



# County of Santa Cruz

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## PLANNING DEPARTMENT

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ALVIN D. JAMES, DIRECTOR

**Agenda Date: October 26, 1999**

October 8, 1999

Board of Supervisors  
County of Santa Cruz  
701 Ocean Street  
Santa Cruz, CA 95060

Subject: Jurisdictional hearing to consider the Planning Commission's decision to deny rezoning application 98-0604, a proposal to rezone Assessor's Parcel 079- 121-12 from the Special Use ("SU") zone district to the Timber Production ("TP") zone district. The property is located on the northwest side of Roberts Road (beyond the Harley Road sign), about 1 mile up Roberts Road from the intersection of Roberts and Love Creek Roads, Ben Lomond.

Members of the Board:

On September 22, 1999, the Planning Commission held a public hearing to consider Application 98-0604, a proposal to rezone the above-referenced parcel to Timber Production. The Planning Commission denied this application, which was appealed to your Board by Dennis Kehoe, attorney for Charles and Rebecca Aalfs on September 29, 1999 (see Attachment 1). The matter is now before your Board to consider whether or not to take jurisdiction of the appeal pursuant to Section 18.10.340 of the County Code.

## BACKGROUND

On September 1, 1998, the Aalfs applied to rezone the subject parcel from the Special Use (SU) zone district to Timber Production (TP). Application No. 98-0604 was heard by the Planning Commission on February 24, 1999 as Item H-7. After the close of the public hearing, the Planning Commission continued this item and directed staff to return on the March 24<sup>th</sup> Planning Commission agenda with findings for denial, due to visual impacts which would result from timber harvesting on this steep property. This application was placed on the consent agenda for the March 24<sup>th</sup> Planning Commission meeting. At the March 24<sup>th</sup> meeting, Roy Webster and Dennis Kehoe, Professional Forester and Legal Counsel for the property owners, wished to address the Commission regarding this application. Since this was scheduled as a consent item and their comments extensive, the Planning Commission continued this item to May 26<sup>th</sup> in order to reopen the public hearing, directing staff to re-notice this hearing. Due to unanticipated circumstances, staff requested deferral of this hearing date from May 26<sup>th</sup> to August 25<sup>th</sup>. At the August 25<sup>th</sup> Planning Commission, a majority vote could not

be attained and the item was continued to September 22. On September 22, 1999, the Planning Commission denied application 98-0604 without prejudice.

The proposed project is statutorily exempt from CEQA under Article 17, Section 1703. The project proposes rezoning a 41.6 acre parcel for timber production. The subject parcel is characterized by a ridge line running north-south along the eastern property line while the majority of the property lies along the western flank of the ridge. The property slopes abruptly down and is extremely steep (60% to vertical). The San Lorenzo River is located off of the property at the bottom of the slope. Cable logging would be required to harvest timber on this parcel due to its steepness. Cable harvesting requires narrow corridors be clear cut up the slope to allow logs to be transported up to the ridge top via cables. Cable corridor widths may vary from 15 to over 50 feet in width, with wider areas where some corridors may converge at the tower. The parcel is zoned SU, only a small, currently inaccessible corner of the property is located within a mapped Timber Resource. Therefore, under current zoning ordinances, the property cannot be timber harvested. Due to the steepness of the slopes and the parcel configuration, about 1/3 of the property is accessible for timber harvesting.

The property is highly visible from Highway 9, which is a designated Scenic Road in the County's 1994 General Plan (Exhibit C). The County's General Plan policy 5.10.3 on Visual Resources states that significant public vistas shall be protected "by minimizing disruption of land form and aesthetic character caused by grading operations, **timber harvests**, utility wires and poles, signs, inappropriate landscaping and structure design" (emphasis added). Moreover, policy 5.10.10 Designation of Scenic Roads states "(t)he following roads and highways are valued for their vistas. The public vistas from these roads shall be afforded the highest level of protection". Due to the steepness of the slope and the visibility of the entire parcel, timber harvesting on this property could have a significant detrimental affect on its visual aesthetics, as viewed from Highway 9, and thus be inconsistent with the General Plan.

#### JURISDICTIONAL CRITERIA

County Code Section 18.10.340 specifies that your Board may take jurisdiction of an appeal if it finds that any of the following criteria are met:

1. There was an error or abuse of discretion of the part of the Commission, Zoning Administrator, or other officer; or
2. There was a lack of a fair and impartial hearing; or
3. That the decision appealed from is not supported by the facts presented and considered at the time the decision appealed from was made; or
4. There is new evidence relevant to the decision which could not have been presented at the time the decision appealed from was made; or

5. There is either error, abuse of discretion, or some other factor which renders the act done or determination made unjustified or inappropriate to the extent that further hearing before the Board is necessary.

The jurisdictional process places the burden of proof on the appellant to convince your Board to take jurisdiction by demonstrating that one or more of the jurisdictional criteria have been met. As your Board is aware, the criteria are narrow in scope. Our report and analysis is necessarily limited to the appellant's letter. Your Board should consider this material, plus any testimony given by the appellants at the jurisdictional hearing in reaching your decision. Should your Board decide to take jurisdiction of the appeal, you may either (1) Grant a review limited to the administrative record; or (2) Rehear the entire matter de novo. Your Board may also choose to deny taking jurisdiction, but act to refer the matter back to the Planning Commission for their reconsideration.

#### ANALYSIS AND DISCUSSION OF APPEAL ISSUES

The letter of appeal sets forth specific reasons that the appellant believe constitute grounds for your Board taking jurisdiction of this matter. In general, the appellant contends that there was an error or abuse of discretion and an absence of supporting evidence at the Planning Commission level (See Attachment 1). Addressing the appellant's issues in order:

Issues related to State Law: The appellant contends State Government Code requires that a parcel be rezoned to Timber Production if the criteria for this rezoning are met. Nevertheless, State Statutes also require that the zoning ordinances be consistent with the County's adopted General Plan and, furthermore, that the County is required to find that any rezoning is consistent with these General Plan policies. Therefore, the Planning Commission was operating within its discretion and authority in determining the proposed rezoning's consistency with the County's General Plan.

General Plan Visual Issues: Nearly all of the parcel is visible from locations along Highway 9, a designated scenic road. As stated previously, County General Plan policies require that visual resources and vistas from designated scenic roads shall be afforded the highest level of protection from development activities, specifically including timber harvesting, which could have an adverse impact. Your Board has identified the need to carefully evaluate the potential for visual impacts resulting from Timber Production rezonings. This was clearly demonstrated when your Board remanded Application 98-0461, a proposal to rezone a property adjacent to Highway 17 (another designated scenic road) to Timber Production, back to the Planning Commission to determine its consistency with the General Plan's visual policies. The first report to the Planning Commission for the subject application (see Attachment 3, Exhibit G) did not fully address visual issues and policies. The Planning Commission did, however, consider visual impacts at the first hearing and directed staff to prepare new findings for denial (Attachment 3).

The previously harvested parcel referred to in the original staff report (APN 077-011-04)

which is also located in the Highway 9 view shed is not strictly analogous to APN 079-121-12. The terrain of APN 077-01 1-04 differs significantly from the subject parcel. Parcel 077-01 1-04 is not nearly as steeply sloped as the subject parcel. In addition, there is a difference in elevation between the respective ridge lines of these parcels of 320' to 400' with the Aalfs property being the higher, more visible parcel. Parcel 077-01 1-04 was harvested in 1995. While the cable corridors are no longer visible, these corridors were visible for several years after the harvest.

The facts remain that the property is visible from Highway 9, a designated scenic road and that rezoning this parcel to Timber Production will not afford the visual aesthetics of the property the highest level of protection.

Timberland Issues: The appellant contends that the subject parcel is timberland. The parcel does meet the criteria of being capable of producing a volume of 15 cubic feet of wood fiber per acre per year, which is true of virtually any property containing redwood trees in Santa Cruz County. State Government Code 51104(f) defines "Timberland" as land "which is devoted to and used for growing and harvesting timber and compatible uses, and which is capable of growing an average annual volume of at least 15 cubic feet of wood fiber per acre." The capability of wood production for this property is not in question. The forester contends in the Timber Management Plan (see page 67 of Attachment 3, Exhibit G) that this property was clear cut some time at the turn of the century. The ridge top was certainly cut at that time, but due to the extreme steepness of the rest of the property it may not have been cut. Staff identified trees which appeared to be old growth, however, this could not be fully evaluated due to the inaccessibility. Nevertheless, this property has not been harvested at any time in the last 100 years. Thus, this property has not been devoted to the harvesting and growing of timber, and the rezoning is not necessary to allow a continuation of a timber harvesting use.

Timber Resources Overlay Mans: The Timber Resources Overlays were not intended to be parcel specific. While staffs analysis indicated that only a portion of the subject parcel was within a mapped timber resource, the decision and findings to deny this rezoning application were not based upon this information.

Taking Issues: The appellant claims that in denying application 98-0604 to rezone APN 079-121-12, the Planning Commission has denied the Aalfs of all viable economic use of their property and thereby has affected a "Taking". The Planning Commission has not denied the Aalfs all economic uses of their property. Under its current zoning designation "Special Use" (SU), the Aalfs may construct a single family dwelling and appurtenant structures, and any other uses that are consistent with the General Plan and allowed by the Zoning ordinance. In fact, parcel 079-371-01 (1205 Roberts Road), which borders the subject parcel along their north and south property lines respectively, is similar to the subject parcel in topography. APN 079-371-01 is approximately 20 acres in size, and a single family dwelling was constructed on this parcel in 1993. As the characteristics of these parcels are very similar, it follows that development of a single family dwelling is a viable, economic use which remains available to the Aalfs. In fact, the Timber Management Plan identifies a potential future home

site on one of the proposed timber landings. The denial of the rezoning does not preclude a future residential use.

Significant New Information: No significant new information has been submitted which was not presented at the time of the decision.

Public Interest: The appellant states that the decision of the Planning Commission does not substantially advance any legitimate public interest. Wooded forest and mountain hillside views are highly valued by the County's residents and its visitors. Moreover, tourism is important to the County's and State's economies. Tourists to the San Lorenzo Valley are attracted by the redwoods and forested mountainsides. Highway 9 is the thoroughfare by which both tourists and residents travel. The preservation of scenic vistas and the County's visual aesthetics along Highway 9 is a legitimate public interest.

Right to Harvest under SU Zoning: While the interim ordinances have expired, your Board has determined that the zoning regulations do not allow timber harvesting in the SU zone district unless it is consistent with the General Plan. A given SU parcel is determined to be consistent with the General Plan if the lands are located within a mapped Timber Resource. As these maps are not necessarily parcel specific, your Board set forth a procedure and criteria for determining consistency with the General Plan policies for timber harvesting. As this determination has not been applied for nor made, the property cannot be timber harvested under its current zoning designation.

Failure to Act Within the Required Time Limit: Rezoning is a Legislative action and is therefore exempt from the Permit Streamlining Act.

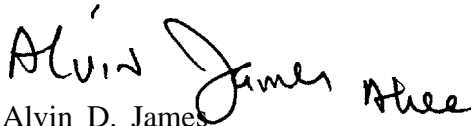
Lack of Fair Hearing: The applicant and appellant both had ample opportunities to present their information at several noticed public hearings. This application was removed from the consent agenda and rescheduled, specifically to allow all parties sufficient time to present their respective evidence.

## CONCLUSION AND RECOMMENDATION

The Planning Commission considered all relevant comments, ordinances and General Plan policies and based their denial of the proposed rezoning based on the findings that the proposed rezoning is inconsistent with the General Plan. The decision to deny the project is justified and supported by the facts presented for consideration and found in the administrative record.

It is therefore, RECOMMENDED, that your Board not take jurisdiction of this appeal of the denial of Application 98-0604, a proposal to rezone APN 079-121-12 to Timber Production, based on the fact that the appellant has not established sufficient grounds for the Board to take jurisdiction for further review.

Sincerely,



Alvin D. James  
Planning Director

RECOMMENDED:



SUSAN A. MAURIELLO  
County Administrative Officer

cc: Dennis Kehoe, 311 Bonita Drive, Aptos, CA 95003  
Roy Webster, Webster and Assoc. 512 Capitola Ave. Suite 201, Capitola CA 95010

Attachments:

1. Letter of Appeal by Dennis J. Kehoe, dated September 29, 1999
2. Correspondence Received on September 22, 1999
3. Planning Commission Staff Report of August 25 and September 22, 1999
4. Planning Commission Minutes of September 22, 1999
5. Planning Commission Minutes of August 25, 1999
6. Location Map
7. Mailing List