

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
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W13a



**Prepared May 24, 2007 (for June 13, 2007 hearing)**

**To:** Commissioners and Interested Persons

**From:** Charles Lester, Deputy Director  
Steve Monowitz, District Manager  
Susan Craig, Coastal Planner

**Subject: Santa Cruz County LCP Major Amendment Number 1-07 Part 1 (Timber Production Zones)** Proposed major 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 June 13, 2007 meeting to take place at the Hyatt Vineyard Creek Hotel & Spa, 170 Railroad Street, Santa Rosa, CA 95401.

### SYNOPSIS

The County of Santa Cruz (see Exhibit #1 for location maps) proposes to amend policies 5.12.8 and 5.12.9 of the Local Coastal Program's (LCP) Land Use Plan (LUP). The County also proposes to amend sections 13.01.040(b)(4), 13.10.170(d), 13.10.342(b), 13.10.352(b), 13.10.371, 13.10.372(b), 13.10.375(a)(c), and 13.10.700-C of the certified Implementation Plan (IP) and delete section 13.10.695 of the IP. The purpose of the amendment is to comply with recent court decisions regarding Timber Production zones.

### SUMMARY OF STAFF RECOMMENDATION

The proposed amendment repeals the Commission's previously suggested LCP modifications regarding: 1) additional criteria for TP (Timber Production) rezoning; 2) the requirement that TP rezonings be submitted as LCP amendments; 3) imposing limitations on what land is eligible to be rezoned as TP, and; 4) references to the riparian setback ordinance. These changes are required to comply with writs of mandate (attached as Exhibits #6 & #7) issued to the County and the Commission. Additionally, to ensure consistency between the certified implementation plan and the Timberland Productivity Act, the amendment will revise the zoning ordinance to track more precisely the current wording of Government Code Section 51113 regarding TP rezonings. Staff recommends approval of the amendment as submitted.

### ANALYSIS CRITERIA

Santa Cruz County's Local Coastal Program (LCP) was certified in 1983 and has been amended many times since then. The LCP consists of the *General Plan and Local Coastal Program*, which functions as the Land Use Plan (LUP), and the Coastal Implementation Plan (IP), which consists of a number of County Code chapters and sections. This proposed amendment is to the LUP and IP and was submitted and filed as complete on May 16, 2007.

The County has organized and submitted this LCP amendment request in accordance with the standards for amendments to certified LCPs (Coastal Act Sections 30513 and 30514, and California Code of Regulations 13551 through 13553). The proposed amendment affects the LUP and IP components of the County of Santa Cruz LCP. Generally, the standard of review for land use plan amendments is that



California Coastal Commission

June 2007 Meeting in Santa Rosa

Staff: Susan Craig Approved by: Steve Monowitz

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they must meet the requirements of, and be in conformity with, the Chapter 3 policies of the Coastal Act; the standard of review for implementation amendments is that they must be consistent with and adequate to carry out the policies of the certified coastal land use plan. In this instance, however, the Commission is acting pursuant to a final court judgment and writ of mandate, so the standard of review is whether the proposed LCP amendment is consistent with the final court judgment and writ of mandate.

**ADDITIONAL INFORMATION**

Further information on the submittal may be obtained from Susan Craig at the Central Coast District Office of the Coastal Commission at 725 Front Street, Suite 300, Santa Cruz, CA 95060, (831) 427-4863.

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    Exhibit 7: Peremptory Writ of Mandate to California Coastal Commission

I. Staff Recommendation – Motions and Resolutions

- A. Approval of Land Use Plan Major Amendment Number 1-07 Part 1 as Submitted
- Motion (1 of 2).** I move that the Commission certify Land Use Plan major amendment #1-07 Part 1 as submitted by the County of Santa Cruz.

Staff recommends a **YES** vote. Passage of this motion will result in certification of the land use plan amendment component as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

*Resolution to Certify the Land Use Plan Amendment as Submitted. The Commission hereby*



*certifies Major Amendment #1-07 Part 1 to the Land Use Plan of the County of Santa Cruz as submitted and adopts the findings set forth below on grounds that the land use plan amendment will comply with the writ of mandate in Big Creek Lumber Co. v. County of Santa Cruz, County of Santa Cruz Superior Court Case No. CV 134816.*

- B. Approval of Implementation Plan Major Amendment Number 1-07 Part 1 as Submitted  
**Motion (2 of 2).** I move that the Commission reject Major Amendment #1-07 Part 1 to the County of Santa Cruz Local Coastal Program Implementation Plan as submitted.

Staff recommends a **NO** vote. Failure of this motion will result in certification of the Implementation Plan amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

***Resolution to Certify the Implementation Plan Amendment as Submitted:** The Commission hereby certifies Major Amendment #1-07 Part 1 to the Implementation Plan of the County of Santa Cruz Local Coastal Program, as submitted, and adopts the findings set forth below on grounds that the Implementation Plan Amendment complies with the writ of mandate in Big Creek Lumber Co. v. County of Santa Cruz, County of Santa Cruz Superior Court Case No. CV 134816.*

## II. Findings and Declarations

The Commission finds and declares as follows:

### A. Amendment Description

The proposed amendment modifies the County's certified land use plan and zoning ordinance to comply with recent court decisions limiting the County's and the Commission's authority to impose requirements regarding the rezoning of land to Timber Production (TP) beyond those specified in the Timberland Productivity Act, Cal. Gov. Code § 51100 *et seq.*

### B. History of LCP Amendment and Litigation

In 1998, Santa Cruz County submitted LCP Amendment #3-98 Part 1, which proposed a series of changes to the County LCP regarding timber harvesting. These changes included provisions prohibiting timber harvesting in most land use designations and zones except lands zoned Timber Production; Parks, Recreation, and Open Space; or Mineral Extraction. The County also proposed rules regarding riparian setbacks and helicopter timber harvesting. On July 14, 1999, the Commission approved the submittal with suggested modifications. Two of the suggested modifications required changes to LUP policies to prohibit rezoning certain areas as TP (Timber Production). Other suggested modifications to the zone district ordinance required proposals to rezone land as TP or M-3 (Mineral Extraction) to be



submitted to the Commission as LCP amendments, added criteria regarding land proposed to be rezoned as TP in the coastal zone, and prohibited timber harvesting on lands zoned PR (Parks, Recreation, and Open Space) in the coastal zone. The Commission also proposed suggested modifications to the ordinance regarding riparian setbacks and deletion of a proposed ordinance that would have provided restrictions on helicopter timber harvesting.

On December 14, 1999, the County accepted the suggested modifications with respect to the LUP and the zoning district ordinance, but opted not to accept the suggested modifications regarding siting standards for timber harvesting with respect to riparian setbacks, and also opted not to accept a modification that affirmatively stated that timber harvesting was not an allowed use in the commercial agricultural zoning district. The Commission concurred with the Executive Director's determination that the County's acceptance of the Commission's modifications was legally adequate because the County's decision not to accept the above-mentioned modifications did not result in a substantive change to the LCP or the Commission's action on the LCP amendment. Because the County did not accept the suggested modifications regarding the setbacks and commercial agricultural zoning district, those ordinances were not incorporated into the LCP.

In March 2000, Big Creek Lumber Company and the Central Coast Forest Association filed lawsuits against the County and the Commission, alleging, among other things, that the County and the Commission lacked authority to regulate the location or conduct of timber harvesting activities by virtue of the Forest Practice Act (Cal. Pub. Resources Code § 4511 *et seq.*) and lacked authority, as a consequence of the Timberland Productivity Act (Cal. Gov. Code § 51100 *et seq.*) to impose additional criteria for rezoning parcels to TP. The trial court upheld the LCP amendment and the County's ordinances to the extent that they limited timber harvesting to land zoned TP, PR (outside the coastal zone), or M-3. The court also ruled, however, that the Timberland Productivity Act prohibits the County and the Commission from imposing any criteria regarding TP rezonings beyond those specified in Government Code section 51113, including the requirement that TP rezonings be submitted to the Commission as LCP amendments. Finally, the court invalidated the County's uncertified ordinances regarding riparian setbacks and helicopter timber harvesting.

All the parties appealed the trial court decision. On February 17, 2004, the court of appeal ruled that the LCP amendment and the uncertified ordinances were invalid.<sup>1</sup> The court of appeal agreed with the trial court that the Timberland Productivity Act prohibits the County and the Commission from imposing criteria regarding TP rezonings beyond those specified in Government Code section 51113. The court further held that the Forest Practice Act prohibits the County from regulating the conduct of timber harvesting and that the restrictions on the location of timber harvesting fall within the scope of that prohibition. The court of appeal thus invalidated provisions restricting timber harvesting to specified zones as well as the County's uncertified ordinances regarding riparian setbacks and helicopter timber harvesting on the grounds that they impermissibly regulated the conduct of timber operations.

The County filed a petition for review with the California Supreme Court challenging the court of

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<sup>1</sup> The court of appeal modified its opinion on March 20, 2004, but those modifications did not alter the judgment in the case.



appeal's ruling that the Forest Practice Act prohibits the County from regulating the location of timber harvesting activities. Neither the County nor the Commission sought review of the court of appeal's decision that the County and the Commission lack authority to impose requirements regarding TP rezoning beyond those specified in the Timberland Productivity Act. The County did not seek review regarding the riparian setback ordinance, either.

On August 30, 2006, the California Supreme Court ruled that the Forest Practices Act does not prohibit local governments from regulating the location of timber harvesting activities with respect to land that is not zoned TP pursuant to the Timberland Productivity Act. See *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal. 4<sup>th</sup> 1139. Based on this conclusion, the Supreme Court upheld the ordinance limiting timber harvesting to the TP, M-3, and (outside the coastal zone) PR zones, as well as the ordinance restricting the location of helicopter logging. The Supreme Court remanded the case for further proceedings consistent with the Court's decision. On remand (see Exhibit #5 for this decision), the court of appeal issued a decision that summarized the outcome of the litigation.<sup>2</sup> The trial court subsequently issued a writ of mandate directing the County to repeal invalid provisions of the LCP and the uncertified ordinances and issued a writ of mandate directing the Commission to review the County's LCP amendment in conformity with the court decisions in the litigation (see Exhibits #6 & #7 for writs of mandate).

### C. Analysis

The LCP Amendment as adopted by the Board of Supervisors complies with the requirements of the writ of mandate issued against the County. The proposed amendment repeals the following: 1) suggested modifications to LUP policies 5.12.8 and 5.12.9 regarding additional criteria for TP rezoning; 2) the suggested modification to Santa Cruz County Code Section 13.10.170(d) that required TP rezonings to be submitted as LCP amendments; 3) the suggested modifications to Santa Cruz County Code Sections 13.10.170(d) and 13.10.375(c)(7)-(8) that imposed limitations on what land is eligible to be rezoned as TP, and; 4) references to the riparian setback ordinance. Finally, it amends County Code Section 13.10.375(c)(1)-(7) to track more precisely the current wording of Government Code Section 51113 regarding TP rezonings. Please see Exhibits #2 & #3 for the proposed amendment language.

All of these changes, except the last set of changes to County Code Section 13.10.375(c)(1)-(7), are required in order to comply with the writs of mandate issued to the County and the Commission. The changes to County Code Section 13.10.375(c)(1)-(7), although not directly required by the writs of mandate, are necessary to ensure consistency between the County Code and the Timberland Productivity Act.

The LCP amendment does not repeal the Commission's suggested modifications that require rezoning of property to M-3 (Mineral Extraction) to be submitted as an LCP amendment and that prohibited timber harvesting activities on lands zoned as PR (Parks, Recreation and Open Space) in the coastal zone. These suggested modifications were not affected by the ultimate court decision because they

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<sup>2</sup> The court of appeal decisions in this case are unpublished and thus generally may not be cited as legal precedent in future litigation.

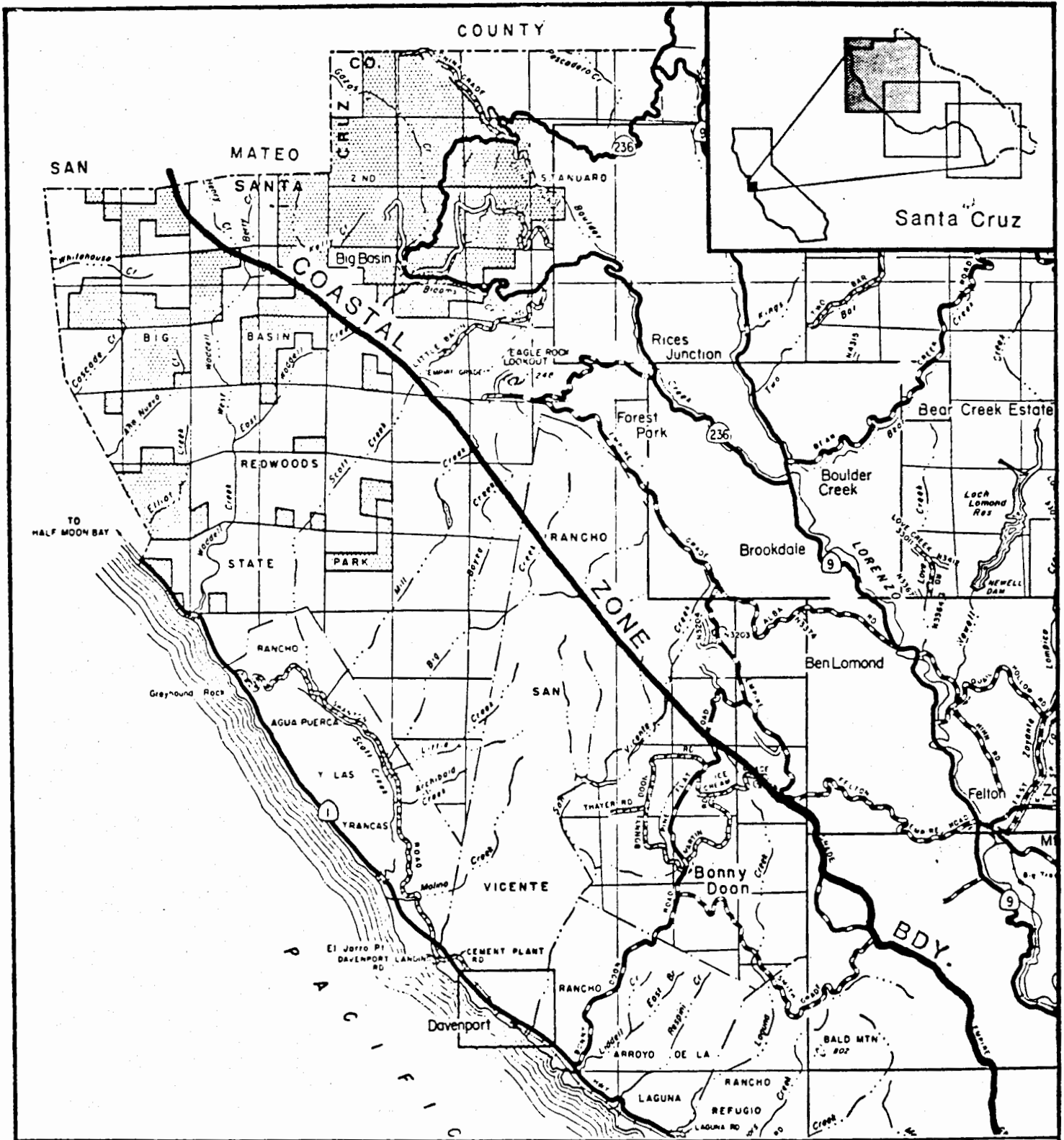


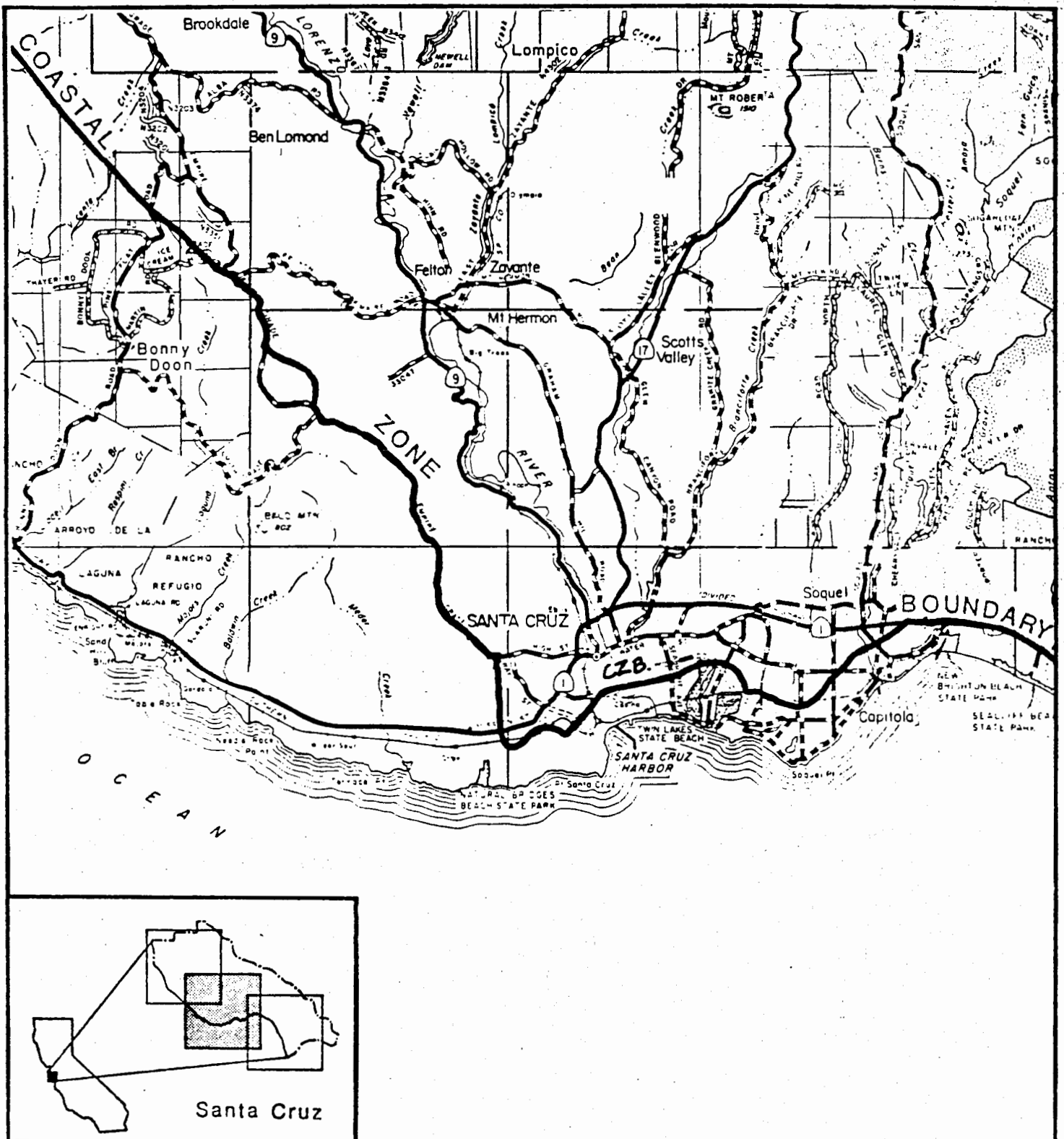
appropriately restrict the location of timber harvesting on lands that are not zoned TP and do not add further criteria for rezoning parcels to TP. This LCP amendment also does not alter provisions of the LCP that restrict the location of timber harvesting on lands that are not zoned TP. The LCP amendment is therefore consistent with the requirements of the writ of mandate and the court decisions in the *Big Creek Lumber Co.* litigation.

### III. California Environmental Quality Act (CEQA)

Pursuant to section 21080.5 of CEQA, the Secretary of Resources has certified the Coastal Commission's review and development process for LCPs and LCP amendments as being the functional equivalent of the environmental review required by CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits the Commission from approving any project "if there are feasible alternatives or feasible mitigation measures available that would substantially lessen a significant adverse effect that the [project] may have on the environment." Furthermore, section 21080.9 of CEQA exempts local governments from the requirement to which they would otherwise be subject to undertake environmental analysis of proposed LCP amendments, although the Commission can and does use any environmental information that the local government has developed. In this case, the County determined that its action was categorically exempt from CEQA (Class 5: Minor Alterations to Land Use Regulations). In addition, because the Commission's action on this LCP amendment is mandated by court order, the Commission's action is ministerial in nature and therefore exempt from CEQA.







 California Coastal Commission

LOCATION MAP



County of Santa Cruz

**CCC Exhibit 1**  
 (page 2 of 3 pages)

Sheet 2 of 3





**General Plan/Local Coastal Program Amendments Required for Compliance with Supreme Court Decision:**

Revise 1994 General Plan and Local Coastal Program for the County of Santa Cruz Policy 5.12.8 by deleting the indicated wording:

- 5.12.8 Timber Resource Land Not Zoned Timber Production**  
Evaluate proposed land divisions and residential development permit applications on parcels larger than 20 gross acres designated Timber Resources on the General Plan and LCP resources and Constraints Maps, but not zoned TP, for timber resource potential. Apply the TP land division and residential density requirement policies for any parcel found to have timber resources equivalent to TP parcels. Require, as a condition of any land division, rezoning to TP for parcels which have equivalent timber resources. ~~and that meet the criteria of policy 5.12.9.~~

Revise 1994 General Plan and Local Coastal Program for the County of Santa Cruz policy 5.12.9 by deleting the indicated wording:

- 5.12.9 Rezoning Land to Timber Production**  
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) 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 for 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.

ORDINANCE 4873

**ORDINANCE AMENDING SUBSECTION (b)(4) OF SECTION 13.01.040; SUBSECTION (d) OF SECTION 13.10.170; SUBSECTION (b) OF SECTION 13.10.352; SECTION 13.10.371; SUBSECTION (b) OF SECTION 13.10.372; SUBSECTIONS (a) AND (c) OF SECTION 13.10.375 OF THE SANTA CRUZ COUNTY CODE; RESCINDING COUNTY ORDINANCE NO. 4571; AND DELETING SECTION 13.10.695, ALL RELATING TO THE REGULATION OF TIMBER HARVESTING.**

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

**SECTION I**

Subsection (b)(4) of Section 13.01.040 of the Santa Cruz County Code is hereby amended to read as follows:

(4) A conservation element providing for the conservation, development and use of natural resources including: forests, soils, wild plants and animals, minerals and water, including rivers, streams, coastal beaches and bluffs, harbors, and fisheries. The element shall include policies to protect mineral resources pursuant to the State Surface Mining and Reclamation Act (Public Resources Code Section 2710, et seq.), and policies for the long- term protection of timberland consistent with the ~~State Forest Taxation and Reform Act~~ California Timberland Productivity Act of 1982 (Government Code Section 51100, et seq.).

**SECTION II**

Subsection (d) of Section 13.10.170 of the Santa Cruz County Code, Consistent Zone Districts, is hereby amended to read as follows:

d) Consistent Zone Districts. The following table denotes the basic and combining districts which implement and are consistent with the various General Plan land use, resource and constraint designations. Rezoning of a property to a zone district which is shown in the following Zone Implementation Table as implementing the designation applicable to the property, shall not constitute an amendment of the Local Coastal Program, unless it involves rezoning to ~~"TP"~~ or "M-3" in the Coastal zone.

**ZONING IMPLEMENTATION TABLE**

<b>General Plan/Local Coastal Program Land Use Designation</b>	<b>Zone District pursuant to Section 13.10.300 et seq., and Section 13.10.400 et seq.</b>
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**CCC Exhibit 3**  
**(page 1 of 9 pages)**

## All Land Use Designations

(Except Agricultural Resource lands)

SU - Special Use

## Agricultural:

AG - Agriculture

A - Agriculture  
 RA - Residential Agriculture  
 CA - Commercial Agriculture  
 TP - Timber Production  
 PR - Parks, Recreation and Open  
 Space  
 AP - Agricultural Preserve (for  
 existing AP districts only)

## Commercial:

C-N - Neighborhood Commercial

C-1 - Neighborhood Commercial  
 CT - Tourist Commercial

PA - Professional and Administrative  
 Offices

C-C - Community Commercial

C-2 - Community Commercial  
 C-1 - Neighborhood Commercial  
 CT - Tourist Commercial

VA - Visitor Accommodations  
 PA - Professional and Administrative  
 Offices

C-V - Visitor Accommodations

VA - Visitor Accommodations

C-S - Service Commercial/Light  
Industry

M-1 - Light Industrial

PA - Professional and Administrative  
 Offices

C-4 - Commercial Services

PA - Professional and Administrative  
 Offices

C-O - Professional and  
Administrative Offices

## Public Facility/Institutional:

P - Public/Institutional Facilities

PF - Public and Community  
 Facilities

## Residential:

R-M - Mountain Residential	RR -	Rural Residential
	RA -	Residential Agriculture
	TP -	Timber Production
	A -	Agriculture
	R-1 -	Single Family Residential** (5,000 square feet to 1 acre lot size)
R-R - Rural Residential	RR -	Rural Residential
	RA -	Residential Agriculture
	A -	Agricultural
	R-1 -	Single Family Residential** (5,000 square feet to 1 acre lot size)
R-S - Suburban Residential	RR -	Rural Residential
	RA -	Residential Agriculture
	R-1 -	Single Family Residential** (5,000 square feet to 1 acre lot size)
R-UVL - Urban Very Low Residential	R-1 -	Single Family Residential*
R-UL - Urban Low Residential	R-1 -	Single Family Residential*
	RB -	Ocean Beach Residential*
	RM -	Multi-Family Residential*
R-UM - Urban Medium Residential	R-1 -	Single Family Residential*
	RB -	Ocean Beach Residential*
	RM -	Multi-Family Residential*
R-UH - Urban High Residential	R-1 -	Single Family Residential*
	RM -	Multi-Family Residential*
All Residential Designations	PR -	Parks, Recreation and Open Space

\* Zone district designations shall be considered consistent with the General Plan and Local Coastal Program Land Use Plan when in conformance with the residential density allowed by Figure 2-3 of the General Plan and Local Coastal Program Land Use Plan.

\*\* This zone district is established for the sole purpose of recognizing as conforming parcels those legal parcels of record located outside the Urban Services Line of the County that, prior to the adoption of the 1994 General Plan and Local Coastal Program Land Use

Plan, were zoned R-1-5, R-1-6, R-1-7, R-1-8, R-1-9, R-1-10, R-1-12, R-1-15, R-1-20, R-1-32, R-1-40 or R-1-1 acre and developed with or intended for development of a single-family residence and any permitted accessory structures. Such development, including additions or remodels, is subject to the site and development standards of the specified zone district for the parcel. All land divisions must be consistent with the provisions of the Rural Residential Density Determination Ordinance (Chapter 13.14 of the County Code) and with the residential density allowed by Figure 2-2 of the General Plan and Local Coastal Program Land Use Plan.

Open Space Uses:

- O-R Parks, Recreation and Open Space	PR -	Parks, Recreation and Open Space
	TP -	Timber Production, <del>outside of the coastal zone only.</del>
- O-C Resource Conservation	PR -	Parks, Recreation and Open Space
	TP -	Timber Production, <del>outside of the coastal zone only.</del>
	A -	Agriculture
-O-L Lakes, Reservoir, Lagoon	PR-	Parks, Recreation and Open Space
-O-U Urban Open Space	PR-	Parks, Recreation and Open Space

General Plan/Local Coastal Program Land Use Overlay Designations:

- I - Heavy Industry	M-1	Light Industrial
	M-2	Heavy Industrial
- Q - Quarry	M-3	Mineral Extraction
- PP - Proposed Parks and Recreation	PR -	Parks, Recreation and Open Space
	D -	Designated Park Site Combining Zone District with any other zone district

General Plan/Local Coastal Program Resource:

- Agricultural Resource Lands	AP -	Agricultural Preserve Zone District
	A-P -	Agriculture with Agricultural Preserve Zone District
	CA -	Commercial Agriculture
	TP -	Timber Production ( <del>except for coastal zone lands designated Parks or Resource Conservation</del> )
- Timber Resource Lands	TP -	Timber Production ( <del>except for coastal zone lands designated Parks or Resource Conservation</del> )

General Plan/Local Coastal Program Constraint:

- Coastal Bluffs and Beaches                      GH -                      Geologic Hazards Combining Zone District with any other zone district (see 13.10.400)

Fault Zones

Liquefaction areas

Landslide areas

Floodplains and tsunami inundation areas

Other Designation or Condition:

Designated Assisted Housing Site                      H -                      Assisted Housing Combining District with any other zone district

Property issued a Statement of Intention                      I -                      Statement of Intention Combining District with any other zone district

Designated Historic Landmark                      L -                      Historic Landmark Combining District with any other zone district

Mobile Home Park                      MH -                      Mobile Home Park Combining District with any other zone district

Property restricted by an Open Space Contract                      O -                      Open Space Combining District with any other zone district

Santa Cruz Long-Toed Salamander Habitat                      SP -                      Salamander Protection Combining District with any other zone district

**SECTION III**

Subsection (b) of Section 13.10.342 of the Santa Cruz County Code is hereby amended by revising the category "Mine Site Interim Uses" to read as follows:

INDUSTRIAL USES CHART

USE	M-1	M-2	M-3
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Mine site interim uses, such as:

- 1) Agricultural uses subject to the regulations of the "A" District;

Allowed at Approval Levels required by Section 13.10.312

**CCC Exhibit 3**  
**(page 5 of 9 pages)**

2) Timber harvesting,  
subject to Section 13.10.695.

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**SECTION IV**

Subsection (b) of Section 13.10.352 of the Santa Cruz County Code is hereby amended by revising the category "Timber Harvesting" to read as follows:

**"PR USES CHART"**

USE	PR
Timber Harvesting, outside the coastal zone subject to Section 13.10.695.	P

**SECTION V**

Section 13.10.371 of the Santa Cruz County Code is hereby amended to read as follows:

In addition to the general objectives of this Chapter (13.10), the "TP" District is included in the Zoning Ordinance to achieve the following purposes:

(a) To protect and maintain the timberland of the County through regulation of timberland use; to establish a zone district consistent with the mandates of the ~~Forest Taxation Reform Act of 1976~~ California Timberland Productivity Act of 1982; to protect the health, safety and welfare of the people of Santa Cruz County; and to preserve agriculture and other open space uses where compatible with timberland uses. (Ord. 2520, 1/17/78; 3344, 11/23/82; 3432, 8/23/83)

**SECTION VI**

Subsection (b) of Section 13.10.372 of the Santa Cruz County Code is hereby amended by revising the category "Timber" to read as follows:

**"TP" USES CHART**

USE	TP
Timber: Growing, harvesting: the cutting and removal of timber and other forest	products, and work incidental thereto; subject to Section 13.10.695 of the County

**CCC Exhibit 3**  
**(page 6 of 9 pages)**



Code.

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## SECTION VII

Subsection (a) of Section 13.10.375 of the County Code is hereby amended to read as follows:

a) Required Special Findings for Nontimber Growing and Harvesting Uses. The following special findings shall be made in addition to the findings required by Chapter 18.10:

1) The proposed uses will be physically compatible with the growing and harvesting of a sustained yield tree crop, and will be consistent with the purposes of the ~~Forest Taxation Reform Act of 1976~~ Timberland Productivity Act of 1982 and the purposes of Chapter ~~13.10.370~~ 13.10.371.

2) The proposed use is supported by a Timber Management Plan Compatibility Analysis, as defined in section 13.10.700-C, submitted as a part of the application for such proposed use, and which ~~Timber Management Plan Compatibility Analysis~~ has been approved as submitted, or as amended by the County, as a condition upon any permit granted.

## SECTION VIII

Subsection (c) of Section 13.10.375 of the Santa Cruz County Code is hereby amended to read as follows:

(c) Zoning to the "TP" District. An owner may ~~make application petition~~ to rezone land to the Timber Production District. The Board of Supervisors may shall, by ordinance, upon the advice of the Planning Commission pursuant to Government Code Section 51110.2, Public Resource Code, and after public hearings, zone as Timber Production parcels submitted to it by petition pursuant to this Government Code section 51113, and/or which meet all of the following criteria:

1. Submittal of A-a map ~~shall be submitted~~ with the legal description or assessor's parcel number of the property ~~desired~~ to be zoned.

2. Submittal of A-a Timber Management Plan for the property ~~shall be submitted. This plan shall have that has~~ 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, as determined by the preparer of the Plan. 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.

3. ~~The parcel must~~ ~~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 Southern Subdistrict of the Coast Forest District ~~in which the parcel is located~~, or the owner must ~~sign an~~ enter into an agreement with the Board of Supervisors that the parcel shall to meet such stocking standards and Forest Practice Rules by the fifth anniversary of the signing of the such agreement. ~~If the parcel is subsequently zoned a Timber Production,~~ Failure to meet such stocking standards and Forest Practice Rules within this time period shall constitute grounds for rezoning the parcel.

4. Upon the fifth anniversary of the signing of the agreement, the Board shall determine whether the parcel meets the timber stocking standards in effect on the date that the agreement was signed. If the parcel fails to meet the timber stocking standards, the Board shall immediately rezone the parcel and specify a new zone for the parcel, which is in conformance with the general Plan/Local Coastal Program land Use Plan and whose primary use is other than timberland.

~~4-5.~~ The parcel ~~must be~~ is timberland as defined in subdivision (f) of Government Code section 51104.

~~5-6.~~ Uses ~~on of~~ the parcel ~~shall be in compliance~~ complies with the Timber Production Zone uses set forth in Section 13.10.372.

~~6-7.~~ The land area to be rezoned ~~shall be~~ is in the ownership of one person, as defined in Section 38106 of the Revenue and Taxation Code, and ~~shall be~~ is 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.~~

### SECTION IX

Santa Cruz County Ordinance No. 4571, adopted on November 16, 1999, is hereby rescinded.

### SECTION X

Chapter 13.10 of the County Code is hereby amended by deleting Section 13.10.695 in its entirety.

~~13.10.695~~ ~~LOCATIONAL CRITERIA FOR TIMBER CUTTING AND REMOVAL~~

~~(a) Within those zone districts in which timber harvesting is otherwise allowed by this Code, the cutting and removal of trees and other solid wood products for commercial purposes which require either a Timber Harvest Plan or a Non industrial Timber Management Plan shall not occur within riparian corridors, defined as:~~

~~1) 50 feet from the bank full flow line of a perennial stream, as defined in Section 16.30.030 of the County Code~~

~~2) 30 feet from the bank full flow line of an intermittent stream, as defined in Section 16.30.030 of the County Code~~

~~(b) Notwithstanding the above, if compliance with section (a) would preclude access to timber that is otherwise subject to harvest consistent with this section, the cutting and removal of trees and other solid wood products for commercial purposes which require either a Timber Harvest Plan or a Non industrial Timber Management Plan within riparian corridors shall be permitted only as necessary to provide access to such timber.~~

~~(c) Notwithstanding the foregoing, this section shall only apply outside the Coastal Zone.~~

**SECTION XI**

Section 13.10.700-C is hereby amended by adding the definition of "Compatibility Analysis" to read as follows:

Compatibility Analysis. An analysis, prepared by a certified forester, of the affect of a proposed use on the long-term management of timber resources on the parcel or parcels for which the use is proposed or which could be affected by the proposed use.

**SECTION XII**

This Ordinance shall take effect on the 31<sup>st</sup> day after the date of final passage or upon certification by the California Coastal Commission, whichever is latest.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz this 15th day of May, 2007, by the following vote:

AYES:	SUPERVISORS	Campos, Pirie, Coonerty, Stone and Beautz
NOES:	SUPERVISORS	None
ABSENT:	SUPERVISORS	None
ABSTAIN:	SUPERVISORS	None

ATTEST: [Signature] CHAIRPERSON, BOARD OF SUPERVISORS

ATTEST: [Signature] Clerk of the Board

APPROVED AS TO FORM: [Signature] County Counsel

Copies to: Planning  
County Counsel

**CCC Exhibit 3**  
**(page 9 of 9 pages)**

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 16th DAY OF May, 2007  
SUSAN A. MAUMELLE, COUNTY ADMINISTRATIVE OFFICER AND EX-OFFICIO CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CRUZ, CALIFORNIA.  
BY [Signature] DEPUTY

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

RESOLUTION NO. 136-2007

On the Motion of Supervisor Campos  
duly seconded by Supervisor Pirie  
the following Resolution is adopted:

RESOLUTION APPROVING AMENDMENTS TO THE COUNTY GENERAL  
PLAN/LOCAL COASTAL PROGRAM LAND USE PLAN AND IMPLEMENTING  
ORDINANCES RELATING TO TIMBER HARVESTING

---

WHEREAS, on November 16, 1999, the Board of Supervisors adopted Ordinance No. 4571 adding County Code Section 13.10.695 - Locational Criteria for Timber Cutting and Removal; and

WHEREAS, on November 16, 1999, the Board of Supervisors adopted Ordinance No. 4572 adding County Code Section 13.10.378 - Timber Harvest Related Helicopter Operations; and

WHEREAS, the Board of Supervisors, on December 14, 1999, adopted Resolution No.493-99 approving amendments to the Santa Cruz County General Plan/Local Coastal Program Land Use Plan and implementing ordinances relating to timber harvesting, including the modifications recommended by the California Coastal Commission; and

WHEREAS, the Board of Supervisors, on December 14, 1999, adopted Ordinance No. 4577 to designate which zone districts allow timber harvesting; and

WHEREAS, on June 29, 2006 the California Supreme Court upheld the County's adoption of

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the Board of Supervisors of the County of Santa Cruz approves the amendments to the County General Plan/Local Coastal Program Land Use Plan and implementing ordinances, as set forth in Exhibits A and B.

BE IT FURTHER RESOLVED AND ORDERED that the General Plan/Local Coastal Program Land Use Plan Amendments become effective immediately and the ordinance amendments become effective on the 31<sup>st</sup> day following approval.

ATTACHMENT 11

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz, State of California, this 15th day of May, 2007, by the following vote:

AYES: SUPERVISORS Pirie, Coonerty, Campos, Stone and Beautz  
NOES: SUPERVISORS None  
ABSENT: SUPERVISORS None  
ABSTAIN: SUPERVISORS None

ATTEST: [Signature]  
Clerk of the Board

[Signature]  
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 May 16th 07, 20  
SUSAN A. MAURIELLO, County Administrative Officer  
By [Signature] Deputy

Big Creek Lumber Co. v. County of Santa Cruz  
 Cal.App. 6 Dist., 2006.

## BACKGROUND

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

Court of Appeal, Sixth District, California.  
 BIG CREEK LUMBER CO. et al., Plaintiffs and Appellants,  
 v.  
 COUNTY OF SANTA CRUZ et al., Defendants and Appellants.  
 Nos. S123659, H023778.  
 (Santa Cruz County Super. Ct. Nos. CV134816, CV137992).

Oct. 24, 2006.  
 As Modified on Denial of Rehearing Nov. 21, 2006.

### McADAMS, J.

\*1 Having previously granted review, the California Supreme Court filed its decision in this case on June 29, 2006, as modified August 30, 2006. (See *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 45 Cal.Rptr.3d 21, 136 P.3d 821.) The Supreme Court reversed the judgment previously rendered by this court and remanded the matter for further proceedings consistent with the views expressed in its opinion.

## INTRODUCTION

The central question in this case is the preemptive effect of state forestry law on a local government's power to regulate land use. The relevant state statutory law includes the Z'berg-Nejedly Forest Practice Act of 1973 (Forest Practice Act or FPA, Public Resources Code section 4511 et seq.), and the California Timberland Productivity Act of 1982 (Timberland Productivity Act or TPA, Government Code section 51100 et seq.). The California Supreme Court concluded that the local legislation at issue before it was not preempted by state timber law.

This litigation was initiated by plaintiffs/petitioners Big Creek Lumber Company and Homer T. McCrary (collectively, Big Creek), and the Central Coast Forest Association (CCFA). Plaintiffs attacked certain actions by defendants/respondents Santa Cruz County and the California Coastal Commission, asserting preemption and other grounds. The challenged local legislation included several resolutions and ordinances adopted by Santa Cruz County, which this court identified as (1) zone district, (2) riparian, and (3) helicopter regulations.<sup>FN1</sup> Also at issue was a decision by the California Coastal Commission certifying one of those measures as an amendment to the county's local coastal program.

<sup>FN1</sup>. The three sets of local measures, all enacted in 1999, are more fully described as follows: (1) the zone district ordinance restricted timber harvesting to specified zone districts within the County (Santa Cruz County Res. No. 493-99 & Santa Cruz County Ord. No. 4577); (2) the riparian or stream ordinance barred timber harvesting operations in certain areas adjacent to streams and residences (Santa Cruz County Ord. No. 4571); and (3) the helicopter ordinance limited the parcels on which helicopter timber harvesting operations could occur (Santa Cruz County Ord. No. 4572).

In the trial court, the preemption issues were bifurcated and heard first. The court concluded that most but not all of the challenged provisions of the County's ordinances were preempted by the Forest Practice Act or the Timberland Productivity Act, and it entered judgment accordingly.

Resolving appeals from plaintiffs on the one hand, and from the County and the Coastal Commission on the other hand, this court invalidated the three challenged County ordinances in their entirety on preemption grounds. The California Supreme Court granted the County's petition for review of our decision as to the zone district and helicopter ordinances only.

## OUR PRIOR APPELLATE DECISION

After setting forth the applicable principles of statutory construction and reviewing the relevant statutory schemes, we analyzed each of the three challenged local measures in turn. In an opinion authored by Justice Wunderlich, this court concluded that each of the ordinances was preempted by the Forest Practice Act. In doing so, this court respectfully disagreed with a decision by the First District Court of Appeal, which had reached a contrary conclusion in a case involving a similar preemption argument. (*Big Creek Lumber Co. v. County of San Mateo* (1995) 31 Cal.App.4th 418, 424-427, 37 Cal.Rptr.2d 159.) The First District's decision distinguished between *how* timber operations would occur, a matter of state law, and *where* they would occur, which traditionally falls within local zoning power—a distinction questioned by this court.

\*2 Our analysis began with the County's zone district ordinance. The conclusion reached by this court was that the ordinance was expressly preempted by the Forest Practice Act because it purported to regulate the conduct of timber operations, which was prohibited by the statute. In light of the determination that the FPA expressly preempted the ordinances, we did not reach the issue of implied preemption. Nor did we reach the question of preemption under the Timberland Productivity Act.

However, we did invalidate the ordinance to the extent that it imposed additional criteria for timber production zoning in violation of one provision of the TPA, which states that the local government “shall adopt a list of criteria required to be met by parcels being considered for zoning as timberland production under this section. The criteria *shall not* impose any requirements in addition to those listed in this subdivision and in subdivision (d).” (Gov.Code, § 51113, subd. (c), italics added.)

This court next addressed the riparian ordinance, likewise concluding that it was expressly preempted because it conflicted with the Forest Practice Act. Moreover, we concluded, the ordinance contradicted regulations promulgated under the FPA. As before, we did not reach the issue of implied preemption, nor did we consider preemption under the Timberland Productivity Act

Finally, addressing the helicopter ordinance, this

court agreed with the trial court's determination that the ordinance represented an attempt to regulate timber operations in contravention of the FPA. Again, that conclusion was based solely on express preemption under the Forest Practice Act.

## THE SUPREME COURT'S OPINION

The Supreme Court granted the County's petition for review, which addressed the zone district ordinance and the helicopter ordinance. (See *Big Creek Lumber Co. v. County of Santa Cruz*, *supra*, 38 Cal.4th at p. 1146, 45 Cal.Rptr.3d 21, 136 P.3d 821.) The stream ordinance was not at issue before the high court. (*Id.*, fn. 1.) After analyzing the two ordinances that were before it, the court concluded that neither was preempted. (*Id.* at p. 1162, 45 Cal.Rptr.3d 21, 136 P.3d 821.) The Supreme Court therefore reversed this court's decision. (*Id.* at p. 1163, 45 Cal.Rptr.3d 21, 136 P.3d 821.) In doing so, it explicitly endorsed the reasoning of *Big Creek Lumber Co. v. County of San Mateo*, *supra*, 31 Cal.App.4th 418, 37 Cal.Rptr.2d 159. (*Big Creek Lumber Co. v. County of Santa Cruz*, at pp. 1152-1153, 45 Cal.Rptr.3d 21, 136 P.3d 821.)

In the words of the California Supreme Court, the relevant provision of the Forest Practice Act, Public Resources Code section 4516.5, subdivision (d), “contains no express reference to ‘zoning,’ nor does it bar localities in terms from regulating the location of timber operations. Rather, counties are forbidden to ‘regulate the conduct’ of timber operations. As the court in *Big Creek v. San Mateo* pointed out, in common parlance an ordinance that avoids speaking to *how* timber operations may be conducted and addresses only *where* they may take place falls short of being ‘a clear attempt to regulate the conduct’ thereof.” (*Big Creek Lumber Co. v. County of Santa Cruz*, *supra*, 38 Cal.4th at pp. 1152-1153, 45 Cal.Rptr.3d 21, 136 P.3d 821, citing *Big Creek Lumber Co. v. County of San Mateo*, *supra*, 31 Cal.App.4th at p. 424, 37 Cal.Rptr.2d 159.) “In sum,” the court concluded, “plaintiffs have not identified a clear statement by the Legislature of an intent, when enacting the FPA, to preempt traditional local zoning authority over the location of timber operations.” (*Big Creek Lumber Co. v. County of Santa Cruz*, at p. 1161, 45 Cal.Rptr.3d 21, 136 P.3d 821.)



### I. Zone District Ordinance

\*3 Specifically addressing the County's zone district ordinance in light of the Forest Practice Act, the court said “local zoning ordinances, like the County's zone

district ordinance, that speak to the location of timber operations but not to the manner in which they are carried out, are not expressly preempted by section 4516.5(d).” (*Big Creek Lumber Co. v. County of Santa Cruz*, *supra*, 38 Cal.4th at p. 1157, 45 Cal.Rptr.3d 21, 136 P.3d 821.) The court similarly concluded that the County’s zone district regulations are not impliedly preempted. (*Id.* at pp. 1157-1162, 45 Cal.Rptr.3d 21, 136 P.3d 821.) The high court mentioned the Timberland Productivity Act in its discussion. (See, e.g., *id.* at p. 1153, 45 Cal.Rptr.3d 21, 136 P.3d 821 [“neither the TPA nor the FPA suggests localities are restricted in what uses they may prohibit outside TPZ zones”]; *id.* at p. 1154, 45 Cal.Rptr.3d 21, 136 P.3d 821 [“section 4516.5(d) was added to the FPA during the same legislative session in which the TPA was amended”].) And the court noted that the “County may not deny TPZ rezoning to any qualifying parcel....” (*Id.* at p. 1161, citing Gov.Code, § 51113, subd. (a)(1).) But it rested its preemption determination on the FPA. (*Id.* at p. 1151, 45 Cal.Rptr.3d 21, 136 P.3d 821.)

## II. Helicopter Ordinance

Turning to the challenged helicopter ordinance, the Supreme Court reached the same conclusion, finding that the ordinance was not preempted by the Forest Practice Act because it regulated only where-not how-timber operations could occur. The court thus stated: “Like the zone district ordinance’s specification of permissible zone districts for timber harvesting, County’s helicopter ordinance is a locational zoning provision that regulates not how timber operations may be conducted, but rather where they may take place. (See *Big Creek [Lumber Co.] v. [County of] San Mateo*, *supra*, 31 Cal.App.4th at pp. 424-425, 37 Cal.Rptr.2d 159.) The helicopter ordinance does not attempt to locally regulate the removal of timber, as it speaks neither to whether nor how helicopters may be used to remove timber.” (*Big Creek Lumber Co. v. County of Santa Cruz*, *supra*, 38 Cal.4th at p. 1162, 45 Cal.Rptr.3d 21, 136 P.3d 821.) As before, the high court mentioned the Timberland Productivity Act in its discussion. (*Ibid.* [“both the FPA and the TPA expressly contemplate the survival of localities’ power to abate nuisances”] ) But its holding rests on the Forest Practice Act. (*Ibid.* [“the helicopter ordinance is preempted neither expressly by section 4516.5(d) nor impliedly by general state forestry law”] )

Based on the foregoing determinations, the court reversed the judgment of this court, and it remanded

the cause for further proceedings consistent with its opinion.

## CONSIDERATION AFTER REMITTUR

The high court’s opinion in this case explicitly validates two of the three ordinances analyzed in our prior appellate decision (the zone district and helicopter ordinances), but it does not directly address the third (the riparian or stream ordinance).

### I. Zone District Ordinance; Helicopter Ordinance

As mandated by the Supreme Court’s ruling, we uphold both the zone district ordinance and the helicopter ordinance against plaintiffs’ preemption challenge. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455, 20 Cal.Rptr. 321, 369 P.2d 937.) However, we reconfirm our prior conclusion, left undisturbed by the high court’s decision, that the zone district regulations are invalid to the extent that they mandate or permit the imposition of addition criteria for TPZ rezoning in contravention of the TPA, Government Code section 51113, subdivision (c).

### II. Riparian Ordinance

\*4 As noted above, in a portion of our prior appellate decision that was not placed in issue by the County’s petition for review, we concluded that the County’s riparian ordinance conflicted both with the Forest Practice Act itself and with regulations promulgated under that Act, because stream protection falls under the rubric of the conduct of timber operations.

Addressing the statute in our prior opinion, this court stated that the County’s riparian ordinance improperly invades the area occupied by the Forest Practice Act itself—the conduct of timber operations. As we observed there, for purposes of the FPA provision that limits the authority of local government, “timber operations” is defined to include the “protection of stream character and water quality....” (Pub. Resources Code, § 4516.5, subd. (a))<sup>FN2</sup>

<sup>FN2</sup>. As more fully provided in the statute: “Individual counties may recommend that the board adopt additional rules and regulations for the content of timber harvesting plans and the conduct of timber



operations to take account of local needs. For purposes of this section, 'timber operations' includes, but is not limited to, soil erosion control, protection of stream character and water quality, water distribution systems, flood control, stand density control, reforestation methods, mass soil movements, location and grade of roads and skid trails, excavation and fill requirements, slash and debris disposal, haul routes and schedules, hours and dates of logging, and performance bond or other reasonable surety requirements for onsite timber operations and for protection of publicly and privately owned roads that are part of the haul route." (Pub. Resources Code, § 4516.5, subd. (a).)

After discussing the interplay between the riparian ordinance and the Forest Practice Act, our prior opinion next addressed regulations promulgated under the statute, starting with the observation that the Legislature has reposed authority for watercourse protection in the State Forestry Board under the FPA. (See Pub. Resources Code, § 4551.) The statute thus provides in relevant part: "The board shall adopt district forest practice rules and regulations ... to assure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, and wildlife, and water resources, including, but not limited to, streams, lakes, and estuaries." (*Ibid.*) "Rules and regulations shall apply to the *conduct of timber operations* and shall include, but shall not be limited to, *measures for ... water quality and watershed control ...*" (*Id.*, § 4551.5, italics added.)

Pursuant to its statutory authority, the State Forestry Board has promulgated a number of pertinent regulations. (See Cal.Code Regs., tit. 14, § 916 et seq.) Among other things, the regulations address riparian buffers by establishing watercourse and lake protection zones. (*Id.*, § § 916.4, 916.5.) The width of those zones is determined by a specialized formula set forth in the regulations, with some discretion accorded the registered professional forester to alter the width of the buffer. (*Ibid.*) The standard width of a watercourse and lake protection zone ranges from 50 feet to 150 feet, though it depends on a number of factors specified in the regulation. (See *id.*, § 916.5, Table 1, p. 250.)

By contrast, the County's riparian ordinance establishes unitary buffer zones of 50 feet from perennial streams and 30 feet from intermittent

streams. The ordinance's 50-foot corridor for perennial streams is at variance with the specialized formula for establishing buffer width provided by the state law regulations. As for the 30-foot buffer for intermittent streams, that requirement likewise is at odds with watercourse and lake protection zone widths set forth in the state regulations. (See Cal.Code Regs., tit. 14, § 916.4, 916.5; see also, *id.*, § 895.1 [defining "watercourse"]; compare Public Res.Code, § 4528, subd. (f) [defining "stream"] with Santa Cruz County Code, § 16.30.030 [defining "intermittent stream"].)

\*5 For these reasons, we concluded in our prior opinion, the ordinance cannot operate concurrently with the regulations promulgated by the State Forestry Board, without conflict between the two. (See, e.g., Water Quality Assn. v. City of Escondido (1997) 53 Cal.App.4th 755, 765, 61 Cal.Rptr.2d 878 [preemption doctrine applied where "two acts are irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation"].) Timber harvesting near streams that would be allowable under state law riparian regulations could be banned under the County's stream ordinance. (*Ibid.*) Given that conflict, our prior opinion concluded, the ordinance is invalid.

Nothing in the California Supreme Court's decision in this case dictates a different result from that reached previously by this court. To the contrary, we believe that the high court's decision bolsters our prior conclusion that this particular ordinance is preempted.

As explained above, a central theme of the Supreme Court's decision in this case is the distinction between the *conduct* of timber operations-how they are performed-and the *location* of such operations-where they are performed. In the abstract, the County's riparian buffer zones could be viewed as prescribing only "the location of timber operations"-traditionally the province of local zoning authority. (See Big Creek Lumber Co. v. County of Santa Cruz, supra, 38 Cal.4th at p. 1161, 45 Cal.Rptr.3d 21, 136 P.3d 821.) In fact, the County calls them "locational criteria for timber cutting and removal." When viewed against the state law statutory and regulatory landscape, however, it is clear that this particular ordinance intrudes into the preempted field of *how* timber operations are conducted. And as the high court recognized in this case, the "how" of timber operations is the exclusive province of state law under the Forest Practice Act. (Big Creek Lumber Co. v. County of Santa Cruz, supra, 38 Cal.4th at p. 1154,

45 Cal.Rptr.3d 21, 136 P.3d 821.) In the words of the court: "That the Legislature intended the phrase 'regulate the conduct' in [Public Resources Code] section 4516.5(d) to preclude only local regulations that affect *how* timber operations are conducted is borne out by the *kinds of issues* the Board, under the rubric of 'the conduct of timber operations,' is in its rules and regulations statutorily required to address. (See [Public Res.Code] § 4551.5.) Fire prevention and control, soil erosion control, site preparation, *water quality and watershed control*, flood control, disease prevention and control (*ibid.*)-these clearly are matters relating to the process of carrying out timber operations." (*Ibid.*, italics added.)

To reiterate, the Forest Practice Act provides in pertinent part: "Rules and regulations shall apply to the *conduct* of timber operations and shall include, but shall not be limited to, measures for ... *water quality and watershed control...*" (Public Res.Code § 4551.5, italics added.) The State Forestry Board regulations at issue here are measures for water quality control; their purpose "is to ensure that the beneficial uses of water, native aquatic and riparian species, and the beneficial functions of riparian zones are protected from potentially significant adverse site-specific and cumulative impacts associated with timber operations." (Cal.Code Regs., tit. 14, § 916.) As our high court recognized in its opinion in this case, such measures "clearly are matters relating to the process of carrying out timber operations." (*Big Creek Lumber Co. v. County of Santa Cruz, supra*, 38 Cal.4th at p. 1154, 45 Cal.Rptr.3d 21, 136 P.3d 821.) As water quality measures, these regulations concern the conduct of timber operations. Because the County's riparian ordinance conflicts with them, it cannot stand.

\*6 In sum, we reconfirm the conclusion that we reached in our prior appellate decision, which was unaffected by the Supreme Court's decision-that the County's riparian ordinance is preempted because it is in conflict with State Forestry Board regulations that dictate watercourse buffers in connection with timber harvest operations. As explained, that conclusion is consistent with the Supreme Court's decision in this matter.

### III. Plaintiffs' Remaining Claims

The trial court's judgment provides in part as follows: "4. Petitioners' due process and equal protection claims have previously been stricken from the petition. Judgment on those claims is entered in favor

of Respondents. [¶ ] 5. As Petitioners have stipulated to the dismissal of any remaining claims not addressed by this Judgment, the same are dismissed and judgment thereon is entered in favor of Respondents."

In its notice of appeal, Big Creek identified paragraph 4 of the judgment as an appellate issue. In its appellate briefs, however, Big Creek failed to argue or support any claim that the trial court erred in dismissing its constitutional claims. Where "plaintiffs have presented no argument or authority in support of" a particular contention, that "aspect of plaintiffs' appeal has been abandoned." (*Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 611, 107 Cal.Rptr.2d 489.)

Under these circumstances, we conclude, no further issues remain for resolution by the trial court.

### SUMMARY OF CONCLUSIONS

I. As determined by the California Supreme Court in this matter, neither the County's zone district ordinance nor its helicopter ordinance is preempted by state forestry law. However, as determined in our prior opinion, the zone district ordinance is invalid to the extent that it conflicts with Government Code section 51113. II. As to the County's riparian ordinance, which the California Supreme Court did not consider, we reconfirm our earlier conclusion that it is preempted by the Forest Practice Act and by regulations promulgated thereunder by the State Forestry Board. III. There are no other issues remaining in this case.

### DISPOSITION

We reverse the judgment of the trial court, which was entered September 21, 2001, and we remand the matter to the trial court with the following instructions:

1) Concerning the zone district ordinance (Santa Cruz County Res. No. 493-99 & Santa Cruz County Ord. No. 4577), the court shall declare those regulations valid and enforceable, except insofar as they impose criteria for timber production rezoning beyond those allowed under Government Code section 51113, and the court shall vacate the peremptory writ of mandate insofar as it directs the County to annul or repeal the valid portions of that ordinance; and

(2) Concerning the helicopter ordinance (Santa Cruz County Ord. No. 4572), the court shall enter judgment for defendant County of Santa Cruz, declaring that the ordinance is valid and enforceable, and the court shall vacate the peremptory writ of mandate insofar as it directs the County to annul or repeal that enactment; and

(3) Concerning the riparian ordinance (Santa Cruz County Ord. No. 4571), the court shall enter judgment for plaintiffs, Big Creek Lumber Company, Homer T. McCrary, and the Central Coast Forest Association County of Santa Cruz, declaring that the ordinance is invalid and unenforceable, and the court issue a peremptory writ of mandate directing the County to annul or repeal that enactment.

Each party shall bear its own costs on appeal.

WE CONCUR: ELIA, Acting P.J., and MIHARA, J.  
Cal.App. 6 Dist., 2006.  
Big Creek Lumber Co. v. County of Santa Cruz  
Not Reported in Cal.Rptr.3d, 2006 WL 3008212  
(Cal.App. 6 Dist.)

END OF DOCUMENT

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ALEX CALVO, CLERK  
BY JUDI CLARK  
DEPUTY, SANTA CRUZ COUNTY

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15 COUNTY OF SANTA CRUZ, BOARD OF SUPERVISORS  
16 OF SANTA CRUZ COUNTY, SANTA CRUZ COUNTY  
17 PLANNING DEPARTMENT

18 SUPERIOR COURT OF CALIFORNIA

19 COUNTY OF SANTA CRUZ

20 BIG CREEK LUMBER COMPANY and  
21 HOMER T. McCRARY,

22 Petitioners and Plaintiffs,

23 vs.

24 COUNTY OF SANTA CRUZ, BOARD OF  
25 SUPERVISORS OF SANTA CRUZ  
26 COUNTY, SANTA CRUZ COUNTY  
27 PLANNING DEPARTMENT, THE  
28 CALIFORNIA COASTAL COMMISSION,  
and DOES 1 through 500,

Respondents, Real Parties in  
Interest, and Defendants.

CENTRAL COAST FOREST  
ASSOCIATION, a nonprofit organization,

Petitioner,

vs.

COUNTY OF SANTA CRUZ and BOARD  
OF SUPERVISORS OF THE COUNTY OF  
SANTA CRUZ, CALIFORNIA COASTAL

Case No. CV 134816  
(Case No. CV 137992) (Consolidated)

<sup>PPB</sup>  
~~PROPOSED~~ PEREMPTORY  
WRIT OF MANDATE TO COUNTY  
OF SANTA CRUZ

CCC Exhibit 6  
(page 1 of 4 pages)

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COMMISSION, and DOES 1 through 100, )  
Respondents. )

---

**CCC Exhibit 6**  
**(page 2 of 4 pages)**

1 TO: The County of Santa Cruz and Board of Supervisors of the County of Santa  
2 Cruz (collectively, "County"):

3 Final Judgment having been entered in this action on 4-16-07, directing  
4 that a writ of mandate be issued by this Court,

5 YOU ARE HEREBY COMMANDED, immediately upon receipt of this Writ of  
6 Mandate, to set aside your respective decisions and actions as follows:

- 7 1. rescind County Ordinance No. 4571 and County Code section  
8 13.10.695;
- 9 2. rescind the reference to "Section 13.10.695 of the County Code"  
10 in Section 13.10.372(b) of the County Code, which reference was added pursuant to  
11 Ordinance No. 4577, Section IX;
- 12 3. rescind the revisions to sections 5.12.8 and 5.12.9 of the  
13 County's 1994 General Plan/Local Coastal Program Land Use Plan ("General Plan/LCP")  
14 which were added pursuant to Resolution 493-99;
- 15 4. rescind paragraphs 7 and 8 of County Code Section 13.10.375,  
16 subsection(c), which were added pursuant to Ordinance No. 4577, Section X; and
- 17 5. rescind the language in County Code Section 13.10.170,  
18 subsection (d), which was added pursuant to Ordinance No. 4577, Section I, which  
19 provides that rezoning to TP in the coastal zone shall constitute an amendment of the  
20 County's Local Coastal Program.

21 YOU ARE FURTHER COMMANDED to make and file a return to this writ  
22 on or before 7-13-07, setting forth what you have done to comply.

23 PPB

24  
25  
26 **CCC Exhibit 6**  
27 **(page 3 of 4 pages)**  
28

1 LET THE FOREGOING WRIT ISSUE.  
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5 Dated: 4-13-07

PAUL P. BURDICK

6 Judge of the Superior Court  
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26 **CCC Exhibit 6**  
27 **(page 4 of 4 pages)**  
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ALEX CALVO, CLERK  
BY JUDI CLARK  
DEPUTY, SANTA CRUZ COUNTY

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9 COUNTY OF SANTA CRUZ, BOARD OF SUPERVISORS  
OF SANTA CRUZ COUNTY, SANTA CRUZ COUNTY  
10 PLANNING DEPARTMENT

11  
12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF SANTA CRUZ

14 BIG CREEK LUMBER COMPANY and  
HOMER T. McCRARY,

15 Petitioners and Plaintiffs,

16 vs.

17 COUNTY OF SANTA CRUZ, BOARD OF  
18 SUPERVISORS OF SANTA CRUZ  
COUNTY, SANTA CRUZ COUNTY  
19 PLANNING DEPARTMENT, THE  
CALIFORNIA COASTAL COMMISSION,  
20 and DOES 1 through 500,

21 Respondents, Real Parties in  
Interest, and Defendants.

22  
23 CENTRAL COAST FOREST  
ASSOCIATION, a nonprofit organization,

24 Petitioner,

25 vs.

26  
27 COUNTY OF SANTA CRUZ and BOARD  
OF SUPERVISORS OF THE COUNTY OF  
28 SANTA CRUZ, CALIFORNIA COASTAL

Case No. CV 134816  
(Case No. CV 137992) (Consolidated)

~~PROPOSED~~ PEREMPTORY  
WRIT OF MANDATE TO  
CALIFORNIA COASTAL  
COMMISSION

CCC Exhibit 7  
(page 1 of 3 pages)



1 COMMISSION, and DOES 1 through 100, )  
2 Respondents. )  
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**CCC Exhibit 7**  
**(page 2 of 3 pages)**

1 TO: The California Coastal Commission ("Commission"):

2 Final Judgment having been entered in this action on \_\_\_\_\_, directing that a  
3 writ of mandate be issued by this Court,

4 YOU ARE HEREBY COMMANDED, immediately upon receipt of this Writ of  
5 Mandate, to take action consistent with the Final Judgment, and with the decisions issued  
6 in this matter by the Court of Appeal and the California Supreme Court, in acting on any  
7 amendments to the General Plan/Local Coastal Program adopted by the County of Santa  
8 Cruz and proposed to the Commission for certification pursuant to subsection A of  
9 paragraph 14 of the Final Judgment.

10 YOU ARE FURTHER COMMANDED to make and file a return to this writ  
11 on or before 7-13-07, setting forth what you have done to comply.

12  
13 LET THE FOREGOING WRIT ISSUE.

14  
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16  
17 Dated: 4-13-07

PAUL P. BURDICK

18 Judge of the Superior Court  
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27 **CCC Exhibit 7**  
28 **(page 3 of 3 pages)**