

County of Santa Cruz

OFFICE OF THE COUNTY COUNSEL

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DWIGHT L. HERR, COUNTY COUNSEL

December 3, 1998

Agenda: December 8, 1998

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, California 95060

Re: Proposed Ordinance Restricting Timber Harvesting Within Riparian Corridors

Dear Members of the Board:

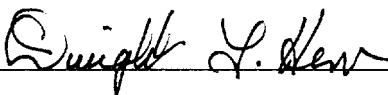
On November 24, 1998, your Board directed this office to submit a separate ordinance to restrict timber harvesting within riparian corridors which are located outside the Coastal Zone during the period that the proposed timber rules are being processed through the State Board of Forestry and the proposed County zoning ordinance amendments are being processed through the Coastal Commission. In response to the Board's direction, please find attached a proposed ordinance restricting timber harvesting within riparian corridors which are located outside the Coastal Zone, and which are not zoned Timberland Production (TP). The proposed ordinance contains an expiration date of December 31, 1999, for the reason that any of the proposed timber rules which may be adopted will not be effective until January 1, 2000, unless they are adopted by the State Board of Forestry and approved by the Office of Administrative Law as emergency regulations. The December 31, 1999, expiration date will also allow sufficient time for the processing of the package of proposed ordinance amendments through the Coastal Commission.

IT IS THEREFORE RECOMMENDED that your Board consider whether to

adopt the attached proposed ordinance prohibiting timber harvesting within riparian corridors which are located outside the Coastal Zone and which are not zoned Timberland Production.

Very truly yours,

DWIGHT L. HERR, COUNTY COUNSEL



RECOMMENDED:



SUSAN A. MAURIELLO
County Administrative Officer

cc: Alvin James, Planning Director

ORDINANCE NO. _____

ORDINANCE ADDING SECTION **13.10.695**
TO THE SANTA CRUZ COUNTY CODE RELATING TO
LOCATIONAL CRITERIA FOR TIMBER HARVESTING

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

SECTION I

Chapter 13.10 of the County Code is hereby amended by adding Section 13.10.695
to read as follows:

13.10.695 LOCATIONAL CRITERIA FOR TIMBER HARVESTING.

(a) Within those zone districts in which timber harvesting is otherwise allowed by
this Code, timber harvesting shall not occur within riparian corridors, defined as:

- (1) 50 feet from the bank full flow line of a perennial stream.
- (2) 30 feet from the bank full flow line of an intermittent or ephemeral
stream.

(b) Notwithstanding the foregoing, the locational restriction of subsection (a) shall
only apply outside of the Coastal Zone, and shall not apply to TP zoned property.

SECTION II

If any section, subsection, division, sentence, clause phrase or portion of this
ordinance is for any reason held to be invalid or unconstitutional by the decision of any
court of competent jurisdiction, such decision shall not affect the validity of the
remaining portions of this ordinance. The Board of Supervisors of this County hereby

declares that it would have adopted this Ordinance and each section, subsection, division, sentence, clause, phrase, or portion thereof, irrespective of any such decision.

SECTION III

This ordinance shall take effect on the 31st day after the date of **final** passage, and shall expire on December 31, 1999..

PASSED AND ADOPTED this ____ day of, 1998, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES: SUPERVISORS
NOES: SUPERVISORS
ABSENT: SUPERVISORS
ABSTAIN: SUPERVISORS

Chair of the Board of Supervisors

Attest: _____
Clerk of the Board

APPROVED AS TO FORM:



DWIGHT L. HERR, County Counsel

DISTRIBUTION: County Counsel
Planning Department

Law Offices of
DENNIS J. KEHOE
Law Corporation
311 Bonita Drive
Aptos, California 95003
(831) 662-8444 FAX (831) 662-0227

December 2, 1998

BOARD OF SUPERVISORS
COUNTY OF SANTA CRUZ
701 Ocean Street
Santa Cruz, CA 95060
FAX: 454-2327, 454-3262 and also (Hand Delivered)

Re: December 8, 1998, Board of Supervisors Meeting-Consent Agenda on each of the Following Projects:

1. Amendments to the Santa County Code to Limit Timber Harvesting to the Timber Production, Parks, Recreation and Open Space and the Mineral Extraction Industrial Zone Districts; to Established Improved Surfacing Standards for Private Roads; to Delete Timber Harvesting as a Riparian Corridor Exemption; to Establish Helicopter Regulations Related to Timber Harvesting and to Establish Locational Criteria for Timber Harvesting in the County; Amendments to the County General Plan/Local Coastal Program LUP and County Codes Relating to the Regulation of Timber Harvest

PROJECT ONE:

2. General Plan/Local Coastal Program Amendment to Policy 5.13.5 to add Timber Harvesting as a principal permitted use on Commercial Agricultural zoned land and to policy 5.14.1 to add Timber harvesting as an allowed use on non-commercial zoned land; and ordinance amendments to the County Code amending Sections 13.10.170(d) - Zoning Implementation, 13.10.312(b) - Agricultural Zoning Uses Chart, 13.10.382 - Special Use Zoning Uses Chart, 16.20.180 - Private Road Standards and 16.30.050 - Riparian Corridor Exemptions, and adding County Code Sections 13.10.378 - Timber Harvesting Related Helicopter Regulations and 13.10.386 - General Plan consistency criteria for timber harvesting in the Special Use District.

PROJECT TWO:

3. **PROJECT THREE:** Current staff proposal to the Board.

4. **PROJECT FOUR:** Proposed Ordinance: re: TPZ ZONES, REGULATION, and CORRIDORS.

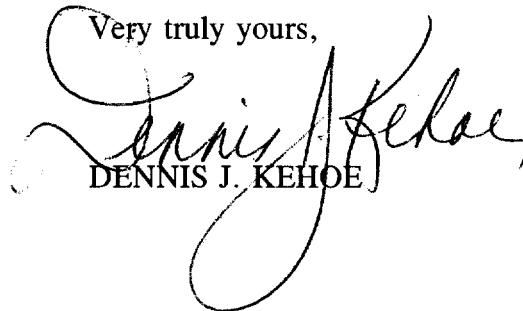
Dear Supervisors:

Please be advised that the undersigned represents Big Creek Lumber Company and Homer T. (Bud) McCrary in connection with the above described PROJECTS. The Board of Supervisors is already in receipt of my correspondence dated November 17, 1998, and evidence

provided at the public hearing on November 24, 1998. My November 17, 1998, correspondence to the Board and the letters of Mr. McBride and Mr. Rentz provided to you at the hearing on November 24, 1998, are all incorporated herein as though fully set forth.

On your December 8, 1998, consent agenda, there is a proposed Ordinance relating to the TPZ zone and other connected matters including thousands of acres of timber resources. My clients vigorously object to the adoption of the same! These matters must be pulled from the consent agenda. Among other items, this is a new Project and an environmental review must be made. Since this new Project will have a significant adverse effect on the environment, an Environmental Impact Report must be prepared. Further, this proposal is attempting to regulate timber operations and, therefore, preempted by State law. The other points, legal authorities, and evidence presented in, inter alia, my November 17, 1998, correspondence, and the testimony and letters of Messrs. McBride and Rentz are incorporated herein.

Very truly yours,



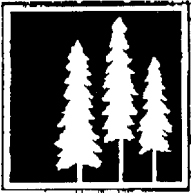
DENNIS J. KEHOE

DJK: jlc

c: Big Creek Lumber Company, Bud McCrary, FAX: 423-2800
County Counsel, County of Santa Cruz, Attn: Dwight Herr, (Hand Delivered)
Santa Cruz County Planning Department, (Hand Delivered)
Clerk, Board of Supervisors, County of Santa Cruz, (Hand Delivered)
State Board of Forestry
California Department of Forestry
The Office of the Attorney General
Santa Cruz Farm Bureau
California Coastal Commission
California Forestry Association, Attn: Mark S. Rentz, Esq.
Vice President, Environmental and Legal Affairs, FAX: (916) 444-0170

CALIFORNIA FORESTRY ASSOCIATION

December 2, 1998



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www.foresthealth.org

BOARD OF SUPERVISORS
COUNTY OF SANTA CRUZ
701 ocean street
Santa Cruz, California 95060

RE: Board of Supervisors Consideration to Adopt Riparian Buffer Zones

Dear Supervisors:

The California Forestry Association (CFA) consists of companies, forest landowners and **natural** resource professionals committed to environmentally sound policies, the sustainable use of **renewable** resources and responsible forestry. Our membership includes forest **management** companies and registered professional foresters **who** do business in Santa Cruz county, as **well** as persons who own land in **the** county.

It is **our understanding** that the Santa Cruz County Board of Supervisors is considering a proposal by Supervisor Almquest to adopt a county ordinance creating "**riparian buffer zones**" for Timber Productivity Zone (TPZ) lands throughout the county. The California Forestry Association (CFA) strongly opposes any **such effort by the Board of Supervisors**.

We **believe** that any such action constitutes regulation of **timber** management operations. The Forest Practice Act of 1973 and the Timberland Productivity Act of 1982 **clearly** establish that such regulatory authority rests **solely** with the State of California, through the **Board** of Forestry and the **California** Department of Forestry and Fire Protection. Any **effort** by the **county** to **regulate timber** management operations is **pre-empted** by the State. See our **comments** submitted to the Board of Supervisors dated November 23, 1998.

If the **Board** of Supervisors is determined to **pursue** such an ill-advised course of action, it is **obligated** under the Administrative Procedures Act (APA) to provide adequate **notification** and **an** opportunity to comment on the **proposed** action. We believe that an adoption of Supervisor Almquest's proposal through a blanket "**consent vote**" is a denial of due process in **violation** of the APA and the Constitution of the State of California.

WC **strongly encourage** the **Board** to reconsider any action to **unilaterally** establish **riparian** buffer zones. If you have any questions on **this matter**, please **feel free** to give me a call at 916/444-6592

Sincerely ,

Mark S. Rentz
Vice President of Environmental
and Legal Affairs

MSR/ea

cc: Bud McCrary, Big Creek Lumber Company
Central Coast Forestry Association