

CLERK OF THE  
BOARD OF SUPERVISORS



## COUNTY OF SANTA CRUZ

GOVERNMENTAL CENTER

701 OCEAN STREET - Room 500  
SANTA CRUZ, CALIFORNIA 95060  
(408) 454-2323

September 29, 1999

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

Re: Scheduling jurisdictional hearing regarding an appeal of the Planning Commission's decision regarding Application No. 98-0604 by Dan Aalfs and Rebecca Aalfs

Members of the Board:

Pursuant to Section 18.10.340 of the Santa Cruz County Code, Attorney Dennis Kehoe has filed an appeal of the Planning Commission's decision regarding Application No. 98-0604. The application is a proposal to rezone an approximately 41.6 acre parcel from the "SU" Special Use Zone District to the "TP" Timber Production Zone District. The property is located at the north end of Harley Road about 0.7 miles west of Roberts Road, approximately one mile up Roberts Road from the intersection of Roberts Road and Love Creek Road in the San Lorenzo Valley planning area.

IT IS THEREFORE RECOMMENDED that a jurisdictional hearing be scheduled for Tuesday, October 26, 1999 at 9:00 a.m. or thereafter for your Board to consider this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Susan M. Rozario".  
Susan M. Rozario  
Chief Deputy Clerk

Recommended:

A handwritten signature in dark ink, appearing to be a stylized "S" followed by a flourish.  
\_\_\_\_\_  
County Administrative Officer

cc: Planning  
Attorney Dennis Kehoe

146.1

**I.**

**APPEAL TO THE BOARD OF SUPERVISORS AND REQUEST FOR HEARING**

**TO:** BOARD OF SUPERVISORS of Santa Cruz County;  
THE CLERK OF THE BOARD OF SUPERVISORS; and  
THE SANTA CRUZ COUNTY PLANNING DEPARTMENT, and each  
of them.

**FROM:** APPELLANTS:  
CHARLES (DAN) AALFS and REBECCA AALFS, and each of them,  
Owners of the subject parcel, APN: #079-121-12

**II.**

Send all legal notices and staff reports to:

- A. Dennis J. Kehoe, Law Corporation  
The attorney for Appellants  
3 11 Bonita Drive  
Aptos, CA 95003  
Telephone (831) 662-8444; FAX: (831) 662-0227
- B. Roy Webster, Registered Professional Forester for appellants  
512 Capitola Avenue, Suite 201  
Capitola, CA 95010

**III.**

**SUBJECT PROPERTY**

**A. Backmound:**

Mr. and Mrs. Aalfs, the appellants, are the owners of property consisting of approximately 41.6 acres located in Santa Cruz County. The Accessors Parcel Number is 079-121-12. Mr. and Mrs. Aalfs retained Roy Webster, Registered Professional Forester (RPF). An application was filed to rezone the property to Timber Production (TP). The application number is 980604. Dennis J. Kehoe, Attorney at Law represents the appellants. Roy Webster, RPF, also represents the appellants.

**Iv.**

**DECISIONS APPEALED.**

The zoning application to TP was filed and accepted by the County as complete on September 1, 1998. The initial hearing by the Planning Commission was on February 24, 1999, at which time the planning staff submitted its report and proposed findings **recommending approval of the application to rezone the property to TP (Timber Production)**. The Planning Commission continued the matter to March 24, 1999. Thereafter, the Planning Commission continued the matter, again, to May 28, 1999. Again, the Planning Commission continued the matter to August 25, 1999. On August 25, 1999, the matter was continued to September 22, 1999, because there was two-two vote with one abstention. On September 22, 1999, over the objection of the appellants through their representatives, the Planning Commission by a three-two vote denied the application to rezone the property to Timber Production. Further, the decisions, and each of them, hereinabove set forth and hereinafter set forth are, by this reference, incorporated herein by this reference. The appellants appeal each of the said decisions, including especially, (but not limited to) the **denial** of the appellants' application to rezone their property to TP by the Planning Commission (three-two vote) on September 22, 1999.

#### Iv.

#### **SOME PERTINENT FACTS.**

The following are some of the pertinent facts.

**A. Backs-wound:** As a matter of background, the application was filed in 1998. Mr. and Mrs. Aalfs are the owners of the property. The initial hearing was held by the Planning Commission on February 24, 1999, at which time the planning staff submitted its report and proposed findings recommending **approval** of the application to rezone the property to Timber Production (TP) .

**B. The Subject Property is Timberland:** The subject parcel exceeds 40 acres.

Currently, it is zoned Special Use (SU). The request is to rezone the property to TP. The property, in part, is designated Timber Resource on the Santa Cruz County General Plan Timber Resource overlay map. The entire parcel is heavily forested and **all** portions of it, both within the area designated Timber Resource and the remainder area of the parcel, significantly exceed the timberland criteria set forth in State law and the General Plan: "...capable of producing an average annual volume of wood fiber of at least 15 cubic feet per acre." General Plan, §5.12.1

Thus, the Aalfs parcel is clearly "timberland" under State and County law.

**C. The Declared State Policies Protect and Require the Productivity of Timberland Property Rights. The Aalf Property Must Be Rezoned to Timber Production:**

Timberland, including, that owned by Charles and Rebecca Aalfs, and the long-term productivity of such timberlands are protected property rights. For example:

"Inasmuch as the planned production of the trees is distinguishable from the production of other products of the soil **only** in relation to the time elapsing before maturity, the **production of trees** shall be considered a branch of the **agricultural** industry of the State for the purposes **any** law which provides for the **benefit** or **protection** of the agricultural industry of the State." (emphasis added) Food & Agricultural Code §22

In addition, the State Legislature has determined that agricultural, which includes timberlands, is an important natural resource which must be encouraged, protected, and enhanced as a matter of State mandate. For example, Statutes 1993, Chapter 812 (SB 850) provides, in part, as follows:

- "The Legislature hereby finds and declares all of the following:
- (a) Agriculture is the State's leading industry and is important to the State's economy.
  - (b) The continued **productivity** of agricultural lands in California is important in maintaining a healthy agriculture economy." (Statutory Notes, Public Resources Code §2 1095)

Although the property is not in the coastal zone, the California Coastal Act, as a further indication of State policy, specifically mandates the enhancement and protection of the productivity of timberlands.

"The long-term productivity of . . . timberlands shall be protected. " Public Resources Code §30243

Further, the declared State policy requires that timberlands, such as the property owned by Mr. and Mrs. Aalfs, be protected from any non-timberland uses and encroachments and requires the enhancement of the productivity of such timberlands.

"Government Code §51101, Legislative Findings and Declarations:

The Legislature hereby finds and declares all of the following:

- (a) The forest resources and timberlands of this State, together with the forest products industry, contribute substantially to the health and stability of the State's economy and environment by providing high quality timber, employment opportunities regional economic vitality, resource and protection, and
- (b) The State's increasing population threatens to erode the timberland base and diminish forest resource productivity through pressures to divert timberland to 'urban and other uses' and through pressures to restrict or prohibit timber operations when viewed as being in conflict with nontimberland uses.
- (c) A continued and predictable commitment of timberland, and of investment capital, for growing and harvesting of timberland are necessary to ensure the long-term productivity of the forest resource, the long-term economic viability of the forest products industry, and long-term stability of local resource-based economies. " Government Code §5 1101

The Legislature further requires that the County create a "favorable climate for long-term investment in forest resources" in order to protect the environment.

"Government Code §51102. Legislative Declarations; State Policy:

- (a) The Legislature further declares that . . .to fully realize the productive potential of the forest resources and timberlands of the State, and to provide a favorable climate for long-term investment in forest resources, it is the policy of this State to do all of the following:
  - (1) Maintain the optimum amount of the limited supply of timberland . . .to ensure its current and continued availability for the growing and harvesting of timber and compatible uses.
  - (2) Discourage premature and unnecessary conversion of timberland to urban and other uses.
  - (3) Discourage expansion of urban services into timberland.
  - (4) Encourage investment in timberland based on reasonable expectation of harvest.
- (b) The Legislature further declares that it is the policy of this State that timber operations conducted in a manner consistent with Forest Practice Rules adopted by the State Board of Forestry and Fire Protection shall not be or become restricted or prohibited due to any land use in or around the locality of those operations. " Government Code §5 1102

The Aalfs timberland parcel meets all the qualifications for timberland and, it **is** timberland. Therefore, the County must rezone the property to a Timber Production (PT) zone. Government Code §45110 The Planning Commission, the Board of Supervisors, and the County of Santa Cruz, and each of them, are required to approve this application and rezone the property to Timber Production since the Aalf's property is, indeed, timberland.

One of the comments at the Planning Commission on February 24, 1999, suggested that there was a concern the County could loose control of future harvesting to the State Board of Control should the property be rezoned to TP. Nevertheless, such a concern is **not** a basis for denying this rezoning application. Rather, this type of concern must be addressed to the State Legislature in order to seek a change in existing law.

The Legislature has created a preemption vested in the State Board of Forestry with respect to the timbering of timberlands. Public Resources Code §4516.5(d)(f) Nevertheless, the counties have direct input into the Forest Practice Rules adopted by the State Board of Forestry. Public Resources Code §§45 16.5 and 45 16.8 In addition, the County has direct input into the Timber Harvest Plan by on-site field inspections prior to the issuance of the same. Public Resources Code §§4551-4553

All proposed Timber Harvest Plans (THP) are subject to the Forest Practice Rules adopted by the State Board of Forestry. These Forest Practice Rules address environmental concerns including, but not limited to, the following.

**(1) RIPARIAN CORRIDORS - EXISTING APPLICABLE FOREST PRACTICE**

**RULES:** (14 California Code of Regulations)

**ARTICLE 4 Harvesting Practices and Erosion Control**

CCR 915.3	Protection of Natural Resources
CCR 916	Watercourse and Lake Protection
CCR 916.2	Protection of the Beneficial Uses of Water
CCR 916.3	General Limitations Near Watercourses.. .and Other Wet Areas

CCR 916.4 Watercourse and Lake Protection  
 CCR 916.5 Procedures for Determining Watercourse and Lake Protection Zone  
 (WLPZ) Widths and Protective Measures  
 CCR 916.6 Alternative Watercourse and Lake Protection  
 CCR 916.7 Reduction of Soil Loss  
 CCR 916.8 Sensitive Watersheds  
 CCR 196.10 Domestic Water Supply Protection  
 ARTICLE 11 Coastal Commission Special Treatment Areas  
 CCR 921.7 Watercourse and Lake Protection (C.C. Special Treatment)  
 CCR 921.8 Buffer Zones Within the coastal Zone (Coastal Zone)  
 CCR 921.9 Alternative (Coast, CZ)

ARTICLE 12 CCR 923 - Logging Roads and Landings  
 CCR 923.1(d) Planning for Roads and Landings (near WLPZ)  
 CCR923.1(h) Road construction to be planned to stay out of WLPZ  
 CCR 923.2(d) Road Construction (fills near WLPZ)  
 CCR 923.2(v) Road Construction in WLPZ prohibited  
 CCR 1034 Contents of Plan

FOREST PRACTICE ACT: PRC 4562.7, PRC 4582(E), prc 45892.5 and  
DEPT. OF FISH & GAME 2090 AGREEMENT also apply to WATERCOURSE  
 PROTECTION

**(2) GEOLOGICAL CONSTRAINTS CRITERIA - EXISTING**  
**APPLICABLE FOREST PRACTICE RULES:**

CCR 895.1 Definitions-Slide area, Unstable areas, Unstable soils  
 CCR921.5(b)3 Logging practices-Road restrictions near slide areas  
 CCR923.1(c) Planning for roads and landings according to slope instability  
 CCR923.2(b) Road construction measures to minimize slope instability  
 CCR 923.5 Landing Construction measures to minimize slope instability  
 CCR 923.8 Planned abandonment of Roads, Watercourse crossings, and landings  
 to minimize slope instability  
 CCR 1034 Contents of Plan  
 , CCR 1034 Map location of known unstable areas of slides

**FOREST PRACTICE ACT:** PRC 4582.75 Rules are intended to provide the  
 exclusive criteria for reviewing THPs .

**EXISTING FOREST PRACTICE RULES APPLICABLE TO EROSION**  
**CONTROL:**

CCR 9 14.6 Waterbreaks  
 CCR 916.7 Reduction of Soil Loss  
 CCR 923.4 Road maintenance  
 CCR 923.6 Conduct of Operations on Roads and Landings  
 CCR 923.8 Planned Abandonment of roads, Watercourses crossings, and landings  
 CCR 926.19 Erosion Control Maintenance

**(3) ROADS/LOG HAULING - EXISTING APPLICABLE FOREST PRACTICE RULES:**

CCR 923 Logging Roads and Landings  
CCR 923.1 Planning for Roads and Landings  
CCR 923.2 Road Construction  
CCR 923.3 Watercourse Crossings  
CCR 923.4 Road Maintenance  
CCR 923.6 Conduct of Operations on Roads and Landings  
CCR 923.7 Licensed Timber Operator Responsibility for Roads and Landings  
CCR 923.8 Planned Abandonment of roads, Watercourse Crossings, and Landings  
CCR 926.15 Road Construction  
CCR 926.17 Abandonment of Roads and Landings (Santa Cruz County)  
CCR 1034 Contents of Plan  
CCR 926.10 Log Hauling  
CCR 926.11 Flagging  
CCR 926.13 Performance Bonding  
CCR 926.23 Contents of Plan

**(4) FOREST PRACTICE ACT:** PRC 4527 Timber Operations - "Timber Operations means the cutting or removal of both timber . . .from timberlands . . .together with all the work incidental thereto, including, but not limited to, construction and maintenance of roads, . . .stream crossings, landings, skid trails . . .and site preparation . . ."

Thus, this timberland property owned by Charles and Rebecca Aalfs and its productivity, are property protected under both the state and federal Constitutions and by declared State mandate.

**D. The General Plan Requires Rezoning to Timber Production:**

**(1) Criteria Met:** The General Plan requires rezoning to Timber Production. Among other items, all portions of the subject property are growing significant timber resources. The same greatly exceeds the required timber growth specified in the General Plan, §5.12.1. Moreover, the County registered professional forester also determined that the subject parcel meets this criteria.

"The Timber Management Plan for this property meets the minimum standards for TMPs in Santa Cruz County. The lands included in this application also meet the minimum timber growth of 15 cubic feet per acre per year to qualify as timberland. (Memorandum from County RPF to Cathleen Carr, planning; staff.. October 13, 1998.)



In addition, General Plan §5.12.9 encourages timberland owners, such as Charles and Rebecca Aalfs, to apply for Timber Production zoning.

The two key criteria triggering the requirement to rezone timberland to a Timber Production (TP) is (1) the Timber Management Plan (TMP) must conform with the Santa Cruz County Timber Management Plan Requirements, which this does, and (2) the parcel must meet the timber stockings standards of the State Public Resources Code with an average annual volume of 15 cubic feet of per acres of wood fiber, which this does. Thus, the Aalfs parcel meets all required criteria and, in particular, the two key criteria mentioned above. See also correspondence in the Administrative Record from Webster & Associates. Consequently, the State law as well as County law require that the Aalfs parcel be rezoned to Timber Production (TP).

**(2) Outdated Overlay Is Map Not Parcel Specific:** There is a County Timber Resource Overlay Map and the subject parcel is included, in part, within this overlay. Moreover, the remainder of the parcel is heavily forested and significantly exceeds the average annual volume of 15 cubic feet per acre of wood fiber. Thus, rezoning this property to Timber Production clearly complies with both the State law and mandated policies and the County General Plan.

In addition, the General Plan specifically states:

“The General Plan and LCP Land Use Maps included in this section are diagrammatic in nature and are intended to express relationships rather than parcel specific detail. . . .” pg. 2-56

Furthermore, the Santa Cruz County Planning staff personnel in the Geographic Information System (GIS) division has confirmed that the Timber Resource Overlay Map is based on an earlier general information document entitled the Parks, Recreation, and Open Space Plan (PROS) dated 1974. The PROS plan was just for general information and it was **not** intended

to be parcel specific in detail. Moreover, according to the person handling the Geographic Information System (GIS) in the Planning Department, the existing Timber Resource Overlay Map is merely a digitalization of the original general mapping in the 1974 PROS plan with respect to Timber Resources. Consequently, the only meaningful criteria is the timber stocking standard of an average annual volume of wood fiber of at least 15 cubic feet per acre. The entire Aalfs parcel and all portions thereof significantly exceed this State and County timber stocking standard. Thus, the Aalfs parcel is timberland within the meaning of both State and County law and must be zoned, accordingly, to Timber Production (TP). In addition, the General Plan, as well as the Timberland Productivity Act, provides that any timber resource map, may be updated by rezoning property to TP zone district. Parcel specific overlay information may be submitted by a Registered Professional Forester demonstrating that the land is capable, growing an average annual volume of 15 cubic feet of wood per acre. The Aalf property more than meets this standard.

**E. Planning: Commission Findings In Error:**

**(1) Original Staff Report Findings For Approval dated February 24, 1999, Confirmed That All Findings For Approval Exist And The Rezoning to TP Must Be Made:**

The initial staff report--recommended rezoning of the Aalfs parcel to Timber Production (TP) for good reason, namely--it is timberland and complies with the State and County standard:

**"Conclusion**

All of the criteria have been met for rezoning this parcel to the Timber Production zoning designation. All required findings can be made to approve this application and the rezoning is consistent with the General Plan policies and land use designations . . . .

**Recommendation**

Staff recommends that your Commission adopt the attached Resolution (Exhibit H) sending a recommendation to the Board of Supervisors for approval of Application No. 98-0604.. . " (pg. 4)

In addition, the planning staff pointed out that a nearby parcel of timberland was harvested within the last several years and that the visible affect is “imperceptible.” (pg. 3)

(2) **Contrary To The Facts and The Law, The Planning’s Denial of The Rezone Application Is In Error:** Staff was directed by some of the Commissioners to make contrary findings, **unsupported** by the facts and the law. In view of the facts of this case, the State mandated policies with respect to timberlands, and the appellants’ compliance with both State and County standards for timberlands, the Commission’s attempt to reverse staff’s earlier statement of facts and findings is **not** supported by any substantial evidence; the Commission’s denial is inherently unfair to the landowner; and it is contrary to law. Purported “findings” may change; however, the facts do not. The only facts before the Commission not only support but also demand this rezoning to Timber Production. Our United States Supreme Court has clearly stated that the now Commission “findings” based on craftful verbiage carry absolutely **no** weight in a court of law. Lucas v. South Carolina Coastal Commission (1992) 120 L.Ed.2nd 798 (Findings by the Coastal Commission based on craftful staff verbiage were stricken by the United States Supreme Court, which determined that the landowner had a right to damages against the public agency for inverse condemnation.)

(a) Staff, under pressure, were forced to make later some contrary findings (unsupported by any facts). The original staff Finding 1, determined that the rezoning is, indeed, consistent with the General Plan, since it is. The later, pressured staff report incorrectly states that the “. . .use allowed as a result of the rezoning of the parcel will not conform with the General Plan, as nearly all of the parcel lies outside of the Timber Resource designation.” Initially, the criteria is **not** the out-dated, generalized Timber Resource Map but, rather, the State and County timber stocking standards requiring an average annual volume of 15 cubic feet per acre of wood fiber. Here, **all** portions of the Aalfs parcel, both within the Timber Resource

designation and outside, substantially exceed the timber to these stocking standards. The trees are still there, whether the out-dated County Timber Resource Map so indicates and whether the Commission chooses so to acknowledge the same. Please also refer to the correspondence of Webster & Associates including the color photographs attached thereto to the Administrative Record. Also, the Timber Resource Map is **not** parcel specific. This is acknowledged in the General Plan and even the County's own rezoning application.

(b) In the later pressured findings further states, erroneously, "... the parcel is highly visible from a designated scenic road, Highway 9, and the timber harvest of the property would have significant adverse impacts on this resource." Initially, if the County wishes to acquire "view easements," both the federal and state Constitutions require the County to pay just compensation therefor to the landowners, Charles and Rebecca Aalfs. Second, most of Santa Cruz County is mountainous in nature and, therefore, significant portions of this County can be viewed from various roads. Significant residential, commercial, and industrial development has already been permitted by the County in such pseudo-viewshed areas. The Planning Commission discriminates against timberlands and is diametrically contrary to the State Legislature and its declared public policies to protect, enhance, and preserve timberlands and the productivity of the same. Moreover, the federal and state Constitutions require equal protection, due process, and the payment of just compensation for the taking or damaging of private property.

Also, there will be **no** interference with any view in that only selective harvesting in accordance with good environmental forestry practices are allowed by the State Board of Forestry. This promotes the growth of the forest resources. Further, due to dense tree growth along Highway 9, there is almost no view of the Aalf's property from Highway 9. The nearby timber harvested property, which is highly visible from Highway 9, generate no impacted on the

viewshed. Staff used the word “imperceptible”. (pg. 3, February 24, 1999, staff report)

Those opposed to timbering and the protection of timberland always conjure up the denuded mountains and hills that occurred generations ago in the 40s and 50s. This is not the nature of timbering either suggested by Mr. and Mrs. Aalfs or permitted by the State Board of Forestry. Please refer to the State Forest Practice Rules, some of which are outlined above.

(c) Next, the later pressured Planning Commission “finding” states, erroneously, “the proposed rezoning will not afford the highest level of protection of this public vista, contrary to the General Plan, since the cable/skyline logging will require clear-cutting corridors on the steep slope. ” Staff is using the inflammatory phrase, “clear-cutting”; however, this just does **not** occur any longer. Furthermore, this is **not** a “public vista” unless the County chooses to file eminent domain proceedings for the acquisition of a public open space easement. Selective harvesting will enhance the growth of the forest and the environmental effects of the same will be beneficial not only to this property but to surrounding properties. Please refer to the correspondence of Webster & Associates.

(d) Next, the later pressured “findings,” erroneously, assert that “. . . all logging operations are outside of the control and jurisdiction of the County of Santa Cruz. Therefore, the County cannot ensure that future logging will be conducted in a manner which will not detrimentally affect the scenic value of the subject property. ” Initially, if the County **wants to** acquire the “scenic value of the subject property, ” it will have to pay for it pursuant to the state and federal Constitutions. Second, the logging operations are **not** outside of the control of the County of Santa Cruz. The Forest Practice Act specifically requires that County representatives view the site in the coordination with State officials and review any purported Timber Harvest Plan. Moreover, the County of Santa Cruz, as well as other counties, can make recommendations for and to the Forest Practice Rules. Last, there is a disagreement with the

preemption of the State Board of Forestry with respect to timbering, the proper manner is to contact the Legislature and request a change of the law and **not** by taking it out on owners of timberland such as Charles and Rebecca Aalfs.

(e) A later pressured and erroneous finding 3 attempts to change direction as compared with the correct findings proposed by staff on February 24, 1999, to the Planning Commission. Nevertheless, the County registered professional forester, as well as Roy Webster, RPF, has confirmed to staff and the Planning Commission that this parcel meets the timber stocking standards of the State and the County. The photographs of Webster & Associates also confirm the same. Moreover, your staff has confirmed that the submitted Timber Management Plan conforms with the Santa Cruz County Timber Management Plan requirements. Furthermore, the only prior use of this property was for timberland after the turn of the century. In the meantime this agricultural product, timber, has been growing and needs to be selectively harvested in order to comply with State mandated policies requiring the productivity enhancement of timberland. The trees have always been there; the trees are an agricultural product; and Charles and Rebecca Aalfs have a right to selectively harvest their agricultural product. Food & Agricultural Code §22

(f) All the purported Commission “findings” are **not** supported by any substantial evidence. Those “findings” do **not** support a denial of this application. Rather, State mandated policies and the federal and state Constitutions require that this application be approved. The law, facts, and common sense require that this property be rezoned to Timber Production since it is, indeed, timberland as confirmed by the registered professional forester, Roy Webster.

**F. Grounds for appeal:** The grounds for this appeal to Board of Supervisors from the decisions of the Planning Commission including the denial by a 3-2 vote on September 22,

1999, of the application to rezone the Aalf's property to TP as hereinabove set forth include, but are not necessarily limited to, the following, and each of them:

1. Error.
2. Error is a matter of law.
3. Abuse of discretion
4. Lack of a fair and impartial hearing.
5. Each decision is not supported by any substantial evidence.
6. Each decision is not supported by findings.
7. Any so-called findings for each decision are not supported by any substantial evidence.
8. Each decision appealed from is not supported by the facts presented and considered at the time the decision appealed from was made.
9. There was error, abuse of discretion, and other factors which renders each determination unjustified and inappropriate, and each of them, to the extent that a further hearing before the Board of Supervisors is necessary.
10. The Planning Commission and the staff, and each of them, acted unreasonably, arbitrarily, inappropriately, abused its discretion, made error, decided contrary to law, and each of the foregoing.
11. The Planning Commission and its determinations, decisions, findings and denials of the application violated, the following:

The Federal and State constitutional rights of the appellants including, but not limited to, the right to just compensation for the taking and damaging, and each of them, of private property; the denial of equal protection; denied the appellants' rights to procedural due process; denied the substantive due process rights of the appellants; impaired the contractual rights and obligations of the appellants; and violated other constitutional rights guaranteed to the appellants by the Federal and State Constitutions, and each of them, Moreover, the rights guaranteed to the appellants under the Federal Civil Rights Act, 42 U.S.C. Section 1983, et seq., have been violated thereby.

12. There is significant new information relevant to the decision which could not have been presented at the time the appeal of the decision was made.

13. The decisions of the Planning Commission create legal impossibilities unenforceable in law and in equity, and each of them.
14. The conduct and decisions of the Planning Commission, and each of them, deprive, unreasonably and unlawfully, the appellants of all viable economic use of their property.
15. The decisions of the Planning Commission from which this appeal is taken do not substantially advance any legitimate public interest.
16. The Planning Commission prejudicially abused its discretion. The decision is not supported by findings. Any purported findings are not supported by substantial evidence.
17. The Planning Commission proceeded without and in excess, and each of them, of its jurisdiction.
18. There was not a fair hearing.
19. The Planning Commission did not proceed in accordance with law applicable to this matter.
20. Any purported findings or determinations of the Planning Commission are merely makeshift attempts to shore up its unreasonable, illegal, and abusive decisions including the Planning Commission's denial of this rezoning application made on September 22, 1999. These "makeshift" findings are illegal and not supported by substantial evidence or the law. See also Lucas v. South Carolina Coastal Council (1992) supra
21. The subject parcel, now known as APN 079- 121- 12, and has the right to be timber harvested under the SU zone and, also, must be rezoned to TP, and each of them. The County Planning Commission and the Board of Supervisors are estopped and prevented, and each of them, from determining otherwise. Furthermore, the Special Use zone (SU) does permit timber harvesting now that prior interim ordinances have expired. Thus, the County, the Planning Commission, and the Board of Supervisors shall permit timber harvesting on the subject property and the interpretation by the Planning Commission, inter alia, that SU does not permit timber harvesting is in error, both factually and legally, and each of them.

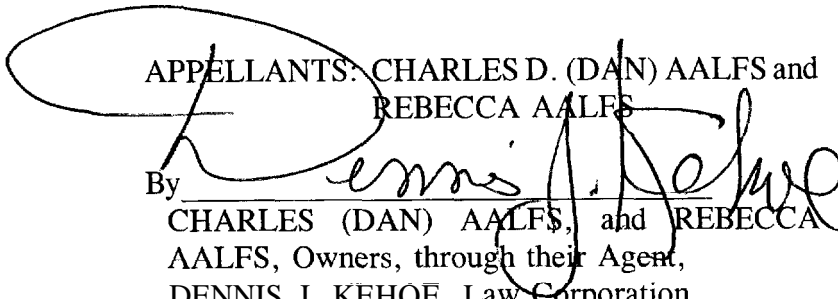


22. The application to rezone to TP is deemed approved by operation of law for failure to act within the required time limit.
23. The decisions, and each of them, from which this appeal is taken, violate State law including, but not limited to, the Timber Productivity Act and the Timber Practice Act, and each of them.
24. Pursuant to the County Code and, also, Government Code §§65856(a) the Board of Supervisors "shall" grant a hearing to the appellants and appellants hereby specifically request a hearing pursuant to said Government Code §§65856(a).

DATED: September 29, 1999

APPELLANTS: CHARLES D. (DAN) AALFS and  
REBECCA AALFS

By

  
CHARLES (DAN) AALFS, and REBECCA  
AALFS, Owners, through their Agent,  
DENNIS J. KEHOE, Law Corporation  
who is authorized by them to sign this appeal.