

CALIFORNIA COASTAL COMMISSION

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| Staff Report: | March 26, 1999 |
| Hearing Date: | April 16, 1999 |
| Commission Action: | |

STAFF REPORT: APPEAL**SUBSTANTIAL ISSUE**

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| LOCAL GOVERNMENT: | Del Norte County |
| LOCAL DECISION: | Approved with conditions |
| APPEAL NUMBER: | A-1-DNC-97-019 |
| APPLICANT: | RICHARD C. McNAMARA |
| PROJECT LOCATION: | Lakeside Loop Road off Vipond Drive near Lake Earl in Del Norte County. APN 110-020-64 |
| PROJECT DESCRIPTION: | Divide a 26.94-acre parcel into ten residential lots (approximately 20,000 square feet each in size) and a 22-acre remainder lot. |
| APPELLANTS: | California Coastal Commissioners Sara J. Wan and Fran Pavley. |
| SUBSTANTIVE FILE DOCUMENTS: | Del Norte County: (1) Coastal Development Permit File No. MJ9702C; (2) Resource Conservation Area Rezone File No. R9702C; (3) LCP 2-98, Major (McNamara); and (4) Local Coastal Program. |

SUMMARY OF STAFF RECOMMENDATION.**1. SUMMARY OF STAFF RECOMMENDATION: SUBSTANTIAL ISSUE**

Staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed, and that the Commission hold a de novo hearing,

because the appellants have raised a substantial issue with the local government's action and its consistency with the certified LCP.

Del Norte County approved a coastal development permit for the subdivision of a 26.94-acre parcel into ten residential lots (approximately 20,000 square feet each in size) and a 22-acre remainder lot. The appellants contend that the project is not consistent with the County's certified LCP, and have four main areas of concern as discussed in greater detail below: (a) the subdivision as approved would ultimately result in the placement of fill in wetland and riparian habitat for residential uses, uses for which the LCP does not allow fill; (b) the development fails to protect the riparian wetland habitat area; (c) feasible, less environmentally damaging alternatives to the placement of fill within wetland/riparian habitat area were not examined as required by policies of the LCP, and (d) one of the lots proposed in the subdivision does not meet the minimum lot size standards of the LCP.

The Commission staff analysis indicates that the project, as approved by the County, raises a substantial issue with respect to each of the contentions raised by the appellants.

The appeal is related to an LCP amendment affecting the zoning for the project site that the County began processing simultaneously with the coastal development permit. The County approved the permit, and the appeal was filed, prior to transmittal of the LCP amendment to the Commission. To allow the Commission to act on the LCP amendment prior to its consideration of the appeal, the applicant waived the time deadline for Commission action on the appeal. An LCP amendment was subsequently transmitted by the County and certified by the Commission (Del Norte County LCP Amendment No. 2-98 (Major). Although the currently certified LCP governs the Commission's substantial issue determination, staff believes that the appeal raises a substantial issue of conformance with the LCP both as it existed prior to the LCP amendment and as amended.

The motion to adopt the Staff Recommendation of Substantial Issue is found on page 4.

2. SUMMARY OF STAFF RECOMMENDATION DE NOVO: APPROVAL WITH CONDITIONS

The staff recommends that the Commission approve with conditions the coastal development permit for the proposed project on the basis that, as conditioned by the Commission, the project is consistent with the County's certified LCP and with the public access and public recreation policies of the Coastal Act.

The staff analysis indicates that the proposed project is not consistent with the sensitive resource protection policies and the minimum lot size standards of the LCP. However, staff believes the proposed project would be consistent with the County's LCP if conditioned to require the applicant to submit a revised subdivision map that eliminates one of the ten proposed residential parcels (Parcel J). The condition would result in a revised subdivision composed of nine residential parcels and a remainder parcel, with all of the residential parcels located outside of the habitat areas and conforming to the minimum lot size requirements of the LCP. Thus, adverse impacts associated with the proposed project can be mitigated consistent with the provisions of the certified LCP through special conditions.

The Motion to adopt the Staff Recommendation of Approval with Conditions is found on Page 25.

STAFF NOTES:

1. Appeal Process.

After certification of Local Coastal Programs (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Coastal Act Section 30603 provides, in applicable part, that action taken by a local government on a coastal development permit application may be appealed to the Coastal Commission for certain kinds of developments including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, those located in a sensitive coastal resource area or those located within 100 feet of any wetland, estuary, or stream. Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments that constitute a major public works or a major energy facilities may be appealed, whether approved or denied by the city or county.

The subject development is appealable to the Commission because it is located within 100 feet of a wetland, is located between the first public road paralleling the sea and the sea, and is not a principally permitted use identified in the Del Norte County certified Coastal Zoning Ordinance.

Section 30603 limits the grounds for an appeal to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access and public recreation policies set forth in the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of the Commissioners present to find that no substantial issue is raised. Unless it is determined that there is no substantial issue, the Commission would continue with a full public hearing on the merits of the project. If the Commission were to conduct a de novo hearing on the appeal the applicable test under Coastal Act Section 30604 would be whether the development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act.

The only persons eligible to testify before the Commission on the substantial issue question are the applicant, persons who made their views known before the local government (or their

representatives) and the local government. Testimony from other persons regarding the substantial issue question must be submitted in writing.

2. Filing of Appeal.

The appellants filed an appeal to the Commission in a timely manner on March 31, 1997, within ten working days of receipt by the Commission of a complete notice of Final local action on March 17, 1997. The applicant waived the applicable time limits for Commission action on the appeal to allow an associated LCP amendment to first be reviewed by the Commission.

PART ONE - SUBSTANTIAL ISSUE.

STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE.

Pursuant to Section 30603(b) of the Coastal Act as discussed below, the staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed. The proper MOTION is:

I move that the Commission determine that Appeal No. A-1-DNC-97-019 raises NO substantial issue as to conformity with the certified Local Coastal Program with respect to the grounds on which the appeal has been filed pursuant to Section 30603 of the Coastal Act.

Staff recommends a NO vote on the motion. A majority of the Commissioners present is required to pass the motion. Approval of the motion would mean that the County permit is effective.

I. FINDINGS AND DECLARATIONS.

The Commission hereby finds and declares:

A. APPELLANT'S CONTENTIONS.

The Commission received an appeal of the County of Del Norte decision to approve the project from Coastal Commissioners Sara J. Wan and Fran Pavley. The project as approved consists of the subdivision of a 26.94-acre parcel into ten residential lots (approximately 20,000 square feet each in size) and a 22-acre remainder lot. The site is located west of Lake Earl Drive, which is the first public road paralleling the sea.

The appellant's contentions are summarized below, and the full text of the contentions is also included as Exhibit No. 4. The appellants contend that the development as approved by the County is inconsistent with the certified LCP.

1. Environmentally Sensitive Wetland Resources.

The appellants assert that the Del Norte County approval of the subdivision does not conform to a number of LCP policies that relate to environmentally sensitive wetland resources. They contend that: (a) the proposed fill in wetland/riparian habitat for residential uses is not allowable under the LCP; (b) that the project as approved fails to buffer the riparian wetland habitat area from future development; and (c) that feasible, less environmentally damaging alternatives to the placement of fill within wetland/riparian habitat area were not examined, all as specified and required by the policies of the certified LCP.

2. Minimum Lot Size.

The appellants also contend that one of the lots (Lot "J") of the proposed subdivision does not meet the minimum lot size development standard requirement as specified by the Resource Conservation Area policies of the LCP.

B. LOCAL GOVERNMENT ACTION

The applicant applied to Del Norte for a coastal development permit to subdivide the 26.94-acre parcel into ten residential lots (approximately 20,000 square feet each in size) and a 22-acre remainder lot. On March 5, 1997, the Del Norte County Planning Commission approved Coastal Development Permit No. MJ9702C which authorized the subject subdivision, and the Planning Commission also approved an RCA rezone of the property. The decision to approve the coastal development permit for the subdivision was not appealed to the Board of Supervisors. The County issued a Notice of Final Action, which was received as complete in the Commission Office on March 17, 1997. The Planning Commission's recommendation of approval for the RCA rezone was forwarded to the Del Norte County Board of Supervisors for its review as an LCP amendment at an April 22, 1997 public hearing.

The coastal development permit approved by the County includes sixteen (16) conditions of approval (see Exhibit No. 5). The conditions of approval most relevant to this appeal are Condition Nos. 1, 4, 11, 12, & 13, as summarized below. Condition No. 1 requires approval of the Resource Conservation Area zoning LCP amendment by both the County and the Coastal Commission and indicates that changes in the final zoning configuration may require an amendment of this subdivision project. Condition No. 4 requires that prior to recordation of any portion of the final map, the developer shall obtain a Waste Discharge Report from the Regional Water Quality Control Board (RWQCB) that includes a plan for well and sewage disposal system locations for each lot, subject to RWQCB requirements. Condition No. 11 requires that the boundary of the RCA zoned riparian area is identified on the Final map with a note indicating "riparian drainage area - disturbance of vegetation subject to County regulations." Condition No. 12 requires that prior to the recordation of any portion of the final map, the applicant shall have a final wetland mitigation/restoration plan prepared by a qualified biologist which shall be reviewed by the California Department of Fish and Game and accepted by the County. The plan shall reflect the mitigation proposed by the project including the location of the restoration area and a 1:5 replacement ratio, and shall be based upon the current standards for restoration of the identified habitat(s), including a monitoring program. Finally, Condition No. 13 requires that the

100-year flood hazard boundary (elevation 12 feet) be identified on the final map and in deeds to be recorded that prohibit the construction of any structures (except a well) or the removal of any native habitat except for drainage and access projects within the hazards area.

The County Planning Commission found that the project as conditioned conforms to the LCP. The County findings that are the most applicable to this appeal are listed below:

- A. The project is consistent with the policies and standards of the County General Plan, Coastal Program and Subdivision Ordinance;
- C. Soils and vegetation mapping and analysis has been prepared by a professional biologist and sensitive habitat areas of the project identified and proposed as Riparian pursuant to the adopted Local Coastal Plan;
- G. Habitat impacts have been mitigated by establishing zoning and elevation boundaries where disturbance is limited and by mitigative restoration of adjacent wetlands for fill areas;
- J. Comments received from the Department of Fish and Game were submitted to the County after the close of the CEQA review period. Review of the referenced letter of September, 1996, indicates no comment regarding a 100-foot setback as outlined. It is noted that Coastal Zoning Map C-8 indicates that the edge of the Resource Conservation Area-2 (estuary) designation for the lake is over 100 feet from the project area and that the adjacent Department of Fish and Game lands are designated as Resource Conservation Area -2 (farmed wetlands) which have no buffer requirements;
- K. The adopted County Local Coastal Program separately identifies and sets policies for several sensitive habitat Resource Conservation Area categories including riparian, wetland, wetland buffer and farmed wetland. The Department of Fish and Game has, in recent years, incorporated these into a more general category called wetland for the purpose of CEQA review and impact evaluation. The Local Coastal Program does not limit or condition the placement of fill in riparian areas; however, such fill is subject to mitigation under Department of Fish and Game policies, as in this project case.

C. PROJECT SETTING, DESCRIPTION, AND RELATED RCA REZONE.

1. Site Description.

The 26.94-acre site is located adjacent to the southeastern side of Lake Earl, off Lake Earl Drive approximately two miles north of Crescent City in an unincorporated area of Del Norte County. The subject property consists of three sub-areas, each with distinct environmental characteristics. The northerly portion of the property is an agricultural area that is covered with a second growth Spruce forest. The Middle portion of the property includes an environmentally sensitive wetland/riparian habitat area. And finally, the southerly portion of the property is covered with an open grassy meadow that was cleared of its forest resources some time ago.

The Lake Earl Wildlife Refuge is located west and north of, and adjacent to the subject property. The California Department of Fish and Game administers the Lake Earl Wildlife Refuge for the protection of sensitive habitat areas and to provide hunting and fishing opportunities. The land directly to the east of the subject property is currently developed as a rural residential neighborhood at similar densities as the proposed project.

2. Project Description.

As approved by the County of Del Norte, the project would allow the division of the 26.94-acre parcel into ten residential building lots that are each about 20,000 square feet in size and a 22-acre remainder lot to be used for agriculture. The project includes the extension of a paved road (i.e. Lakeside Loop) within the subdivision to form a loop road at the westerly end of Vipond Drive. The proposed road extension of Lakeside Loop would be approximately 2,300 feet long and average 40 feet wide.

The project site contains environmentally sensitive wetland/riparian habitat. Based on an initial wetlands investigation, it was thought at the time the County acted on the proposed subdivision, that the proposed road construction and future development of house sites on Lots B, I, and J would result in the filling of about 35,000+ square-feet of environmentally sensitive, wetland/riparian habitat area. As mitigation for the wetland fill, the applicant proposed to create about 54,000 square feet of wetland (i.e. riparian habitat) from an upland area in the northwest corner of the property next to Lake Earl. Specific plans for the proposed wetland restoration mitigation have not yet been developed.

Subsequent to the County's action to approve the subdivision, the project was appealed to the Coastal Commission as discussed herein. Based on concerns raised in the appeal, the applicant caused to be prepared a supplemental wetlands investigation that re-examined identified and potential wetland areas using the wetland definitions contained in the certified LCP and compared more precise dimensions of the subdivision against the identified riparian/wetland resources. The supplemental wetland investigation revealed that the proposed road alignment is in fact located outside of the riparian/wetland habitat area and thus would not require any fill within an environmentally sensitive habitat area. The supplemental wetlands investigation further revealed that proposed Lot B does not contain riparian/wetland habitat. Finally, the investigation confirmed that the previous riparian/wetland delineation on Lots I and J was correct.

The subject property is located outside of the urban/rural boundary where public water and public sewer systems are not available. Consequently, all of the proposed lots within the subdivision would rely upon private, on-site wells and septic systems. The property is fairly flat and has high ground water conditions due to its proximity to Lake Earl. Lake Earl is a coastal lagoon that has a surface water level that may rise up to 10 feet mean sea level (MSL) in the winter months. Most of the property is between 12 to 16 feet MSL. Because of high ground water conditions on the property and updated sewage disposal regulations in Del Norte County, each of the ten proposed residential building lots will have to rely upon a "Wisconsin mound" septic system, each lot cannot be less than 20,000 square feet in size, and the subdivision plan designates specific areas

on each lot to install a septic system, a reserve area, and a well with a minimum 100-foot separation from any septic system.

The project is locally known as the "McNamara Unit 3 Subdivision" because it is the third subdivision of the McNamara property. The County staff report for the subdivision/RCA rezone provides a brief history of the project as follows:

"In the early 1980's, McNamara submitted a proposal for the development of 80+ residential lots overall at the end of Vipond Drive in the northern Crescent City area. Adjacent to Lake Earl, the project had significant issues for which an EIR was prepared (SCH No. 82111705). These issues included the impacts of and upon Lake Earl, ground water and sewage disposal, traffic, emergency services, flooding, and habitat. The EIR was subsequently adopted with mitigation measures and mitigative conditions. Unit I was recorded prior to expiration. Subsequently, an application to reestablish Unit II (China Creek Court) was processed and conditions updated and reestablished. In 1990/91, McNamara submitted a proposal for Unit III that included a General Plan and Zone change that changed the agricultural area to a residential designation and lots. A Notice of Preparation for an EIR was circulated (SCH No. 91103037) with several issues identified. These included agricultural conversion, habitat mapping and impacts, sewage disposal, and drainage. The applicant in mid-1996 withdrew the project. The revised Unit III proposal now submitted is reduced in size with no agricultural area conversion...."

3. LCP Designations and Amendment.

The subject property has three principal land use and zoning designations. Generally, the northern portion of the property is designated and zoned for agriculture. The middle portion of the property is designated and zoned with Resource Conservation Area designations, and the southerly portion is designated and zoned as a residential area.

The agricultural portion of the property is designated and zoned as A-5, General Agriculture, with a 5-acre minimum parcel size. For the most part, the agricultural area is contained within the proposed 22-acre remainder lot that is now covered with a second growth Spruce forest.

The intent of the A-5 zoning classification is to acknowledge that there is limited area within the County that is suitable for use as agricultural land. This district is designed to protect agricultural-related industry on non-prime agricultural lands against encroachment by other uses that may be in conflict with such uses. Principally permitted uses within A-5 zone include: (a) all agricultural uses including horticulture, crop and tree farming, small livestock and animal husbandry including dairies, public and private stables (except feed lots); (b) accessory buildings and uses including barns, stables, one green house and other agricultural buildings; and (c) a one-family residence and appurtenant accessory structures. Although the principally permitted uses of the A-5 zoning classification are essentially the same as other agricultural zoning classifications, by comparison, the A-5 zoning classification is less restrictive as to the scope of permitted uses within the County's AE, Exclusive Agriculture zoning classification. The AE zoning classification is intended to protect prime agricultural land that consists of twenty acres or more in contiguous

ownership and is actively used for the production of nursery crops, pasture crops, dairy products and/ or the raising of live stock or which contain Class I soils and/or a quality for a rating of eighty and above on the Storie Index.

The residential area of the subject property covers the southerly portion of the property. This area has a Rural Neighborhood land use designation and is zoned as R1-B13 (one-family residence, 13,000-sq. ft. minimum lot size. The Rural Neighborhood land use designation is generally applied to areas that have been developed historically with lots smaller than those found in the surrounding rural lands. The purpose of the Rural Neighborhood land use designation is to keep pockets of small lot residential development from expanding into adjacent forests, agricultural or other rural lands. Within the Rural Neighborhood land Use designation, the creation of parcels at densities specified on the land use map is permitted subject to any physical limitations.

The Del Norte County Land Use Map does not include specified densities for the Rural Neighborhood land use designation. However, the Del Norte Zoning Map indicates the R1-B13 zoning has a minimum parcel size of 13,000-square-feet. However, due to high groundwater saturation levels in the area, the Regional Water Quality Control Board and the County Environmental Health Department require a minimum parcel size of 20,000-square-feet, to be able to safely accommodate both domestic water well and septic disposal systems.

When the Del Norte County Planning Commission approved the coastal development permit for the McNamara subdivision, a General Resource Conservation Area (RCA-1) land use designation and zoning classification applied to the middle portion of the property. Portions of several residential lots and a portion of the proposed extension of Lakeside Loop Road were believed by the County at that time to be wholly or partially located within a wetland/riparian habitat area. The Del Norte County certified LCP requires that, prior to approval of any development within areas classified as RCA-1, those areas zoned as RCA-1 must be re-designated to a specific RCA-2 classification based on a field survey of sensitive resources present at the site. The RCA rezone process is implemented by Chapter 21.11 and Chapter 21.11A of the County's coastal zoning ordinance and is used to identify environmentally sensitive lands that may contain wetlands, wetland buffers, farmed wetlands, riparian areas, estuaries, and coastal sand dunes.

The RCA rezone process is unique to Del Norte County's Local Coastal Program. Because the County's coastal zone has extensive environmentally sensitive habitat areas, it was not possible for the County to conduct precise, site-specific habitat mapping for every property within the County's coastal zone when the County's LCP was prepared. Instead, the County prepared generalized resource maps, and applied a zoning category of Resource Conservation Area – General (RCA-1) to such areas. Consequently, the RCA-1 zone serves as a transition zone until more precise site-specific habitat mapping can be completed.

The RCA-1 zoned areas were originally mapped in a very general way using available aerial photographs and other information. As a result, the general RCA-1 zone tends to be over inclusive with respect to the actual location of the environmentally sensitive habitat area within the zone. Once site specific identification of sensitive resources is completed, the property containing the sensitive resources can then be designated with a RCA-2 zone (*Designated Resource Conservation*

Area) designation as detailed in Chapter 21.11A of the County's coastal zoning ordinance. A RCA-1 to RCA-2 rezone requires, among other things, a site investigation by various parties and the mapping of the area's topography, soils, vegetation, and the location of any non-tidal wetlands that are permanently or seasonally inundated. Where additional information indicates that riparian or other resources are present on the site, the property is rezoned to the category of RCA-2, with a suffix indicating the type of resource present (for instance, "r" for riparian). Any non-habitat area within the former RCA-1 zone should be rezoned to the adjacent, non-habitat zoning designation. For the McNamara Subdivision and RCA rezone, the adjacent, non-habitat-zoning designations are R1-B13 (*One-Family Residence, 13,000-sq. ft. minimum lot size*) and A-5 (*Agricultural General, 5-acre minimum lot size*).

The County's LCP requires that the approval of an RCA-1 to RCA-2 rezone by the Planning Commission be submitted to the Del Norte County Board of Supervisors for their review. If the Board of Supervisors approves the RCA rezone, then the rezone is forwarded to the Coastal Commission for its review and certification as an LCP amendment.

4. McNamara RCA-Rezone and Subdivision Chronology.

The RCA rezone proposal associated with the McNamara Unit 3 Subdivision evolved and changed since it was originally reviewed by the County Planning Commission on March 5, 1997. At the time of the Planning Commission's action on the subdivision request, a portion of the subject property was zoned undesignated or General Resource Conservation Area (RCA-1).

The Planning Commission's approval was not appealed at the local level to the Board of Supervisors. The Planning Commission's approval of the subdivision was subject to a proposed Resource Conservation Area (RCA) rezone amendment being approved by the County Board of Supervisors and certified by the Coastal Commission.

Coastal Commissioners Sara Wan and Fran Pavley filed the subject appeal on March 31, 1997. A primary issue raised by the appeal concerns the consistency of the proposed fill within riparian habitat areas that would result from the subdivision for residential uses with the sensitive habitat protection policies of the County's certified LCP.

After the appeal was filed, the applicant requested additional time to conduct a supplemental wetland investigation in an attempt to address Coastal Commission concerns prior to the Board of Supervisors taking action on the RCA-rezone proposal. The applicant specifically requested that he be allowed to precisely locate the proposed roadway alignment and reconfirm the location of riparian habitat in relation to the proposed subdivision configuration. On April 22, 1998, the Board of Supervisors opened the public hearing on the proposed RCA rezone, but pursuant to the applicant's request, the hearing was continued.

On May 13, 1997, the applicant's engineer (Michael Young and Associates, Civil Engineers) and biological consultant (Karen Theiss and Associates, Biological and Environmental Consultant) visited the site to evaluate the proposed subdivision configuration with respect to the mapped wetlands; more specifically to determine the extent of possible encroachment of the residential

uses of the proposed subdivision configuration onto the adjacent wetlands. The centerline of the road and its intersection with Vipond Road was staked, and the distance from these points to the edge of the wetland was measured. While the original wetland map indicates that riparian vegetation is included within a portion of a curve in the road alignment, the field reconnaissance revealed that the staked road alignment falls just outside of the area that supports woody riparian vegetation. As such, it was determined that the entire proposed road right-of-way falls outside of the riparian habitat area. The supplemental wetland investigation further revealed that: (1) the riparian areas within parcel B did not meet the necessary wetland identification criteria; and (2) the upland/wetland boundaries on Parcels I and J were correct as originally mapped.

As approved by the County Board of Supervisors and later certified by the Coastal Commission, the RCA-Rezone identified a large area of riparian habitat in the central portion of the subject property that has now been zoned Designated Resource Conservation Area – Riparian (RCA-2(r)). The area at the southern most portion of the property that has been found to contain no sensitive habitat areas and is suitable for residential development has been zoned One-Family Residence, 13,000-square-foot minimum parcel size (R1-B13). The northern most portion of the property is now primarily zoned Agriculture General, 5-acre minimum parcel size (A-5), but also contains small pockets of RCA-2(r). It must be noted that both the recently zoned RCA-2(r) and A-5 areas are within the 22-acre remainder parcel and would not be affected by the subject subdivision proposal (Exhibit 6).

By way of letter dated May 15, 1997, to Del Norte County Planning Department, the applicant's engineer modified the original rezoning proposal to reflect the findings of the supplemental wetland investigation. If these changes to the rezoning proposed were incorporated into the proposed subdivision permit, the changes would result in the elimination of one residential lot, avoid areas of any wetland fill, and the elimination of any wetland mitigation, as described below:

- a) delete previously mapped "Wetland II" thereby allowing development of Lot B;
- b) change the proposed RCA-2(r) boundary on Lot I to reflect location of riparian habitat and eliminate proposed fill within Lot I;
- c) change the proposed RCA-2 (r) boundary between lots J and I to follow the edge of the curved right-of-way and established riparian boundary thereby eliminating the proposed fill;
- d) Delete Lot J; and
- e) Delete the proposed wetland mitigation areas and revise proposed RCA-2(r) boundary accordingly.

However, no such changes could be made at that time to the project description in the coastal development permit application as approved by the County because the County had already completed its action on the permit. Thus, the coastal development permit as approved by the County that is before the Commission on appeal reflects the original subdivision configuration.

On June 10, 1997, the County Board of Supervisors approved the RCA-rezone proposal, as modified by the applicant's letter dated May 15, 1997, and forwarded on the LCP amendment to

the Coastal Commission for certification. On September 9, 1998, the Coastal Commission certified, as submitted by the Board of Supervisors, LCP Amendment No. 2-98 (McNamara).

As a result, riparian resources have been identified within certain areas that the coastal development permit as approved by the County would allow to be developed for residential uses.

D. SUBSTANTIAL ISSUE ANALYSIS.

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

All of the contentions raised in the appeal present valid grounds for appeal in that they allege the project is inconsistent with policies of the certified LCP.

Public Resources Code section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the Commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term substantial issue is not defined in the Coastal Act or its implementing regulations. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal.Code Regs. Title 14, section 13115(b). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, section 1094.5.

In this case, for the reasons identified herein, the Commission finds that a substantial issue exists with regard to the project's conformance with the certified Del Norte County LCP. The Commission finds, as discussed in the following findings, that the project as approved raises a substantial issue of conformance with the LCP, both as the LCP existed prior to certification of LCP Amendment No. 2-98 and as amended. Each of the areas of concern raised by the appellants is specifically discussed below.

A. Uses Allowed Within Environmentally Sensitive Habitat Area.

i. Contention

The appellants contend that the project would allow the impermissible placement of fill within a 35,000+ square-foot, environmentally sensitive, wetland habitat area to create three residential lots identified as "B", "I", and "J", and to construct a portion of a road extension (Lakeside Loop) within the subdivision.

ii. LCP Policies.

The appellants contend that the placement of fill within the environmentally sensitive habitat area conflict with the following LCP policies:

- The LUP text on page 51 states the following with respect to sensitive coastal habitats:

*Land Use Criteria: Standards for designating land uses in and adjacent to sensitive habitats and criteria for acceptable levels of use of these areas are proposed below.**

- a. Land uses and levels of use in and adjacent to biologically sensitive habitats shall not adversely alter or contribute significantly to a cumulative alteration of the overall biological productivity of the area.*
- b. Land uses and levels of use in and adjacent to biologically sensitive habitats shall not adversely impact or contribute significantly to a cumulative impact on the viability of flora and fauna inhabiting or utilizing the area.*

**Note: These criteria are to be incorporated into the Land Use Designation Program and are to be utilized as general guides in future development in sensitive habitat areas.*

- General Policy No. 6 on page 58 of the LUP for environmentally sensitive habitat areas states:

Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values and only uses dependant upon such resources shall be allowed within such

areas. Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which would significantly degrade such areas and shall be compatible with the continuance of such habitat areas.

- Specific Area Policy No. 4a on page 65 of the LUP for wetlands states in applicable part:

The diking, filling, or dredging of wetlands shall be permitted in accordance with other applicable provisions of this program, where there is no feasible less environmentally damaging alternative and where feasible mitigation measures have been provided to minimize adverse environmental effects. Such projects shall be limited to those identified in Section 30233 of the Coastal Act.

- As incorporated by Specific Area Policy No. 4a above, Section 30233 of the Coastal Act limits the filling of wetlands to one or more of the following eight uses:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and out-fall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

- Specific Area Policy No. 4a on page 67 of the LUP for riparian vegetation states:

Riparian vegetation shall be maintained along streams, creeks, and sloughs and other water courses within the coastal zone for their qualities as wildlife habitat, stream buffer zones, and bank stabilization.

- Section 21.11A.030(E) on page 34 of the County's coastal zoning ordinance indicates the principally permitted uses that are allowed within riparian vegetated areas and the RCA-2(r) zone and it states:

The principal permitted designated resource conservation area (riparian) uses includes uses such as:

- 1. Nature study, fish and wildlife management and hunting and fishing, including the development of minor facilities such as duck blinds and recreation trails;*
 - 2. Firewood removal by the owner for on-site residential use;*
 - 3. Commercial timber harvest of conifers pursuant to California Department of Forestry Practice Rules for special treatment areas and stream protection zones and where:*
 - a. Heavy equipment is not used,*
 - b. At least fifty percent of the coniferous tree canopy and all of the hardwood canopy is retained;*
 - 4. Wells within rural areas;*
 - 5. Maintenance of existing flood-control and drainage channels;*
 - 6. Roads, road maintenance and repair. Where new stream crossings are proposed they shall be limited, when feasible, to right-angle crossings of the stream corridors.*
- Section 21.11A.040 on pages 35 and 36 of the County's coastal zoning ordinance indicates the conditionally permitted uses that are allowed in all RCA-2 designations and more limited RCA-2 designations. Section 21.11A.040 states in applicable part:

Uses permitted with a use permit include:

- A. In all designations, a single-family residence and appurtenant structures where denial of such would otherwise substantially deny all reasonable use of the parcel and where such development will be sited and designed to prevent impacts which would significantly degrade the environmentally sensitive habitat area...*
 - B. In all designations, those recreational facilities included in a State Park and Recreation/Department of Fish and Game Master Plan which has been submitted and approved as an amendment to the General Plan Coastal Element.*
 - C. In all designations, wetland restoration subject to Section 21.11A.080.*
- Section 21.11A.080 on pages 39 and 40 of the County's coastal zoning ordinance establishes guidelines for wetland restoration projects permitted under Section 21.11A.040(D). Section 21.11A.080 states, in applicable part, that:

Restoration projects which are a permitted development in Section 21.11A.040(D) are publicly or privately financed projects in which restoration is the sole purpose of the project except as set forth on subsection A of this section:

- A. *Requirements for filing for the purpose of reclassification in urban areas restoration projects may include some fill for reclassification for non-permitted uses if the wetlands are small, extremely isolated and incapable of being restored. Small, extremely isolated wetland parcels that are being restored to biological productive systems may be filled and developed for reclassification only if such actions establish stable and logical boundaries between urban and wetland areas and if the applicant provides funds sufficient to accomplish the approved restoration program in the same general region...*

iii. Discussion.

The wetlands information available to the County at the time it acted on the permit indicated that a portion of the road extension to be built pursuant to the permit would be located within a wetland and that three of the proposed residential lots contained wetlands, leading to the possibility that future development of houses on the lots would result in wetland fill for residential purposes. As noted earlier, a supplemental wetland investigation conducted prior to the rezone determined later that no portion of the road would be located in a wetland and only two of the three lots previously identified as containing wetlands actually contain wetlands. However, the report also concludes that at least one of the residential lots (Lot J) could not feasibly be developed without constructing a residence at least partially within the wetland area. Therefore, both the initial wetland investigation and the supplemental investigation evidence that the project approved by the County raises issues of consistency with the wetland policies of the certified LCP.

The LUP recognizes that wetlands are a type of biologically or environmentally sensitive habitat. Neither the LUP nor zoning policies allow for fill within a wetland/riparian habitat area for residential uses. General Policy No. 6 on page 58 of the LUP limits uses within an environmentally sensitive habitat areas to those uses that are dependent upon such resources. Specific Area Policy No. 4a on page 65 of the LUP provides that the placement of fill within wetlands shall be permitted only when there is no feasible, less environmentally damaging alternative. This policy further limits projects that include wetland fill to those project types identified in Section 30233 of the Coastal Act. Specific Area Policy No. 4a on page 67 of the LUP requires that riparian vegetation shall be maintained within the coastal zone for their qualities as wildlife habitat and stream buffer zones.

The creation of a residential lot (Lot J) within a riparian habitat area would result in a residence at least partially in that riparian habitat area. Such a use is not dependent on these resources as such development can be located outside of environmentally sensitive habitat areas and still function as intended. Further, the creation of the residential lot (Lot J) would result in a residence at least partially within an environmentally sensitive habitat area that would not protect the area from significant disruption of habitat values. Moreover, the creation of residential lots and the

construction of new roads adjacent to a riparian habitat may significantly degrade the habitat values and may be incompatible with the continuance of such habitat areas if the new development is not properly sited and designed.

The Land Use Categories on pages 331 and 332 of the LUP cite allowable uses within a riparian habitat areas or a RCA-2(r) zoned areas. The proposed residential use is not listed as an allowable use within a riparian habitat or RCA-2(r). Consistent with the certified LCP, Section 21.11A.030(E) on page 34 of the County's Coastal Zoning Ordinance describes the principally permitted uses within the Designated Resource Conservation Area – Riparian (RCA-2(r)). The proposed residential use within areas classified as RCA-2(r) zone is not listed as principally permitted uses under this section.

Section 21.11A.040 on Page 35 of the County's Coastal Zoning Ordinance describes the conditionally permitted uses within the Designated Resource Conservation Area – Riparian (RCA-2(r)). The proposed residential use within a riparian habitat area is not listed as a conditionally permitted use under Section 21.11A.040(D) on pages 35 and 36 of the County's coastal zoning ordinances. Although Section 21.11A.040(A) does allow the construction of a single-family residence and appurtenant structures within a riparian habitat or a RCA-2(r) zone, it is only allowed where the denial of this residential use would otherwise substantially deny all reasonable use of the parcel and where such development is sited and designed to prevent impacts which would significantly degrade the environmentally sensitive habitat area. In this case, the applicant has not applied to the County for a conditional use permit to site single-family residences in a riparian habitat area. In addition, the proposed subdivision plan shows that at least seven of the ten residential building lots can be sited outside of the riparian habitat area on the property. Thus, denial of a residential use within the riparian habitat area on the property would not result in a denial of all reasonable use of the property.

Section 21.11A.040(C) allows wetland restoration in all designated RCA-2 zoned areas. As proposed and approved by the County, the proposed project includes 52,500 square feet of wetland restoration. The County approval suggests that the proposed fill for a residential use could be approved as part of a larger wetland restoration project that is allowed within wetlands.

The wetland investigation report on page one acknowledges that one of the constraints encountered during the field investigation was "manipulation of some portions of the site (e.g. grading, removal of vegetation)." Coastal staff confirmed this observation during a recent site visit. However, nowhere does the report describe the identified riparian habitat areas on the site as degraded, or in need of restoration.

Section 21.11A.080 of the County's Coastal Zoning Ordinance establishes guidelines for wetland restoration projects that are permitted under Section 21.11A.040(D). Section 21.11A.040(D) specifically limits wetland restoration projects to those project where "restoration is the sole purpose of the project. Section 21.11A.080 is not applicable to the subject project because: (1) wetland restoration is not the sole purpose of the project; (2) the wetlands to be filled are not being restored; and (3) the exception that allows some wetlands to be filled applies only to wetlands within "urban areas" where the wetlands are small, extremely isolated and incapable of being

restored. In this case, the wetlands that would be filled are not located within an urban area.

iv. Conclusion

The appellant's contentions that the project approved by the County includes fill within an environmentally sensitive riparian/wetland resource area for residential development raises a substantial issue of conformity with the certified LCP. A wetlands investigation report, dated January 1993 (supplemented May 13, 1997), that was prepared for the subject project by Karen Theiss and Associates, documents that the proposed subdivision could result in the future development of a residential use within a sensitive riparian habitat area, raising a substantial issue of consistency with: 1) the definition of wetlands as a type of biologically sensitive habitat on pages 47 through 50 of the LUP; 2) the performance standards for land uses in and adjacent to environmentally sensitive wetland habitat areas as described on page 51 of the LUP; 3) General Policy No. 6 on page 58 of the LUP regarding development within environmentally sensitive habitat areas; 4) Specific Area Policy No. 4a on page 65 of the LUP regarding fill within wetlands; 5) Specific Area Policy No. 4a on page 67 of the LUP regarding the maintenance of riparian vegetation; 6) the Land Use Categories on pages 331 and 332 of the LUP; 7) Section 21.11A.030(E) of the Coastal Zoning Ordinance regarding principally permitted uses within a Designated Resource Conservation Area; 8) Section 21.11A.040 of the Coastal Zoning Ordinance which limits uses within environmentally sensitive habitat areas to uses dependant upon such resources; and 9) Section 21.11A.080 of the Coastal Zoning Ordinance which establishes guideline for wetland restoration projects.

The proposed residential use within an environmentally sensitive, riparian habitat area raises a substantial issue of conformance with the County's certified LUP and Coastal Zoning Ordinance. The creation of a residential lot (Lot J) would lead to the future placement of fill within riparian wetland resource areas for residential use, and the significant disruption of sensitive coastal habitat. As evidenced in Coastal Act Section 30233, the preservation of coastal wetlands is an issue of statewide importance. Coastal Commission concurrence with the project as approved by the County would set a precedent regarding wetland fill and the County's future interpretation and implementation of the certified LCP. Therefore, the Commission concludes that the project as approved by the County, raises a substantial issue with respect to conformance of the approved project with the Del Norte County certified LCP.

D. Inconsistent with Buffer Zone Policies.

i. Contention.

The appellants contend that the project does not establish a buffer zone between the proposed development and adjacent wetlands on the subject property and adjoining properties. The project as approved by the County would result in future residential development within and adjacent to riparian and wetland habitat, inconsistent with General Policy No. 6 on page 58 of the LUP, Specific Area Policy No. 4f on pages 65 and 66 of the LUP, Specific Area Policy No. 4a on page 67 of the LUP and Section 21.11A.020(B) of the Coastal Zoning Ordinance.

ii. LCP Policies.

- General Policy No. 6 on page 58 of the LUP for environmentally sensitive habitat areas states:

Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values and only uses dependant upon such resources shall be allowed within such areas. Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which would significantly degrade such areas and shall be compatible with the continuance of such habitat areas.

- Specific Area Policy No. 4f on pages 65 and 66 of the LUP requires a buffer area between existing and/or proposed development and the edge of a wetland. The policy states in applicable part:

Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts that could significantly degrade such areas, and shall be compatible with the continuance of such areas. The primary tool to reduce the above impacts around wetlands between the development and the edge of the wetland shall be a buffer of one hundred feet in width. A buffer of less than one hundred feet may be utilized where it can be determined that there is no adverse impact on the wetland. (Emphasis added)

- Specific Area Policy No. 4a on page 67 of the LUP for wetlands states in applicable part:

Riparian vegetation shall be maintained along streams, creeks, and sloughs and other water courses within the coastal zone for their qualities as wildlife habitat, stream buffer zones, and bank stabilization.

- Section 21.11A.020 (B) on page 33 of the County's coastal zoning ordinance states in applicable part:

This zone [i.e. the RCA-2(wb) zone] shall also be applied to buffer areas which shall be established around wetlands between the edge of the wetland and any future and/or existing development. Such buffers shall be one hundred feet in width unless a determination of no adverse impact upon the wetland is made, in which case a buffer of less than one hundred feet may be utilized.

iii. Discussion and Conclusion.

As approved by the County Planning Commission, the project includes the placement of fill within and adjacent to resource conservation areas that contain environmentally sensitive riparian habitat and could result in significant adverse impacts to these coastal resources. For example, the subdivision configuration approved by the County would provide for future residential development on Lot J, which would necessitate the placement of fill within the riparian wetland.

Approval of the project as proposed would have a precedential influence on the future interpretations of the Del Norte County certified LCP as it pertains to wetland buffer requirements. Since fill would be placed directly in the riparian wetland in some locations, no buffer that would serve to protect the wetland would be provided. Therefore, the Commission finds that the project as approved by the County raises a substantial issue with respect to conformance of the approved project with the wetland buffer policies of the Del Norte County certified local coastal program.

E. Inconsistent with Less Environmentally Damaging Alternatives Analysis.

i. Contention.

The appellants contend that the County staff report did not examine whether there are any feasible less environmentally damaging alternatives to the placement of fill within an environmentally sensitive, wetland habitat area as required by Specific Area Policy No. 4a on page 65 of the LUP and Section 21.11A.040(D) of the Coastal Zoning Ordinance.

ii. LCP Policies.

- Specific Area Policy No. 4a on page 65 of the LUP applies to the diking, filling, and dredging of wetlands. Like Section 30233 of the Coastal Act, Policy No. 4a establishes a three-part test, whereby all three parts of the test must be met before any diking, filling, or dredging of a wetland is allowed. Policy No. 4a states in applicable part:

The diking, filling, or dredging of wetlands shall be permitted in accordance with other applicable provisions of this program where there is no feasible less environmentally damaging alternative... (Emphasis added)

- Similarly, Section 21.11A.040(D) on pages 35 and 36 of the County's coastal zoning ordinance states in applicable part:

In the wetlands, farmed wetlands, and estuary designations, diking, filling, or dredging shall be permitted ... where there is no feasible less environmentally damaging alternative... (Emphasis added)

iii. Discussion and Conclusion.

As discussed above, the proposed subdivision would result in the placement of fill within designated environmentally sensitive wetland habitat areas for new residential development. The County staff report contains no analysis or findings that feasible less environmentally damaging alternatives to the placement of wetland fill were examined. Thus, the Commission finds that the project as approved by the County raises a substantial issue with respect to conformance with the approved project with the wetland fill policies requiring an analysis and findings as to whether there are any feasible less environmentally damaging alternatives to the wetland fill.

F. Inconsistent with Minimum Lot Size Requirements of the RCA-2 zone.

i. Contention.

The appellants contend that lot "J" in the proposed subdivision does not comply with the minimum area requirements of Section 21.11A.050(D) of the Coastal Zoning Ordinance for the RCA-2 zone (Designated Resource Conservation Area).

ii. LCP Policies.

- Section 21.11A.050(D) on page 36 of the County's coastal zoning ordinance states in applicable part:

Parcels may be created which include RCA land areas subject to the provision of a non-RCA area totaling at least 50 percent of the minimum lot size (as required by the non-RCA zone) for parcels designated as one unit/two acres or higher in density...

iii. Discussion and Conclusion.

The configuration of Lot "J" of the proposed subdivision raises a substantial issue with respect to compliance with Section 21.11A.050(D) because the non-RCA area portion of the proposed parcel is less than 50 percent of the required 20,000-square-foot minimum lot size required by the County and the State Regional Water Quality Control Board due to the physical limitations of the property relating to high ground water conditions.

The site plan indicates that lot "J" is 130 feet deep and 165 feet wide, and therefore has a total area of 21,450 square feet. Coastal Commission Staff calculated the wetland area on parcel "J" to be 11,500 square feet in size. The remaining non-RCA portion of the parcel is equal to 9,950 square feet, or 46.4 percent of the total size of the lot, not 50 percent as required by Section 21.11A.050(D) of the Del Norte County coastal zoning ordinance. Therefore, the Commission finds that the proposed subdivision as approved by the County raises a substantial issue with respect to conformance of the approved project with the minimum area requirements for non-RCA land contained in the certified LCP.

G. Conclusion.

The Commission finds that, as discussed above, the appeal raises a substantial issue with respect to conformance of the approved project with the policies of the LCP that protect riparian/wetland habitats and with the minimum lot area requirements of the Coastal Zoning Ordinance.

NOTES

1. Procedure.

If the Commission finds that a locally approved coastal development permit raises a Substantial Issue with respect to the policies of the certified Local Coastal Program, the local government's approval no longer governs, and the Commission must consider the merits of the project with the LCP de novo. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application.

2. Incorporation of Substantial Issue Findings.

The Commission hereby incorporates by reference the Substantial Issue Findings above.

I. MOTION, STAFF RECOMMENDATION DE NOVO, AND RESOLUTION:

1. Motion:

I move that the Commission approve Coastal Development Permit No. A-1-DNC-97-019 subject to conditions.

2. Staff Recommendation of Approval:

Staff recommends a YES vote on the motion and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

3. Resolution to Approve Permit:

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, is in conformance with the Del Norte County certified Local Coastal Program, is located between the nearest public road and a body of water in the coastal zone and is in conformance with the public access and public recreation policies of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions: See attached.

III. Special Conditions:

1. PRIOR TO ISSUANCE of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director a copy of the revised tentative map for the proposed subdivision that has been approved by the County. The revised tentative map shall eliminate Lot "J" as a separate residential parcel and combine the area encompassed

by Lot "J" into the remainder parcel, leaving Parcels "A" through "I" as separate residential parcels and a +/-22.5-acre remainder parcel. The revised tentative map shall also be consistent with the other terms and conditions of Coastal Development Permit No. A-1-DNC-97-019. The applicant shall record the revised map approved by the Executive Director.

All development shall take place consistent with the revised tentative map, as approved by the Executive Director."

2. Within 60-days of Coastal Commission authorization of Coastal Development Permit No. A-1-DNC-97-019, the applicant shall submit to the Executive Director a letter indicating whether or not he proposes to carry out the proposed wetland restoration work.

If the required letter indicates that the wetland restoration work will be undertaken, he shall submit detailed plans for the restoration work for the review and approval of the Executive Director prior to commencement of the restoration work. The plans shall provide that all of the wetland restoration work will be performed outside of the existing mapped wetland/riparian habitat on the site, shall be prepared by a qualified biologist, and shall be prepared in consultation with the Dept. of Fish & Game.

IV. FINDINGS AND DECLARATIONS.

The Commission hereby finds and declares as follows:

- A. The Substantial Issue Findings for Commission Appeal A-1-DNC-97-019 are hereby incorporated by reference.

- B. Site Description.

See Finding C-1 of the Substantial Issue Findings.

- C. Project Description.

See Finding C-2 of the Substantial Issue Findings.

- D. LCP Designations and Amendment.

* See Finding C-3 of the Substantial Issue Findings.

- E. McNamara RCA-Rezone and Subdivision Chronology.

See Finding C-4 of the Substantial Issue Findings.

- F. Environmentally Sensitive Habitat Areas.

- General Policy No. 6 on page 58 of the LUP for environmentally sensitive habitat areas states:

Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependant upon such resources shall be allowed within such areas. Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

- Specific Area Policy No. 4f on page 65 and 66 of the LUP for development adjacent to environmentally sensitive habitat areas states:

Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which could significantly degrade such areas, and shall be compatible with the continuance of such habitat areas. The primary tool to reduce the above impacts around wetlands between the development and the edge of the wetland shall be a buffer of one-hundred feet in width. A buffer of less than one-hundred feet may be utilized where it can be determined that there is no adverse impact on the wetland. A determination to be done in consultation with the California Department of Fish and Game and the County's determination shall be based upon specific findings as to the adequacy of the proposed buffer to protect the identified resource. Firewood removal by owner for on-site use and commercial timber harvest pursuant to CDF timber harvest requirements are to be considered as allowable uses within 100-foot buffer areas.

- Specific Area Policy No. 4a on page 67 of the LUP for riparian vegetation states:

Riparian vegetation shall be maintained along streams, creeks, and sloughs and other water courses within the coastal zone for their qualities as wildlife habitat, stream buffer zones, and bank stabilization.

- Section 21.11A.030(E) on page 34 of the County's coastal zoning ordinance indicates the principally permitted uses that are allowed within riparian vegetated areas and the RCA-2(r) zone and it states:

The principal permitted designated resource conservation area (riparian) uses includes uses such as:

- 1. Nature study, fish and wildlife management and hunting and fishing, including the development of minor facilities such as duck blinds and recreation trails;*
- 2. Firewood removal by the owner for on-site residential use;*
- 3. Commercial timber harvest of conifers pursuant to California Department of Forestry Practice Rules for special treatment areas and stream protection zones and where:*
 - a. Heavy equipment is not used,*
 - b. At least fifty percent of the coniferous tree canopy and all of the*

hardwood canopy is retained;

4. *Wells within rural areas;*
5. *Maintenance of existing flood-control and drainage channels;*
6. *Roads, road maintenance and repair. Where new stream crossings are proposed they shall be limited, when feasible, to right-angle crossings of the stream corridors.*

- Section 21.11A.040 on pages 35 and 36 of the County's coastal zoning ordinance indicates the conditionally permitted uses that are allowed in all RCA-2 designations and more limited RCA-2 designations. Section 21.11A.040 states in applicable part:

Uses permitted with a use permit include:

- A. *In all designations, a single-family residence and appurtenant structures where denial of such would otherwise substantially deny all reasonable use of the parcel and where such development will be sited and designed to prevent impacts which would significantly degrade the environmentally sensitive habitat area...*
 - B. *In all designations, those recreational facilities included in a State Park and Recreation/Department of Fish and Game Master Plan which has been submitted and approved as an amendment to the General Plan Coastal Element.*
 - C. *In all designations, wetland restoration subject to Section 21.11A.080.*
- Section 21.11A.080 on pages 39 and 40 of the County's coastal zoning ordinance establishes guidelines for wetland restoration projects permitted under Section 21.11A.040(D). Section 21.11A.080 states, in applicable part, that:

Restoration projects which are a permitted development in Section 21.11A.040(D) are publicly or privately financed projects in which restoration is the sole purpose of the project except as set forth on subsection A of this section:

- A. *Requirements for filing for the purpose of reclassification in urban areas restoration projects may include some fill for reclassification for non-permitted uses if the wetlands are small, extremely isolated and incapable of being restored. Small, extremely isolated wetland parcels that are being restored to biological productive systems may be filled and developed for reclassification only if such actions establish stable and logical boundaries between urban and wetland areas and if the applicant provides funds sufficient to accomplish the approved restoration program in the same general region...*

The subject property is vegetated with Sitka spruce forest, forested wetlands, persistent emergent wetlands (resource conservation areas) and upland grassland (non-resource conservation area). The property contains gentle slopes but is generally flat. The property has three-land use and zoning map designations that correspond with the suitability of those areas for development and with identified agricultural resource areas and environmentally sensitive habitat areas.

Generally, the northern portion of the property is designated and zoned as General Agriculture, 5-acre minimum parcel size. This agricultural area is a part of the proposed 22-acre remainder parcel and would not be directly affected by the proposed residential subdivision configuration. The middle portion of the property, approximately 9 acres, is designated and zoned as RCA-2(r), meaning Designated Resource Conservation Area -- Riparian. A Wetlands Investigation of the property prepared by Karen Theiss and Associates (January 1993, amended May 1998), indicates that the middle portion of the property contains environmentally sensitive, wetland/riparian habitat that primarily consists of second growth Spruce forest and forested wetlands. The southernmost edge of the riparian habitat area borders the northeastern edge of the area zoned for single-family residential development. The northeastern edge of the proposed subdivision configuration, specifically Lots J and I, contain both Designated Resource Conservation Area -- Riparian and non-resource conservation area. The southernmost portion of the property is designated as Rural Neighborhood and zoned as R1-B13, One-Family Residence, 13,000 square foot minimum lot size. The southern portion of the property is covered with an open grassy meadow, and was cleared of its forest some time ago. (Please see Exhibit No. 6)

The project, as proposed, would result in future development of residential fill within a riparian habitat area and is therefore inconsistent with policies of the certified LCP. More specifically, the creation of Lot J would lead to future residential development directly within a riparian habitat area which is not allowed by the environmentally sensitive habitat protection policies referenced herein. Residential use within a Designated Resource Conservation Area -- Riparian [RCA-2(r)] would be inconsistent with the certified LCP because the zoning and LUP policies specifically limit uses to those that are dependent upon such resources.

Specific Area Policy No. 6 on page 58 of the LUP provides that only development that is dependant upon sensitive habitat areas shall be allowed within such areas and that development be sited and designed to prevent impacts that would significantly degrade these areas. The Land Use Categories on pages 331 and 332 of the LUP limit the types of uses that are allowed within designated as Resource Conservation Areas to one of eight specifically enumerated uses. The creation of a single-family residential lot is not: (a) considered to be a use that is dependant upon an environmentally sensitive habitat area; or (b) intended to be a preventive measure against significant degradation of these areas; or (c) one of the specifically enumerated uses allowed within an resource conservation area. Therefore, the Commission attaches Special Condition No. 1 that would require that prior to issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director a copy of a revised tentative map for the proposed subdivision that has been approved by the County. The revised tentative map shall eliminate Lot J as a separate residential parcel and combine the area encompassed by Lot J into the remainder parcel, leaving Parcels A through I as separate residential parcels and a +/-22.5-acre remainder parcel. The revised tentative map shall also be consistent with the other terms and conditions of Coastal Development Permit No. A-1-DNC-97-019. The applicant shall record the revised map as approved by the Executive Director.

Specific Area Policy 4a on page 67 of the LUP requires that riparian vegetation be maintained as wildlife habitat and stream buffer areas. Specific Area Policy No. 4f on pages 65 and 66 provides

that an adequate buffer area, typically 100-feet in width, be provided in developments proposed adjacent to environmentally sensitive habitat areas. This policy further provides that a buffer of less than 100-feet in width may be utilized if a determination can be made that the development will not result in adverse impacts to the sensitive resource. The proposed subdivision is located well beyond 100-feet away from other wetland resources on adjoining properties including Lake Earl and the adjacent area zoned as agriculture and/or farmed wetlands. With respect to riparian resources on the property itself, both the County and the California Department of Fish and Game have determined that no additional buffer is needed for the proposed road alignment, which is adjacent to a riparian habitat area. Further, with the exception of Lot J, the future development of the proposed residential lots that are located adjacent to sensitive habitat areas are not expected to result in adverse impacts to sensitive habitat areas. Each of these lots contain adequate area to develop a single-family residence while also providing an adequate spatial buffer and/or a buffer composed of fencing or vegetative screening that would prevent significant impact to environmentally sensitive resources. In addition, the future development of the proposed residential lots would be subject to coastal development permit requirements. Thus the County will have the opportunity to evaluate the potential impacts associated with the development of individual lots and may impose conditions designed require mitigation measures to prevent impacts to sensitive coastal resources such as requirements to locate individual homes away from sensitive areas and to create suitable buffers. Finally, any development proposed within 100-feet of a coastal wetland/riparian area would be subject to the appeal provision of the Coastal Act. Therefore the Commission finds that the project, as conditioned with Special Condition No. 1 which requires that the subdivision be reconfigured to eliminate Lot J, is consistent with the LUP buffer policies.

The proposed project includes a wetland restoration component, originally proposed to mitigate wetland fill impacts associated with development of the site for future residential fill. However, as the supplemental wetlands investigation that was conducted after the County approved the project determined that the project would result in much less wetland fill than originally thought, and as Special Condition No. 1 will eliminate all proposed wetland fill for the project, the wetland restoration component of the project is not necessary to make the project consistent with the habitat protection policies of the LCP. Furthermore, the applicant proposed to eliminate the wetland restoration component when the County approved the RCA rezoning for the project, that was later certified by the Commission.

The applicant has not yet submitted plans for the proposed wetland restoration component of the project. If not properly planned and implemented, well-intentioned wetland restoration projects performed within existing habitat areas can actually degrade environmentally sensitive habitat areas associated with the proposed wetland restoration project. Therefore, to avoid such impacts and to ascertain whether or not the wetland restoration work will be carried out, Special Condition No. 2 requires that, within 60-days of Commission approval of this coastal development permit, the applicant submit a written statement to the Executive Director that indicates whether or not the applicant proposes to carry-out the proposed wetland restoration work. If the applicant indicates that the wetland restoration work will be undertaken, the condition requires the applicant to submit detailed plans for the restoration work for the review and approval of the Executive Director prior to commencement of the restoration work. To avoid impacts to existing sensitive

habitat, the plans must provide that all of the wetland restoration work will be performed outside of the existing mapped wetland/riparian habitat areas on the site, shall be prepared by a qualified biologist, and shall be prepared in consultation with the California Department of Fish and Game. The Commission finds that the project, as conditioned, conforms with environmentally sensitive resource protection policies of the LUP.

Conclusion:

The tentative subdivision map should be reconfigured in order to: (1) avoid significant adverse effects to the riparian wetland resources contained in proposed Lot J; (2) make the project consistent with LUP policies pertaining to buffer requirements and environmentally sensitive habitat areas; and (3) make the project consistent with the Coastal Commission's approval of Del Norte County LCP Amendment No. 2-98 (RCA-Rezone). Therefore, Special Condition No. 1 requires that prior to issuance of the Coastal Development Permit the applicant shall submit, for Executive Director approval, a reconfigured tentative subdivision map that conforms with LCP Amendment 2-98, Major (McNamara), the minimum lot size requirements of the coastal zoning ordinance, and that contains no fill for road construction or for the creation of residential parcels within areas with RCA zoning designations. Additionally, Special Condition No. 2 requires timely notification of the applicant's intent, and Executive Director approval of, any future restoration project that may be undertaken as a result of the Commission's approval of this project. The Commission finds that as conditioned, the project is consistent with the Del Norte County certified Land Use Plan, as the project will not lead to future development within an environmentally sensitive habitat area on the site.

G. Minimum Lot Area.

- Section 21.11A.050(D) of the County's coastal zoning ordinance states:

Parcels may be created which include RCA land areas subject to the provision of a non-RCA area totaling at least fifty percent of the minimum lot size (as required by the non-RCA zone) for parcels designated as one unit/two acres or higher in density or a minimum of one acre for parcels designated as one unit per /three acres or lower in density.

The proposed subdivision consists of ten +/-20,000-square-foot residential lots and a +/-22-acre remainder parcel. The area proposed for subdivision is primarily zoned R1-B13, one-family residence, and 13,000-square-foot minimum. The affected area also contains some RCA-2(r), Designated Resource Conservation Area – Riparian zoning which corresponds with identified riparian habitat on-site. Although the R1-B13 zoning classification establishes a minimum parcel size of 13,000-square-feet, both the County and the Regional Water Quality Control Board have required a 20,000-square-foot minimum parcel size because of environmental constraints located on the subject property. Proposed Lots A through I all meet the development criteria as required by Section 21.11A.050(D) of the Coastal Zoning Ordinance.

However, Lot J, as shown on the tentative subdivision map, does not comply with minimum area requirements of the RCA-2r zone (Designated Resource Conservation Area, Riparian). Lot J is

0.48 acres in size. The area of Lot J that is affected by the RCA-2r zone constitutes approximately 66% (or .32 acres) of the lot area. Therefore, Lot J does not meet the minimum zoning ratio of 50% for RCA designated area to non-RCA area. To address the apparent inconsistencies between the proposed subdivision configuration and riparian habitat located on-site, the Commission attaches Special Condition No. 1 which requires that prior to issuance of the Coastal Development Permit the applicant shall submit, for the review and approval of the Executive Director, a reconfigured tentative subdivision map that eliminates Lot J as a separate residential lot and combines the area that was part of proposed Lot J as part of the remainder parcel. The Condition also requires that the Final Map be recorded in accordance with the approved Tentative Map, as modified.

The Commission finds that, as conditioned, the project is consistent with Section 21.11A.050(D) of the Coastal Zoning Ordinance as all of the approved residential lots would contain at least fifty percent of non-RCA zoned area of the minimum size specified for each parcel.

H. New Development and Rural Subdivision.

LCP Policy D(2) states:

In rural areas new development shall be required to prove the subject area's ability to accommodate such development prior to approval. Land divisions, both major and minor subdivisions (not including boundary adjustments and inside the urban/rural boundary), shall be permitted when 50% of the usable parcels in the area have been developed and the created parcels would not be smaller than the average size of the surrounding parcels. To determine if this criteria is met, the following shall apply:

- a. *Usable parcels do not include parcels committed to agricultural and designated as such in the Land Use Plan, nor shall parcels committed to open space or portions of parcels committed to open space be considered as usable parcels.*
- b. *To determine if the 50% rule has been met, a survey of the existing parcels in each planning area (delineated on the Land Use Maps) will need to be conducted. If 50% or more of the existing lots are developed, then the land division may be processed.*
- c. *The Land Use Plan designates the minimum lot size for parcels in each planning area. As these minimum lot sizes are reflective of the average size of lots in each area, the minimum lot size designated for land use classification that the land division is proposed establishes the average size.*

LCP Policy D(2) only allows development in rural areas that are able to accommodate such development with necessary services. Policy D(2) further requires that land divisions not be approved unless a survey of the existing parcels in the area indicates that 50% or more of the existing lots are developed.

The subject property is located outside of the urban limit line and within the Lake Earl Rural Area

of Del Norte County as identified on the certified Land Use Maps. The proposed subdivision is an extension of an existing residential neighborhood and would not require significant new utilities. Consistent with the rest of the neighborhood, the residential parcels to be created would be served by on-site water wells and sewage disposal systems. A preliminary review of documentation contained in the subdivision application indicates that the wells should produce a sufficient amount of water to support the full range of allowed uses within the R1-B13 (One Family Residential) Zoning District. Final approval of individual water wells by the Del Norte County Health Officer will be required prior to recordation of the Final Map. The County has conceptually approved a preliminary on-site sewage disposal evaluation for the subject property. As shown on the tentative subdivision map, there are adequate septic recovery areas within each lot that can accommodate on-site sewage disposal systems. Due to the high groundwater conditions in the area, "Wisconsin Mound" systems are proposed for some of the lots. A Waste Discharge Report (or waiver) and final design for each septic system will be required to be submitted for review and approval by the State Regional Water Quality Control Board prior to recordation of the Final Map.

Del Norte County has developed a computer program (Planning/Building 50% Developed Report) that can generate a parcel based survey to determine the percentage of similar existing parcels within the applicable planning area that have been developed. According to the Del Norte County Planning/Building 50% Developed Report, the Lake Earl Rural Planning area of the coastal zone is 88% developed. Thus, subdivision of the applicant's property would be consistent with the rural land division criteria contained in Policy D(2) (Exhibit No. 9).

LCP Policy D(2)(c) also requires that new parcels be no smaller than the average size of the surrounding parcels as reflected by minimum parcel size specified by the applicable zoning district. The southerly portion of the property has a land use classification of Rural Neighborhood and is zoned as R1-B13, One-Family Residential, 13,000 feet minimum lot size. All of the new parcels to be created under the proposed subdivision are at least 20,000 square feet in size, exceeding the required 13,000-square-foot minimum parcel size.

Conclusion.

As conditioned by the Commission, the coastal development permit for the Unit III Subdivision would result in the creation of 9 residential lots that are approximately 20,000 square feet in size and a 22.5-acre remainder parcel. The lots have been determined to be adequate to support the necessary water wells and septic systems that would serve the proposed lots. In addition, the proposed subdivision is consistent with the rural land division criteria contained in LCP Policy D(2) as the Lake Earl Rural Planning area of the coastal zone is already 88% developed, and the creation of nine 20,000-square-foot lots is consistent with the minimum lot size requirement of the LCP applicable zoning districts. Thus, the Commission finds that the project, as conditioned, is consistent with LCP Policy D(2).

I. Public Access.

Coastal Act Section 30604(c) requires that every coastal development permit issued for

development between the first public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.

- Coastal Act Section 30210 states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

- Coastal Act Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

- Coastal Act Section 30212 states, in part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

In addition to the above referenced Coastal Act policies, the Del Norte County certified LCP contains a number of policies intended to address public access to the shoreline.

- Policy No. C-1 on page 15 of the certified LCP states:

The County shall work actively towards the attainment of maximum coastal access for the public, where it is consistent with public safety, property owner rights and the protection of fragile coastal resources.

- Policy No. C-2 on page 15 of the certified LCP states:

The rights of private property owners shall be protected in all considerations of public

access.

- Policy No. C-5 on page 15 of the certified LCP states:

Agricultural lands shall be protected from adverse effects resulting from public access. Priority consideration shall be given to the maintenance of agricultural productivity.

- Policy No. C-8 on page 15 and 16 of the certified LCP states:

Development along the immediate shoreline shall provide public access to the shoreline except where:

- a. Findings are made consistent with Section 30212 of the Coastal Act that access is inconsistent with public safety or that agriculture would be adversely affected; or*
- b. Access would have unavoidable adverse impacts on environmentally sensitive habitat areas as designated in the LUP; or*
- c. An existing vertical accessway, adequate to meet anticipated access needs, is located one-half mile or less from the development; or*
- d. The parcel is too small to allow for an adequate vertical access corridor without passing within twenty-five feet of a proposed dwelling; or*
- e. Project site is too small for the proposed development and the access with improvement related to its use (i.e. parking).*

In its application of these policies, the Commission is limited by the need to show that any denial of a permit application based on these sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to offset a project's adverse impact on existing or potential public access.

The project is located within the Lake Earl Rural Planning Area of Del Norte County. This planning area is generally located between the Smith River and Point St. George and is characterized as a ten mile stretch of open sandy beach and grass covered dunes that permits extensive physical vertical and lateral access. Additionally, the project is located within the immediate vicinity of the Lake Earl Wildlife Area, which is administered by the California Department of Fish and Game (CDFG). Because the Lake Earl Wildlife Area contains sensitive habitat areas and is used extensively for hunting and fishing, the CDFG maintains a limited access policy to this coastal resource for resource management and public safety concerns. Public access is available a short distance from the proposed subdivision at the ends of Lakeview Drive and Buzzini Road, both of which are accessed off of Lake Earl Drive.

Although the project is located between the first public road and the sea, the project does not require the provision of any additional public access because the project will not result in adverse

impacts to existing or potential public access. The proposed subdivision would not interfere with the public's right to access the sea where acquired through use as there is no evidence of any trails or paths through the project area. In addition, although the subdivision would bring new residents to the area, the nine residential lots that would be created by the subdivision as conditioned would not increase the demand for public access beyond what can easily be accommodated by existing access facilities around Lake Earl. Therefore, the Commission finds that the proposed project, which does not include any new public access, is consistent with the public access policies of the Coastal Act.

J. California Environmental Quality Act (CEQA).

Section 13096 of the California Code of Regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures that would substantially lessen any significant adverse impact that the activity may have on the environment.

The subdivision configuration, as proposed, would result in significant adverse impacts to sensitive coastal habitat areas and more specifically cause fill to be placed within a riparian habitat area for the creation of residential development. The proposed project has been conditioned to be consistent with the policies of Del Norte County's certified LCP and the public access and recreation policies of the Coastal Act. A mitigation measure intended to minimize project-related adverse environmental impacts has been added as Special Condition No. 1. Special Condition No. 1 requires that Prior to Issuance of the Coastal Development Permit the applicant shall submit, for Executive Director approval, a reconfigured tentative subdivision map that conforms with LCP Amendment 2-98, Major (McNamara), the minimum lot size requirements of the coastal zoning ordinance, and that contains no fill for road construction or for the creation of residential parcels within areas with RCA zoning designations. The Final Map shall be recorded in accordance with the tentative map as approved by the Executive Director.

As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of the Coastal Act and to conform to CEQA.

EXHIBITS:

1. Regional Location Map
2. Area Location Map
3. Coastal Development Permit Jurisdiction Map
4. Appeal to Commission
5. Del Norte County Planning Commission Findings

APPEAL NO.: A-1-DNC-97-019

APPLICANT: RICHARD C. McNAMARA

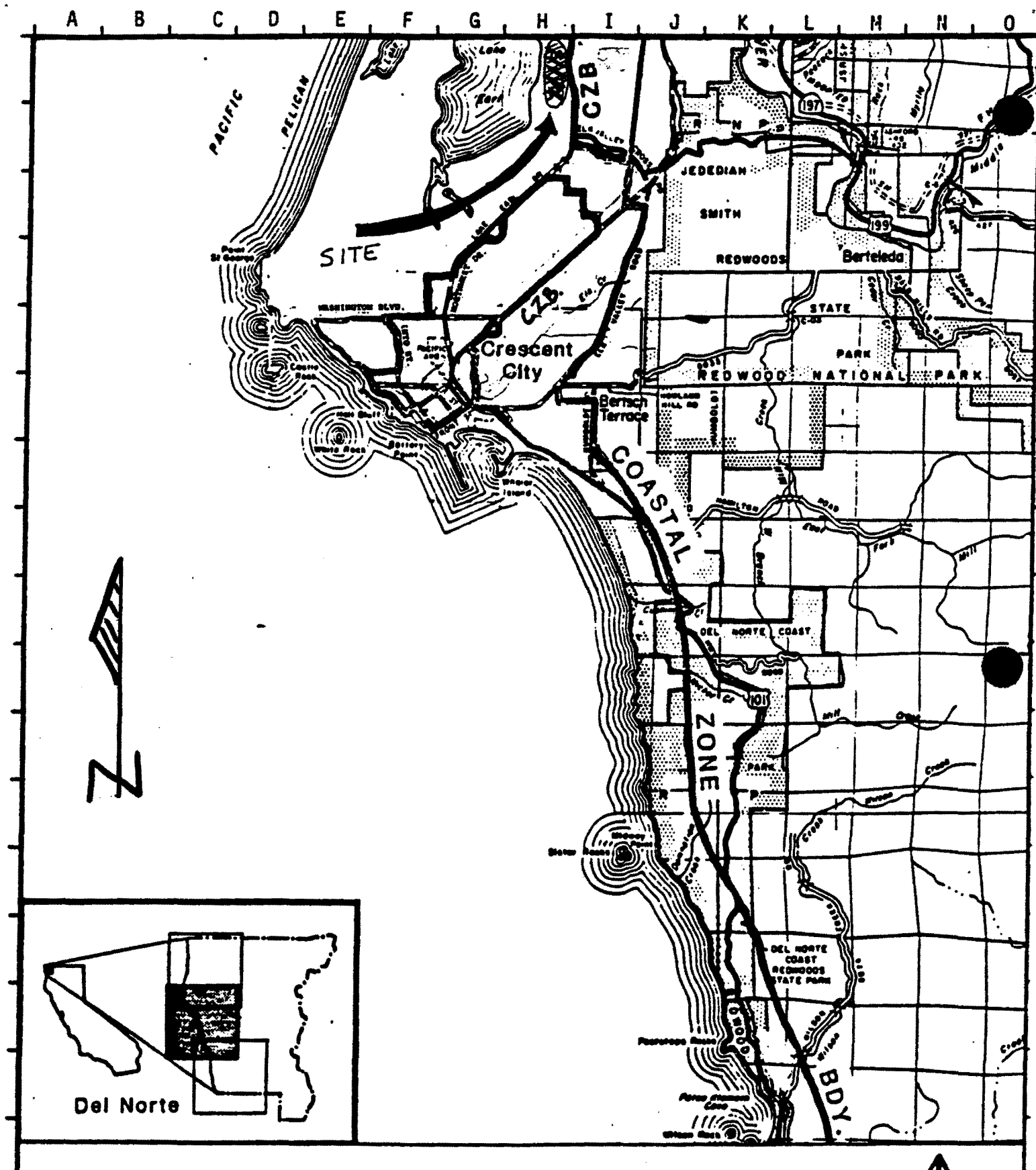
Page 34

6. Del Norte County Board of Supervisors Staff Report
7. Del Norte County Ordinance No. 97-009
8. Memo from Del Norte County Planning Department to Planning Commission (5/28/97)
9. Del Norte County Fifty Percent Developed Report

ATTACHMENT A

Standard Conditions.

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If Development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any question of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.



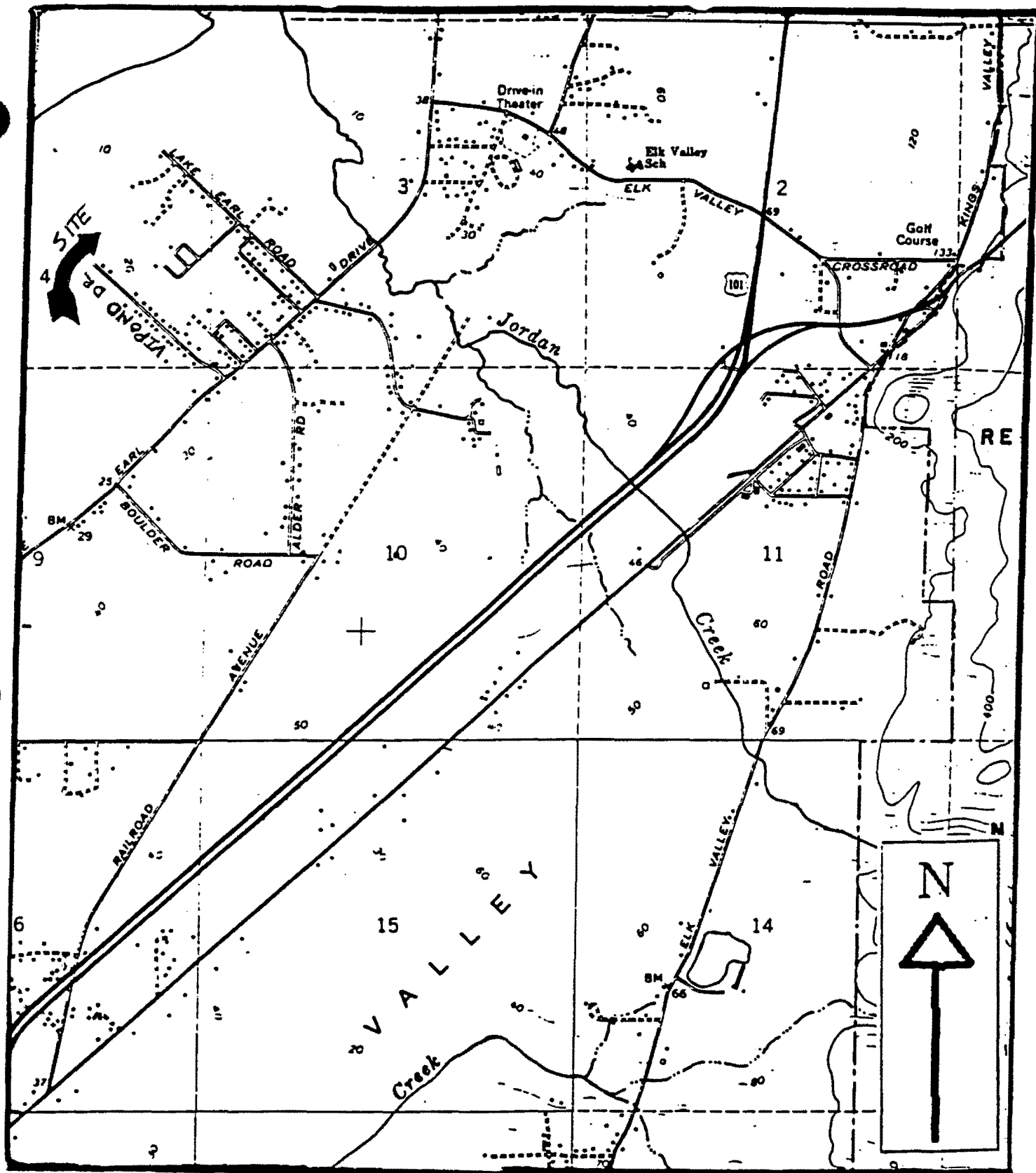
California Coastal Commission

LOCATION MAP



County of Del Norte

| |
|-----------------------------------|
| EXHIBIT NO. |
| APPLICATION NO. A-1-DNC-97-019 |
| (McNAMARA) |
| Regional Location |



LOCATION MAP

McNAMARA, RICHARD

Rezone

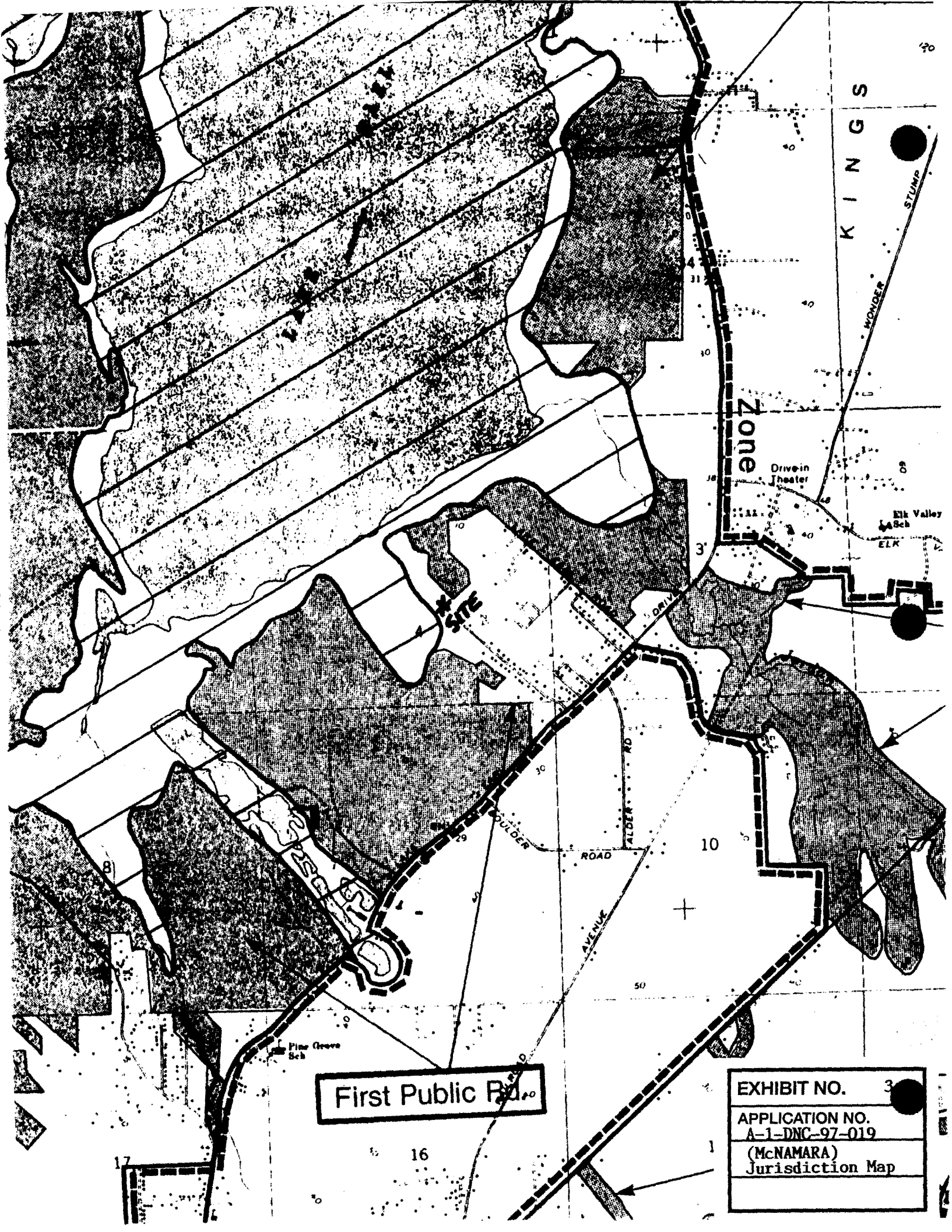
McNAMARA, RICHARD

Major Subdivision

EXHIBIT NO. 2

APPLICATION NO.
A-1-DNC-97-019

(McNAMARA)
Area Location



First Public Rd.

| | |
|------------------|----------------|
| EXHIBIT NO. | 3 |
| APPLICATION NO. | A-1-DNC-97-019 |
| (McNAMARA) | |
| Jurisdiction Map | |

REASONS FOR THE APPEAL

SYNOPSIS.

The McNamara III subdivision is being appealed primarily because:

- (1) The placement of fill within a 35,000± square-foot, environmentally sensitive, riparian/wetland habitat area to develop three house sites on lots "B", "I", and "J" and to construct a portion of a road extension within the subdivision are not allowable uses for fill within an environmentally sensitive, riparian/wetland habitat area, as specified by LCP policies;
- (2) No buffer area is proposed between the proposed development and the adjacent wetlands and the development as approved by the County does not protect the riparian wetland habitat areas from significant disruption of habitat values as required by LCP policies;
- (3) Feasible less environmentally damaging alternatives to the placement of fill within an environmentally sensitive, riparian/wetland habitat area have not been examined as required LCP policies.
- (4) One of the lots to be created by the proposed subdivision does not meet minimum lot area requirements of the LCP.

BACKGROUND INFORMATION.

The McNamara Unit III subdivision proposes the division of a 28-acre parcel into 10 lots that are each about 20,000 square feet in size and a 22-acre remainder lot. The project also includes the extension of a road (i.e. Lakeside Loop) within the subdivision. The County approved the project contingent upon Coastal Commission approval of a Resource Conservation Area rezoning of the property. Condition No. 1 of the County permit states:

Approval of this project is for a major subdivision creating 10 lots and a remainder as shown on the approved plot plan and is subject to approval of the Resource Conservation Area zoning project (R9702C) by the County and the California Coastal Commission as submitted. Any changes in the final zoning configuration may require an amendment of this subdivision project.

The Del Norte County Board of Supervisors has scheduled the RCA rezone for an April 22, 1997 public hearing. Consequently, the RCA rezone that is associated with this subdivision/appeal has not yet been submitted to the Coastal Commission as an amendment to Del Norte County's LCP.

For the RCA-2 rezone, Karen Theiss and Associates determined in their wetlands investigation that the designated resource conservation areas on the property are a type of wetland. The identified wetlands meet the criteria of both the state and federal definitions for wetlands. The type of wetland identified by Ms. Theiss is "riparian" in nature and it was appropriately mapped and designated as RCA-2(r) (Designated Resource Conservation Area). There is no disagreement as to the location and type of wetlands identified and mapped by Karen Theiss for the subdivision/RCA rezone.

| | |
|-----------------|--------------------|
| EXHIBIT NO. | 4 |
| APPLICATION NO. | A-1-DNC-97-019 |
| | (McNAMARA) |
| | Reasons for Appeal |

The proposed subdivision includes the placement of fill within a 35,000±-square-foot, environmentally sensitive, riparian/wetland habitat area to develop three house sites on lots "B," "I," and "J" and to construct a portion of a road extension. The applicants propose to mitigate for the loss of the 35,000± square feet of wetland area by excavating an on-site, upland area to create a 54,000± square of in-kind, wetland habitat at a 1:1.5 ratio.

CONTENTIONS.

1. The proposed fill within an environmentally sensitive, riparian habitat areas to develop house sites and to construct a road extension is not for allowable uses in such area, as specified by numerous LCP policies.

Placement of fill within riparian habitat areas is incompatible with the continuance of such habitat areas. The proposed fill for the subdivision is inconsistent with numerous LCP policies that limit the uses for which fill may be placed in riparian wetland habitat areas.

- a. The placement of fill within an environmentally sensitive, riparian habitat area to develop house sites and to construct a road extension is not a use that is dependent on the resources within such habitat areas, as required by General Policy No. 6 on page 58 of the LUP.

General Policy No. 6 on page 58 of the LUP states in applicable part:

Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

Homes and road extensions are clearly not uses dependent on environmentally sensitive habitat areas because they can be located outside of such areas and still function as intended.

- b. The placement of fill within a riparian habitat area to develop house sites and to construct a road extension is not an allowable use within a riparian habitat area per the land use categories on pages 331 and 332 of the LUP.

The LUP chapter on land use categories on pages 331 and 332 allows the following uses within riparian habitat areas:

- (i) Recreational trails,
- (ii) Hunting and fishing,
- (iii) Timber harvesting of conifers where heavy equipment is not used and where at least 50% of the coniferous tree canopy and where all of the hardwood tree canopy is retained and removal is otherwise consistent with forest practices rules for special treatment areas and stream protection zones,
- (iv) Maintenance of existing flood control and drainage channels,
- (v) Wells within rural areas,

- (vi) Firewood removal by the owner, for use in residence on site, and
- (vii) Road maintenance and repair of existing roads. New stream crossings shall be limited when feasible to right angle crossings of streams and stream corridors.

The above list of allowable uses within riparian areas contains no reference to any residential use as proposed with the subdivision. Although listed use number (vii) mentions roads, the reference to roads is limited to maintenance and repair of existing roads or new stream crossings. The fill in riparian areas for roads proposed as part of the subdivision does not include repair or maintenance or a stream crossing, but rather the extension of a road into a riparian area. Therefore, the proposed fill is not for an allowable use within riparian habitat areas as specified on pages 331 and 332 of the LUP.

- c. The placement of fill within a RCA-2(r) (Designated Resource Conservation Area, riparian) zone to develop house sites and to construct a road extension is not an allowable use within an RCA-2(r) zone under Section 21.11A.030 of the LCP.

Section 21.11A.030 establishes the principal permitted uses for the RCA-2 zone. For the proposed RCA-2(r) zone, the principal permitted uses are as follows:

1. Nature study, fish and wildlife management and hunting and fishing, including the development of minor facilities such as duck blinds and recreation trails;
2. Firewood removal by the owner for on-site residential use;
3. Commercial timber harvest of conifers pursuant to California Department of Forestry Practice Rules for special treatment areas and stream protection zones and where:
 - a. Heavy equipment is not used,
 - b. At least fifty percent of the coniferous tree canopy and all of the hardwood canopy is retained;
4. Wells within rural areas;
5. Maintenance of existing flood-control and drainage channels;
6. Road maintenance and repair of existing roads. New stream crossings shall be limited when feasible to right angle crossings of streams and stream corridors.

Again, the above list of allowable uses within the RCA-2 zone makes no reference to residential uses and the allowable road uses are limited to repair, maintenance, and stream crossings, and not extensions of roads. Therefore, the proposed residential and roadway use of the RCA-2 zone is inconsistent with Section 21.11A.030 of the zoning code.

- d. The placement of fill within a RCA-1 (General Resource Conservation Area) zone to develop house sites and to construct a road extension is not an allowable use within an RCA-1 zone under Section 21.11.030 of the LCP.

Since the RCA rezone that is associated with this subdivision/appeal has not yet been submitted to the Coastal Commission as an amendment to Del Norte County's LCP, the standard of review for the proposed subdivision is the LCP in its current form, without the proposed rezoning of portions of the property from RCA-1 to other zones. The riparian wetland areas within the proposed subdivision area are currently zoned RCA-1. The principal permitted uses within RCA-1 zoned areas are listed in Section 21.11.030 as follows:

- A. Fish and wildlife management,
- B. Nature study, and
- C. Hunting and fishing including development of duck blinds and similar minor facilities.

The proposed subdivision is inconsistent with this section as the proposed residential and roadway uses are not principally permitted uses in the zoning district.

- e. The placement of fill within an wetland area to develop house sites and to construct a road extension is inconsistent with Specific Area Policy No. 4a for wetlands on page 65 of the LUP and Section 21.11A.040 of the LCP because the placement of fill in a wetland for these purposes is not for allowable uses.

Specific Area Policy No. 4a for wetlands on page 65 of the LUP states:

The diking, filling, or dredging of wetlands shall be permitted in accordance with other applicable provisions of this program, where there is no feasible less environmentally damaging alternative and where feasible mitigation measures have been provided to minimize adverse environmental effects. Such projects shall be limited to those identified in Section 30233 of the Coastal Act.

Section 21.11A.040 of the LCP indicates that certain uses are allowed within a wetland subject to a use permit. Conditionally permitted uses that are allowed within a RCA-2(w) zone are subject to the requirements of Section 21.11A.040 (D), which states in applicable part:

In the wetlands, farmed wetlands, and estuary designations, diking, filling, or dredging shall be permitted in accordance with the provisions of the General Plan Coastal Element and Section 21.11A.070 (B), where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to: (one of the eight allowable uses in Section 30233 of the Coastal Act).

Section 30233 of the Coastal Act limits the diking, filling, or dredging of wetlands to one or more of the following eight uses:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

The list of uses above that are allowed by Section 30233 of the Coastal Act as incorporated in Policy No. 4a of the LUP and Section 21.11A.040 of the LCP does not include residential use and new roads. Therefore, the proposed fill for these uses is inconsistent with Policy No. 4a and Section 21.11A.040.

f. The wetland fill is not allowed under Section 21.11A.080 on pages 39 and 40 of the LCP.

Section 21.11A.080 establishes guidelines for wetland restoration projects permitted under Section 21.11A.040(D) where "restoration is the sole purpose of the project except as set forth in subsection A of this section." Section 21.11A.080 is not applicable because: (1) wetland restoration is not the sole purpose project, (2) the wetlands to be filled are not being restored, and (3) the exception that allows some wetlands to be filled applies only to wetlands within "urban areas" where the wetlands are small, extremely isolated and incapable of being restored. In this case, the wetlands to be filled are not located within an urban area.

2. The proposed development includes no buffer areas between proposed development and adjacent wetlands and does not protect the riparian

wetland habitat areas from significant disruption of habitat values as required by LCP policies.

The County's LUP states on page 47 that "wetlands and riparian vegetation systems" are "biologically sensitive habitat types." The LUP states on page 50 that: "sensitive habitats are vulnerable to disturbance from human activities", that "development can threaten the integrity of sensitive habitats unless adequate protective measures are instituted", that "the potential for harm through development can be minimized by locating development sufficiently away from the sensitive habitats...", and that "certain activities in or near sensitive habitats may be entirely non-conforming with the required protection and maintenance of the area's natural resources." The LUP on page 51 states in applicable part that land uses and levels of use in and adjacent to biologically sensitive habitats shall not "adversely alter...the biological productivity of the area" and shall not "adversely impact...the viability of flora and fauna inhabiting or utilizing the area."

The proposed development within and adjacent to riparian wetland habitat is inconsistent with the following more specific LCP requirements that incorporate the above policies.

- a. The placement of fill within an environmentally sensitive, riparian habitat area to develop house sites and to construct a road extension is not consistent with maintenance of riparian vegetation as required by Specific Area Policy No. 4 on page 67 of the LUP.

Specific Area Policy No. 4a for riparian vegetation on page 67 of the LUP states:

Riparian vegetation shall be maintained along streams, creeks, and sloughs and other water courses within the coastal zone for their qualities as wildlife habitat, stream buffer zones, and bank stabilization.

By filling and eliminating 35,000 square feet of existing riparian wetlands the development, as approved by the County, does not maintain riparian vegetation as required by Specific Area Policy No. 4a.

- b. The placement of fill within an environmentally sensitive riparian habitat does not protect the environmentally sensitive habitat area against significant disruption of habitat values and is not compatible with the continuance of such habitat areas as required by General Policy No. 6 on page 58 of the LUP.

General Policy No. 6 on page 58 of the LUP states in applicable part:

Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values... Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which would significantly degrade such areas and shall be compatible with the continuance of such habitat areas.

By filling and eliminating 35,000 square feet of riparian wetland habitat, the proposed development will significantly disrupt and degrade the wetland and does not provide for the continuance of that portion of the habitat as required by General Policy No. 6.

- c. The project does not establish a buffer area between the proposed development and the adjacent wetlands as required by Specific Area Policy No. 4f on pages 65 and 66 of the LUP and Section 21.11A.020 on pages 32 and 33 of the LCP.

Specific Area Policy No. 4f for wetlands on pages 65 and 66 of the LUP states in applicable part:

Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which could significantly degrade such areas, and shall be compatible with the continuance of such areas. The primary tool to reduce the above impacts around wetlands between the development and the edge of the wetland shall be a buffer of one-hundred feet in width. A buffer of less than one-hundred feet may be utilized where it can be determined that there is no adverse impact on the wetland.

Section 21.11A.020 (B) on page 33 of the LCP states in applicable part:

This zone [the RCA-2 zone] shall also be applied to buffer areas which shall be established around wetlands between the edge of the wetland and any future and/or existing development. Such buffers shall be one-hundred feet in width unless a determination of no adverse impact upon the wetland is made, in which case a buffer of less than one hundred feet may be utilized.

The project as approved establishes no buffer at all, and in fact, includes fill within the identified wetlands on the site.

The County staff report indicates on page 2 that there are four types of wetlands under the County's LCP. They are listed as: "estuary, wetland (which requires a buffer), farmed wetland (which requires no buffer) and riparian. The adjacent Department of Fish and Game (DFG) owned lands are currently designated farmed wetland with no buffer required.

There are no findings in the staff report, and there do not appear to be any policies within the County's LCP, to support the County's interpretation that a farmed wetland does not require a buffer. In general, there is less of a need for a buffer around a farmed wetland when the area around the wetland is farm land. The adjacent DFG lands next to the project site were formerly in private ownership, were used as farmed wetlands, and were zoned as RCA-2(fw) (Designated Resource Conservation Area - farmed wetland). However, these lands are no longer in private ownership, are no longer being farmed, and habitat values appear to have increased. More importantly, there is a greater need to establish a buffer around a wetland if the wetland is adjacent to proposed development, such as the subdivision presented here. Therefore, the

County has not established that there is no adverse impact upon the wetland and the 100-foot buffer required by the LCP policy has not been provided.

3. The County findings do not examine whether there are feasible less environmentally damaging alternatives to the proposed wetland fill as required by Specific Area Policy No. 4a on page 65 of the LUP and Section 21.11A.040(D) of the LCP.

Specific Area Policy No. 4a on page 65 of the LUP states, in applicable part:

The diking, filling, or dredging of wetlands shall be permitted in accordance with other applicable provisions of this program where there is no feasible less environmentally damaging alternative...

Section 21.11A.040(D) of the LCP states in applicable part:

In the wetlands, farmed wetlands, and estuary designations, diking, filling, or dredging shall be permitted ... where there is no feasible less environmentally damaging alternative...

The County made no findings with regard to alternatives to the proposed wetland fill. No findings address such possible alternatives as reconfiguring the proposed parcels to avoid the wetland fill, reducing the number of parcels created to avoid the wetland area or any other alternative to the project as approved by the County. Therefore, the project as approved by the County is inconsistent with the above referenced LCP policies.

4. Lot "J" in the proposed subdivision does not comply with the minimum area requirements of Section 21.11A.050(D) on page 36 of the LCP.

Section 21.11A.050(D) states the following in applicable part on page 36 of the LCP:

Parcels may be created which include RCA land areas subject to the provision of a non-RCA area totalling at least 50 percent of the minimum lot size (as required by the non-RCA zone) for parcels designated as one unit/two acres or higher in density...

Lot "J" of the proposed subdivision is inconsistent with Section 21.11A.050(D) because the non-RCA area of the parcel is less than 50 percent of the minimum lot size. The site plan indicates that lot "J" is 130 feet deep and 165 feet wide, and has a total area of 21,450 square feet. The wetland area on parcel "J" was calculated to be 11,500 square feet in size. Thus, the remaining non-RCA area of the lot is equal to 9,950 square feet, or 46.4 percent of the total size of the lot. Thus, the project as approved by the County is inconsistent with Section 21.11A.050(D) on page 36 of the LCP.

Agent: Michael Young & Associates

STAFF REPORT

API

APPLICANT: Richard McNamaraAPPLYING FOR: RCA Rezone and Major SubdivisionAP#: 110-020-64 LOCATION: Lakeside Loop & Clayton Rd, off Lake Earl Dr

| | | |
|--------------------------|--------------------|-------------------------|
| <u>PARCEL(S)</u> | <u>EXISTING</u> | <u>EXISTING</u> |
| <u>SIZE:</u> 26.94 acres | <u>USE:</u> vacant | <u>STRUCTURES:</u> none |

| | |
|-------------------------|---|
| <u>PLANNING AREA:</u> 3 | <u>GENERAL PLAN:</u> Rural Res(1u/1a), General Agriculture-5 acre min, Rural Neighborhood, Resource Conservation Area |
|-------------------------|---|

ADJ. GEN. PLAN: SameZONING: RRA-1, A-5, RCA-1, R1-B13 ADJ. ZONING: Same, A-20, RCA-2(fw)

| | | | |
|--------------------------------|-------------------------------|------------------------------|---|
| 1. <u>PROCESSING CATEGORY:</u> | <u>NON-COASTAL</u> | <u>APPEALABLE COASTAL</u> | X |
| | <u>NON-APPEALABLE COASTAL</u> | <u>PROJECT REVIEW APPEAL</u> | |

| | | | | |
|-------------------------------|---------------|-------------|-----------------------|---|
| 2. <u>FIELD REVIEW NOTES:</u> | DATE: 12/6/96 | HEALTH DEPT | BUILDING INSP | x |
| | | PLANNING | ENGINEERING/SURVEYING | x |

| | |
|--|---|
| <u>ACCESS:</u> Vipond Dr/Lakeside Loop | <u>ADJ. USES:</u> res, vacant, rur res, DFG |
| <u>TOPOGRAPHY:</u> generally flat | <u>DRAINAGE:</u> unnamed surface, Lake Earl |

DATE OF COMPLETE APPLICATION: 12/12/96

3. ERC RECOMMENDATION: Adopt negative declaration. Recommend approval of rezone to Board of Supervisors. Approval of major subdivision subject to listed conditions.

4. STAFF RECOMMENDATION:

Richard McNamara has submitted a proposal for the rezoning of a Resource Conservation Area and subdivision of Unit 3 of his subdivision on 28+ acres at the end of Vipond Drive. The parcel is accessed by both Clayton Road and Lakeside Loop. It is bisected by drainage which is currently zoned RCA-1 (General Resource Conservation Area) with Agriculture, 5 acre minimum, designation to the northeast and Rural Neighborhood/R1-B13 (One family residence - 13,000 sq.ft. minimum lot size) designation on the southwest. The subdivision would complete Lakeside Loop with 10 residential lots approximately 20,000 sq.ft. in size and a 22 acre remainder. The project is within the Coastal Zone's Lake Earl Rural Planning area which is currently 88% developed, well above the 50% minimum required for subdivision consideration.

In the early 1980's, McNamara submitted a proposal for the development of 80+ residential lots overall at the end of Vipond Drive in the northern Crescent City area. Adjacent to Lake Earl, the project had signifi-

cant issues for which an EIR was prepared (SCH #82111705). These issues included the impacts of and upon Lake Earl, ground water and sewer disposal, traffic, emergency services, flooding and habitat. The EIR was subsequently adopted with mitigations and mitigative conditions. Unit I was recorded prior to expiration. Subsequently, an application to reestablish Unit II (China Creek Court) was processed and conditions updated and reestablished. In 1990/91, McNamara submitted a proposal for Unit III which included a General Plan and Zone change which changed the agricultural area to residential designation and lots. A Notice of Preparation for an EIR was circulated (SCH #91103037) with several issues identified. These included agricultural conversion, habitat mapping and impacts, sewage disposal, and drainage. The project was withdrawn by the applicant in mid 1996. The revised Unit III proposal now submitted is reduced in size with no agricultural area conversion or development proposed.

The Resource Conservation Area identifies sensitive habitat areas. A rezone from the General designation requires soils and vegetation mapping and study. Upon review of the information, rezone to a designated RCA-2 zone, such as wetland or riparian, is made for the actual habitat area with any non-habitat area identified going to an adjacent designation. As a rezone within the Coastal Zone, the Coastal Commission reviews the project subsequent to Board of Supervisors review and takes the final action for approval or denial.

A habitat study has been completed for the McNamara property by Karen Theiss, biologist. It identifies habitat types and outlines wetland mitigations for proposed subdivision fill areas. The proposed RCA-2 areas are previously disturbed forested wetlands with braided seasonal drainages which are natural and man-made. Under the Del Norte County Coastal program there are four types of wetland: estuary, wetland (which requires a buffer), farmed wetland (which requires no buffer) and riparian. The adjacent Department of Fish and Game (DFG) owned lands are currently designated farmed wetland with no buffer required. The drainage corridors within the project which enter the DFG lands are proposed as a RCA-2r (riparian) zone. Non-habitat areas are proposed for rezoning to General Agriculture - 5 acre minimum on the northeast, and R1-B13 Single Family Residential - 13,000 sq. ft. minimum lot size on the southwest as shown on Exhibit A.

The resulting 7+ acres of R1 zoning have a potential of 21 units maximum density under the Rural Neighborhood, 3 units per acre General Plan/13,000 sq.ft lot minimum designations. Fewer, larger lots have been proposed with on-site wells and sewage disposal systems. Sewage disposal soils testing was completed by Michael Young, project engineer. Pursuant to Water Quality Control Board criteria, the lot sizes are to be approximately 20,000 sq.ft., with designated well/sewage system locations. Testing information indicates mound and/or shallow systems for the lots. A Waste Discharge Report (or waiver) and final design will be required prior to recordation

The project includes wetland fill as indicated on the map and in project description. Those areas to be disturbed, approximately 35,000 sq.ft. total of several smaller areas, will be replaced on-site as shown

on the map at a 1.5 ratio, approximately 54,000 sq.ft. The restoration plan will be prepared and financed prior to recordation of the final project. The fill will be placed for road and building site purposes and will not significantly impact the seasonal drainage. A permit or waiver may also be required from the U.S. Army Corps of Engineers for the fill and restoration project.

Several improvements and mitigations from the original project are included in this project, while some have already been completed. Lake-side Loop will be completed as a county road. Drainage begun with unit I, including non-source pollutant catch-basins prior to discharge, will also be completed. A turn-lane on Lake Earl Drive at the Vipond intersection as mitigation for impacts from the overall project traffic has been completed. The issue of emergency secondary access to the area was also mitigated in the EIR by the provision of an easement from Clayton Road to lands on the southeast for an eventual emergency connection to Lakeview, now being required as part of this project. (This will not be a public road.) The 12 foot elevation has been identified as the Lake flood level and, pursuant to prior mitigations, development will be prohibited from disturbance. The existing agricultural driveway which falls at the edge of the area will be reviewed separately in the future. An agreement for fire hydrant mitigations from the original EIR has previously been made, however placement of a third hydrant has been proposed by the applicant for this project.

Based upon the proposal and recommended conditions, which reflect prior mitigations as well as new ones, a Mitigated Negative Declaration supplemental to the original EIR was prepared and circulated to the State Clearinghouse for review. No comments were received at the close of the review period. Staff notes that the project is subject to payment of State Department of Fish and Game impact mitigation fees before the adopted Negative Declaration document is complete.

At this time, staff recommends the Commission open its public hearing and, at its close, consider adoption of the below listed findings and the Negative Declaration. Staff further recommends the Commission consider forwarding the rezone to the Board of Supervisors with a recommendation for approval and take action to approve the subdivision subject to the recommended conditions listed below.

5. FINDINGS:

A) The project is consistent with the policies and standards of the County General Plan, Coastal Program and Subdivision Ordinance;

B) The project unit is within and similar to portions of the original McNamara Subdivision for which an Environmental Impact Report (SCH #82111705) was prepared, publicly reviewed and adopted by the County. That document is herein incorporated as a part of the Mitigated Negative Declaration document of this project;

** C) Soils and vegetation mapping and analysis has been prepared by a professional biologist and sensitive habitat areas of the project identified and proposed as Riparian pursuant to the adopted Local Coastal Plan;

D) The Lake Earl Rural Planning Area of the Coastal Zone is 88% developed, permitting consideration of this project under the Coastal Act Rural Land Division Criteria;

E) The potential for groundwater pollution from on-site sewage disposal systems has been addressed by the original EIR and subsequent project information and no significant impact potential has been identified. Final jurisdiction is the responsibility of the State Regional Water Quality Control Board;

F) Traffic impacts at Vipond Drive and Lake Earl Drive have been mitigated by prior turning lane construction;

G) Habitat impacts have been mitigated by establishing zoning and elevation boundaries where disturbance is limited and by mitigative restoration of adjacent wetlands for fill areas;

H) The potential for flood hazard impacts has been avoided by the requirement that the known hazard area be delineated upon the final map and that no structures be constructed within it. Sufficient area for residential use remains on each parcel outside of the hazard area;

*** I) The Commission has reviewed testimony indicating that a fence already exists along the project/Department of Fish and Game property line which was installed by the Department of Fish and Game, and has therefore determined that the Department of Fish and Game is responsible for maintenance and repair/replacement, not the project applicant;

*** J) Comments received from the Department of Fish and Game were submitted to the County after the close of the CEQA review period. Review of the referenced letter of September, 1996, indicates that no comment regarding a 100 foot setback was outlined. It is noted that Coastal Zoning Map C-8 indicates that the edge of the Resource Conservation Area-2 (estuary) designation for the lake is over 100 feet from the project area and that the adjacent Department of Fish and Game lands are designated as Resource Conservation Area-2 (farmed wetlands) which have no buffer requirements;

*** K) The adopted County Local Coastal Program separately identifies and sets policies for several sensitive habitat Resource Conservation Area categories including

riparian, wetland, wetland buffer and farmed wetland. The Department of Fish and Game has, in recent years, incorporated these into a more general category called wetland for the purpose of CEQA review and impact evaluation. The Local Coastal Program does not limit or condition the placement of fill in riparian areas, however, such fill is subject to mitigation under Department of Fish and Game policies, as in this project case.

6. CONDITIONS:

- ** 1) Approval of this project is for a major subdivision creating 10 lots and a remainder as shown on the approved plot plan and is subject to approval of the Resource Conservation Area zoning project (R9702C) by the County and the California Coastal Commission as submitted. Any changes in the final zoning configuration may require an amendment of this subdivision project;
- 2) A final subdivision map shall be recorded with the County Clerk within 24 months of the date of approval;
- 3) The proposed water supply shall be from a source approved for the purpose by the Health Officer prior to recordation of the final map. If testing indicates, it may be necessary to place a note on the final or parcel map advising any prospective purchaser that "The installation of filtration treatment equipment may be desirable on proposed individual wells in order to avoid any unacceptable levels of such minerals or corrosiveness. This equipment may be costly to install and maintain.";
- 4) Prior to recordation of any portion of the final map, the developer shall obtain a Waste Discharge Report from the Regional Water Quality Control Board, a copy of which shall be provided to the County Planning Division for its file. The report shall include a plan for well and sewage disposal system locations for each lot, subject to RWQCB requirements. Final testing for any Wisconsin Mound systems shall be completed and noted in the reports. A note shall be placed on the map referring to the report(s) by preparer's name and date;
- ** 5) Lakeside Loop shall be extended from the end of the existing paved County maintained road (Lakeside Loop) to the beginning of the existing County maintained road (Lakeside Loop) at its junction with Vipond Drive. The road shall be constructed in accordance with County maintained road standards and shall include paving, curb and gutter (on both sides of the roadway), and

storm drain. The width shall be 40 feet from face of curb to face of curb using Cal-Trans A2-6 or County approved rolled curb and gutter, whichever matches existing improvements. The structural section shall be the same as that required and constructed for the existing portion of Lakeside Loop. The right-of-way width shall be 50 feet. The road and right-of-way shall be dedicated to the County. All design work shall comply with Title 12 of Del Norte County Code;

6) The existing 60 foot wide access easement for Clayton Road along the southeast property line shall be shown on the final map;

7) Construction plans for the roads and utilities shall be prepared by a registered civil engineer and shall be submitted to the Community Development Department, Engineering and Surveying Division, for acceptance prior to the recordation of the final map;

8) A preliminary soil report shall be prepared by a California registered civil engineer and submitted prior to the recordation of the final map;

9) A note shall be placed on the map and/or included within the CC&Rs (Conditions, Covenants & Restrictions) indicating that all future residential construction shall comply with Section 14.16.027 and Section 14.16.028 of Del Norte County Code regarding addressing and the posting of address numbers;

10) All roads and/or streets within the subdivision shall comply with Section 14.16.029 of Del Norte County Code regarding naming and identification;

11) The boundary of the Resource Conservation Area zoned riparian area shall be shown on the final map with a note which indicates "riparian drainage area - disturbance of vegetation subject to County regulations";

12) Prior to recordation of any portion of the final map, the applicant shall have a final wetland mitigation/restoration plan prepared by a qualified biologist which shall be reviewed by the Department of Fish and Game and accepted by the County. The plan shall reflect the mitigations proposed by the project including the location of the restoration area and 1.5 replacement ratio, and shall be based upon current standards for restoration of the identified habitat(s), including a monitoring program. The property owner shall enter into an agreement with the County and the Department of Fish and Game to complete the wetland mitigation and subsequent monitoring program as set forth in the final

report. The agreement shall specify the date of commencement of the mitigation work, dates of annual inspections and reports, and a bond or equivalent security shall be posted with the County to ensure performance for both construction and subsequent monitoring. The applicant shall be responsible for any Department of Fish and Game and/or Army Corps of Engineers permits required for the fill/restoration;

13) The 100 year flood hazard boundary (elevation 12 feet) shall be identified on the final map and a note shall be placed on the map and in the deeds prohibiting the construction of any structures (except a well) or the removal of native habitat (except where a drainage or access project have been specifically approved or where a windfall tree threatens a nearby structure) within the hazard area;

14) An engineered drainage plan and road improvement plan shall be submitted to the Engineering and Surveying Division for review and acceptance prior to the recordation of the map. This plan shall include a program for erosion control for both the construction period and for on-going application to the project. Catch-basins shall be included for drainage entering any natural surface drainage system;

15) The project shall comply with the requirements of the Uniform Fire Code applicable at the time of complete application (12/96). Prior to recordation of the map, the applicant shall complete arrangements with the Crescent Fire Protection District for installation of a fire hydrant as outlined in the project description;

*** 16) Prior to recordation of the final map, a gate shall be placed across the driveway serving the remainder parcel from Clayton Road and no trespassing signs shall be posted on it and along the property boundary.

** Amended per PC Meeting 3/5/97

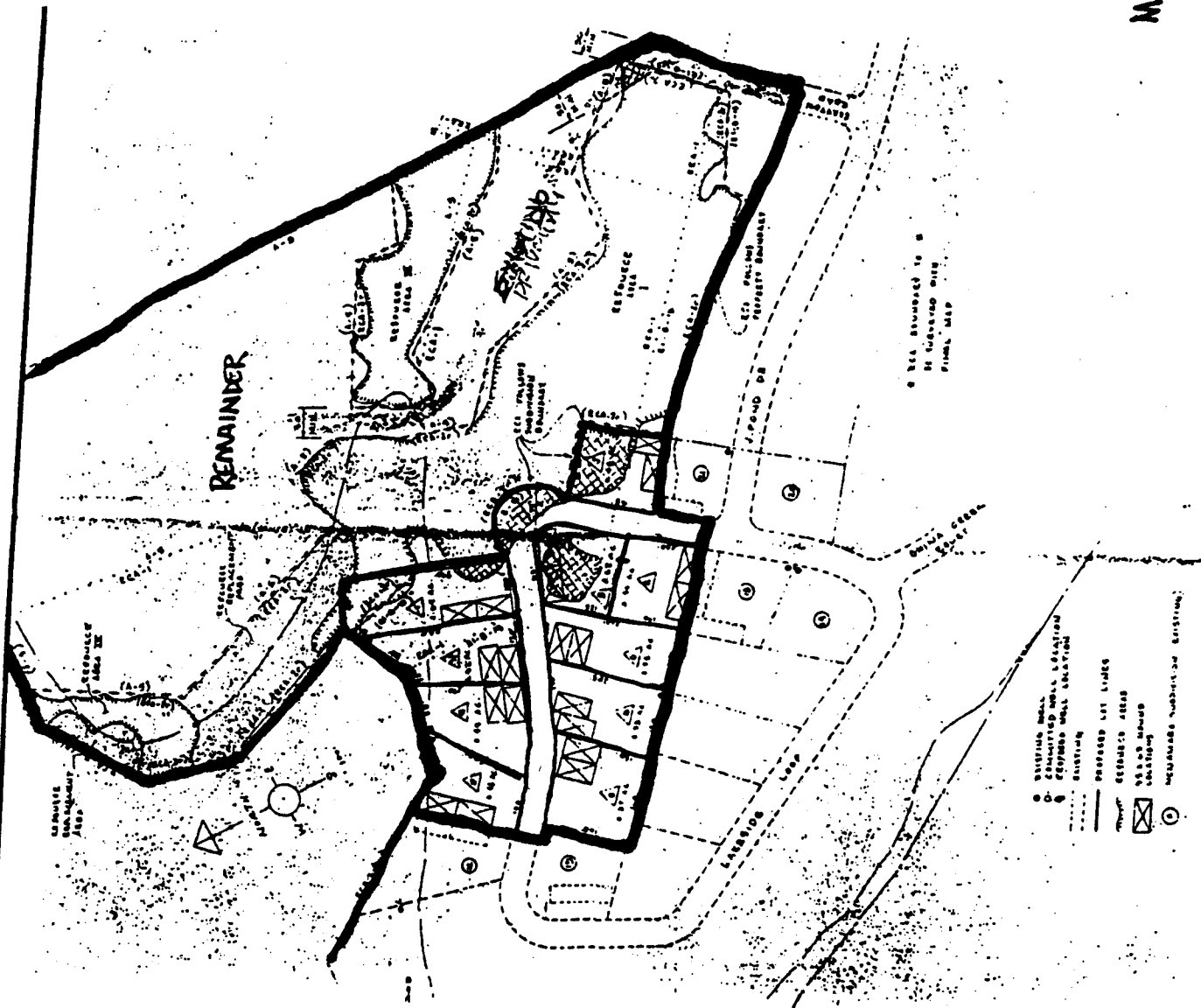
*** Added per PC Meeting 3/5/97

McNAMARA, RICHARD
Major Subdivision
MJ9702C
110-020-64

110-020-64

McNAMARA, RICHARD

Major Subdivision



MCNAMARA REZONE & SUBDIVISION
R9702C & N39702C

WETLAND
REPLACEMENT AREAS



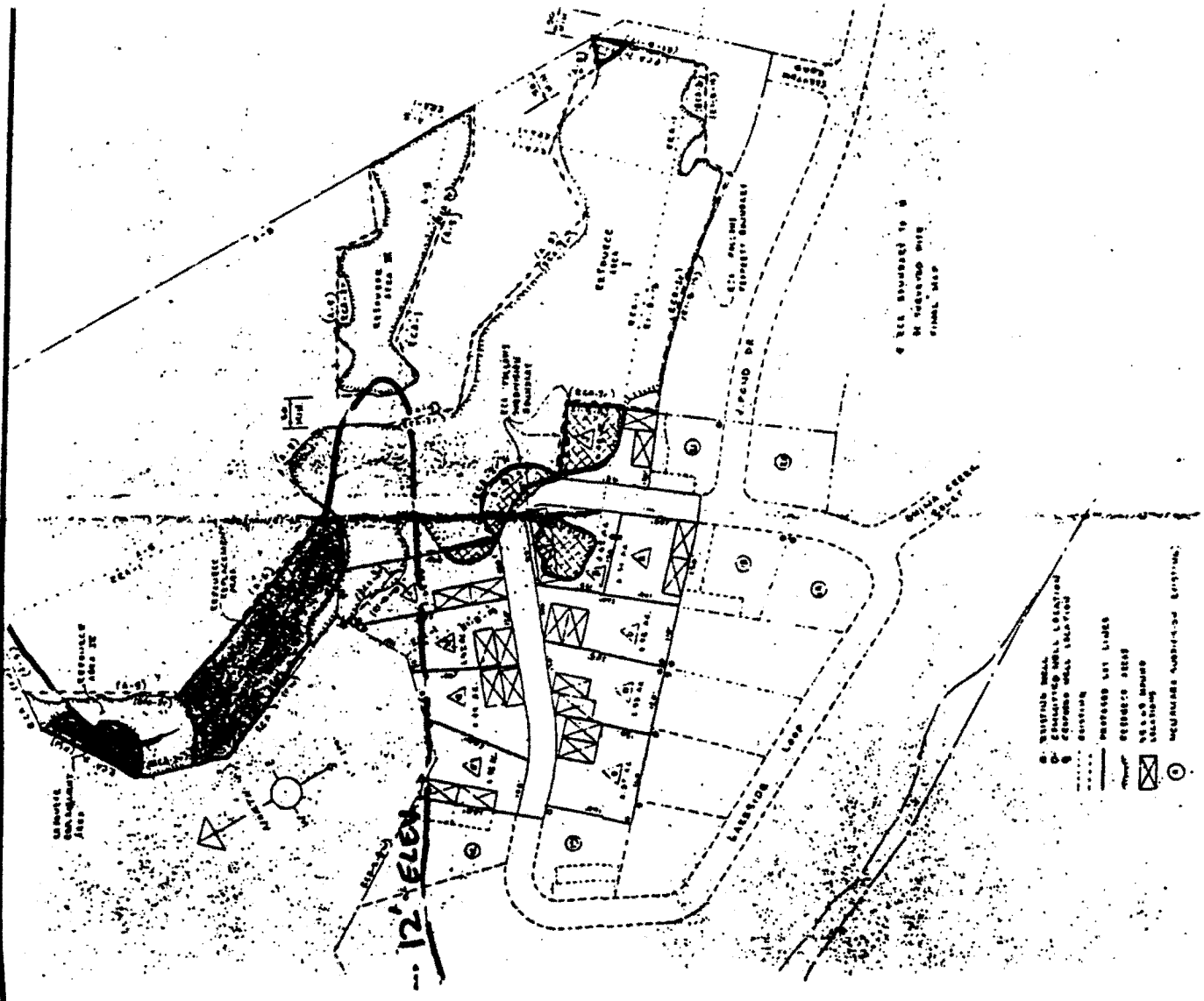
WETLAND FILL
AREAS



12' ELEVATION
FLOOD LEVEL



NO DEVELOPMENT/
NO VEGETATION DISTURBANCE
PER EIR MITIGATIONS
SCH 82111705





COUNTY OF DEL NORTE
COMMUNITY DEVELOPMENT DEPARTMENT

700 Fifth Street
CRESCENT CITY, CALIFORNIA 95531

FAX (707) 465-0340

PLANNING
(707) 464-7254

ENGINEERING & SURVEYING
(707) 464-7229

BUILDING INSPECTION
(707) 464-7253

May 27, 1997

Del Norte County Board of Supervisors
583 G Street, Suite 1
Crescent City, CA 95531

SUBJECT: Supplemental Staff Report #2: Richard McNamara RCA
Rezone R9702C - APN 110-020-64

RECOMMENDATIONS: Staff recommends that the Board adopt the findings of the Planning Commission and the attached Response to the Coastal staff letter and take action to approve the revised McNamara Ordinance and rezone exhibit as conditioned, and to further approve the Resolution submitting the proposal to the California Coastal Commission.

SUMMARY: Subsequent to the continuation of the Board hearing for the above project on April 22, the project engineer and biologist revisited that portion of the project site where fill and biological boundaries were an issue. Michael Young staked the centerline tangents of the proposed road and Karen Theiss resurveyed the habitat and measured from the staking to the habitat boundary. This was done under above-normal-rainfall conditions. As outlined in Exhibits 9 and 10 attached, the more specific information led to several conclusions. The proposed road r.o.w. is outside the habitat area and fill or disturbance of the area is not necessary. Originally identified Wetland II does not have soils or hydrolic (standing water) indicators and is not a wetland under State or Federal criteria. Also, the location of the habitat boundary on lots J and I was confirmed, confirming that lot J does not have adequate building site area to meet code. Subsequently the applicant has submitted a proposal to revise the proposed RCA-2 (r) boundary along the existing habitat boundary so that no fill will be placed in the RCA-2 area and has agreed to the deletion of lot J. Lot I has been demonstrated to meet building site criteria with the change. With absence of a fill proposal, the restoration area has also been deleted and the proposed RCA-2 boundary revised to follow existing habitat.

| | |
|-----------------|----------------|
| EXHIBIT NO. | 6 |
| APPLICATION NO. | A-1-DNC-97-019 |
| | (McNAMARA) |
| | BOS Report |

The Coastal staff's 16-page comment letter, submitted to the Board by fax less than two hours before its hearing, raised three issues. In light of the County's certified LCP and 13+ years of implementation history, two of these issues are raised in error. County staff has reviewed these comments and prepared the attached response which discusses the issues in more detail. It is noted that each issue response ends with findings which staff has recommended the Board adopt in addition to the original Planning Commission findings. Additionally, a revised zoning map exhibit is attached and a condition of the rezoning deleting lot J from the MJ9702C (McNamara) project.

DISCUSSION/JUSTIFICATION: see attached response to comments and exhibits.

ALTERNATIVES: As indicated in the Coastal staff comments, submittal of a proposal with no changes would most likely result in a denial from the Coastal Commission. This would require either abandonment of the project or similar or greater revisions in a new submittal in the future.

FINANCING: none

OTHER AGENCY INVOLVEMENT: California Coastal Commission

SIGNATURE REQUIREMENTS: An ordinance and Resolution are included.

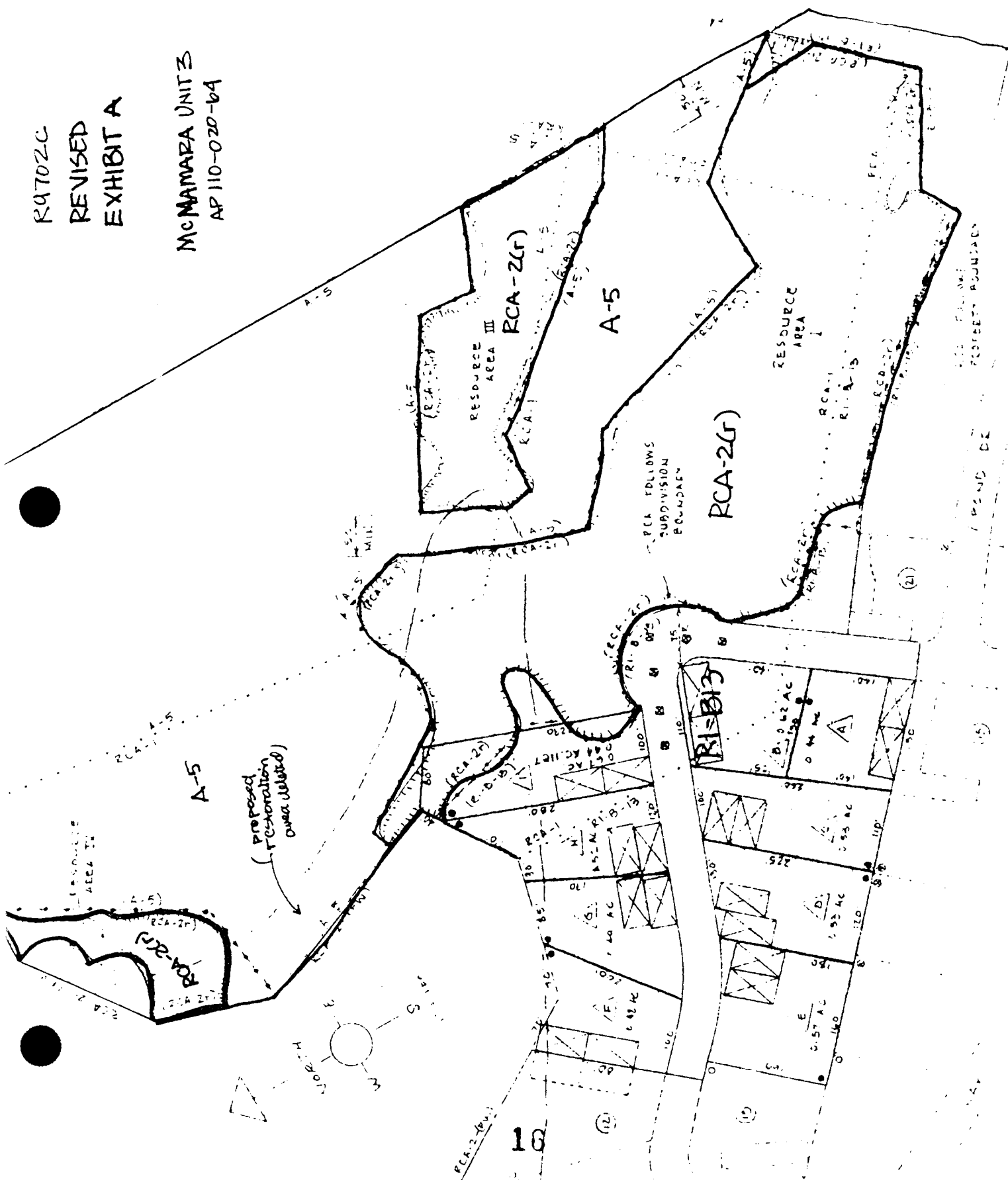
Sincerely,

Diane Mutchie

Diane Mutchie
Senior Planner

cc: Tim Goodman, CAO

McMAMARA UNIT 3
AP 110-020-64



County Response
RE Coastal Staff letter 4/21/97
McNamara RCA Rezone

Issue 1

Statements on pages 2 and 4 of the Coastal Commission staff comments imply that the proposed rezone requires changes to the Land Use Plan (LUP) and as a change in RCA zoning is a major amendment to the Local Coastal Program, citing section 21.050B.060(C).

Response:

The project consists of a change of zoning from RCA-1 to RCA-2 with those areas not designated as RCA-2 proposed as either A-5 or R1-B13. As illustrated by thier titles in the Coastal Zoning index (Exhibit 1) this is a change from General RCA to Designated RCA.

The quotation of a portion of Section 21.50B.060(C), referring to "the removal of Chapter 21.11A (designated resource conservation area)" is out-of-context, misleading and irrelevant. Review of the full text of the section (Exhibit 2) shows that the sentence following the quotation clearly states that "A rezoning from RCA-1 to RCA-2... shall be considered a minor amendment". The proposed project consists of a change from RCA-1 to RCA-2 and DOES NOT remove designated RCA-2 zoning. (The only existing RCA-2 is on adjacent Department of Fish and Game property which is designated Farmed Wetlands.) The County recognizes that while it may submit an RCA-1 to RCA-2 change as a minor amendment, it is the descretion of the Coastal Commission to hear any one project as a major amendment based upon issue, not upon incorrect code quotations.

The implication that the RCA-1 to RCA-2 change requires an LUP amendment because portions of the RCA-1 area will be A-5 or R1-B13 instead of RCA-2 has been previously addressed in the management of the Countys RCA program, represents a reversal of 13+ years of simliar project actions by the Coastal Commission, and is contrary to adopted LCP text. Section 21.11.010 (Exhibit 3) outlines the intent of RCA-1 as a transition zone awaiting more detailed information. Section 21.11.060 (D), items 2 and 3, (Exhibit 4) specifically indicate that the area found not to be resource conservation area or any wetland buffer is within the abutting General Plan land use classification and shall be re-zoned to another zoning which is in accord with the General Plan. In this case, onsite portions of the parcel to the northeast are General Agriculture-5 and lands to the southeast are Rural Neighborhood 3 units per acre on the General Plan. The proposed zones correspond to these LUP/General Plan land use designations.

Finding: Pursuant to Sections 21.11.060 (D) 2 and 3 and Section 21.50B.060 the project consists of a change in zoning from RCA-1 (General Resource Conservation Area to RCA-2 (Designated Resource Conservation Area) with related rezonings of non-resource areas to A-5 and R1-B13 which are consistant with the respective adjacent land use designations of General Agriculture 5 and Rural Nieghborhood 3 units per acre. An amendment of the LCP- Land Use Plan is not required for this proposal.

Finding: The project is a change in zoning from RCA-1 to RCA-2 and is not mandated by the County LCP as a major LCP amendment as outlined in Section 21.11.010. The determination as to whether this specific zone change is a minor or major LCP amendment is at the descretion of the Coastal Commission, based upon substantial issues of this specific project.

Issue 2

Statements on page 3 of the Coastal staff comments contend that Theiss has provided an incomplete wetlands investigation which utilizes Army Corps of Engingeers criteria and was not conducted in a year of normal rainfall has been utilized and resulted in inaccurate mapping.

Response:

The Coastal Act definition of wetlands played a pivotal role the hearings and outcome of the County's LCP in 1979-84. The development of the Environmentally Sensitive Habitat Area maps, the Land Use Map/RCA areas, and the RCA zoning and zoning map program were subject to several years of discussion in and out of the field between County, Coastal, and Department of Fish and Game staffs. At issue was the interpretation of the Coastal Act wetlands phrase "lands covered periodically or permanently with shallow water." The significantly high rainfall on the northcoast and in Del Norte County (relative to the balance of the Coastal Zone) literally results in the covering of the entire coastal plain with some form of shallow water during the weeks/months of continual seasonal rain. A system for discernment was necessary both between habitat and non-habitat areas and in determining the types of habitat, such as wetland, riparian or estuary outlined in the LUP.

The Resource Conservation Area program was developed and both the LUP and Zoning established a process for habitat mapping and categorization which included soils, vegetation, topography and required consultation with the Department of Fish and Game. This program was certified in 1983 and implementation began in 1984. Biologists reports were then generally referred to as vegetation or habitat studies.

In 1987 the Army Corps of Engineers (COE) established its program of "jurisdictional wetlands" which is a broad program encompassing many of the LCP's RCA categories under one federal title of "wetlands" for the purposes of its permit system. During the past

le many projects have been subject to multiple review for "wetlands" issues by the State and the COE. Often reports are prepared which address this multiplicity of agencies and are generally referred to as wetlands reports. While utilizing such reports the practice of the County and the Coastal Commission under the certified Del Norte RCA program has been to rely upon the criteria, requirements and recommendations of Department of Fish and Game staff in the analysis of sites.

Karen Theiss and Associates is a highly qualified and reputable biology firm which has worked within this and other local jurisdictions on the northcoast, the Department of Fish and Game, Coastal Commission, and the Corps of Engineers for many years. It is noted that the McNamara report does not rely solely upon the COE criteria and DOES also address State and County requirements. It is also noted that County staff has verified that consultations by Theiss and field visits were made by Department of Fish and Game (Pierce) and COE (Ammerman) staffs, neither of which have objections to the proposal as submitted. This includes the category of habitat (riparian) as well as the report. The proposed mapping is based upon firsthand information, familiarity with the Del Norte LCP/RCA program categories, and the discernment of these qualified professional biologists. County staff also notes that it has determined that Coastal staff has at no time consulted with Department of Fish and Game staff regarding the project or its report, nor has it indicated which Coastal staff biologist has deemed the conclusions reflected in the mapping inaccurate.

In response to Coastal staff comments regarding the "normal rainfall" requirement, and to more specifically address the issue of proposed habitat fill areas, a supplemental report was contracted by the applicant with Theiss. This report (Exhibit 9) reflects a field review in April of this year, where the seasonal rainfall at the time was 89.78" (normal=74.14") and the monthly rainfall was 7.13" (normal April=5.57").

The project engineer field staked the centerline tangents of the proposed road corner to verify its proposed location and from which Theiss could measure the distance to the habitat boundary. Based upon the additional work by both the engineer (Young) and Theiss it is determined that the staked road right-of-way falls outside of the riparian habitat boundary and will not require placement of fill within the habitat area. The location of the boundary across proposed parcel J and portions of proposed parcel I were also confirmed. As a result the applicant's engineer has indicated agreement to relinquish the fill proposal, revising the RCA-2 (r) zone boundary, thereby foregoing the creation of lot J and reducing the net non-RCA building area of parcel I to .44 acre (Exhibit 10). This 19,150+ sq.ft. exceeds the minimum of 7,200 sq.ft. of non-RCA area required by Section 21.11A.050D.

The second review of the area of controversy included closer analysis of the isolated area on proposed lot B, originally

labeled Wetland II based solely upon common hydrophytic vegetation. Finding no standing water and, by new soils test pit review, no saturated soils, it is concluded that the area does not meet Fish and Game nor COE criteria for wetland. Based upon the conclusions of the supplemental report and the zoning boundary and project changes resulting, the proposed habitat replacement area is also deleted from the project, revising its boundary to the existing habitat limits (Exhibit 10).

Finding: The implementation of Coastal Act policies regarding wetlands and other environmentally sensitive habitat has been addressed by the certified LCP Resource Conservation Area program. The development of this program appropriately considered local conditions such as climate and habitat categories and provides for review by Department of Fish and Game on a case-by-case basis. This process of discernment has been successfully utilized by the County and the Commission for 13+ years.

Finding: Habitat mapping has been prepared by Karen Theiss & Associates which outlines County, State and Federal criteria and which included consultation and field review by biology staff from the Department of Fish and Game and Corps of Engineers. No issue in data, mapping, use of criteria or proposed habitat boundaries was identified by the California Department of Fish and Game, or COE.

Finding: A supplemental habitat investigation conducted by Theiss in April 1997, in above normal rainfall conditions and based upon engineer-staked reference points, has provided more specific information and conclusions as to the location of habitat boundaries.

Finding: Based upon the habitat reports areas of general RCA-1 zoning have been determined to be Riparian and are proposed as designated RCA-2 Riparian with no disagreement from any party.

Finding: Based upon the habitat reports areas of general RCA-1 zoning have been determined to be outside the riparian habitat area and are proposed to be designated other than RCA-2 in accordance with Section 21.11.060.D3.

Finding: Based upon the supplemental habitat report by Theiss the applicant has proposed a revised RCA-2(r) boundary, abandoned the proposal for fill within the habitat area, demonstrated adequate building site area for lot I, and abandoned lot J.

Issue 3

The lack of provision of a buffer zone is raised as an issue on pages 6-8 of the Coastal staff comments. References to Coastal Act sections, seven portions of the County Land Use Plan and zoning which deal with wetlands, and correspondence from the Department of Fish and Game for the Planning Commission hearing

are utilized to conclude that a wetland buffer is required for the project between the sensitive habitat area and project development.

Response:

The Coastal Commission Certification of the County's Land Use Plan and the Coastal Zoning Ordinance in 1983 found that the referenced Coastal Act sections are addressed and implemented in the County Local Coastal Program. The way in which these sections have been addressed and implemented have been ignored by the Coastal staff comments.

Pages 46-70 of the certified Land Use Plan address Sensitive Coastal Habitats, including a section of Specific Area Policies and Recommendations (pgs 60-70). This section sets forth definitions, distributions, issues and policies for each category of sensitive habitat identified in the LCP. As indicated in the condensed outline/example of this section (Exhibit 5) Wetlands are a separate category from Riparian Vegetation. This separation of categories, with separate policies and activities, continues to the Land Use section which creates the Resource Conservation Area land use designation with subcategories. Implementation under the RCA 1 and 2 zoning program also applies this separation, requiring specification as to category at the time of RCA-2 designation (Exhibit 4). This is also reflected as the RCA-2 chapter outlines specific uses/use permit uses for each category. It is noted that there are separate categories for wetland, wetland buffer, farmed wetland, riparian and others including estuary.

Beginning in 1984, the application of the RCA-2 program and these categories has been relatively clear. Well over 20 such LCP amendments have been heard and approved by the County and the Coastal Commission, most of which are summarized by Exhibit 6. Projects such as Miller, Day, Sonnenberg and Fugate demonstrate that where Wetlands (w) have been designated, a Wetland Buffer (wb) has been applied. Projects such as Tryon, O'Dell, Stanhurst, Ziedler and Bliss demonstrate that where Farmed Wetlands (fw) are designated, Wetland Buffer has not been applied, based upon the nature of the "fw" activities. Similarly, projects such as Munger, Leither, Cozzolio, Fugate, BDC, Eller, Agness Ent, and McMurray demonstrate that where Riparian (r) designations are determined, Wetland Buffer is not applied. This is because the nature of riparian areas, as defined (Exhibit 6), includes the vegetation systems along the drainage system. In the mid-1980's the Department of Fish and Game issued an internal policy document for its northern region outlining how these were to be identified. It is noted that this system of applying RCA categories did not change after the introduction of the all encompassing ACOE "jurisdictional wetland" terminology in 1987.

Completed - 1980

The proposal for the McNamara rezone is for RCA-2 (r) - that is Riparian. The Department of Fish and Game has not contested this in its comments (Exhibit 7). Coastal staff has not disagreed with

the proposed Riparian designation. However, the LUP text and policies and Zoning text and policies cited by Coastal staff are not from the Riparian category policy and zoning text sections but from the Wetlands category texts. For example, the requirements for a wetland buffer cited from "Specific Area Policy No. 4f page 66 of the LUP" is found under the Wetlands heading (VII.D.- Exhibit 5) three paragraphs on the same page before the Riparian policies section E. Such misquotation of text demonstrates either ignorance of the Del Norte LCP or total disregard for an approved, long-time utilized system of review.

Similar misinterpretation is included in the reference to the letter of the Department of Fish and Game dated March 5, 1997 (Exhibit 7). The wetland concern expressed in the first paragraph is explicitly stated as "a 100 foot setback from the shoreline of Lake". As discussed by the review of the original subdivision Unit 1 project, and the Planning Commission hearing and findings, the Lake (Lake Earl) shoreline is approximately 500 ft. away from the Unit 3 project, as illustrated by the zoning map (Exhibit 8) where the Lake shoreline is designated RCA-2 e (estuary) in the upper left corner of the map. It is also noted that Mr. Pierce was provided a copy of the County action and findings and did not file an appeal of this determination.

While the requirement for application of a wetland buffer is not called for in the case of a riparian designated area, mitigative conditions have been applied to the conditions of the companion subdivision development. These include showing the RCA-2 boundary on the recorded map with a map note referencing County regulations regarding riparian areas (condition 11); a requirement for the provision of curb and gutter for the street, thus limiting drainage discharge (condition 5); and, preparation of a drainage plan including erosion controls and provision of catch basins prior to discharge into natural surface drainages (condition 14). The latter is a standard condition developed with the Department of Fish and Game and applied to similar projects such as McMurray and Miller (Exhibit 6) where development was immediately adjacent to riparian corridors.

Finding: Based upon the format of the Environmentally Sensitive Habitat/Resource Conservation Area Land Use Policies and Zoning program in the certified Del Norte County LCP, and the history of its application over 13+ years, and the agreement to the designation of the subject habitat as Riparian under said LCP's RCA program, no Wetland Buffer designation is required.

Finding: The subject project area is located more than 100 feet from the shoreline of Lake Earl, as previously addressed by the Planning Commission findings for the subdivision approval.

FINDING: Conditions of the subdivision (#'s 5, 11 & 14) have provided for notice of the sensitive habitat location and regulations and for standard mitigation of potential drainage impacts developed with the Department of Fish and Game.

Karen Theiss and Associates

Biological and Environmental Consultants

1933 Central Avenue • McKinleyville, CA 95519 • 707-839-0681 • FAX 707-839-4012

May 13, 1997

Michael Young
Michael Young and Associates
711 J Street
Crescent City, CA 95531

RE: McNamara Subdivision
KTA #96-296

Dear Mr. Young:

I visited the project site on April 22, 1997 with staff from your office to evaluate the placement of the proposed road with regard to the mapped wetlands, especially the possible infringement of the curve in the road to the wetlands on the outer side. The centerline of the road had been staked, as had the point of interception (PI) of the two roads. The distance from these points to the edge of the wetland was measured using a tape. While the original wetland map indicates that wetland vegetation is included within a portion of the curve, field conditions in reveal that the staked road alignment falls just outside of the area supporting woody riparian vegetation. The straight sections of road, including the entire right-of-way, also fall outside of the wetland boundary, as shown on the original map.

The original mapping in this immediate area was based on vegetation distribution and composition, and generally followed the drip line of woody riparian species. The aerial photograph used for mapping of the vegetation was difficult to interpret in areas supporting a mix of deciduous and herbaceous species. Re-examination of the map, which was based on field work conducted in May of 1992, indicates that a portion of the area in question may have supported nonwoody as well as woody species at the time of mapping, but that the entire area was included within the wetland boundary. The discrepancy may be due to an original mapping error, clearing of vegetation, or a combination of the two. A blueprint of the proposed rezoning map is enclosed with the revised wetland boundary indicated in black.

While in the field in April, I also re-evaluated wetland boundary running through proposal parcel J as well as the Wetlands II area designated on the map. The boundary running through parcel J is located in the same location as originally mapped. Wetlands II was originally labeled as wetland due to the dominance by hydrophytic species. At the time of field investigation, no soils test was done. Upon further examination with staff of the US Army Corps of Engineers, it was determined that neither the soils nor hydrology meet the wetlands criteria. During today's investigation, I examined a backhoe pit that was about 2.5 feet in depth. There was no standing water nor was the soil saturated. Rainfall during the current hydrologic year has exceeded "normal" amounts, and has included rain during the last five days at the project site. I

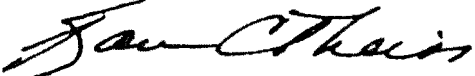
think that it would be reasonable to assume that the hydrologic criteria would not be met at this site. The presence of hydrophytic vegetation in areas without hydric soils or wetland hydrology is not unusual in coastal areas in Northern California. These areas experience cool temperatures, high relative humidity, rainfall from October through April, and fog during much of the summer. The abundance of moisture is sufficient to allow for growth and maintenance of many hydrophytic plant species but is insufficient to allow for hydric soils conditions or wetland hydrology.

In summary, field review on April 22, 1997 revealed the following conditions with regard to proposed placement of lots and roads:

1. the entire right-of-way of the access road, including the curve, falls outside of wetlands; thus, the wetland originally included in the curve of the road should be changed to upland;
2. the upland/wetland boundary on parcel J is correct;
3. Wetland II does not meet the wetland criteria of either the Corps of Engineers or the Department of Fish and Game.

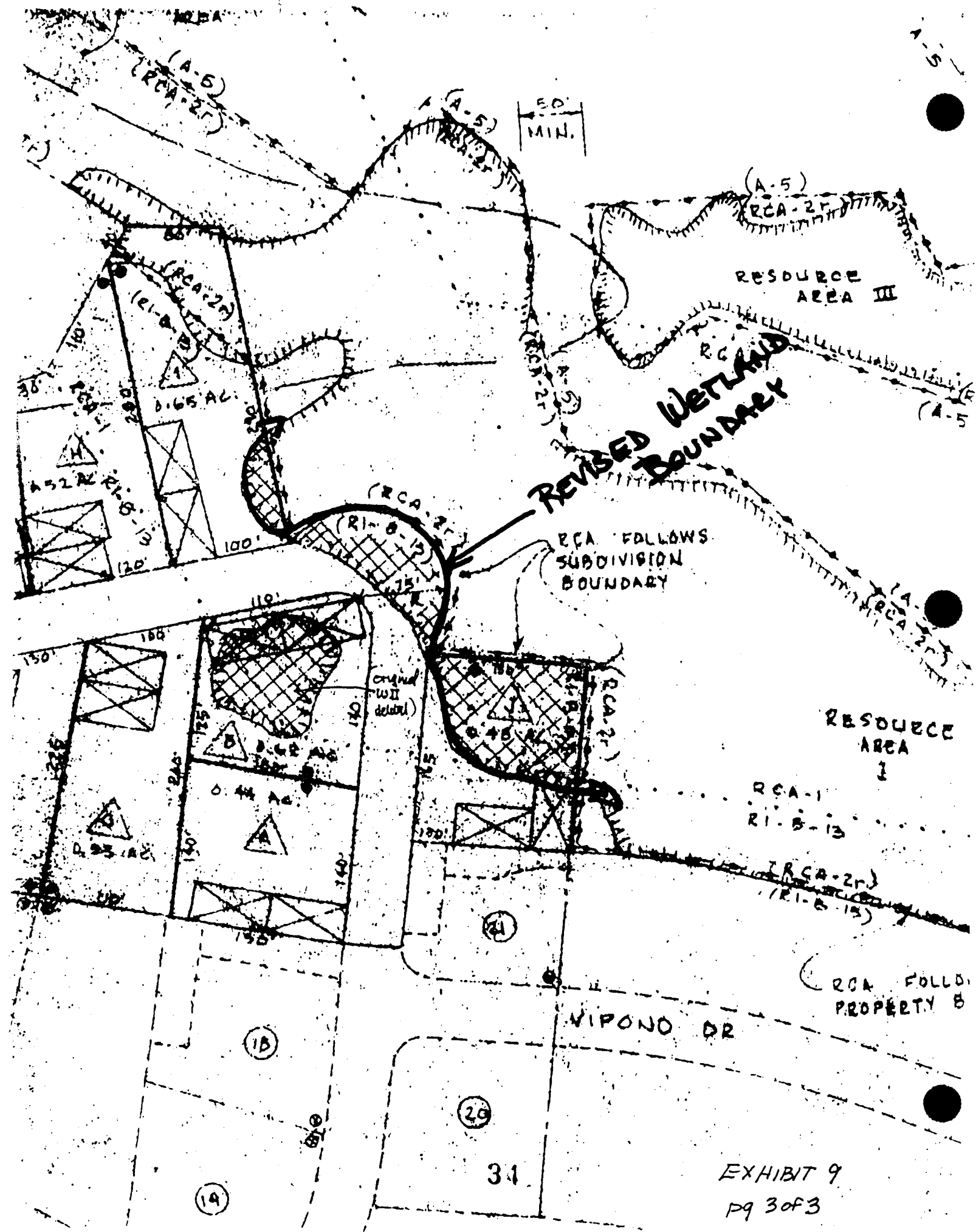
Sincerely,

KAREN THEISS AND ASSOCIATES



Karen C. Theiss
Principal

cc: Mike Young



MICHAEL YOUNG
& ASSOCIATES

CIVIL ENGINEERS

711 "J" STREET
CRESCENT CITY, CALIF. 95531

(707) 464-8711

May 15, 1997

RECEIVED

MAY 15 1997

PLANNING
COUNTY OF DEL NORTE

Diane Mutchie, Senior Planner
Del Norte County
Community Development Department
Planning Department
700 Fifth Street
Crescent City, CA 95531

re: Third McNamara Subdivision
RCA Zoning

Dear Diane:

Enclosed please find a copy of the May 13, 1997 letter and accompanying map from Karen Theiss and Associates regarding the wetland boundaries in the most easterly portion of the proposed Third McNamara Subdivision. This portion of the project was revisited in light of the Coastal Commission appeal of the subdivision approval.

The Coastal Commission objected to the proposed filling of wetlands even though a 1.5 to 1 replacement was proposed. The proposed fill would have occurred on Lots "B", "I" and "J" and on a portion of the street (Lakeside Loop) adjacent to those lots.

As noted in Karen Theiss' letter, we staked the street centerline in order to determine the exact location of the "wetland" boundary relative to the street and the above three lots. It was determined that the "wetland" boundary was outside the right-of-way of the proposed street, but unchanged on Lots "I" and "J". It was also determined that the previously mapped "Wetland II" (isolated area on Lot "B") was not a wetland.

With this information, we propose to modify the project as follows:

1. Delete the previously mapped "Wetland II" thereby allowing development of Lot "B".

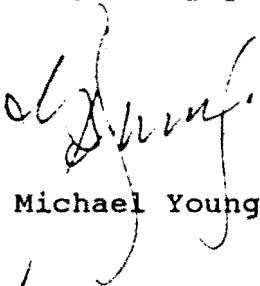
2. Change the proposed Resource Conservation Area 2-riparian (RCA2-r) boundary on Lot "I" (as shown) which will eliminate the need for any "wetland filling".
3. Change the proposed RCA2-r boundary between Lot "I" and Lot "J" to follow the street right-of-way (as shown) thereby eliminating the "wetland filling".
4. Delete Lot "J".
5. Delete the proposed wetland replacement areas and revise the proposed RCA2-r boundaries appropriately.

The net result of these changes will be to eliminate one lot, avoid any "wetland filling" and eliminate the creation of any new wetlands. The enclosed revised project map reflects the above noted changes.

An unstated assumption underlying the above is that a "buffer" is not required adjacent to any of the proposed RCA2-r zoned areas. This is consistent with past RCA rezonings in this and other areas of the community.

I hope this provides the information you need. If you have any questions please feel free to call.

Very truly yours,



Michael Young

cc: Richard McNamara
Jerry Johnson

BOARD OF SUPERVISORS
COUNTY OF DEL NORTE
STATE OF CALIFORNIA

ORDINANCE NO. 97- 009

AN ORDINANCE AMENDING ORDINANCE NO. 83-08
AND COUNTY CODE TITLE 21 BY DELETING
COASTAL ZONING AREA MAP C-8 AND ADOPTING
NEW COASTAL ZONING AREA MAP C-8 (MCNAMARA)

The Board of Supervisors, County of Del Norte, State of California, does ordain as follows:

SECTION I: Section 2.D.2 of the Coastal Zoning Enabling Ordinance No. 83-08 and County Code Title 21 is hereby amended by deleting therefrom Coastal Zoning Area Map C-8 and amending same with a new Coastal Zoning Area Map C-8 as specified in attached Revised Exhibit "A" and subject to the following condition:


This rezone requires the deletion of proposed lot "J" of the McNamara Unit 3 Subdivision (MJ9702C)

SECTION II: This Ordinance shall take effect and be enforced thirty (30) days after the date of its passage or approval of the rezone by the Coastal Commission, whichever is the latter.


FINDINGS OF FACT: This Ordinance is passed and adopted based upon the findings cited in the Staff Report and the Board of Supervisors hereby makes said findings as more particularly described in said Staff Report, which is herein incorporated by reference (§ 65804(c)(d) of the Government Code).

PASSED AND ADOPTED this 10th day of ^{XXXX}May, 1997, by the following polled vote: June

AYES: Supervisors Finigan, Reese, Eller, McClure and Clausen
NOES: None
ABSENT: None


BARBARA P. CLAUSEN, Chairman
Board of Supervisors

ATTEST:


KAREN L. WALSH, Clerk of the
Board of Supervisors, County
of Del Norte, State of California

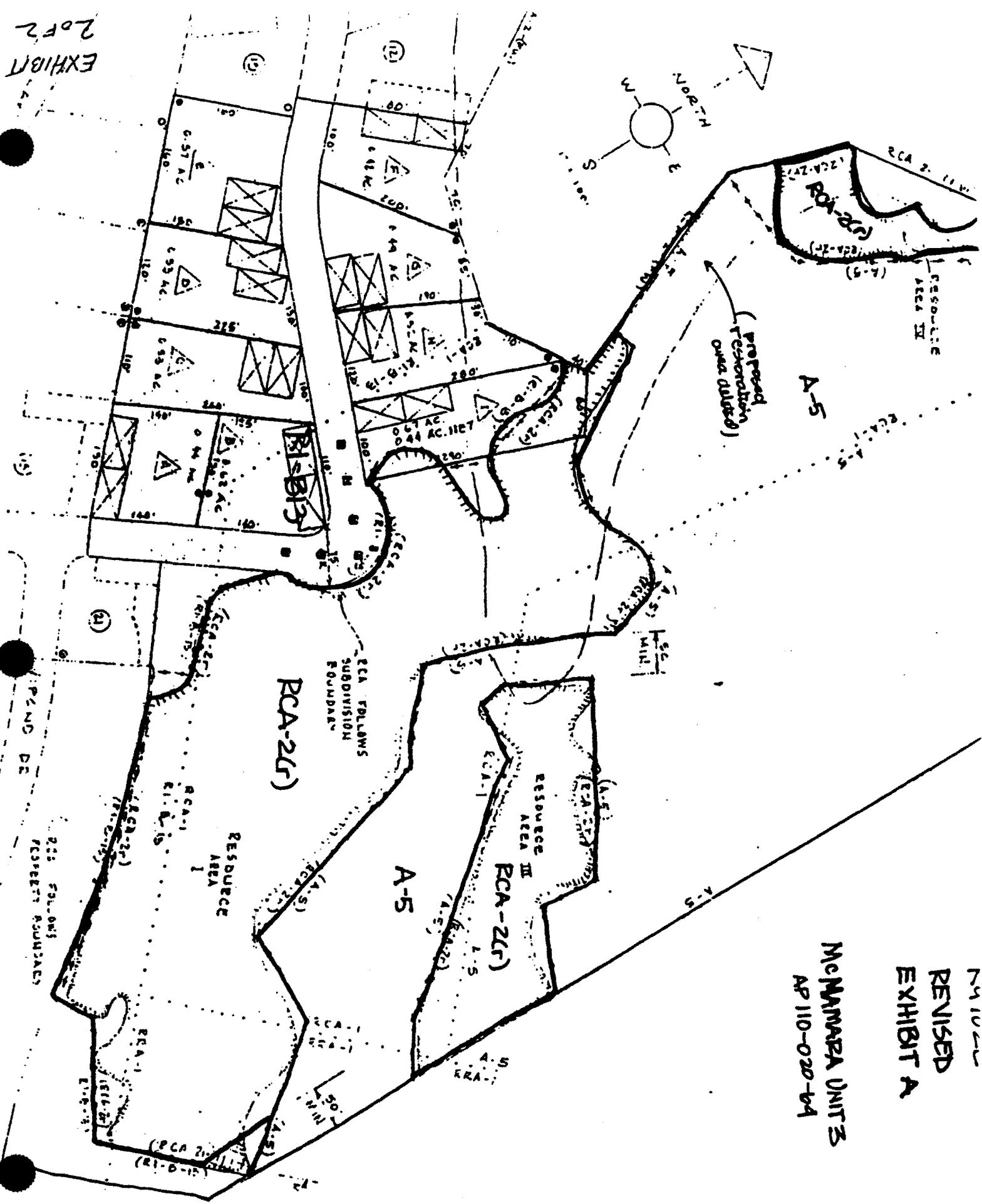
BOC

| | |
|-----------------|------------------|
| EXHIBIT NO. | 7 |
| APPLICATION NO. | A-1-DNC-97-019 |
| | (MCNAMARA) |
| | County Ordinance |

MUCU
 REVISED
 EXHIBIT A

McMANARA UNIT 3
 AP 110-020-b4

EXHIBIT 6
 20F2





COUNTY OF DEL NORTE
COMMUNITY DEVELOPMENT DEPARTMENT

700 Fifth Street
CRESCENT CITY, CALIFORNIA 95531

FAX (707) 465-0340

PLANNING
(707) 464-7254

ENGINEERING & SURVEYING
(707) 464-7229

BUILDING INSPECTION
(707) 464-7253

May 28, 1997

EXHIBIT NO. 8

APPLICATION NO.
A-1-DNC-97-019

(McNAMARA)

Memo to Planning
Commission

MEMO TO : Del Norte County Planning Commission

FROM : Diane Mutchie, Senior Planner

RE : Richard McNamara - RCA Rezone R9702C and Unit 3 Major
Subdivision MJ9702C - APN 110-020-64

At its regular meeting of March 5, 1997, the Commission heard the above proposals by McNamara, off Vipond Drive, in the Lakeside Loop area. The Commission approved the subdivision subject to conditions, and forwarded a recommendation of approval for the rezone to the Board of Supervisors. Subsequent to the Commission action, the Coastal Commission filed an appeal of the subdivision and submitted comments regarding the zoning project to the Board for its hearing.

A copy of the Coastal staff comments regarding the rezone to the Board is attached. The primary relevant issue related to fill in the habitat area. The applicant requested an opportunity to specifically locate the proposed roadway centerline in the field, reconfirm the location of the habitat line and amend the proposal to address Coastal concerns. This resulted in changes to the habitat boundary, changes in the proposed RCA-2(r) boundary and related changes in the subdivision proposal. A follow-up report was prepared by staff for the Board which included copies of the reports of Theiss and Young. This follow-up report is also attached. The Board of Supervisors considered the additional information and proposed changes at its continued hearing on May 27, 1997. Pursuant to Government Code requirements, it has referred the proposed changes to the Commission for their review and comment since these changes were not previously considered by the Commission.

The specific changes to the rezone are shown in Revised Exhibit A and include changes in the proposed lots I and J areas as well as deletion of the proposed wetland restoration RCA-2 zone area north of lot I. The change in the RCA-2 boundary is to follow the habitat line as outlined by Theiss. As a result, the appli-

RE: Richard McNamara - Rezone R9/02C & Major Subdivision MJ9/02C
May 28, 1997
Page 2

cant has deleted any proposed fill within the revised RCA-2(r) habitat areas. The restoration area is deleted as a result of the deletion of fill in the habitat areas. The deleted wetland restoration is proposed to become Ag-5, as is the adjacent non-habitat area. The Theiss work also confirmed that the proposed lot J is not consistent with Zoning Code for the creation of a lot with RCA zoning where at least 50% of the minimum lot size must be non-RCA area. As a result, the applicant has agreed to delete proposed lot J, which the revised zone ordinance would incorporate as a condition of the final approval.

Staff recommends the Commission review these changes and take action to indicate to the Board its concerns, support or objections. Staff also recommends that, for clarification of the subdivision approval, it consider adopting the following findings regarding the project changes:

A) Pursuant to the changes in the RCA-2(r) boundary and condition of zoning deleting lot J, the project approval outlined in condition 1 of the subdivision would be reduced to 9 lots and a remainder.

B) Pursuant to the changes in the RCA-2(r) boundary and the applicant's subsequent withdrawal of proposals to fill within the designated habitat areas, condition 12 of the subdivision calling for wetlands mitigation/restoration would become unnecessary.

DM/wm

(mempcmcn.mam)

Post-it® Fax Note

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|---------|-----------------------|------------|---|
| Date | 1/13/99 | # of pages | 2 |
| To | DARREYL RANCE | | |
| From | DIANE MITCHELL | | |
| Co/Dept | CA COASTAL-NORTHCOAST | | |
| Co. | DEL NORTE | | |
| Phone # | | | |
| Fax # | 415-904-5400 | | |

Darryl - call if questions - DM

PAC - Planning Area Code

(By Map)

COASTAL ZONE (single digit #)

Smith River Map:

1. Ocean View Rural Area
2. Smith River Rural Area

Crescent City Map:

3. Lake Earl Rural Area
9. Lake Earl Urban Area
4. Crescent City Rural Area
7. Crescent City Urban Area
8. Crescent City Harbor Area

Klamath:

5. Klamath Rural Area
6. Klamath Urban Area

NON-COASTAL ZONE (two digit #)

Smith River Map:

21. Smith River Area

Crescent City Map:

41. Crescent City Rural Area
71. Crescent City Urban Area

25. THE STONE

Klamath:

51. Klamath Highway 101 Area
52. Terwer Klamath Glen Area
53. SOUTH OF KLAMATH RIVER

Hiouchi:

22. North Bank/South Bank Area
23. Hiouchi

Gasquet:

24. Gasquet

25. Gaskin - callie - 1000

RECEIVED

JAN 13 1999

CALIFORNIA
COASTAL COMMISSION

| | |
|---|---|
| EXHIBIT NO. | 9 |
| APPLICATION NO. A-1-DNC-97-019 (McNAMARA) | |
| 50% Dev. Report | |

DATE 1/13/99

PLANNING/BUILDING 50% DEVELOPED REPORT
BY MARKET AREA

| MARKET AREA | TOTAL PARCELS | TOTAL EXEMPTS | TOTAL LOTS | TOTAL DEVELOPED | PERCENT DEVELOPED |
|-------------|------------------|------------------|---------------|--------------------|----------------------|
|-------------|------------------|------------------|---------------|--------------------|----------------------|

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|---|-----|----|-----|-----|-----|
| 1 | 489 | 36 | 279 | 187 | 67% |
|---|-----|----|-----|-----|-----|

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|---|-----|-----|----|----|-----|
| 2 | 195 | 127 | 25 | 23 | 92% |
|---|-----|-----|----|----|-----|

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|---|-----|-----|-----|-----|-----|
| 3 | 715 | 389 | 290 | 257 | 88% |
|---|-----|-----|-----|-----|-----|

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|---|-----|-----|-----|-----|-----|
| 4 | 475 | 130 | 315 | 194 | 62% |
|---|-----|-----|-----|-----|-----|

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| 5 | 264 | 97 | 155 | 62 | 40% |
|---|-----|----|-----|----|-----|

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|---|-----|---|----|----|-----|
| 6 | 110 | 3 | 89 | 27 | 30% |
|---|-----|---|----|----|-----|

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|---|-----|-----|-----|-----|-----|
| 7 | 946 | 185 | 729 | 390 | 53% |
|---|-----|-----|-----|-----|-----|

| | | | | | |
|---|---|---|---|---|-----|
| 8 | 6 | 0 | 6 | 3 | 50% |
|---|---|---|---|---|-----|

| | | | | | |
|---|-------|-------|---|---|------|
| 9 | 1,488 | 1,487 | 1 | 1 | 100% |
|---|-------|-------|---|---|------|

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| 11 | 1 | 0 | 1 | 1 | 100% |
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| 19 | 1 | 1 | 1 | 1 | 100% |
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|----|-----|---|-----|-----|-----|
| 21 | 384 | 9 | 296 | 196 | 66% |
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| 22 | 277 | 34 | 128 | 90 | 70% |
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| 23 | 1 | 0 | 1 | 1 | 100% |
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| 24 | 1 | 0 | 1 | 1 | 100% |
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| 29 | 1 | 0 | 1 | 1 | 100% |
|----|---|---|---|---|------|

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|----|-----|----|-----|-----|-----|
| 30 | 883 | 56 | 688 | 512 | 74% |
|----|-----|----|-----|-----|-----|