

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

W-12a**RECORD PACKET COPY**

DATE: November 27, 2000

TO: Commissioners and Interested Parties

FROM: Steven F. Scholl, Deputy Director
Chris L. Kern, North Central Coast District Supervisor
Jane A. Steven, North Central Coast Planner

SUBJECT: San Mateo County Implementation Plan Major Amendment No. 2-00
Timber Harvest Buffer

Summary of Staff Report

Amendment Description

San Mateo County proposes to amend the implementation portion (IP) of its Local Coastal Program (LCP) to establish a 1,000-foot buffer zone between legal residences in existence as of June 18, 1991 and commercial timber harvest operations in two zoning districts in the coastal zone. The proposed amendment would amend Zoning Code Sections 6905 (Resource Management/Coastal Zone) and 6353 (Planned Agricultural District) to establish the timber harvest buffer provisions for these districts. The amendment also adds Section 6401.5 to the Zoning Code, which would allow the Planning Division to file notices as a condition of approval on the title of properties proposing new residential development on lands zoned RM/CZ and PAD. The notices would disclose to residential property owners in these two zoning districts that they may be subject to inconvenience or discomfort associated with timber harvest operations.

On June 19, 2000, the Executive Director determined the County's LCP amendment application to be complete in accordance with the Commission's regulations (14 CCR sections 13551 and 13552). In accordance with Coastal Act Section 30513, the LCP amendment must be scheduled for Commission review on or before August 18, 2000. Pursuant to Coastal Act Section 30517, the Commission may extend for good cause the 60-day time limit for action on an LCP implementation plan amendment for a period not to exceed one year. Because of an unusually large volume of work and recent staff turnover, the staff was not able to complete its review and prepare a recommendation for final Commission action on this LCP amendment application within the 60-day time period. Accordingly, on August 9, 2000 the Commission extended the time limit for action not to exceed one year. San Mateo County staff requested that this amendment be scheduled for public hearing during the Commission's December 2000 meeting in San Francisco in order to maximize local public participation.

Standard of Review

In order to approve the IP Amendment the Commission must determine that the proposed IP changes are consistent with and adequate to carry out the policies of the certified coastal land use plan (LUP).

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Staff Recommendation

Staff recommends that the Commission approve the proposed amendment establishing a 1,000-foot buffer zone between legal residences in existence as of 1991 and timber harvest operations in specified zones. The amendment would limit the locations of timber harvesting within 1,000 feet of established residences in existence as of June 18, 1991 in specified zones. The County ordinance was upheld by a California Appellate Court decision on the ordinance (Big Creek Lumber v. County of San Mateo (1995) 31 Cal. App. 4th 418). The proposed LCP amendment is consistent with and will further implement LUP resource protection policies.

Additional Information

If you have any questions or need additional information regarding the proposed amendment, please contact Jane Steven at (415) 904-5260.

Staff Recommendation: Motions and Resolutions

Motion

I move that the Commission reject Implementation Plan Amendment 2-00 to the County of San Mateo Implementation Plan as submitted by the County.

Staff Recommendation to Certify

Staff recommends a "NO" vote. Failure of this motion will result in certification of the Implementation program as submitted and the adoption of the following resolution and findings. The motion passes by an affirmative vote of a majority of the Commissioners present is needed to pass the motion.

Resolution

The Commission hereby approves Major Amendment No. 2-00 to the IP of the County of San Mateo and adopts the findings set forth below on the grounds that the IP amendment will meet the requirements and is adequate to carry out the provisions of the certified LUP. Certification of the IP amendment as suggested complies with the California Environmental Quality Act because the implementation plan amendment will not have a significant adverse effect on the environment and thus there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts which the IP may have on the environment.

Recommended Findings

1. Description and Background

San Mateo County is proposing to amend Section 6905(g) and Section 6353(B)(10) of the implementation portion (IP) of its Local Coastal Program (LCP) to establish a 1,000-foot buffer zone between legal residences in existence as of June 18, 1991 and commercial timber harvest operations in the Resource Management/Coastal Zone (RM/CZ) and Planned Agricultural District (PAD) (Exhibit 1). In addition, the amendment would add Section 6401.5 to allow the Planning Division to file notices as a condition of approval on the titles of properties proposing new residential development in the RM/CZ or PAD zones. These notices would disclose to residents adjacent to lands zoned RM/CZ and PAD that they may be subject to inconvenience or discomfort associated with timber harvest operations. Although the County amendment also affects lands zoned RM, these lands are outside the Coastal Zone. Only lands zoned RM/CZ and

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PAD are within the Coastal Zone. The proposed amendment would not create buffers in lands designated TPZ or TPZ/CZ where timber harvesting is recognized as the "best use". Adoption of this ordinance would create a 1,000-foot buffer only for residences in existence as of June 18, 1991, and not future developments.

There are approximately 73,000 acres of privately owned lands zoned RM, RM/CZ, and PAD. Of these, only about 11,000 acres are timbered (San Mateo County 1971). The total timber acreage in private ownership, including TPZ and TPZ/CZ zoned lands, is estimated to be approximately 35,000 acres. The proposed ordinance would not create buffers in lands designated TPZ or TPZ/CZ where timber harvesting is recognized as the "best use". The publicly-owned forestlands include State, Regional, and County Parks where there is no potential for commercial timber harvesting. **The cumulative impact of the ordinance would be to remove a total of 1,236 acres, or about four percent, of commercial timberland that can be harvested in the County** (excluding eucalyptus groves, which are not a species controlled for harvesting by CDF). Comparable data on the acreages within the Coastal Zone alone is not available.

Timber Harvesting in San Mateo County

In San Mateo County commercial timber harvesting is an allowed use in lands designated Timberland Preserve Zone (TPZ), Timberland Preserve Zone/Coastal Zone (TPZ/CZ), Resource Management (RM), Resource Management/Coastal Zone (RM/CZ), and Planned Agricultural District (PAD). Residential development is also an allowed use in these districts and in adjacent residential districts. Since 1983, under the Forest Practices Act, the California Department of Forestry and Fire Protection (CDF) has solely regulated timber operations, and, with limited exceptions, the County is pre-empted by State law from directly regulating the conduct of such operations. However, a 1995 California Appellate Court decision involving the proposed San Mateo County ordinance determined that while local governments cannot regulate the conduct of timber cutting operations, they can use their planning authority to determine where it may occur (Big Creek Lumber v. County of San Mateo (1995) 31 Cal. App. 4th 418) (Exhibit 2).

Conflicts between Commercial Timber Harvesting and Residential Uses

Over the years since permitting authority passed to the state, considerable controversy has arisen over the compatibility of timber harvesting adjacent to residential uses in the affected districts. The San Mateo County Board of Supervisors has found that commercial timber harvesting operations have the potential to cause a number of conflicts with existing residential uses. These predominantly involve complaints about noise associated with adjacent timber harvest operations, but also include complaints about windthrow¹; erosion, particularly in steep areas and areas near riparian corridors; and adverse impacts on wildlife and their habitat. Timber harvesting in the vicinity of residential structures also adversely impacts the scenic and aesthetic qualities of the viewshed.

In addition, in adopting the ordinance, the Board of Supervisors specifically declared that the conduct of timber operations within 200 feet of an existing residential structure constitutes a nuisance. The Board found that the absence of a buffer zone in current zoning regulations poses

¹ Windthrow is wind damage to trees, including uprooting resulting from timbering within forest stands.

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a real and imminent threat to the welfare of persons residing in the vicinity of proposed timber operations.

County's Adoption of the 1,000 Foot Buffer Ordinance

Neither the Forest Practices Act nor associated regulations establish a buffer zone between residential uses and timber harvesting. On June 18, 1991, in recognition of a threat of potential timber harvesting near residential areas, the San Mateo County Board of Supervisors adopted Interim Urgency Ordinance 3328 followed by Interim Ordinance 3332 to establish a 1,000 foot buffer zone between commercial timber harvesting operations and legal residential structures existing as of June 18, 1991 in areas zoned Resource Management (RM), Resource Management/Coastal Zone (RM/CZ), and Planned Agricultural District (PAD). On April 14, 1992 the County Board of Supervisors adopted Ordinance No. 3381 permanently establishing a 1,000-foot buffer zone.

Following the County's adoption of Ordinance 3381 the ordinance was immediately challenged by Big Creek Lumber Company, and was set aside by the Superior Court of San Mateo County. The County subsequently appealed the Superior Court's decision. In January 1995, the State Court of Appeals reversed the decision of the Superior Court reinstating Ordinance No. 3381 in its entirety. As of February 8, 1995, the ordinance went into effect in the County outside the coastal zone. However, pending Commission approval of this LCP amendment, the ordinance is not effective in the coastal zone for purposes of permitting coastal development under the certified LCP.

On June 30, 1997, the San Mateo County Farm Bureau requested the Board of Supervisors initiate an amendment to the provisions of Ordinance 3381 to exclude parcels with Williamson Act contracts.² On July 22, 1998 the San Mateo County Planning Commission considered the proposed amendment to exclude properties under the Williamson Act from the provisions of Ordinance 3381. The Planning Commission opposed the amendment because the proponents of the amendment failed to establish that excluding parcels with Williamson Act contracts would not adversely affect the existing legal residences protected under Ordinance 3381. The 1,000 foot buffer ordinance was implemented to protect such residences from the impacts of commercial timber harvesting. As a result of the Planning Commission's decision, no further action was taken by the Board of Supervisors to amend Ordinance 3381. On February 9, 1999 the Board of Supervisors adopted Resolution No. 62606 requesting the California Coastal Commission certify Ordinance No. 3381.

Exclusions to the 1,000 Foot Buffer Ordinance

Ordinance No. 3381 protects legal dwelling units in existence as of June 18, 1991 under the following circumstances:

² The Williamson Act allows lowered property taxes for land that is maintained in agriculture and certain open space uses. The landowner enters into a contract with the local government to restrict land uses to those that are compatible with agriculture, wildlife habitat, scenic corridors, recreational use, or open space. In return, the local authorities calculate the property tax assessment based on the actual use of the land instead of its potential value assuming full commercial development.

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1. Timber harvesting operations for which all permits had been received on or before June 18, 1991 may complete operations in accordance with the terms and conditions of such permits.
2. "A legal dwelling unit in existence" means that dwelling unit was built with all required permits, and a Certificate of Occupancy was issued on or before June 18, 1991.
3. If the legal dwelling unit was in existence on June 18, 1991 no timber harvesting may be conducted within 1,000 feet of the affected residence unless the owner of the affected residence agrees in writing that the harvesting may occur, and also records a statement, as described in proposed Section 6401.5 of San Mateo County Zoning Code which states:

This parcel is adjacent to lands zoned to allow timber harvesting as permitted by either the County of San Mateo or the California Department of Forestry and Fire Protection. Residents on this parcel may be subject to inconvenience or discomfort arising from timber harvesting operations, including but not limited to the felling of trees; noise from trucks, tractors, chain saws; dust; vibration; slash burning; and timber harvest road and bridge construction. San Mateo County has established that timber harvesting is an appropriate use on productive timberlands as a sustained yield management resource, and residents of adjacent property should be prepared to accept inconvenience or discomfort from normal, necessary timber harvesting operations.

If the legal dwelling was not a "legal dwelling unit in existence" on June 18, 1991, the 1,000-foot buffer zone does not apply, and timber harvesting may occur subject to the rules and regulations of the Forest Practices Act.

4. Normal forest maintenance may be conducted within the 1,000 foot buffer zone, but is limited to: (a) removing dead, dying, or diseased trees and snags; (b) salvaging downed wood; (c) cutting trees for the purposed of developing viewsheds or landscape aesthetics; or (d) clearing for firebreaks, in accordance with requirements of the County Fire Marshall or other applicable fire authority having jurisdiction.
5. Notwithstanding the above, access roads to the site of timber harvesting operations may be constructed, improved, and used within the 1,000 foot buffer zone. The limitation on harvesting within 1,000 feet on an existing dwelling shall not apply to a dwelling located on a parcel, which is proposed for timber harvesting. The distance from a dwelling shall be measured along the surface of the ground.

Notices to be Recorded on Title of Properties Proposing New Residential Development

Section 6401.5 of Ordinance 3381 requires notices to be recorded on parcel deeds to disclose to residential property owners that timber harvesting could take place on adjacent properties and of potential nuisances associated with those activities. From June 18, 1991 through February 8, 1995, the notice requirements of Section 6401.5 were not applied to residences that were constructed in areas zoned RM because the ordinance was overturned by the Superior Court. Notices under Section 6401.5 have been filed in the title as a condition of approval for residential dwellings proposed since February 8, 1995 in the RM district. Notices have not been recorded as a condition of development for residential dwelling units constructed in the Resource Management/Coastal Zone (RM/CZ) and Planned Agricultural District (PAD) since June 18, 1991. The provisions of the Ordinance 3381 in the Coastal Zone will: (1) apply to residential

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structures constructed before June 18, 1991 in the RM/CZ and PAD Zoning Districts, and (2) allow the Planning Division to file notices as a condition of approval, as described in Section 6401.5, on the title of properties proposing new residential development in the RM/CZ or PAD.

2. Analysis

Local Government Authority; Nuisances

In adopting the ordinance, the Board of Supervisors specifically declared that the conduct of timber operations within 200 feet of an existing residential structure constitutes a nuisance. The Board found that the absence of a buffer zone in current zoning regulations poses a real and imminent threat to the welfare of persons residing in the vicinity of proposed timber operations.

Section 30005 of the Coastal Act states in part:

No provision of this division is a limitation on any of the following:

(a) Except as otherwise limited by state law, on the power of a city or county or city and county to adopt and enforce additional regulations, not in conflict with this act, imposing further conditions, restrictions, or limitations with respect to any land or water use or other activity which might adversely affect the resources of the coastal zone.

(b) On the power of any city or county or city and county to declare, prohibit, and abate nuisances.

In accordance with Section 30005, the Commission must approve the IP amendment unless it is in conflict with the requirements of the Coastal Act.

Consistency with and Adequacy to Carry Out LUP

According to LUP Policy 1.2 (Definition of Development) "timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practices Act of 1973" are not considered coastal development under the LCP. However, the location of timber harvesting operations is addressed in the certified land use plan. As mentioned previously, the certified LUP designates certain districts in which timber harvesting is a permitted use. These districts are in addition to timberland production zones. Pursuant to sections 30513-30514 of the Coastal Act, the Commission is required to review the proposed IP amendment to ensure it is consistent with and adequate to carry out the certified LUP.

By reducing areas where timber harvesting may occur in the Coastal Zone, the ordinance will protect coastal resources from potential impacts associated with timber harvesting, such as habitat loss, erosion and sedimentation, and degraded aesthetic qualities. Therefore, the proposed ordinance is consistent with and will further implement LUP resource protection policies. For example, LUP Policy 7.3 protects sensitive habitats. If there are any sensitive habitats, such as riparian corridors, wetlands, and endangered species habitat, within or adjacent to the proposed buffer areas, these habitats would be protected from adverse impacts associated with timber harvesting. The biologic productivity of sensitive habitats would be protected, for instance, by eliminating potential erosion that may be caused by the removal of trees and exposure of bare

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ground. Accordingly, water quality in adjacent riparian areas and waterbodies would be protected from the sedimentation that may result from erosion in logged areas. "Accelerated rates of erosion and sediment yield are a consequence of most forest management activities" (Forest Ecosystem Management Assessment Team 1993). Sedimentation of streams can result in increased turbidity, reduction in microhabitats for spawning fish, and changes in the diversity of invertebrates (Rosenberg and Weins 1978 as cited in H.T. Harvey and Associates 1999). "Timber harvesting and associated activities can alter the amount and timing of streamflow by changing onsite hydrologic processes" (Keppeler and Ziemer 1990; Wright et al. 1990).

The proposed buffer between residences and timber harvesting operations is consistent with visual resources policies of the LUP. For instance, LUP Policy 8.9 protects trees and acknowledges their importance in scenic areas. Areas where clearcutting timber harvest is practiced result in barren areas that are not aesthetically pleasing. In addition to trees contributing to scenic areas on their own, they also may screen less aesthetically pleasing structures or other human modifications to the landscape.

The establishment of buffer zones between timber harvesting areas and residential areas mirrors LCP Policies 5.15 (c), 5.8(a)(2), and 5.10(a)(3), which require that clearly defined buffer areas be provided between agricultural and non-agricultural uses. The proposed LCP amendment (Section 6401.5 of Ordinance No. 3381) requires the recordation of a warning regarding the nuisances and hazards of timber operations that is very similar to statement that must be recorded for parcels on or adjacent to agricultural land in LCP Policy 5.15. The proposed language for Section 6401.5 is cited above in Section 1, Description and Background.

Conclusion

The proposed 1,000 foot buffer zone between existing residences (as of June 18, 1991) and commercial timber harvest operations in areas zoned RM/CZ and PAD is consistent with and adequate to carry out the land use policies of the San Mateo County LUP. The proposed amendment would protect coastal resources, such as sensitive habitat, water quality, and visual resources and is therefore consistent with policies protecting these coastal resources. The proposed amendment is similar to existing LUP policies designed to reduce conflicts between agricultural operations and adjacent land uses. Therefore, the Commission finds San Mateo County LCP Amendment 2-00-Major is consistent with and is sufficient to implement the policies of the certified San Mateo County LUP.

The Commission also notes that the ordinance proposed for certification in the coastal zone is the same zoning ordinance specifically upheld by the First Appellate District in Big Creek Lumber v. County of San Mateo (1995) 31 Cal. App. 4th 418. As such, the proposed ordinance has already been found to be a proper exercise of zoning authority that is not preempted by the Forest Practices Act as the ordinance regulates the location rather than the conduct of timber harvesting.

California Environmental Quality Act

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with a LCP. Instead, the CEQA responsibilities are assigned to the Coastal

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Commission. Additionally, the Commission's LCP review and approval procedures have been found by the Resources Agency to be functionally equivalent to the environmental review process. Thus, under Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare an EIR for each LCP submitted to the Commission for review and approval. Nevertheless, the Commission is required when approving a LCP to find that the LCP does conform with the applicable provisions of CEQA.

At the time the Board of Supervisors adopted Ordinance No. 3381, the amendments to the Zoning Regulations were found to be Categorically Exempt from the California Environmental Quality Act under Class 8 - Actions by Regulatory Agencies for Protection of the Environment. Such actions include an action by an agency as authorized by local ordinance to assure the protection of the environment. Should a commercial timber harvest of any acreage be proposed on lands zoned RM/CZ or PAD that are affected by Ordinance No. 3381, a Timber Harvest Plan, which is the functional equivalent of the CEQA document, is required.

The Commission has considered the County's categorical exemption and all other evidence in the record, and concurs in their finding of no significant impacts with respect to its approval of Major Amendment No. 2-00. There is nothing in the record that indicates that the amendment would have a significant impact on the environment. In fact, the amendment will have a beneficial environmental effect by not allowing timber harvesting in some areas of the County. Accordingly, pursuant to Section 21080.5 of the Public Resources Code, the Commission concludes that the staff report and the Commission's adopted findings are adequate to meet the Commission's obligations under CEQA. The Commission also concludes that since the LCP amendment, as proposed, will not have a significant, adverse effect in the first instance, there are no feasible alternatives or feasible mitigation measures that would substantially lessen any significant, adverse effects on the environment.

Appendix A

Substantive File Documents

References

Forest Ecosystem Management Assessment Team. 1993. *Forest Ecosystem Management: An Ecological, Economic, and Social Assessment*.

H.T. Harvey & Associates, Stephen C. Rottenborn. 1999. Letter to California Coastal Commission regarding Santa Cruz County's proposed regulations on logging in riparian zones. July 14, 1999.

Keppler and Ziemer. 1990. *Forest Ecosystem Management: An Ecological, Economic, and Social Assessment*.

San Mateo County, Forest Resources Study Committee. 1971. Timber Harvest Report: Study of San Mateo County.

Wright et al. 1990. *Forest Ecosystem Management: An Ecological, Economic, and Social Assessment*.

Appendix B

Referenced Policies

San Mateo Local Coastal Plan Land Use Policies

1.2 Definition of Development

As stated in Section 30106 of the Coastal Act, define development to mean:

On land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511). As used in this section, "structure" includes, but is not limited to, any buildings, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

1.18 Location of New Development

- *a. Direct new development to existing urban areas and rural service centers in order to: (1) discourage urban sprawl, (2) maximize the efficiency of public facilities, services, and utilities, (3) minimize energy consumption, (4) encourage the orderly formation and development of local governmental agencies, (5) protect and enhance the natural environment, and (6) revitalize existing developed areas.
- b. Concentrate new development in urban areas and rural service centers by requiring the "infilling" of existing residential subdivisions and commercial areas.
- c. Allow some future growth to develop at relatively high densities for affordable housing in areas where public facilities and services are or will be adequate and where coastal resources will not be endangered.
- d. Require the development of urban areas on lands designated as agriculture and sensitive habitats in conformance with Agriculture and Sensitive Habitats Component policies.

5.8 Conversion of Prime Agricultural Land Designated as Agriculture

- a. Prohibit conversion of prime agricultural land within a parcel to a conditionally permitted use unless it can be demonstrated: ...

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- (2) Clearly defined buffer areas are provided between agricultural and non-agricultural uses...

5.8 Conversion of Land Suitable for Agriculture Designated as Agriculture

- a. Prohibit the conversion of lands suitable for agriculture within a parcel to conditionally permitted uses unless all of the following can be demonstrated: ...

- (2) Clearly defined buffer areas are developed between agricultural and non-agricultural uses...

****5.15 Mitigation of Land Use Conflicts***

- a. When a parcel on or adjacent to prime agricultural land or other land suitable for agriculture is subdivided for non-agricultural uses, require that the following statement be included, as a condition of approval, on all parcel and final maps and in each parcel deed:

“This subdivision is adjacent to property utilized for agricultural purposes. Residents of the subdivision may be subject to inconvenience or discomfort arising from the use of agricultural chemicals, including herbicides, pesticides, and fertilizers, and from the pursuit of agricultural operations, including plowing, spraying, pruning and harvesting, which occasionally generate dust, smoke, noise, and odor. San Mateo County has established agriculture as a priority use on productive agricultural lands, and residents of adjacent property should be prepared to accept such inconvenience or discomfort from normal, necessary farm operations.”

- b. Require the clustering of all non-agricultural development in locations most protective of existing or potential agricultural uses.
- c. Require that clearly defined buffer areas be provided between agricultural and non-agricultural uses.
- d. Require public agencies owning land next to agricultural operations to mitigate rodent, weed, insect, and disease infestation, if these problems have been identified by the County’s Agricultural Commissioner.

****7.3 Protection of Sensitive Habitats***

- a. Prohibit any land use or development which would have significant adverse impact on sensitive habitat areas.
- b. Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of the habitats.

8.9 Trees

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- a. Locate and design new development to minimize tree removal.
- b. Employ the regulations of the Significant Tree Ordinance to protect significant trees (38 inches or more in circumference) which are located in urban areas zoned Design Review (DR).
- c. Employ the regulations of the Heritage Tree Ordinance to protect unique trees which meet specific size and locational requirements.
- d. Protect trees specifically selected for their visual prominence and their important scenic or scientific qualities.
- e. Prohibit the removal of trees in scenic corridors except by selective harvesting which protects the existing visual resource from harmful impacts or by other cutting methods necessary for development approved in compliance with LCP policies and for opening up the display of important views from public places, i.e., vista points, roadways, trails, etc.
- f. Prohibit the removal of living trees in the Coastal Zone with a trunk circumference of more than 55 inches measured 4 1/2 feet above the average surface of the ground, except as may be permitted for development under the regulations of the LCP, or permitted under the Timber
- g. Harvesting Ordinance, or for reason of danger to life or property.
- h. Allow the removal of trees which are a threat to public health, safety, and welfare.

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
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VOICE AND TDD (415) 904-3200
FAX (415) 904-5400



EXHIBIT NO. 1
APPLICATION NO. <u>588</u>
<u>San Mateo Co. LCP Amend.</u>
<u>No. 2-00 Major</u>
<u>Application for LCP Amend.</u>
<u>Resolution 62606, and</u>
<u>Ordinance 3381</u>

_____ DISTRICT
_____ AREA OFFICE

APPLICATION FOR LOCAL COASTAL PROGRAM AMENDMENT

I. JURISDICTION San Mateo County
SEGMENT Unincorporated Coastal Zone
UNCERTIFIED AREA _____

II. TYPE OF AMENDMENT SUBMITTAL (check one)
LUP _____
ZONING/IMPLEMENTATION PROGRAM X
LCP (Land Use & Zoning) _____

III. LCP STATUS Yes/No, Date
LUP CERTIFIED Yes, 1980
ZONING CERTIFIED Yes, 1980
AREA OF DEFERRED CERTIFICATION _____
STATUS OF COMMISSION ACTION _____
ON SUGGESTED MODIFICATIONS _____
PRIOR COMMISSION ACTION ON THIS SUBMITTAL _____

IV. SUMMARY OF AMENDMENT PROPOSAL
1) Establish a 1,000 foot buffer zone between existing residences and commercial timber harvesting operations in the Resource Management
2) Coastal Zone (RM/CZ), and Planned Agricultural District (PAD)
3)
4) etc.
Attach documentation as needed and as outlined in Submittal Requirements.

V. COMMISSION OFFICE USE ONLY:
Amendment # _____
Date Received _____
Date Filed _____
Comm. Hearing Agenda _____
Commission Action: A _____, AWM _____, D _____ DATE _____

RECEIVED
JUN 05 2000

CALIFORNIA
COASTAL COMMISSION

RESOLUTION NO. 62606

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

A RESOLUTION REQUESTING THAT THE CALIFORNIA COASTAL COMMISSION CERTIFY ORDINANCE NO. 3381, WHICH ESTABLISHED A 1,000-FOOT BUFFER ZONE BETWEEN EXISTING RESIDENCES AND TIMBER HARVEST OPERATIONS IN THE RESOURCE MANAGEMENT (RM), RESOURCE MANAGEMENT/COASTAL ZONE (RM/CZ), AND PLANNED AGRICULTURAL DISTRICT (PAD), PURSUANT TO SECTION 6315(g), SECTION 6905(g), AND SECTION 6353(B)(10) OF THE ZONING REGULATIONS, RESPECTIVELY

WHEREAS, on April 24, 1992, the Board of Supervisors adopted Ordinance No. 3381 which established a 1,000-foot buffer zone between legal residences in existence on June 18, 1991, and commercial timber harvest operations in the Resource Management (RM), Resource Management/Coastal Zone (RM/CZ), and Planned Agricultural District (PAD), pursuant to Section 6315(g), Section 6905(g), and Section 6353(B)(10) of the Zoning Regulations, respectively.

WHEREAS, public notice of all hearings was made to ensure maximum public participation, and all interested parties were afforded the opportunity to be heard; and

WHEREAS, due to lawsuits, and proposed amendments to the provisions of Ordinance No. 3381, it has not been certified in the Coastal Zone so as to apply to lands zoned Resource Management/Coastal Zone and Planned Agricultural District.

NOW, THEREFORE, IT IS HEREBY RESOLVED, that the Board of Supervisors of San Mateo County directs staff to submit the above-mentioned amendments that would be

applied in the Coastal Zone to the California Coastal Commission for its review and certification as conforming with the California Coastal Act; and

NOW, THEREFORE, IT IS FURTHER RESOLVED, that should the Coastal Commission certify the amendments without modifications, the amendments shall become effective thirty (30) days after such certification; and

NOW, THEREFORE, IT IS FURTHER RESOLVED, that none of the above-mentioned amendments require a Countywide election pursuant to LCP Policy 1.31.

SH:fc - SFHI1910.6FS

Regularly passed and adopted the 9th day of March, 1999.

AYES and in favor of said resolution:

Supervisors:

MARY GRIFFIN

JERRY HILL

RICHARD S. GORDON

ROSE JACOBS GIBSON

MICHAEL D. NEVIN

NOES and against said resolution:

Supervisors:

NONE

Absent Supervisors:

NONE

MARY GRIFFIN

President, Board of Supervisors
County of San Mateo
State of California

Certificate of Delivery

(Government Code section 25103)

I certify that a copy of the original resolution filed in the Office of the Clerk of the Board of Supervisors of San Mateo County has been delivered to the President of the Board of Supervisors.

Dale Ellen Young

DALE ELLEN YOUNG, Deputy
Clerk of the Board of Supervisors

RECEIVED
JUN 05 2000
CALIFORNIA
COASTAL COMMISSION

ORDINANCE NO. 03381

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * *

AN ORDINANCE ESTABLISHING BUFFER ZONES FOR TIMBER HARVESTING OPERATIONS
IN THE RESOURCE MANAGEMENT (RM), RESOURCE MANAGEMENT/COASTAL
ZONE (RM/CZ) AND PLANNED AGRICULTURAL (PAD) DISTRICTS

* * * * *

The Board of Supervisors of the County of San Mateo, State of California, ORDAINS as follows:

Section 1. Subsection (g) of Section 6315, Chapter 20A (Resource Management District), Part One, Division VI, San Mateo County Ordinance Code is hereby amended to read as follows:

- (g)² Timber harvesting and commercial woodlots, providing that no commercial timber harvesting shall occur within 1,000 feet of any legal dwelling in existence on June 18, 1991, except under the following circumstances:
 - (1) Timber harvesting operations for which all permits had been received on or before June 18, 1991, may complete operations in accordance with the terms and conditions of such permits.
 - (2) Timber harvesting operations may occur within the 1,000-foot buffer zone with prior written approval of the owner of the affected dwelling, subject to the prior recordation of the statement specified in Section 6401.5.
 - (3) Normal forest maintenance may be conducted within the 1,000-foot buffer zone, but shall be limited to: (a) removing dead, dying, or diseased trees and snags; (b) salvaging downed wood; (c) cutting trees for the purposes of developing viewsheds or landscape aesthetics in accordance with other applicable provisions of this Part and of Division VII, San Mateo County Ordinance Code; or (d) clearing for firebreaks, in accordance with requirements of the County Fire Marshal or other applicable fire authority having jurisdiction.

Notwithstanding the above, access roads to the site of timber harvesting operations may be constructed, improved, and used within the 1,000-foot buffer zone. The limitation on harvesting within 1,000 feet of an existing dwelling shall not apply to a dwelling located on the parcel which is proposed for timber harvesting.

For the purpose of this section, the distance from a dwelling shall be measured along the surface of the ground.

Section 2. Subsection (B)(10) of Section 6353, Chapter 21A (Planned Agricultural District), Part One, Division VI, San Mateo County Ordinance Code, is hereby amended to read as follows:

10. Timber harvesting, commercial woodlots and log storage, providing that no commercial timber harvesting shall occur within 1,000 feet of any legal dwelling in existence on June 18, 1991, except under the following circumstances:
 - (1) Timber harvesting operations for which all permits had been received on or before June 18, 1991, may complete operations in accordance with the terms and conditions of such permits.
 - (2) Timber harvesting operations may occur within the 1,000-foot buffer zone with prior written approval of the owner of the affected dwelling, subject to the prior recordation of the statement specified in Section 6401.5.
 - (3) Normal forest maintenance may be conducted within the 1,000-foot buffer zone, but shall be limited to: (a) removing dead, dying, or diseased trees and snags; (b) salvaging downed wood; (c) cutting trees for the purposes of developing viewsheds or landscape aesthetics in accordance with other applicable provisions of this Part and of Division VII, San Mateo County Ordinance Code; or (d) clearing for firebreaks, in accordance with requirements of the County Fire Marshal or other applicable fire authority having jurisdiction.

Notwithstanding the above, access roads to the site of timber harvesting operations may be constructed, improved, and used within the 1,000-foot buffer zone. The limitation on harvesting within 1,000 feet of an existing dwelling shall not apply to a dwelling located on the parcel which is proposed for timber harvesting.

For the purpose of this section, the distance from a dwelling shall be measured along the surface of the ground.

Section 3. Section 6401.5 is hereby added to Chapter 22, Part One, Division VI, San Mateo County Ordinance Code, to read as follows:

SECTION 6401.5. The following statement shall be recorded on a parcel deed:
(1) as a condition of permit approval of a dwelling proposed for construction on a parcel contiguous to lands zoned Resource Management (RM), Resource Management/Coastal Zone (RM/CZ), or Planned Agricultural District (PAD); or
(2) as a condition of commercial timber harvesting operations within 1,000 feet of a dwelling in existence on June 18, 1991, as provided in Sections 6315, 6353, and 6905 of this Part:

"This parcel is adjacent to lands zoned to allow timber harvesting as permitted by either the County of San Mateo or the California Department of Forestry and Fire Protection. Residents on this parcel may be subject to inconvenience or discomfort arising from timber harvesting operations, including but not limited to the felling of trees; noise from trucks, tractors, chain saws; dust; vibration; slash burning; and

timber harvest road and bridge construction. San Mateo County has established that timber harvesting is an appropriate use on productive timberlands as a sustained yield management resource, and residents of adjacent property should be prepared to accept such inconvenience or discomfort from normal, necessary timber harvesting operations."

Section 4. Subsection (g) of Section 6905, Chapter 36 (Resource Management/Coastal Zone District), Part One, Division VI, San Mateo County Ordinance Code, is hereby amended to read as follows:

- (g)² Timber harvesting and commercial woodlots, providing that no commercial timber harvesting shall occur within 1,000 feet of any legal dwelling in existence on June 18, 1991, except under the following circumstances:
- (1) Timber harvesting operations for which all permits had been received on or before June 18, 1991, may complete operations in accordance with the terms and conditions of such permits.
 - (2) Timber harvesting operations may occur within the 1,000-foot buffer zone with prior written approval of the owner of the affected dwelling, subject to the prior recordation of the statement specified in Section 6401.5.
 - (3) Normal forest maintenance may be conducted within the 1,000-foot buffer zone, but shall be limited to: (a) removing dead, dying, or diseased trees and snags; (b) salvaging downed wood; (c) cutting trees for the purposes of developing viewsheds or landscape aesthetics in accordance with other applicable provisions of this Part and of Division VII, San Mateo County Ordinance Code; or (d) clearing for firebreaks, in accordance with requirements of the County Fire Marshal or other applicable fire authority having jurisdiction.

Notwithstanding the above, access roads to the site of timber harvesting operations may be constructed, improved, and used within the 1,000-foot buffer zone. The limitation on harvesting within 1,000 feet of an existing dwelling shall not apply to a dwelling located on the parcel which is proposed for timber harvesting.

For the purpose of this section, the distance from a dwelling shall be measured along the surface of the ground.

Section 5. The Board of Supervisors hereby finds:

- (a) Timber harvesting is an allowed use in the Resource Management (RM), Resource Management/Coastal Zone (RM/CZ), and Planned Agricultural (PAD) Districts. Residential development is also an allowed use in these districts. Since 1983, timber harvesting has been regulated by the State Department of Forestry under the California Forest Practices Act, and, with limited exceptions, the County is preempted by State law from directly regulating the conduct of such operations. Over the years since permitting authority passed to the State, considerable controversy has arisen over

the compatibility of timber harvesting operations with residential uses in the affected districts.

- (b) The Board of Supervisors finds that timber harvesting operations cause a number of conflicts with existing residential uses. These conflicts predominantly involve complaints about noise associated with adjacent timber harvesting operations, but also include complaints about potential windthrow, wildfire and erosion. Timber harvesting in the vicinity of residential structures also impact the scenic and aesthetic qualities associated with those structures. Neither the Forest Practices Act nor regulations adopted thereunder establish a buffer zone between residential uses and timber harvesting.
- (c) The County's General Plan provides particular policy direction favoring the buffering of timber harvesting operations from other land uses. These policies include:

POLICY 9.23 - Land Use Compatibility in Rural Lands . . .

"Promote land use compatibility by encouraging the following methods: . . . (4) buffer land uses such as mineral extraction, timber harvesting, solid waste disposal sites and other resource extraction uses from surrounding land uses by auditory and visual screening isolation in large parcels, and other appropriate methods."

POLICY 9.25 - Compatible Land Uses Adjacent to Rural Service Centers and Rural Residential Subdivisions

"Encourage land uses in proximity to Rural Service Centers and Rural Residential Subdivisions that are compatible with the visual, economic, and/or social character of the community."

POLICY 9.32 - Encourage Existing and Potential Timber Production Land Uses . . .

"c. Permit the continuance or initiation of timber production operations on parcels designated for other land uses when it can be demonstrated that the timber production use would not disturb sensitive habitats and/or threatened or endangered species and other resources, would not create conflicts with adjacent land uses, and would provide adequate methods of buffering from adjacent land uses and resources."

POLICY 9.34 - Development Standards to Minimize Land Use Conflicts With Timber Production Lands . . .

"c. Buffer and new non-timber uses from productive timber resources by means of restricted access, distance, physical barriers or other appropriate methods.

"d. Buffer any new timber operations from surrounding land uses by similar means."

The adoption of an ordinance establishing a buffer as part of the zoning applicable to lands designated RM, RM/CZ and PAD will be consistent with and further these goals of the General Plan. The absence of a buffer zone in current zoning regulations poses a real and imminent threat to the welfare of persons residing in the vicinity of proposed timber operations. In recognition of this threat, this Board earlier adopted an urgency ordinance to establish an interim buffer zone of one thousand feet (1,000').

- (d) Public Resources Section 4514 provides that no provision of the Forest Practices Act shall be a limitation on "the power of any city or county or city and county to declare, prohibit, and abate nuisances." The Board of Supervisors hereby declares that the conduct of timber harvesting operations within two hundred feet (200') of an existing residential structure constitutes a nuisance for the reasons as set forth above.

Section 6. This ordinance shall be in full force and effect, except in the Coastal Zone, thirty (30) days after its passage at which time Interim Ordinance 3332 shall be repealed.

Section 7. This ordinance shall be in full force and effect within the Coastal Zone thirty (30) days following its certification without change by the California Coastal Commission.

RXG:kcd - RXGC0877.BKQ

Regularly passed and adopted this 14th day of April, 1992.

AYES and in favor of said ordinance:

Supervisors:

TOM HUENING

ANNA G. ESHOO

TOM NOLAN

WILLIAM J. SCHUMACHER

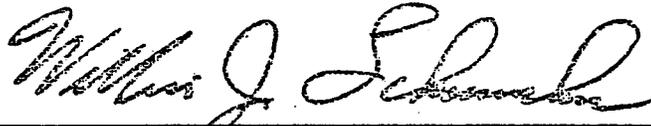
NOES and against said ordinance:

Supervisors:

NONE

Absent Supervisors:

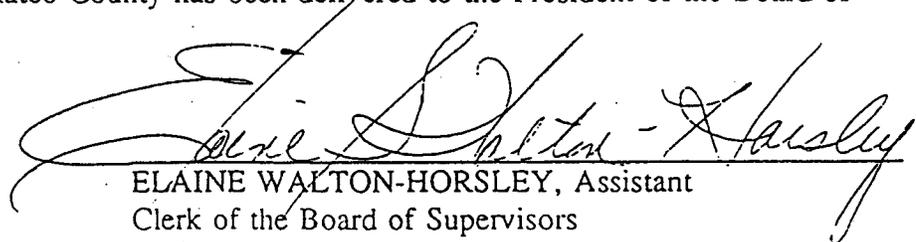
MARY GRIFFIN



President, Board of Supervisors
County of San Mateo
State of California

Certificate of Delivery
(Government Code section 25103)

I certify that a copy of the original resolution filed in the Office of the Clerk of the Board of Supervisors of San Mateo County has been delivered to the President of the Board of Supervisors.



ELAINE WALTON-HORSLEY, Assistant
Clerk of the Board of Supervisors

CERTIFIED FOR PUBLICATION

COPY

THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

DIVISION THREE

RECEIVED
JUN 05 2000

FILED

JAN 9 1983

Court of Appeal - First Dist.
RON'S BARROW, Clerk

BY _____ DEPUTY

BIG CREEK LUMBER COMPANY, INC.,

Plaintiff and Respondent,

v.

A062643

COUNTY OF SAN MATEO et al.,

Defendants and Appellants.

(San Mateo County
Super. Ct. No. 375544)

This case is one of first impression concerning statutory preemption. With its passage of the Z'berg-Nejedly Forest Practice Act of 1973 (hereafter the FPA),^{1/} the Legislature established a comprehensive statutory scheme regulating the conduct of timber operations. At issue here is whether the FPA preempts a county's attempt to control, by zoning ordinance, the location of commercial timber harvesting. We conclude the county's action was not preempted and, further, that it was a reasonable exercise of the zoning authority. Accordingly, we reverse.

FACTS AND PROCEDURAL BACKGROUND

The FPA was passed in 1973. Its purpose was to "create and maintain an effective and comprehensive system of

^{1/} Codified as Public Resources Code sections 4511-4628.

EXHIBIT NO. 2
APPLICATION NO. San Mateo Co. LCP Amend.
No. 2-00 Major Big Creek Lumber Co. v.
County of San Mateo California Court of Appea.

regulation and use of all timberlands" (Pub. Resources Code, § 4513.) The California Timberland Productivity Act of 1982 (hereafter the TPA)^{2/} requires cities and counties to zone described timberlands as "timberland production zones," or TPZ's.^{3/} The TPA is intended to protect properly conducted timber operations from being prohibited or restricted due to conflict or apparent conflict with surrounding land uses.^{4/} The Legislature directed that this policy is to be implemented "by including all qualifying timberland in timberland production zones."^{5/} San Mateo County (hereafter the County) contains a number of areas that are zoned to allow timber harvesting. The conduct of timber operations in all of these areas is regulated by the FPA. In accordance with the TPA, the County designated a number of TPZ's.^{6/} The County had also designated other districts^{7/} in which timber harvesting was permitted as one of a wide variety of allowed uses. It is the regulation of these latter districts that is at issue here.

2/ Government Code sections 51100-51155.

3/ Government Code sections 51104, subdivision (g), 51112, 51114.

4/ Government Code sections 51101, subdivision (b), 51102, subdivision (b).

5/ Government Code section 51103.

6/ As used in county general plans, the designation "'timberland preserve zone'" is synonymous with "'timberland production zone.'" (Gov. Code, § 51104, subd. (g).)

7/ These districts were zoned Resource Management (RM), Resource Management/Coastal Zone (RM/CZ), and Planned Agricultural District (PAD).

On April 14, 1992, the County Board of Supervisors (hereafter the Board) considered the potential conflict between timber harvesting operations and residential land use, then enacted amendments to its zoning ordinance.^{8/} The amendments prohibited, with certain exceptions, commercial timber harvesting in designated rural areas of the County "within 1,000 feet of any legal dwelling in existence on June 18, 1991" The Ordinance did not apply to any TPZ's. It only imposed the restrictions in districts that had not been so zoned. The buffer zone's creation made about 13 percent of timber areas outside the TPZ's unavailable for timber operations.

In taking its action, the Board articulated several findings, including the following: "The Board of Supervisors finds that timber harvesting operations cause a number of conflicts with existing residential uses. These conflicts predominantly involve complaints about noise associated with adjacent timber harvesting operations, but also include complaints about potential windthrow, wildfire and erosion. Timber harvesting in the vicinity of residential structures also impact [sic] the scenic and aesthetic qualities associated with those structures. Neither the Forest Practices [sic] Act nor regulations adopted thereunder establish a buffer zone between residential uses and timber harvesting."

^{8/} San Mateo County Ordinance No. 3381 (hereafter the Ordinance).

Big Creek Lumber Company, Inc. (hereafter Big Creek), a corporation operating on lands subject to the Ordinance, sought, and the trial court granted, declaratory relief, ruling the Ordinance was preempted by the FPA, was enacted in an arbitrary and capricious manner, and was unenforceable. The court also found the Board had insufficient evidence to justify a 1,000-foot buffer zone.^{9/} The court issued a peremptory writ of mandamus compelling the County to set aside the Ordinance.^{10/} The County appealed, asserting the Ordinance was a proper exercise of its police power and was not preempted by existing law.

DISCUSSION

I. Preemption by State Law

In this case, state and local entities have taken legislative^{11/} action designed to further competing governmental interests. We consider first whether the County's amendments to its zoning ordinance were preempted by state statutes governing the conduct of timber harvest operations. We are guided here by well-established principles.

^{9/} While not contained in the court's written order, this finding was articulated in the court's oral statement of decision.

^{10/} Although the record does not contain a petition for writ of mandate, the County does not contend the court erred specifically in issuing the writ. Indeed, the County agrees mandamus was the appropriate channel for review of its adoption of the Ordinance.

^{11/} The adoption of a zoning ordinance constitutes legislative action by the County. (Arnel Development Co. v. City of Costa Mesa (1980) 28 Cal.3d 511, 514, 516.)

"Comprehensive zoning has long been established as being a legitimate exercise of the police power. [Citations.]" (Beverly Oil Co. v. City of Los Angeles (1953) 40 Cal.2d 552, 557.) "The power of cities and counties to zone land use in accordance with local conditions is well entrenched. [Citations.] The Legislature has specified certain minimum standards for local zoning regulations (Gov. Code, § 65850 et seq.) but has carefully expressed its intent to retain the maximum degree of local control (see, e.g., id., §§ 65800, 65802)." (IT Corp. v. Solano County Bd. of Supervisors (1991) 1 Cal.4th 81, 89.)

While local authority to zone is clearly recognized, it is not limitless. As noted in People ex rel. Deukmejian v. County of Mendocino (1984) 36 Cal.3d 476, 484-485: "Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates [citations], contradicts [citation], or enters an area fully occupied by general law, either expressly or by legislative implication [citations]. . . ."

In passing the FPA, the Legislature expressly preempted regulation of the conduct of timber harvesting operations. Public Resources Code section 4513 declares the Legislature intended "to create and maintain an effective and comprehensive system of regulation and use of all timberlands" The State Board of Forestry (hereafter the State Board) (id., § 4521.3) was directed to divide the state into districts (id.,

§ 4531) and to adopt "forest practice rules and regulations" for each district (*id.*, § 4551).

By statute, these district rules and regulations "shall apply to the conduct of timber operations" and deal, *inter alia*, with fire prevention; soil erosion; water quality; watershed and flood control; stocking; protection of young timber growth and soil productivity; control of insects, pests, and disease; protection of natural and scenic qualities; and preparation of timber harvesting plans. (Pub. Resources Code, § 4551.5.) No timber operations may be conducted without submission of a timber harvesting plan and approval by the Director of Forestry and Fire Protection or by the State Board on appeal. (*Id.*, §§ 4004, 4581-4582, 4582.7.)

Of particular significance here, Public Resources Code section 4516.5 expressly preempted local attempts to regulate the conduct of timber operations. Although counties may recommend rules and regulations to the State Board (*id.*, subd. (a)), ". . . individual counties shall not otherwise regulate the conduct of timber operations, as defined by this chapter, or require the issuance of any permit or license for those operations." (*Id.*, subd. (d).)

If the Ordinance were a clear attempt to regulate the conduct of timber operations, our analysis would stop here. Any such attempt would be preempted expressly by Public Resources Code section 4516.5, subdivision (d) and impliedly by the remainder of the FPA's comprehensive regulatory scheme.

We find, however, that the amended zoning ordinance at issue speaks not to how timber operations may be conducted, but rather addresses where they may take place. The TPA clearly contemplates local zoning authority be exercised on these issues. Other pertinent legislation demonstrates the Legislature's intent to preserve local zoning authority over the lands at issue here.

As noted above, the TPA specifically addresses the subject of zoning. It requires cities and counties to zone certain qualifying timberlands as TPZ's. (Gov. Code, §§ 51104, subd. (g), 51112, 51113.)^{12/} The TPA is intended to protect properly conducted timber operations from being prohibited or restricted due to conflict or apparent conflict with surrounding land uses. (Id., §§ 51101, subd. (b), 51102, subd. (b).) This policy is to be implemented "by including all qualifying timberland in timberland production zones." (Id., § 51103.)

The designation of TPZ's is left to local action, which is required under some specifically described circumstances. Exceptions are likewise set out and may result in different zoning, depending on findings made by a county board of

^{12/} TPZ land may be used only for growing and harvesting timber and compatible uses. "The growing and harvesting of timber on those parcels shall be regulated solely pursuant to state statutes and regulations." (Gov. Code, § 51115.) TPZ zoning creates a presumption and gives notice that timber operations are expected to occur on the parcel in the future. (id., § 51115.1), and exempts such timber operations (if conducted in compliance with the FPA) from being considered a public or private nuisance (id., § 51115.5, subd. (a)).

supervisors or city council. The board or council is empowered to exclude lands from TPZ's if a majority of the body finds such exclusion to be in the public interest. (Gov. Code, § 51112.) The TPA also contains provisions for rezoning. (Id., §§ 51113, 51120-51131, 51133-51142.) Thus, it is clear that the Legislature has deferred a number of important zoning decisions to local authority, even in the case of TPZ's. It should be recalled, however, that the lands in question here are not TPZ areas.

As to those parcels excluded from the TPZ's, the board or council is empowered to apply an alternate zoning designation for primary use other than timberland, in conformance with the county general plan.^{13/} The local government may also remove a parcel from a TPZ (Gov. Code, § 51120, subd. (c)) or immediately rezone for conversion from timber production to another use, under some circumstances (id., § 51133, subd. (b)).

Nowhere in the statutory scheme has the Legislature expressly prohibited the use of zoning ordinances such as the one at issue here. In fact, the Legislature has specifically provided for local zoning action. Thus, we consider whether there has been implied preemption. To evaluate preemption by implication, we consider the purpose and scope of the legislative scheme. Implied preemption may be accomplished in

^{13/} Government Code section 51112, subdivision (d). The TPA also provides for later zoning of additional land as a TPZ upon petition of the owner (id., § 51113) and for extension of TPZ status beyond the initial 10-year term (id., § 51114).

one of three ways: (1) the general law so completely covers the subject as to clearly indicate the matter is exclusively one of state concern; (2) the general law partially covers the subject in terms clearly indicating a paramount state concern that will not tolerate further local action; or (3) the general law partially covers the subject and the adverse effect of a local ordinance on transient citizens of the state outweighs the possible municipal benefit. (People ex rel. Deukmejian v. County of Mendocino, supra, 36 Cal.3d at p. 485.)

Applying these tests to the case before us, we see that there has been no implied preemption. (1) The general law has not completely covered the subject of zoning. To the contrary, local zoning decisions are specifically provided for. (2) The general law not only tolerates but invites further local action as to zoning. (3) There is nothing in the record before us to support a conclusion that the adverse effect on transient citizens, if any, will outweigh the possible municipal benefit. The Supreme Court has stated: "Preemption by implication of legislative intent may not be found when the Legislature has expressed its intent to permit local regulations. Similarly, it should not be found when the statutory scheme recognizes local regulations." (People ex rel. Deukmejian v. County of Mendocino, supra, 36 Cal.3d at p. 485.) The statutory scheme here recognizes local regulation as to zoning decisions.

Reading the TPA and the FFA together, we are persuaded the Legislature did not intend to preclude counties from using

their zoning authority to prohibit timber cutting on lands outside the TPZ's. Under the FPA, the "conduct" of timber harvesting operations is exclusively governed by state law. "Conduct" is not given a specialized definition in the FPA. Its ordinary meaning is "the act, manner, or process of carrying out (as a task) or carrying forward (as a business, government, or war)." (Webster's Third New Internat. Dict. (1970) p. 473.) That the Legislature intended to use the term "conduct" in such a way is born out by the specific kinds of issues the State Board's rules and regulations are to address. Flood control, stand density, reforestation methods, soil movement, debris disposal and the like (Pub. Resources Code, § 4516.5, subd. (a)), are clearly matters relating to the process of carrying out timber operations.

In support of its claim of express preemption, Big Creek relies upon several pieces of legislative history regarding Public Resources Code section 4516.5, subdivision (d). This history, however, sheds little or no light on the particular question before us. There is no discussion of county zoning authority or its relation to regulation of the "conduct" of logging operations. The parties herein essentially agree as to the purpose of the statute: Big Creek states it was intended to "extinguish the fragmented regulations enacted by local jurisdictions throughout the state," the County that its purpose was "to achieve uniformity in the regulation of the conduct of timber harvesting operations . . . and to eliminate duplicative regulations." A

zoning law allocating competing land uses among the various parts of a county, however, neither conflicts with nor duplicates general state regulations governing how one such activity is to be conducted where allowed.

Big Creek's expansive reading of Public Resources Code section 4516.5, subdivision (d) would apparently preclude all local zoning control over timber operations, so that cities and counties would be required to allow commercial logging in residential districts, for example. Neither the language of the statute nor the history provided support such a reading.

In support of its implied preemption claim, Big Creek cites several regulations adopted pursuant to the FPA which, it contends, "exhaustive[ly]" address concerns, such as noise, windthrow, fire hazard, and erosion, identified by the County as motivating the Ordinance.^{14/} As the County notes in response, Big Creek's argument begs the question. The County concedes it has no power to adopt its own rules on the conduct of timber operations as covered in the cited state regulations and touching on matters such as harvesting methods and quantities, the contents of a timber harvesting plan, the hours

^{14/} Big Creek asserts that current State Board rules "prohibit timber harvesting within 200 feet of a dwelling used for human habitation." None of the regulations it cites, however, contain any such prohibition. Title 14, California Code of Regulations, sections 917.2, subdivision (c) and 917.4, subdivision (a) govern the disposal and treatment of logging slash near homes and roads in the Coast Forest District; section 928.2, subdivision (b)(2), one of several rules adopted for San Mateo County pursuant to Public Resources Code section 4516.5, requires the location of homes to be marked on timber harvesting plan maps. The remaining cited sections are similar regulations applying in other counties and forest districts.

of logging operations, the treatment of slash and debris, and the maintenance of erosion control facilities. Nothing in the FPA or TPA, however, precludes the County from addressing some of the same concerns by excluding logging activity from some of the non-TPZ land under its zoning jurisdiction.

Logging, even when conducted according to state regulations, may have some impacts properly addressed by the zoning authority. That the state has sought to reduce and control these same occurrences through general regulation does not preempt local zoning control, any more than the state and federal regulation of industrial air pollution would preclude a local zoning authority from relying on air pollution as a reason for excluding industrial plants from residential districts.

Finally, Big Creek argues the purpose of the TPA was to maintain large parcels of land for timber production, "not to carve out one zone allowing state regulated commercial timber production and harvesting, while allowing local regulation of timber production in all other zones." However, the County does not contend it has authority to regulate the conduct of logging on non-TPZ lands, but only that under the TPA it retains its traditional zoning authority to determine in what zones (other than the TPZ's) logging, like other land uses, may be pursued.^{15/}

^{15/} Government Code section 51115.1, subdivision (b), upon which Big Creek relies in this regard, is of no assistance to it. Subdivision (a) of section 51115.1 provides that a parcel's TPZ zoning creates a presumption that timber operations are expected to occur in the future on that (Footnote continued on next page.)

In conclusion, under the TPA, localities must designate certain lands as TPZ's. These zones are dedicated to timber growing and harvesting, and localities may not prohibit logging on them. As to other lands that may contain timber, the TPA expressly reaffirms local authority to choose appropriate zoning. Local legislative bodies retain authority to exclude from the TPZ's certain parcels when they believe exclusion is in the public interest. (Gov. Code, § 51112, subds. (b), (c).) Localities also retain the authority to choose the non-TPZ zones into which excluded or removed parcels are placed. (Id., §§ 51112, subd. (d), 51120, subd. (c), 51133, subd. (b).) Nothing in either the TPA or the FPA suggests localities are restricted in what uses they may allow or prohibit in non-TPZ zones.

II. Reasonableness of the Ordinance as a Zoning Regulation

While local bodies retain broad discretion in zoning issues, their authority is not boundless. Zoning restrictions may be stricken if they are "arbitrary and unreasonable and without substantial relation to public health, safety, or morals." (Schroeder v. Municipal Court (1977) 73 Cal.App.3d

(Footnote continued from previous page.)
property. Subdivision (b) contains a further declaration "that this section is not intended and shall not be construed as altering any substantive or procedural requirement of [the FPA or state forestry regulations]." (Emphasis added.) The evident purpose of the declaration is to make clear that the presumption arising from TPZ zoning does not provide an exemption from the FPA and the rules adopted pursuant to it. By its terms, the subdivision relates only to the section in which it appears, Government Code-section 51115.1, and does not state, as Big Creek urges, that the TPA as a whole has no bearing on interpretation of the FPA.

841, 848.) In other words, "a land use restriction lies within the public power if it has a 'reasonable relation to the public welfare.' [Citations.]" (Associated Home Builders etc., Inc. v. City of Livermore (1976) 18 Cal.3d 582, 604.) "The courts may differ with the zoning authorities as to the "necessity or propriety of an enactment," but so long as it remains a "question upon which reasonable minds might differ," there will be no judicial interference with the municipality's determination of policy." [Citation.] In short, as stated by the Supreme Court in Euclid v. Ambler Co. [(1926) 272 U.S. 365, 388], "If the validity . . . be fairly debatable, the legislative judgment must be allowed to control." (Id. at p. 605.) Setbacks and similar buffers are among the tools counties may use in the interest of sound community planning. (Hutcherson v. Alexander (1968) 264 Cal.App.2d 126, 132.)

Big Creek contends the Board's action was "arbitrary and unreasonable," because the record before the Board does not show a 1,000-foot buffer zone is necessary. The County's planning staff and commission, Big Creek emphasizes, had recommended the interim 1,000-foot buffer zones be replaced with permanent zones of between 200 and 500 feet.

The question, however, is not whether this court or the lower court are convinced 1,000 feet of buffer are "necessary," or whether smaller zones would adequately accommodate the conflicting land uses. The legal issue is whether the propriety of the larger zones is a fairly debatable question, one upon which reasonable minds could differ. "Somewhere the

line of demarcation must be drawn, and it is primarily the province of the municipal body to which the zoning function is committed to draw that line of demarcation, and it is neither the province nor the duty of courts to interfere with the discretion with which such bodies are invested in the absence of a clear showing of an abuse of that discretion."

(Consolidated Rock Products Co. v. City of Los Angeles (1962) 57 Cal.2d 515, 533, quoting Miller v. Board of Public Works (1925) 195 Cal. 477, 495.)

The Ordinance was not adopted arbitrarily, but followed the presentation of information regarding the character of the affected districts and the potential conflicts between land uses thereon. The County's Director of Environmental Services stated that, despite the staff recommendation, the Board "should and could feel very comfortable adopting a thousand feet. That would be the maximum protection." A geologist familiar with the erosion problems of the Santa Cruz Mountains opined a 1,000-foot buffer would be an important element in mitigating erosion impacts in the vicinity of residences. A resident of the Skylonda area, which she described as "a residential area . . . with many small lots" and "modest family homes on a suburban street," stated logging had been proposed on an RM-zoned parcel across the street from her house. She believed "[p]utting one thousand feet between my children playing in my yard and log trucks, chainsaws and slash burning is the minimum." Another homeowner in a forested area of the County spoke in favor of a large buffer zone because of the

erosion "even the best kind of logging" may cause to adjacent properties in hilly areas. A representative of the Skylonda Area Association testified and presented written materials, including excerpts from a Stanford University study of logging in urban counties. This text pointed out that removing the larger trees from a redwood forest increases, rather than decreases, the fire danger, in part because it may sharply reduce the "fog drip" effect that keeps the mature redwood forest moist. The authors recommended a buffer zone of unlogged, moist redwood forest be maintained around roads and residential areas. A strip "at least" 800 feet wide is required.^{16/} Another speaker pointed out that at a walking pace of 5 miles per hour, 500 feet could be travelled in just over a minute and 1,000 feet in a little more than 2 minutes. As she remarked, "A fire going uphill travels with amazing speed." In light of this and other information before the Board, we conclude the adoption of a 1,000-foot buffer in non-TPZ zones, potentially affecting only about 4 percent of the County's total timberlands, was not arbitrary, unreasonable, or substantially unrelated to public health or safety. (Schroeder v. Municipal Court, *supra*, 73 Cal.App.3d at p. 848.) Reasonable minds may differ about the specifics, but

^{16/} Although Big Creek complains these text excerpts were introduced before the Board without being "authenticated, nor were the qualifications of the authors listed," it cites no authority suggesting a board of supervisors may not consider such information in support of a legislative zoning decision. The Evidence Code does not govern such legislative hearings. (Evid. Code, § 300.)

the Board's action is based on information properly brought before it and "represents a reasonable accommodation of the competing interests." (Associated Home Builders etc., Inc. v. City of Livermore, supra, 18 Cal.3d at p. 609, fn. omitted.)

We conclude the zoning regulation is not preempted by state law and was not arbitrarily or capriciously adopted. These being the bases of the trial court's decision, its order and judgment for declaratory relief and peremptory writ of mandamus must be reversed.^{17/}

DISPOSITION

The order and judgment of the superior court are reversed. The County shall recover its costs on appeal.

^{17/} Having concluded the FPA does not expressly or impliedly preempt local declarations of nuisance, we need not decide whether the savings clause for local declarations of nuisance (Pub. Resources Code, § 4514, subd. (a)) or whether the Ordinance's nuisance finding was invalidated by other provisions of state law, as Big Creek argues. Nor do we decide whether the Ordinance is in conformity with the County's general plan, an issue raised, but not decided, below and not briefed in this court.

Corrigan, J.

We concur:

Chin, P.J.

White, J.*

*/ Retired Presiding Justice of the Court of Appeal sitting under assignment by the Chairperson of the Judicial Council.

Big Creek Lumber Company, Inc. v. County of San Mateo, A062643

Trial court:

San Mateo County
Superior Court

Trial judge:

Honorable Thomas McGinn Smith

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