year thereafter that the owner does not petition the local governing body to rezone his land, or is unsuccessful in his petitioning efforts, an additional year is added to the restrictions. If rezoning is granted, the new zoning designation does not take effect for ten years. Thus, the TPZ is frequently termed a ten year "rolling zone."

There are good reasons for imposing the restrictions for a minimum of ten years. First, speculation in land will hopefully be constrained if land is held for such a long period of time. Presumably, landowners not truly interested in timber production would not seek the protection of the TPZ. Second, a long investment period may be necessary for silviculture ventures. An investor in timberlands should be assured of protection from "highest and best use" assessment for an adequate period of time.

C. Selection of Land for the TPZ

Section 3(j) does not specify which lands should be included in the TPZ. The only guide is that such land should be devoted to timber production and compatible uses.

There is a growing awareness on the part of forestry experts and policy makers that highly productive timberland, like rich farm land, is a limited and precious asset. However, it was not possible for the legislature to designate specifically all high site class land use for the TPZ upon adoption of the FTRA, because much of this land was devoted to non-timber uses.

following, unless in a specific instance such a use would be contrary to the preceding definition of compatible use:

(1) Management for watershed;
(2) Management for fish and wildlife habitat or hunting and fishing;
(3) A use integrally related to the growing, harvesting and processing of forest products, including but not limited to roads, log landings, and log storage areas;
(4) The erection, construction, alteration, or maintenance of gas, electric, water, or communication transmission facilities; or
(5) Grazing.

Id. § 51100(h).
121. Id. § 51114.
122. Id. §§ 51114, 51120.
123. See id. § 51131 (prohibiting the county or city government from rezoning land in the TPZ during this ten-year period, except upon request by a landowner). See discussion of "immediate rezoning procedures" in text accompanying notes 142-144 infra. The local government body may on its own initiative vote to remove a parcel from the TPZ, but the removal does not take effect until the expiration of the ten-year period. Id. § 51121.
124. The text of Section 3(j) is quoted in the text accompanying note 106.
125. See, e.g., Vaux, How Much Land Do We Need for Timber Growing? 3 J. FORESTRY 399 (1973). In July, 1977, the California State Board of Forestry adopted a policy concerning the maintenance of the state's timber supply which recognized the urgent need to protect the state's highly productive timberland. 2 California State Forest and Fire Laws, ch. 5 (1977). Over half of California's timber production potential is contained in approximately five million of the state's eighteen million acres of timberlands.
126. Much of the highly productive timberland is located in areas of rich river basin soils. These soils are often concentrated in areas easily accessible to the public. Consequently, there is pressure to subject this land to non-timber uses, especially "second home" developments which severely constrain using the land for commercial timber production.
Instead, the first parcels to be included in the TPZ were to be those whose "highest and best use" assessment was timber production. In an immediate sense, the TPZ zoning process did not alter, but was largely based on present land use patterns.

The legislature opted for a three-level land classification system under the TPZ. The FTRA provides criteria by which land is to be mandatorily included, optionally included, or not included at all in the TPZ. Further, there is provided a mechanism for the inclusion or exclusion of lands in the future.

1. The TPZ Zoning Process

Provisions in the FTRA evidence a legislative belief that local government should be given a maximum amount of control and flexibility in the selection of land for inclusion in the TPZ, where consistent with state policy. The TPZ zoning process represents a blend of state mandate to preserve productive timberlands, and some local control over what timberlands should be included. The FTRA requires local governments to implement the TPZ via a three-step zoning process.

The first step entails the compilation of "List A," composed of those parcels that the local assessor had, under the ad valorem tax system, assessed for timber production as the "highest and best use" of the land.127 Under the FTRA, such parcels automatically qualify for inclusion in the TPZ, unless the local government body finds that the parcels are not devoted to timber production and compatible uses.128 If the owner does not want such zoning, he may contest the listing.129 Local governments were deliberately given only limited discretion to exclude these parcels from the TPZ. Parcels which received the benefit of assessment solely on the basis of their value as timberland under the ad valorem tax should continue to be assessed according to that use. If the "highest and best use" of the land is truly timber production, inclusion of the property in the TPZ will not cause the same loss of significant development opportunities that might occur in connection with lands previously assessed as valuable for a "higher and better use."

The second step in zoning land as TPZ is development of "List B."130 This list consists of all parcels that, in the judgment of the assessor, were devoted to timber production but were taxed under the ad valorem tax

127. CAL. GOV'T CODE § 51110.
128. Id. § 51112(a). In order to exclude an "uncontested" parcel from List A, the local governing body must find that either: (1) the parcel is incapable of growing an average of at least fifteen cubic feet of wood fibre per acre per year; or (2) the use of parcel has changed subsequent to its assessment under the ad valorem tax system, and it is no longer devoted to timber production. Id.
129. Id. § 51110(c). In contrast to the specific findings the local board or council must make to exclude an "uncontested" parcel from List A, see note 128 supra, the body need only find that it is "in the public interest" to exclude a "contested" parcel. Id. § 51112(b).
130. Id. § 51110.1.
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system according to a market value based on a "higher and better use." The purpose of this list is to give the local board or council an approximate listing of existing, productive timberlands with significant potential for the development of other, more "valuable" uses. Based on this listing, the board or council must then decide how much of this land should be set aside for timber growing. The local governing body must zone parcels on List B as TPZ unless it is in the public interest not to do so. Because the zoning of "List B" parcels would limit the assessment values that could be placed on property with "higher and better uses," and thus potentially could have the effect of reducing the local tax revenues, this "public interest" test was instituted to allow local governments the opportunity to weigh local needs for revenue against preservation of the county's timberlands base.

The third step in the TPZ zoning procedure permits the owner to petition the local government to include his land in the TPZ. Parcels so classified are informally referred to as "List C" parcels, although this term does not appear in the statute. This provision reflects concern that local governments, fearful of potential revenue losses accompanying a limitation on assessment values, would resist "down-zoning" legitimate timber producing land to TPZ.

Under the FTRA, each city or county must adopt specific criteria that a parcel must meet before it will be zoned as TPZ. However, each local government has very limited discretion in choosing appropriate criteria. The FTRA mandates that the following three conditions be adopted: (1) the presentation of a map of the parcel; (2) the presentation of a timber management plan; and (3) a guarantee that the parcel will continue to meet certain timber stocking standards. Two additional criteria may be included at the option of the county: (1) a minimum land area set by the county or city, not to exceed 160 acres; and (2) a certain minimum site quality not greater than site class III. Under no circumstances may a city or county require an owner to satisfy criteria other than the five listed

131. Id. § 51112(c). The local assessor, who must initially determine which parcels to include in Lists A and B, has been given primary responsibility for making judgments about the use of these parcels. In many counties, assessors have properly carried out the intent of the law, particularly in determining which parcels have been devoted to timber production and should be included in List B. In some counties, assessors did not follow the intent of the List B determination, namely to provide a listing of possible timberlands to the local board or council. Consequently, the FTRA was amended in late 1977 to provide that any owner with a management plan signed by a registered professional forester could qualify his parcels for List B. Ch. 853, § 5.5, 1977 Cal. Stats. (to be codified at CAL. GOV'T CODE § 51100.3). In this way, most timberlands would come before the local governing body on either List A or List B.

132. CAL. GOV'T CODE § 51112(c) (West Supp. 1977).

133. Id. § 51113(a).

134. Id. § 51113(c).

135. Id. The timber stocking standards which must be met are those specified by CAL. PUB. RES. CODE § 4561 (West Supp. 1977) (Z'berg-Nejedly Forest Practice Act of 1973).

136. CAL. GOV'T CODE § 51113(d). Site class III is a class of "intermediate productivity potential." For an explanation of the classification scheme, see note 107 supra.
The authority of the local government to deny petitions is also limited. Any parcel on Lists A, B, or C that satisfies the adopted criteria must be zoned as timberland preserve. The optional criteria provision represents a concession to local governments. The two optional criteria may not be required of List A or List B parcels. More stringent requirements for zoning of List C lands permit local governments to minimize potential revenue losses associated with the restricted-use valuation of TPZ parcels. Yet, by dictating which additional criteria are permitted, the state retains the control necessary to achieve the FTRA's purpose of enforceably restricting all legitimate timberlands.

Nothing in the law prevents the county or city from zoning any parcel as TPZ, as long as that parcel conforms to the FTRA's definition of "timberland" and the county or city's own ordinance for compatible uses within a TPZ. California Government Code section 51113 is drafted so as to restrict the ability of local government to deny petitions for TPZ status, not to restrict local government's ability to approve such petitions. Section 51113 affirmatively requires the local governing body to restrictively zone timberland on the petition of the owner if certain criteria are met, but it does not prohibit the governing body from waiving those criteria and granting such petitions more liberally.

2. Removal of the TPZ Zoning Restrictions

An owner may contest the decision to zone his land as timberland preserve. In order to prevail, he must satisfy a majority of the local ruling body that it is not in the "public interest" to classify his parcel as TPZ. Once a parcel is zoned as TPZ, however, the FTRA provides only two methods whereby an owner may later request the county or city to remove the enforceable use restrictions, presumably for the purpose of changing the land use to a use inconsistent with timber production.

The first method of removing the TPZ designation is termed "immediate rezoning." In order to immediately rezone, the full local governing body must find by at least 4/5 majority vote that: (1) "immediate rezoning would be in the public interest;" (2) immediate rezoning would not have a substantial and unmitigated adverse effect upon the timber-growing or open-space uses of other nearby TPZ parcels; and (3) "the soils, slopes and watershed conditions would be suitable for the [new] uses proposed." In addition, the circumstances under which the local board may conclude that

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137. Id. § 51113(c).
138. Id. § 51113(a).
139. Id. § 51100(f) defines "timberland" to mean 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.
140. Id. § 51111. See note 120, and accompanying text.
141. Id. §§ 51110, 51112(c). See note 129 supra.
142. Id. § 51134(a).
the public interest is served by rezoning are restricted. The local board or council is instructed that "the existence of an opportunity for an alternative use of the land shall not alone be sufficient reason for granting a request for immediate rezoning," and that "the uneconomic character of the existing use shall not be sufficient reason for the approval of immediate rezoning." These two restrictions indicate that the legislature intended to make it difficult for the owner to remove the TPZ designation from his parcel.

The legislature recognized that immediate rezoning could lead to a tax windfall for owners seeking to reclassify their land. If rezoning occurs immediately, it is possible for an owner to hold land that is zoned in a tax-benefited timber category for a number of years, and then apply for and receive rezoning at a convenient time, thereby gaining both the unrestricted use of his land for non-timber purposes and the tax break intended to preserve the land for timber. Therefore, in addition to the requirements listed above, penalty provisions were adopted as a further disincentive to immediate rezoning. The provisions impose a tax recoupment fee, with interest based on the amount of time a landowner enjoyed the tax benefits inuring to the TPZ designation.

The second method of obtaining relief from the use restriction of the TPZ is normal rezoning. As explained above, however, under the normal rezoning process, the new zoning designation does not take effect for a period of ten years following adoption of the new designation.

The TPZ provisions of the FTRA demonstrate a strong state policy in favor of preservation of a resource base for timber production. Implementation of this policy is deliberately achieved through a balance of state and local control. The FTRA provides direction to local governments to zone those parcels the state desires to have included in the TPZ, while allowing local governments the discretion to deal with the situation on a case-by-case basis. The FTRA also grants landowners the right to contest inclusion of their parcels in the TPZ and to retain use of the parcels for other purposes if such use is in the public interest.

CONCLUSION

The enactment of the FTRA corrected several serious defects of the pre-existing tax structure. Primarily, the FTRA is designed to eliminate disincentives to timber production inherent in an ad valorem property tax system. The legislature feared that California's timber supply would continue to decline, absent increased investment in timber production by all timber owners in the state. Additionally, the FTRA is designed to improve tax equity among classes of timber owners through greater uniformity in administration and valuation of timber and timberlands.

143. Id. § 51134(b)-(c).
144. Id. § 51142.
145. Id. §§ 51120-51121.
146. See text accompanying notes 121-122 supra.
The FTRA further is designed to replenish a diminishing revenue base for local governments. As noted earlier, tax payments under the pre-FTRA system were expected to decline because of the increasing amount of timber exempted from taxation pursuant to the Section 12-3/4 exemption. The yield tax also extends the revenue base by applying a six percent tax to timber harvested from federal as well as private lands.

Local revenue is protected by other safeguards incorporated into the yield tax law. The first safeguard is a revenue guarantee to counties, financed by a surtax on timber. A second safeguard is a mechanism constructed to adjust the yield tax relative to the average property tax rate in unincorporated areas of rural counties. Thus, if local tax rates are rising because of the demand for local revenue, the yield tax rate will also rise.

Another local revenue guarantee lies in revenue distribution policies. In the event that too much money is accumulated in the reserve fund, excess funds will be distributed to counties in proportion to yield tax collections. This feature of the tax allows moneys to go to counties in which the timber is actually harvested.

Although there is little doubt that the FTRA will eventually encourage investment in timber production, the FTRA will probably have little impact on the actual timber supplies harvested from industrial ownerships for roughly the next ten years.\(^{147}\) Harvests on these lands are relatively stable and variances in harvest are related primarily to market conditions or mill requirements.

In the case of owners of small timber holdings, the impact is quite uncertain. Because these owners are no longer under pressure to harvest simply to pay taxes, it may well be that they will allow their growing stock to increase. In this way, the harvest may decline in the short run, but inventory will increase.

In the next twenty to fifty years, the yield tax may have a more definite impact on timber supply.\(^{148}\) The yield tax removes a tax obstacle to rehabilitating understocked lands. Increasing the timber yield of these lands may prove profitable for the timber owner as timber prices continue to rise. The yield tax also encourages owners to hold timber stands now in the sapling or pole timber stage until these stands become merchantable. These types of timber account for nearly half of the stands on small ownerships in California. Under the pre-FTRA system, these young stands would be most susceptible to the time bias inherent in the ad valorem tax system.

The FTRA is a novel experiment in combining taxation and land use law. Its complexity indicates that there are no easy means of promoting investment in timber production and preserving the state's private timberland base while sustaining the present revenue level. To ensure that this

\(^{147}\) NIAR, supra note 2, at 87.

\(^{148}\) Id. at 88.
complex scheme functions effectively, the legislature has mandated that the entire yield tax system be scrutinized in 1980. Based on data collected in the first three years of FTRA implementation, the legislature will be able to determine if adequate revenue is generated, if revenues are wisely distributed, and if zoning provisions are functioning properly. At that time, the legislature will be able to judge whether forestry is prospering in California under the FTRA umbrella.
