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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

BIG CREEK LUMBER CO. et al., Plaintiffs and Appellants, v. COUNTY OF SANTA CRUZ et al., Defendants and Appellants.	H023778 (Santa Cruz County Super.Ct.Nos CV134816, CV137992

In this case, we are called upon to analyze the interplay among various state statutes that affect timber harvesting and to determine the impact of those statutes on local government's power to regulate land use.

The relevant statutes are the California Timberland Productivity Act of 1982 (Timberland Productivity Act or TPA),[1] the Z'berg-Nejedly Forest Practice Act of 1973 (Forest Practice Act or FPA),[2] the California Coastal Act of 1976 (Coastal Act),[3] and the Planning and Zoning Law (State Zoning Law).[4]

The challenged local legislation includes several resolutions and ordinances adopted by Santa Cruz County in the late 1990s. Also at issue is a decision by the

[1] Government Code section 51100 et seq.

[2] Public Resources Code section 4511 et seq.

[3] Public Resources Code section 30000 et seq.

[4] Government Code section 65000 et seq.

California Coastal Commission certifying one of those measures as an amendment to the county's local coastal program.

By separate legal actions that were later consolidated, parties representing forestry interests attacked the actions of the County and the Coastal Commission, asserting preemption and other grounds. The preemption issues were bifurcated and heard first. Following that hearing, the trial court concluded that the two state forestry statutes preempted most but not all of the challenged provisions of the ordinances. The court entered judgment accordingly. On appeal, each party continues to press its preemption and statutory construction arguments.

With respect to the justiciable issues presented here, we conclude that the challenged local measures are invalid in their entirety.[5]

BACKGROUND

I. The Parties

Plaintiffs: The first parties to appeal the trial court's decision were the petitioners below (collectively referred to in this opinion as "plaintiffs"). Plaintiffs are Big Creek Lumber Company and Homer T. McCrary (collectively, Big Creek), and the Central Coast Forest Association (CCFA), a nonprofit association representing forest landowners and forestry professionals in Santa Cruz County. Plaintiffs contend that state law preempts the challenged ordinances in their entirety.

Defendants: An appeal also was taken by the respondents below (collectively referred to in this opinion as "defendants"). Defendants are the County of Santa Cruz, its

[5] In finding that certain zoning aspects of some of the challenged local measures are expressly preempted by the Forest Practice Act, we respectfully disagree with *Big Creek Lumber Co. v. County of San Mateo* (1995) 31 Cal.App.4th 418 (*Big Creek v. San Mateo*). In *Big Creek v. San Mateo,* the First District Court of Appeal rejected a similar preemption argument, based on its interpretation of the FPA and the TPA. (*Id.* at pp. 424-427.) As we explain below, we have a different view of the proper construction of the relevant statutory provisions.

Board of Supervisors, and its Planning Department (collectively, the County), and the California Coastal Commission (the Commission or Coastal Commission). Both in response to plaintiffs' appeal and in their own appeal, defendants argue that state law does not preempt any of the ordinances in whole or in part. Defendant Coastal Commission also asserts the validity of its certification action.

Amici Curiae: Appearing as *amici curiae* are the Forest Landowners of California, the California Forestry Association, the California Farm Bureau Federation, and the California Cattlemen's Association. *Amici* support plaintiffs' view that the Forest Practice Act preempts the challenged local ordinances.

II. Actions by the County and the Coastal Commission

In February 1998, the County's Timber Technical Advisory Committee recommended that the County consider additional timber regulations. The Committee suggested two available avenues: (1) the advisory route—submitting proposed forest practice rules to the State Board of Forestry and Fire Protection (State Forestry Board); (2) the direct route—amending the County's zoning ordinance and General Plan/Local Coastal Program (LCP). The County explored both avenues.

First, the County proposed forest practice rules to the State Forestry Board, as permitted by Forest Practice Act.[6] In early November 1998, the State Forestry Board accepted some but not all of the County's proposed rules. Among the rejected proposals were a riparian "no-cut" corridor and limits on helicopter logging operations.

In late November 1998, the County proceeded by the direct route, approving "in concept" certain General Plan/LCP amendments. Among other things, the conceptually approved amendments addressed riparian buffers and helicopter operations. At the same time, the County also adopted an interim ordinance, Ordinance 4529, which banned timber harvesting within designated riparian corridors.

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[6] See Public Resources Code section 4516.5, subdivision (a).

Thereafter, the County revisited the advisory route. It made minor modifications to its previously rejected proposals and resubmitted them to the State Forestry Board in 1999, in the hope that the political winds had changed. That attempt was unavailing. In September 1999, the State Forestry Board denied the County's 1999 proposed rule package in its entirety.

Two months later, in November 1999, the County adopted two ordinances affecting timber harvesting. The first, Ordinance 4571, prohibits timber harvesting within specified riparian corridors. (It replaced Ordinance 4529, the interim riparian corridor ordinance enacted the previous year, which was due to expire at the end of 1999.) Ordinance 4571 requires a 50-foot buffer from a perennial stream and a 30-foot buffer from an intermittent stream. The second measure, Ordinance 4572, limits the areas where helicopter operations may occur. That ordinance restricts helicopter "staging and loading activities" and "service areas" to (1) the parcel from which timber is being harvested or a contiguous parcel; (2) parcels whose zoning permits timber harvesting; and (3) property within the boundaries of an approved timber harvest plan (THP). Neither the riparian nor the helicopter ordinance applies inside the coastal zone.[7]

In December 1999, the County adopted two additional sets of measures affecting timber harvesting.[8] One set included Resolution 493-99 and Ordinance 4577, which

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[7] The coastal zone is statutorily defined as that area of land and water "extending seaward to the state's outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea." (Pub. Resources Code, § 30103, subd. (a).) In some areas, the inland boundary of the coastal zone may vary from the 1,000-yard standard. (*Id.,* subd. (b).)

[8] The County's measures included both resolutions and ordinances.

"Strictly speaking, there is a difference between the two." (45 Cal.Jur.3d (Rev.) (2000) Part 2, Municipalities, § 309, p. 11, fn. omitted.) "An ordinance is the equivalent of a municipal statute . . . ." (*Ibid.*) " 'Resolution' denotes something less formal." (*Id.* at p. 12.)

amend the County's General Plan/LCP and its zoning code. The effect of those measures is to limit timber harvesting to properties, whether inside or outside the coastal zone, that are zoned either Timber Production (TP) or Mineral Extraction Industrial (M-3), and to properties outside the coastal zone that are zoned Parks, Recreation and Open Space (PR). The other set of measures comprised Resolution 494-99 and Ordinance 4578. If effective, those measures would have added the Commercial Agricultural (CA) zone as a fourth zone where timber harvesting is a permitted use. In addition, the ordinance would have extended the helicopter and riparian restrictions to the coastal zone. The ordinance also would have imposed new design standards for private roads. According to the County, however, Resolution 494-99 and Ordinance 4578 were subsequently withdrawn because the Coastal Commission did not take final action on them, and they are not effective.

The County forwarded Resolution 493-99 and Ordinance 4577 to the Coastal Commission. Those measures had evolved from the earlier General Plan/LCP amendments conceptually approved in November 1998. In 1999, the Coastal Commission had rejected the conceptually approved amendments, returning them to the County with proposed modifications. As relevant here, the proposed modifications affected timber production zoning within the coastal zone. The first suggested modification imposed certain limitations on applications for timber production zoning within the coastal zone. The second proposed modification mandated that applications for rezoning to TP within the coastal zone be processed as LCP amendments. The County incorporated those modifications into Resolution 493-99 and Ordinance 4577.

By both statute and regulation, local governments must submit proposed local coastal plans to the Coastal Commission by resolution. (Pub. Resources Code, § 30510, subd. (a); Cal. Code Regs., tit. 14, § 13518, subd. (a).)

In February 2000, the Coastal Commission certified Resolution 493-99 and Ordinance 4577 as part of Major Amendment 3-98 to the County's General Plan/LCP.

III. Proceedings in the Trial Court

In December 1998, Big Creek filed a petition for a writ of mandate and for declaratory and other relief against the County. Big Creek's action challenged Ordinance 4529, the interim riparian corridor ordinance, as well as the General Plan/LCP amendments that were conceptually approved in November 1998. Big Creek asserted causes of action based on the California Environmental Quality Act (CEQA) and on the doctrine of preemption.

In March 2000, CCFA petitioned for a writ of mandate against the County and the Coastal Commission, seeking to set aside Ordinances 4571, 4572, 4577, and 4578, as well as the Commission's certification. CCFA asserted CEQA and preemption grounds for its petition. At the same time, Big Creek amended its petition, naming the Coastal Commission and adding allegations related to actions taken since 1998 both by that body and by the County.

Based on the parties' stipulations, the court consolidated the plaintiffs' actions. Later, again by stipulation, the court bifurcated the preemption claims and ordered them to be tried first.

In December 2000, the court conducted a hearing on the preemption issues. Prior to the hearing, the parties submitted substantial briefing. At the hearing, Big Creek offered in evidence three administrative records—two from proceedings before the County and one from proceedings before the Coastal Commission. The court then entertained extensive oral argument from all parties.

Big Creek and CCFA argued that the County's riparian and helicopter regulations violate the TPA. They further argued that the County's zone district regulations violate the FPA. As to that point, Big Creek and CCFA contended that the County was attempting to regulate the conduct of timber operations—a field preempted by state

law—under the guise of "locational" zoning ordinances. Big Creek and CCFA further urged that the Coastal Commission's certification of the County's LCP amendment illegally imposed additional zoning criteria for TPZ lands, in violation of the TPA.

For its part, the County asserted that local government retains its traditional zoning power notwithstanding the existence of a comprehensive state regulatory scheme governing the conduct of timber operations. In support of that argument, the County cited *Big Creek v. San Mateo*. In that case, the First District Court of Appeal held that the FPA preempts local ordinances only to the extent that they attempt to regulate *how*—not *where*—timber operations may be conducted. (*Big Creek v. San Mateo, supra,* 31 Cal.App.4th at pp. 421-422.) The County characterized its helicopter ordinances as valid location regulations. The County also argued that its riparian corridor ordinances were proper zoning regulations, even inside timber production zones, since watershed protection qualifies as a compatible use under the TPA.

The Coastal Commission concurred in the County's arguments and further asserted the validity of its certification action. According to the Commission, its actions were proper and necessary as part of its duty to carry out the policies of the Coastal Act. The Commission also urged that the Coastal Act must take precedence within the coastal zone to the extent that it conflicts with the state forestry statutes.

After entertaining oral argument from all parties, the court took the matter under submission. Shortly thereafter, the trial court issued its decision, in the form of a formal order that partially granted plaintiffs' writ petitions. In essence, the court found in favor of plaintiffs on all of their preemption claims except those relating to the zone district regulations, which limit timber operations to the enumerated zones.

In its order, the court separately addressed each of the challenged local measures, as follows:

Ordinance 4571 (Riparian Corridor Regulations) Citing *Big Creek v. San Mateo*, the court concluded that the riparian corridor ordinance regulates the "location" rather

than the "conduct" of timber operations and therefore "is not expressly preempted by state law." Nevertheless, the court found, "it is impliedly preempted to the extent that it applies to land within Timber Production Zones (TPZs)." Because the valid and invalid portions of the ordinance are not severable, the court concluded, the local legislation "is preempted in its entirety."

Ordinance 4572 (Helicopter Regulations) The court determined that the helicopter ordinance constitutes "a regulation of the manner in which timber is removed," which is expressly preempted by the Forest Practice Act. (Pub. Resources Code, § 4516.5, subd. (d).)

Resolution 493-99 (General Plan/LCP Amendment: Zone District Regulations and TP Zoning) The court observed that this resolution amends the General Plan/LCP in two ways. First, it restricts logging to three specified zones: Timber Production (TP), Mineral Extraction Industrial (M-3), and Parks, Recreation and Open Space (PR). Second, it limits the rezoning of land to TPZ. The court upheld Resolution 493-99 to the extent that it restricts timber operations to the three specified zones. But the court invalidated the resolution to the extent that it restricts TPZ rezoning, on the ground of express preemption by the Timberland Productivity Act. (Gov. Code, § 51113.)

Ordinance 4577 (Zone District Regulations and TP Zoning) As with its accompanying resolution, the trial court upheld Ordinance 4577 to the extent that it prohibits commercial timber harvesting except in the TP, M-3, and PR zones, but invalidated the ordinance on preemption grounds to the extent that it imposed additional restrictions on TPZ rezoning. The court also observed that the ordinance changes existing local legislation by providing that rezoning to TPZ or M-3 constitutes an amendment to the LCP, which requires Coastal Commission approval. The court concluded that this aspect of the ordinance is expressly preempted because it "imposes an additional requirement for the zoning change" beyond those enumerated in the governing Timberland Productivity Act provision. (Gov. Code, § 51113.)

Resolution 494-99 (General Plan/LCP Amendment: Zone District Addition) As the trial court observed: "This resolution adds the Commercial Agricultural Zone . . . as an additional zone in which timber harvesting is permitted." The court concluded that state law does not preempt the resolution.

Ordinance 4578 (Zone District, Helicopter, Riparian Corridor, and Road Design Regulations) Mirroring its decision on the accompanying resolution, the trial court upheld the section of Ordinance 4578 that added the Commercial Agricultural (CA) zone to the three zones previously specified for timber operations. Consistent with its rulings on the other local measures, the court invalidated those sections of Ordinance 4578 that extended both the helicopter restrictions and the riparian buffer to the coastal zone, finding them preempted by state law. Finally, the court upheld the ordinance's design standards for private roads.

Following entry of the court's order, CCFA stipulated to dismissal of all of its remaining claims. Big Creek likewise stipulated to dismissal of all of its remaining claims, except its constitutional claims, which the trial court previously had stricken from the petition.

In September 2001, the trial court entered judgment in accordance with its earlier order. As directed by the judgment, a peremptory writ of mandate issued, which commanded the County and the Coastal Commission to take action consistent with the judgment.

IV. The Appeals

Plaintiffs (Big Creek and CCFA) appeal the single aspect of the judgment that the trial court decided adversely to them. They assert that state law preempts the ordinances and resolutions in their entirety, particularly including the ban on commercial timber harvesting except in the specified zones (the zone district regulations).

Defendants (the County and the Coastal Commission) appeal the remainder of the judgment, which the trial court decided adversely to them. They argue that state law does

not preempt any of the ordinances or resolutions, particularly including the riparian corridor regulations and the helicopter regulations. In addition, the Commission argues the validity of its certification action under the Coastal Act.

ISSUES

At the outset, for the sake of clarity, we identify certain questions arising from this case that we will not address, with an explanation of why they are not before us. We then summarily describe the issues that are properly presented for our consideration and resolution here.

I. Questions Not Presented

We first observe that Ordinance 4578 and Resolution 494-99 are not at issue in this appeal. The County represents that those measures did not take effect and thus have no legal force; Big Creek accedes in that representation. Because they never became effective, a challenge to those measures would lack justiciability. (See generally, 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, § 73, p. 132.) For that reason, we need not and do not reach any issue specifically related to Ordinance 4578 or to Resolution 494-99.

Second, we shall not consider the constitutional issue raised solely by *amici curiae*. As a general rule, appellate courts decline to address contentions not raised by the litigants. (*Lance Camper Manufacturing Corp. v. Republic Indemnity Co.* (2001) 90 Cal.App.4th 1151, 1161, fn. 6.) We see no reason to depart from that rule in this case.

II. Questions Presented

The appeals by both sides present the question of whether state law preempts various aspects of the challenged ordinances.

The appeal by defendant Coastal Commission's raises the additional issue of the relationship between the Coastal Act and other state statutory law.

STANDARD OF REVIEW

The interpretation of statutes and ordinances presents a question of law for our independent review. (*Hewlett v. Squaw Valley Ski Corp.* (1997) 54 Cal.App.4th 499, 523 [statutes]; *County of Madera v. Superior Court* (1974) 39 Cal.App.3d 665, 668 [ordinances].) Preemption likewise presents a question of law, which we review *de novo*. (*Roble Vista Associates v. Bacon* (2002) 97 Cal.App.4th 335, 339.)

DISCUSSION

We begin by setting forth the principles of statutory construction that guide our analysis. Next, we examine each of the four statutory schemes that relate to these proceedings. Then, employing the principles of statutory interpretation, we discuss the interplay among the statutes. Finally, we turn to the question of preemption.

I. Statutory Construction

At the threshold, we "note that the rules applying to the construction of statutes apply equally to ordinances. [Citation.]" (*County of Madera v. Superior Court, supra,* 39 Cal.App.3d at p. 668.)

A. Primary Rules

"The rules governing statutory construction are well established. Our objective is to ascertain and effectuate legislative intent. [Citations.]" (*City of Huntington Beach v. Board of Administration* (1992) 4 Cal.4th 462, 468.)

In determining legislative intent, we first look to the statutory language itself. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386.) "The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible. [Citations.]" (*Id.* at p. 1387.) Thus, "every statute should be construed with reference to the whole system of law of which it is a part, so that all may be harmonized and have effect." (*Moore v. Panish* (1982) 32 Cal.3d 535, 541. See also, *City of Huntington Beach v. Board of*

Administration, supra, 4 Cal.4th at p. 468.) "In construing a statute, all acts relating to the same subject matter should be read together as if one law and harmonized if possible, even though they may have been passed at different times, and regardless of the fact that one of them may deal specifically and in greater detail with a particular subject while the other may not. [Citations.]" (*In re Marriage of Williams* (1989) 213 Cal.App.3d 1239, 1245.)

Where, as here, several codes are to be construed, "they 'must be regarded as blending into each other and forming a single statute.' [Citation.] Accordingly, they 'must be read together and so construed as to give effect, when possible, to all the provisions thereof.' [Citation.]" (*Tripp v. Swoap* (1976) 17 Cal.3d 671, 679 overruled on another point in *Frink v. Prod* (1982) 31 Cal.3d 166, 180. See also, *Mejia v. Reed* (2003) 31 Cal.4th 657, 663; *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 778-779.)

B. Secondary Rules

Where the primary principles of statutory construction fail to resolve an ambiguity, courts turn to secondary rules of interpretation, with resort to extrinsic aids such as legislative history and to intrinsic aids such as maxims where appropriate. (See, *Mejia v. Reed, supra,* 31Cal.4th at p. 663. See generally, 2A Singer, Sutherland Statutes and Statutory Construction (6th ed. 2000) Criteria of Interpretation, § 45:14, pp. 109-110.)

When the language of an enactment is ambiguous, its legislative history is a proper extrinsic aid to its interpretation. (See, e.g., *Mejia v. Reed, supra,* 31 Cal.4th at p. 663; *Halbert's Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6 Cal.App.4th 1233, 1239. See generally, 2A Singer, Sutherland Statutes and Statutory Construction, *supra*, Extrinsic Aids—Legislative History, ch. 48, pp. 407-489.) "Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent. [Citations.]" (*Dyna-Med, Inc. v. Fair Employment & Housing Com., supra,* 43 Cal.3d at p. 1387.)

Maxims also may serve as legitimate intrinsic aids to statutory interpretation in a proper case. (See, e.g., *Mejia v. Reed, supra,* 31 Cal.4th at p. 663. See generally, 2A Singer, Sutherland Statutes and Statutory Construction, *supra*, Intrinsic Aids, ch. 47, pp. 207-405.) One such maxim is *expressio unis est exclusio alterius*: "The expression of some things in a statute necessarily means the exclusion of other things not expressed." (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 852, citing *Dyna-Med, Inc. v. Fair Employment & Housing Com., supra,* 43 Cal.3d at p. 1391, fn. 13. See generally, *In re Christopher T.* (1998) 60 Cal.App.4th 1282, 1290; 2A Singer, Sutherland Statutes and Statutory Construction, *supra*, Intrinsic Aids, §§ 47:23 - 47:25, pp. 304-333.)

With the foregoing principles of statutory interpretation in mind, we turn to the enactments at issue here.

II. The Relevant Statutes

A. The Timberland Productivity Act

The Timberland Productivity Act "is intended to protect properly conducted timber operations from being prohibited or restricted due to conflict or apparent conflict with surrounding land uses." (*Big Creek v. San Mateo, supra,* 31 Cal.App.4th at p. 422, citing Gov. Code, §§ 51101, subd. (b); 51102, subd. (b), fn. omitted.)

In enacting the TPA, the Legislature found: "(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 protection, and aesthetic enjoyment. [¶] (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 the growing and harvesting of timber 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." (Gov. Code, § 51101.) The Legislature declared "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." (*Id.,* § 51102, subd. (b).) The Legislature further declared its intent to implement the TPA's policies "by including all qualifying timberland in timberland production zones." (*Id.,* § 51103.) " 'Timberland' means privately owned land, or land acquired for state forest purposes, which is devoted to and used for growing and harvesting timber, or for growing and harvesting timber and compatible uses, and which is capable of growing an average annual volume of wood fiber of at least 15 cubic feet per acre." (*Id.,* § 51104, subd. (f).)

The Timberland Productivity Act relies on tax incentives coupled with zoning mandates to accomplish its purposes. Prior to enactment of the TPA's predecessor statute,[9] "timber and timberlands were taxed under the property tax system. This system was 'criticized by timber owners because the tax fell due annually even though the owner realized no income from the standing trees, by environmentalists because timber owners were encouraged to cut excessively to avoid the tax, and by local government officials who feared a long-term reduction in tax dollars due to the widening effect of the property tax exemption for immature timber.' " (*Clinton v. County of Santa Cruz, supra,* 119

[9] The TPA's predecessor statute was titled the Z'berg-Warren-Keene-Collier Forest Taxation Reform Act (FTRA). (Stats. 1977, ch. 853, § 31, p. 2580.) It was enacted after California voters approved a constitutional amendment in 1974 that exempted forest trees and timber from property taxation. (Cal. Const., art. XIII, § 3, subd. (j). See generally, *Clinton v. County of Santa Cruz* (1981) 119 Cal.App.3d 927, 931-932; *State of California v. County of Santa Clara* (1983) 142 Cal.App.3d 608, 611-612.) The FTRA became effective in September 1977. (Stats. 1977, ch. 853, § 34, p. 2580.)

Cal.App.3d at p. 931, fn. omitted.) The predecessor statute substituted a yield tax on harvested timber for the former *ad valorum* tax on growing timber. (Stats. 1976, ch. 176, § 2, subd. (c), p. 294. See Rev. & Tax. Code, § 38101 et seq. See generally, 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 334, pp. 393-394; *id.* (2003 supp.) p. 197.) The TPA restricts land in a timberland production zone (TPZ) to the growing and harvesting of timber and compatible uses. (Gov. Code, §§ 51115; 51118.) In exchange, the owner of TPZ land benefits by a lower property tax valuation that reflects the enforceable statutory restrictions. (See Cal. Const., art. XIII, § 8. See, *State of California v. County of Santa Clara, supra,* 142 Cal.App.3d at p. 611 [FTRA].)

As noted above, the Timberland Productivity Act also utilizes zoning mandates to achieve its purposes. When initially enacted, the TPA dictated TP zoning for "List A" parcels that were assessed for growing and harvesting timber as the highest and best use. (Gov. Code, § 51112, subds. (a), (b).) Exceptions to the mandatory TP zoning of List A properties were permitted where the property in fact was not used for growing and harvesting, or where the owner contested the TP zoning and local officials found exclusion to be in the public interest. (*Ibid.*) The TPA also dictated TP zoning for other timberlands, called "List B" parcels, that were not then assessed for growing and harvesting timber as the highest and best use. (*Id.,* subd. (c).) Exceptions to the mandatory TP zoning of List B properties were permitted only where local officials found exclusion to be in the public interest. (*Ibid.*) These initial determinations were to have been completed by 1978. (*Id.,* subds. (a), (b), (c).) Since then, TP zoning has been initiated by petition of the property owner. (*Id.,* § 51113.) Upon petition, the county "shall zone as timberland production all parcels" that meet the statutory criteria. (*Id.,* subd. (a)(1).)

The TPA further provides: "Parcels zoned as timberland production shall be zoned so as to restrict their use to growing and harvesting timber and to compatible uses." (Gov. Code, § 51115.) As pertinent here, the statute defines a compatible use as "any use

which does not significantly detract from the use of the property for, or inhibit, growing and harvesting timber and shall include, but not be limited to, any of the following, unless in a specific instance such a use would be contrary to the preceding definition of compatible use: [¶] (1) Management for watershed. [¶] (2) Management for fish and wildlife habitat or hunting and fishing." (Gov. Code, § 51104, subd. (h). See *Clinton v. County of Santa Cruz, supra,* 119 Cal.App.3d at p. 932, fn. 5.)

The TPA contains provisions for rezoning and for removal from TP zoning. (Gov. Code, §§ 51120-51146.) In some cases, rezoning requires the approval of the State Forestry Board. (*Id.,* § 51133, subd. (b); Pub. Resources Code, § 4621.2.)

B. The Forest Practice Act

"Timber harvesting operations in this state must be conducted in accordance with the provisions of the Forest Practice Act. The Act was intended to create and maintain a comprehensive system for regulating timber harvesting in order to achieve two goals . . . ." (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1226.) Those goals are (1) to restore, enhance, and maintain the productivity of timberlands where feasible, and (2) to achieve the "maximum sustained production of high-quality timber products . . . while giving consideration to values relating to recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment, and aesthetic enjoyment." (Pub. Resources Code, § 4513; *Sierra Club v. State Bd. of Forestry, supra,* 7 Cal.4th at p. 1226.) In enacting the FPA, the Legislature explicitly found "that the forest resources and timberlands of the state are among the most valuable of the natural resources of the state and that there is great concern throughout the state relating to their utilization, restoration, and protection." (Pub. Resources Code, § 4512, subd. (a).)

As originally enacted in 1973, the FPA permitted individual counties, "within the reasonable exercise of their police power, to adopt rules and regulations by ordinance or resolution which are stricter than those provided under this chapter and its regulations."

(Stats 1973, ch. 880, § 4, p.1615, adding Pub. Resources Code, § 4516.) But when the FPA was amended in 1982, the Legislature eliminated this local authority. (Stats. 1982, ch. 1561, § 3, p. 6164, adding Pub. Resources Code, § 4516.5.)[10] Counties now may

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[10] That section reads in full as follows:

"(a) Individual counties may recommend that the board adopt additional rules and regulations for the content of timber harvesting plans and the conduct of timber operations to take account of local needs. For purposes of this section, "timber operations" includes, but is not limited to, soil erosion control, protection of stream character and water quality, water distribution systems, flood control, stand density control, reforestation methods, mass soil movements, location and grade of roads and skid trails, excavation and fill requirements, slash and debris disposal, haul routes and schedules, hours and dates of logging, and performance bond or other reasonable surety requirements for onsite timber operations and for protection of publicly and privately owned roads that are part of the haul route. Where a bond or other surety has been required, the director shall not issue a work completion report without first ascertaining whether the county in which the timber operations were conducted has knowledge of any claims intended to be made on the bond or surety.

"(b) The board shall, in conformance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and within 180 days after receiving recommended rules and regulations from a county, adopt rules and regulations for the content of timber harvesting plans and the conduct of timber operations consistent with the recommended rules and regulations, subject to Section 4551.5, if the board finds the recommended rules and regulations are both of the following:

"(1) Consistent with the intent and purposes of this chapter.

"(2) Necessary to protect needs and conditions of the county recommending them.

"(c) The rules and regulations, if adopted by the board, shall apply only to the conduct of timber operations within the recommending county and shall be enforced and implemented by the department in the same manner as other rules and regulations adopted by the board.

"(d) Except as provided in subdivision (e), individual counties shall not otherwise regulate the conduct of timber operations, as defined by this chapter, or require the issuance of any permit or license for those operations.

"(e) The board may delegate to individual counties its authority to require performance bonds or other surety for the protection of roads, in which case, the procedures and forms shall be the same as those used in similar circumstances in the county. The board may establish reasonable limits on the amount of performance bonds or other surety which may be required for any timber operation and criteria for the requirement, payment, and release of those bonds or other surety. If the county fails to

recommend forest practice rules and regulations to the State Forestry Board "to take account of local needs." (Pub. Resources Code, § 4516.5, subd. (a).) The State Forestry Board "shall" adopt the recommendations if it finds that they are both consistent with the statute's purposes and necessary to protect local needs and conditions. (*Id.,* subd. (b).) But "individual counties shall not otherwise regulate the conduct of timber operations, as defined by this chapter, or require the issuance of any permit or license for those operations." (*Id.,* subd. (d). See *Big Creek v. San Mateo, supra,* 31 Cal.App.4th at p. 424.) That limitation does not apply to non-TPZ land less than three acres in size. (Pub. Resources Code, § 4516.5, subd. (c).)

The FPA defines both timberland and timber operations. " 'Timberland' means land . . . available for, and capable of, growing a crop of trees of any commercial species used to produce lumber and other forest products . . . ." (Pub. Resources Code, § 4526.) "'Timber operations' means the cutting or removal or both of timber . . . from timberlands for commercial purposes, together with all the work incidental thereto, . . . but excluding preparatory work such as treemarking, surveying, or roadflagging." (*Id.*, § 4527. See *Westhaven Community Development Council v. County of Humboldt* (1998) 61 Cal.App.4th 365, 368, fn. 4.)

"Actual timber operations are controlled by means of a site-specific timber harvesting plan [THP] that must be submitted to the [state forestry] department before timber operations may commence. ([Pub. Resources Code,] §§ 4581 and 4582.5.) The Legislature has specified that the plan include the name and address of the timber owner and the timber operator, a description of the land upon which the work is proposed to be

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inform the director of the claims within 30 days after the completion report has been filed, the bond or surety shall be released.

"(f) This section does not apply to timber operations on any land area of less than three acres and which is not zoned timberland production." (Pub. Resources Code, § 4516.5.)

done, a description of the silviculture methods to be applied, an outline of the methods to mitigate erosion caused by operations performed in the vicinity of a stream, the provisions, if any, to protect any 'unique area' within the area of operations, and the anticipated dates for commencement and completion of operations. ([*Id.,*] § 4582, subds. (a)-(g).)" (*Sierra Club v. State Bd. of Forestry, supra,* 7 Cal.4th at p. 1226.) The THP is reviewed for compliance with the statute and applicable rules and regulations. (*Ibid.,* citing Pub. Resources Code, § 4582.7.)

The Forest Practice Act expressly provides for exemptions from its operation for certain activities. (Pub. Resources Code, § 4584.) One such activity is the "cutting or removal of trees . . . for the purpose of reducing flammable materials and maintaining a fuelbreak . . . ." (*Id.,* subd. (j)(1).) Timber operations conducted pursuant to that exemption are required to "conform to applicable city or county general plans, city or county implementing ordinances, and city or county zoning ordinances." (*Id.,* subd. (j)(4).)

C. The Coastal Act

The California Coastal Act of 1976 replaced the California Coastal Zone Conservation Act, which had been enacted by initiative measure in 1972. (See Pub. Resources Code, § 30000, Historical and Statutory Notes, p. 131.) The Coastal Act "was enacted by the Legislature as a comprehensive scheme to govern land use planning for the entire coastal zone of California." (*Yost v. Thomas* (1984) 36 Cal.3d 561, 565. See generally, 4 Witkin, Summary of Cal. Law (9th ed. 1987) Real Property, § 90, pp. 312-314; *id.* (2003 supp.) pp. 234-235; Robie et al., California Civil Practice – Environmental Litigation (2002) § 8:62, pp. 92-93. See also, e.g., McDonald, *Land Use Planning in the Coastal Zone: Protecting A Sensitive Ecosystem with Transferrable Development Credits*, 21 Santa Clara L.Rev. 439, 444-447.)

In enacting the Coastal Act, the Legislature declared that "the basic goals of the state for the coastal zone are to: [¶] (a) Protect, maintain, and, where feasible, enhance

and restore the overall quality of the coastal zone environment and its natural and artificial resources. [¶] (b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state. [¶] (c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners. [¶] (d) Assure priority for coastal-dependent and coastal-related development over other development on the coast. [¶] (e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone." (Pub. Resources Code, § 30001.5.)

The Coastal Act "assigns chief responsibility for regulating the use and development of the 'coastal zone' [citation] to [the] California Coastal Commission." (4 Witkin, Summary of Cal. Law, *supra,* Real Property, § 90, p. 313.) The Commission's "regulatory functions are coordinated with those of other state agencies having overlapping responsibilities." (*Ibid.*) But the Act "does not increase, decrease, duplicate or supersede the authority of any existing state agency." (Pub. Resources Code, § 30401.) "Local governments are extensively involved in the formulation and implementation of local coastal plans." (4 Witkin, Summary of Cal. Law, *supra,* Real Property, § 90, p. 313.) The Coastal Act sets " 'minimum standards and policies' for localities to follow in developing land use plans" but leaves " 'wide discretion to . . . local government . . . to determine the contents' of such plans . . . ." (*DeVita v. County of Napa, supra,* 9 Cal.4th at p. 775, quoting *Yost v. Thomas, supra,* 36 Cal.3d at pp. 572-573. See also Pub. Resources Code, §§ 30004, subd. (a); 30005, subds. (a), (b).) The Act thus contemplates "local discretion and autonomy in planning subject to review for conformity to statewide standards." (*Yost v. Thomas, supra,* 36 Cal.3d at p. 572.)

A local coastal plan (LCP) consists of a local government's land use plans, zoning ordinances, zoning district maps, and other implementing actions that satisfy the Coastal Act. (Pub. Resources Code, § 30108.6.) The LCP is submitted to the Coastal Commission. (*Id.,* § 30510, subd. (a). See generally, Robie et al., California Civil Practice - Environmental Litigation, *supra,* §§ 8:67-8:68, pp. 102-104.) In order to certify the LCP, the Commission must find that it satisfies the requirements and policies set forth in Chapter 3 of the Coastal Act. (Pub. Resources Code, §§ 30200, subd. (a); 30512, subd. (c); 30513. See Robie et al., California Civil Practice – Environmental Litigation, *supra,* §§ 8:69-8:70, pp. 104-105.) After certification, the local government may amend its LCP, but the amendment is ineffective until the Commission certifies its consistency with the Coastal Act's policies. (Pub. Resources Code, § 30514, subd. (a); *Conway v. City of Imperial Beach* (1997) 52 Cal.App.4th 78, 86; Robie et al., California Civil Practice – Environmental Litigation, *supra,* § 8:71, pp. 105-106.) Even so, only those amendments that authorize "a use other than that designated in the LCP as a permitted use ... require certification by the Commission . . . ." (*Yost v. Thomas, supra,* 36 Cal.3d at p. 573, fn. 9. See Pub. Resources Code, § 30514, subd. (e); *Conway v. City of Imperial Beach, supra,* 52 Cal.App.4th at p. 90.)

The statutory policies set forth in Chapter 3 of the Coastal Act constitute the standards for judging the adequacy of an LCP. (Pub. Resources Code, § 30200, subd. (a). See *Yost v. Thomas, supra,* 36 Cal.3d at p. 566, citing Chapter 3 of the Coastal Act, Pub. Resources Code, § 30200 et seq. See Robie et al., California Civil Practice – Environmental Litigation, *supra,* § 8:71, pp. 105-106.) Those "Chapter 3 policies" are designed to protect certain identified resources, including recreation, sensitive habitat, and scenic resources. (See Pub. Resources Code, §§ 30223 [upland recreation], 30240 [environmentally sensitive habitat area ("ESHA")], 30251 [visual and scenic resources].) Significantly, timberlands are among the resources expressly protected by the policies. (*Id.*, § 30243.)

The Coastal Act's Chapter 3 policies also constitute the standards for judging the permissibility of developments within the coastal zone. (Pub. Resources Code, § 30200, subd. (a).) Certain policies apply to specific types of developments. (See Robie et al., California Civil Practice – Environmental Litigation, *supra,* § 8:65, pp. 100-102.) Thus, for example, new development must minimize risks from geologic and other natural hazards. (Pub. Resources Code, § 30253, subd. (*1*).) Notably, however, the Coastal Act's definition of "development" specifically excludes timber operations conducted pursuant to an FPA timber harvesting plan. (*Id.,* § 30106.)

D. State Zoning Law

"State land use planning laws grant legislative power to [localities] to enact a general plan and zoning ordinances. (Gov. Code, §§ 65100-65910.)" (*L.I.F.E. Committee v. City of Lodi* (1989) 213 Cal.App.3d 1139, 1148.) With respect to zoning regulations, the purpose of the State Zoning Law is "to provide for the adoption and administration of zoning laws, ordinances, rules and regulations by counties and cities . . . ." (Gov. Code, § 65800.) The Legislature declared "its intention to provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters." (*Ibid.* See, *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 747.)

The statute thus recognizes significant local discretion in zoning matters. (Gov. Code, § 65800.) "The power of cities and counties to zone land use in accordance with local conditions is well entrenched. [Citations.]" (*IT Corp. v. Solano County Bd. of Supervisors* (1991) 1 Cal.4th 81, 89.) "Comprehensive zoning has long been established as being a legitimate exercise of the police power. [Citations.]" (*Beverly Oil Co. v. City of Los Angeles* (1953) 40 Cal.2d 552, 557.) That recognition comports with the constitutional source and stature of local zoning power. (Cal. Const., art. XI, § 7. See generally, Hagman et al., Cal. Zoning Practice (Cont.Ed.Bar 1969) §§ 4.14, 4.16, pp. 112, 113.)

Among other things, the State Zoning Law expressly recognizes the authority of local legislative bodies to "[r]egulate the use of . . . land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes." (Gov. Code, § 65850, subd. (a).)

III. Interplay Among the Statutes

In order to determine the statutes' proper relationship to each other, we apply the rules of statutory interpretation set forth above. We begin by examining the language of the statutes within the context of the whole system of law of which each is a part, harmonizing the statutes where possible. If necessary, we resort to the acts' legislative history and to maxims as appropriate.

A. The Forestry Statutes

Before considering the impact of the Timberland Productivity Act and the Forest Practice Act on other legislation, it is important to understand how the two forestry statutes relate to each other.

1. Purposes

The stated purposes of the TPA and the FPA are not identical, but they are similar. Both statutes are designed to protect timberland and timber production. The TPA declares the state's policy to 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." (Gov. Code, § 51102, subd. (a)(2).) The FPA seeks to achieve the "maximum sustained production of high-quality timber products . . . while giving consideration to values relating to recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment, and aesthetic enjoyment." (Pub. Resources Code, § 4513, subd. (b).)

2. Operation

Comparing the two forestry statutes, Big Creek correctly observes that the TPA is not a regulatory statute: "It does not provide for any forest practice rules, or THP

requirements or licensing requirements or any other similar regulation of timber harvesting. The TPA simply creates a mechanism for restricting property to timber uses so as to comply with the constitutional mandate and qualify the property for alternative tax treatment. The regulatory statute for all timberland is the FPA. . . ."

Despite their differences in focus, the two forestry statutes operate in harmony. For one thing, they express a common expectation that timber operations will occur on timberlands. By explicit statutory provision, the zoning of a parcel pursuant to the TPA raises a presumption that the parcel will be used for timber operations, as defined in the FPA. (Gov. Code, § 51115.1, subd. (a).) By the same token, however, that provision explicitly does not alter "any substantive or procedural requirement of [the FPA] or of any rule or regulation adopted pursuant thereto." (*Id.,* subd. (b).) For another thing, both statutes consistently address those situations where timberland rezoning requires the approval of the State Forestry Board. (Pub. Resources Code, § 4621; Gov. Code, §§ 51133, 51134.)

B. The Coastal Act and the Forestry Statutes

1. Purposes

Among other things, the Coastal Act seeks to "[p]rotect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources." (Pub. Resources Code, § 30001.5, subd. (a).) As the Legislature declared, "it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction." (*Id.,* § 30001, subd. (c).) For that reason, environmental concerns are given high priority in interpreting the Coastal Act. (*Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493, 506.) But the Coastal Act also takes "into account the social and economic needs of the people of the state." (Pub. Resources Code, § 30001.5, subd. (b).) Thus, for example, as the Legislature recognized, it may be necessary to locate developments with "significant adverse effects on coastal resources . . . in the coastal zone in order to ensure that inland as well as

coastal resources are preserved and that orderly economic development proceeds within the state." (*Id.,* § 30001.2, subd. (a).)

The purposes of the Coastal Act may be harmonized with those of the TPA and the FPA. All three statutes seek to protect California's valuable natural resources—including timberlands—while balancing the state's economic needs. The Coastal Act aims to protect the "overall quality of the coastal zone environment" while "taking into account … economic needs." (Pub. Resources Code, § 30001.5, subds. (a), (b).) It specifically protects the "long-term productivity of . . . timberlands." (*Id.,* § 30243.) The TPA declares that timberlands "contribute substantially to . . . the state's economy *and* environment." (Gov. Code, § 51101, subd. (a); italics added.) The FPA's goal is to achieve "maximum sustained production of high-quality timber products" while considering "regional economic vitality, employment, and aesthetic enjoyment." (Pub. Resources Code, § 4513, subd. (b).) With respect to their overall purposes, then, the three statutes are not in conflict.

2. Operation

We next consider whether the relevant operative provisions of the statutes may be harmonized. The Coastal Commission complains that the trial court's ruling "gives the TPA unjustified superiority over the Coastal Act." To assess that contention, we first revisit the Commission's actions and the trial court's ruling concerning them. We then examine that ruling in the context of the governing statutory provisions.

At issue below were two requirements imposed by the Commission as a condition of certifying the County's LCP. First, the Commission required the County to impose certain limitations on applications for timber production zoning within the coastal zone. Second, the Commission mandated that applications for rezoning to TP within the coastal zone be processed as LCP amendments. The trial court invalidated both mandates as preempted, concluding that they constituted additional criteria for TP zoning beyond those allowed under the TPA. The Coastal Commission assigns both of those rulings as

error, asserting two grounds for reversal as to each. As we explain, we reject all of the Commission's contentions.

a. Additional Criteria

With respect to the addition of TP zoning requirements, "state law forbids imposing criteria not on the statutory list . . . ." (*State of California v. County of Santa Clara, supra,* 142 Cal.App.3d at p. 614, citing Gov. Code, former § 51113 [FRTA]. See now, Gov. Code, § 51113, subd. (c).) The relevant provision of the TPA mandates that "the [county] board [of supervisors] or [city] council by ordinance shall adopt a list of criteria required to be met by parcels being considered for zoning as timberland production under this section. The criteria *shall not* impose any requirements in addition to those listed in this subdivision and in subdivision (d)." (Gov. Code, § 51113, subd. (c), italics added.)

The Coastal Commission first argues that the statutory prohibition on imposing additional criteria does not apply to it. The Commission urges that the straightforward language of the relevant provision demonstrates that it applies only to local governments.

We agree that the provision, by its plain terms, is directed only to local governments. (See, e.g., 1A Singer, Sutherland Statutes and Statutory Construction (6th ed. 2002) Legislative Composition, § 21:7, pp. 172-173, discussing the "legal subject" of legislation.) But that conclusion does not aid the Commission. In this case, the trial court did not rule that the *Commission* violated the statute. Rather, it invalidated the *County's* decision to adopt the additional zoning criteria demanded by the Commission. Since the County's addition of those criteria was impermissible under the TPA, the trial court's ruling on that point was proper. (Gov. Code, § 51113, subd. (c); *State of California v. County of Santa Clara, supra,* 142 Cal.App.3d at p. 614.) Furthermore, as a general proposition, we observe that the Coastal Act does not "authorize the commission to require any local government . . . to exercise any power it does not already have . . . ." (Pub. Resources Code, § 30005.5.) Since the County has no power to impose additional

criteria on TP zoning, the Commission has no authority to require the imposition of such criteria.

The Commission further argues that the additional criteria it imposed are necessary to ensure that LCP amendments comply with the Coastal Act's requirements. The Commission asserts that the trial court's ruling "gives no effect to the Coastal Act, and effectively precludes the Commission from meeting its duty to ensure that an LCP amendment addressing the location of timber harvesting in the coastal zone is consistent with the Chapter 3 policies of the Coastal Act."

We disagree. In our view, adherence to the TPA's exclusive criteria for timberland production zoning does not prevent the Commission from carrying out its legislative mandate. We offer two reasons for that conclusion.

First, there are important differences between the Coastal Act and the TPA in their treatment of timberlands within the coastal zone. Significantly, the TPA contains no exception from its provisions for lands within the coastal zone. The Coastal Act, on the other hand, expressly addresses timberlands in several provisions. For one thing, it specifically includes the protection of timberlands as one of its Chapter 3 policies. (Pub. Resources Code, § 30243.) For another thing, the Act's definition of development excludes timber operations conducted under a State Forestry Board timber harvest plan. (*Id.*, § 30106.) In yet another provision, the Coastal Act requires the Commission to "identify special treatment areas within the coastal zone" and to forward information about those areas to the State Forestry Board to assist that body "in adopting rules and regulations that adequately protect the natural and scenic qualities of the special treatment areas." (*Id.,* § 30417, subd. (b).) Taken together, these provisions indicate legislative recognition that the forestry statutes and the State Forestry Board's rules and regulations apply even within the coastal zone, thereby necessarily leaving the Commission with a more circumscribed oversight role with respect to timberlands.

Second, nothing in the appellate record or in the governing law suggests that zoning pursuant to the TPA will frustrate the Coastal Act's Chapter 3 policies. To the contrary, the Timber Productivity Act incorporates similar policies by reference. The TPA specifically refers to the FPA and to rules and regulations promulgated under that statute. (Gov. Code, § 51115.1, subd. (b).) FPA regulations that apply within coastal special treatment areas address some of the same concerns identified in the Coastal Act's Chapter 3 policies. (Cal. Code Regs., tit. 14, §§ 921-921.9.)[11] Thus, for example, both the regulations and the Coastal Act seek to protect scenic views. (See Cal. Code Regs., tit. 14, § 921.8; Pub. Resources Code, § 30251.) In short, there is no basis for concluding that the TPA's zoning criteria thwart the Coastal Act's policies.

b. LCP Amendments

The Coastal Commission advances two contentions in defense of its requirement that TP rezoning applications be processed as LCP amendments.

First, the Commission recasts its prior argument that such a mandate is necessary to satisfy its duty of ensuring local compliance with the Coastal Act's policies.

Again, however, we are not persuaded that the Commission must process TP rezoning applications as LCP amendments in order to carry out its legislative duty. In the first place, that legislative duty is statutorily circumscribed: "The commission shall require conformance with the policies and requirements of Chapter 3 . . . *only to the extent necessary to achieve the basic state goals* specified in Section 30001.5." (Pub. Resources Code, § 30512.2, subd. (b), italics added.) Those basic goals include

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[11] The express purpose of those regulations is "to protect the natural and scenic qualities as reflected in the criteria and objectives for each of the Coastal Commission Special Treatment Areas designated and adopted by the California Coastal Commission on July 5, 1977, while at the same time allowing management and orderly harvesting of timber resources within these areas." (Cal. Code Regs., tit. 14, § 921.) The regulations, which apply in designated special treatment areas, are in addition to the statutes and other regulations governing timber operation. (*Ibid.*)

protecting "the overall quality of the coastal zone environment and its natural and artificial resources" and assuring "orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state." (*Id.*, § 30001.5, subds. (a), (b).) As noted above, the productivity of timberlands is among coastal zone resources subject to the Act's protection. (*Id.*, § 30243.) Furthermore, we reiterate, TP zoning does not operate to thwart the Coastal Act's policies.

The Commission's second contention is that the Coastal Act specifically mandates the processing of rezoning applications as LCP amendments. (See Pub. Resources Code, § 30514, subd. (e).) Under the Act, LCP amendments require commission certification if they authorize a use that differs from permitted uses already designated in the LCP. (*Ibid.*; *Yost v. Thomas, supra,* 36 Cal.3d at p. 573, fn. 9; *Conway v. City of Imperial Beach, supra,* 52 Cal.App.4th at p. 90.) According to the Commission: "By proposing a different zoning designation, an application to rezone a parcel to TP in the coastal zone proposes to authorize uses of a parcel other than those which are designated in the certified LCP as permitted uses."

We disagree. We find no statutory imperative for treating TP rezoning applications as LCP amendments. As the Commission recognizes, the Coastal Act provision on which it relies applies only to the extent that local government actions change the use of a given parcel. (See Pub. Resources Code, § 30514.) The act of zoning timberland for timberland production does not change its use. Regardless of its zoning designation, land of a specified productive capability that is "devoted to and used for growing and harvesting timber . . . and compatible uses" constitutes timberland under the TPA's statutory definition. (See Gov. Code, § 51104, subd. (f).) By definition, the use of timberland is for timber growing and harvesting. (*Ibid*.) That is so, even if the timberland in question is not restrictively zoned exclusively for timber production. Given

that TP zoning does not constitute a change in the use of timberland, there is no statutory requirement of Coastal Commission certification.

We therefore conclude that the Coastal Act does not require that timber production rezoning applications be processed as LCP amendments. Furthermore, we agree with the trial court that treating such applications as LCP amendments constitutes the imposition of additional criteria for timber production zoning, which violates the Timber Productivity Act.

3. Conclusion

In undertaking the task of statutory interpretation, a "principle of paramount importance is that of harmonious construction, by which we must attempt to give effect to both statutes if possible . . . ." (*Conway v. City of Imperial Beach, supra,* 52 Cal.App.4th at p. 84.) We conclude that it is possible to harmonize the Coastal Act with the forestry statutes. In our view, neither the legislative purposes nor the operative provisions of those statutes are in conflict with each other. We therefore reject the Commission's assertion that the trial court erroneously gave the Timberland Productivity Act primacy over the Coastal Act. To the contrary, the result reached by the trial court correctly reflects that the Coastal Act and the forestry statutes operate in harmony, each within its legislatively designated sphere. We therefore affirm that result.

C. The Zoning Law and the Forestry Statutes

1. Purposes

The State Zoning Law is designed to permit local governments "the maximum degree of control over local zoning matters." (Gov. Code, § 65800. See, *Morehart v. County of Santa Barbara, supra,* 7 Cal.4th at p. 747.)

Both the TPA and the FPA are designed to protect statewide timberland and timber production. (Gov. Code, § 51102, subd. (a)(2) [TPA]; Pub. Resources Code, § 4513 [FPA].) .

2. Operation

The State Zoning Law does not contain detailed operative provisions. "Substantively, it provides no more than a guide, thus allowing great flexibility in application to the particular needs of a locality." (Hagman et al., Cal. Zoning Practice, *supra,* § 4.14, p. 112.) Thus "the front line role in land use planning and zoning is in the hands of the local government." (*Building Industry Assn. v. Superior Court* (1989) 211 Cal.App.3d 277, 291 disapproved on another point in *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 547.) As relevant here, the State Zoning Law expressly recognizes the authority of local legislative bodies to "[r]egulate the use of . . . land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes." (Gov. Code, § 65850, subd. (a).)

In contrast to the strong local role embodied in the State Zoning Law, the state forestry laws restrict local discretion in decisions affecting timberlands. Under the FPA, individual counties are limited to recommending forest practice rules and regulations to the State Forestry Board "to take account of local needs." (Pub. Resources Code, § 4516.5, subd. (a).) They are not permitted to "otherwise regulate the conduct of timber operations" except on non-TPZ land less than three acres in size. (*Id.,* subds. (d), (c).) The TPA meanwhile expressly circumscribes local zoning decisions affecting timberland in several ways. For one thing, the TPA requires local governments to zone qualifying land for timber production upon the landowner's petition. (Gov. Code, § 51113*,* subd. (a)(1).) The TPA further restricts local authority by providing: "Parcels zoned as timberland production *shall be zoned* so as to restrict their use to growing and harvesting timber and to compatible uses." (*Id.,* § 51115, italics added.) As noted above, the TPA contains provisions for rezoning and for removal from TP zoning. (*Id.*, §§ 51120-51146.) But conversion from timber production requires the approval of the State Forestry Board in some instances. (*Id.*, § 51133, subd. (b); Pub. Resources Code, § 4621.2.)

3. Construction

Because the State Zoning Law recognizes and authorizes local control of zoning decisions, its provisions do not conflict directly with either the TPA or the FPA. Rather, the conflict is between the operation of the state forestry statutes and the exercise of local zoning authority. Put another way, the question is one of preemption.

IV. Preemption

A. General Principles

Where a conflict exists between state and local law on a matter of statewide concern, the local law is void and cannot be enforced. (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 894.) A conflict exists where local law duplicates or contradicts state law. Local law duplicates state law when it is coextensive with it. (*Id*. at pp. 897-898.) Local law contradicts state law when it is inimical to it. (*Id.* at p. 898.) A conflict also exists when local law invades an area that the state has fully occupied, either expressly or implicitly. (*Id*. at p. 897.) "If the subject matter or field of the legislation has been fully occupied by the state, there is no room for supplementary or complementary local legislation, even if the subject were otherwise one properly characterized as a 'municipal affair.' [Citations.]" (*Lancaster v. Municipal Court* (1972) 6 Cal.3d 805, 808.)

Under the principles of express preemption, local legislation is invalid if it "enters an area that is 'fully occupied' by general law when the Legislature has expressly manifested its intent to 'fully occupy' the area . . . ." (*Sherwin-Williams Co. v. City of Los Angeles, supra,* 4 Cal.4th at p. 898.) In such cases, the question of express preemption turns on whether the state-occupied field encompasses the ordinances. (*Morehart v. County of Santa Barbara, supra,* 7 Cal.4th at p. 748.)

Implied preemption occurs when the Legislature has implicitly demonstrated its intent to fully occupy an area of law. "In determining whether the Legislature has preempted by implication to the exclusion of local regulation we must look to the whole

purpose and scope of the legislative scheme. There are three tests: '(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality.' [Citations.]" (*People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 485. Accord, *IT Corp. v. Solano County Bd. of Supervisors, supra,* 1 Cal.4th at pp. 90-91; *Morehart v. County of Santa Barbara, supra,* 7 Cal.4th at p. 751.)

In order to assess whether local legislation has entered an area fully occupied by state law, either expressly or by implication, courts first must define the relevant field of law being regulated. (*In re Hubbard* (1964) 62 Cal.2d 119, 125 overruled in part on another point in *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 63, fn. 6; *San Diego Gas & Electric Co. v. City of Carlsbad* (1998) 64 Cal.App.4th 785, 793-794; 45 Cal.Jur.3d (Rev) (2000) Part 1, § 247, p. 391.) "If the definition is narrow, preemption is circumscribed; if it is broad, the sweep of preemption is expanded." (*California Water & Telephone Co. v. County of Los Angeles* (1967) 253 Cal.App.2d 16, 27-28.) "Where local legislation clearly serves local purposes, and state legislation that appears to be in conflict actually serves different, statewide purposes, preemption will not be found. [Citation.]" (*San Diego Gas & Electric Co. v. City of Carlsbad*, *supra,* 64 Cal.App.4th at p. 793.)

The preemption doctrine is constitutionally based. It derives from article XI, section 7 of the California Constitution, which provides: "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." This constitutional provision "is not only a

delegation of power by the people to the local body, but it is also a limitation upon the local body [citations] . . . ." (*Abbott v. City of Los Angeles* (1960) 53 Cal.2d 674, 681 criticized on another point in *Bishop v. City of San Jose, supra,* 1 Cal.3d at p. 63, fn. 6.)

The preemption doctrine serves to ensure uniformity of law. "The denial of power to a local body when the state has preempted the field is not based solely upon the superior authority of the state. It is a rule of necessity, based upon the need to prevent dual regulations which could result in uncertainty and confusion." (*Abbott v. City of Los Angeles, supra,* 53 Cal.2d at p. 682.) The preemption doctrine thus is critical to the orderly administration of justice on matters of statewide concern.

Determining whether a matter is of local or statewide concern may defy easy resolution. (See, *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 16 ["determining whether a given activity is a 'municipal affair' or one of statewide concern is an ad hoc inquiry"]; Hagman et al., Cal. Zoning Practice, *supra,* § 4.6, p. 108, [the cases determining the question "are not easy to rationalize"].) "Zoning is usually held to be a municipal affair, but it may not be." (Hagman et al., Cal. Zoning Practice, *supra,* § 4.5, p. 108.) "To the extent difficult choices between competing claims of municipal and state governments can be forestalled in this sensitive area of constitutional law, they ought to be; courts can avoid making such unnecessary choices by carefully insuring that the purported conflict is in fact a genuine one, unresolvable short of choosing between one enactment and the other." (*California Fed. Savings & Loan Assn. v. City of Los Angeles, supra,* 54 Cal.3d at pp. 16-17. See also, e.g., *Conway v. City of Imperial Beach, supra,* 52 Cal.App.4th at pp. 84-85.) Nevertheless, courts may be called upon to "allocate political supremacy" between state and local governments. (*California Fed. Savings & Loan Assn. v. City of Los Angeles, supra,* 54 Cal.3d at p. 25. See also, e.g., *San Diego Gas & Electric Co. v. City of Carlsbad, supra,* 64 Cal.App.4th at p. 802.) And if "there is a doubt as to whether an attempted regulation relates to a municipal or to a state matter, or if it be the mixed concern of both, the doubt must be

resolved in favor of the legislative authority of the state [citations]." (*Abbott v. City of Los Angeles, supra,* 53 Cal.2d at p. 681.)

But the mere "fact that a matter is of statewide concern does not oust municipal governments of police power. 'Even in matters of state-wide concern . . . , the city or county has police power equal to that of the state so long as the local regulations do not conflict with general laws.' (*Chavez v. Sargent* (1959) 52 Cal.2d 162, 176, citations omitted.)" (*Baldwin v. County of Tehama* (1994) 31 Cal.App.4th 166, 175, fn. omitted.)

B. Application

To determine whether the challenged local measures conflict with state law in this case, we apply well-established principles of preemption analysis. We thus consider whether the subject local measures duplicate or contradict state law, or whether they invade a field that the state has fully occupied, either expressly or implicitly. (*Sherwin-Williams Co. v. City of Los Angeles, supra,* 4 Cal.4th at p. 897.)

In undertaking that analysis here, we examine the County's measures—category by category—to determine whether state law expressly or impliedly preempts any of the local measures. Categorized by subject matter, the local legislation regulates zone districts, riparian corridors, and helicopter operations.[12]

1. Zone District Regulations

Among other things, Resolution 493-99 and Ordinance 4577 affect where timber harvesting may occur within the County. For simplicity's sake, we refer to those aspects of the two measures as zone district regulations. The effect of the zone district regulations is to limit commercial timber harvesting to property located in Timber

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[12] The local legislation also addresses at least two other subjects that were litigated below, timber production zoning and road design.

We have already discussed TP zoning in connection with our analysis of the interplay between the Coastal Act and the forestry statutes.

The road design regulations were part of Resolution 494-99 and Ordinance 4578, which never became effective and thus are not at issue here.

Production (TP) or Mineral Extraction Industrial (M-3) zones, and to property outside the coastal zone located in Parks, Recreation and Open Space (PR) zones.

The trial court upheld the zone district regulations, concluding that state law does not preempt them.

Plaintiffs and *amici* challenge that ruling. They assert that the zone district regulations are both expressly and impliedly preempted by the Forest Practice Act. As we explain below, we agree with their assertion of express preemption.

a. Preemption under the Forest Practice Act

Applying the first test for express preemption, we consider whether the local legislation duplicates state law. We find no duplication here. The zone district regulations are not coextensive with the Forest Practice Act. (See, *Sherwin-Williams Co. v. City of Los Angeles, supra,* 4 Cal.4th at pp. 897-898, 902.) The state and local laws are "different in scope and substance." (*Id.* at p. 902.) Thus, the local measures do not duplicate the general law.

Turning to the second test for express preemption, we assess whether the local legislation contradicts the FPA. Local laws contradict state law if they "prohibit what the statute commands or command what it prohibits." (*Sherwin-Williams Co. v. City of Los Angeles, supra,* 4 Cal.4th at p. 902.) As discussed above, the Forest Practice Act prohibits individual counties from regulating "the conduct of timber operations." (Pub. Resources Code, § 4516.5, subd. (d).) In our view, the County's zone district regulations run afoul of that prohibition because they allow what the FPA forbids—local regulation of the conduct of timber operations.

The issue turns on what it means to "conduct" timber operations. As to this point, we respectfully disagree with the analysis in *Big Creek v. San Mateo*, which reasoned: " 'Conduct' is not given a specialized definition in the FPA. Its ordinary meaning is 'the act, manner, or process of carrying out (as a task) or carrying forward (as a business, government, or war).' (Webster's Third New Internat. Dict. (1970) p. 473.) That the

Legislature intended to use the term 'conduct' in such a way is born out by the specific kinds of issues the State Board's rules and regulations are to address. Flood control, stand density, reforestation methods, soil movement, debris disposal and the like [citation] are clearly matters relating to the process of carrying out timber operations." (*Big Creek v. San Mateo, supra,* 31 Cal.App.4th at p. 426, citing Pub. Resources Code, § 4516.5, subd. (a).) The court thus drew a distinction between *how* timber operations will occur, which unquestionably is the province of the FPA, and *where* they will occur, which the court saw as the province of local zoning authority. (*Id.* at pp. 424-425, 427.) In support of that view, the First District mainly relied on the Timberland Productivity Act but also mentioned other unspecified legislation, saying: "The TPA clearly contemplates local zoning authority be exercised on these issues. Other pertinent legislation demonstrates the Legislature's intent to preserve local zoning authority over the lands at issue here." (*Id.* at p. 425.) The court concluded: "Reading the TPA and the FPA together, we are persuaded the Legislature did not intend to preclude counties from using their zoning authority to prohibit timber cutting on lands outside the TPZ's." (*Id.* at p. 426.)

We have two problems with that analysis.

First, we disagree with the First District's opinion that the TPA "contemplates local zoning authority be exercised on these issues." (*Big Creek v. San Mateo, supra,* 31 Cal.App.4th at p. 425.) We take the opposite view. As we explained previously, the TPA affords no mandate for an expansive view of local discretion; to the contrary, it severely circumscribes local zoning authority with respect to timberlands.

Second, and more fundamentally, we question the differentiation between *how* and *where* timber operations take place in interpreting the statutory phrase "conduct of timber operations." (Pub. Resources Code, § 4615.5, subd. (d).) In making that distinction, *Big Creek v. San Mateo* relied on the "ordinary meaning" of conduct, which is " 'the act, manner, or process' " of carrying out a task. (*Big Creek v. San Mateo, supra,* 31

Cal.App.4th at p. 426, quoting Webster's Third New Internat. Dict., *supra,* p. 473.) As plaintiffs observe, however, that definition necessarily includes the "act" of doing the task at all. Local measures that forbid logging in certain locations "regulate the conduct of timber operations" in those places in the most fundamental way imaginable—by prohibiting it outright. Carried to its logical conclusion, the reasoning in *Big Creek v. San Mateo* allows individual counties to completely circumvent the FPA by the simple expedient of enacting zoning measures that prevent logging altogether. Such a result would be contrary to the clear intent of the Legislature, which eliminated local authority over timber operations with its 1982 amendment to the FPA. (Stats. 1982, ch. 1561, § 3, pp. 6164-6165, adding Pub. Resources Code, § 4516.5.) Given both the language and the intent of the statute, we construe the statutory phrase "conduct of timber operations" to encompass the location of those activities as well as the manner of carrying them out.

To sum up, we conclude that the zone district regulations contradict the FPA because they purport to regulate the conduct of timber operations, which is forbidden by the statute. The FPA thus expressly preempts those regulations.[13]

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[13] Given our analytic departure from *Big Creek v. San Mateo*, we need not resolve the parties' dispute over a related point—whether the "how versus where" distinction elucidated in *Big Creek v. San Mateo* has been undermined by subsequent case law. (See *Westhaven Community Development Council v. County of Humboldt, supra,* 61 Cal.App.4th 365.)

Similarly, in view of our conclusion that the zone district regulations fail the second test for express preemption, we need not address the third test: whether state law fully and explicitly occupies the field being regulated. (*Sherwin-Williams Co. v. City of Los Angeles, supra,* 4 Cal.4th at p. 897.)

Likewise, in light of our determination of express preemption under the FPA, we need not consider the question of implied preemption under that statute.

b. Preemption under the Timber Productivity Act

Plaintiffs make no contention that the Timber Productivity Act preempts the zone district regulations. For that reason, and because of our determination of preemption under the FPA, we need not and do not consider preemption under the TPA.

2. Riparian Regulations

The riparian regulations are contained in Ordinance 4571, which prohibits timber harvesting within 50 feet of a perennial stream or within 30 feet of an intermittent stream. The ordinance applies in all areas of the County where timber harvesting is permitted, including within timber production zones.

Citing *Big Creek v. San Mateo*, the trial court concluded that state law does not expressly preempt the riparian corridor ordinance, because that ordinance regulates the "location" rather than the "conduct" of timber operations. But the court found the ordinance "is impliedly preempted to the extent that it applies to land within Timber Production Zones (TPZs)." Based on its further determination that the invalid portions of the measure are not severable, the court found the local legislation "preempted in its entirety."

The County challenges only certain aspects of the trial court's preemption determination. The County agrees with the court's analysis under the FPA. It defends the court's determination that the riparian ordinance regulates only the location and not the conduct of timber operations and thus is not preempted by the FPA. But the County disagrees with the court's analysis under the TPA. The County thus attacks the court's determination the riparian regulations are invalid to the extent they operate within timber production zones. As to that point, the County contends that the regulations constitute an allowable "compatible use" under the TPA.

Plaintiffs take the contrary view. They argue that both the Forest Practice Act and the Timber Productivity Act preempt the riparian ordinance, and that the ordinance is invalid both outside and inside the timber production zones.

a. Preemption under the Forest Practice Act

We agree with plaintiffs that the riparian ordinance conflicts with the Forest Practice Act and that the statute therefore expressly preempts the ordinance.

In the first place, the riparian ordinance invades the area occupied by the Forest Practice Act—the conduct of timber operations. For purposes of the FPA provision that limits the authority of local government, "timber operations" is defined to include the "protection of stream character and water quality . . . ." (Pub. Resources Code, § 4516.5, subd. (a).)

In the second place, the local measure contradicts regulations promulgated under the Forest Practice Act. Under the FPA, authority for watercourse protection is reposed in the State Forestry Board. (Pub. Resources Code, § 4551.) The statute requires the Board to "adopt district forest practice rules and regulations . . . to assure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, and wildlife, and water resources, including, but not limited to, streams, lakes, and estuaries." (*Ibid.*) Pursuant to that directive, the State Forestry Board has promulgated regulations for watercourse and lake protection. (Cal. Code Regs., tit. 14, § 916 et seq.) Among other things, those regulations address riparian buffers by establishing watercourse and lake protection zones (WLPZs). (*Id.,* §§ 916.4, 916.5.) The width of those zones is determined by a specialized formula set forth in the regulations, with some discretion accorded the registered professional forester to alter the width of the buffer. (*Ibid.*) The standard width of the WLPZ ranges from 50 feet to 150 feet but depends on a number of specified factors. (See *Id.,* § 916.5, Table 1, p. 250.) The County's riparian ordinance establishes a different buffer width than the state law regulations.

Preemption based on contradictory legislation generally is found only when the state and local acts "are irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation. [Citation.]" (*Water Quality Assn. v. City of Escondido* (1997) 53 Cal.App.4th 755, citing *Western Oil & Gas Assn. v. Monterey Bay Unified Air*

Pollution Control Dist. (1989) 49 Cal.3d 408, 419-420.) That is the situation presented here. The local and state riparian protection regulations are at odds with each other; they cannot operate concurrently. Timber harvesting near streams allowable under the state law regulations could be banned under the local ordinance. (*Ibid.* [ordinance preempted where it prohibited water softening units that would be permitted under state law].) The riparian ordinance therefore contradicts the general law and is expressly preempted. (*Sherwin-Williams Co. v. City of Los Angeles, supra,* 4 Cal.4th at p. 902.)

Furthermore, because the ordinance operates identically both inside and outside timber production zones, it is preempted in its entirety under the Forest Practice Act. Based on the foregoing conclusions, we affirm the result reached by the trial court on this point, albeit on different grounds.

b. Preemption under the Timber Productivity Act

Given our determination that the Forest Practice Act preempts the County's riparian regulations, we need not and do not consider the parties' contentions concerning preemption under the Timber Productivity Act.

3. Helicopter Regulations

Ordinance 4572 limits helicopter staging, loading, and service areas to qualifying parcels within the boundaries of an approved timber harvest plan (THP). The ordinance explicitly states that it applies to "timber operations involving the use of helicopters."

The trial court concluded that the Forest Practice Act expressly preempts the helicopter ordinance. As the court observed, the FPA definition of timber operations includes removal of timber. (Pub. Resources Code, § 4527.) The court determined that the helicopter ordinance constitutes an invalid "regulation of the manner in which timber is removed."

The County attacks that determination. Citing *Big Creek v. San Mateo*, it urges that the helicopter ordinance regulates where—not how—timber is harvested and that it is therefore valid under the FPA. (See *Big Creek v. San Mateo*, *supra,* 31 Cal.App.4th at

pp. 424-425.) The County further asserts that the ordinance does not run afoul of the TPA, even to the extent that it applies within timber production zones. More broadly, the County also defends the helicopter ordinance as a proper exercise of its general police power to provide for public health, safety, and welfare, and as an exercise of well-established local authority over aircraft-related land uses.

In response to the County's contentions, plaintiffs first urge FPA preemption. They begin by renewing their attack on the "how versus where" distinction elucidated in *Big Creek v. San Mateo*. Next, in defense of the trial court's preemption ruling, plaintiffs stress the FPA's definition of timber operations, which includes the removal of timber. (Pub. Resources Code, § 4527.) They also point out that the State Forestry Board's regulations expressly address the removal of timber by helicopter. (See, e.g., Cal. Code Regs., tit. 14, § 926.3, subds. (a)(2), (b), (c), (h).) In addition, plaintiffs also invoke TPA preemption. They characterize the ordinance as an improper regulation of timber harvests on TPZ land. Lastly, plaintiffs argue against the County's police power contentions.

a. Preemption under the Forest Practice Act

We agree with the trial court's determination that the helicopter ordinance represents an attempt to regulate timber operations in contravention of the FPA. As we explained above, the FPA expressly preempts the conduct of timber operations. The removal of timber is an integral part of timber operations. Thus, for example, the FPA provision that limits local authority defines "timber operations" to include "haul routes . . . ." (Pub. Resources Code, § 4516.5, subd. (a).) More importantly, the statute generally defines timber operations as "the cutting or *removal* . . . *of timber* or other solid wood forest products . . . together with all the work incidental thereto . . . but excluding preparatory work such as treemarking, surveying, or roadflagging." (Pub. Resources Code, § 4527, italics added.) The "construction and maintenance of . . . landings" is among "the work incidental" to timber cutting and removal. (*Ibid.*) When timber is

removed from the point of felling to a landing, the process is called "yarding." (See Cal. Code Regs., tit. 14, § 895.1, p. 217.) By setting limits on helicopter yarding, the ordinance regulates the removal of timber. It thereby invades the field of "timber operations," which is the exclusive province of state law. Further evidence that the state has fully occupied the field is found in State Forestry Board regulations that explicitly address the removal of timber by helicopter. (See, e.g., *Id.,* § 926.3, subds. (a)(2), (b), (c), (h).) The Board has even promulgated rules applicable solely to Santa Cruz County, which impose special notice requirements on proposed helicopter yarding operations. (*Ibid.*)

For all of these reasons, we conclude that the general law has occupied the field of the conduct of timber operations—particularly including the removal of timber by helicopter—leaving no room for regulation by the County. The County's helicopter ordinance thus is expressly preempted by the FPA.

As with its riparian regulations, the County's helicopter ordinance operates identically both inside and outside timber production zones. Thus, it is preempted in its entirety by the FPA as a local effort to regulate the conduct of timber operations.

b. Preemption under the Timber Productivity Act

As before, in light of our determination that the Forest Practice Act preempts the helicopter ordinance, we do not reach the issue of preemption under the Timber Productivity Act.

c. Police Power

Having determined that the FPA preempts the helicopter ordinance, we necessarily reject the County's assertion that that measure is a valid exercise of its police power. As appellant CCFA points out: "This begs the issue." The exercise of local government police power is valid only to the extent that it is "not in conflict with general laws." (Cal. Const., art. XI, § 7.) As we have explained above, this particular exercise conflicts with state law.

We likewise reject the County's contention that the helicopter ordinance is a valid exercise of its local authority over aircraft-related land uses. Whatever authority local government may have to regulate aircraft in other contexts, with respect to the use of helicopters in timber operations, the FPA leaves no room for local regulation. The helicopter ordinance is invalid.

SUMMARY OF CONCLUSIONS

I. Statutory Interplay

Reading the Coastal Act and the Timber Productivity Act together, and harmonizing the two statutes, we reach two conclusions regarding the County's regulation of timberland production zoning (Resolution 493-99 and Ordinance 4577). First, we conclude that the Coastal Commission lacks authority to require the County to mandate additional criteria for TP zoning within the coastal zone. Second, we reject the treatment of coastal zone timber production rezoning applications as LCP amendments necessitating Coastal Commission certification. Given our determination that timber production zoning does not constitute a change in the use of timberland, we conclude that the Coastal Act does not require those rezoning applications to be certified as LCP amendments. We further conclude that treating TP rezoning requests as LCP amendments constitutes the imposition of additional criteria for timber production zoning in violation of the Timber Productivity Act.

II. Preemption

A. Zone District Regulations (Resolution 493-99 and Ordinance 4577)

We reject the reasoning of *Big Creek v. San Mateo* to the extent that it distinguishes between how timber operations will occur and where they will occur. We conclude that the County's zone district regulations impermissibly regulate the conduct of timber operations, thereby contradicting the FPA. For that reason, they are expressly preempted.

B. Riparian Regulations (Ordinance 4571)

We find that the County ordinance establishing riparian buffers conflicts with the Forest Practice Act in two ways. First, the ordinance invades an area occupied by the statute, the conduct of timber operations. In addition, the ordinance contradicts regulations promulgated under the statute. For those reasons, the riparian ordinance is expressly preempted by the FPA.

C. Helicopter Regulations (Ordinance 4572)

We conclude that the helicopter ordinance is an impermissible attempt to locally regulate the removal of timber. Because the removal of timber falls within the definition of timber operations under the Forest Practice Act, that statute expressly preempts the helicopter ordinance.

D. Other Regulations (Resolution 494-99 and Ordinance 4578)

Ordinance 4578 and Resolution 494-99 never became effective. For that reason, any controversy concerning those measures—whether at the trial or the appellate level—is not justiciable.

DISPOSITION

We reverse the judgment, and we remand the matter to the trial court with instructions to enter a new and different judgment invalidating Ordinances 4571, 4572, and 4577, and Resolution 493-99.

Plaintiffs shall have costs on appeal.

Wunderlich, J.

WE CONCUR:

Elia, Acting P.J.

Mihara, J.

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Trial Judge:	Hon. Robert B. Yonts, Jr.
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