



County of Santa Cruz

ATTACHMENT 4
6308

PLANNING DEPARTMENT

701 OCEAN STREET, 4TH FLOOR, SANTA CRUZ, CA 95060

(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123

ALVIN D. JAMES, DIRECTOR

August 5, 1999

Mr. Robert Kerstiens, Chairman
California State Board of Forestry
1416 Ninth Street
Sacramento, CA 958 14

SUBJECT: APPEAL OF TIMBER HARVEST PLAN #1-99NTMP-003 SCR.

Dear Mr. Kerstiens:

The purpose of this letter is to appeal the decision by the Department of Forestry to approve the above referenced timber harvest plan. On August 3, 1999, the Santa Cruz County Board of Supervisors authorized the Planning Director to file an appeal of this non-industrial timber management plan (NTMP) with the Board of Forestry. This authorization is attached with this appeal.

NTMP 1-99-003 SCR was submitted by the California Redwoods Christian Association, and is located in the Santa Cruz Mountains approximately 1 mile north of the town of Boulder Creek on Two Bar Road. The NTMP acreage is 130 acres. The County has participated in the preharvest inspection and the review team as documented in the CDF record. The County submitted a letter of non-concurrence with the plan on May 28, 1999 (attached). The County contact for the purpose of this appeal is Matt Baldzikowski, Resource Planner III at (831) 454-3 165.

The County's appeal is based on threats to the environment and to the public health, safety and welfare. The County's appeal also addresses the fact that the approval of this NTMP will permit timber harvesting on this property in perpetuity with no compliance with the County's interim restrictions on timber harvesting within riparian corridors and with no requirement for compliance with the more protective riparian protection rules being considered by the Board of Forestry.

On December 15, 1999 the Santa Cruz County Board of Supervisors adopted Ordinance No. 4529 (attached) which prohibits timber harvesting within defined riparian corridors. This ordinance, adopted with a sunset date of December 31, 1999, was enacted as an interim measure to prohibit the local harvesting of timber in riparian corridors until the State and the National Marine Fisheries Service could prepare and enact regulations protecting Coho salmon and steelhead. The specific locational criteria forth in Ordinance No. 4529 does not allow timber harvesting within: 50 feet from the bank full flow line of a perennial stream, and 30 feet from the bank full flow line of an intermittent or ephemeral stream. The Board of Supervisors adopted this locational restriction for timber harvesting because of their concern for the protection of riparian corridors, habitats critical for the

recovery of two ESA listed species: Coho salmon and steelhead. In addition, the protection of these riparian corridors is essential for the maintenance of water quality, as many of the County's surface streams are used as drinking water sources, and all of the County's streams flow into the Monterey Bay National Marine Sanctuary. The subject Plan proposes timber harvesting within Class I (perennial) and Class III (ephemeral) streams in violation of the Ordinance. 309

On June 23, 1999, Steve Wert, Unit Chief for the Felton CDF office, responded to the letter of non-concurrence. In this letter (attached), Chief Wert indicated that they believed that the County's Ordinance No. 4529 was invalid, citing the powers granted to CDF under the Public Resources Code as the basis for this assertion. While it is clear that the County has no jurisdiction over the *conduct* of timber harvesting (essentially, how timber harvesting is conducted), the County retains the authority to determine where it may be conducted through its zoning ordinances. The Ordinance in question, adopted as a part of the County's Zoning Ordinance, simply states that timber harvesting is not an allowed use within specified distances from perennial, intermittent and ephemeral streams. No permit is required (ref. Westhaven Community Development Council v. County of Humboldt) and it speaks only to the location where timber harvesting is prohibited (ref. Big Creek Lumber Company v. County of San Mateo). The decision whether the County's Ordinance is pre-empted by the Forest Practice Act and its implementing regulations is still pending in Santa Cruz County Superior Court, and, until that decision is rendered, all property owners must abide by Ordinance No. 4529 regarding timber harvesting in riparian corridors. We ask that you honor this authority.

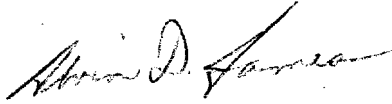
Furthermore, the findings of the Scientific Review Panel report, prepared for the Resources Agency of California and the National Marine Fisheries Service by an independent panel of scientists under the direction of CDF, states that the current Forest Practice Rules are inadequate to protect the riparian habitats needed by the *salmonid* species of concern, steelhead and Coho salmon. The report includes a number of recommendations that are necessary for adequate protection, including a shift to a cumulative watershed assessment approach to Timber Harvesting Plan analysis. The Panel recognized that the baseline work necessary for this type of analysis would take years to prepare. The Panel, therefore, also recommended that a package of Forest Practice Rules (**FPRs**) be developed to provide protection of these critical habitats. Such a package was submitted to the Board of Forestry on July 6, 1999, and the Board directed their staff to file the **45-day** Notice of Proposed Rulemaking with the Office of Administrative Law, thereby initiating the review process for these proposed **FPRs**. These **FPRs** were reviewed by the Interim Committee in August and will be the subject of a public hearing on September 14, 1999. The subject NTMP (1-99NTMP-003) is inconsistent with the Rules promulgated by Cal EPA and the Resources Agency, which are now being considered by the Board of Forestry for implementation on January 1, 2000.

The County believes it is in the best interest of the State, and the County, that all **THPs** and **NTMPs** be required to provide the highest level of protection to the freshwater resources of the State. It is clear, based on the Scientific Review Panel report and the enumerable complaints and comments regarding timber harvesting practices, that compliance with the existing Forest Practice Rules does not achieve this goal.

The approved NTMP, 1-99NTMP-003 SCR, does not comply with any of the locational requirements of County Ordinance No. 4529, adopted as a short-term ordinance for the protection of riparian corridors, nor will it provide the highest level of stream protection as necessary to protect and

enhance the aquatic habitat of the federally listed Coho salmon and steelhead. The County requests that 1-99NTMP-003, therefore, be denied.

Sincerely,



Alvin D. James
Planning Director

cc: Board of Supervisors
County Counsel
California Redwoods Christian Association
Shute, Mihaly, & Weinberger Attn: Fran Layton
Matt Baldzikowski
Eric Huff, Big Creek Lumber Co.

Attachments: 1. Board of Supervisors authorization
2. Letter of non-concurrence, dated May 28, 1999
3. Ordinance No. 4529
4. Letter of Steve Wert, Unit Chief, CDF Felton, dated June 23, 1999

August 3, 1999

66. AS THE BOARD OF SUPERVISORS AND REDEVELOPMENT AGENCY, SCHEDULED a closed personnel and litigation session as follows:
- CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Case Name/No.: County of Santa Cruz, CSA 54, Mt. Charlie Waterworks (Santa Cruz Superior Court Case No. 133807); In re, Alexia M. (Santa Cruz Superior Court Case No. DP000068 and DP000085); Big Creek Lumber v. County of Santa Cruz (Santa Cruz Superior Court Case No. 134816); Oreb v. County of Santa Cruz Santa Cruz Superior Court Case No. CV134016)
- CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
Initiation of litigation was considered pursuant to subdivision (c) of Government Code Section 54956.9 for three potential case.
- CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
Significant exposure to litigation was considered pursuant to subdivision (b) of Government Code Section 54956.9 for one potential case.
- CONFERENCE WITH LABOR NEGOTIATOR
Agency negotiator: Personnel Director
All Employee Organizations
- CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Property street address (APN if no street address): APN: 75-021-08 (Lompico area)
Negotiating parties (not agents): Neil and Marjorie Fisher and County of Santa Cruz
- REPORT OF COUNTY COUNSEL - The Board declined to become involved in any contempt proceedings against the parent or the reporter or the newspaper that employs the reporter in re. Alexia M. (WBSCA); the Board authorized the P-Director to file an appeal re the approval of Timber-Harvest Plan 1-99NTMP-003SCR on property owned by Redwood Christian Camp on the basis of the proposed timber harvesting in riparian corridors (BSWCA); and the Board approved compromise of a claim and authorized payment to Hillside Drilling in the amount of \$15,000 with regard to a contract with the County (BSWCA)

REGULAR AGENDA

67. CONSIDERED report on the Pajaro River Flood Control Project: accepted and filed report
- CWBSA

PLANNING DEPARTMENT

GOVERNMENTAL CENTER



COUNTY OF SANTA CRUZ

701 OCEAN STREET, ROOM 400, SANTA CRUZ, CALIFORNIA 95060
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123

Calif. Department of Forestry
ATTN: Ms. Nancy Drinkard
Review Team Chair
6059 Highway 9, P.O. Drawer F-Z
Felton, CA 95018

May 28, 1999

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

The County of Santa Cruz does not concur with THP 1-99NTMP-003 as it is written.

On December 15, 1998 the Santa Cruz County Board of Supervisors adopted Ordinance No. 4529 (attached) which prohibits timber harvesting within defined riparian corridors: 50 feet from the bank full flow line of a perennial stream and 30 feet from the bank full flow line of an intermittent or ephemeral stream. This would include all class I, II, and III watercourses.

During the pre-harvest and review team staff discussed specific protection measures only for class I and II streams. Staff was in error in not including the protection measures specified in Ordinance No. 4529 for ephemeral (class III) drainages of 30 feet.

The County does not concur with 1-99NTMP-003 since it does not comply with the required protection for all riparian corridors as defined by ordinance No. 4529, including class III watercourses.

Sincerely,

**Matt Baldzikowski
Resource Planner III**

attachments:

1. January 22, 1999 letter to Mr. Ross Johnson CDF.
2. Approved Ordinance No. 4529

ORDINANCE'NO. 4529

**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.

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 15th day of December, 1998, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES:	SUPERVISORS	Wormhoudt, Almquist & Beautz
NOES:	SUPERVISORS	Symons and Belgard
ABSENT:	SUPERVISORS	None
ABSTAIN:	SUPERVISORS	None

JANET K. BEAUTZ

Chair of the Board of Supervisors

Attest: **EUCANI AL. ROZARIO**
Clerk of the Board

APPROVED AS TO FORM:

Dwight L. Herr
DWIGHT L. HERR, County Counsel

DISTRIBUTION: County Counsel
Planning Department

I HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THE OFFICE ATTEST BY MY HAND AND SEAL THIS 17th DAY OF December 1998
CUDAN A. MINELLO, COUNTY ADMINISTRATIVE OFFICER AND EX-OFFICIO CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CRUZ, CALIFORNIA.

BY *Almquist* DEPUTY

DEPARTMENT OF FORESTRY
AND FIRE PROTECTION
6059 Highway 9 . P.O. Drawer F-2
Felton, CA 95018
(831) 335-6742

ATTACHMENT 4

0315



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 4516.5(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

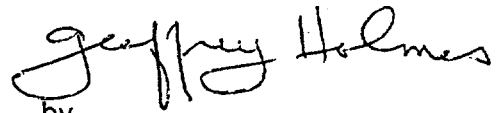
"A combination of the rules, the THP, and mitigation measures shall provide protection for the following:

- (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.

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