

**DEPARTMENT OF FORESTRY
AND FIRE PROTECTION**

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ATTACHMENT 3

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June 23, 1999

Matt Baldzikowski, Resource Planner III
Santa Cruz County Planning Department
701 Ocean Street, Room 400
Santa Cruz, CA 95060

Re: Non-concurrence 1-99NTMP-003 SCR

Dear Mr. Baldzikowski,

This is in response to the letter dated May 28, 1999 from the County of Santa Cruz Planning Department expressing a non-concurrence with THP 1-99NTMP-003 SCR because the THP would allow some harvesting within the riparian corridors of class I and class III watercourses and that harvesting would be inconsistent with Santa Cruz County Ordinance No. 4529 that prohibits timber harvesting within 50 feet from each side of the stream.

We believe that the county ordinance has no application to this THP because the ordinance is invalid. The width and manner of protection of watercourse and lake protection zones in timber harvesting operations are subjects addressed in detail in the Forest Practice Rules adopted by the Board of Forestry. See 14 C.C.R. sections 916 – 916.10. These rules address the conduct of timber harvesting as discussed in *Big Creek Lumber Company v. County of San Mateo* (1995) 31 Cal.App.4th 418 and *Westhaven Community Development Council v. County of Humboldt* (1998) 61 Cal.App.4th 365. The county ordinance seeks to describe its prohibition on timber harvesting along streams as an exercise of its authority to restrict the location of timber harvesting activities under its zoning powers to choose among competing land uses in the county. Although the county has authority to designate locations where timber harvesting may be conducted, we believe that this ordinance has crossed the line into attempting to regulate the conduct of timber operations, an area of regulation limited to the state. See Public Resources Code section 45165(d).

The Forest Practice Rules provide a variety of protective measures for the WLPZ. The contain Table I showing "Procedures for Determining Watercourse and Lake Protection Zone Widths and Protective Measures." 14 C.C.R. 916.5. Section 916.4 (b) provides that

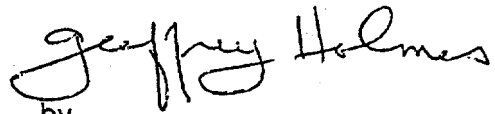
"A combination of the rules, the THP, and mitigation measures shall provide protection for the following:

- (a) Water temperature control.
- (b) Streambed and flow modification by large woody debris.
- (c) Filtration of organic and inorganic material.
- (d) Upslope stability.
- (e) Bank and channel stabilization.
- (f) Vegetation structure diversity for fish and wildlife habitat. . . .

Section 916.4 allows the registered professional forester and the Director of CDF to increase or decrease the width of a proposed WLPZ. Some of the mitigation devices applied are filter strips, equipment limitation zones, equipment exclusion zones, no harvest bands, restricted harvest bands, selective entry bands, and canopy retention requirements. The county ordinance resembles a no harvest band of 50 feet, in some cases duplicating the result of the THP process but in most cases conflicting with the THP process and never allowing adjustment of the width in response to conditions found in an on-site inspection. 7307

Because the ordinance seeks to control timber harvesting through a method already addressed in detail in the Forest Practice Rules, we believe that the ordinance seeks to control the conduct of timber operations in a manner prohibited by Public Resources Code section 4516.5(d).

Steve Wert
Unit Chief



by
Geoffrey Holmes
Forest Practice Inspector
RPF#2561

c: Mark Demming
Region
Unit file