

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
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**F13a**

**Prepared September 18, 2003 (for October 10, 2003 hearing)**

**To:** Commissioners and Interested Persons

**From:** Diane Landry, District Manager  
Dan Carl, Coastal Planner

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**Subject: Santa Cruz County LCP Amendment Number 2-03 Part 2 (Timber Production Rezone).**  
Proposed amendment to the Santa Cruz County certified Local Coastal Program to be presented for public hearing and Commission action at the California Coastal Commission's October 10, 2003 meeting to take place at the Hotel Del Coronado located at 1500 Orange Avenue in Coronado (San Diego).

## Summary

Santa Cruz County is proposing to amend its certified Local Coastal Program (LCP) zoning code (or IP, Implementation Plan) to rezone Assessor Parcel Number (APN) 063-011-33, located off of Thayer Road in the mountainous Bonny Doon area of north Santa Cruz County about four miles inland from the shoreline, from the Special Use (SU) zone district to the Timber Production (TP) zone district. Timber harvesting in Santa Cruz County's coastal zone is only allowed in the TP and M-3 (Mineral Extraction Industrial) zoning districts. Pursuant to the Coastal Act and the LCP, timber harvesting itself is generally not considered "development" and thus does not require a coastal development permit (CDP). However, the designation of zoning districts is a legislative act which requires an amendment to the LCP.

The subject site is located within the area mapped by the LCP as "timber resource;" is bordered to the north and west by TP-zoned lands; is designated by the Land Use Plan (LUP) as Mountain Residential (RM; the RM district is implemented by the proposed TP zone district); and has been the site of numerous timber harvests in the past.

The LUP establishes criteria for proposed TP rezones. The Commission may deny a proposed TP rezone if these criteria are not met. Some of these criteria, some other timber harvest issues, and some other LCP policies (including the requirement that this proposed rezone requires an LCP amendment at all), are the subject of litigation involving timber interests, the Commission, and Santa Cruz County. This litigation is currently pending before the 6<sup>th</sup> District Court of Appeal.

In this case, the proposed rezone satisfies the LUP and IP criteria (including the challenged elements of it) for rezoning to TP. This is due in large measure to the fact that the property owners have agreed, on behalf of themselves and any successors in interest via recorded and enforceable property restrictions, to avoid future timber harvest and tree removal activities near areas of the property where there are environmentally sensitive habitat areas (ESHAs), landmark trees, and geologic constraints, and because the site is not visible from rural scenic roads. As a result of these agreements and deed restrictions, future timber harvests will be consistent with the resource protective policies of the LCP to the degree



**California Coastal Commission**

**October Meeting in San Diego**

Staff: D. Carl Approved by: *DSL*

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feasible inasmuch as those future timber harvests themselves do not constitute "development" requiring a CDP. In other words, the deed restriction incorporates the resource protective measures required of development by the LCP (such as the required stream setback) as property restrictions applicable to any future timber harvests as a condition of allowing the property to be rezoned to permit such future timber harvests.

**Staff recommends that the Commission find that the proposed rezoning is consistent with and adequate to carry out the policies of the LUP, and thus that the Commission approve the LCP amendment as submitted.**

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## I. Staff Recommendation – Motions and Resolutions

Staff recommends that the Commission, after public hearing, approve the proposed amendment as submitted. Staff recommends a **NO** vote on the motion below. Failure of this motion will result in certification of the rezoning and the adoption of the following resolution and the findings in this staff report. The motion passes only by an affirmative vote of a majority of the Commissioners present.<sup>1</sup>

**Motion.** I move that the Commission **reject** Part 2 of Major Amendment Number 2-03 to the Santa Cruz County Local Coastal Program Implementation Plan as submitted by Santa Cruz County.

**Resolution to Certify Implementation Plan Amendment as Submitted.** The Commission hereby certifies Part 2 of Major Amendment Number 2-03 to the Santa Cruz County Local Coastal Program Implementation Plan as submitted and adopts the findings set forth in this staff report on the grounds that Part 2 of Major Amendment Number 2-03 as submitted is consistent with and adequate to carry out the certified Land Use Plan, and certification of the Implementation Plan amendment will meet the requirements of the California Environmental Quality Act, because either (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Plan amendment on the environment, or (2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Plan amendment.

## II. Findings and Declarations

The Commission finds and declares as follows:

### A. Proposed LCP Amendment

#### 1. Description of Proposed LCP Amendment

The amendment changes the zoning of APN 063-011-33 from the Special Use (SU) zone district to the Timber Production (TP) zone district. See exhibit A for the property location, exhibit B for the County Board of Supervisors' resolution and rezoning ordinance, and exhibit C for the Board of Supervisors' staff report.

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<sup>1</sup> Note that the motion and resolution refer to "Part 2 of Major Amendment Number 2-03." The reason for this is that this amendment request is part 2 of a two part LCP amendment submitted by the County. In other words, LCP amendment number 2-03 is in two parts. The other part of the amendment, regarding processing changes for second unit applications pursuant to AB 1866, was approved by the Commission at its September meeting.



## 2. General Effect of Changes Proposed

Timber harvesting in Santa Cruz County's coastal zone is only allowed in the TP and M-3 zoning districts.<sup>2</sup> As a result, the zone change allows for timber harvesting to occur on a site where it would be prohibited otherwise.<sup>3</sup> Timber harvest in accordance with a California Department of Forestry-approved timber harvest plan pursuant to the Forest Practice Act (see regulatory background below) does not constitute development per the Coastal Act and the LCP, and thus such future individual timber harvests would not require a coastal development permit.

Because the rezoning is contingent upon a deed restriction that requires avoidance of habitat (consistent with the LCP setback parameters), avoidance of landmark old growth trees, and avoidance of geologic hazard (instability) areas, future timber harvests would to the degree feasible avoid resource degradation. See exhibit D for the timber management plan for the site and exhibit E for the property restrictions.

## B. Consistency Analysis

### 1. Standard of Review

The standard of review for proposed modifications to the County's LUP is consistency with the Coastal Act. The standard of review for proposed modifications to the County's IP is that they must be consistent with and adequate to carry out the policies of the LUP. In general, Coastal Act policies set broad statewide direction that are generally refined by local government LUP policies giving local guidance as to the kinds, locations, and intensities of coastal development. IP (zoning) standards then typically further refine LUP policies to provide guidance on a parcel by parcel level. Because this is an IP (only) LCP amendment, the standard of review is the certified LCP LUP.

### 2. Timber Harvesting Regulatory and Judicial Background

A significant body of legislation relevant to timber harvesting was enacted by the state legislature in the 1970s and 1980s that limits the Coastal Commission's ability to regulate this particular land use. Subsequent appellate court decisions have provided interpretive guidance regarding the authority to plan and regulate this activity. The following discussion briefly outlines the main provisions of the relevant legislation and cases as they affect the Commission's responsibility to carry out the Coastal Act, and their effect on the amendment submitted by the County.

#### A. Relevant Timber Statutes

The Z'berg-Nejedly Forest Practice Act of 1973 (Public Resources Code (PRC) Section 4511 et seq) and the Timberland Productivity Act of 1982 (Government Code (GC) Section 51100 et seq) together provide a regulatory and planning framework for commercial timber harvesting in California. The Forest

<sup>2</sup> Note that this was one of specific LCP changes approved by the Commission in 1999 (LCP amendment 3-98), and subsequently challenged (see "Judicial Background" section that follows).

<sup>3</sup> Ibid.



Practice Act specifically gives the California Department of Forestry (CDF) rather than the local governments primary authority to regulate most commercial timber operations through the review of Timber Harvest Plans (PRC Section 4516.5(d)).<sup>4</sup> The Act also includes criteria to be used in the development of individual timber harvest plans and invites local counties to submit recommendations to the Board of Forestry for specific additional or more restrictive criteria to be applied to timber harvests in their jurisdiction (PRC Sections 4516.5 and 4516.8). No specific mention is made of the Coastal Commission in the Forest Practice Act, however PRC Section 4514(c) states that the Act is not "a limitation on the power of any state agency in the enforcement or administration of any provision of law which it is specifically authorized or required to enforce."

Per the Coastal Act, the Commission is not authorized to regulate the conduct of timber operations through the coastal development permit process because Section 30106 specifically exempts the removal of major vegetation pursuant to "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" from the definition of "development," and thus also from the permit requirement. This same exemption is contained in the County's LCP. There is, however, no parallel exemption in the Coastal Act regarding the Commission's planning responsibilities for various land uses, including timber production, in the Coastal Zone. Chapter 6 of the Coastal Act contains a legislative scheme to prepare and certify Local Coastal Programs for all land in the Coastal Zone. PRC 30330 gives the Commission the authority to carry out the planning provisions found in Chapter 6 ("The Commission, unless specifically otherwise provided, shall have the primary responsibility for the implementation of the provisions of this division..."). The LCPs prepared pursuant to the requirements laid out in the Coastal Act include Land Use Plans "sufficiently detailed to show the kinds, locations and intensity of land uses" (PRC 30108.5) and "zoning ordinances....which, when taken together with [the land use plan] implement the policies and provisions of this division at the local level" (PRC 30108.6). The Commission is thus specifically authorized to undertake the land use planning process laid out in the Coastal Act and is not limited in fulfilling these duties by the terms of Section 4514(c) the Forest Practice Act.

Further, pursuant to Coastal Act Section 30514(e), the amendment of an LCP includes "any action by a local government that authorizes the use of a parcel of land other than a use that is designated in the certified local coastal program as a permitted use of the parcel." An application to rezone a parcel to TP in the coastal zone proposes to authorize use of a parcel other than that which is designated in the certified LCP. Thus the Act requires that the LCP be amended when a parcel is rezoned to TP, or to any other use not designated in the LCP. The LCP amendment provision simply implements the Commission's duty to review each LCP amendment for consistency with Chapter 3 of the Act and/or the certified LUP.

The Timberland Productivity Act of 1982 (GC Section 51101 et seq) is primarily directed towards encouraging counties to identify timber resources and to zone land that contains commercial timber

<sup>4</sup> Section 4516.5(d) provides that, with certain minor exceptions specified in 4516.5(e) and (f), "individual counties shall not otherwise regulate the conduct of timber operations, as defined by [the Forest Practice Act], or require the issuance of any permit or license for those operations." The Forest Practice Act defines "timber operations" in section 4527 of the Public Resources Code.



resources to the "Timber Production" zone district. The statute required all county assessors in the state to prepare a list of properties that were, or, in the opinion of the county assessor, should be, assessed as timber production lands as their "highest and best" use (GC Sections 51110 and 51110.1). The Act then lays out a mandatory re-zoning process that was to have been undertaken by counties where timber production properties were identified (GC Section 51112). In conclusion, this statute strongly encourages the identification and placement of timber land into the "Timber Production" zone district, but leaves the individual designations and rezoning to the discretion of local planning authorities. The Act also contains no limitations on the Coastal Commission to carry out its' statutory planning responsibilities.

### B. Relevant Court Cases

There are two published appellate court cases, and a third pending appellate court case, that provide additional insight into the effect of the Forest Practice Act and The Timber Productivity Act on the Coastal Commission's authority to plan for various land uses in the Coastal Zone.

The first case, *Big Creek Lumber Company v. County of San Mateo* ((1995) 31 Cal. App 4<sup>th</sup> at 418), found that a zoning regulation which provided for a 1000-foot buffer between timber operations and residences located on land outside land zoned for timber production was not in conflict with the Forest Practice Act. In its decision, the Court distinguished between regulations that directed *how* timber harvesting would be conducted and those that were simply identifying *where* the timber harvesting land uses could take place. The Court opined that regulations directed to the *conduct* of timber operations were inconsistent with the Forest Practice Act because the Act gave CDF sole authority to review and approve the permits for this activity through the Timber Harvest Plan process. The Court found, however, that the zoning criteria added by San Mateo County was permissible because it only addressed a *locational* issue (i.e., where timber harvesting could and could not occur) pursuant to the County's general authority to plan for land uses within its jurisdiction.

In the second case, *Westhaven Community Development Council v. County of Humboldt* ((1998) 61 Cal. App. 4<sup>th</sup> at 365), the Court denied the plaintiffs' request to issue an injunction preventing logging, subject to a CDF-approved Timber Harvest Plan, unless and until a conditional use permit for the activity was obtained from Humboldt County. The Court opined that even though the County Zoning Ordinance stated that a use permit was required for commercial timber harvests, the requirement could not be enforced because the Forest Practice Act pre-empted application of zoning regulations "to the extent those regulations required a permit for timber operations on a land area of three or more acres." The Court distinguished the ruling in that case from that made in the Big Creek case as follows "that decision [i.e., the Big Creek decision] did not address, consider or resolve any issues relating to local permitting requirements, because the county ordinance at issue in Big Creek Lumber Co. did not create a permit requirement....The Big Creek Lumber Co. draws a distinction between local attempts to regulate the conduct of timber operations, the first type prohibited by Section 4516.5(d) and local efforts to regulate the location of timber operations." In contrast, the *Westhaven* case involved a challenge to a local government use permit requirement, the second type of local government regulation generally prohibited by PRC section 4516.5(d) [see footnote 4, supra]. The Court thus affirmed the earlier decision



in Big Creek “that the Forest Practice Act does not preempt local efforts to regulate the location of timber harvesting.”

The Commission and Santa Cruz County are currently involved with pending litigation challenging multiple aspects of the coastal management program in the County’s coastal zone and its applicability to timber production in Santa Cruz County (*Big Creek Lumber et al v. County of Santa Cruz et al*). In this case, the plaintiffs contend that changes to the County’s LCP adopted by the County, and ultimately certified by the Commission, are preempted by the Forest Practice Act and the Timberland Productivity Act. The challenged LCP changes were a part of LCP amendment 3-98 that was approved by the Commission in July 1999, and certified in January 2000. That amendment, as it was certified, ultimately limited timber harvesting to two zoning districts in the County’s coastal zone, TP and M-3; required LCP amendments for any rezoning to TP or M-3; and specified criteria to be considered when rezoning to TP. Appeals and cross-appeals have been filed and this case is currently pending the 6<sup>th</sup> District Court of Appeal.<sup>5</sup>

#### **D. Conclusion**

At a minimum, and based on the above context, the Commission may review and act on LCP amendments submitted by Santa Cruz County relevant to timberlands and timber harvesting that provide criteria concerning the location of various land uses in the coastal zone. Thus, the Commission may consider those amendments which identify the zone districts where timber harvesting can occur, and those zoning criteria which specify buffer areas from specific natural features because they simply specify where timber operations can occur.<sup>6</sup>

In this case, the proposed amendment is to rezone a property to TP. By doing so, the amendment would allow timber harvesting on a particular property where it is currently prohibited under the applicable zoning district. By virtue of the deed restriction associated with the rezoning, some portions of the property would be off-limits to future timber harvesting. Thus, the question before the Commission in this case is strictly a locational question. As a result, it is within the Commission’s purview.

### **3. LUP Timber Harvest Requirements and Standards for TP Rezoning**

Timber resources and timber production are most directly the purview of LUP Section 5.12 et seq (Timber Resources). LUP Section 5.12 includes a broad objective to promote sustainable forestry. LUP

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<sup>5</sup> That said, the analysis in this report relies on the certified LCP, including challenged portions of it for which litigation is pending. Notations are provided to identify such challenged elements.

<sup>6</sup> Note that the County has been cautious in proceeding with rezoning applications in light of the pending litigation. In this case, the County indicates as follows in this regard (see exhibit E): “It is the County’s position that it is required by state law to ensure that all zoning decisions, including rezoning property to a TP zone district, are consistent with the policies set forth in the County’s General Plan and Local Coastal Program Land Use Plan (“General Plan/LCP”) and that it has the authority to deny TP rezone applications where necessary to ensure such consistency. Given that the County’s authority in this area is currently at issue pending litigation before the Court of Appeal, the County, in order to avoid the potential for duplicative additional litigation, has refrained from acting on rezone applications that present clear conflicts with its General Plan/LCP pending a final judicial decision.” In this case, the County found the rezoning consistent with the General Plan and LCP.



Objective 5.12 states:

*To encourage the orderly economic production of forest products on a sustained yield basis under high environmental standards, to protect the scenic and ecological values of forested areas, and to allow orderly timber production consistent with the least possible environmental impacts.*

LUP Policy 5.12.9 specifically applies to rezoning of land to timber production (as is the case in here). LUP Policy 5.12.9 states:<sup>7</sup>

*Encourage timberland owners to apply for Timber Production zoning where appropriate. In the coastal zone it is not appropriate to zone timberland for timber production if the land is recreational, environmentally sensitive, or visible from rural scenic roads (pursuant to policy 5.10.3)<sup>[8]</sup> and if logging will harm these resource values. For purposes of this policy, harmful activities shall be considered as those including any significant disruption of environmentally sensitive habitat, any loss of landmark old growth trees, any degradation of scenic public views, any significant loss of timberland soils or siltation of spawning gravels. Also, in the coastal zone, it is not appropriate to zone timberland to timber production if the land is susceptible to a geologic hazard that may be exacerbated by logging and not responsive to mitigation. Such rezonings must be in accordance with the procedures set forth in the TP ordinance.*

Thus, LUP Policy 5.12.9 incorporates the rezoning requirements of the TP ordinance. Specifically, IP Section 13.10.375(c) states:<sup>9</sup>

*Zoning to the "TP" District. An owner may make application to rezone land to the Timber Production District. The Board of Supervisors may, by ordinance, upon the advice of the Planning Commission pursuant to Section 51110.2, Public Resource Code, and after public hearings, zone as Timber Production parcels submitted to it by petition pursuant to this section, and/or which meet all of the following criteria:*

- 1. A map shall be submitted with the legal description or assessor's parcel number of the property desired to be zoned.*
- 2. A Timber Management Plan for the property shall be submitted. This Plan shall have been prepared or approved as to content by a Registered Professional Forester. Such Plan shall provide for the eventual harvest of timber within a reasonable period of time. The Timber Management Plan shall be subject to approval as submitted, or as amended by the County.*

<sup>7</sup> The re-zoning criteria identified in LUP Policy 5.12.9 are at issue in the pending appeal of the Big Creek case (see preceding judicial background section).

<sup>8</sup> LUP Policy 5.10.3 requires the protection of public vistas by, among other things, "minimizing disruption of landform and aesthetic character caused by...timber harvests, ..."

<sup>9</sup> As with LUP Policy 5.12.9, the re-zoning criteria identified in IP Section 13.10.375(c), and specifically subsections (7) and (8) added by the Commission as suggested modifications in the Commission's approval of LCP Amendment 3-98 in 1999, are at issue in the pending appeal of the Big Creek case (see preceding judicial background section).



*Prior to rezoning of the property to "TP" the property owner shall bind himself and his successors in interest to carry out the approved Timber Management Plan.*

3. *Either the parcel must currently meet the timber stocking standards as set forth in Section 4561 of the Public Resources Code and the Forest Practice Rules adopted by the Board of Forestry for the district in which the parcel is located, or the owner must sign an agreement with the Board of Supervisors to meet such stocking standards and forest practice rules by the fifth anniversary of the signing of such agreement. If the parcel is subsequently zoned as Timber Production, failure to meet such stocking standards and Forest Practice Rules within this time period shall constitute grounds for rezoning the parcel.*
4. *The parcel must be timberland.*
5. *Uses on the parcel shall be in compliance with the Timber Production Zone uses set forth in Section 13.10.372.*
6. *The land area to be rezoned shall be in the ownership of one person, as defined in Section 38106 of the Revenue and Taxation Code, and shall be comprised of single or contiguous parcels consisting of at least five acres in area.*
7. *In the coastal zone, the land shall not be recreational, environmentally sensitive, nor visible from rural scenic roads (pursuant to policy 5.10.3) where logging will harm these resource values. For the purposes of this subsection, harmful activities shall be considered as those including any significant disruption of environmentally sensitive habitat, any loss of landmark old growth trees, any degradation of scenic public views, any significant loss of timberland soils or siltation of spawning gravels.*
8. *In the coastal zone, the land shall not be susceptible to a geologic hazard that may be exacerbated by logging and not responsive to mitigation.*

### **C. LUP Limitations on Where Timber Harvests Allowed**

Finally, pursuant to LUP policy 5.12.14, timber harvesting in Santa Cruz County's coastal zone is only allowed in the TP, and M-3 zone districts.<sup>10</sup> LUP policy 5.12.14 states:

*Allow timber harvesting and associated operations, requiring approval of a Timber Harvesting Plan by the California Department of Forestry, only in the Timber Production (TP), Parks, Recreation and Open Space (PR) (except in the coastal zone), and Mineral Extraction Industrial (M-3) zone districts.*

Thus, although the LUP does not include a separate designation for timber harvesting, it does provide guidance (through zoning district reference) to those areas in the coastal zone within which timber

<sup>10</sup> This LUP policy 5.12.14 limitation is also at issue in the pending appeal of the Big Creek case (see preceding judicial background section)



harvesting may be appropriate (namely the TP and M-3 districts).<sup>11</sup>

#### **D. Other LUP Applicable Policies**

As explicitly stated in the LUP policies listed above, other resource issues are engendered by requests for rezonings to TP. These include the LUP's sensitive habitat, open space recreational, geologic hazard, and viewshed provisions.

### **4. Zoning APN 063-011-33 to TP**

#### **A. Property Location and Background**

The 36-acre property is located in the mountainous Bonny Doon area of Santa Cruz County's rural north coast, about four miles inland from the shoreline (see exhibit A). It is bordered by an area of low-density rural residential use to the south and east, and by forested timberlands (zoned TP) to the north and west. San Vicente Creek forms the property's northern border, and the site includes an unnamed intermittent stream that feeds into San Vicente Creek. San Vicente Creek is known to provide habitat for such State- and Federally-listed species as coho salmon, steelhead salmon, and California red-legged frog,<sup>12</sup> and the California Fish and Game Commission has designated San Vicente Creek as an endangered coho salmon spawning stream. The National Marine Fisheries Service (now referred to as NOAA – Fisheries) indicates that San Vicente Creek is the southern-most creek where coho salmon is still extant in its entire North American range, and that protection of this creek is therefore of major importance. Because the site is upstream of the old San Vicente Creek quarry (where the creek drops over a waterfall), coho are unable to migrate inland to that portion of the Creek that borders this property. The Creek does contain resident trout populations upstream of the waterfall.

The property's LUP land use designation is Mountain Residential (RM). The Mountain Residential land use designation is implemented by both the existing zoning district (SU, or Special Use) and the proposed TP zone district (IP Section 13.10.170(d)). The property is located within an area mapped by the LCP as timber resource. An existing single-family residence is located on the property along the southern boundary. Access to the property is from Thayer Road off of Bonny Doon Road.

#### **B. Property Timber Harvest History**

According to the property's 2002 Timber Management Plan (TMP), the site contains redwood and Douglas fir (old and young growth) along with tanoak (see exhibit D). The TMP indicates that timber was historically harvested at this site by virtue of clear cutting in the early 1900s, and more recent selective cuts in 1980, 1997, and 1998-99; in the latest episode, the trees were cut and manufactured into

<sup>11</sup> The LCP is structured oddly in this sense inasmuch as LUPs typically indicate general kinds, locations, and intensities of permitted uses through a series of land use designations, each for a different use or group of uses, and the zoning then provides the details consistent with the land use plan directive. The County's LCP does not have a land use designation for timber harvesting per se. Rather, the timber resource maps and LUP Section 5.12 et seq (Timber Production) provide guidance, with Section 5.12 et seq incorporating zoning standards and criteria.

<sup>12</sup> Coho are State-listed as an endangered species and Federally listed as a threatened species, steelhead are Federally listed as a threatened species, and red-legged frog are Federally listed as a threatened species and State listed as a special concern species.



lumber to construct the on-site residence.

### **C. Timber Harvesting Restrictions Agreed Upon as Part of Rezoning**

In approving the rezoning from SU to TP, the County entered into an agreement with the property owners in this case, and the agreement provisions are to be recorded as an enforceable deed restriction. The deed restriction responds to the resource constraints present on the property and requires, among other things, that: (1) timber harvesting and tree removal are prohibited within 50 feet of San Vicente Creek (i.e., the setback required per the LCP's sensitive habitat setback policies for perennial streams); (2) timber harvesting and tree removal are prohibited within 30 feet of the unnamed tributary to San Vicente Creek (i.e., the setback required per the LCP's sensitive habitat setback policies for intermittent streams); (3) timber harvesting and tree removal are prohibited in the less geologically stable portions of the property; and (4) removal of landmark old growth trees is prohibited (see exhibit E).

As a result of the property restriction, and in addition to any more restrictive conditions that may be imposed by CDF, any future timber harvest must avoid the sensitive portions of the site consistent with the LCP's resource protection policies. The restrictions run with the land "in perpetuity at all times during which the subject property is zoned TP or is in a zone district in which commercial timber harvesting is permitted under County law." The restrictions govern all future timber harvesting on the subject property.

### **D. LUP Policy 5.12.9 (and IP Section 13.10.375) Rezoning Criteria**

LUP Policy 5.12.9 and IP Section 13.10.375(c) (both cited above) provide criteria for evaluating proposed rezoning to TP. In particular, the eight criteria of Section 13.10.375(c) provide the relevant details on this point. The project meets all eight criteria:<sup>13</sup>

1. A map shall be submitted with the legal description or assessor's parcel number of the property desired to be zoned. The required map was submitted.
2. A Timber Management Plan for the property shall be submitted. This Plan shall have been prepared or approved as to content by a Registered Professional Forester. Such Plan shall provide for the eventual harvest of timber within a reasonable period of time. The Timber Management Plan shall be subject to approval as submitted, or as amended by the County. Prior to rezoning of the property to "TP" the property owner shall bind himself and his successors in interest to carry out the approved Timber Management Plan. A TMP prepared by a registered professional forester was submitted (see exhibit D). The property owners have agreed to bind themselves and successors in interest to carrying out the TMP subject to the above-described restrictions (see exhibit E).
3. Either the parcel must currently meet the timber stocking standards as set forth in Section 4561 of the Public Resources Code and the Forest Practice Rules adopted by the Board of Forestry for the district in which the parcel is located, or the owner must sign an agreement with the Board of Supervisors to meet

<sup>13</sup> See also County staff report and findings for the County's evaluation of the 8 criteria.



such stocking standards and forest practice rules by the fifth anniversary of the signing of such agreement. If the parcel is subsequently zoned as Timber Production, failure to meet such stocking standards and Forest Practice Rules within this time period shall constitute grounds for rezoning the parcel. According to the Timber Management Plan, the parcel meets the timber stocking standards as set forth in Section 4561 of the Public Resources Code, as well as the Forest Practice Rules adopted by the Board of Forestry for the district in which the parcel is located (see exhibit D).

4. The parcel must be timberland. The County LCP defines "timberland" as follows (IP Section 13.10.700-T): "Privately owned land, or land acquired for state forest purposes, which is devoted to and used for growing an average annual volume of wood fiber of at least 15 cubic feet per acre." The parcel is privately owned, it is located within an LCP-mapped timber resource area, and it has been the site of previous timber harvests. According to the Timber Management Plan, the site can maintain an annual volume of well in excess of 15 cubic feet per acre per year (see exhibit D).

5. Uses on the parcel shall be in compliance with the Timber Production Zone uses set forth in Section 13.10.372. The site is used for one single-family residence and the remainder is forested with 2 creeks running through and along the property. This is consistent with the uses identified in IP Section 13.10.372.<sup>14</sup>

6. The land area to be rezoned shall be in the ownership of one person, as defined in Section 38106 of the Revenue and Taxation Code, and shall be comprised of single or contiguous parcels consisting of at least five acres in area. The property is 36 acres and is owned by Robert and Lisa Banks as husband and wife and joint tenants (i.e., a partnership that qualifies as one "person" per the Revenue and Taxation Code).<sup>15</sup>

7. In the coastal zone, the land shall not be recreational, environmentally sensitive, nor visible from rural scenic roads (pursuant to policy 5.10.3) where logging will harm these resource values. For the purposes of this subsection, harmful activities shall be considered as those including any significant disruption of environmentally sensitive habitat, any loss of landmark old growth trees, any degradation of scenic public views, any significant loss of timberland soils or siltation of spawning gravels. The land is private timberland and is not recreational, and thus logging will not harm recreational resources. The County indicates that the land is not visible from rural scenic roads, and thus logging will not degrade these public viewsheds. The site contains ESHA, namely San Vicente Creek along its border and the unnamed feeder stream to San Vicente Creek, but timber harvesting will be prohibited in both these ESHA portions of the site and in buffer areas adjacent to the ESHAs. Thus logging will not significantly disrupt these habitats and siltation of spawning gravels will be avoided. The site contains landmark old growth

<sup>14</sup> IP Section 13.10.372 describes the following principally permitted uses: "In the Coastal Zone, the principal permitted uses in the Timber Production "TP" District shall be the growing and harvesting of timber, watershed management, fish and wildlife habitat management, agriculture, and one single-family dwelling per parcel including appurtenant uses and structures."

<sup>15</sup> Section 38106 of the Revenue and Taxation Code defines person as follows: "Person" includes any individual, firm, partnership, joint venture, association, social club, fraternal organization, corporation, limited liability company, estate, trust, business trust, receiver, trustee, syndicate, this state, any county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit.



trees, but timber harvesting of these trees will be prohibited. Thus there will be no loss of old growth trees. Timberland soils will be maintained.

8. In the coastal zone, the land shall not be susceptible to a geologic hazard that may be exacerbated by logging and not responsive to mitigation. A portion of the site has been mapped as unstable, but timber harvesting in this area is prohibited. Thus geologic hazard areas will be avoided.

#### **4. LUP Consistency Conclusion**

The Commission must determine whether the rezoning proposed is consistent with and adequate to carry out the LUP. In this case, the property owners have agreed, on behalf of themselves and any successors in interest, to avoid future timber harvest and tree removal activities near areas of the property where there are habitat areas, landmark trees, and geologic constraints. The County verified that the site is not visible from rural scenic roads, and that it meets the other IP Section 13.10.375 rezoning tests. As a result, and in large measure because of the agreed upon property restrictions (on which the rezoning is contingent), the proposed rezoning can be found consistent with the LUP, and the proposed amendment is approved as being consistent with and adequate to carry out the certified LUP.

#### **C. California Environmental Quality Act (CEQA)**

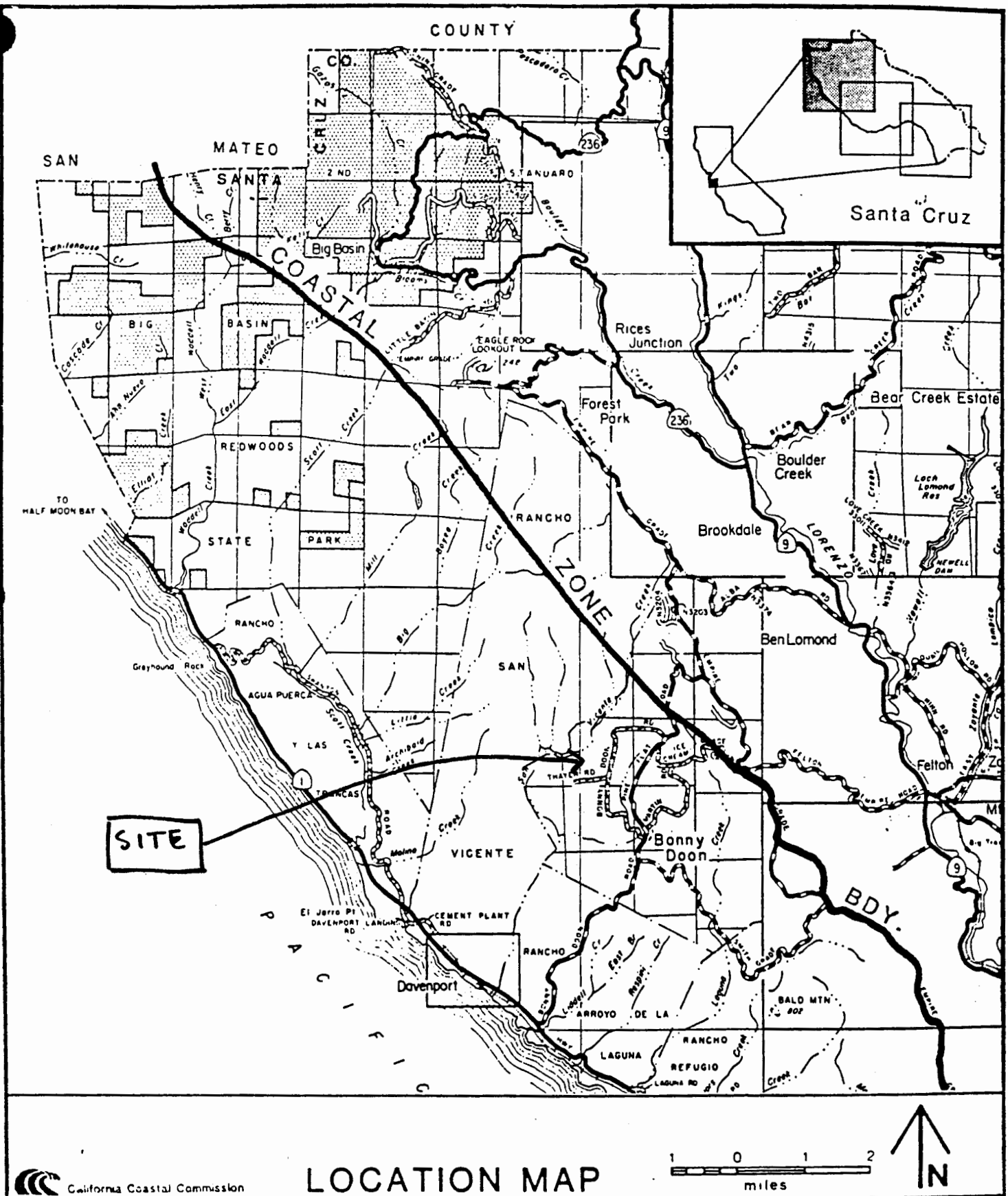
The Coastal Commission's review and development process for LCPs and LCP amendments has been certified by the Secretary of Resources as being the functional equivalent of the environmental review required by CEQA. Therefore, local governments are not required to undertake environmental analysis of proposed LCP amendments, although the Commission can and does use any environmental information that the local government has developed. CEQA requires that alternatives to the proposed action be reviewed and considered for their potential impact on the environment and that the least damaging feasible alternative be chosen as the alternative to undertake. Section 21080.5(d)(2)(A) of CEQA prohibits a project from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the project may have on the environment.

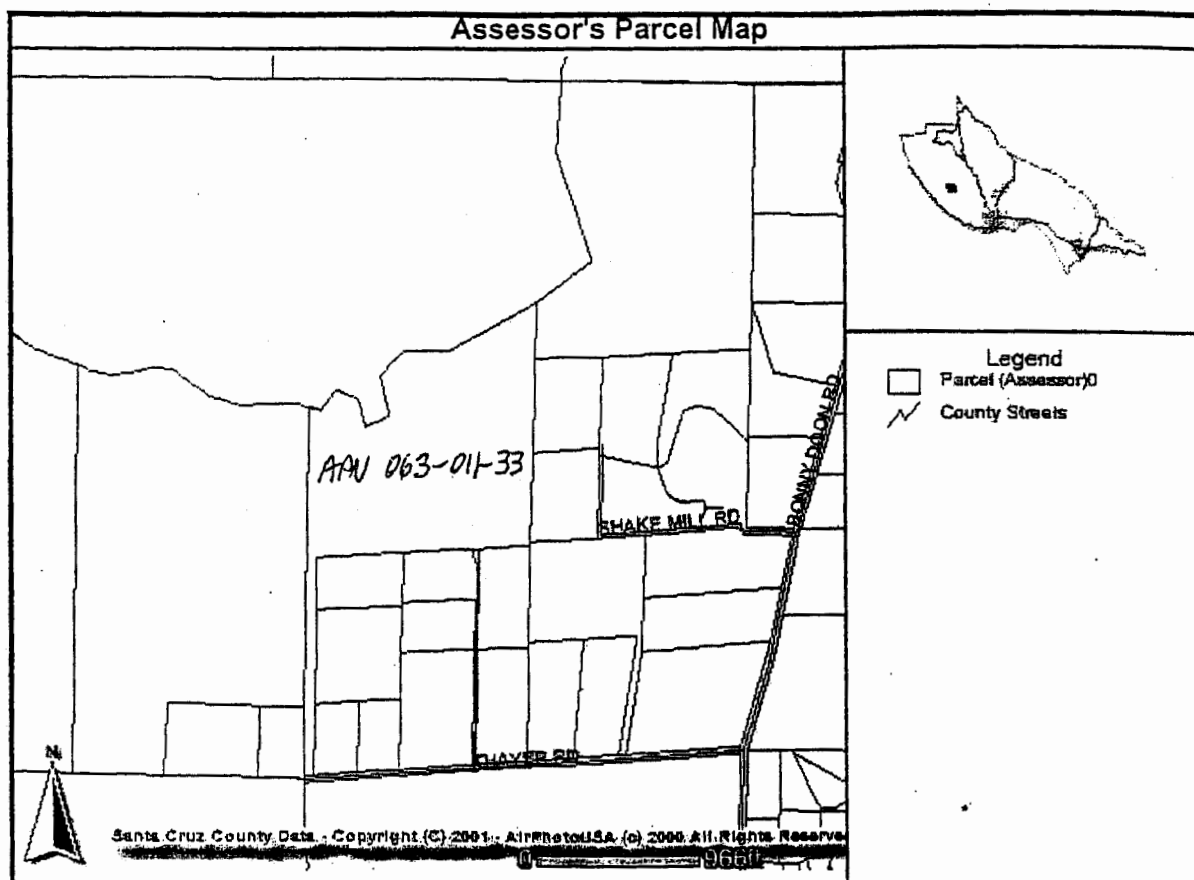
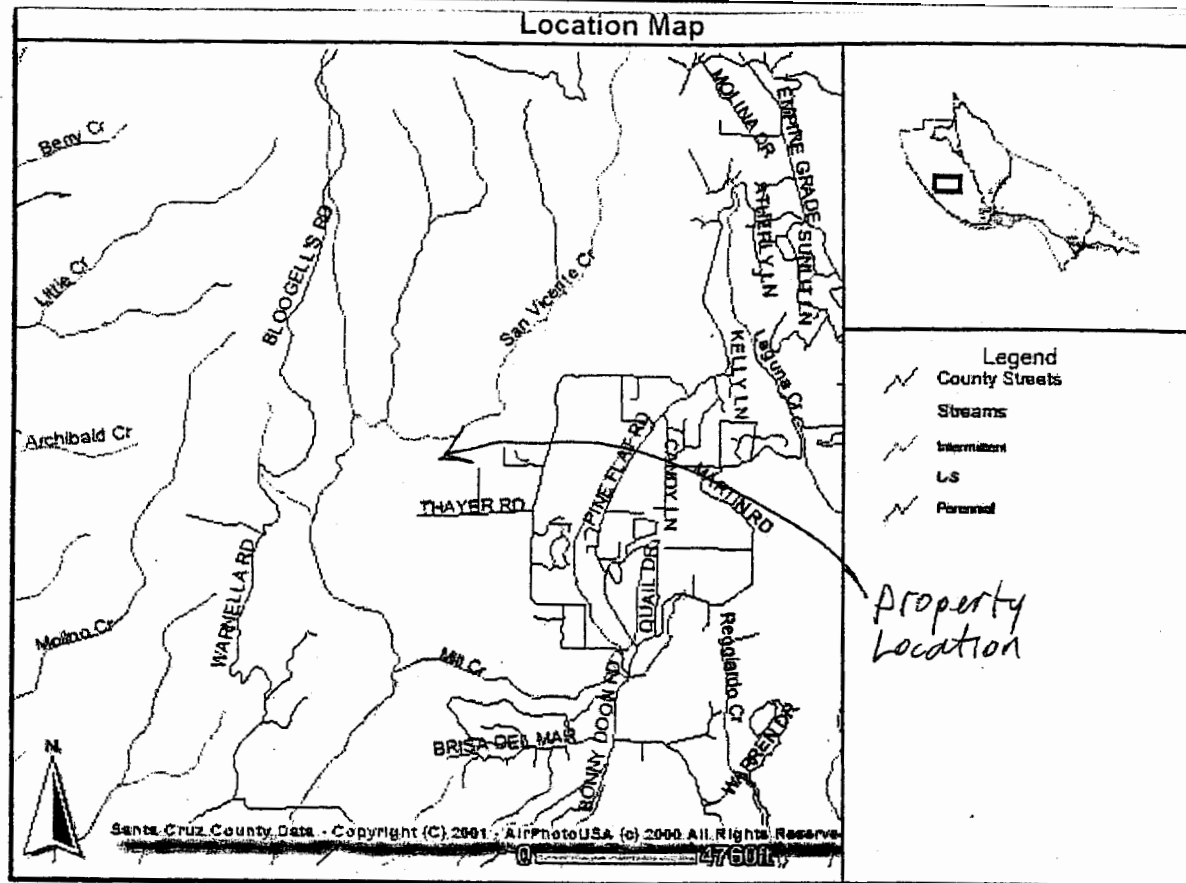
The County in this case exempted the proposed amendment under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal. All public comments received to date have been addressed in the findings above. All above Coastal Act findings are incorporated herein in their entirety by reference.

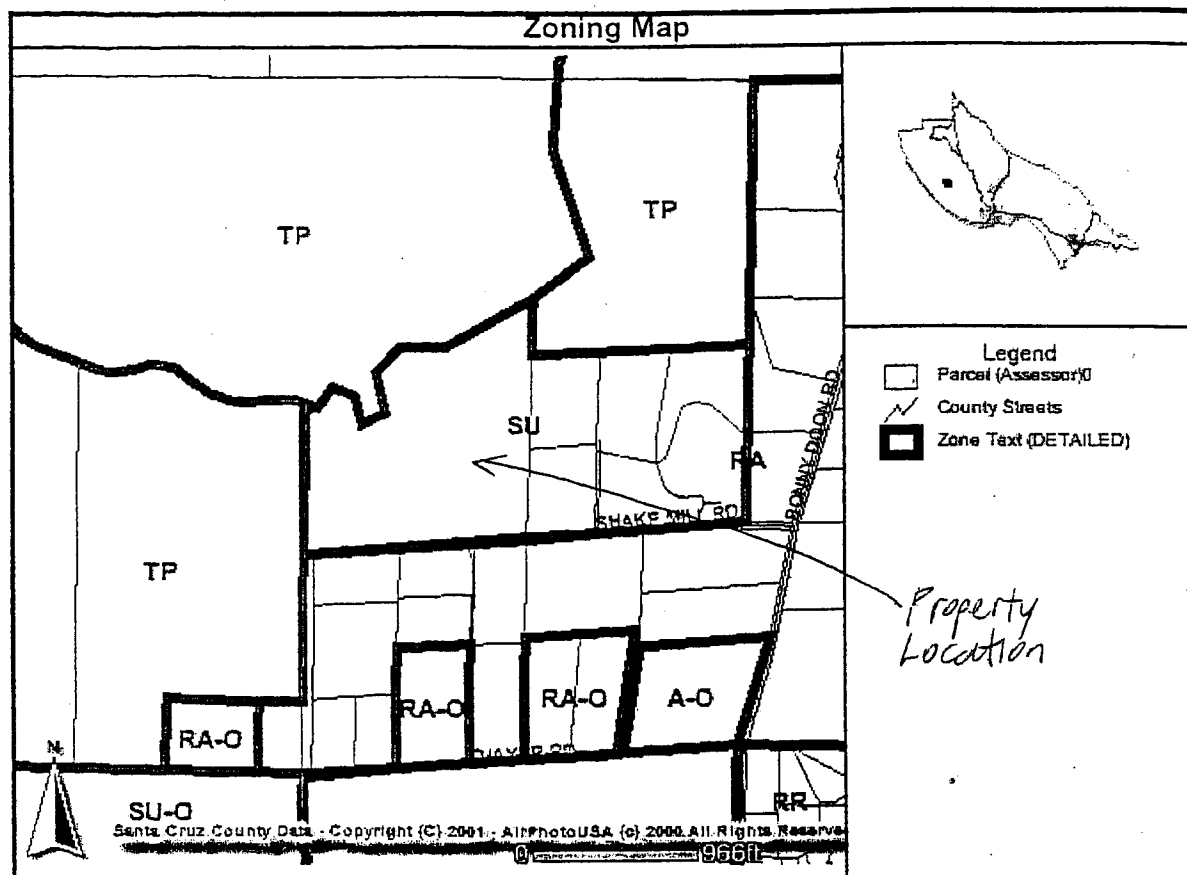
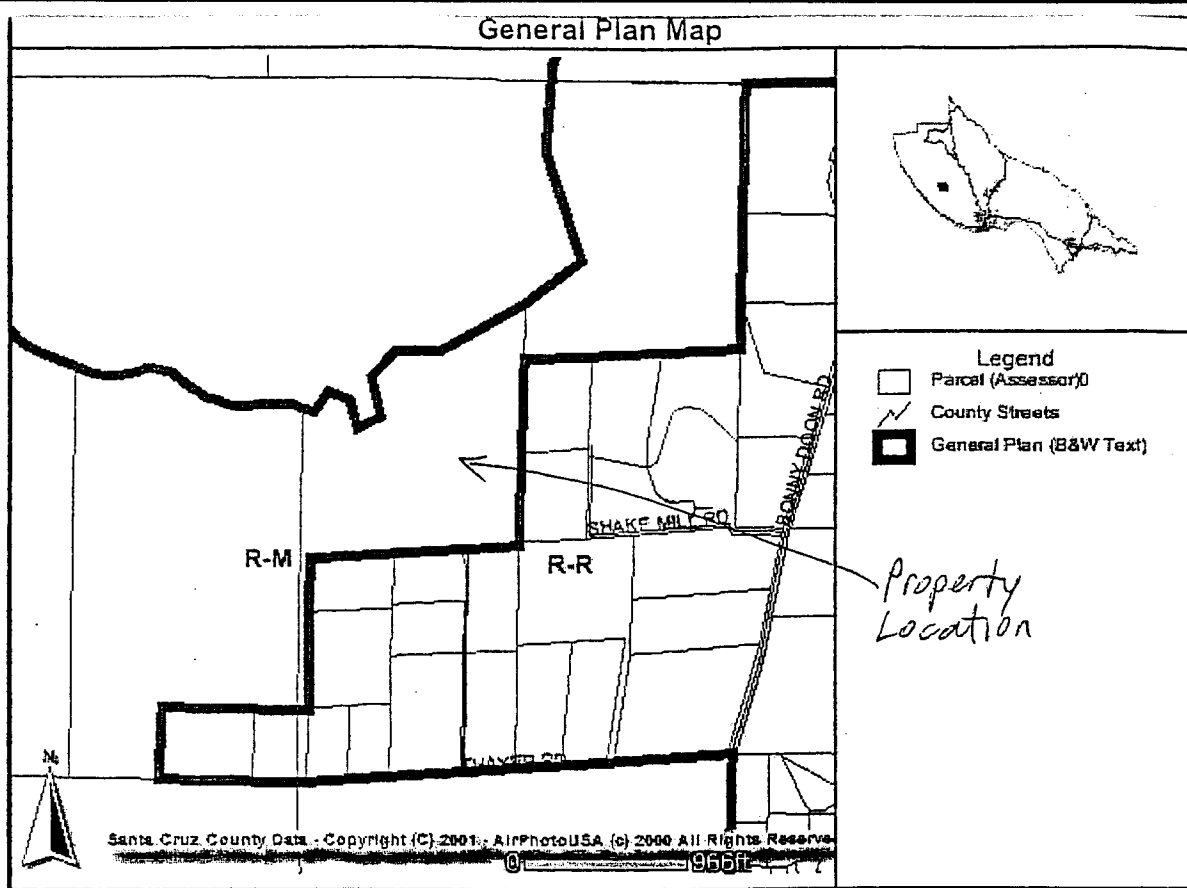
As such, there are no additional feasible alternatives nor feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the amendment would have on the environment within the meaning of CEQA. Thus, the proposed amendment will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).



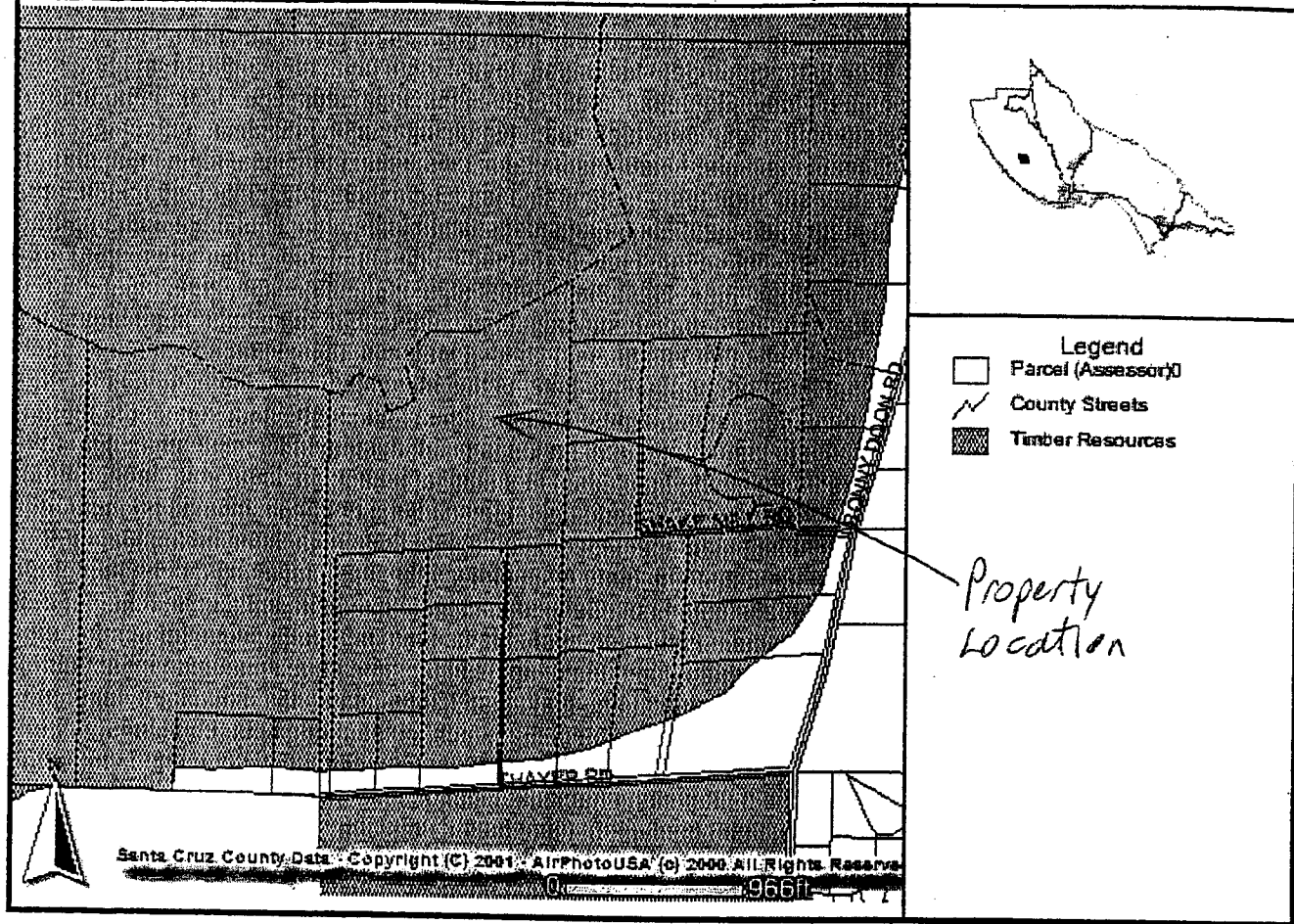








# Timber Resources Map



BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA

0510

RESOLUTION NO. 189-2003

On the Motion of Supervisor Almquist  
duly seconded by Supervisor Beautz  
the following Resolution is adopted:

RESOLUTION ADOPTING AMENDMENT TO THE COUNTY LOCAL COASTAL  
PROGRAM IMPLEMENTING ORDINANCE RELATING TO REZONING ASSESSOR'S  
PARCEL NUMBER 063-011-33 FROM THE SPECIAL USE ZONE DISTRICT TO THE  
TIMBER PRODUCTION ZONE DISTRICT

WHEREAS, On May 29, 2002, the County Planning Department accepted application 02-0282 for rezoning a 35.9-acre parcel from the Special Use (SU) zone district to Timber Production (TP); and

WHEREAS, All of the criteria have been met for rezoning the subject parcels to the Timber Production zoning designation. All required findings can be made to approve this application and the rezoning is consistent with the General Plan policies and land use designations pursuant to California State Government Code Section 51113 and County Code Section 13.10.375 and subject to the attached Agreement; and

WHEREAS, This project qualifies for a statutory exemption in accordance with the California Environmental Quality Act and the County Environmental Review Guidelines (Article 17, Section 1703); and

WHEREAS, the Planning Commission, on April 23, 2003, adopted a Resolution recommending that the Board of Supervisor's adopt the attached ordinance amending the Zoning Ordinance by changing the property from the "SU" Special Use zone district to the "TP" Timber Production zone district; and

WHEREAS, the Board of Supervisors held a duly noticed public hearing on June 17, 2003, to consider the amendment to the Local Coastal Program Implementing Ordinance, the staff report and all testimony and evidence received at the public hearing; and

WHEREAS, the proposed amendment to the County Local Coastal Program is consistent with the County General Plan/Local Coastal Program Land Use Plan and all other provisions of the implementing ordinances.

CCC Exhibit B  
(page 1 of 4 pages)

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the Board of Supervisors of the County of Santa Cruz approves the amendment to the County Local Coastal Program Implementing Ordinance, as set forth in Attachment 6 of the report to the Board of Supervisors on June 17, 2003.

BE IT FURTHER RESOLVED AND ORDERED that the Board of Supervisors directs that this Local Coastal Program Implementing Ordinance Amendment be referred to the California Coastal Commission for its review and certification, and to return for final adoption and certification of the environmental documents by the Board of Supervisors.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz, State of California, this 17th day of June, 2003, by the following vote:

AYES:	SUPERVISORS	Beautz, Wormhoudt, Campos, Almquist and Pirie
NOES:	SUPERVISORS	None
ABSENT:	SUPERVISORS	None
ABSTAIN:	SUPERVISORS	None

ATTEST: *Hait. Bork* Clerk of the Board  
*Allen Pirie* Chairperson of the Board of Supervisors  
APPROVED AS TO FORM: *[Signature]* County Counsel

DISTRIBUTION: County Counsel  
Planning

STATE OF CALIFORNIA	)
COUNTY OF SANTA CRUZ	) ss
I, SUSAN A. MAURIELLO, County Administrative Officer and ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz, State of California do hereby certify that the foregoing is a true and correct copy of the resolution passed and adopted by and entered in the minutes of the said board. In witness whereof I have hereunto set my hand and affixed the seal of the said Board on <u>6/19</u> 20 <u>03</u> .	
SUSAN A. MURIELLO, County Administrative Officer	
By <u><i>[Signature]</i></u> Deputy	

ORDINANCE NO. 4724

ORDINANCE AMENDING CHAPTER 13.10 OF THE SANTA CRUZ COUNTY  
CODE CHANGING FROM ONE ZONE DISTRICT TO ANOTHER

The Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

The Board of Supervisors finds that the public convenience, necessity, and general welfare require the amendment of the County Zoning Regulations to implement the policies of the County General Plan and Local Coastal Program Land Use Plan regarding the property located on the north side of Thayer Road (about 1,500 feet from the end of pavement) at approximately 2,500 feet west of Bonny Doon Road at 640 Thayer Road; finds that the zoning established herein is consistent with all elements of the Santa Cruz County General Plan; and finds and certifies that all environmental regulations specified in the California Environmental Quality Act, the State and County Environmental Guidelines, and Chapter 16.01 of the County Code have been complied with by the preparation and approval of a Statutory Environmental Exemption for the project.

SECTION II

The Board of Supervisors hereby adopts the recommendations of the Planning Commission for the Zoning Plan amendment as described in Section III, and adopts their findings in support thereof without modification as set forth below:

1. The proposed zone district will allow a density of development and types of uses which are consistent with the objectives and land use designations of the adopted General Plan; and
2. The proposed zone district is appropriate of the level of utilities and community services available to the land; and
3. ☐ a) The character of development in the area where the land is located has changed or is changing to such a degree that the public interest will be better served by a different zone district; or  
☒ b) The proposed rezoning is necessary to provide for a community related use which was not anticipated when the zoning plan was adopted; or  
☐ c) The present zoning is the result of an error; or  
☐ d) The present zoning is inconsistent with the designation shown on the General Plan.

SECTION III

Chapter 13.10, Zoning Regulations, of the Santa Cruz County Code is hereby amended by amending the County Zoning Plan to change the following property from the existing zone district to the new zone district as follows:

<u>Assessor's Parcel Number</u>	<u>Existing Zone District</u>	<u>New Zone District</u>
063-011-33	"SU"	"TP"

SECTION IV

This ordinance shall take effect on the 31st day after the date of final passage.

PASSED AND ADOPTED this 17th day of June, 2003, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES: SUPERVISORS Alqu Coast, Beautz, Wormhoudt, Campos and Pirie  
NOES: SUPERVISORS None  
ABSENT: SUPERVISORS None  
ABSTAIN: SUPERVISORS None

Allen Pirie  
Chairperson of the Board of Supervisors

ATTEST: Paul H. Bostwick  
Clerk of the Board

APPROVED AS TO FORM: Patricia Garcia  
Asst. County Counsel

I HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THE OFFICE ATTEST MY HAND AND SEAL THIS 17th DAY OF June, 2003  
SUSAN A. MAURIELLO, COUNTY ADMINISTRATIVE OFFICER AND EX-OFFICIO CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CRUZ, CALIFORNIA.  
BY Sharon Mitchell DEPUTY

DISTRIBUTION: County Counsel  
Assessor  
Planning: David Carlson  
Bernice Romero



COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

701 OCEAN STREET, SUITE 310, SANTA CRUZ, CA 95060  
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123  
ALVIN JAMES, DIRECTOR

Agenda Date: June 17, 2003

May 30, 2003

Board of Supervisors  
County of Santa Cruz  
701 Ocean Street  
Santa Cruz, CA 95060

Subject: Proposal to rezone Assessor's Parcel Number 063-011-33 from the Special Use (SU) zone district to the Timber Production (TP) zone district. Requires a Rezoning and Local Coastal Program Implementation Plan Amendment. The property is located on the north side of Thayer Road (about 1,500 feet from the end of pavement) at approximately 2,500 feet west of Bonny Doon Road. 640 Thayer Road.

Members of the Board:

BACKGROUND

On May 29, 2002, the County Planning Department accepted this application for rezoning a 35.9-acre parcel from the Special Use (SU) zone district to Timber Production (TP). This project qualifies for a statutory exemption (Attachment 2) in accordance with the California Environmental Quality Act and the County Environmental Review Guidelines (Article 17, Section 1703). California State Government Code Section 51113 and County Code Section 13.10.375 (c), zoning to the TP district specifies eight criteria, which must be met in order to rezone to TP in the Coastal Zone. The project meets the following eight criteria for rezoning to Timber Production:

1. A map has been submitted with the legal description or assessor's parcel number of the property to be rezoned (Attachment 7, Exhibit F).
2. A Timber Management Plan, dated May 29, 2002, prepared by a registered professional forester has been submitted for the property (Attachment 7, Exhibit J). The Timber Management Plan has been reviewed and accepted as amended (see 7 below and Attachment 7, Exhibit K) by the Planning Department as meeting minimum standards.
3. The parcel currently meets the timber stocking standards as set forth in Section 4561 of the Public Resources Code and the Forest Practice Rules for the district in which the parcel is located.
4. The parcel is timberland, as the entire parcel is capable of producing a minimum of 15 cubic feet of timber per acre annually and is located within a mapped Timber Resource area.

5. The uses on the parcel are in compliance with the Timber Production Zone uses set forth in Section 13.10.372.
6. The land area to be rezoned is in the ownership of one person, as defined in Section 38106 of the Revenue and Taxation Code, and is comprised of at least five acres in area.
7. The property is located within the Coastal Zone. The land is not recreational, nor visible from rural scenic roads (pursuant to policy 5.10.3) where logging would harm these resource values. The land contains sensitive habitat area, which is protected through the Agreement discussed in this report. In addition, to prevent any loss of landmark old growth trees the Agreement prohibits removal of landmark old growth trees, which locations are shown on the amended Timber Harvest Map (Attachment 7, Exhibit K).
8. In the coastal zone, the land shall not be susceptible to a geologic hazard that may be exacerbated by logging and not responsive to mitigation. The Agreement prohibits timber harvesting within the mapped landslide and unstable slope areas shown in the Timber Management Plan.

In addition, the three required findings for rezoning have been prepared and are included with this staff report as Attachment 1.

On October 23, 2002, the Planning Commission heard this application at a noticed public hearing. The Planning Commission unanimously adopted Resolution 7-03 (Attachment 3), recommending approval of the rezoning of the subject parcel to your Board. Minutes of the Planning Commission meeting can be seen as Attachment 8.

Because this project involves rezoning to TP in the Coastal Zone it also requires an amendment of the Local Coastal Program. The Board of Supervisors may approve a Local Coastal Program Amendment in the form of a resolution, containing the statement and findings of paragraph 13.03.080(a) of the County Code, which is included as Attachment 9. An amendment approved by the Board is not effective until certified by the California Coastal Commission.

## DISCUSSION

### Project Setting:

The project site is located in the Bonny Doon planning area. The parcel is approximately 35.9 acres and is developed with a single-family dwelling. The site is accessed via Thayer Road. San Vicente Creek, classified as a perennial stream, forms the northern boundary of the subject parcel. San Vicente Creek is a habitat for Coho Salmon and Steelhead trout, Federally listed Threatened species. A topographical barrier (a waterfall) is located downstream from the subject parcel in the old San Vicente quarry that precludes Coho migration upstream. The stream contains resident trout populations upstream from the barrier. In addition, there is an intermittent stream in the north-central portion of the parcel that flows into San Vicente Creek. Slope instability is noted in the Timber Management Plan: (1) along the banks of the San Vicente Creek, (2) along the intermittent stream channel in the north-central portion of the parcel and (3) a landslide mass in the north-central portion of the parcel.

The subject parcel is bordered on the north, and west by TP zoned properties; along the south by RA (Residential Agriculture) zoned properties and along the east by SU zone properties. The

Zoning Map for APN 063-011-33 and the surrounding parcels is included in Attachment 7, Exhibit G.

### General Plan & Zoning Consistency

The subject parcel has a 1994 General Plan land use designation of Mountain Residential and is located entirely within a mapped Timber Resource designated area (Attachment 7, Exhibit I). Parcel 063-011-33 is currently zoned Special Use. The Special Use and Timber Production zoning districts implement the Mountain Residential General Plan designation, as specified in Section 13.10.170 of the County Code.

San Vicente Creek meets the definition of Sensitive Habitat under General Plan policy 5.1.2(c) through (f), (i) and (j). The key definitions are (c) Areas adjacent to essential habitats of rare, endangered or threatened species as defined in (e) and (f); (d) Areas which provide habitat for Species of Special Concern as listed by the California Department of Fish and Game; (e) Areas which provide habitat for rare or endangered species which meet the definition of Section 15380 of the California Environmental Quality Act guidelines; (f) Areas which provide habitat for rare, endangered or threatened species as designated by the State Fish and Game Commission, United States Fish and Wildlife Service or California Native Plant Society; which all apply to the Southern steelhead trout population and Coho salmon in San Vicente Creek. General Plan policy 5.1.4 states "implement the protection of sensitive habitats by maintaining the existing Sensitive Habitat Protection ordinance" (this ordinance is Chapter 16.32 of the County Code). In addition, General Plan policy 5.1.6 states that sensitive habitats shall be protected against any significant disruption of habitat values; any proposed development within or adjacent to these areas must maintain or enhance the functional capacity of the habitat. Projects must be reduced in scale, redesigned, mitigated or, if no alternative exists, denied. Policy 5.1.7 includes the following language, "Protect sensitive habitats against any significant disruption or degradation of habitat values in accordance with the Sensitive Habitat Protection ordinance." The Sensitive Habitat Protection ordinance's definition of development includes the following "the removal or harvesting of major vegetation other than for ... 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; the disturbance of any rare, endangered, or locally unique plant or animal or its habitat". Thus, timber harvesting under a CDF Timber Harvest Permit is specifically exempted from the regulations of Chapter 16.32. Nevertheless, as timber harvesting is not allowed under the subject parcels' current zoning, the proposed rezoning must be analyzed with respect to and found in conformance with the County's General Plan policies for protecting the County's biological resources.

Objective 6.2 of the County's 1994 General Plan is to "reduce safety hazards and property damage caused by landslides and other ground movements affecting use activities in areas of unstable geologic formations, potentially unstable slopes". There is evidence of a landslide and other unstable slope areas noted on the Timber Management Plan, which have been verified by County staff during field inspection. Certain timber harvesting activities such as road and skid trail construction on this parcel could potentially aggravate slope instability problems. The proposed rezoning will allow a use, timber harvesting, which, on this parcel, that can exacerbate slope instability.

The subject parcel contains landmark old growth trees, which was acknowledged in a previous timber harvest plan and verified and mapped during a site inspection by County staff. Consistent with the General Plan requirement that rezoning to the Timber Production zone district comply with

the Timber Production zone district regulations, all landmark old growth trees must be protected from any loss.

At the Planning Commission hearing on this proposal neighbors of the subject parcel expressed concerns regarding hours of future timber operations. In response to these concerns the Owners agreed at the hearing to mitigate the noise level produced by any timber harvesting activities by voluntarily limiting such activities to weekdays from 8 am to 5 pm. The County acknowledges that it has no authority to require such a limit.

The property owners have entered into an Agreement with the County of Santa Cruz, which has been revised following the Planning Commission hearing, setting limitations on certain timber harvesting activities on the subject parcels, resolving the aforementioned conflicts between timber harvesting activities and the County's General Plan and incorporating the limitations on hours of operation. Specifically, the property owners have agreed to a "no cut zone" within 50 feet of San Vicente Creek and within 30 feet of the unnamed tributary to San Vicente Creek (located in the north-central portion of the property). This no cut zone is consistent with the County's riparian corridor protection policies and corridor widths for a perennial stream. This undisturbed area will also provide adequate protection for this sensitive biotic habitat consistent with the County's Sensitive Habitat protection policies. Timber harvesting within the mapped landslide and unstable slope areas shown in the Timber Management Plan (Attachment 7, Exhibit J) is prohibited by the Agreement. To prevent any loss of landmark old growth trees the Agreement prohibits removal of landmark old growth trees, which locations are shown on the amended Timber Harvest Map (Attachment 7, Exhibit K). In addition, the Agreement incorporates the owner's desire to voluntarily limit timber harvest activities to weekdays from 8 am to 5 pm. With this agreement, the proposed rezoning will conform to the General Plan's policies for the protection of sensitive habitat, riparian corridors, reduction of health and safety risks associated with slope instability and the requirement that rezoning to the TP zone district comply with the TP zone district regulations. The Agreement protects landmark old growth trees and is responsive to neighborhood concerns regarding noise. A copy of this Agreement is included as Attachment 4.

All of the criteria have been met for rezoning the subject parcels to the Timber Production zoning designation. All required findings can be made to approve this application and the rezoning is consistent with the General Plan policies and land use designations pursuant to California State Government Code Section 51113 and County Code Section 13.10.375 and subject to the attached Agreement (Attachment 4). Please see Attachment 1 ("Findings") for a complete listing of findings and evidence related to the above discussion.

#### RECOMMENDATION

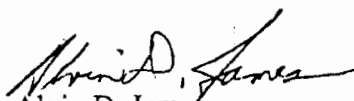
It is, therefore, RECOMMENDED that your Board, based on the attached Findings (Attachment 1):

1. Approve the determination that the project is statutorily exempt from the California Environmental Quality Act (Attachment 2); and
2. Execute the Agreement (Attachment 4) between the County of Santa Cruz and the property owners, Robert and Lisa Banks; and
3. Adopt the attached Ordinance amending Chapter 13.10 of the Santa Cruz County Code that Rezones Assessor's Parcel Number 063-011-33 from the SU zone district to the TP zone district (Attachment 6); and

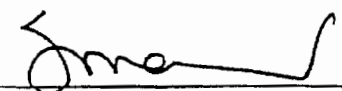
443

4. Adopt the attached Resolution approving the Amendment to the Local Coastal Program Implementation Plan (Attachment 9); and
5. Direct the Planning Department to execute and record the Declaration of Restrictions (Attachment 5) on the property deed; and
6. Direct the Planning Department to submit the Amendment to the Local Coastal Program Implementation Plan to the California Coastal Commission.

Sincerely,

  
Alvin D. James  
Planning Director

RECOMMENDED:

  
SUSAN A. MAURIELLO  
County Administrative Officer

cc: Robert and Lisa Banks, 640 Thayer Road, Santa Cruz, CA 95060

Attachments: \*

1. Findings
2. CEQA Exemption
3. Planning Commission Resolution No 7-03
4. Agreement
5. Declaration of Restrictions
6. Ordinance Amending Chapter 13.10 of the County Code
7. Planning Commission Staff Report of April 23, 2003
8. Planning Commission Minutes for April 23, 2003
9. Board of Supervisor's Resolution

\* STAFF NOTE: NOT ALL  
OF THESE EXHIBITS  
HAVE BEEN DUPLICATED  
HERE. THEY ARE AVAILABLE  
FOR REVIEW AT THE CCC'S  
SANTA CRUZ OFFICE.

## REZONING FINDINGS

1. THE PROPOSED ZONE DISTRICT WILL ALLOW A DENSITY OF DEVELOPMENT AND TYPES OF USES WHICH ARE CONSISTENT WITH THE OBJECTIVES AND LAND-USE DESIGNATIONS OF THE ADOPTED GENERAL PLAN; AND,

The rezoning will allow a density of development and types of uses, which are consistent with the objectives and the land use designations of Mountain Residential. The uses will more closely conform to the General Plan as a result of the zoning of a parcel, which lies entirely within a Timber Resource designation, which contains timber resources meeting the timber stocking.

San Vicente Creek provides spawning and rearing habitat for the Coho salmon and Southern steelhead trout – both Federally listed threatened species. San Vicente Creek, the intermittent tributary and their respective riparian corridors meets the definition of a Sensitive Habitat under General Plan policy 5.1.2(b) through (f), (i) and (j). General Plan policy 5.1.6 states that sensitive habitats shall be protected against any significant disruption of habitat values; any proposed land use within or adjacent to these areas must maintain or enhance the functional capacity of the habitat. Projects must be reduced in scale, redesigned, mitigated or, if no alternative exists, denied. Policy 5.1.7 states, "Protect sensitive habitats against any significant disruption or degradation of habitat values in accordance with the Sensitive Habitat Protection ordinance". Timber harvest operations in accordance with a timber harvest plan approved by the California Department of Forestry, however, are specifically exempted from the Sensitive Habitat Protection ordinance (Chapter 16.32) regulations. As timber harvesting is exempt from Chapter 16.32, timber harvesting could not be mitigated, reduced in scale or redesigned through the regulations of Chapter 16.32. General Plan policies 5.2.2 Riparian Corridor and Wetland Protection Ordinance and 5.2.3 Activities Within Riparian Corridors and Wetlands define riparian corridors and the level of protection afforded these resources. General Plan policy 5.2.1 defines the riparian corridor for a perennial stream as 50 feet from the high water mark and as 30 feet for an intermittent stream. The removal of trees within these riparian corridors could damage Salmonid habitat through increased water temperatures through loss of shade. Moreover, the site disturbance resulting from timber harvesting activities can increase erosion, resulting in increased turbidity and sedimentation within the stream, thereby degrading in stream water quality and aquatic habitats.

Objective 6.2 of the County's 1994 General Plan is to "reduce safety hazards and property damage caused by landslides and other ground movements affecting use activities in areas of unstable geologic formations, potentially unstable slopes". There is evidence of a debris failure on APN 063-011-33. Certain timber harvesting activities such as road and skid trail construction on this parcel could potentially aggravate slope instability problems. The proposed rezoning will allow a use, timber harvesting, which, on this parcel, increases the potential for slope failure.

In order to provide the highest level of protection of these resources, the property owners have entered into an Agreement with the County of Santa Cruz setting limitations on certain timber harvesting activities on the subject parcels, resolving the aforementioned conflicts between timber harvesting activities and the County's General Plan. Specifically, the property owners

have agreed to a "no cut zone" within 50 feet of San Vicente Creek and for 30 feet on each side of the intermittent tributary to San Vicente Creek. This no cut zone is consistent with the County's riparian corridor protection policies and corridor widths for perennial and intermittent streams. This undisturbed area will also provide adequate protection for this sensitive biotic habitat consistent with the County's Sensitive Habitat protection policies. The property owners have agreed to remove the area of the landslide and unstable slope areas from the boundaries of all future timber harvests, thereby avoiding any potential adverse effects on this unstable slope. With this agreement, the proposed rezoning will conform to the General Plan's policies for the protection of sensitive habitat and riparian corridors, and for reducing health and safety risks associated with slope instability.

2. THE PROPOSED ZONE DISTRICT IS APPROPRIATE OF THE LEVEL OF UTILITIES AND COMMUNITY SERVICE AVAILABLE TO THE LAND; AND,

The proposed TP zone district is appropriate to the level of utilities and community services available to the parcel. The subject parcel is accessed via a privately maintained road off of Thayer Road. The parcel is located outside of the Urban Services Line and is, therefore, rural in nature.

3. THE PROPOSED REZONING IS NECESSARY TO PROVIDE FOR A COMMUNITY RELATED USE WHICH WAS NOT ANTICIPATED WHEN THE ZONING PLAN WAS ADOPTED,

The proposed rezoning is necessary to provide for a community related use - timber harvesting and timberland management. Timber harvesting was permitted in the SU zone districts in the past in certain circumstances under the jurisdiction of the County and later under the sole authority of the California Department of Forestry. Presently, timber harvesting is only allowed within the Timber Production and Parks and Recreation, Mineral Extraction zone districts. The subject parcel contains timber stands meeting the timber stocking standards and lies entirely within a designated Timber Resource area. The rezoning will allow the continuation of harvesting and management of the timberlands on the subject parcel.

~~ATTACHMENT~~ 1



TIMBER MANAGEMENT PLAN

FOR

ROBERT D. AND LISA G. BANKS

APN 063-011-33

PREPARED BY

DALE F. HOLDERMAN  
REGISTERED PROFESSIONAL FORESTER  
LICENSE NUMBER 69

2002

**CCC Exhibit** D  
(page ~~400~~ of 17 pages)

ATTACHMENT - 7

# TIMBER MANAGEMENT PLAN

## MAPS

## PAGE

Geographic Location (1:24,000 scale) . . . . .	i
- north indicator	
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- north indicator	
- assessor's parcel number	
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- existing roads, tractor roads and landings	
- existing residence	
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- historical structures - none	
- archeological sites - not mapped	
- areas covered by recommended logging system	
- streams and drainages	
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- soil	
- vegetation type	
- ancient trees (200 years +) - not mapped	
Geologic Map . . . . .	iv
- north indicator	
Harvest Plan Map. . . . .	v
- north indicator	

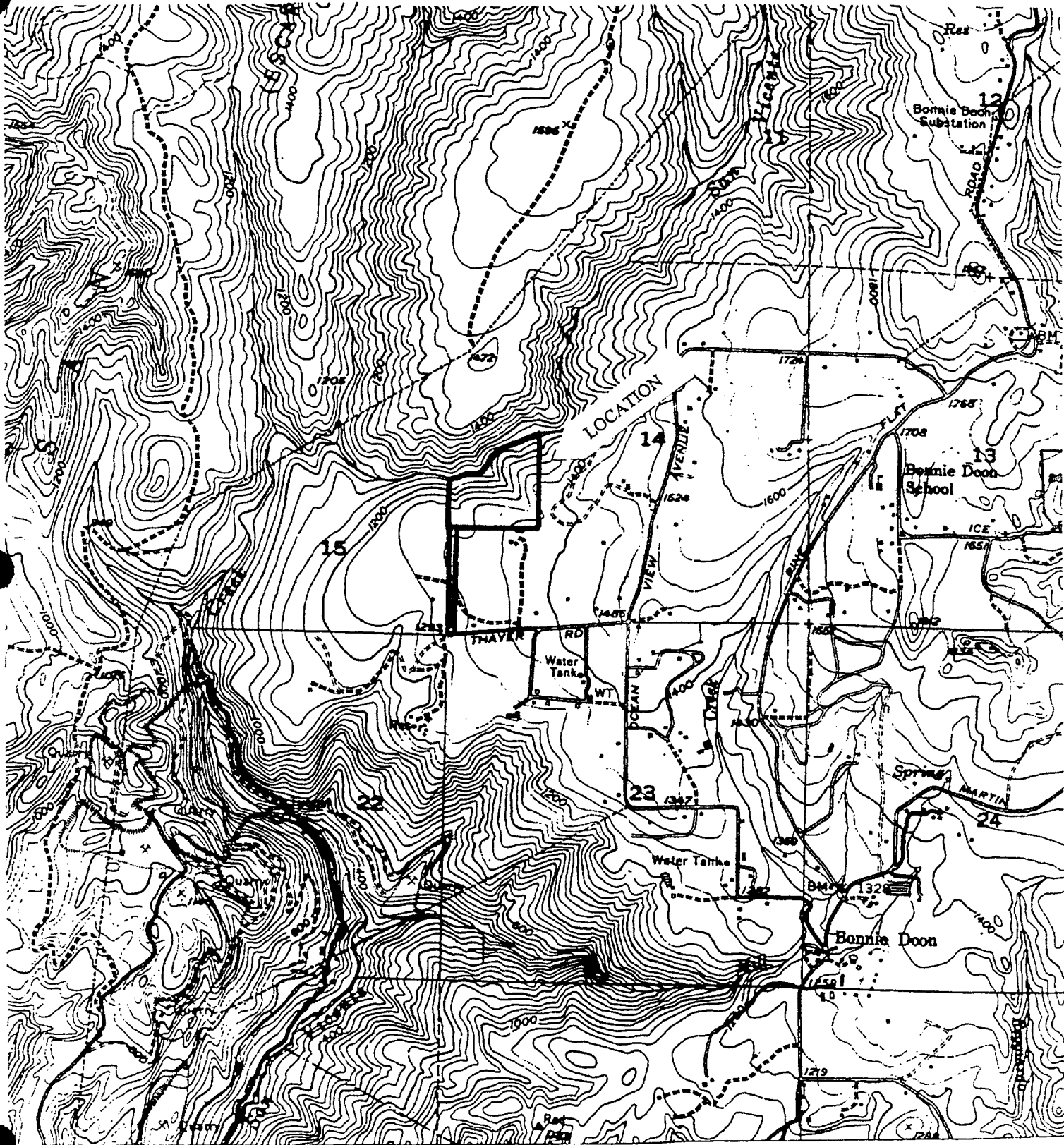
ATTACHMENT

7

# GEOGRAPHIC LOCATION

Scale: 1:24,000

NORTH



ATTACHMENT

7

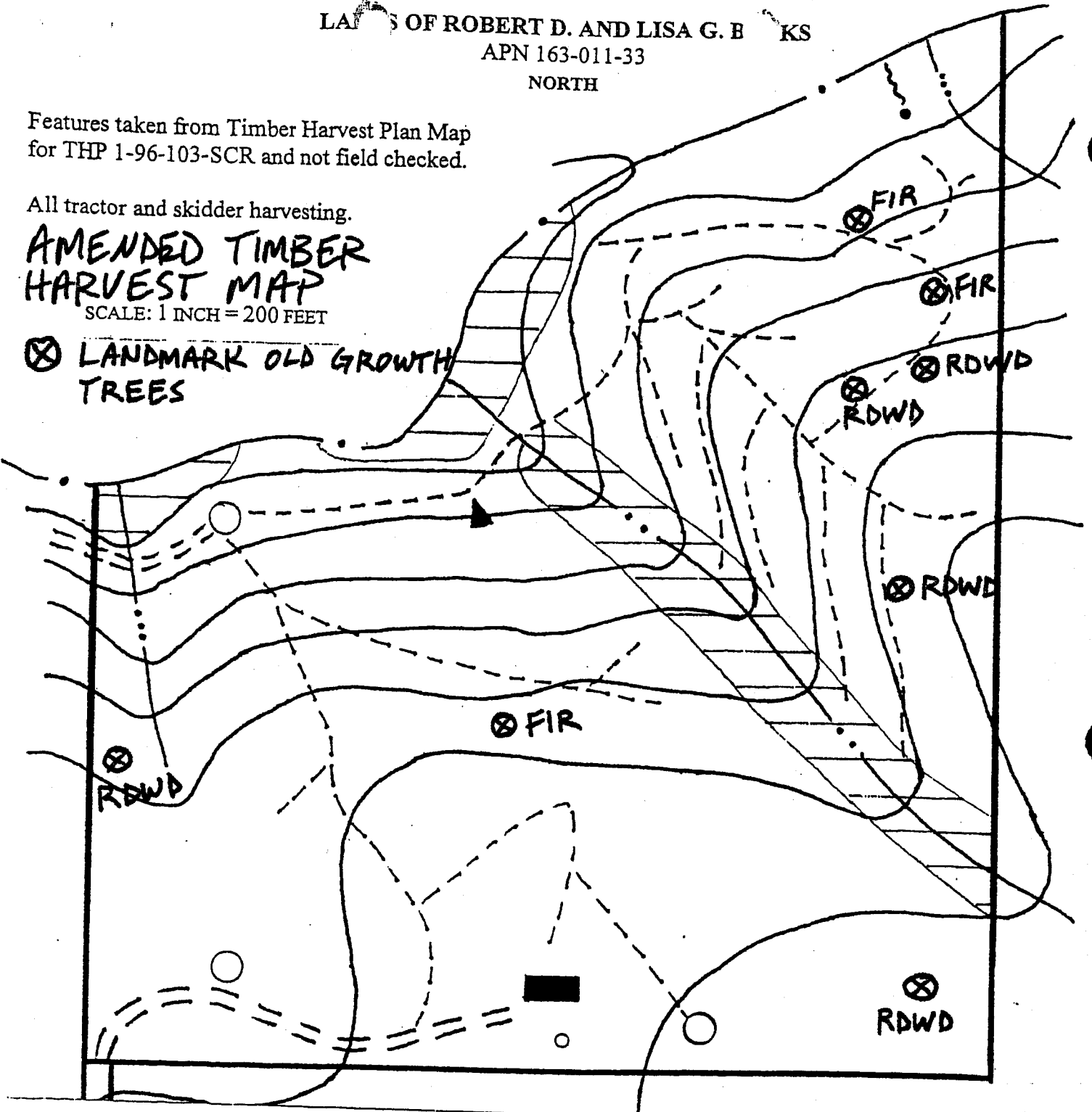
Features taken from Timber Harvest Plan Map  
for THP 1-96-103-SCR and not field checked.

All tractor and skidder harvesting.

# AMENDED TIMBER HARVEST MAP

SCALE: 1 INCH = 200 FEET

⊗ LANDMARK OLD GROWTH  
TREES



- |           |                       |             |                       |
|-----------|-----------------------|-------------|-----------------------|
| — — — — — | Property Boundary     | — . — . — . | Class I Watercourse   |
| = = = = = | Existing Road         | — .. — ..   | Class II Watercourse  |
| - - - - - | Existing Tractor Road | — ... — ... | Class III Watercourse |
| ○         | Existing Landing      | ~ ~ ~       | Spring                |
| ■         | Existing Residence    | ▲           | Landslide             |
| ○         | Well                  | ⊗           | Unstable Area         |

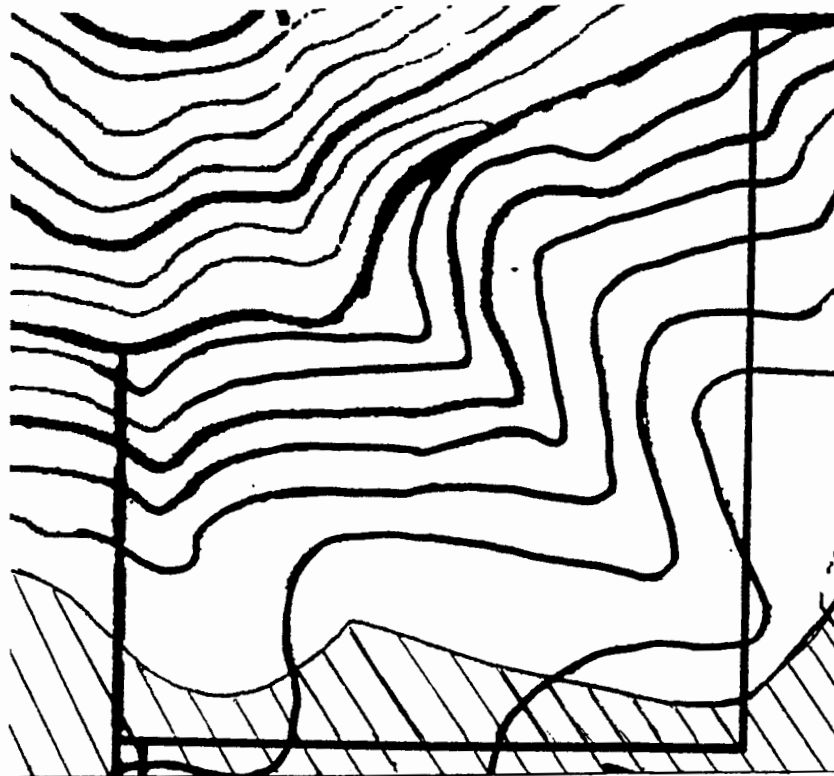
CCC Exhibit 44 D  
(page 4 of 17 pages)

ATTACHMENT 7

# SOIL DESCRIPTION AND VEGETATIVE TYPE

Scale 1:400

NORTH



**Soil Type 173:** Sur-Catelli complex, 50 to 75 percent slopes. **Vegetative Type:** Tanoak, Douglas-fir, redwood. This area contains widely scattered old growth redwood, Douglas-fir and very young conifer reproduction in a sea of tanoak.

The Sur soil is moderately deep and somewhat excessively drained. Permeability is relatively rapid. The Sur soil is poorly suited to the production of Douglas-fir. It is capable of producing 5,500 cubic feet, or 10,220 board feet (International rule), of merchantable timber per acre from a fully stocked, even-aged stand of 80-year-old trees.

Catelli soil is moderately deep and well drained. Permeability is relatively rapid. The Catelli soil is well suited to the production of Douglas-fir. It is capable of producing 10,795 cubic feet, or 47,000 board feet (International rule), of merchantable timber per acre from a fully stocked, even-aged stand of 80-year-old trees.



**Soil Type 138:** Felton Sandy Loam, 5 to 9 percent slopes. **Vegetative Type:** redwood, Douglas-fir, tanoak. This area contains young growth redwood and Douglas-fir with tanoak in about equal measure.

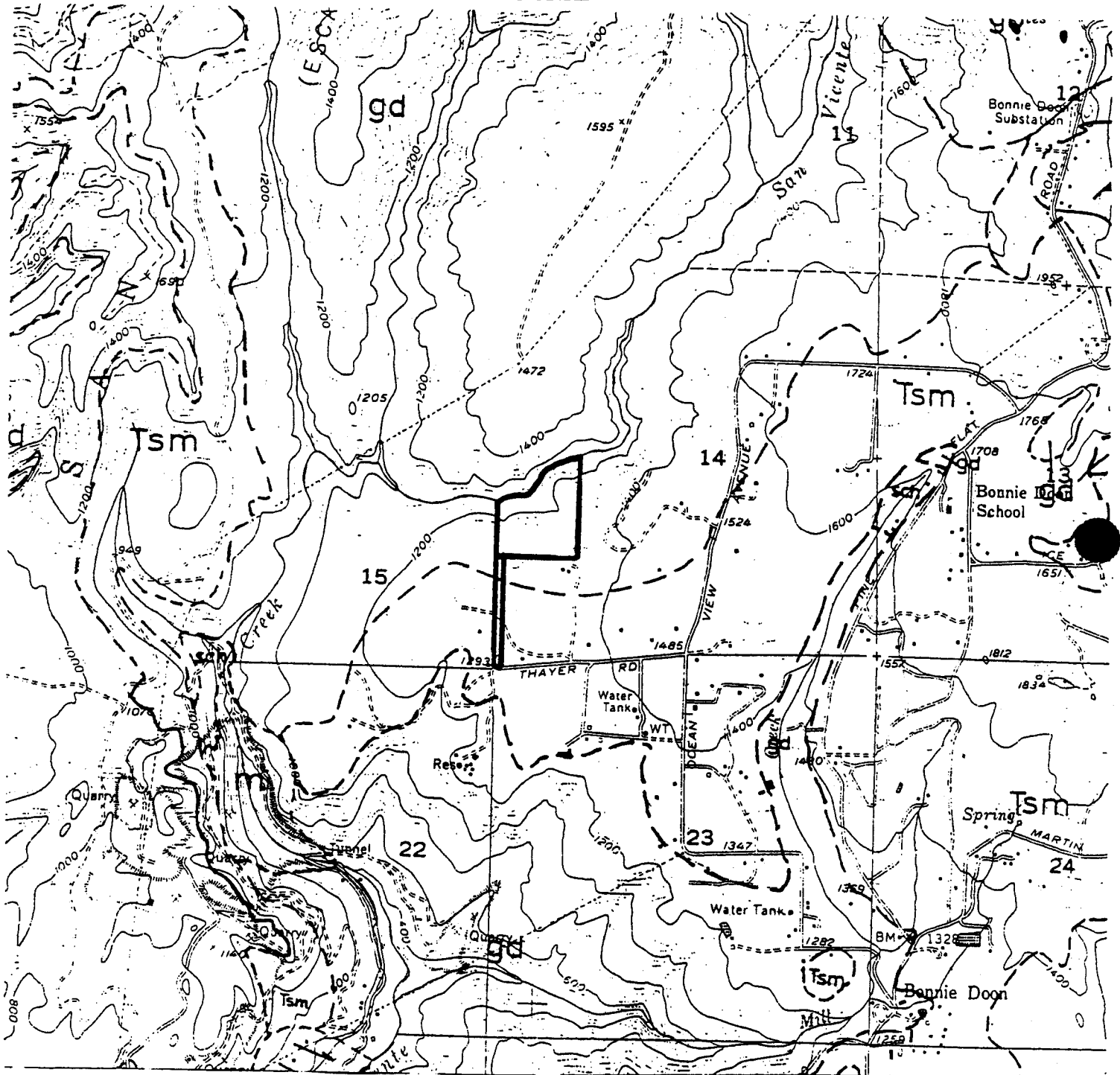
The soil is deep and well drained. Permeability is moderately slow. The soil is well suited to the production of Douglas-fir. It is capable of producing 13,360 cubic feet, or 70,000 board feet (International rule), per acre of merchantable timber in a fully stocked stand of 80-year-old trees.

Source: Soil Survey of Santa Cruz County, California, U. S. Department of Agriculture, Soil Conservation Service in cooperation with University of California, Agriculture Experiment Station, 1980.

# GEOLOGIC MAP

Scale: 1:24,000

NORTH



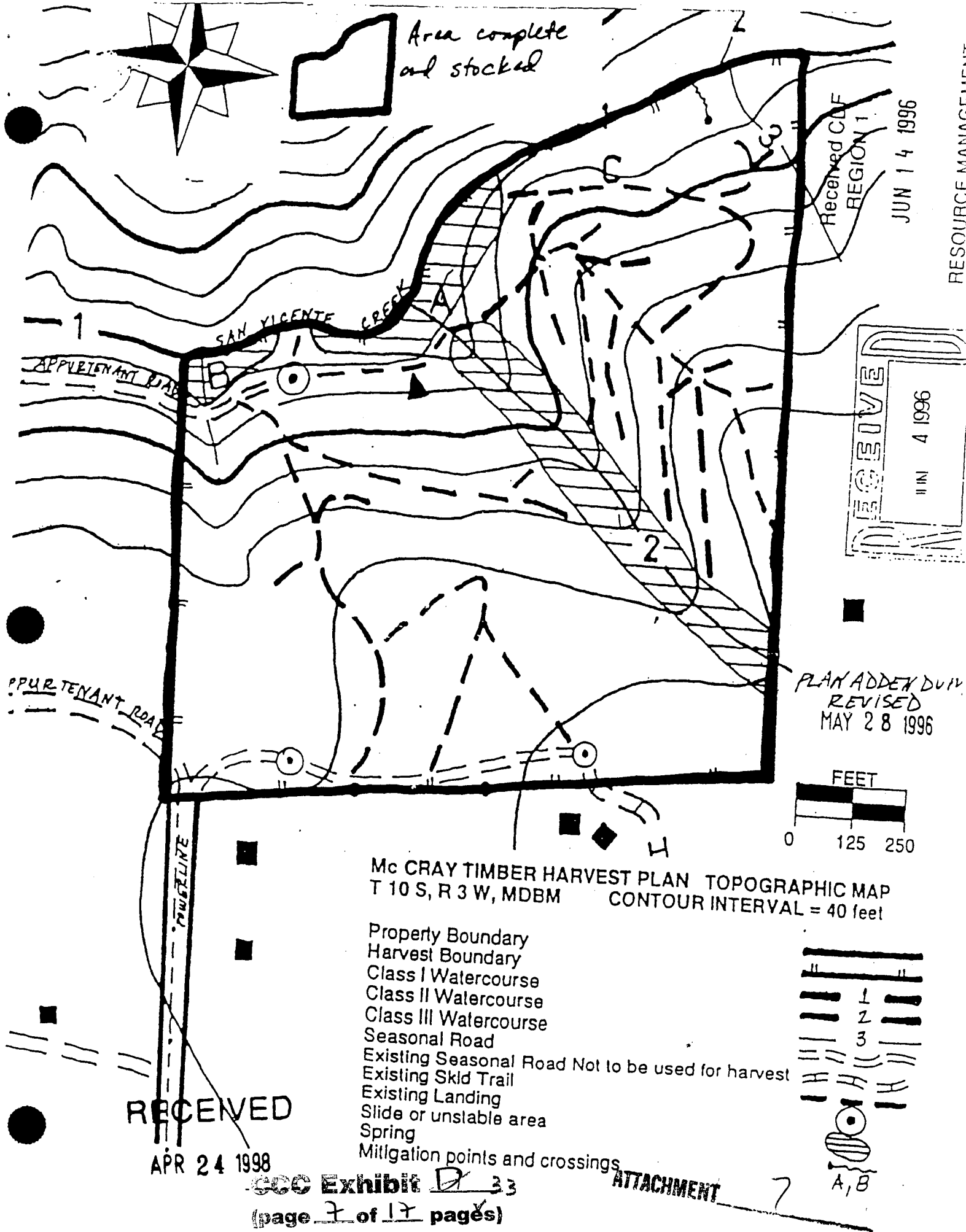
gd = Intrusive Igneous Rocks

Tsm = Santa Margarita Sandstone

iv

CCC Exhibit D 32  
(page 6 of 17 pages)

ATTACHMENT 7



# TIMBER MANAGEMENT PLAN

	TEXT	PAGE
Property description		
- owners name. ....		1
- assessor's parcel number		
- size of parcel		
- discussion of acreage in different vegetation types		
- site class		
Previous timber operations		
- parcel timber harvest history. ....		1
- approved State or County timber harvest plans & haul route		
Timber management		
- management objectives and goals. ....		1
- recommended logging systems`		
- present and future stand conditions		
- present and future growth		
- commencement of harvesting		
- cutting prescription		
- harvest cycles		
- regeneration		
- future growth model		
- management units		
- forest improvement		
- snags and downed wood inventory		
- fish and wildlife management		
- fire protection plan		
- recreation		
- urban interface issues		
- erosion hazard inventory and plan		
- archaeological site		
Proposed development . . . . .		3
Analysis of any conflicts between proposed development and future harvesting. ....		3

ATTACHMENT 7

OWNER'S NAME - Robert D. and Lisa G. Banks

ASSESSOR'S PARCEL NUMBER - 063-011-33

SIZE OF PARCEL - 36 acres

ACREAGE IN DIFFERENT VEGETATION TYPES - The steeper terrain, about 25 acres, consists of widely scattered redwood and Douglas-fir old growth and reproduction, all in a sea of tanoak. The more gentle terrain along the south boundary of the parcel is young growth redwood and Douglas-fir with about an equal amount of tanoak.

SITE CLASS - Site Class III

#### PARCEL TIMBER HARVEST HISTORY

In the early 1900's redwoods and Douglas-fir were clear-cut on the gentle ground, while only a relatively few were taken on the steeper slopes. In 1980 and in 1997 the entire parcel was selectively cut. In 1998-99 a few trees were cut and manufactured into lumber on site for construction of the residence.

#### APPROVED STATE OR COUNTY TIMBER HARVEST PLANS & HAUL ROUTE

The 1980 harvest was done pursuant to Timber Harvesting Plan 5-79-102. The plan for that harvest is not available. The 1997 harvest was done pursuant to THP 1-96-103-SCR. The haul route for both harvests was Thayer Road to Bonny Doon Road to Highway 1.

#### MANAGEMENT OBJECTIVES AND GOALS

The objective and goal is to produce an even flow of high quality redwood logs through periodic harvesting.

#### RECOMMENDED LOGGING SYSTEMS

The recommended logging system is crawler tractor and/or rubber tired skidder.

#### PRESENT AND FUTURE STAND CONDITIONS

The present stand on the steeper slopes consists of scattered redwood and Douglas-fir old growth and reproduction, all in a sea of tanoak. The present stand on the gentle ground is young-growth redwood and Douglas-fir with an approximately equal amount of tanoak.

The future stand will be an all-aged stand with a greater variety of tree sizes. The oldest trees, other than any remaining old growth, will be about 80 to 100 years old, with about an equal number of crop trees in each age class.

#### PRESENT AND FUTURE GROWTH

Current growth is slow to moderate due to the relatively poor soil. Future growth will not

improve since the stand is already open enough that light is not a significant limiting factor.

#### COMMENCEMENT OF FUTURE HARVESTING

On the steep ground, the timing of the next cut can be determined as follows. Sample three scattered redwood clusters that grew from the 1980 cut. In each cluster measure the diameter of all the redwood trees that are at least six inches in diameter, well formed and not suppressed. When at least 40 percent of the measured trees are greater than 18 inches in d.b.h. for a fifty percent cut, or when at least 14 percent of the measured trees are greater than 24 inches d.b.h. for a sixty percent cut, the cutting prescription below will be applicable. On the gentle ground, the cutting prescription below is immediately applicable.

#### CUTTING PRESCRIPTION

The even flow of high quality redwood logs from any stand is guaranteed by doing nothing more than applying a simple cutting prescription. Cut 50-60 percent of the trees 18 inches in diameter and larger. Take the largest trees first.

#### HARVEST CYCLE

Don't cut again until a sampling of dominant redwoods, not growing in advantageous habitat such as standing alone or near water, have grown six inches in diameter. A sample equal to two trees for every 10 acres, or portion thereof, is enough.

#### REGENERATION

Since redwoods sprout from the stump, regeneration is assured without any intervention. Douglas-fir has regenerated naturally.

#### FUTURE GROWTH MODEL

The cutting prescription will produce an even flow of harvest trees, mostly 24 to 30 inches in diameter. Assuming just one replacement tree for each tree cut, ultimately the distribution of crop trees prior to each harvest will look something like this:

TREE DISTRIBUTION			
50% CUT		60% CUT	
NUMBER	DIAMETER	NUMBER	DIAMETER
20%	24-30"	14.4%	24-30"
20%	18-24"	21.4%	18-24"
20%	12-18"	21.4%	12-18"
20%	6-12"	21.4%	6-12"
20%	0-6"	21.4%	0-6"

#### MANAGEMENT UNITS

The entire parcel is one management unit.

#### FOREST IMPROVEMENT

No forest improvement is proposed, other than the cutting prescription detailed above.

#### SNAGS AND DOWNED WOOD INVENTORY.

There are a few cull logs left from previous harvests

#### FISH AND WILDLIFE MANAGEMENT

Fish and wildlife management is not proposed.

#### FIRE PROTECTION PLAN

Maintain appropriate clearing for fire protection around the residence.

#### RECREATION

There is only private recreation on the parcel, such as hiking and horse back riding.

#### URBAN INTERFACE ISSUES

Access to the property is by private driveway from a public road. There are approximately four additional residences in the general vicinity. Most of the property is on a steep slope facing away from the residences, so noise of harvesting will not be particularly noticeable. On the gentle ground, harvesting will only take a few days.

#### EROSION HAZARD INVENTORY AND PLAN

There are truck roads, tractor roads and landings on the property. Waterbars have been, and must continue to be, maintained in effective condition. A small area of accelerated erosion on the lower truck road needs to be addressed with the installation of additional water bars.

#### ARCHAEOLOGICAL SITE

The owner reported the discovery of an archaeological site to the County and Department of Forestry and Fire Protection. State Archaeologist Linda Sandelin and Matt Baldzikowski of the Santa Cruz County Planning Department visited the site on January 22, 1999 for the purpose of recording its location. The county is aware of the site's location. The site has not been mapped or described here for its protection.

#### PROPOSED DEVELOPMENT

There is no development proposed.

#### ANALYSIS OF ANY CONFLICTS BETWEEN PROPOSED DEVELOPMENT AND FUTURE HARVESTING

There are none.

*Dale F. Holderman*

Dale F. Holderman

May 29, 2002

May 29, 2002

Planning Department  
County of Santa Cruz  
Government Center  
Santa Cruz, CA 95060

Re: Zoning APN 063-011-33 Timber Production District

Greetings:

Robert D. and Lisa G. Banks, owners of APN 063-011-33, hereby request that their 36 acre parcel be zoned Timber Production District.

The property meets the following criteria:

1. The parcel currently meets the timber stocking standards as set forth in Section 4561 of the Public Resources Code and the Forest Practice Rules adopted by the State Board of Forestry for the Southern Subdistrict of the Coast Forest District. (See the accompanying Stocking Analysis.)
2. The parcel is timberland as defined in Section 51104 (f) of the Government Code. (See the accompanying Wood Fiber Analysis.)
3. The parcel meets the permitted use requirements of Section 13.10.372 of the County Code. It contains one single-family dwelling and appurtenant uses and structures. (See the accompanying Compatible Use Analysis.)
4. The parcel is in the ownership of one person, as defined in Section 38106 of the Revenue and Taxation Code.
5. The property is comprised of a single parcel consisting of at least five acres in area.

Submitted herewith are:

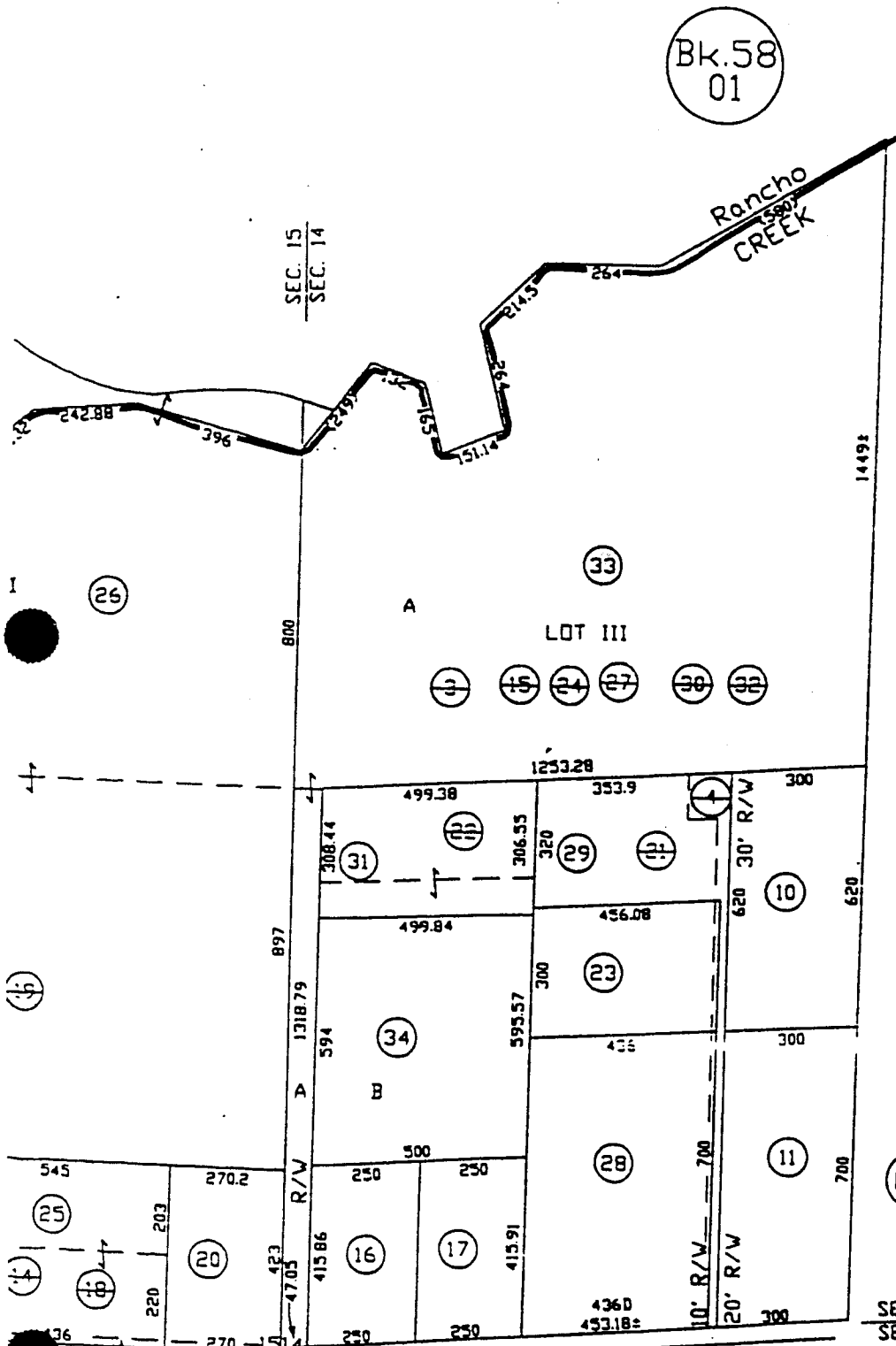
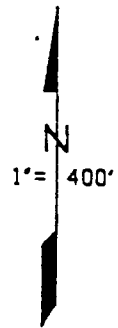
1. A timber management plan for the property that provides for the eventual harvest of timber within a reasonable period of time.
2. A map showing the assessor's parcel of the property desired to be zoned.
3. An Owner-Agent Approval Form signed by Robert D. and Lisa G. Banks designating Dale F. Holderman as agent for purposes of this application.
4. A check payable to the County in the amount of \$750.

Sincerely,

*Dale Holderman*

DALE F. HOLDERMAN  
Agent for Applicants

ATTACHMENT 7



50MB44  
8/20/69

42MB29  
9/22/64

02 REVISED

DATE

OLD MAP NO.

SEC. 14  
SEC. 23

ATTACHMENT

7

THAYER RD  
27PM37

04 39

## STOCKING ANALYSIS

Government Code section 51113 (c) (3) (A) requires that the parcel must currently meet the timber stocking standards in Section 4561 of the Public Resources Code and in Section 913.8 (a) (1) of the California Code of Regulations. The timber stocking standards of California Code of Regulations section 913.8 (a) (1) are met if the parcel contains an average basal area, measured in stems 1 inch or larger in diameter, of at least 75 square feet per acre for Site III lands. The requirements of Public Resources Code section 4561 are less stringent.

Analysis: A sampling of redwood and Douglas-fir found that their total height fell within the standard for Site Class III. It is fair to say that the parcel is Site Class III.

The parcel meets the minimum stocking requirements for Site Class III lands. Joe Culver, Registered Professional Forester 2674, conducted a stocking survey of the property using the procedure prescribed in Public Resources Code section 1070. Survey lines beginning 100 feet north and 70 feet east of the southwest corner of the parcel were spaced 275 feet apart and run east and west across the property. Plots established on each survey line were spaced 150 feet apart. Conifer basal area (redwood and Douglas-fir) and hardwood basal area (tanoak and madrone) were measured on each plot. The plot centers are shown on the accompanying diagram "Stocking Survey Plots." The results of the survey are summarized in the accompanying table "Banks Stocking Sample."

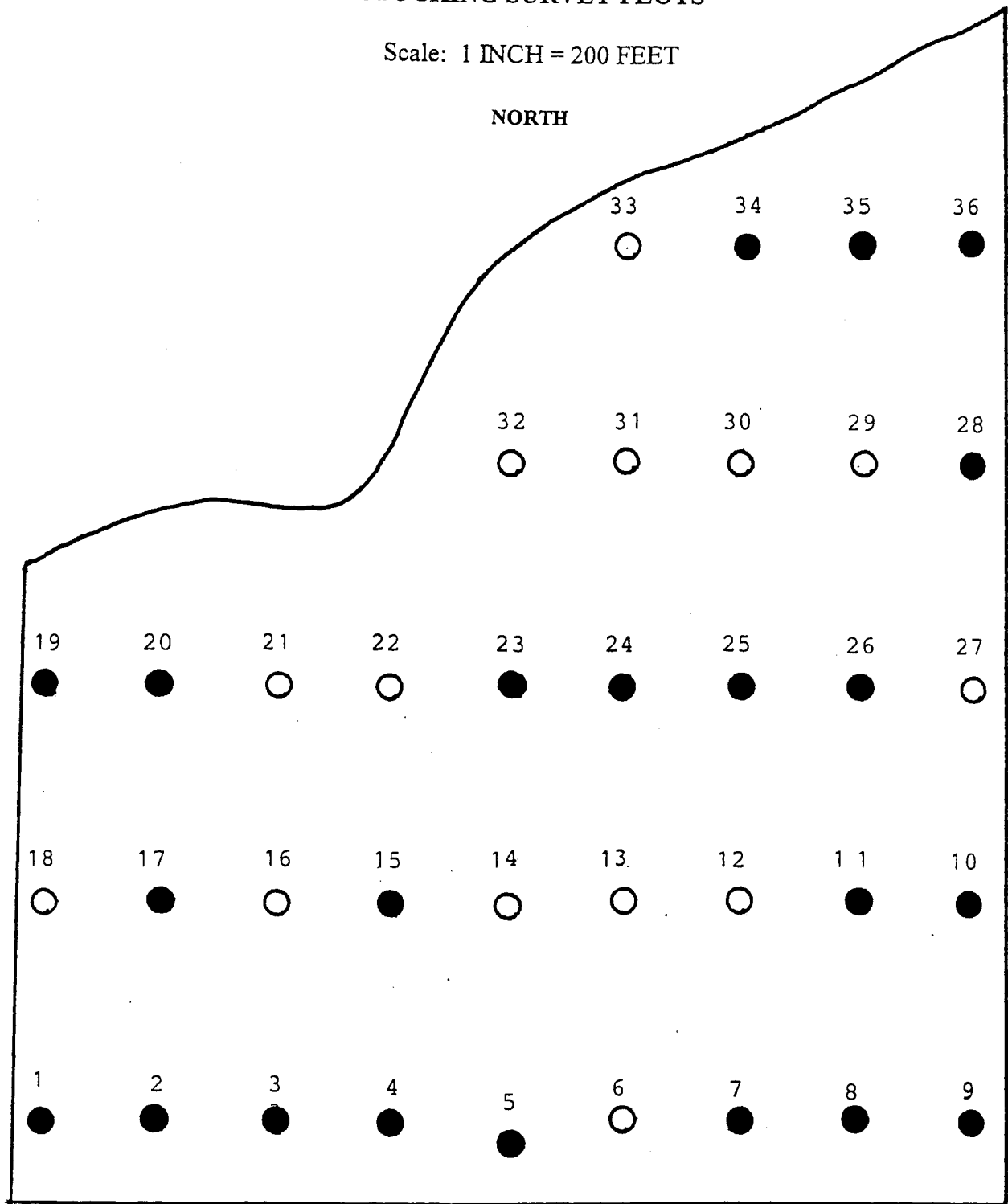
The parcel contains an average of 82 square feet of basal area per acre in coast redwood and Douglas-fir, measured in stems one inch or larger in diameter. The standard requires an average of at least 75 square feet per acre. The survey found no more than four contiguous under-stocked plots. The standard permits five contiguous under-stocked plots. Sixty-one percent of the plots are stocked. The standard requires at least 55% of the plots to be stocked. When tanoak and madrone are counted, which the standard permits, only two plots are under-stocked.

ATTACHMENT 7

# STOCKING SURVEY PLOTS

Scale: 1 INCH = 200 FEET

NORTH



STOCKED



UNDER-STOCKED

Plot 5 was moved  $\frac{1}{2}$  chain south to avoid the cleared area around the house.

# **Banks Stocking Sample**

Plot #	Count trees per plot			Basal Area per acre (BAF = 20)			Basal area per plot	BAF/plot RW & DF only
	Redwood	Douglas-fir	Tanoak	Redwood	Douglas-fir	Tanoak		
1	9	0	0	180	0	0	180	180
2	6	0	1	120	0	20	140	120
3	4	0	0	80	0	0	80	80
4	2	7	1	40	140	20	200	180
5*	9	0	0	180	0	0	180	180
6	0	2	0	0	40	0	40	40
7	3	1	1	60	20	20	100	80
8	1	6	4	20	120	80	220	140
9	1	3	4	20	60	80	160	80
10	2	3	4	40	60	80	180	100
11	6	0	1	120	0	20	140	120
12	1	1	5	20	20	100	140	40
13	0	3	6	0	60	120	180	60
14	0	3	7	0	60	140	200	60
15	2	2	2	40	40	40	120	80
16	1	2	6	20	40	120	180	60
17	3	1	2	60	20	40	120	80
18	1	2	7	20	40	140	200	60
19	1	4	3	20	80	60	160	100
20	3	1	0	60	20	0	80	80
21	2	1	4	40	20	80	140	60
22	3	0	1	60	0	20	80	60
23	1	3	5	20	60	100	180	80
24	5	0	0	100	0	0	100	100
25	4	2	1	80	40	20	140	120
26	1	5	2	20	100	40	160	120
27	0	3	7	0	60	140	200	60
28	2	2	7	40	40	140	220	80
29	1	0	7	20	0	140	160	20
30	0	0	10	0	0	200	200	0
31	1	1	6	20	20	120	160	40
32	0	1	6	0	20	120	140	20
33	1	0	2	20	0	40	60	20
34	2	2	2	40	40	40	120	80
35	3	1	4	60	20	80	160	80
36	1	3	2	20	60	40	120	80
Total over 36 plots =							5340	2940
Basal Area per acre =							148	82

\*The original plot center was located on a cleared area associated with the home-site.  
The plot center was shifted one half chain to the south.

ATTACHMENT 7

## WOOD FIBER AND COMPATIBLE USE ANALYSIS

### A. The Parcel is Timberland.

Government Code section 51113 (c) (4) requires that the parcel shall be timberland. Section 51104 (f) defines timberland as privately owned land devoted to and used 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.

According to the publication Soil Survey of Santa Cruz County, California, U. S. Department of Agriculture, Soil Conservation Service, in cooperation with University of California, Agriculture Experiment Station, 1980, the soil type is Sur-Catelli complex, 50 to 75 percent slopes, except in a narrow strip along the southern boundary of the property. "The Catelli soil is well suited to the production of Douglas-fir and the Sur soil is poorly suited. The Sur soil is capable of producing 5,510 cubic feet ... of merchantable timber per acre from a fully stocked, even-aged stand of 80-year-old trees (that's 69 cu ft/ac/year). The Catelli soil is capable of producing 10,795 cubic feet of merchantable timber from a fully stocked, even-aged stand of 80-year-old trees (that's 135 cu ft/ac/yr)."

The narrow strip along the southern boundary of the property is soil type Felton sandy loam, 5 to 9 percent slopes. "This soil is well suited to the production of Douglas-fir. It is capable of producing 13,360 cubic feet per acre of merchantable timber from a fully stocked stand of 80-year-old trees (that's 167 cu ft/ac/yr)."

### B. The use is compatible.

Government Code section 51113 (c) (5) requires that the parcel shall be in compliance with the compatible use ordinance adopted by the Board of Supervisors. County Code Section 13.10.372 specifies that one single-family dwelling per parcel, including appurtenant uses and structures, is a compatible use.

The use of the parcel, other than growing and harvesting timber, is one single-family dwelling, including appurtenant uses and structures.

ATTACHMENT

7



**AGREEMENT CONCERNING APPLICATION FOR REZONE  
TO TIMBER PRODUCTION ZONE DISTRICT**

The County of Santa Cruz ("County") and Robert and Lisa Banks ("Owners") agree as follows:

1. The County and Owners enter into this Agreement Concerning Application for Rezone to Timber Production Zone District ("Agreement") on the basis of the following facts, understandings, and intentions:
  - A. Owners are the owners of certain real property, totaling approximately 36 acres (APN 063-011-33) ("Property") located on 640 Thayer Road, Bonny Doon.
  - B. The Property is currently zoned SU (Special Use) and RA (Residential Agriculture).
  - C. On May 29, 2002, Owners submitted an application, including a timber management plan ("TMP"), to the County to rezone the Property to a Timber Production ("TP") zone district.
  - D. In December 1998, litigation was filed against the County, which included, among other claims, a challenge to the criteria that the County may consider in reviewing applications to rezone property to a TP zone district. The litigation is currently pending in the California Court of Appeal (Big Creek, et al. v. County of Santa Cruz, Civil No. H023778).
  - E. It is the County's position that it is required by state law to ensure that all zoning decisions, including rezoning property to a TP zone district, are consistent with the policies set forth in the County's General Plan and Local Coastal Program Land Use Plan ("General Plan/LCP") and that it has the authority to deny TP rezone applications where necessary to ensure such consistency. Given that the County's authority in this area is currently at issue in pending litigation before the Court of Appeal, the County, in order to avoid the potential for duplicative additional litigation, has refrained from acting on rezone applications that present clear conflicts with its General Plan/LCP pending a final judicial decision.
  - F. The County Planning Department has determined that rezoning the Property to the

TP zone district would, at a minimum, create the following potential conflicts between timber harvest on the property and the designated County General Plan/LCP policies:

*5.1 Biological Diversity*

*5.1.6 Development within Sensitive Habitats*

*5.1.7 Site Design and Use Regulations*

*5.2 Riparian Corridors and Wetlands*

*5.2.2 Riparian Corridor and Wetland Protection Ordinance*

*5.2.3 Activities Within Riparian Corridors and Wetlands*

*5.2.4 Riparian Corridor Buffer Setback*

*5.2.7 Compatible Uses with Riparian Corridors*

*5.12.9 Rezoning Lands to Timber Production*

*6.2 Slope Stability*

*6.9.7 Construction Noise*

*San Vicente Creek, classified as a perennial stream, forms the northern boundary of the subject parcel. San Vicente Creek is a habitat for Coho Salmon and Steelhead trout, Federally listed Threatened species. A topographical barrier (a waterfall) is located downstream from the subject parcel in the old San Vicente quarry that precludes coho migration upstream. The stream contains resident trout populations upstream from the barrier. In addition, there is an intermittent stream in the north-central portion of the parcel that flows into San Vicente Creek. Timber harvesting activities could conflict with the County's riparian and sensitive habitat protection General Plan policies. The removal of trees within the 50-foot riparian corridor of San Vicente Creek and within the 30-foot riparian corridor of the unnamed intermittent channel could damage downstream salmonid habitat through increased water temperatures resulting from the loss of shade. Moreover, the site disturbance resulting from timber harvesting activities can increase erosion, resulting in increased turbidity and sedimentation within the stream, thereby degrading in-stream water quality and aquatic habitats.*

*Slope instability is noted in the Timber Management Plan: (1) along the banks of the San Vicente Creek, (2) along the intermittent stream channel in the north-central portion of the parcel and (3) a landslide mass in the north-central portion of the parcel. Slope instability could be exacerbated by certain timber harvesting techniques. Furthermore, the close proximity of the unstable areas to the stream channels could lead to degradation of salmonid habitat and water quality from increased sedimentation and turbidity from timber harvesting activities.*

*The subject parcel contains landmark old growth trees, which was acknowledged in a previous timber harvest plan and verified and mapped during a site inspection by County staff. Consistent with the General Plan requirement that rezoning to the Timber Production zone district comply with the Timber Production zone district regulations, all landmark old growth trees must be protected from any loss.*

*The Owners seek to mitigate the noise level produced by any timber harvesting activities by voluntarily limiting such activities to weekdays from 8 am to 5 pm. County acknowledges that it has no authority to require such a limit.*

G. Owners seek to have the County rezone the Property to a TP zone district prior to the issuance of the Court of Appeal decision in the Big Creek litigation so that they may proceed at their discretion to obtain all required approvals to timber harvest the Property and obtain any tax benefit resulting from the rezone. Owner's further desire to ensure that future timber harvesting on the Property is consistent, to the extent feasible, with the County General Plan/LCP.

H. The County seeks to ensure that it complies with state law by approving an application to rezone the Property to TP only where the rezone would be consistent with the policies set forth in its General Plan/LCP.

I. Both Owners and the County seek to avoid the expense and risks inherent in litigation and to permit the rezone to go forward in a manner that is mutually satisfactory and beneficial to both parties.

J. In June of 2002, Owners initiated a series of discussions with the County Planning Department to discuss whether the identified potential General Plan/LCP inconsistencies could be resolved by an agreement regarding any future timber harvesting on the Property.

K. After extensive discussions, Owners and the County have agreed to enter into this Agreement and to comply with the terms and conditions set forth herein, including the timber harvesting conditions set forth in paragraph 8, below, which they believe are just, fair and adequate.

2. The TMP has been amended by the County to comply with the timber harvesting conditions set forth in paragraph 8, below. An amended Harvest Plan Map is attached hereto and incorporated herein as Exhibit A

3. Owners shall execute and provide the County with the notarized original of the Declaration of Restrictions attached hereto and incorporated herein as Exhibit B, which includes the timber harvesting conditions that shall govern all future timber harvesting operations on the Property.

4. The County, shall notice a public hearing before the Planning Commission to consider Owners' application to rezone the Property to TP.

5. The Planning Department staff shall diligently seek to procure approval of Owners' rezone application. Nothing herein contained, however, shall be deemed to restrict the discretion of the Planning Commission or the Board of Supervisors to consider such matters as may be appropriate, to propose modifications to this Agreement, or to deny the rezone application.

6. The parties to this Agreement shall make every effort and shall cooperate diligently to have all proceedings before the Planning Commission and the Board of Supervisors with regard to the rezone application concluded expeditiously

7. If the County does not approve Owners' application to rezone the Property to TP in accordance with the terms set forth in this Agreement, then, 1) this Agreement shall have no further force or effect and shall be deemed terminated; and 2) the Declaration of Restrictions executed by Owners shall have no further force or effect, shall be deemed terminated, and shall not be filed with the Office of the County Recorder of the County of Santa Cruz.

8. If the County approves the application to rezone the Property to TP, then the County shall file the Declaration of Restrictions with the Office of the County Recorder of the County of Santa Cruz. In addition, Owners agree that any Timber Harvest Plan ("THP") application that they submit to

the California Department of Forestry ("CDF") to conduct timber harvesting on the Property at any time during which the Property is zoned TP or is in a zone district in which commercial timber harvesting is permitted under County law shall, at a minimum, include and be consistent with the timber harvesting conditions set forth below:

- a. *Timber harvesting and/or tree removal is prohibited within 50 feet of San Vicente Creek and within 30 feet of the unnamed intermittent tributary stream in the north-central portion of the parcel that flows into San Vicente Creek with the following exceptions:*

*Tree(s) posing an imminent hazard to public health and safety may be removed. However, any such tree located within 50 feet of San Vicente Creek and 30 feet of the unnamed tributary shall require a Riparian Exception Permit prior to removal.*

- b. *Timber harvesting and/or tree removal within the unstable area along the banks of the San Vicente Creek, along the intermittent stream channel in the north-central portion of the parcel and a landslide mass as shown on the amended Timber Management Plan is prohibited with the following exception:*

*Removal of individual trees posing an imminent hazard to public health and safety may be removed as determined by a Certified Arborist and/or geologist. Copies of the arborist's and/or geologist's evaluation and recommendations shall be submitted to the Planning Department.*

- c. *Removal of landmark old growth trees, which locations are shown on the amended Timber Harvest Map is prohibited.*
- d. *Timber harvest operations shall be limited to weekdays from 8 am to 5 pm.*
- e. *Nothing contained in this Agreement shall be deemed to restrict the discretion of the CDF or to preclude CDF, in approving a THP for the Property, from imposing conditions on the THP that are more restrictive on timber harvesting than the terms set forth in this Agreement.*

9. This Agreement shall run with the Property and be binding upon the parties hereto, and their respective employees, counsel, agents, successors and assigns.

10. Each signatory hereto represents that he or she is authorized to execute this Agreement so as to bind the parties on whose behalf he or she is a signatory. The parties have read and understand the terms

of this Agreement. Each party is fully aware of the contents of this Agreement and its legal effect, although Owners have chosen not to be represented by counsel in their negotiations for, and in the preparation of, this Agreement.

11. This Agreement constitutes the entire agreement between the parties and all other prior agreements or understandings, written or oral, are merged into and superseded by the terms of this Agreement, which may not be altered, modified, or otherwise changed excepted by a writing signed by the duly authorized representatives of the parties to this Agreement.

12. Owners and the County shall reasonably cooperate with one another in order to effectuate the purposes of this Agreement. The parties to this Agreement shall attempt in good faith to resolve through negotiation any dispute, claim or controversy regarding the interpretation or application of this Agreement. Either party may initiate negotiations by providing written notice in letter form to the party from whom relief is requested, setting forth the subject of the dispute and the relief requested. The recipient of such notice shall respond within five days with a written statement of its position on, and recommended solution to, the dispute. If the dispute is not resolved by this exchange of correspondence, then representatives of the parties shall meet at a mutually agreeable time and place (either in person or by telephone) within ten days of the date of the initial notice in order to exchange relevant information and perspectives, and to attempt to resolve the dispute.

13. Any written communications concerning this Agreement shall be delivered to the parties at the addresses set forth below:

County of Santa Cruz:

Planning Director  
Planning Department  
701 Ocean Street, 4<sup>th</sup> Floor  
Santa Cruz, CA 95060

ATTACHMENT 4

Owners:

Robert and Lisa Banks  
640 Thayer Road  
Santa Cruz, CA 95060

These addresses may be modified by written notification to the other party.

14. This Agreement shall be interpreted and construed in the manner best calculated to carry out its purposes of achieving the objectives set forth in paragraph 1, subparagraphs G, H, and I, above.

15. This Agreement shall become effective on the date that it is signed by the signatories set forth below.

16. This Agreement shall be signed by the parties below and may be executed in separate counterparts.

DATED:

May 14, 03

By

Robert Douglas Banks  
Robert D. Banks

By

Lisa Banks  
Lisa G. Banks

DATED:

May 14, 03

COUNTY OF SANTA CRUZ, et al.

By

\_\_\_\_\_  
Chair, Board of Supervisors

APPROVED AS TO FORM:

Patricia Garcia  
ASSISTANT COUNTY COUNSEL

Recording requested by:

COUNTY OF SANTA CRUZ

When recorded, return to:

Santa Cruz County Planning Department  
701 Ocean Street  
Santa Cruz, CA 95060  
Attn: David Carlson

RE: APN 063-011-33

## DECLARATION OF RESTRICTIONS

### RECITALS

A. THIS DECLARATION is made in the County of Santa Cruz, State of California, effective date shown below, by Robert and Lisa Banks ("Declarants"), owners of real property described in Exhibit "A" attached hereto and incorporated herein by reference ("Subject Property"). Declarants enter into this Declaration for the purpose of complying with the Agreement Concerning Application for Rezone to Timber Production Zone District entered into between the Declarants and the County of Santa Cruz ("County") on \_\_\_\_\_ ("Agreement").

B. Declarants applied to rezone the Subject Property to a Timber Production ("TP") zone district so that they could conduct timber harvesting on the Subject Property. The County Planning Department determined that timber harvesting on the Subject Property created potential conflicts with the County's General Plan and Local Coastal Program Land Use Plan ("General Plan/LCP"). The Agreement provides, in part, that if the County approved the rezone to TP, Declarants agreed to a number of conditions regarding the manner of harvesting the timber on the Subject Property that would reduce or eliminate the potential General Plan/LCP conflicts. The Agreement states that the Timber Harvest Plan ("THP"), which Declarants must submit to the State in order to conduct timber harvesting on the Subject Property, must include these conditions.

C. The County entered into the Agreement because, among other reasons, it concluded that the Agreement's conditions on timber harvesting reduce or eliminate the potential conflicts that the rezoning would create with the General Plan/LCP and therefore benefit the public at large and, more specifically, the property owners and residents in proximity to the Subject Property, while permitting Declarants to achieve the benefits of rezoning to the TP zone district and to comply with the General Plan/LCP.

D. For purposes of this Declaration, the pertinent provisions of the Agreement are as follows:

1. Paragraph 8 provides that if the County approves the application of Declarants to rezone the Subject Property to TP, Declarants agree that any THP application that they submit to the California Department of Forestry to conduct timber harvesting on the Subject Property shall, at a minimum, include and be consistent with the terms set forth in the remainder of Paragraph 8.

CCC Exhibit E  
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ATTACHMENT 5

## RESTRICTIONS

Declarants, in consideration of the County's approval of the rezone of the Subject Property to TP, a zone designation in which timber harvest operations are permitted and which benefits the Subject Property, and to comply with the terms of the Agreement, hereby declare that all of the Subject Property shall be held, transferred, sold, and conveyed subject to the following restrictions and conditions for the protection and benefit of the County and of the public at large:

1. Covenant Running with the Land. Declarants covenant and agree to restrict, and by this instrument do restrict, the future use of the Subject Property as set forth below by the establishment of this covenant which shall run with the title to the Subject Property and be binding on all parties having or acquiring any right, title or interest in the Subject Property or any part thereof, their heirs, assigns and any other transferees and successors and shall apply to each owner thereof, while each such owner owns an interest in the subject property.

2. Use of the Subject Property. Neither Declarants nor any other person shall conduct any commercial timber harvesting operations on the Subject Property inconsistent with the terms of the Agreement. In particular, the following timber harvesting conditions, set forth in paragraph 8 of the Agreement, shall govern future timber harvesting on the Subject Property:

- a. *Timber harvesting and/or tree removal is prohibited within 50 feet of San Vicente Creek and within 30 feet of the unnamed intermittent tributary stream in the north-central portion of the parcel that flows into San Vicente Creek with the following exceptions:*

*Tree(s) posing an imminent hazard to public health and safety may be removed. However, any such tree located within 50 feet of San Vicente Creek and 30 feet of the unnamed tributary shall require a Riparian Exception Permit prior to removal.*

- b. *Timber harvesting and/or tree removal within the unstable area along the banks of the San Vicente Creek, along the intermittent stream channel in the north-central portion of the parcel and a landslide mass as shown on the amended Timber Management Plan is prohibited with the following exception:*

*Removal of individual trees posing an imminent hazard to public health and safety may be removed as determined by a Certified Arborist and/or geologist. Copies of the arborist's and/or geologist's evaluation and recommendations shall be submitted to the Planning Department.*

- c. *Removal of landmark old growth trees, which locations are shown on the amended Timber Harvest Map is prohibited.*

- d. *Timber harvest operations shall limited to weekdays from 8 am to 5 pm.*

- e. *Nothing contained in this Agreement shall be deemed to restrict the discretion of the CDF or to preclude CDF, in approving a THP for the Property, from imposing conditions on the THP that are more restrictive on timber harvesting than the terms set forth in this Agreement.*

3. Term. This Declaration shall commence on the effective date shown below and remain in full force and effect in perpetuity at all times during which the Subject Property is zoned TP or is in a zone district in which commercial timber harvesting is permitted under County law.

4. No Dedication; No Rights of Public Use. The provisions of this Declaration do not constitute a dedication for public use, or a conveyance of an interest in the Subject Property.

5. Enforcement. Any conveyance, contract, or authorization (whether written or oral) by Declarants or their successors in interest which would permit use of the Subject Property contrary to the terms of this Declaration shall be a breach of this Declaration. County or its successor may bring an action by administrative or judicial proceeding when County deems necessary or convenient to enforce this Declaration. Declarants understand and agree that the enforcement proceedings provided in this paragraph are not exclusive and that the County may pursue any appropriate legal and equitable remedies available to it, and County shall recover, provided that County is the prevailing party, reasonable attorneys' fees and costs in bringing any action, whether administrative or judicial, to enforce this Declaration as against the party causing such breach.

6. Recordation of Documents. This Declaration shall be duly recorded in the Office of the County Recorder of the County of Santa Cruz following the rezoning of the Subject Property to the TP zone district. In the event that under the terms and conditions of this document, or any subsequent mutual written agreement, these restrictions are terminated with respect to all or any part of the Subject Property, the County shall, upon written request, execute and record with the County Recorder of the County of Santa Cruz any documents necessary to evidence such termination.

7. Construction of Validity/Severability. If any provision of these restrictions shall be held to be invalid, or for any reason become unenforceable, no other provision shall be thereby affected or impaired, but rather shall be deemed severable.

ATTACHMENT 5

CCC Exhibit E  
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IN WITNESS WHEREOF, Declarants have executed this Declaration of Restrictions on the 14 day of May 2003.

Robert Douglas Banks  
Declarant

Lisa G Banks  
Declarant

ALL SIGNATURES ARE TO BE ACKNOWLEDGED BEFORE A NOTARY PUBLIC. IF A CORPORATION, THE CORPORATE FORM OF ACKNOWLEDGMENT SHALL BE ATTACHED.

STATE OF CALIFORNIA )  
COUNTY OF SANTA CRUZ )  
\_\_\_\_\_ )

On this 14<sup>th</sup> day of May, 2003, before me Ellen Silverstein Coren, a notary public in and for said state, personally appeared Robert + Lisa Banks, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Ellen Silverstein Coren  
Notary Public, State of California

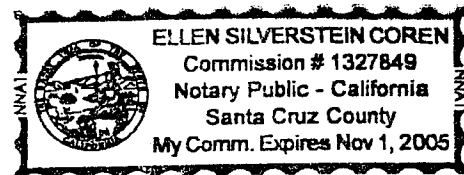


EXHIBIT "A"

All the real property situated in the County of Santa Cruz, State of California, conveyed from Doug & Lisa Banks, to Robert D. and Lisa G Banks, by deed recorded in 2000-0015833, Santa Cruz County Official Records Office on 4-04-00. Assessor's Parcel Number: 063-011-33, located in the County of Santa Cruz, State of California commonly known as: 640 Thayer Road.

ATTACHMENT 5

