

**CALIFORNIA COASTAL COMMISSION**

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**DATE:** November 21, 2018

**TO:** Coastal Commissioners and Interested Persons

**FROM:** John Ainsworth, Executive Director  
Alison Dettmer, Deputy Director  
Robert S. Merrill, North Coast District Manager  
Tamara Gedik, Coastal Program Analyst

**SUBJECT: De Minimis Amendment Determination for County of Del Norte Amendment No. LCP-1-DNC-18-0079-2 (Loughry TPZ Rezone)**  
For the Commission meeting of December 13, 2018 in Newport Beach

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## **DEL NORTE COUNTY'S PROPOSED AMENDMENT**

Del Norte County proposes to amend the Implementation Plan (IP) portion of its previously certified LCP to rezone approximately 47 acres of land from Coastal Timber (CT) to Timber Preserve Zone (TPZ), as approved by the Board of Supervisors on September 25, 2018. The proposed rezone from CT to TPZ would affect 3 adjacent parcels held in common ownership within the Elk Creek Valley, accessed at the end of Steeps Lane off Elk Valley Road, approximately ¾ mile northeast of Crescent City (APNs 112-020-56, -70, and -71; [Exhibit 1](#)). The LCP amendment was submitted to the Coastal Commission under Resolution No. 2018-030 and Ordinance No. 2018-007 ([Exhibits 2](#) and [3](#)).

The proposed rezone to Timber Preserve would establish a contract which restricts the use of the properties affected by the rezone to timber production and related purposes. In exchange, the contract allows the land to be valued for property taxation only on the basis of growing and harvesting timber, thereby reducing the owner's tax obligation on those portions of the land that are being utilized for timber harvest. Additional timber yield taxes are paid at the time of harvest. The property owner, Thomas Loughry, has continued to manage timber harvesting on all three properties since 2006 through an active and approved Non-Industrial Timber Management Plan<sup>1</sup> (NTMP), and one of the properties (APN 112-020-71) contains a single family residence. Single family residences are conditionally-allowable uses under both the existing Coastal Timberland and proposed Timber Preserve zones.

Surrounding parcels consist predominantly of forested lands and low-density rural residential uses. Property south of and adjacent to the subject property is zoned CT, and land east of the

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<sup>1</sup> NTMP No. 1-04-NTMP-020-DEL

subject property includes Agricultural (A-5) and Rural Residential Agriculture (RRA-2) zoning districts. Elk Creek is situated on property west of the subject site, on wholly undeveloped lands designated within a General Resource Conservation Area district (RCA-1).

The Del Norte County certified LCP establishes five basic criteria that must be satisfied to rezone property to TPZ. Specifically Del Norte County Code (DNCC) Section 21.13.50 requires an applicant requesting rezoning to TPZ to satisfy the following requirements:

- A. Provide a map showing the legal description of the assessor's parcels numbers (APNs) of property desired to be rezoned;
- B. A plan for forest management must be prepared or approved as to content for the property 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;
- C. The parcel shall 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 State Board of Forestry for the district in which the parcel is located...
- D. The land 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 which constitute twenty (20) acres or more in size; and
- E. The land shall be Timber Site IV or better.

Del Norte County has transmitted evidence that the five criteria have been met for the proposed rezone. The property owner has submitted the necessary assessor's parcel map showing the legal description of the APNs to be rezoned. In addition, the subject properties are already actively managed under an approved NTMP, as described above. The property owner has also provided evidence in the form of a registered professional forester's report dated February 13, 2018 and California Department of Fire and Forestry Protection ("CalFire") inspection and stocking reports from August 2017 demonstrating that the property affected under the existing NTMP: (a) has been recently harvested, (b) exceeds minimum stocking standards, and (c) is classified as Site Class IV or better in all areas. Lastly, the proposal would rezone three contiguous parcels that collectively comprise 47 acres.

#### **DE MINIMIS LCP AMENDMENT DETERMINATION**

Pursuant to Coastal Act Section 30514(d), the Executive Director may determine that a proposed LCP amendment is "de minimis." In order to qualify as a de minimis amendment, the amendment must meet the following three criteria:

1. The Executive Director determines that the proposed amendment would have no impact either individually or cumulatively, on coastal resources, and that it is consistent with the policies of Chapter 3;
2. The local government provides public notice of the proposed amendment at least 21 days prior to submitting the amendment to the Commission, by one of the following methods: posting on-site and offsite in the affected area, newspaper publication, or direct mailing to owners and occupants of contiguous property; and

3. The amendment does not propose any change in use of land or water or allowable use of property.

If the Executive Director determines that an amendment is de minimis, that determination must be reported to the Commission. If three or more Commissioners object to the de minimis determination, the amendment shall be set for public hearing. If three or more commissioners do not object to the de minimis determination, the amendment will be deemed approved, and will become part of the certified LCP 10 days after the date of the Commission meeting (in this case, the effective date would be December 22, 2018).

**The purpose of this notice is to advise interested parties of the Executive Director's determination that the proposed LCP amendment is de minimis.** Each of the de minimis criteria is discussed briefly below:

- 1. No impact to coastal resources and consistency with Chapter 3 of the Coastal Act:** No development, changes of use, or changes in the intensity of use are proposed in association with the rezone request. The parcels have been actively managed for timber harvest since 2006 under an approved Non-Industrial Timber Management Plan (NTMP) that has been in effect since 2004. Section 30243 of the Coastal Act requires in applicable part that the "long-term productivity of soils and timberlands be protected." The proposed Timber Preserve Zone is intended to encourage timberland production by requiring property owners who request the zoning to enter into a contract that restricts the use of the properties affected by the rezone to timber production and related purposes. In exchange, the contract allows the land to be valued for property taxation only on the basis of growing and harvesting timber, thereby reducing the owner's tax obligation on those portions of the land that are being utilized for timber harvest. Additional timber yield taxes are paid at the time of harvest. Conversion of lands designated TPZ to other than forestry use is subject to review by CalFire. The proposed amendment also does not affect coastal development permitting requirements. Thus, the proposed amendment will protect the timberlands of the site from conversion to other uses consistent with Section 30243. Therefore, the proposed amendment will not have an impact either individually or cumulatively on coastal resources and is consistent with the policies of Chapter 3 of the Coastal Act.
- 2. Provision of public notice:** A newspaper publication notice was printed in The Triplicate, a daily newspaper of general circulation in Crescent City, on May 26, 2018 for the Planning Commission hearing (held on June 6, 2018). For the Board of Supervisors hearing (held on September 11, 2018), the Notice of Public Hearing was mailed on September 1, 2018 to the owners and occupants of the contiguous properties surrounding the three parcels affected by the rezone, in addition to posting the notice on the County's website. Commission staff received the amendment application on October 17, 2018, thus satisfying the 21-day noticing requirement under Coastal Act §30514(d)(1)(A). In compliance with Coastal Act §30514(d)(1)(A), both notices contained a brief description of the proposed amendment, specified the dates and places where comments would be accepted on the proposed amendment (i.e. the dates and places of the public hearings), and stated where additional information about the rezone would be available for public review. The newspaper notices also meet the requirements of Coastal Act §30514(d)(1)(A)(i), which requires that newspaper

notice shall be published at least once in a newspaper of general circulation in the area affected by the proposed amendment.

- 3. No change in use of land or allowable use of property:** The current land use designation of Timberlands would remain unchanged. Furthermore, the TPZ zoning district designation conforms to and is adequate to carry out the Timberlands land use designation, as demonstrated by the “Land Use Plan and Zoning Map Consistency Matrix” included as Table A in the County’s LCP. The amendment also does not affect the allowable permitted or conditional uses or development standards in any land use designation or zoning district. The rezone from CT to TPZ would not modify the permitted uses on the property and would continue to restrict principal permitted uses to those compatible with the growing and harvesting of timber. The eight accessory uses allowable on CT-zoned lands as specified in Del Norte County Code Section 21.14.020 consist of the same compatible uses for the growing and harvesting of timber as those specified in Del Norte County Code Section 21.13.040(A)<sup>2</sup> as allowable on TPZ-zoned lands. The same uses are permitted with a conditional use permit for both zones as specified in DNCC Sections 21.14.30 and 21.13.30, respectively.<sup>3</sup> Development as defined in section 30106 of the Coastal Act will continue to require a CDP and be subject to the development policies of the certified LCP.

#### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Del Norte County, acting as lead CEQA agency, prepared an initial study for the rezoning that resulted in adoption of a Negative Declaration (State Clearinghouse No. 2018042071).

As set forth in section 21080.9 of the California Public Resources Code, CEQA exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. Therefore, local governments are not required to prepare an EIR in support of their proposed LCP amendments, although the Commission can and does use any environmental information that the local government submits in support of its proposed LCP amendments. Instead, the CEQA responsibilities are assigned to the Coastal Commission. The Commission's LCP review and approval program has been certified by the Resources Agency as being the functional equivalent of the environmental review required by CEQA, pursuant to CEQA Section 21080.5. Therefore the Commission is relieved of the responsibility to prepare an EIR for each LCP.

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<sup>2</sup> DNC Code Sections 21.13.040(A) and 21.14.020 list the following accessory uses for both TPZ-zoned and CT-zoned lands, respectively: (1) Management for watershed; (2) Management for fish and wildlife habitat; (3) A use integrally related to the growing, harvesting and processing of forest products, including but not limited to roads, log landings, and log storage area (portable chippers and portable sawmills are considered a part of “processing”); (4) The erection, construction, alteration or maintenance of gas, electric, water or communication transmission facilities; (5) Grazing and uses accessory to grazing; (6) Mineral extraction subject to the requirements of Chapter 7.36; (7) Temporary labor camps, less than one year in duration, accessory to timber harvesting or planting operations; and (8) Recreational use of the land for any of the following: walking, hiking, picnicking, swimming, boating, fishing, hunting and skiing.

<sup>3</sup> Uses subject to a conditional use in both the CT and TPZ zones include the following: (A) Timber products processing plants, (B) Public camps, public stables and similar recreational uses, not including recreational vehicle parks or mobile home parks; and (C) Single-family dwelling, mobile home or a manufactured home and normal accessory uses and structures for owner or caretaker.

Nevertheless, the Commission is required, in approving an LCP amendment submittal, to find that the approval of the proposed LCP, as amended, does conform with CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse impact which the activity may have on the environment [14 CCR §§ 13542(a), 13540(f), and 13555(b)].

This report has discussed the relevant coastal resource issues with the proposal and has concluded that the proposed LCP amendment is not expected to result in any significant adverse impact on the environment. Thus, it is unnecessary for the Commission to suggest modifications to the proposed amendment to address adverse environmental impacts, because the proposed amendment, as submitted, will not result in any significant environmental effects for which feasible mitigation measures would be required.

#### **DEADLINE FOR COMMISSION ACTION**

This proposed LCP amendment was received by the Commission on October 17, 2018 and was filed as complete on October 31, 2018. The amendment modifies only the LCP's IP and the 60-day deadline for Commission action is December 30, 2018. Thus, unless the Commission votes to extend the action deadline (it may be extended by up to one year), the Commission must take final action on this LCP amendment at the December 2018 Commission meeting.

#### **ADDITIONAL INFORMATION AND SUBMITTAL OF COMMENTS**

The Executive Director will report this de minimis LCP amendment determination, and any comments received on it, to the Coastal Commission at its December 12, 2018 meeting in Newport Beach. For additional information about the LCP amendment, please contact Tamara Gedik at the North Coast District Office at (707) 826-8950. Please mail correspondence to the Commission at the letterhead address. Written comments on the proposed de minimis amendment determination should be submitted by December 7, 2018 to ensure they can be transmitted to the Commission meeting.

#### **EXHIBITS**

- [Exhibit 1:](#) Regional Location
- [Exhibit 2:](#) Resolution of Transmittal of IP Amendment
- [Exhibit 3:](#) Ordinance of Adoption of IP Amendment
- [Exhibit 4:](#) Existing and Proposed Zoning Maps