

CALIFORNIA COASTAL COMMISSION

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

To: Commissioners and Interested Persons

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

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 6th 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:

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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.¹

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.

¹ 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.² As a result, the zone change allows for timber harvesting to occur on a site where it would be prohibited otherwise.³ 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

² 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).

³ Ibid.



Forest 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)).⁴ 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

⁴ 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 4th 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. 4th 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 6th District Court of Appeal.⁵

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.⁶

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 Objective 5.12 states:

⁵ 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.

⁶ 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.



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:⁷

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)⁽⁸⁾ 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:⁹

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. 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.*

⁷ 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).

⁸ 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, ...”

⁹ 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).



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.¹⁰ 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 harvesting may be appropriate (namely the TP and M-3 districts).¹¹

¹⁰ 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)

¹¹ 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



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,¹² 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 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

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.

¹² 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.



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:¹³

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 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

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



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 a 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 13.10.372.¹⁴

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).¹⁵

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 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.

¹⁴ 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.”

¹⁵ 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.



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).

