

CALIFORNIA COASTAL COMMISSION

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Filed: June 4, 1999
49th Day: July 22, 1999
Staff: D. Rance
Staff Report: June 25, 1999
Hearing Date: July 16, 1999
Commission Action:

STAFF REPORT: APPEALSUBSTANTIAL ISSUE

LOCAL GOVERNMENT: Del Norte County

DECISION: Approval with Conditions

APPEAL NO.: A-1-DNC-99-037

APPLICANTS: Richard and Genevieve McNamara

PROJECT LOCATION: On the west side of Lake Earl Drive between Lakeside Loop and Clayton Drive (APN 110-020-64) (Exhibits 1-3)

PROJECT DESCRIPTION: Coastal grading permit for vegetation removal and earthwork associated with a 3-acre commercial timber harvest.

APPELLANTS: Friends of Del Norte

SUBSTANTIVE FILE DOCUMENTS: Del Norte County Local Coastal Program; Del Norte County Coastal Grading Permit No. GP-99-007C.

SUMMARY OF STAFF RECOMMENDATION: NO SUBSTANTIAL ISSUE

The staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. These grounds include alleged project inconsistency with Environmentally Sensitive Habitat Area (ESHA) buffer policies, failure of the LCP to identify the forest area to be logged as an ESHA, and the alleged inadequacy of the LCP to protect wetlands, environmentally sensitive habitats and species in general. The appellants have not raised any substantial issue with the local government's action and its consistency with the certified LCP.

A large part of the appellants' concerns involve their assertion that the LCP is inadequate and does not require more stringent measures for the protection of the remaining forest and associated habitat values in the greater Lake Earl area. The appellants assert that development activities associated with commercial timber harvests are detrimental to habitat values and that timber harvest activities should be prohibited in the Lake Earl area. The appellants have made a strong case that the LCP's shortcomings in this respect may result in adverse impacts on habitat values and that some consideration should be given to strengthening the LCP policies to be more protective of forest habitat values in the Lake Earl area. However, the Coastal Act limits the grounds for an appeal to the much narrower issue of whether an appealed project, as approved by the County, raises issues of conformity with the certified LCP as it stands today. Thus, the staff concluded that concerns raised about the shortcomings of the existing LCP policies do not constitute valid grounds for an appeal.

The appellants have not demonstrated that a substantial issue is raised regarding the conformance of the project as approved with the cited LCP policies regarding development within environmentally sensitive habitat areas (ESHAs). The appeal does not establish that the actual area to be harvested is an ESHA as contended by the appellants. The vegetation within the proposed harvest area consists primarily of conifers (spruce, pines etc.). Evidence contained in the administrative record indicates that the area proposed for timber harvest does not include sensitive coastal resources nor has use by bald eagles, peregrine falcons or any other species of special concern been documented within the area proposed for harvest. A 1998 Resource Conservation Area (RCA) rezone was conducted on the subject property which resulted in the precise identification of riparian habitat, agricultural lands and land suitable for residential development. All project-related development activities would be limited to the area designated for agricultural use. In a letter dated March 30, 1999, the U.S. Fish and Wildlife Service (USFWS) indicates that although the area contains potential bald eagle habitat, the USFWS has no direct evidence of bald eagle or peregrine falcon use of the subject property. A Bald Eagle Survey conducted during November 1998 through March 1999, by Feller and Associates, Forest Land Consultants, during the time of year that bald eagles could be expected to nest in the greater Lake Earl area concluded that the subject property was not being utilized by the bald eagle. Therefore the area proposed for timber harvest does not meet the definition of an ESHA.

The appellants have also not demonstrated that a substantial issue is raised regarding the conformance of the project as approved with the cited LCP policies concerning development

adjacent to ESHAs. The LCP allows for commercial timber harvests within both the designated Resource Conservation Area, Riparian ([RCA-2(r)] area and within the Agriculture General, Five-Acre minimum lot size ([A-5]) zoning district where the timber harvest would occur. In this case, a coastal grading permit was granted with conditions modifying and reducing the vegetation disturbance areas to provide a higher degree of protection for adjacent riparian habitat values and restrict all project-related activities to the [A-5] zoned area. More specifically: Special Condition No. 1 of GP99-007C provides that timber harvest activities shall be limited to the [A-5] zoned area and that removal of timber or disturbance of vegetation within any adjacent riparian area is not authorized; Special Condition No. 3 requires that prior to commencing timber harvest activities, the applicant's forester meet on-site with a representative of the California Department of Fish and Game and concur on the boundary between the [RCA-2(r)] zoned land and that the boundary be flagged to prevent any disturbance within the [RCA-2(r)] zoned area; Special Condition No. 4 limits site access improvements and/or temporary haul roads to areas outside of designated riparian habitat areas; Special Condition No. 5 requires that trees be felled and yarded in a manner to prevent disturbance to the adjacent riparian habitat area. With the addition of these conditions that limit disturbance within the [RCA-2(r)] zoned area, the project as approved by the County provides an adequate buffer to Lake Earl that raises no substantial issue of consistency with the LCP policies for the protection of sensitive coastal resources. The fact that the County allowed timber harvesting adjacent within 100 feet of a riparian zone would not prevent the establishment of a buffer between any future permanent development and the riparian area and timber harvesting within buffer areas is expressly allowed by the LCP. For these reasons the staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal was filed.

The Motion to adopt the Staff Recommendation of No Substantial Issue is found on Page 5.

STAFF NOTES:

1. Appeal Process.

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

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the 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 one hundred feet of a wetland or stream or 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.

Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments, which constitute major public works or major energy facilities may be appealed, whether approved or denied by

the city or county. The grounds for an appeal are 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 and public recreation policies set forth in the Coastal Act.

The subject development is appealable to the Commission because it is located between the sea and the first public road paralleling the sea, and the property is located within 100 feet of a wetland.

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 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, which may occur at a subsequent meeting. If the Commission were to conduct a de novo hearing on the appeal, because the proposed development is between the first road and the sea, the applicable test for the Commission to consider 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 qualified to testify before the Commission on the substantial issue question are the applicant, the appellant and persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing.

2. Filing of Appeal.

The appellant filed an appeal (Exhibits 5 – 7) to the Commission in a timely manner on June 4, 1999, subsequent to the County's issuance of the Notice of Final Action, which was received in the Commission's offices on June 3, 1999.

Pursuant to Section 30261 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. In accordance with the California Code of Regulations, on June 4, 1999, staff requested all relevant documents and materials regarding the subject permit from the County, to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. These materials were received on June 14, 1999.

I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

Pursuant to Section 30603(b) of the Coastal Act and as discussed in the findings below, the staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

MOTION:

I move that the Commission determine that Appeal No. A-1-DNC-99-037 raises NO substantial issue with respect to the grounds on which the appeal has been filed pursuant to Section 30603 of the Coastal Act.

Staff recommends a YES vote. To pass the motion, a majority vote of Commissioners present is required. Approval of the motion means that the County permit action is final and effective.

II. FINDINGS AND DECLARATIONS.

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS

The Commission received an appeal of the Del Norte County decision to approve the project from the Friends of Del Norte. The project as approved by the County through a coastal grading permit is for vegetation removal and earthwork associated with a 3-acre commercial timber harvest pursuant to the California Department of Forestry (CDF) Timber Harvest rules, just north of Crescent City in Del Norte County.

The full text of the appellants' contentions as submitted to the Commission is included in Exhibits 5 - 7. This text, in turn, states additional contentions in part by referencing numerous documents that are part of the local record (Exhibit 9). Many of the contentions are repeated in somewhat different form in the various referenced documents. For purposes of the analysis, staff has summarized and consolidated the contentions into general categories as discussed below.

Many of the contentions concern the adequacy of the existing certified LCP. The remaining contentions allege the County did not fulfill its role under the California Environmental Quality Act (CEQA) and allege inconsistencies with the County's existing LCP buffer policies and related zoning and coastal grading permit standards, and the protection of sensitive habitats.

1. Adequacy of Existing LCP Policies to Protect Environmentally Sensitive Habitat Areas (ESHA)

The first category addresses the appellants' contentions that place the appeal in a broader context that essentially concerns the adequacy of the existing LCP itself in addressing issues of area-wide planning and cumulative impact.

- The County's Local Coastal Program is inconsistent with the Coastal Act because the implementation tools (e.g. the Resource Conservation Area system and 100-foot buffer requirement) are inadequate to protect wetlands, habitats and species of the Lake Earl area.

- The County's Local Coastal Program is inconsistent with the Coastal Act regarding the identification and protection of environmentally sensitive habitat areas.
- The County's Local Coastal Program is inconsistent with the Coastal Act, regarding the cumulative effects associated with subdivision, development, logging and loss of canopy and diversity in the forested edge of Lake Earl, and along its ponds, wetlands, sloughs and within the Lake Earl drainage basin in general.
- The County's Local Coastal Program is inconsistent with the Coastal Act because of its failure to adequately address the scenic and visual qualities of the Lake Earl Wildlife area.
- The County's Local Coastal Program does not adequately reflect all of the planning issues and background information formulated to prepare the LCP as certified by the Coastal Commission.
- The County's Local Coastal Program is inconsistent with the Coastal Act because it does not provide adequate measures to protect the visual resources of Del Norte County.

2. Consistency with CEQA.

The second category of contentions allege that the County did not adequately fulfill its role as lead agency under the California Environmental Quality Act.

3. Project Consistency with LCP Policies Governing the Use of ESHAs.

The third category of contentions allege the project's inconsistency with the policies of the certified LCP governing the direct use of ESHA.

- The project is inconsistent with LCP Policy No. 6 on page 58 of the LUP because the area to be logged constitutes an environmentally sensitive habitat area that must be protected.
- The project is inconsistent with LCP Policy No. 4.a on page 67 of the LUP because the project fails to maintain existing species of wildlife and the project fails to provide adequate protection of habitat values for environmentally sensitive habitat values.

4. Project Consistency with LCP ESHA Buffer Policies.

- The project is inconsistent with LCP Policy No. 6 on page 58 of the LUP because project implementation would result in significant disruptions of habitat values of Lake Earl and its associated ponds and sloughs and because the project is not designed to prevent impacts that will significantly degrade habitat values.

- The project is inconsistent with LCP Policy No. 4.f on page 65 of the LUP because the adequate protection measures (e.g. buffers) have not been incorporated into the project design which would protect Lake Earl and its associated ponds from significant adverse impacts.

B. LOCAL GOVERNMENT ACTION

On April 7, 1999, the Del Norte County Planning Commission approved with conditions (see section C below) an application for a coastal grading permit to allow the vegetation removal and earthwork associated with a commercial timber harvest pursuant to CDF Timber Harvest rules, as a principal permitted use. The Planning Commission's approval included authorization to conduct timber harvest activities exclusively within an area designated for agricultural use [A-5]. The Friends of Del Norte appealed the Planning Commission's approval of the Coastal Grading Permit GP99-007C to the County Board of Supervisors. On May 11, 1999, the County Board of Supervisors held a public hearing on the project. The Board of Supervisors acknowledged that commercial timber harvest activities are listed as a principal permitted use within the [RCA-2(r)] zoning district. However, the Board supported the Planning Commission's approval which limits the project description by prohibiting any disturbance within the designated [RCA-2(r)] zoned area, including any access improvements and temporary haul roads. The County Board of Supervisors further supported the Planning Commission's requirement to have the applicant's forester meet with a representative of the California Department of Fish and Game on-site and concur on the boundary between the [RCA-2(r)] and [A-5] areas, and to flag the [RCA-2(r)] boundary as an area not to be disturbed, prior to commencing any timber harvest activities.

The County concluded that the [RCA-2(r)] zoned area that is located to the west of the [A-5] area on the subject property constitutes the forested edge of Lake Earl and that the [RCA-2(r)] area to the west of the [A-5] zone serves as an adequate buffer between Lake Earl and the area zoned for agricultural use. The County further concluded that although the McNamara property is located approximately ¾ of a mile from an area known to be utilized by wintering bald eagles, the project is not expected to result in either individual or cumulative adverse impacts to wintering bald eagles in the greater Lake Earl area. The County based its conclusion on a bald eagle survey that was conducted during November 1998 through March 1999. This study concluded that wintering bald eagles did not utilize the subject property.

The County issued a Notice of Final Action on Coastal Grading Permit No. GP99-007C, which was received by Commission staff on June 3, 1999 (see Exhibit 5). The project was appealed to the Coastal Commission in a timely manner on June 4, 1999, within the 10-working day appeal period. On June 4, 1999, staff requested all relevant documents and materials regarding the subject permit from the County; these materials were received on June 14, 1999.

C. PROJECT SETTING AND DESCRIPTION, AND HISTORY.

The subject property is located between Lakeside Loop Road and Clayton Road, off Vipond Drive, on the west side of Lake Earl Drive, Crescent City, Del Norte County. The 26-acre parcel has three zoning designations, including: 1) [R1-B13], Single Family Residential – 13,000 sq. ft. minimum parcel size; 2) [A-5], General Agriculture – 5-acre minimum parcel size; and 3) [RCA-2(r)], Designated Resource Conservation Area, Riparian Habitat. (Exhibit 4)

These zoning designations have been assigned in accordance with an RCA rezone and LCP amendment that was completed for the subject property and approved by the Coastal Commission in September 1998. The LCP amendment involved the rezone of the General Resource Conservation Area [RCA-1] to the designated [RCA-2(r)] zoning designation. As a result of the RCA rezone and LCP amendment, those areas not found to have any riparian characteristics were rezoned to the abutting zoning designations pursuant to the certified Del Norte County LCP. A major residential subdivision has been approved by the County and the Coastal Commission for the residential portions of the site, but has not yet been completed. (see Exhibit 4)

As approved by the County, the proposed timber harvest activities would occur exclusively in the northern [A-5] zoned portion of the property (see Exhibit 4). However, as originally proposed by the applicant, site access and temporary haul roads would have occurred within the [RCA-2(r)] zoned area. As the RCA-2 area contains some environmentally sensitive habitat area, the use of heavy equipment within the [RCA-2(r)] zone is prohibited pursuant to Section 21.11A.030 under Title 21 of the Coastal Zoning Ordinance. And although the County Board of Supervisors acknowledged that commercial timber harvest activities are listed as a principal permitted use within the [RCA-2(r)] zone, the County conditioned the project to prohibit any disturbance within the designated [RCA-2(r)] zoned area, including any access improvements and/or temporary haul roads. All trees would be felled away from these areas. As approved by the County, access to the timber harvest area would be provided off Clayton Road and within an area zoned [A-5] (see Exhibit 4). The County approval also requires that, prior to commencing any timber harvest activities, the applicant's forester meet with a representative of the California Department of Fish and Game on-site and concur on the boundary between the [RCA-2(r)] and [A-5] zoned areas. The forester would be required to flag the [RCA-2(r)] boundary and project-related activities are prohibited therein. And finally, the County concluded that the [RCA-2(r)] zoned area that is located to the west of the [A-5] area on the McNamara parcel constitutes the forested edge of Lake Earl and serves as an adequate buffer between Lake Earl and the area zoned for agricultural use.

As a timber harvest of less than 3 acres, the proposed logging is exempt from the need of timber harvest plan approval from the California Department of Forestry (CDF). However, the timber harvest activity remains subject to the timber harvest regulations administered by the CDF. Coastal Act Section 30600 requires a coastal development permit (CDP) for any development, and the Coastal Act definition of development includes the removal of major vegetation except

timber harvesting subject to a timber harvest plan. As the project is 3-acres in size, it is exempt from timber harvest plan requirements and the project constitutes major vegetation removal subject to CDP requirements. As conditioned and approved by the County, the project consists of vegetation removal and earthwork (log landings and temporary haul roads) associated with a 3-acre commercial timber harvest that would be completed in compliance with CDF Timber Harvest rules.

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. (emphasis added)

As discussed below several of the contentions raised in the appeal do not present potentially valid grounds for appeal in that they do not allege the project's inconsistency with policies and standards of the certified LCP. These contentions fall into two groups: 1) those that concern the alleged inadequacy of the certified LCP policies to address protection of environmentally sensitive habitat areas; and 2) those that present allegations about the County's role as lead agency under the California Environmental Quality Act.

1. Appellants Contentions That Are Not Valid Grounds for Appeal

a. Adequacy of the LCP to Protect Environmentally Sensitive Habitat Areas

A principal issue underlying many of the appellants contentions is concern about the adequacy of the LCP and the consequences and impact of development activities in the project area. The appellants contend that the individual and cumulative impacts of development activities within the Lake Earl area could ultimately result in an unacceptable loss of sensitive coastal resources. Such development could result in serious impacts on habitat quality and visual resources because the LCP does not contain strong enough policies to protect these resources. The appellant's contentions regarding the adequacy of the LCP to protect sensitive coastal resources are summarized in Section 1 on pages 5 through 7 of this report.

In support of their contentions, the appellants cite background information that was used in the preparation of the County's certified LCP and also cited numerous planning issue discussions that call for the identification and protection of environmentally sensitive habitat areas that were intended to provide guidance in the preparation of the LCP. The appellants also question why the Lake Earl area was not designated a Special Treatment Area in 1977, under regulations promulgated to implement the Forest Practices Act. The appellants have also submitted correspondence that appear to support more restrictive development controls in the Lake Earl area.

These contentions raise serious concerns. The consequences of complete build-out of the Lake Earl area in accordance with the provisions of the County's certified LCP include: (1) commercial timber harvest and residential firewood collection within designated resource conservation areas; (2) potentially inadequate buffers between sensitive coastal resources and numerous development activities; and (3) potentially significant adverse cumulative loss of habitat values in the Lake Earl area.

The Commission recognizes that the Del Norte County certified LCP should be updated and revised to reflect current conditions and potentially increased protective measures for sensitive coastal resources. However, the County's certified LCP is the legal standard of review for development activities within the Del Norte County coastal zone. Indeed, some of the facts related to this appeal raise serious concerns over the effectiveness of the County's certified LCP to protect sensitive coastal resources. The appellant's concerns over current and potential future development proposals that are in conformance with the County's certified LCP but may harm sensitive coastal resources, may well warrant development of an LCP amendment by the County. In fact, the County is currently in the process of a general plan/LCP update that may include significant changes to the development standards within the coastal zone. Concerns regarding the ability of the certified LCP to protect coastal resources within the Lake Earl area should be appropriately considered during the LCP update process.

In the contentions listed above, the appellants essentially question the appropriateness of the current standards in the certified LCP governing development within the Lake Earl area and imply that these standards should be changed. As noted, such changes may only be made through an LCP amendment or the LCP update process, an entirely separate process from the review of this appeal. Coastal Act Section 30603(b)(1) specifically limits the grounds for appeal to the question of whether the proposed development conforms to the public access and public recreation policies of the Coastal Act and **to the standards of the certified local coastal program as it stands**. Therefore, the Commission finds that the appellants' contentions related to the adequacy of the LCP's policies with regard to development activities within the Lake Earl area are not valid grounds for appeal.

b. Consistency with CEQA

The appellants contend that the County did not adequately fulfill its role as Lead Agency under the California Environmental Quality Act (CEQA). The appellants further contend that the County did not incorporate all of the suggestion made during the public hearing process nor did they require mitigation measures beyond those required by the certified LCP.

Discussion

The California Environmental Quality Act provides that a Lead Agency can determine the appropriate level of environmental review for development activities that are proposed within their jurisdiction. The County has determined that the proposed development activities meet the definition of a Class 4 exemption, and are thus exempt from the requirement for the preparation

of environmental documents (§15304, CEQA Guidelines, Minor Alterations to Land). The Class 4 Exemption consists of minor alterations in the condition of land, water, and/or vegetation, which do not involve removal of healthy, mature, scenic trees **except for forestry and agricultural purposes**. The applicant has indicated his intent to harvest the trees for forestry purposes under a California Department of Forestry commercial timber harvest authorization.

The appellants do not cite a specific LCP policy that they feel the County's actions did not conform with in this regard. The concerns raised by the appellants do not allege the project's inconsistency with existing policies of the certified LCP. Thus, the Commission finds that this contention is not a valid ground for appeal.

2. **Appellants Contentions That Are Valid Grounds for Appeal.**

The contentions discussed below present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP. These contentions allege that the approval of the project by the County raises significant issues related to LCP provisions regarding the protection of environmentally sensitive habitat and the use of appropriate buffers to protect environmentally sensitive habitats from significant disruption.

Coastal Act 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 indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal. Code Regs., tit. 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 interpretations 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 discussed further below, the Commission exercises its discretion and determines that the development as approved by the County raises no substantial issue with regard to the appellants' contentions regarding the use of buffers and the protection of sensitive habitats.

Use and Development of Environmentally Sensitive Habitat Areas.

a. Consistency with Policy No. 6 on page 58 of the LUP.

The appellants contend that the 3-acre timber harvest on the subject property is contrary to the requirements to protect environmentally sensitive habitat areas as required by LCP Policy No. 6, on page 58 of the LUP. They contend that the entire Lake Earl area should be off-limits to timber harvest activities as these activities are contrary to the protection of sensitive habitat.

- LCP Policy No. 6, on page 58 of the LUP states, in applicable part:

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

Discussion

LCP Policy No. 6 on page 58 of the LUP sets up a two part standard for project review. The first standard requires that environmentally sensitive habitats be protected against disruption and that only uses dependant upon such resources shall be allowed within such areas. The second standard of review is discussed in the following section, Consistency with LCP Buffer Policies.

The timber harvesting, as proposed by the applicant, would have occurred outside but directly adjacent to a riparian habitat area (ESHA), and would have also included site access and temporary haul roads within a designated riparian habitat area. Title 21 of the coastal zoning ordinance allows commercial timber harvest as a principal permitted use within a designated riparian habitat area [RCA-2(r)]. However, the County, on appeal to the Board of Supervisors, approved the timber harvest activities with the requirement to eliminate any proposed disturbance within the designated [RCA-2(r)] area. More specifically, Special Condition No. 1 of GP99-007C provides that timber harvest activities be limited to the [A-5] zoned area and that removal of timber or disturbance of vegetation within any adjacent riparian area is not authorized; Special Condition No. 3 requires that prior to commencing timber harvest activities, the applicant's forester meet on-site with a representative of the California Department of Fish and Game and concur on the boundary between the [RCA-2(r)] zoned land and that the boundary

be flagged to prevent any disturbance within the [RCA-2(r)] zoned area; Special Condition No. 4 of limits site access improvements and/or temporary haul roads to areas outside of designated riparian habitat areas; Special Condition No. 5 requires that trees be felled and yarded in a manner to prevent disturbance to the adjacent riparian habitat area.

The appellants contend that the trees approved by the County to be harvested in the [A-5] zoned area also constitute an ESHA and thus the project has not been designed to adequately protect this resource.

The Del Norte County LCP does not include a definition of an ESHA. However, Coastal Act Section 30107.5 defines Environmentally Sensitive Area as *"any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in the ecosystem and which could be easily disturbed by human activities and developments."* Although the very nature of commercial timber harvest activities within an area will reduce existing habitat values, the area approved for vegetation removal is not considered an ESHA. The vegetation within the harvest area consists primarily of conifers and is located within an area planned for agricultural use. An Resource Conservation Area (RCA) rezone was conducted on the subject property in 1998. The RCA rezone resulted in the precise identification of riparian resources, agricultural land, and land suitable for neighborhood residential development. All project-related development activities would be limited to the area designated for agricultural use.

The appellant asserts that both peregrine falcons and bald eagles utilize the subject trees for roosting. The appellants further assert that bald eagles utilize the subject trees as winter nesting habitat. To support their assertions, the appellants have provided: 1) a letter from the U.S. Fish and Wildlife Service (USFWS) dated March 30, 1999, which states although the area contains potential habitat for the bald eagle that the USFWS has no direct evidence of bald eagle or peregrine falcon use of the subject property; and 2) a letter from the California Department of Fish and Game (CDFG) dated March 3, 1999, which states that the subject property is located within 3/4 of a mile of a similar area known to be used by bald eagles and potentially to contains habitat for the bald eagle; and 3) a letter from CDFG dated June 19, 1998, which pertains to an unrelated timber harvest project located approximately two miles away from the subject property in an area known to be used by bald eagles. The project-related correspondence from CDFG and USFWS recommend that a survey for wintering bald eagles be conducted prior to project approval.

In review and approval of the project, the County relied on a Bald Eagle Survey which included the subject property that was conducted during November 1998 through March 1999, by Feller and Associates, Forest Land Consultants, during the time of year that bald eagles could be expected to nest in the greater Lake Earl area. The survey concluded that the subject property was not being utilized for foraging, roosting or nesting during the winter period by the bald eagle, and therefore does not qualify as an ESHA. The Feller and Associates Bald Eagle Survey and the 1998 RCA rezone of the subject property constitute factual and legal support for County

approval action as it relates to identification and protection of environmentally sensitive habitat areas.

Thus, there is no substantial evidence in the record that the project site constitutes an ESHA. As such, the actual timber harvest and related activities, as approved by the County would not result any activity within an ESHA. Further, the County has conditioned the project to prohibit any disturbance within the designated riparian habitat area. Therefore, the project raises no substantial issue of conformance with the first standard as provided for in LCP Policy No. 6 on page 58 of the LUP.

b. Consistency with Specific Area Policy No. 4.a on page 67 of the LUP.

The appellants contend that the project is inconsistent with Specific Area Policy No. 4.a on page 67 of the LUP for protection of riparian vegetation along streams, creeks, sloughs and other water courses.

- Specific Area Policy No. 4.a on page 67 of the LUP for the protection of 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.

Discussion

The riparian zoned area [RCA-2(r)] contains drainage swales surrounded by riparian vegetation. The appellants contend that the subject 3-acre commercial timber harvest does not provide for the maintenance of this riparian vegetation. Riparian habitat is considered to be a form of environmentally sensitive habitat. A wetland investigation was performed in 1998, as part of a Resource Conservation Area (RCA) rezone (McNamara) of the subject property. The 1998 wetlands investigation found no riparian habitat within the area zoned for agricultural use where project activities would occur. The RCA rezone was subject to public hearing and circulated through the State Clearing House for agency review and public comment. The subject RCA rezone delineated the riparian habitat area and was subsequently zoned designated Resource Conservation Area, Riparian [RCA-2(r)]. Additionally, the area that is located beyond the RCA-2(r) zoned area was zoned Agriculture General, five-acre minimum lot size [A-5]. The remainder of the subject property was zoned One Family Residential, 13,000 square foot minimum lot size [R1-B13].

As approved by the County, all activities related to the commercial timber harvest will occur within the [A-5] zoned property. Riparian resources have not been identified within the [A-5] zoned area. Further, the County approval of the timber harvest activities expressly prohibits any disturbance within the designated [RCA-2(r)] zoned area where riparian vegetation is located. To this end, the County's approval of this project was based upon the factual content of the 1998 wetland investigation of the subject property which did not identify any riparian resources within

the area proposed for timber harvest activities. Although the LCP expressly allows timber harvest activities within buffer areas, the County's approval limits disturbance within the RCA-2(r) buffer area. The County relied on the Specific Area Policy No. 4.f to support its decision that by maintaining the RCA-2(r) area in a undisturbed and natural state between the timber harvest activities and Lake Earl was appropriate even though the LCP could be interpreted as not affecting timber harvest activities within the RCA-2(r) zoned areas. As such, the County's approval of this project will not result in an adverse precedence for future interpretations of its certified LCP with respect to protecting environmentally sensitive habitat areas. Therefore, the Commission finds that the project site does not constitute an ESHA with respect to riparian habitat. Further, the Commission finds that the project as approved by the County raises no substantial issue with respect to conformance of the approved project with Specific Area Policy No. 4.a of the certified LCP which pertains to the maintenance of riparian vegetation along creek, streams, sloughs and other water courses.

Adequacy of ESHA Buffer.

a. Consistency with LCP Policy No. 6 on page 58 of the LUP.

The appellant contends that the subject 3-acre commercial timber harvest does not include provisions to adequately protect environmentally sensitive habitat areas **adjacent** to the project site as required by LUP Policy No. 6 on page 58.

- LCP Policy No. 6 on page 58 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 would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Discussion

As discussed above, LCP Policy No. 6 on page 58 of the LUP sets up a two part standard for project review for developments proposed adjacent to ESHAs. The first standard is discussed in the previous section, Use and Development of Environmentally Sensitive Habitat Areas. The second standard established by LCP Policy No. 6 on page 58 of the LUP requires that development that is adjacent to an ESHA should be sited and designed to prevent significant impacts to the adjacent sensitive resource.

As approved by the County, timber harvesting would occur adjacent to a riparian habitat area. As discussed previously in this report, the County conditioned the permit to limit project-related impacts to the adjacent riparian habitat area. More specifically: Special Condition No. 1 of GP99-007C provides that timber harvest activities shall be limited to the [A-5] zoned area and that removal of timber or disturbance of vegetation within any adjacent riparian area is not authorized; Special Condition No. 3 requires that prior to commencing timber harvest activities, the applicant's forester meet on-site with a representative of the California Department of Fish

and Game and concur on the boundary between the [RCA-2(r)] zoned land and that the boundary be flagged to prevent any disturbance within the [RCA-2(r)] zoned area; Special Condition No. 4 limits site access improvements and/or temporary haul roads to areas outside of designated riparian habitat areas; Special Condition No. 5 requires that trees be felled and yarded in a manner to prevent disturbance to the adjacent riparian habitat area.

The appellants contend that the County should have required more stringent special conditions that would prevent all logging activities within 100 feet of the [RCA-2(r)] zoned area. However, the certified LCP does not prohibit timber harvesting within designated buffer areas. For example, Section 21.11A.030 of the Coastal Zoning Ordinance for designated Resource Conservation Area, Wetland Buffer [RCA-2(wb)] allows timber harvesting in areas specifically zoned as a wetland buffer. In fact, Section 21.11A.030 also allows timber harvesting within the riparian area [RCA-2(r)] itself. Timber harvesting within wetland buffer area is not in and of itself inconsistent with the intent of a buffer. The purpose of the buffer requirement is to separate structures and other permanent development that could accommodate uses that could result in on-going disturbance to an ESHA. Logging by itself would not result in permanent structures or uses that would result in on-going disturbance to the adjacent ESHA.

By imposing Special Condition Nos. 1 and 4 specifically to limit disturbance within the designated [RCA-2(r)] zoned area and by designating that the riparian habitat area as off-limits to project-related disturbance, the County has instituted mitigation measures designed to prevent impacts that would significantly degrade the adjacent riparian habitat from project-related activities and subsequent agricultural use. Tree cutting within 100 feet of the riparian area is an allowed use under the LCP and would not prevent a buffer from being established between any subsequent permanent development and the riparian area. Therefore, the Commission finds that the project as approved by the County raises no substantial issue with respect to the project's conformance with the second standard of LCP Policy No. 6 on page 58 of the LUP of the certified LCP which pertains to buffering of environmentally sensitive habitat areas from new development.

b. Consistency with Specific Area Policy No. 4.f on pages 65 and 66 of the LUP.

The appellants contend that the 3-acre timber harvest on the subject property is contrary to the requirements to protect environmentally sensitive habitat areas as required by LCP Policy No. 4.f, on page 65 and 66 of the LUP.

- Specific Area Policy No. 4.f on pages 65 and 66 of the LUP pertains to development adjacent to environmentally sensitive habitat areas and the use of buffers to protect such resources 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. (emphasis added)

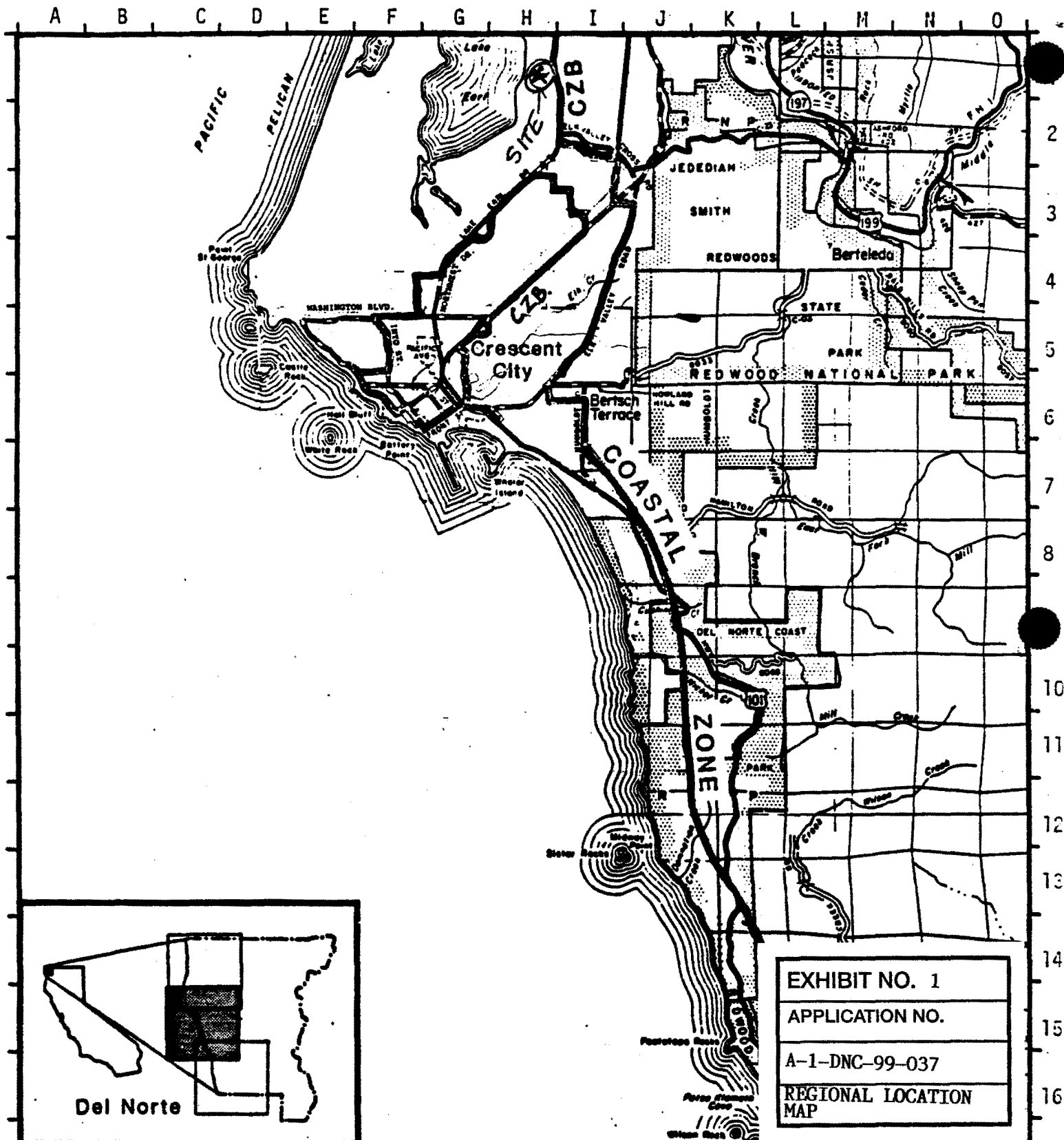
Specific Area Policy No. 4.f on pages 65 and 66 of the LUP includes similar protection of environmentally sensitive habitat areas as the protection provided for in LCP Policy No. 6 on page 58 of the LUP. However, LCP Policy 4.f specifically requires the establishment of a one hundred-foot-buffer to protect wetlands that are located adjacent proposed development activities. Nonetheless, this policy expressly allows commercial timber harvests within the 100-foot wetland buffer. Therefore, the Commission finds that the project, as approved by the County, raises no substantial issue with regards to the projects conformance with Specific Area Policy No. 4.f of the County's certified LCP which pertains to buffer area requirements.

3. Conclusion

The Commission finds that, for the reasons stated above, that the appeal raises no substantial issue with respect to conformance of the approved project with the certified LCP.

EXHIBITS:

1. Regional Location Map
2. Site Location Map.
3. Assessor's Parcel Map
4. Zoning Map
5. Notice of Final Action and Findings and Conditions of Approval [May 11, 1999]
6. Appeal to Commission, May 25, 1999
7. Appeal Addendum, May 25, 1999
8. Appeal Addendum, June 17, 1999
9. Appeal reference: County Staff Report* on McNamara Timber Harvest Project
[*includes staff report dated Feb. 24, 1999 and staff report addenda dated March 31, 1999, and April 9, 1999]



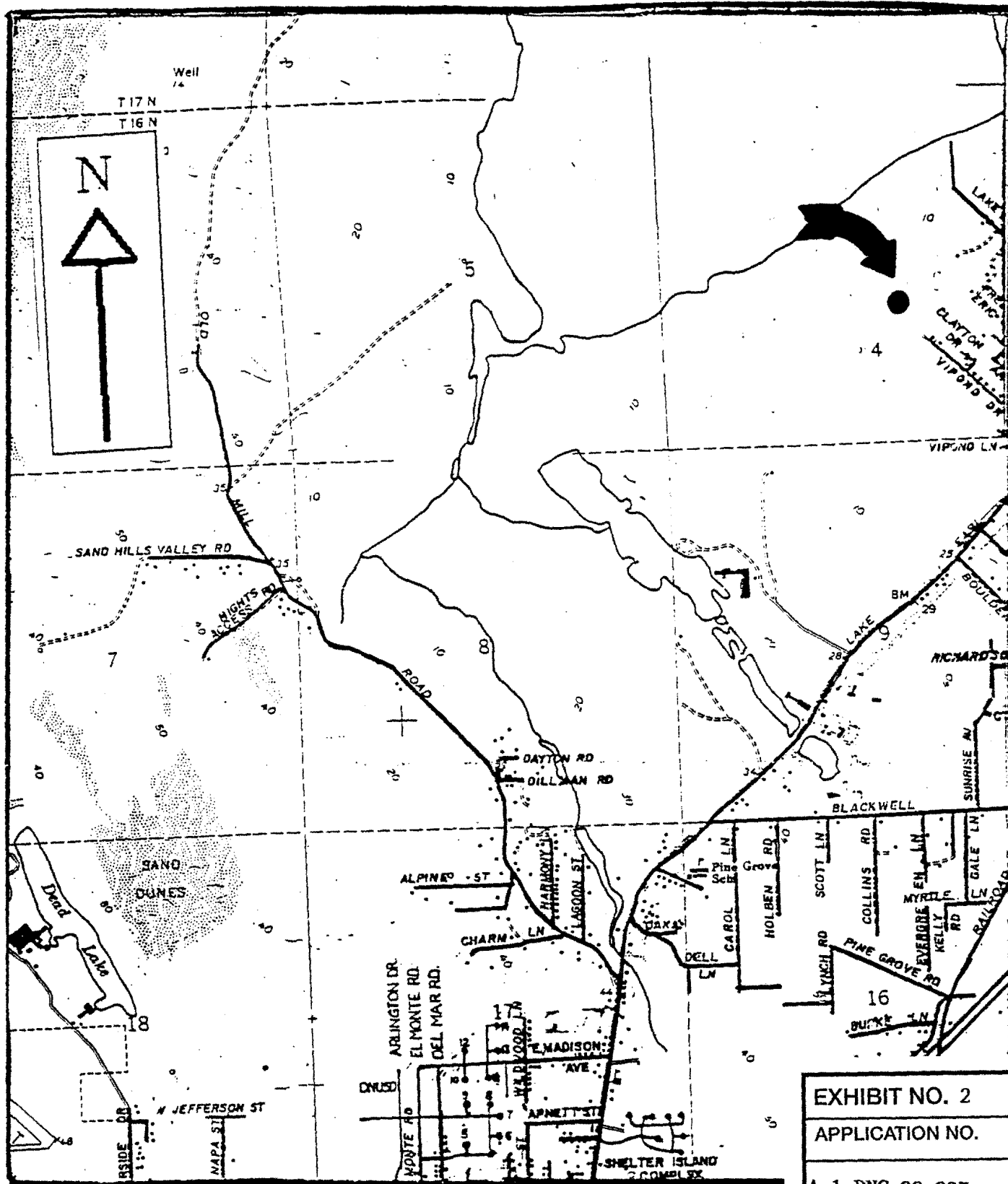


EXHIBIT NO. 2
APPLICATION NO.
A-1-DNC-99-037
SITE LOCATION MAP

LOCATION MAP

McNAMARA, RICHARD
Coastal Grading Permit

GP99-007C
110-020-64

116 73

1" = N-1000'

LAKE EARL

05A. CALIFORNIA, STATE OF
05B - BUZZINI, ERNESTINE

(5)
252.58 AC

(57)
43.75 AC

(21)
4.13 AC

(22)
13.87 AC

(64)
25.94 AC

(45)

(27)
97.2 AC

(54)
129.73 AC

(9)
148.54 AC

(50)
32.16 AC

(51)
7.84 AC

(53)
67.11 AC

(56)
100.61 AC

(60)
155.97 AC

PCL. 8
BK. 6 PG. 13
P.M.

(44)

PCL 3
5-17

(38)
10 AC

(62)
135.79 AC

(70)
13.49 AC

(72)
22.87 AC

EXHIBIT NO. 3
APPLICATION NO.
A-1-DNC-99-037
ASSESSOR'S PARCEL MAP

McNAMARA, RICHARD
Coastal Grading Permit

GP99-007C
110-020-64

RESERVATION Ranch

LAKE EARL

LFB LANDS

EXISTING

RCA 2(FW)

EXISTING RCA-1
PROPOSED A-5

A-5 (existing)

RELEASED AREA

RCA2(r)

A-5

PROPOSED RCA-2(r)

RIB13 (existing)

PROPOSED

RIB13

EXISTING RCA-1

ACCESS ROAD AS APPROVED BY COUNTY ALONG CLAYTON ROAD THROUGH [A-5] ZONED AREA



CONVERSION Area

PROPOSED ACCESS ROAD



Log Landing

CLAYTON ROAD

EXHIBIT "A"
RCA-1 TO A-5, RCA-2(r), RIB13

- EXISTING WELL
- EXISTING WELL LOCATION
- EXISTING WELL LOCATION
- EXISTING
- PROPOSED LOT LINES
- RESOURCE ZONE
- ⊠ 15' X 15' SQUARE
- ① MEASURED NUMBER OF EXISTING

McNAMARA, RICHARD

Coastal Grading Permit

GP99-007

110-020-6

EXHIBIT NO. 4
APPLICATION NO.
A-1-DNC-99-037
ZONING MAP



**DEL NORTE COUNTY BOARD OF SUPERVISORS
583 G STREET, SUITE 1
CRESCENT CITY, CA 95531**

AMENDED NOTICE OF ACTION

- I. Notice is hereby given that the Board of Supervisors of Del Norte County took the following action on May 11, 1999 regarding the project listed below:

Action: ☐ approved ☒ denied ☐ continued ☐ waived ☐ took no action
☒ appeal/waiver ☐ rezone ☐ use permit ☐ variance
☐ abandonment of road right-of-way ☐ waiver of road condition
☒ upheld the Planning Commission's decision of: April 7, 1999

Application Number: **GP99-007C**

Project Description: **Coastal Grading Permit**

Project Location: **End of Clayton Drive, off Vipond Drive**

Assessor's Parcel Number: **110-020-64**

Applicant: **Richard & Genevieve McNamara**

Agent: **Feller & Associates**

Applicant's Mailing Address: **2801 Lake Earl Drive, Crescent City, CA 95531**

Appellant: **Friends of Del Norte**

Appellant's Address: **P.O. Box 229, Crescent City, CA 95531**

A copy of any conditions of waiver and/or findings adopted as part of the above action are attached.

- II. If approved:

☒ This County permit or entitlement serves as a Coastal permit. No further action is required unless an appeal is filed in which case you will be notified.

☐ This County permit or entitlement DOES NOT serve as a Coastal permit. Consult the Coastal Zone Permit procedure section on your NOTICE OF APPLICATION STATUS or the Planning Department Office if you have questions.

- III. Notice is further given that this project:

☒ Is appealable to the California Coastal Commission. Any action of the Board of Supervisors on this item may be appealed to the California Coastal Commission within 10 working days or 21 calendar days subject to the requirements of Chapter 21.52 DNCC and Coastal Regulations.

☐ Must be forwarded to the California Coastal Commission for final action. You notified of its status by the Coastal Commission.

☐ Is not subject to Coastal Commission regulation.

EXHIBIT NO. 5

APPLICATION NO.

A-1-DNC-99-037

**NOTICE OF FINAL ACTION
& FINDINGS & CONDITIONS
OF APPROVAL [5/11/99]**

____ Parcel map must be filed within 24 months of the date of approval.

Attachment: Findings & Conditions

cc: CDD/ENGR
BOS File
Coastal Commission

PROJECT: Richard & Genevieve McNamara--Coastal Grading Permit GP99-007C
Page 4

California Coastal Commission through a public review process and is administered by Del Norte County.

CEQA also allows a lead agency to determine that the incremental impacts of a project are not cumulatively considerable when they are so small that they make only a de minimus contribution to a significant cumulative impact caused by other projects that would exist in the absence of the proposed project. All Timber Harvest Plans and exempt timber conversions within and outside of the Coastal Zone are not within the permit authority of the County, and will continue to exist in the absence of this proposed project. The mere existence of other projects that may result in significant cumulative impacts does not constitute substantial evidence that the proposed project's incremental effects are cumulatively considerable.

The public comment portion of the hearing was closed at the Commission's last meeting. The Commission is not required to reopen the public hearing at this time. Staff recommends the Commission discuss the project issues as presented at the last meeting and in the staff report addendum above, which addresses the comments received during the public hearing. Staff further recommends the Commission adopt the findings and approve the project with the specified conditions.

5. FINDINGS:

- A) The project is consistent with the policies and standards of the General Plan and Title 21 Zoning; and
- B) The project is exempt from the requirements of the California Environmental Quality Act as a Class 4 Exemption; and
- ** C) The project as conditioned is not located within an area that includes an environmental resource of hazardous or critical concern, that has been designated, precisely mapped, and officially adopted pursuant to law by a federal, state, or local agency; and
- ** D) A prior biological survey of the property was conducted by Karen Theiss and Associates for the purpose of habitat RCA zoning and adopted as SCH# 96122060. No habitat or listed species impacts were identified in the biological survey; and
- * E) The original McNamara Major Subdivision EIR (SCH# 82111705) addressed wildlife issues for the entire parcel. The RCA and below 12-foot contour represent the area where the most sensitive habitat may be found. The Department of Fish and Game has not objected to any subsequent projects in the same area (i.e. this project); and

PROJECT: Richard & Genevieve McNamara--Coastal Grading Permit GP99-007C
Page 5

- * F) The RCA-2(r) zoned land on the McNamara parcel represents "the forested edge of the estuary". The RCA-2(r) zoned land is located to the west of the proposed harvest area, serving as a buffer between the lake and the A-5 zoned land; and
- * G) The proposed 3 acre minor timber conversion is completely located within the A-5 portion of the McNamara parcel. This zoning was adopted by the Board of Supervisors on September 6, 1983; and
- ** H) There is no substantial evidence before the lead agency that the subject property is located within a particularly sensitive environmental area; and
- ** I) The subject project constitutes a minor private alteration in the condition of land and vegetation for forestry and/or agricultural purposes; and
- *** J) Significant cumulative impacts will not result over time from successive projects of the same type in the same place because this project constitutes a de minimus contribution to the cumulative effect of other projects completed in the area (i.e. Wier - GP9701C; Reed - GP9603C; Geertson - GP95007C; Reservation Ranch - THP-110-020-62) and its mere existence does not result in substantial evidence that the project's incremental effects are cumulatively significant; and
- *** K) Although the subject property is approximately three quarters of a mile away from an area the Department of Fish and Game has determined is utilized by wintering bald eagles, the harvesting of less than 3 acres of trees on the subject property does not constitute substantial evidence that the project's incremental effects will have a cumulative impact on the bald eagle; and
- *** L) There is no substantial evidence before the lead agency showing a reasonable possibility that significant environmental impacts will result due to unusual circumstances, as no unusual circumstances have been identified with regard to the subject project.

6. CONDITIONS:

- 1) This is a coastal permit for removal of timber under a harvest exemption in the designated area on the project map. Removal of timber or disturbance of vegetation within any adjacent riparian areas is not a part of this permit;

PROJECT: Richard & Genevieve McNamara--Coastal Grading Permit GP99-007C
Page 6

2) The applicant is responsible for obtaining any required permits from the California Department of Forestry prior to any disturbance on the site;

3) Prior to harvest, the RCA-2(r) zoned land adjacent to the proposed harvest shall be flagged in the field based on the Karen Theiss Report completed as part of the McNamara Rezone. A representative of the Department of Fish and Game shall meet with the forester and concur on the boundary between the RCA-2(r) zoned land and the proposed area to be cut. The RCA-2(r) zoned land is not to be disturbed;

4) Any access improvements to the harvest area must be located outside the RCA-2(r) zoned area. This may necessitate the removal of additional trees in order to make the access improvements needed in order to avoid crossing the RCA-2(r) zoned area;

5) Where applicable, trees shall be felled and yarded in a manner to prevent disturbance of the adjacent riparian areas; and

6) All other applicable standards and/or practices set forth by the Forest Practices Act shall be followed in undertaking this project.

* Renumbered per PC Meeting 4/7/99

** Amended per PC Meeting 4/7/99

*** Added per PC Meeting 4/7/99

FINDINGS A THROUGH L AND CONDITIONS 1 THROUGH 6 ADOPTED BY THE BOARD OF SUPERVISORS
ON MAY 11, 1999.

04/09/99

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Friends of Del Norte (Vice President- Eileen Cooper)
P.O. Box 229
Gasquet, CA 95543 (707) 465-8904
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: Del Norte County
2. Brief description of development being appealed: GP99-007C Coastal Grading Permit
with associated 3 acre timber cut
adjacent to a designated sensitive habitat
3. Development's location (street address, assessor's parcel no., cross street, etc.): Parcel 110-020-64
End of Clayton Dr., off Vipond
4. Description of decision being appealed:
 - a. Approval; no special conditions: _____
 - b. Approval with special conditions: X
 - c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: _____

DATE FILED: _____

DISTRICT: _____

H5: 4/88

EXHIBIT NO. 6

APPLICATION NO.

A-1-INC-99-037

APPEAL TO COMMISSION
MAY 25, 1999

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

a. Planning Director/Zoning Administrator

c. ☒ Planning Commission (initially)

b. ☒ City Council/Board of Supervisors

d. Other

6. Date of local government's decision: May 11 1999

7. Local government's file number (if any): GP99-007C

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Richard A Genevieve McNamara
2801 Lake Earl Drive
Crescent City, CA 95531

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Eileen Cooper
1093 Hwy 101N #18
Crescent City, CA 95531

(2) Halstead
Springer
and others that wrote letters on permits

(3) Susan E. Morrison
701 Clayton Dr
Crescent City CA 95531

(4) CA Dept of Fish and Game, Herb Pierce
619 Second Street
Eureka, CA 95501

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Please see attached appeal notes.

More documentation will come.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Eileen Cooper

Signature of Appellant(s) or
Authorized Agent

Date May 24, 1999

NOTE: If signed by agent, appellant(s)
must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date _____

Appeal: GP99-007C, McNamara, coastal grading permit, Del Norte County

A) This project is not consistent with the policies of Del Norte County Local Coastal Plan (LCP)

B) This project is not allowable as a Class 4 exemption under the California Environmental Quality Act, and under the California Coastal Act.

C) This project is directly adjacent to a designated ESHA- an Environmentally Sensitive Habitat Area of critical concern as designated in the Del Norte County Local Coastal Plan

D) Karen Theiss conducted a wetland delineation survey. No wildlife study was conducted. The two visits to the site in 1992 and 1998 addressed wetland delineation, that's all.

E) The Dept. of Fish and Game, the US Wildlife Service, and very respected local biologists are concerned about the adverse impacts these projects will have on the wildlife and biological productivity of Lake Earl.

F) The Dept. of Fish and Game has recommended larger and more adequate buffer zones to protect the biological productivity of the Lake Earl Habitat. The RCA and below 12-foot contour do not adequately address concerns for endangered species and biological productivity, or provide adequate buffers because of hunting activities adjacent to residential areas. Both issues are raised by Dept. of Fish and Game.

G) This project contributes significantly to a cumulative adverse impact on the flora and fauna of the LCP, Environmentally Sensitive Habitat Area (ESHA), Lake Earl and adjacent marshlands.

This project is not consistent with the policies of Del Norte County Local Coastal Plan (LCP), under IV. Sensitive Coastal Habitats.

1. The project site is directly adjacent to a designated Environmentally Sensitive Habitat Area, as designated in the LCP.

including (Log Ponds) (where Foster Cut is proposed)

Under-Sensitive Coastal Habitats, IV- (LCP): Both Lake Earl and the Pond and Sloughs in the Lake Earl region are specifically designated as Environmentally Sensitive Habitat Areas (ESHA). They meet all the Designation Criteria (B): " 1. biologically productive areas important to the maintenance of sport fisheries; 2. Habitat areas vital to the maintenance and enhancement of rare and/ or endangered species; 3. Fragile communities requiring protective management to insure their biological productivity, species diversity and/or continued maintenance; and 4. Areas of outstanding scientific or educational value that require protection to insure their viability for future inquiry and study." These 4 criteria are identified as planning issues.

2. This project is inconsistent with LCP land use policy in and adjacent to an ESHA because adequate protective measures have not been instituted. Supporting statements are made by Dept. of Fish and Game, US Wildlife Service, and various qualified biologists.

Under-Sensitive Habitats and Land Use (LCP, IV.D.1.)- " 1. Planning issues: Sensitive habitats are vulnerable to disturbance from human activities. Recreation, agriculture and development can threaten the integrity of sensitive habitats unless adequate protective measures are instituted."

Under- LCP, IV. D.1.a.- Agricultural Uses- "... Certain agricultural practices, however, have the potential for adversely impacting sensitive habitats. As an example, intensive agricultural activities on small parcels adjacent to riparian corridors can require the removal of vegetative cover and may alter or severely damage the habitat. "

Under- LCP, IV. D.1.d.- Incompatible Uses- " Certain activities in or near sensitive habitats may be entirely non-conforming with the required protection and maintenance of the area's natural resources. Uses which significantly alter the productivity, water quality,.... of a designated habitat should be carefully examined and appropriately mitigated where necessary. Further consideration must be afforded to the maintenance of flora and fauna inhabiting or utilizing a sensitive habitat.

California Dept. of Fish and Game has Recommended Guidelines to Del Norte County of 450 feet buffer zones from dwellings because of hunting activities on Lake Earl.

California Dept. of Fish and Game uses the Washington State Dept. of Ecology Study Recommendations as their guideline for buffers around wetlands- Castelle et al. (1992) "recommend buffer needs of 600 feet or larger from the wetland boundary... The narrower the vegetated uplands adjacent to wetland, the more susceptible wetland wildlife are to stresses and disturbances. Also, the narrower this zone is, the more susceptible the area is to loss of habitat function and productivity through natural changes or human induced impacts." These recommended guidelines have been presented to Del Norte County Planning Department.

California Dept. of Fish and Game refers to a study by Findlay and Houlihan (1997) that, "found that herptile and mammal diversity declined when forests were cleared within 2 kilometers of a wetland... Their results suggest that to preserve maximum biodiversity in wetlands, buffers should be increased to extend a kilometer or two from wetland edges." Foster and McNamara trees are both directly adjacent to wetlands.

All of the large spruce trees adjacent to Lake Earl on this project site fall outside of Del Norte County designated RCA zones and delineated wetland buffers to the 12 foot level. Therefore this important vegetative buffer will be removed with this grading permit, and these buffers do not adequately address LCP policy for a designated Sensitive Habitat Area.

In comments by Fish and Game about THP 1-97-417 DEL bald eagle consultation, located only 1 mile from this site, " protection measures to avoid *take* (to bald eagles) could be as much as one site- potential tree height up to a 300 foot no harvest if following federal guidelines. We have information placing one bald eagle at approximately 250-300 feet inside the plan boundary. If a recommendation were made based on this one observation, a minimum 500 foot protection zone would be warranted.... Protection measures such as these would affect essentially all of the plan west of Lake Earl Drive."

This project site is of the same quality habitat, large spruce trees adjacent to the lake, and is located only 1 mile ^{or less} to the above mentioned THP. The US Fish and Wildlife Service has determined that without surveys for wintering bald eagles prior to approval, the proposed project has the potential to incidentally take bald eagles. Please see attached letter.

Please see CA Fish and Game comments about bald eagle usage on the Foster site. Usage in the Lake Earl area has increased in recent years.

We understand that Scott Feller, the project forester, has done a cursory bald eagle study which contradicts the results of the Fish and Game bald eagle consultation, conducted by a specialist. Also, records have been kept for bird observations on the South East Lake Earl Area by local biologist and well respected field ornithologist Alan Barron. These records indicate regular usage of bald eagles and peregrine falcons over a long period of time, from 1974 to current. Please see attached records.

Please see attached information from report by biologist Deborah Jaques, Breeding Water Birds at Lakes Earl and Talawa. The report shows that the south east lake area, adjacent to the project site, is the most productive water bird area of the lake. Species of special concern are the only known California coastal breeding colony of Western Grebe, and possibly the entire west coast, and this isolated population appears to be ecologically distinct. Grebe nests are fragile and need the wind shelter provided by the McNamara trees, as well as seclusion from human disturbance. Wood ducks made heavy use of the Foster pond area, also known as the Standard Veneer Pond. Wood ducks are particularly dependent on woody areas for nesting and for seclusion, being easily disturbed.

Deborah Jaques' comments to the Brush Creek THP, another recently proposed project on Lake Earl, raises serious concerns about the fragile nesting grebes and the removal of necessary wind shelter provided by tall trees around the lake. Fish and Game comments also raise these same concerns.

Please see attached letter from Dr. Paul Springer, a very respected biologist, siting various wildlife concerns and expressing the need for further assessment before further forest clearing is permitted.

"These wooded ponds provide prime habitat for nesting Wood Ducks and wintering Ring-necked ducks."

Under LCP, IV., D.1.f- Buffer Zones- "... These protective buffer zones should be sufficient along water courses and around sensitive habitat areas to adequately minimize the potential impacts of adjacent land uses."

Under LCP IV. D. 2. 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.", and 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."

Bay Meadows Development Project recently removed substantial habitat adjacent to the Lake Earl Wildlife Area log ponds. An inadequate buffer zone remains, consisting of the spruce trees on the Foster grading permit site. Now they want to remove the inadequate buffer- the Foster trees.

The Vipond McNamara Subdivision recently removed substantial wildlife habitat adjacent to Lake Earl and to the proposed McNamara grading permit site. Now they want to remove more habitat adjacent to the lake- the McNamara trees on the grading permit site.

The 12' buffer contour used around Lake Earl at the McNamara Vipond Subdivision, has resulted in houses adjacent to the shore line, and hunting conflicts have resulted. Residential development this close to the lake shore is inappropriate and noncompliant to LCP land use policies.

The 100' buffer was used on the Bay Meadows Development, even though CA Fish and Game protested and demanded that at least another 100' of buffer was necessary along the log ponds. Their recommendations were not followed. As a result, CA Fish and Game trees are left vulnerable to wind fall, and the area will be subject to significant human disturbance at this designated sensitive habitat site.

We regret not being more aware of these projects.

All four of these projects constitute a cumulative impact with significant adverse effects to the Lake Earl Ecosystem. All are in close proximity to each other (within 1 mile), and adjacent to the wetland.

Coastal Act Policies stated in the LCP, VI:

"Section 30240. (a) 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. (b) Development in areas adjacent to ESHA and... shall be designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas."

The impacts of this grading permit will significantly degrade the area. The removal of large spruce trees and the forested edge of the wetland, which is a vital part of the life cycles of many species of concern, will significantly degrade the ESHA.

LCP VI. B.-" Present Local Policies: The Del Norte County General Plan recognizes the importance of biologically sensitive habitats and seeks to conserve and manage these resources for the educational, recreational, and economic needs of present and future generations.

Standards for the management of wildlife, habitat and vegetation in the County have also been developed. Important policies concerning the maintenance of sensitive coastal habitats include:

1. The county should require Environmental Impact Reports to insure the protection of fish, wildlife, and plant species in the area considered for development... 3. The county should maintain all existing species of fish, wildlife, and vegetation for their economic, and intrinsic and ecological values as well as providing adequate protection of rare and endangered species. 4. The following areas are recognized as major locations of excellent wildlife habitat, native or natural vegetation, and of aesthetic value:...Lakes Earl and Talawa and their immediate marshland ... 5. The County should establish riparian corridors along local streams, creeks and sloughs to maintain their aesthetic appeal, wildlife habitat, control of erosion, and to provide natural vegetation separations between developed uses."

LCPVII: Specific Area Policies and Recommendations.D. Wetlands, f- " 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 100 feet in width..."

This primary tool- a buffer of 100' is entirely inadequate to accomplish the LCP policies for ESHA Lake Earl and surrounding marshland, especially since removal of vegetation within the 100' buffer is allowed. Again, please refer to statements made by CA Fish and Game concerning buffers around wetlands.

We could not find the 12 foot contour around Lake Earl mentioned as a buffer guideline in the LCP.

According to the CA Dept. of Forestry regulations, only one 3 acre timberland conversion exemption is allowed per contiguous ownership parcel. Richard McNamara has recently authorized the harvesting of wood for sale in an approximately 3 acre area on this site. Several neighbors have reported the ongoing cutting during February and March. Del Norte County responded to these complaints, and confirmed them. He was served with a cease and desist letter by the Del Norte Community Development Dept. on Feb. 23, 1999. This cutting has occurred in an RCA-2 zone that specifically prohibits this activity. Please see Susan Morrison's letter, issue #1.

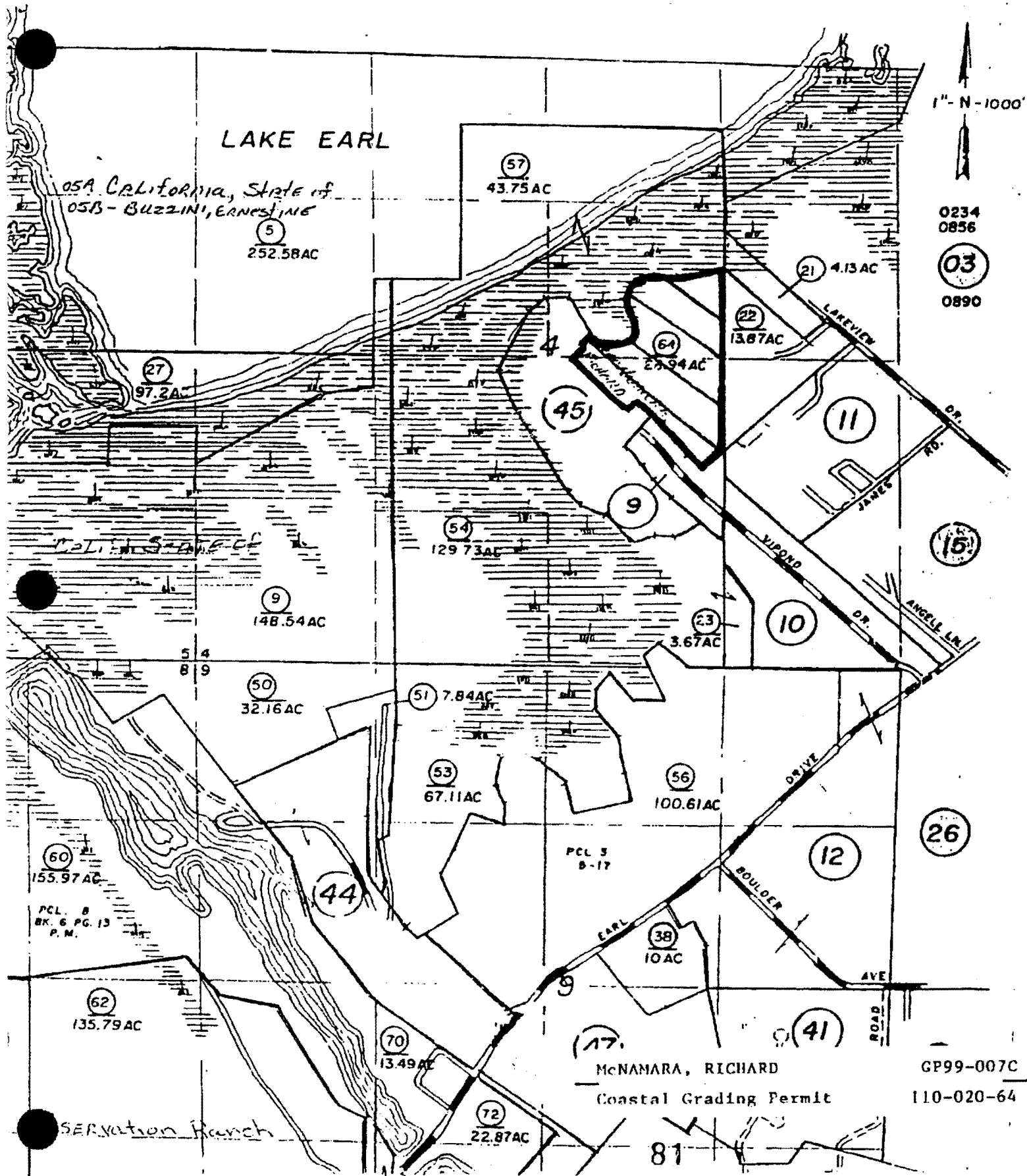
In conclusion, Lake Earl is California's largest coastal lagoon and most biologically diverse Wildlife Area (LEWA). It is considered 2nd only to San Francisco Bay in importance as a unique coastal embayment. With the exception of wetlands, the area was historically surrounded by forests. The interdependent flora and fauna evolved for millions of years with these ancient trees. They are gone, replaced with pasture, homes, lawns, and second growth pockets of trees. That makes these mature second growth areas, a tiny percentage of the original forest, all the more important. If we are serious about protecting the ecosystem of the LEWA, all logging up to 600 feet to 3,281 feet (1 kilometer) from Lake Earl wetlands must stop.

Thank you,

Eileen Cooper May 24/1999

Friends of Del Norte,
President, Joe Gillespie and/or
Vice- president, Eileen Cooper

116 73



HANDED OUT BY STAFF
PLANNING COMMISSION
MEETING OF

4/7/99 *nm*

Susan E. Morrison
701 Clayton Dr.
Crescent City, CA 95531

March 15, 1999

Ernest Perry, Director
County of Del Norte
Community Development Department
Crescent City, CA 95501

RECEIVED

MAR 19 1999

PLANNING
COUNTY OF DEL NORTE

Dear Mr. Perry:

I am writing regarding the McNamara application for a grading permit in conjunction with a three-acre timberland conversion exemption. I am adjacent land-owner in the area of the proposed activity located off of Clayton Drive and Vipond Drive approximately one eighth of a mile from Lake Earl. I have been in regular contact with your staff since I first received the required notice of this proposed action on February 24th, 1999.

I spoke at the recent Planning Commission regarding this proposal and am now submitting the comments I made at the meeting in written form for the record.

I request that the Community Development Department and the Planning Commission reject this proposal. If the Department or Commission does not feel comfortable rejecting the proposal immediately, then I request that any decision on the proposal be postponed for eight weeks. My requests are based on four issues that I believe have not been adequately addressed during the review of the project proposal and, which, I believe once thoroughly researched and reviewed would lead both the Community Development Department and the Planning Commission to reject the McNamara proposal.

Issue #1

My first argument against this proposal is with regard to the three-acre timberland conversion exemption that will be undertaken in conjunction with the grading permit. According to California Department of Forestry regulations, only one three-acre exemption is allowed per contiguous ownership parcel. Richard McNamara has recently (over the last two weeks) authorized the harvesting of wood for sale in an approximately three-acre area

on the parcel in question. Mr. McNamara has, thereby, taken his one allowable three- acre exemption.

Several neighbors have reported the ongoing cutting during late February and early March. Del Norte County Sherriif's Deputys responded to these complaints and spoke to Mr. McNamara to gain assurance that the person doing the harvesting had Mr. McNamara's permission to do so. Mr. McNamara told the Deputy that this person, Mike Amos, did have his permission. On February 21st, 1999, Mike Amos told my partner, Kelly Miess, that he was cutting the wood and selling it as firewood.

The cutting that has been undertaken recently is unauthorized and is being done in a "Resource Conservation Area - 2" that specifically prohibits this type of activity. In addition, the preliminary staff report on the project, dated February 11, 1999, specifically states that no disturbance is allowed in the RCA-2 area.

Mr. McNamara not only authorized this activity, as can be verified through Sheriff's logs but was fully aware of its illegality. He was served with a cease and desist letter by the Del Norte Community Development Department on February 23, 1999. Even after receiving this letter, Mr. McNamara continued to allow the unauthorized cutting. County Community Development as well as California Department of Forestry have records of the unauthorized activity, complaints regarding the activity and action taken in an attempt to stop it. This flagrant disregard for the rules and laws of our county should be taken into consideration as this three-acre exemption from harvest regulations is considered.

Issue #2

This cut will have a devastating impact on the adjacent property owners and the wildlife habitat surrounding Lake Earl. One week's notice is just not sufficient notice for such significant action. As an adjacent land owner myself, I could not even meet the Planning Commission's agenda deadline to submit a letter given such short notice.

The adjacent property owners who will be primarily impacted by this cut, the Adkins, have lived in Del Norte for nearly twenty years, have operated several important business and have made significant contributions during that time. The harvesting of these trees, which they understood to be a legal buffer between themselves and the McNamara subdivision, will have a devastating impact on their way of life. These trees begin less than thirty feet from their kitchen window and if cut will turn a protective buffer into an open field exposing them to both the subdivision from which they sought distance and the wind and weather from the southwest off the lake. I believe that more time should be provided to allow for research into the issues associated with this harvest exemption.

Issue 3

I have read the finding associated with the mid 1980's rezone of this property and believe that the cutting being proposed is specifically not allowable under those findings - in particular, under item "C" of those findings which discusses allowable vegetation removal. I believe it is very likely that additional documentation exists that would confirm that the proposed cut is not allowable. One week is just not enough time to adequately research those issues.

Issue 4

I believe that the "CEQA Class 4 Exempt" recommendation of the County Community Development Department is incorrect and that the permit should, therefore, be denied. Specifically, the CEQA exemption should be denied under items "A", "B" and "C" of Article 19 of CEQA, Section 15300.2. The cumulative impacts of removing the forested edge surrounding Lake Earl have not been considered. Approval of the project as recommended would, thus, circumvent adequate environmental review. In speaking with the Adkins', I understand that they have seen bald eagles, herons, and egrets on their property which is approximately one eighth of a mile from the lake and which is certainly at least potential habitat for a number of critical species.

In closing, I am asking that the Community Development Department and the Planning Commission reject the McNamara proposal. If the Department or Commission does not feel comfortable rejecting the proposal immediately, then I request that any decision on the proposal be postponed for eight weeks.

Sincerely,


Susan E. Morrison

Karen Theiss and Associates

Biological and Environmental Consultants

P.O. Box 3005 • McKinleyville, CA 95521 • (707) 839-0681

WETLANDS INVESTIGATION MC NAMARA III SUBDIVISION

I INTRODUCTION

The proposed McNamara III Subdivision is located northerly of Vipond Drive and Clayton Road, on the easterly shore of Lake Earl, Del Norte County (Figure 1). It is currently vegetated with Sitka spruce forest, forested wetlands, persistent emergent wetlands, and upland grassland. The intent of the wetlands investigation was to determine the extent and nature of wetland habitat within the project area. The parcel falls within the wetlands regulations and policies of the US Army Corps of Engineers, the California Coastal Commission, the California Department of Fish and Game, and the Del Norte County Coastal Plan.

II METHODOLOGY

The delineation of jurisdictional wetlands was carried out during field investigation conducted on May 27, 1992, following the currently applicable US Army Corps of Engineers (COE) criteria from 1987 (Environmental Laboratory, 1987). Data on vegetation, soils, and hydrology were gathered at ten discreet test sites, following the Routine Onsite Determination Method of the Corps of Engineers. The results were recorded on COE data forms which are included in Appendix A. In addition, field notes indicating the extent of homogeneous vegetative types were made on a field map. All test sites were flagged in the field and noted on an aerial photograph. A "line of sight" was subsequently flagged by personnel of Karen Theiss and Associates, and surveyed by personnel of Michael Young and Associates. Test site locations and wetland boundaries are located on the attached blueprint (scale 1" = 100 feet) and are described within the body of the following report. Probable COE wetlands are those which exhibited wetland vegetation and soils at the time of field review, and are expected to exhibit wetland hydrology at a more appropriate sampling period (winter and spring).

The following report presents the results of the field investigation. Constraints encountered during field investigation and report preparation include seasonal lateness of sampling in a drought period, incomplete available soils information, and manipulation of some portions of the site (e.g., grading, removal of vegetation).

dependent upon the value of the habitat being impacted by the project and on the projected value(s) of the proposed mitigation. In general, wetland values tend to be greater in large, contiguous areas than they are in small scattered areas. This is not necessarily the case, however, when dealing with vernal pools. Mitigation areas should be located near or adjacent to functioning wetlands when possible.

X SUMMARY

The parcel proposed for the McNamara III subdivision (AP# 110-020-64) was investigated with regard to the presence and extent of wetlands on May 27, 1992. The delineation of jurisdictional wetlands was carried out following the Routine Onsite Determination Method of the Corps of Engineers (1987). The field investigation revealed that those areas vegetated with open grassland and Sitka spruce forest are not jurisdictional wetlands as defined by either the State or Federal agencies, while those areas vegetated with a willow or alder canopy generally meet the wetland criteria.

XI BIBLIOGRAPHY

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Federal Interagency Committee for Wetland Delineation. 1989. Federal Manual for Identifying and Delineating Jurisdictional Wetlands. U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and U.S.D.A. Soil Conservation Service, Washington, D.C. Cooperative Technical Publication.

Hitchcock, A.S., 1971. Manual of the Grasses of the United States. Dover Publications, New York.

McLaughlin, James and Frank Harradine. 1966. Soils of Coastal Del Norte County, California. Cooperative project between the



Friends of Del Norte

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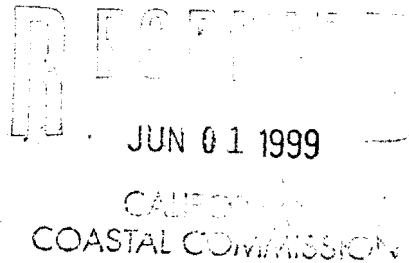
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Natalie Schaefer

May 25, 1999

Robert Merrill
Darryl Rance
California Coastal Commission
North Coast Area Office
45 Fremont, Suite 2000
San Francisco, CA 94105-2219



Dear Messrs:

**RE: Friends of Del Norte Appeal of McNamara
and Foster Grading Permits/ 3 Acre Clearcuts
adjacent to Lake Earl Wildlife Area and its Ponds.**

We have faxed you these two appeals. We are now writing to convey to you a hard copy of the appeals, as well as all referenced and other attachments to these appeals.

We also intend this letter to serve as a brief summary of the actions we ask of the Commission, and a catalogue of the attached photographs and materials.

Summary & Overview

This is a summary of the actions we ask the California Coastal Commission to take. We respectfully ask that you:

- 1) Review these two permits individually, and in combination because of the statement that they make about cumulative forest canopy loss and other cumulative effects.
- 2) Deny these permits because their issuance, and the process and manner of their issuance, is inconsistent with the Local Coastal Plan, and with the Coastal Act itself.

EXHIBIT NO. 7

APPLICATION NO.

A-1-DNC-99-037

APPEAL ADDENDUM,
MAY 25, 1999

3) Deny these permits because the tools (e.g., the Resource Conservation Area system, the so-called 100 foot "buffer" within which vegetation can be removed, etc.) used by Del Norte County to implement their Local Coastal Plan are inadequate to protect wetlands, habitats and species in general, and particularly inadequate to protect the Environmentally Sensitive Habitat Area of Lakes Earl and Talawa (hereafter Lake Earl), and their associated wetlands, ponds and sloughs. These tools are inadequate because they do not address special locations, unusual circumstances, the science regarding buffer zones (which may have emerged since the tools were put into place), cumulative effects, and many other important issues. The County has not established "clearly defined buffer areas" sufficient to protect habitat according to the most recent science available.

4) Review whether the Local Coastal Plan is consistent with the Coastal Act, regarding in general the protection of Environmentally Sensitive Habitat Areas. In particular we would appreciate your advice as to whether a special plan, "special treatment area," or amended plan is required to adequately protect Lake Earl environs. For example, it appears from a reading of the Coastal Act, that this area should be a "Special Treatment Area" and/or have a special plan for its protection, in order to fulfill the intent and meaning of the Coastal Act. (In our view, such a plan should also include and address the entire drainage basin of the Lake, in terms of the health of its tributary creeks, related ponds, and other watershed elements.)

5) Review whether the Local Coastal Plan is consistent with the Coastal Act, because of the County's complete failure, regarding these two permits as well as earlier permits, to examine or address cumulative effects. In these cases, it is the cumulative effects of subdivision, development, logging, and the cumulative loss of canopy and diversity in the forested edge of Lake Earl and along its ponds, wetlands, sloughs, and within its drainage basin – and particularly in, although not limited to, the southeastern and eastern environs of Lake Earl, which are areas of concentrated waterbird use and Bald Eagle and Peregrine Falcon use.

6) Review whether the Local Coastal Plan is consistent with the Coastal Act, because of the County's complete failure to consider, examine or address the outstanding scenic and visual qualities of the Lake Earl Wildlife Area. In a number of recent permits issued by the County, including these two most recent permits, scenic and visual issues have never even been raised (Feller subdivision, and Timber Harvest Plan; Bay Meadows subdivisions; McNamara Lakeside Loop subdivisions).

Consider that if it were not for Bald Eagle and Peregrine Falcon use, Mr. Feller might

have been allowed, by the County and other agencies, to clearcut the largest and oldest remaining clump of mature second growth forest immediately on the Lake shore. County and other policies, allowing for a small, partial cut buffer retaining primarily only alder, and removing nearly all mature spruce in the buffer – were totally inadequate to protect wildlife, endangered species, and scenic and visual qualities.

The Wildlife Area, jointly administered by Fish & Game and State Parks, is increasingly popular with recreational users (kayakers, canoeists, hikers, etc.) and for nature study, bird- and wildlife watching. The forested edge of the Lake is an important scenic and visual buffer for these users who wish to appreciate the outstanding beauty of this coastal lagoon in an at least somewhat natural state.

7) And other issues, as raised in the attached materials.

Loss of Diverse & Mature Canopy

These two projects, especially when combined, put the spotlight on the cumulative loss of forest canopy, as well as the loss of diverse and mature canopy. At one time, ancient Sitka Spruce, and other old growth species, blanketed the north coast, and protected its coastal lagoons and wetlands.

Today plant specialists tell us that the wetland spruce forests in Humboldt County are virtually gone, and that fragments of this special habitat can still be found in Del Norte. Note the photos that we reference, and enclose, to see how little of this habitat remains around Lake Earl. Most has been cleared for agriculture, industry and homes.

Still, this makes the remaining forested edge very significant. Both the Foster and McNamara cuts will take virtually the last remaining forested edge, and the last few mature trees, immediately adjacent to large tracts that have already been cleared and approved for development. Indeed, the McNamara cut proposes to take one of the last remaining stands that is located right on the Lake and contains older, mature spruce trees. (The Feller grove has since been purchased by the state, and will be administered by Fish & Game.) The importance of mature trees for perching and roosting is discussed in our submitted materials.

Unusual Circumstances Regarding McNamara Property

Furthermore, there are some unusual circumstances regarding the McNamara project. We want to express our concern that the McNamaras appear to regularly flaunt and circumvent the law and Coastal Commission protections for wetlands – and never seem to be called on by any agency to take responsibility for their actions.

First, they are attempting to clearcut this three acre parcel as a one-time timberland conversion exemption. It seems very likely that the McNamaras have already used up this three acre conversion, and more, over recent years by illegal, unpermitted removal of trees within their 26.94 acre parcel. Susan Morrison's letter, attached, documents the trees which were taken illegally during late February and early March of this year. Additionally, an August 26, 1997 letter (attached) from Jim Muth, Coastal Commission staff, documents from photos that McNamara has removed major vegetation and trees from this same property, without a permit, between 1992 and 1997, and that this "may involve a violation of the Coastal Act." The same letter further notes unpermitted disruption, manipulation and draining of wetlands within this same parcel.

We are left wondering why Del Norte County allows illegal activities and regular violations by this same owner within this same parcel to continue unremarked. The Coastal Commission should review this pattern of illegal vegetation and tree removal, and wetlands disruption.

Second, please note there is a pattern of cumulative effects within the contiguous existing and future McNamara subdivision(s), that has gone unreviewed and unremarked by any regulatory agency.

Catalogue of Attached Photographs

We are attaching a group of photographs to assist in making our points.

i) Three black and white aerial overviews of the Lake (July 21, 1989, appear to be ~ four foot Lake level) illustrate somewhat how the forest along the east side of the Lake has been cleared for agriculture, housing and industrial use. A narrow band of trees clings to the edge of the coastal lagoon. There has been more cutting and development since these photos were taken.

The other important thing to note from these photos, although it takes some concentration, is the few remaining clumps of mature trees. The Feller and McNamara trees (circled) are notable for their maturity. The McNamara trees in these photos are also notable as a remnant of forest buffer between the intensive development of the Vipond and Lake Loop subdivisions and the Lake. (When the Lake is higher, obviously, these trees are closer to its edge.)

Although CA Fish & Game and State Parks own large areas around the Lake, their lands for the most part lack mature forests, or even fragments of mature forests. It may be that the east side of the Lake has better soils; it may also be the pattern of cutting that took place around the Lake. All trees are second growth; Feller and McNamara trees

Friends of Del Norte Appeals of McNamara & Foster Permits
Cover Letter to the California Coastal Commission
May 25, 1999

appear to be in the 80 year – 100 plus year range.

ii) Four copies of color photos, close up aerial slides; two each of the McNamara and Foster trees proposed to be cut. We believe these speak for themselves.

iii) We also refer you to the color aerial photograph of Lake Earl given to Robert Merrill at the recent Coastal Commission meeting in Santa Rosa. It also illustrates well how little is left of the forests around the Lake.

Thank you for your time and consideration.

Sincerely,

Eileen Cooper

Eileen Cooper
Vice President

Other Attachments:

Photographs

Coastal Comm. Appeal Paperwork/ McNamara

Coastal Comm. Appeal Paperwork/ Foster

Friends of Del Norte letters & statements appealing Planning Commission decision to
County Board of Supervisors

Letters regarding grading permits:

March 15, 1999, from Susan Morrison (included with McNamara appeal
paperwork above)

April 5, 1999, from Dr. Paul Springer

March 30, 1999, from U.S. Fish & Wildlife Service, Halstead

March 3, 1999, from CA Dept. of Fish & Game, Koch

April 2, 1999, Northcoast Environmental Center

March 3, 1999, Jerabek

February 18, 1999, Bob & Francine Adkins

Re Importance of southeast portion of Lake for waterbirds:

Draft Report, 'Breeding Waterbirds at Lakes Earl and Talawa, Del Norte County,
California, 1997-1998, Deborah Jaques, CA Fish & Game, March 1999

Friends of Del Norte Appeals of McNamara & Foster Permits
Cover Letter to the California Coastal Commission
May 25, 1999

Re Bald Eagle and Peregrine Falcon use of Forested Lake Edge, and east side of Lake:

June 19, 1998 cover letter from Armand Gonzales, CDF, and
draft Bald Eagle/Peregrine Falcon Consult Report of same date

Letters/records documenting observations by local biologists Dr. Robert Mize,
Deborah Jaques, Alan D. Barron, Spring, 1998

Observation notes compiled by Alan D. Barron, local biosurvey contractor and
field ornithologist

Letter to the Editor, from Walt Morse, documenting eagle use at the end of
Lakeside Loop, near proposed McNamara cut

Re unpermitted abuses on McNamara property:

August 26, 1999 letter from James Muth, Coastal Commission, to Ernest Perry,
Del Norte County Community Planning

JUN-17-1999 13:37

June 17, 1999

TO: CA Coastal Commission, Darryl Rance, North Coast Area Planner, FAX: 415-904-5400
From: Friends of Del Norte, Eileen Cooper, Vice President
1093 Hwy 101 N. #18
Crescent City, CA 95531
707-465-8904

RE: Commission Appeal No. A-1-DNC-99-037

RE: Commission Appeal No. A-1-DNC-99-038

Please add this document to our grounds for appeal of both Del Norte Coastal Grading Permits. This document is a reorganization of our appeal arguments. We hope this reorganization helps to clarify our position.

Review these two permits individually, and in combination because of the statement that they make about cumulative forest canopy loss and other cumulative effects. Almost all of the information in this document applies to both permits, and where they differ, we have made note. Reviewing them together will save you time.

Please deny these grading permits because they are not consistent with many policies of Del Norte County Local Coastal Plan (LCP), and they are not consistent with CA Coastal Act policies

Under Marine & Water Resources VI.C.:" LCP Policies: Del Norte County recognizes the economic and biologic significance of maintaining and where possible enhancing marine resources, coastal waters and sensitive coastal habitats. General policies designed towards achieving these important goals are stated6. 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. 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."

Deny these two grading permits because their enactment will result in significant disruptions of habitat values of the designated Environmentally Sensitive Habitat Areas of Lake Earl and its associated ponds and sloughs (hereafter referred to as ESHA Lake Earl).

Lake Earl/ Talawa and its surrounding marshlands is specially designated and recognized as an area of outstanding wildlife and sensitive habitat values, scenic values, and recreational values. Therefore in and around ESHA Lake Earl, concerning degrading impacts:

- a. The maintenance and protection of existing species of wildlife including rare and endangered species, as well as of native flora, is required.
- b. The maintenance and protection of the biological productivity of fragile coastal habitat is required, and considered most important. Enhancement is important
- c. The maintenance and protection of the natural scenic beauty is required. Restoration is important.

Deny these two grading permits because they are not designed to prevent impacts which will significantly degrade ESHA Lake Earl.

EXHIBIT NO. 8
APPLICATION NO.
A-1-DNC-99-037
APPEAL ADDENDUM, JUNE 17, 1999

- a. Studies to identify, evaluate, and address impacts that have the potential to significantly degrade ESHA Lake Earl have not been done(such as current Environmental Impact Reports and cumulative impact analysis).
- b. Adequate protection measures, including adequate buffer zones, to prevent significant adverse impacts to ESHA Lake Earl have not been designed or established.
- c. Various adverse impacts which may result have not been identified or mitigated in both permits.

The following significant adverse impacts are inclusive of but not limited to:

- a. The loss of precious forest canopy surrounding ESHA Lake Earl.

The forested canopy surrounding ESHA Lake Earl at this point in time, has been reduced to such an extent that any further losses will jeopardize the continuance of biological productivity at ESHA Lake Earl.

- b. The loss of biological productivity of an area considered to be a national treasure, and in particular to species dependent upon the forested canopy that surrounds ESHA Lake Earl, inclusive of listed, rare and endangered species of fauna and flora. The forested edge is a part of the ecosystem of ESHA Lake Earl. Any activity other than "very minor incidental changes" to the wetland ecosystem is damaging.
- c. The loss of the natural character of an outstanding scenic resource with natural visual integrity, and considered to be a national treasure. Also the related loss of economic-ecologic-value (eco-eco-value) to the community.
- d. Adverse cumulative effects

Please read the section of our LCP titled "Marine and Water Resources." I have highlighted important parts of this section for clarification of issues. They are parts IV, VI, VII.

These two projects are directly adjacent to Lakes Earl/ Talawa (McNamara) or associated ponds of Lake Earl (Foster), which are both listed as specially designated environmentally sensitive habitat areas (ESHA) with outstanding wildlife values, under LCP Marine & Water Resources, IV. A & B, Sensitive Coastal Habitats. They satisfy all of the Designation Criteria (B):

" 1. Biologically productive areas important to the maintenance of sport fisheries; 2. Habitat areas vital to the maintenance and enhancement of rare and/or endangered species; 3. Fragile communities requiring protective management to insure their biological productivity, species diversity and/or continued maintenance; 4. Areas of outstanding scientific or educational value that require protection to insure their viability for future inquiry and study."

Discussion: LCP Marine & Water Resources, IV. D. 1. f.- Buffer zones- "... These protective buffer zones should be sufficient along water courses and around sensitive habitat areas to adequately minimize the potential impacts of adjacent land uses."

Under LCP VII. D. 4. f.- " Development in areas adjacent to ESHA 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...."

- 1. Deny these permits because adequate protection measures, including but not limited to adequate buffers, EIRs and Cumulative Impact Studies, have not been incorporated into their

design, and instituted to protect ESHA Lake Earl and associated ponds, from significant adverse impacts, including impacts from adjacent land uses.

The tools (e.g., the Resource Conservation Area system, the so-called 100 foot "buffer" within which vegetation can be removed, etc.) used by Del Norte County to implement their Local Coastal Plan are inadequate to protect important wildlife and wetland habitats in general, and particularly the ESHA of Lakes Earl and Talawa and their associated wetlands, ponds, and sloughs (hereafter ESHA Lake Earl) from adverse impacts.

In fact the tool itself insures significant degradation of ESHA Lake Earl.

a. There is **no current scientific evidence** that supports the idea that a 100 foot buffer (especially with vegetative structure removed) will adequately protect the biological productivity of a sensitive wetland habitat area. This 100 foot buffer concept is arbitrary, antiquated, and is designed to protect drainages throughout the county. It is inappropriately applied to ESHA Lake Earl.

In fact there are current scientific studies which indicate significant degradation of ESHA Lake Earl will occur if such a 100 foot narrow buffer is used (see discussion following).

b. There is **substantial scientific evidence** and wetland habitat studies that strongly support the need for much larger buffer areas with intact vegetative structure around biologically sensitive and highly productive wetland habitat areas in general, and in particular ESHA Lake Earl.

b.1. CA Dept. of Fish and Game uses the Washington State Dept. of Ecology Study Recommendations as their guideline for buffers around wetlands- Castelle et. al. (1992)

"recommend buffer needs of 600 feet or larger from the wetland boundary... The narrower the vegetated uplands adjacent to wetland, the more susceptible wetland wildlife are to stresses and disturbances. Also, the narrower this zone is, the more susceptible the area is to loss of habitat function and productivity through natural changes or human induced impacts."

Re: Letter from Dept. Fish & Game-Richard Elliot, Regional Manager, to Del Norte Planning-Diane Mutchie, Dec. 1, 1997.

b.2. CA Dept. of Fish and Game also refers to a study by Findlay and Houlahan (1997) that "found that herptile and mammal diversity declined when forests were cleared within 2 kilometers of a wetland... Their results suggest that to preserve maximum biodiversity in wetlands, buffers should be increased to extend a kilometer or two from wetland edges."

These recommended guidelines have been presented to Del Norte County Planning Dept. concerning projects adjacent to ESHA Lake Earl. They have been met with resistance and ignored by Del Norte County Planners.

RE: Same as above, b.2.

b.3. CA Dept. of Fish and Game conducted a bald eagle consultation study for Scott Feller's THP 1-97-417 DEL located less than 1 mile from the McNamara grading permit site and 2 miles from the Foster grading permit site. Comments in Fish and Game bald eagle consultation: "protection measures to avoid *take* (to bald eagles) could be as much as one site-potential tree height up to a 300 foot no harvest if following federal guidelines. We have information placing one bald eagle at approximately 250-300 feet inside the plan boundary. If a recommendation were made based on this one observation, a minimum 500 foot protection zone would be warranted... Protection measures such as these would affect essentially all of the plan west of Lake Earl Drive."

RE: Bald Eagle and Peregrine Falcon use of Forested Lake Edge, and east side of Lake: June 19, 1998 cover letter from Armand Gonzales, CDF, and draft Bald Eagle/Peregrine Falcon Consult Report, June 19, 1998.

b.4. CA Dept. of Fish & Game has required guidelines of 450 foot buffer zones from dwellings because of hunting activities on Lake Earl.

RE: CA Dept. of Fish & Game Required guidelines.

Under: LCP Marine & Water Resources, VI. B. Present Local Policies-" Standards for the management of wildlife, habitat and vegetation in the County have also been developed.

Important policies concerning the maintenance of sensitive coastal habitats include: 1. The county should require Environmental Impact Reports to insure the protection of fish, wildlife and plant species in the area considered for development. 2. The county should maintain all existing species of fish, wildlife, and vegetation for their economic, intrinsic and ecological values as well as providing adequate protection of rare and endangered species.

Under: LCP VII.E.4.a.-" 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.

2. **Deny** these grading permits because if enacted, they will fail to maintain existing species of wildlife in a designated sensitive coastal habitat, and they will fail to provide adequate protection of rare and endangered species. **Evidence:**

a. The US Fish and Wildlife Service has determined that without surveys for wintering bald eagles prior to approval, both proposed grading permits have the potential to incidentally *take* bald eagles. This determination is based on the facts that both grading permit sites are of the same quality habitat as the Feller THP- bald eagle consult site, consisting of large spruce trees adjacent to the ESHA Lake Earl, and are in close proximity to the Feller THP site.

RE: Letter regarding both grading permits, March 30, 1999, from US Fish & Wildlife Service, Halstead

b. The CA Dept. of Fish & Game, in regards to the Foster Coastal Grading Permit, recommends the area be surveyed for wintering bald eagles prior to the approval of the project. " There is a reasonable potential for adverse impacts to the bald eagle."

RE: Letter regarding Foster grading permit, March 3, 1999, from CA Dept. of Fish & Game, Koch

c. Biologist Deborah Jaques' report Breeding Water Birds at Lakes Earl and Talawa shows that the south east lake area, adjacent to the McNamara grading site, is the most productive water bird area of the lake. Species of special concern are the only known California coastal breeding colony of Western Grebe, and possibly the entire west coast, and this isolated population appears to be ecologically distinct. Grebe nests are fragile and need wind shelter, as well as seclusion from human disturbance. These Western Grebes have recently moved their nesting area directly south of the McNamara trees. Wood Ducks make heavy use of the Foster pond area, also known as the Standard Veneer Pond. Wood Ducks are particularly dependent on woody areas for nesting and for seclusion, being easily disturbed.

Deborah Jaques' comments to the Feller- Brush Creek THP raises serious concerns about the fragile nesting grebes and the removal of necessary wind shelter provided by tall trees around the lake. Fish and Game comments also raise these same concerns.

RE: Draft Report, "Breeding Waterbirds at Lakes Earl and Talawa, Del Norte County, CA. 1997-1998, Deborah Jaques, CA Fish & Game, March 1999

RE: Deborah Jaques letter regarding Brush Creek THP, January 17, 1998

d. Retired US Fish & Wildlife Service biologist, Dr. Paul Springer's letter talks about the importance of the forest bordering Lake Earl for various species of raptors and herons, as well as Bald Eagles and Peregrine Falcons, both Federally Listed Species. He also talks about the wooded ponds providing prime habitat for nesting Wood Ducks and for migrating wintering Ring-necked Ducks. The pond on the east side of Lake Earl Drive is the site of the first recorded nesting of the rarer Hooded Merganser in the area and constitutes one of only four or five known nestings in the North Coast Region.

" Clearing of trees in both the McNamara and Foster tracts would eliminate perches, roosting and nesting sites for the aforementioned species and other wildlife. In addition, it would reduce or eliminate the space needed to provide needed buffer from disturbance by adjacent human activity and development.

Numerous other projects involving timber harvest and clearing have occurred in the past around Lake Earl, considered the most important coastal lagoon in California. The present wildlife value of the McNamara and Foster properties and the cumulative nibbling effect of the continued removal of small but important tracts of wooded habitat surrounding the lake need to be assessed before further forest clearing is permitted. "

RE: Letter regarding both grading permits from Dr. Paul Springer, April 5, 1999

e. Records have been kept for bird observations on the South East Lake Earl Area by local biological consultant and field ornithologist Alan Barron. These records indicate regular usage of Bald Eagles and Peregrine Falcons over a long period of time, from 1974 to current.

RE: Observation notes compiled by Alan D. Barron, local biosurvey contractor, and letter regarding both grading permits June 15, 1999

f. Letter to the Editor, in The Triplicate- a local paper, from Walt Morse, documenting eagle use at the end of Lakeside Loop near the proposed McNamara cut.

g. The removal of the forested edge of ESHA Lake Earl is obviously a significant disruption of habitat values. CA Fish & Game states, " **There are eight threatened and endangered species that inhabit the LEWA(Lake Earl Wildlife Area) and 40 California bird species of special concern. Many of these wildlife species use the forest edge portion of the Lake Earl ecosystem as important habitat in their life cycles. Those species for which the forest edge is important for perching, roosting, or nesting include great blue heron, green-backed heron, black-crowned night heron, common egret, snowy egret, American bittern, wood duck, red-tailed hawk, Cooper's hawk, sharp-shinned hawk, bald eagle, peregrine falcon, and belted kingfisher. Several of these species such as the larger herons, hawks, bald eagle, and peregrine falcon use taller trees and snags. The forest edge further acts as a buffer between wildlife that use the lagoon's surface and mudflats for foraging and roosting- and other activities close to the edge of the lake. Species which use the lagoon and for which a buffer screen from adjacent human activities is necessary include waterfowl, shorebirds, wading birds, grebes, otter, mink, and other water-associated wildlife. The waterfowl and shorebirds generally feed in open areas such as the water surface or mudflats that have no protective screening. Some waterfowl species nest on the shore at the lake's edge. Western grebes nest on floating mats of vegetation close to the shore. Removal of or damage to the screening effect of the forested edge pushes those species away from traditional use areas. Some are displaced completely....etc."**

RE: Memorandum from CA Fish & Game to CA Dept. of Forestry, Dec. 17, 1997

3. Deny the McNamara grading permit because there is no current EIR at this site, and the aforementioned wildlife concerns at this site have not been addressed.

4. Deny the Foster grading permit because there is no EIR at this site, and the aforementioned wildlife concerns at this site have not been addressed.

We understand that Scott Feller, the project forester for both grading permits, has done a last-minute, cursory Bald Eagle study which contradicts the results of the Dept. of Fish & Game Bald Eagle consultation, conducted by a specialist. Scott Feller was also the forester for the Feller-Brush Creek THP. He did not find Bald Eagles on that property either. Yet later Bald Eagle consultation studies, conducted by CA Dept. of Fish & Game, found extensive usage of large spruce trees (at this site) by Bald Eagles and Peregrine Falcons for perching and hunting. His results also contradict observation records from 1974 to current, which indicates consistent usage of the area by Bald Eagles and Peregrine Falcons.

RE: same reference as above for 2.e.

Under LCP IV. D. 2.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." and 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."

5. Deny both grading permits because if enacted, they will significantly contribute to an adverse, cumulative alteration of the biological productivity of the ESHA Lake Earl, and will significantly contribute to a degrading cumulative impact on the viability of flora and fauna inhabiting or utilizing the area. These degrading cumulative effects have not been examined or addressed by the county (cumulative impact analysis).

a. In these cases, it is the cumulative effects of subdivision, development, logging, and the cumulative loss of canopy and diversity in the forested edge of Lake Earl and along its ponds, wetlands, sloughs, and within its drainage basin- and particularly in, although not limited to, the southeastern and eastern environs of Lake Earl, which are areas of concentrated waterbird use and Bald Eagle and Peregrine Falcon use.

b. These two projects, especially when combined, put the spotlight on the cumulative loss of forest canopy, as well as the loss of diverse and mature canopy. At one time, ancient Sitka Spruce, and other old growth species, blanketed the north coast, and protected its coastal lagoons and wetlands.

Today plant specialists tell us that the wetland spruce forests in Humboldt County are virtually gone, and that fragments of this special habitat can still be found in Del Norte. Note the photos that we reference, and enclose, to see how little of this habitat remains around Lake Earl. Most has been cleared for agriculture, industry and homes.

Still, this makes the remaining forested edge very significant. Both the Foster and McNamara cuts will take virtually the last remaining forested edge, and the last few mature trees immediately adjacent to large tracts that have already been cleared and approved for development. Indeed, the McNamara cut proposes to take one of the last remaining stands that is located right on the Lake and contains older, mature spruce trees. (The Feller grove has since been purchased by the state, and will be administered by Fish & Game.)

c. Other recent projects have further reduced this precious forested canopy along the shores of ESHA Lake Earl, and have resulted in other obtrusive human disturbances.

c.1. Bay Meadows Development Project recently removed substantial habitat adjacent to the Lake Earl Wildlife Area log ponds. An inadequate buffer zone remains, consisting mostly of the spruce

trees on the Foster grading permit site. Now Foster wants to remove the inadequate buffer that remains- the Foster trees.

A 100' buffer was used on the Bay Meadows Development, even though CA Fish & Game protested and demanded that at least another 100' of buffer was necessary along the log ponds. Their recommendations were not followed. As a result, CA Fish & Game trees are left vulnerable to wind fall, and the area will be subject to significant human disturbance at this designated sensitive habitat site.

RE: Comments from Fish & Game concerning Bay Meadows Subdivision to Del Norte County Planning Dept., dated

c.2. The Vipond McNamara Subdivision recently removed substantial habitat and precious forest canopy adjacent to Lake Earl and to the McNamara grading permit site. Now McNamara wants to remove even more forest canopy adjacent to the lake- the McNamara trees on his grading permit site.

A 12 foot buffer contour used around Lake Earl at the McNamara Vipond Subdivision, has resulted in not only the loss of valuable forested canopy, but also houses extremely close to the shore line. These dwellings are extremely obtrusive, subjecting ESHA Lake Earl to extreme human disturbance.

Consider that if it were not for Bald Eagle and Peregrine Falcon use, Mr. Feller might have been allowed, by the County and other agencies, to clearcut the largest and oldest remaining clump of mature second growth forest immediately on the Lake shore. County and other policies, allowing for a small, partial cut buffer retaining primarily only alder, and removing nearly all mature spruce in the buffer- were totally inadequate to protect wildlife, endangered species, and scenic and visual qualities.

Discussion:LCP Visual Resources II. A & B: Highly scenic coastal areas have the qualities of distinctiveness, integrity or unimpaired conditions (e.g. nature preserves) , and special interest to the public. Locations with these same qualities have been noted in our county as areas with significant visual resources such as: 1. Views of water bodies (ocean, estuary, streams), and 2. Views of sensitive habitats (wetlands), and they have been inventoried.

The Lake Earl Area has been inventoried as an area with significant visual resources.

Therefore both grading permit sites are located in an area with significant visual resources. Certainly the beauty and integrity of the coastal lagoon area of Lake Earl should be maintained. Certainly the removal of the forested canopy that surrounds ESHA Lake Earl will degrade the scenic values of this area, and its unimpaired natural integrity.

Deny these two permits because their enactment will result in the degradation of the scenic values of the Lake Earl area.

Under: LCP, Visual Resources, V.C. :LCP Policies: The visual resources of Del Norte are important to the County's tourist economy and are a continuing source of enjoyment to its residents.

New References Included: CA Dept. Fish & Game, Dec. 1, 1997 to Diane Mutchie;
CA Dept. of Fish & Game Memorandum to CA Dept. of Forestry (CDF), Dec. 17, 1997;
Letter from Deborah Jaques to CDF, Jan. 17, 1998;

Eileen Cooper June 17, 1999

7

DEPARTMENT OF FISH AND GAME

801 LOCUST STREET

REDDING, CA 96001

(530) 225-2300

December 1, 1997

**RECEIVED**

DEC - 5 1997

PLANNING
COUNTY OF DEL NORTE

Ms. Diane Mutchie
Del Norte County Planning Department
700 Fifth Street
Crescent City, California 95531

Dear Ms. Mutchie:

State Clearinghouse (SCH) 97102100 - Bay Meadows Major Subdivision
and Amendment to Use Permit, Crescent City Area, Del Norte County

The Department of Fish and Game has reviewed the Bay Meadows application to reestablish approval of Unit 1 of the Bay Meadows project with 50 single-family lots (formally approved with 39 lots) with communal sewage, individual wells and related access improvements. The project was previously approved (1989) for a 181-unit subdivision with 93 single-family lots and one multifamily parcel with an 88-unit potential located on the 135-acre site.

The Lake Earl Wildlife Area (LEWA) lies on the northern and eastern project boundary. The location of the actual development lies directly adjacent to the eastern property boundary (west of the Standard Veneer log pond). The Bay Meadows project was approved with mitigation of a 100-foot wetland buffer from the log pond. (In reality, the 100-foot wetland buffer is meaningless because it exists on State-owned land, not on the project site.)

The Del Norte County Environmental Review Committee (ERC) determined that former environmental documents were applicable to the current project. However, a supplemental negative declaration was necessary to address the proposed changes from the previously approved project and the likely potential impacts associated with these changes. The issues addressed include a communal sewage disposal system with individual wells and the submission of traffic analysis. The ERC determined that no other issues were applicable.

We, however, disagree with this assessment. Previously, we offered no comment on the project's wetland buffer mitigation. However, based on new information and our own experience with residential development adjacent to our wildlife areas, we offer the following for consideration.

Because of the location and variety of habitat types, Lake Earl is extremely productive in fish and wildlife resources. The dense growth of aquatic vegetation and emergent marsh plants makes Lake Earl particularly important for the many kinds of

Further:

☆ Buffers can reduce the adverse impacts of human disturbance on wetland habitat including blocking noise and glare, reducing sedimentation and nutrient input, reducing direct human disturbance from dumped debris, cut vegetation and trampling, domestic animal predation, and providing visual separation. They also provide essential habitat for wetland-associated species for use in feeding, roosting, breeding and rearing of young, and cover for safety, mobility and thermal protection. As buffer width increases, the numbers and types of wetland-dependant and wetland-related wildlife that can depend on the wetland and buffer for essential life needs increases.

☆
mule Findlay and Houlihan (1997) found that herptile and mammal diversity declined when forests were cleared within two kilometers of a wetland in their investigations in southern Ontario. Specifically, when 20 percent of the forest is cleared near a wetland, the diversity of reptiles, amphibians and mammals decreases by as much as 20 percent. Previous studies have suggested that disturbances such as building roads and clearing forests can reduce biodiversity by keeping animals from migrating and making it easier for nonnative species to spread. Their results suggest that, to preserve maximum biodiversity in wetlands, buffers should be increased to extend a kilometer or two from wetland edges.

☆
sorel Castelle et al. (1992) recommended buffer needs of 600 feet or larger from the wetland boundary to protect cavity nesting ducks (wood duck, hooded merganser). However, the study also suggests that 300-foot forested buffers (which conserve plant structure) could retain wetland function for those species provided the wetland was contiguous with other habitats. Disturbance free buffers of 300-330 feet were recommended to protect such species as beaver, high-use migratory bird areas, dabbling duck nesting (mallard, gadwall), mink and heron feeding within the wetland.

To protect the fish and wildlife values associated with the LEWA, we recommend that the project incorporate the inclusion of a 100-foot wetland buffer (which retains all native vegetation and trees) from the Bay Meadows' eastern property line. This would provide protection to the LEWA needed at full buildout from the Bay Meadows project. As most proposed lots are +200 feet deep, adequate room exists for building sites. Sewage disposal is to occur within the communal disposal site. This requirement could be included within the limits of the proposed homeowner's association.

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water-associated birds that migrate through and winter along the northern California coast (Monroe et al. 1975). Water bird censuses conducted over a three-year period indicate an average annual use of about three million bird days. Waterfowl such as wood and ring-necked ducks, gadwall, grebes, herons, egrets and other wetland-associated birds and small mammals use the log pond area for breeding, foraging and loafing (Monroe et al. 1988). This log pond supports the largest concentration of wood ducks within the LEWA (A. Barron, personal communication).

It is our understanding the project site was selectively harvested in 1979-80. An approved timber harvest plan entails the conversion of the 135-acre site. In essence, all remaining timber would be removed from the site. The expected future use of the "Bay Meadows" site (at a density of 181 units) will contribute to cumulative impacts through the increase in human disturbance both directly and indirectly to the LEWA. While the public's use of the LEWA does occur, it is secondary. As in this case, the "log pond" which lies immediately adjacent to the Bay Meadows eastern property line and many other LEWA locations are off-limits to consumptive public use due to the resource sensitivity and our desire to protect these values. Direct loss of forest habitat in immediate proximity to the log pond as well as significant loss of vegetative buffering and screening of the site will occur.

Prevailing winds during storm events typically flow from the southwest. The proposed project would open up an approximate 2,000-linear-foot forest edge along the eastern timber harvest boundary. The potential for wind throw of mature trees would likely occur within State-owned land lying adjacent to this eastern boundary. Loss of vertical structure and any significant functional vegetative buffering and screening capabilities would occur to the adjacent habitat which adjoins the log pond. For example, the removal of forested habitats up to the property line of the State-owned Crescent City Marsh Wildlife Area in 1994 (Zamarippia parcel) resulted in wind throw damage to fences, tree loss and habitat alteration in the adjacent wetland on State-owned lands.

Castelle et al. (1992) stated that:



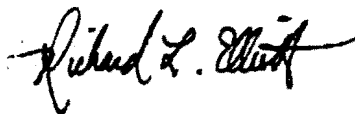
The narrower the vegetated uplands adjacent to wetland, the more susceptible wetland wildlife are to stresses and disturbances. Also, the narrower this zone is, the more susceptible the area is to loss of habitat function and productivity through natural changes or human induced impacts.

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In addition, in order to improve sight distances from the Bay Meadows entrance, the project entails the removal of vegetation and slope grading along Northcrest Drive toward the log pond. We believe some of this vegetation is wetland/riparian-associated and recommend avoidance of this sensitive vegetation. If this is not possible, we suggest relocating the entrance further south on Northcrest Drive.

If you have any questions regarding this matter, please contact staff biologist Ms. Karen Kovacs at (707) 441-5789.

Sincerely,



Richard L. Elliott
Regional Manager

cc: Ms. Karen Kovacs
Department of Fish and Game
619 Second Street
Eureka, California 95501

ate of California

Memorandum

TO: Mr. Glenn Newman, Chief
California Department of Forestry and
Fire Protection
Post Office Box 670
Santa Rosa, California 95402-0670

Date : December 17, 1997

Attention Review Team Chairperson, Humboldt-Dei Norte Ranger Unit, Fortuna

FROM: Department of Fish and Game - Region 1
601 Locust Street, Redding, California 96001

SUBJECT: Recommendations - Timber Harvest Plan (THP) 1-97-417 DEL, Brush Creek and Lake
Earl, Submitted by Scott and Diane

I. Scope of Report:

The report is based on review of the THP, a preharvest inspection of the THP area, and background information on the Lake Earl Wildlife Area (LEWA). The Department of Fish and Game's (DFG's) primary concern with this THP is protection of wetlands associated with the LEWA.

II. Background:

Lake Earl, an estuarine lagoon, is recognized as one of the most important coastal wetlands for fish and wildlife in California. An annual average of approximately 3 million water-associated annual bird days use have been recorded (Monroe, 1975). There are eight threatened and endangered species that inhabit the LEWA and 40 California bird species of special concern. Many of these wildlife species use the forest edge portion of the Lake Earl ecosystem as important habitat in their life cycles. Those species for which the forest edge is important for perching, roosting or nesting include great blue heron, green-backed heron, black-crowned night heron, common egret, snowy egret, American bittern, wood duck, red-tailed hawk, Cooper's hawk, sharp-shinned hawk, bald eagle, peregrine falcon, and belted kingfisher. Several of these species such as the larger herons, hawks, bald eagle, and peregrine falcon use taller trees and snags. The forest edge further acts as a buffer between wildlife that use the lagoon surface and mudflats for foraging and roosting and other activities close to the edge of the lake. This buffering effect is particularly important after land use changes as will occur on the site of THP 1-97-417. Species which use the lagoon and for which a buffer screen from adjacent human activities is necessary include waterfowl, shorebirds, wading birds, grebes, otter, mink, and other water-associated wildlife. The waterfowl and shorebirds generally feed in open areas such as the water surface or mudflats that have no protective screening. Some waterfowl species nest on the shore at the lake's edge. Western grebes nest on floating mats of vegetation close to the shore. Removal

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References:

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- Findlay, C. Scott, and Jeff Houlahan. 1997. Anthropogenic Correlates of Species Richness in Southeastern Ontario Wetlands. Conservation Biology, Vol. 11, No. 4, August 1997. Pages 1000-1009.
- Monroe, G., B. Mapes, P. McLaughlin, B. Browning, D. Rogers, R. Warner and J. Speth. 1975. Natural Resources of Lake Earl and the Smith River Delta. State of California, Department of Fish and Game, Coastal Wetland Series #10. 114 pages.
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of or damage to the screening effect of the forested edge pushes those species away from traditional use areas. Some are displaced completely. The endangered tidewater goby and threatened coho salmon, use the estuary and are known from those areas of the lake near the subject timber harvest. The value of wetlands, in general, and Lake Earl, specifically, to fish and wildlife are well documented (California Coastal Commission, 1983; California Coastal Zone Conservation Commissions, March 1975; California Coastal Zone Conservation Commissions, December 1975; Department of Fish and Game, 1974; Department of Fish and Game, 1975; Department of Fish and Game, 1988; Monroe et al., 1975).

The authority for protection of coastal wetlands and Lake Earl, specifically, occurs in the California Coastal Act (Act) of 1976. Section 30116 of the Act says,

'Sensitive coastal resource areas' means those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity.

'Sensitive coastal resources' include the following:

(a) Special marine and land habitat areas, wetlands, lagoons, and estuaries as mapped and designated in part 4 of the Coastal Plan."

Lake Earl is one of the designated wetlands in the "Coastal Plan," more specifically known as the *Preliminary Coastal Plan* (California Coastal Zone Conservation Commission, 1975). Section 30233 of the Act says that,

"Diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetlands or estuary. Any alteration of coastal wetlands identified by the DFG including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be very minor incidental public facilities, restorative measures and nature study."

Lake Earl is one of the 19 identified wetlands. The *California Coastal Plan* refers to these 19 wetlands as having been identified as "most productive" (California Coastal Zone Conservation Commissions, December 1975). While Act Section 30233 does not pertain directly to timber harvest, it recognizes that any activity other than "very minor incidental" changes to the wetland ecosystem is damaging to the system. The forested edge is a part of the ecosystem at Lake Earl. Section 30107.5 of the Act defines "environmentally sensitive areas" as any area in which plant or animal life are either rare or especially valuable because of their special nature or role in an ecosystem and could be easily disturbed or degraded by human activities and developments. Section 3024(a) says that, "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." Lake Earl is an environmentally sensitive habitat area. The unusually high wildlife values of Lake Earl are recognized not only by the California Coastal Commission and the DFG, but by all of the State and Federal trustee and permitting agencies that have direct trusteeship or permitting authority over the lake.

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The Act should be taken into consideration in the evaluation of timber harvests adjacent to the LEWA. Further, a detailed evaluation of the cumulative impacts of timber harvests adjacent to the LEWA must be addressed and the requested buffer around the LEWA should be provided.

Research published by the Washington State Department of Ecology recommends that coastal wetlands with important wildlife functions should have a 200 to 300-foot buffer based on land use. It is particularly important to maintain buffers of 200 to 300 feet beyond the edge of the wetland with retained plant structure to maintain wetland dependent wildlife in important wildlife areas. The recommendation notes that the 200 to 300 foot buffer is particularly important where open water is a component of the wetland or where the wetland has heavy use by migratory birds or provides forage area for herons (Castelle et al. 1992). Lake Earl is a particularly large high resource value wetland of over 4,800 acres with a large open water component, high migratory bird use and substantial heron use. It further has high threatened and endangered species use.

III. Recommendations:

Specific to THP 1-97-417, a thorough cumulative impacts analysis is necessary. The most significant documented biological value on or adjacent to THP 1-97-417 is the Lake Earl Wildlife Area which is not mentioned in the cumulative impacts analysis. The McNamara, Bay Meadows and Feller timber harvests with their subsequent subdivisions and the Vipond, Pacific Shores and Feller with their attenuated developments should be addressed in terms of the effect they have on the edge of Lake Earl and its associated wildlife values.

subdivisions

The entire wet area or wetland boundary should be clearly delineated with a single recognizable marker system. The delineation should be completed by an individual knowledgeable of wetland delineation techniques.

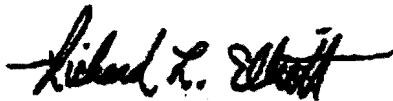
The boundary between the LEWA and the Feller property must be surveyed and marked. The property boundary and THP boundary are not now clearly delineated and the Registered Professional Forester and property owner indicated that they were unaware of the specific property boundary. The DFG recommends a 200-foot buffer between the THP boundary and the LEWA.

The wet area or wetland associated with Brush Creek should be afforded ^{with} as a minimum protection of a 100-foot buffer from its outer edge. The THP site is proposed for subdivision and residential development. Del Norte County (County) has designated the area in the vicinity on either side of Brush Creek as a "Resource Conservation Area" which is provided protection by the County Local Coastal Program. The County's options to provide protection to the wet area or wetland resources through its Local Coastal Plan processes should not be precluded because of damages that may occur as a result of the THP.

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The THP states coho salmon habitat does not occur on or adjacent to the THP. Coho salmon occur in both Lake Earl and Jordan Creek. The channel for Jordan Creek and its confluence with Brush Creek are close to the THP boundary. Because of this fact the DFG recommends that CDF consult with the National Marine Fisheries Service.

The DFG appreciates the opportunity to comment on this project which affects State wildlife areas. Should you have any questions about our comments or if we may be of further assistance, please contact Wildlife Biologist Herb Pierce in our Eureka office at (707) 441-5790 (CALNET 538-5790).



Richard L. Elliott
Regional Manager

cc: Mr. Scott Feller
207 Price Mall
Crescent City, California 95531

Mr. Joe Fassler
California Department of Forestry
and Fire Protection
Post Office Box 425
Fortuna, California 95540

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California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105-
1846

Mr. Dick Butler
National Marine Fisheries Service
777 Sonoma Avenue, Room 325
Santa Rosa, California 95404

Mr. Randy Brown
US Fish and Wildlife Service
625 16th Street
Arcata, California 95521

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Deborah Jaques
7700 Bailey Road
Crescent City, CA
95531

January 17, 1998

464 - 2770
482 - 2770

Tom Osipowich
CA Dept. of Forestry
Coast-Cascade Region
P.O. Box 670
Santa Rosa, CA 95402-0670

Dear Mr. Osipowich,

This letter is in regard to the Brush Creek Timber Harvest Plan #1-97-417 DEL. I am concerned about the potential negative impacts of the proposed clearcut in "Unit 1" on the Lake Earl shoreline. I am a wildlife biologist, local business owner, and dedicated Crescent City community member. This is the first THP that I have ever opposed. I believe that a clearcut at this location would be a major detriment to the aesthetic enjoyment of Lake Earl and be harmful to the developing nature-based tourism that we are trying to develop in this region. The THP filed by Scott and Diane Feller (11/24/97) ignores these effects. The biological assessment submitted in the plan is also very inadequate. I have not been in the stand but have observed bird use of the area from public access points.

One Species of Special Concern which was not mentioned in the THP is the Western Grebe. Lake Earl supports the only known coastal breeding population of these birds in California. During the 1997 breeding season, the primary colony site occurred immediately adjacent to the proposed clearcut near the mouth of Brush Creek. Western Grebes construct floating nests on the surface of the water. One of the primary causes of nest failure is excessive wind. The clearcut would probably result in loss of the buffer from NW spring and summer winds and could preclude successful nesting from taking place at the site. Human disturbance from logging during the breeding period, as well as subsequent development, may also have a negative impact on the colony.

In general, the wildlife surveys described in the THP appear to be insufficient to address potential impacts. For example, "infrequent incidental observations" will not determine whether or not the Sharp-shinned Hawk nests in the Brush Creek area. Other potential nesting species include the Red-shouldered Hawk, White-tailed Kite, Green Heron and Wood Duck. Is logging proposed to take place during the breeding season without knowledge of whether these species are nesting in the stand? The trees provide feeding platforms and shelter for species such as the Bald Eagle, Peregrine Falcon, Osprey, Great Egret and Great Blue Heron. What are the cumulative impacts of the various cuts

around the shores of Lake Earl for these species and others?

The THP states that Coho Salmon do not occur in Brush Creek because the current breaching regime precludes use of Lake Earl by these fish. It is my understanding from lifetime residents that Brush Creek was at one time a very significant drainage for anadromous fish, including Coho. The current breaching regime is not a permanent arrangement and may very well change in the next 200 years. Brush Creek should be considered anadromous fish habitat and protected as such.

The promontory currently offers great forest habitat diversity due to the mixed age and species composition of the stand. The shoreline frontage, riparian and wetland habitats add to make this a regionally unique area. Management for even-aged timber will not replace the habitat that will be lost. What is the likelihood of trees such as Sitka Spruce being regenerated in the stand? What is the likelihood that they will ever be allowed to grow large? I have been told by County employees that the property owner's plan following the clearcut is for subdivision and homesites. Why was this not mentioned in the THP?

In terms of visual impacts, the region proposed for clearcut is a very prominent feature of the Lake Earl shoreline. The August 16 Addendum to the THP states that the clearcut will not be readily visible from Lake Earl or Lake Earl Drive. I contest this statement. The proposed 75-100 ft. buffer of deciduous trees will not be adequate to conceal the clearcut. The cut would be visible, for example, from essentially every view of Lake Earl from the Lake Earl Wildlife Area peninsula on a clear day. In combination with the poorly designed lakeside development to the south, it would create a scar on the landscape and detract from appreciation of the Lake Earl area by residents and visitors. The clearcut has the potential to change the character of the area significantly.

Several nature-based tourism businesses are budding in the Crescent City-Brookings region, and Lake Earl has been targeted as a primary attraction. Lake Earl is one of the most biologically diverse and exciting places for birdwatching on the north coast. It will be very important to maintain a natural setting and diverse array of wildlife habitats around the lake shores if these businesses are to succeed. The clearcut is located immediately adjacent from the main public access and viewing point on the east side of the Lake (end of Lakeview Drive), which is also the primary boat launch at Lake Earl. By altering the viewshed, the proposed clearcut would have negative impacts on tourist appeal and will detract from recreational experiences including boating, birdwatching, nature photography, waterfowl hunting and sight-seeing. This could result in economic loss to the community as a whole.

I believe that the special values of the Brush Creek promontory warrant a much more thorough assessment of potential

adverse biological, visual, and economic impacts from a clearcut. A much broader buffer strip (200-400 feet) around the lakefront, that includes dense stands of conifers, would help mitigate many of the impacts from a clearcut and future housing development. I urge you not to approve the THP as it written. Thank-you for your attention.

Sincerely,

Deborah Jaques

3

EXHIBIT NO. 9
APPLICATION NO.
A-1-DNC-99-037
STAFF REPORT (Page 1 of 23)

: Associates

STAFF REPORT

APP# GP99-007C

APPLICANT: Richard and Genevieve McNamara

APPLYING FOR: Coastal Grading Permit

AP#: 110-020-64 LOCATION: end of Clayton Drive, off Vipond Drive

<u>PARCEL(S)</u>	<u>EXISTING</u>	<u>EXISTING</u>
<u>SIZE:</u> 3 acres	<u>USE:</u>	<u>STRUCTURES:</u>

PLANNING AREA: 3 GENERAL PLAN: General Ag-5ac, Resource Cons. Area

ADJ. GEN. PLAN: Same

ZONING: A-5, RCA-2(r) ADJ. ZONING: Same, RCA-1

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. FIELD REVIEW NOTES: DATE: 2/5/99 HEALTH DEPT x BUILDING INSP x
PLANNING x ENGINEERING/SURVEYING

ACCESS: Clayton Rd. off Vipond Dr. ADJ. USES: Res. and vacant
TOPOGRAPHY: generally flat DRAINAGE: Lake Earl

DATE OF COMPLETE APPLICATION: 2/11/99

3. ERC RECOMMENDATION: CEQA Class 4 exempt. Approval with conditions.

4. STAFF RECOMMENDATION:

Richard and Genevieve McNamara own approximately 26.94 acres of land located between Lakeside Loop and Clayton Road near Vipond Drive. Scott Feller, Registered Professional Forester, has applied for a coastal grading permit for the harvesting of three acres of trees on the northern portion of the property. The harvest is exempt from State Timber Harvest requirements; however, under the County's Local Coastal Program, a coastal grading permit must be approved by the Planning Commission prior to any harvest on the property.

The McNamara parcel has three separate zone designations including R1-B-13 (Single Family Residential - 13,000 sq.ft. minimum lot size), A-5 (Agriculture - 5 acre minimum lot size) and RCA-2(r) (Designated Resource Conservation Area - coastal riparian habitat). A biological review of the entire 26.94 acre parcel was completed by Karen Theiss and Associates in January, 1993, and amended in May, 1998, as part of a Rezone and Major Subdivision application. The Major Subdivision application (MJ9702C) was approved but is not yet completed, and the Rezone application (R9702C), submitted by the applicant in November of 1996, was approved by the County Planning Commission in June of 1997, and a Negative Declaration adopted (SCH# 96122060). The Local Coastal

Program Amendment for the rezone was approved by the California Coastal Commission in September of 1998. The amendment involved the rezone of General Resource Conservation Area (RCA-1) land to the designated RCA-2(r) zone designation. As a result of the rezone and amendment, those areas not found to have any riparian characteristics were rezoned to the abutting zone designation.

The proposed timber harvest is in the northern A-5 portion of the property; however, the applicant is proposing to access the site by crossing parts of the RCA-2(r) designated land. Staff has conditioned the project to provide an alternative access that does not cross any designated riparian habitat. Since riparian resources are considered environmentally sensitive habitat, they may not be crossed with any heavy equipment under Section 21.11A.030 under Title 21 Coastal Zoning. When feasible, a road may be proposed if it is at a right angle crossing of the stream corridor. This minimizes disturbance of the habitat. The proposed access road does not cross the RCA-2(r) at a right angle. Based on the submitted plot plan, an alternative access off of Clayton Road onto the A-5 portion of the property should be considered using the non-RCA corridor provided by the recent rezoning.

Staff has also conditioned the project for the RCA-2(r) portion of the land adjacent to the harvest area to be flagged in the field and that a Department of Fish and Game representative meet with the forester in the field and concur on the placement of the flagging. Although vegetation disturbance may be allowed within the RCA-2(r) zoned land, it is not the subject of this permit, which is only for the removal of timber in the designated area on the submitted plot plan.

A letter has been received from Bob and Francine Adkins, property owners of APN 110-020-22, which is adjacent to the subject harvest area and accessed off of Lakeview Drive. They are requesting the Commission continue the project for eight weeks in order for them to investigate the overall impact of the proposed harvest. Extensive review of this project was completed as part of the rezone process and prior subdivision and environmental review. Coastal Commission staff, Department of Fish and Game staff and the County Planning Commission all approved of the work completed by Karen Theiss and Associates in identifying environmental issues on the entire McNamara Parcel. Under Title 21 Coastal Zoning, it is within the rights of the property owner to use land for permitted and possible conditional uses subject to the underlying zone designation.

Addendum to Staff Report

Several issues were brought up during the Planning Commission meeting on March 3, 1999, which need to be clarified. The first is in reference to a recent non-permitted timber harvest on the subject parcel by the applicant. A cease and desist order was sent to the applicant by the Engineering and Surveying Division which enforces grading violations. It is staff's understanding that the cutting has stopped. Any questions regarding the recent cuts and how they affect the applied for three-acre exemption must be directed to the California Department

of Forestry and Fire Protections. It is their regulation that only one three-acre exemption is allowed per contiguous ownership parcel.

The findings from the 1985 Staff Report, prepared for the McNamara Subdivision, were also mentioned during the meeting. References were made to findings "C-E". Finding "C" addressed vegetation clearing for subdivision development be limited to street, utility and drainage improvements and that no project related clearing be permitted in the RCA-1 zoned area. Finding "D" addressed the issue that RCA rezoning must be approved and designated prior to the development of lots in the RCA-1 zone area and by the recordation of subdivision covenants, conditions and restrictions which limit native wooded habitat below the 12 foot elevation line. Finding "E" addressed the location of an existing fence along the common boundary with state lands and use of lot design in order to avoid public access directly onto state lands.

These findings need to be clarified and the context of their relevance to the current project explained. Findings "C" and "D" relate to vegetation removal and RCA rezoning. The purpose behind these findings is to prevent the disturbance of vegetation of generally undesignated resource conservation areas prior to biological mapping of the subject area by a qualified professional and an RCA rezone. The McNamara's have gone through the RCA rezone process which delineated the location of the riparian habitat and the 12-foot elevation line. As stated above in the original staff report, all proposed vegetation removal is within the A-5 zoned area of the subject parcel. Finding "E" relates to use of lot design and fencing as a way of mitigating any increased disruption of wildlife on adjacent farmed wetlands. This finding has no consequence on the current project since the proposed removal is buffered from the farmed wetlands by the RCA-2(r) zoned area.

The last issue deals with the project's CEQA Class 4 exemption. Written comments and testimony during the meeting from Sandra Jerabek, Susan Morrison, Eileen Cooper and Joe Gillespie of the Friends of Del Norte recommended the CEQA determination should be denied based on CEQA Section 15300.2, Article 19, items "A", "B", and "C" which deal with cumulative effects of projects on the environment. The Friends of Del Norte letter of 3/3/99, and the Sandra Jerabek letter state that a CEQA Class 4 exemption is not appropriate for this project based on cumulative impact and significant impact. Findings have been included below for the Commission's consideration regarding both situations. No substantial evidence has been submitted that demonstrates a cumulative impact or significant effect on an environmental resource. There is no information before the lead agency that the project will result in a cumulative impact on the environment, or that the project will result in a significant effect due to an unusual circumstance. The project is in compliance with Title 21, local coastal program zoning enabling ordinance of the County of Del Norte. CEQA allows a lead agency to determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved coastal plan. The above plan was adopted by the County and Certified by the

California Coastal Commission through a public review process and is administered by Del Norte County.

CEQA also allows a lead agency to determine that the incremental impacts of a project are not cumulatively considerable when they are so small that they make only a de minimus contribution to a significant cumulative impact caused by other projects that would exist in the absence of the proposed project. All Timber Harvest Plans and exempt timber conversions within and outside of the Coastal Zone are not within the permit authority of the County, and will continue to exist in the absence of this proposed project. The mere existence of other projects that may result in significant cumulative impacts does not constitute substantial evidence that the proposed project's incremental effects are cumulatively considerable.

The public comment portion of the hearing was closed at the Commission's last meeting. The Commission is not required to reopen the public hearing at this time. Staff recommends the Commission discuss the project issues as presented at the last meeting and in the staff report addendum above, which addresses the comments received during the public hearing. Staff further recommends the Commission adopt the findings and approve the project with the specified conditions.

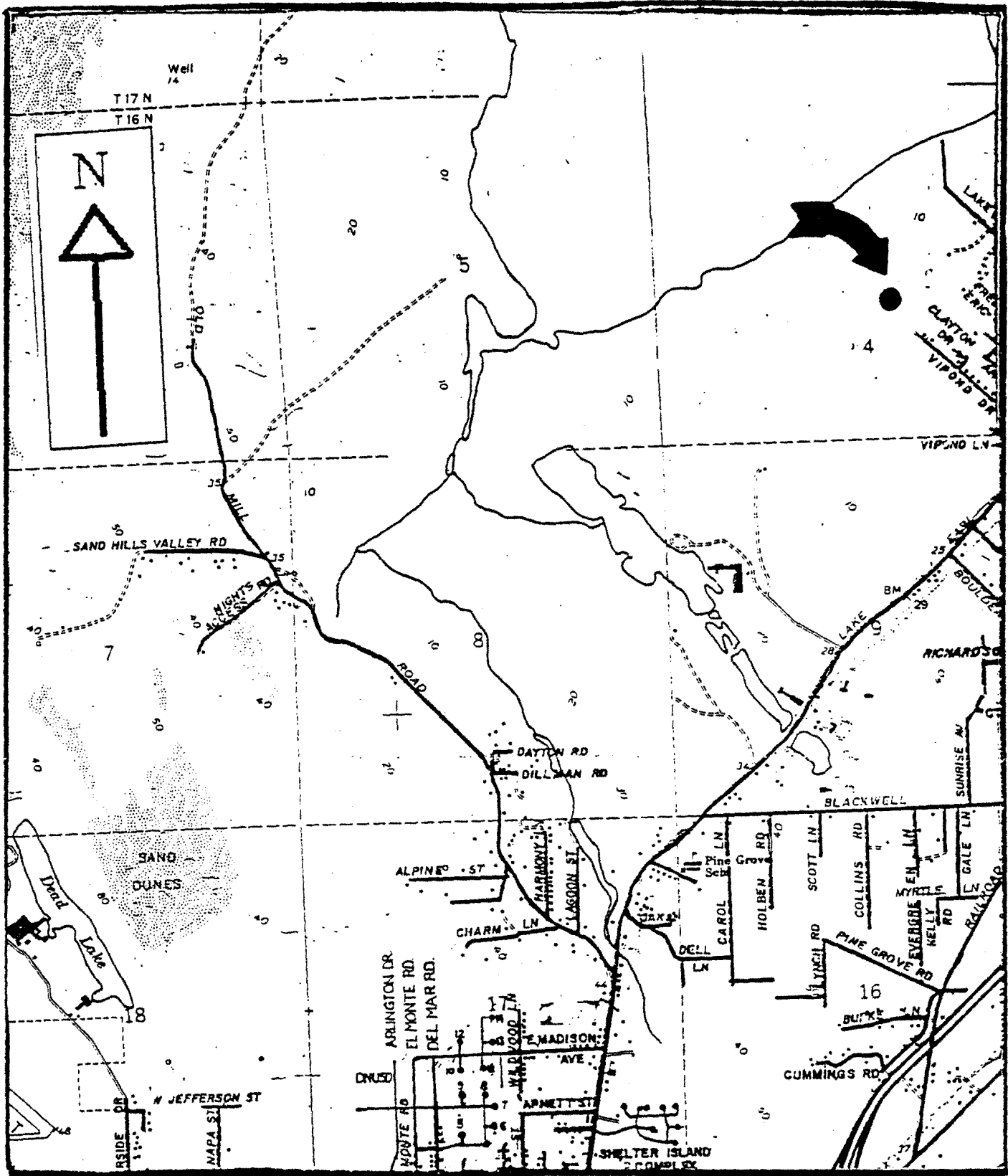
5. FINDINGS:

- A) The project is consistent with the policies and standards of the General Plan and Title 21 Zoning; and
- B) The project is exempt from the requirements of the California Environmental Quality Act as a Class 4 Exemption; and
- ** C) The project as conditioned is not located within an area that includes an environmental resource of hazardous or critical concern, that has been designated, precisely mapped, and officially adopted pursuant to law by a federal, state, or local agency; and
- ** D) A prior biological survey of the property was conducted by Karen Theiss and Associates for the purpose of habitat RCA zoning and adopted as SCH# 96122060. No habitat or listed species impacts were identified in the biological survey; and
- * E) The original McNamara Major Subdivision EIR (SCH# 82111705) addressed wildlife issues for the entire parcel. The RCA and below 12-foot contour represent the area where the most sensitive habitat may be found. The Department of Fish and Game has not objected to any subsequent projects in the same area (i.e. this project); and

- * F) The RCA-2(r) zoned land on the McNamara parcel represents "the forested edge of the estuary". The RCA-2(r) zoned land is located to the west of the proposed harvest area, serving as a buffer between the lake and the A-5 zoned land; and
- * G) The proposed 3 acre minor timber conversion is completely located within the A-5 portion of the McNamara parcel. This zoning was adopted by the Board of Supervisors on September 6, 1983; and
- ** H) There is no substantial evidence before the lead agency that the subject property is located within a particularly sensitive environmental area; and
- ** I) The subject project constitutes a minor private alteration in the condition of land and vegetation for forestry and/or agricultural purposes; and
- *** J) Significant cumulative impacts will not result over time from successive projects of the same type in the same place because this project constitutes a de minimus contribution to the cumulative effect of other projects completed in the area (i.e. Wier - GP9701C; Reed - GP9603C; Geertson - GP95007C; Reservation Ranch - THP-110-020-62) and its mere existence does not result in substantial evidence that the project's incremental effects are cumulatively significant; and
- *** K) Although the subject property is approximately three quarters of a mile away from an area the Department of Fish and Game has determined is utilized by wintering bald eagles, the harvesting of less than 3 acres of trees on the subject property does not constitute substantial evidence that the project's incremental effects will have a cumulative impact on the bald eagle; and
- *** L) There is no substantial evidence before the lead agency showing a reasonable possibility that significant environmental impacts will result due to unusual circumstances, as no unusual circumstances have been identified with regard to the subject project.

6. CONDITIONS:

1) This is a coastal permit for removal of timber under a harvest exemption in the designated area on the project map. Removal of timber or disturbance of vegetation within any adjacent riparian areas is not a part of this permit;



LOCATION MAP

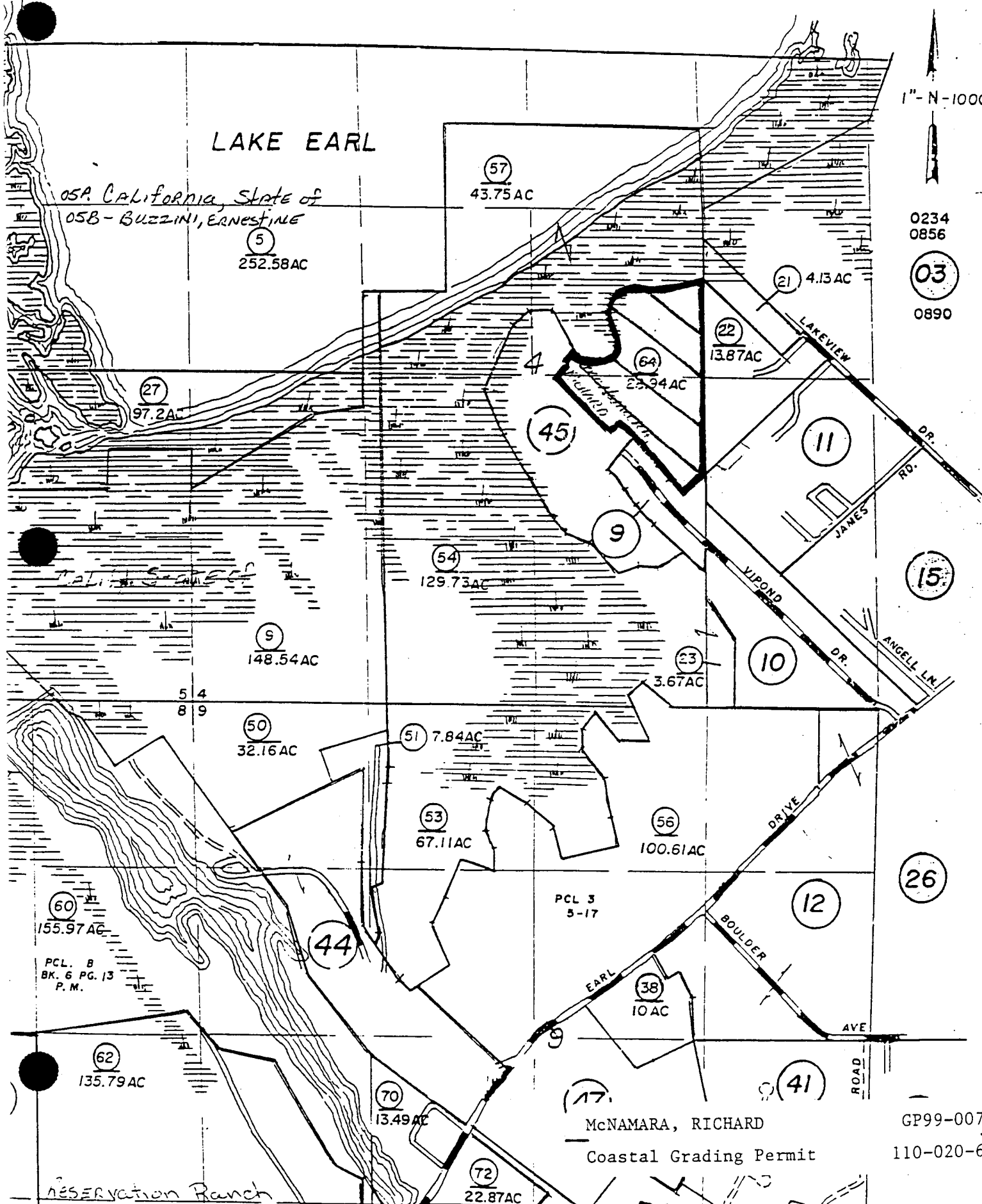
McNAMARA, RICHARD

Coastal Grading Permit

GP99-007C

110-020-64

116 73



LAKE EARL

05A. CALIFORNIA, State of
05B - BUZZINI, ERNESTINE

1" = N-1000'

0234
0856

03
0890

PCL 3
5-17

PCL. 8
BK. 6 PG. 13
P.M.

McNAMARA, RICHARD
Coastal Grading Permit

GP99-007C
110-020-64

RESERVATION Ranch

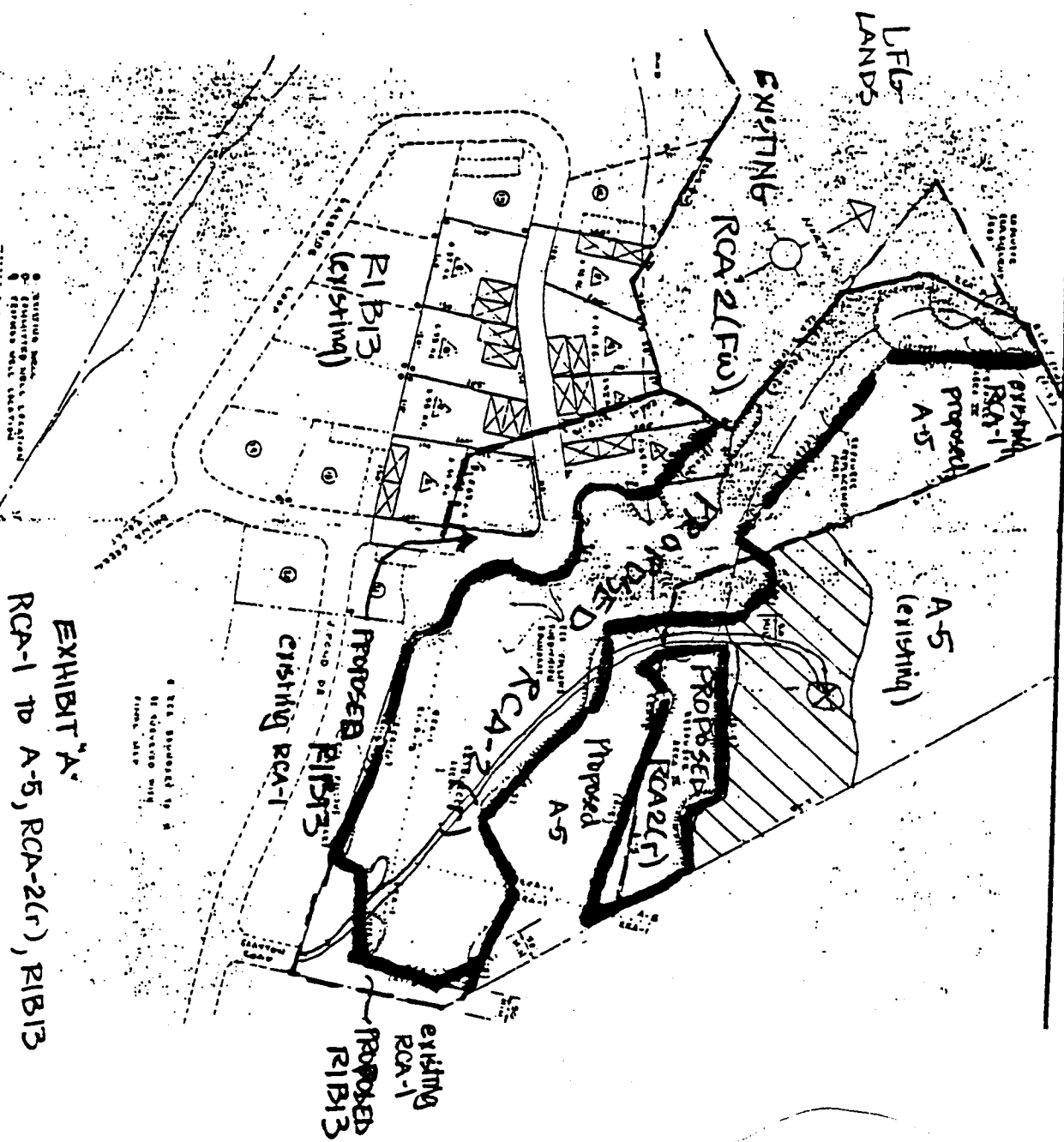


EXHIBIT "A"
RCA-1 to A-5, RCA-2(F), R1B13

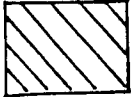
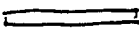


-  CONVERSION Area
-  Existing Road
-  Log Landing

EXHIBIT NO. 4
APPLICATION NO. CNC LCP 2-98 McNAMARA
PROPOSED ZONING
 California Coastal Commission



Friends of Del Norte

Post Office Box 229
Gasquet, CA 95543

(707) 464-4003

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Our Environment
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3-3-99
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Att: Del Norte Planning Department, Planning Commission, and BOS:
Concerning Grading Permits #GP99-007C, APN 110-020-64, McNamara
#GP99-009C, APN 110-130-29, Foster

Recently many development projects and timber cuts have been undertaken around the Lake Earl perimeter. Cumulatively they are having a significant detrimental affect on the high quality of this habitat. Some of these projects are substantial in size, and some are 3-4 acres.

Just last year the Brush Creek Timber Harvest Plan #1-97-417 DEL, located on the lake shore, was found to be substantially inadequate. Studies conducted as a result of our concerns turned up the startling fact that Endangered Bald Eagles and Peregrine Falcons were using this site extensively. This site is located approximately only 1 mile, or less, from the project sites now under review. This is reason enough to require adequate environmental study for all projects around Lake Earl and Tolowa, and the effects of cumulative impacts be considered.

There are also other special circumstances for environmental concern on each of the two sites.

On the Foster property bald eagle sightings were made by the adjacent property owner and an avid bird watcher. Also this site is adjacent to the log ponds which are contiguous with the lake, and are a main source of fresh water flowing into the lake. The proposed Foster project will remove the entire forested buffer zone separating the wetland from adjacent development.

On the McNamara property there is evidence of a possible heron roost, as distinctive loud calling can be heard regularly in the evenings by adjacent property owners. On a brief walk around this area, you will hear large choruses of two species of frogs, and find numerous salamanders. According to Carl Page, Army Corps of Engineer ichthyologist, one of the best breeding areas for the Endangered tidewater goby is located near the lake shore in the Vipond area. Another species of concern is the Threatened coho salmon. How will all of these timber cuttings affect the ecosystem and the numerous creatures that make this rich environment their home?

Lake Earl supports the most northern breeding population of Western Grebes on the coast. The primary colony site occurs near the McNamara property. One of the primary causes of nest failure is excessive wind. Removal of or damage to the screening effect of the forested edge could preclude successful nesting.

According to the Dept. of Fish & Game:

Lake Earl is recognized as one of the most important coastal wetlands in California. There are eight threatened and endangered species that inhabit the LEWA and 40 California bird species of special concern. Many of these wildlife species use the forest edge portion of the Lake Earl ecosystem as an important habitat for their life cycles. Those species for which the forest edge is important for perching, roosting, or nesting include great blue heron, green-backed heron, black-crowned night heron, common egret, snowy egret, American bittern, wood duck, red-tailed hawk, Coopers hawk, sharp-shinned hawk, bald eagle, peregrine falcon, and belted kingfisher. Several of these species such as the larger herons, hawks, bald eagle, and peregrine falcon use taller trees and snags. The forest edge further acts as a buffer for wildlife that use the lagoon surface and mudflats for foraging and roosting and other activities close to the edge of the lake. Species which use the lagoon and for which a buffer screen from adjacent human activities is

necessary include waterfowl, shorebirds, wading birds, grebes, otter, mink, and other water associated wildlife. Removal of or damage to the screening effect of the forested edge pushes those species away from traditional use areas. Some are displaced completely.

The value of wetlands, in general, and Lake Earl, specifically, to fish and wildlife are well documented. The authority for protection of coastal wetlands and Lake Earl, specifically, occurs in the California Coastal Act of 1976. Section 30116 of the Act says:

'Sensitive coastal resource areas' means those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity

'Sensitive coastal resources include the following: (a) Special marine and land habitat areas, wetlands, lagoons, and estuaries as mapped and designated in part 4. of the Coastal Plan"

Lake Earl is one of the 19 designated wetlands in the 'Coastal Plan' as having been identified as most productive. While Act Section 30233 does not pertain directly to timber harvest, it recognizes that any activity other than "very minor incidental" changes to the wetland ecosystem is damaging to the system. The forested edge is part of the ecosystem at Lake Earl.

The California Coastal Act must be taken into consideration in the evaluation of timber harvests adjacent to the LEWA. A detailed evaluation of the cumulative impacts of timber harvests adjacent to the LEWA must be addressed and an adequate buffer around the LEWA should be provided.

Research published by the Washington State Department of Ecology recommends that coastal wetlands with important wildlife functions should have a 200 to 300 foot buffer based on land use. It is particularly important to maintain buffers of 200 to 300 feet beyond the edge of the wetland with retained plant structure to maintain wetland dependent wildlife in important wildlife areas. The recommendation further notes that the 200 to 300 foot buffer is particularly important where open water is a component of the wetland or where the wetland has heavy use by migratory birds, or provides forage area for herons. (Castelle et al. 1992). Lake Earl is a particularly large, high resource value wetland, of over 4,800 acres with a large open water component, high migratory bird use and substantial heron use. It further has high threatened and endangered species use.

A CEQA 4 exemption is not applicable considering these circumstances. An exemption will circumvent adequate environmental review. The cumulative effects of removing the forested edge around Lake Earl in a piece-meal fashion have not been considered. Today there are two projects of 3-5 acres each around the lake. Next month there could easily be 2 more projects of 3-5 acres each in the same area. Other recently developed projects proceeded the Bald Eagle situation, and did not take into account the impact that successive projects of the same type will have over time, on this valuable habitat. We have already lost too much of the forested edge of Lake Earl, with disregard to regulations that protect this sensitive habitat from cumulative detrimental impacts.

The CEQA Class 4 exemption is not relevant in the area surrounding Lake Earl because of the serious negative environmental impacts that these cumulative projects will have, as noted in Article 19 Section 15300.2, Items B. and C:

- Exemptions Class 3,4,5,6, & 11.
- (B) Cumulative Impact-

All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place over time is significant

(C) Significant effect-

A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

The Friends of Del Norte are willing to pursue legal action to insure: that CEQA regulations are correctly applied; that the California Coastal Act is enforced; that adequate environmental study be undertaken; and that adequate buffer zones be retained around the LEWA. The project applications are incomplete, and the CEQA Class 4 exemption is not legal in these two projects. We recommend that you deny these applications. CEQA necessitates that the county mitigate a cumulative impact analysis.

Thank you

A handwritten signature in cursive script, reading "Joe Gillespie".

President, Friends of Del Norte



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Arcata Fish and Wildlife Office
1125 16th Street, Room 209
Arcata, California 95521

707-822-7201

FAX: (707) 822-8411

March 30, 1999

In Reply Refer To:

1-14-99-TA-110

Mr. Joe Gillespie
President, Friends of Del Norte County
1093 Hwy 101 N #18
Crescent City, CA 95531

Subject: Response to Request for Technical Assistance Regarding Del Norte County Grading Permits
#GP99-007C McNamara, GP99-009C Foster, and associated CDF 3 Acre Exemptions

Dear Mr. Gillespie:

This responds to your request for U.S. Fish and Wildlife Service (Service) technical assistance, received in our office on March 20, 1999, on the above projects. At issue in the request is the potential for incidental take of the Federally listed bald eagle and American peregrine falcon as a result of implementation of the projects listed above. After review of the information pertaining to this request, the Service provides the following technical assistance.

The Service has no direct evidence of bald eagle or peregrine falcon use of the two proposed exemption areas; however, the letter from the California Department of Fish and Game to Mr. Jay Sarina, dated March 3, 1999, provided with the request for technical assistance states the project site(s) contain potential habitat for the bald eagle. In addition, the letter states in recent years the use of the Lake Earl area by wintering bald eagles has increased. Furthermore, the site is within two miles of a similar area used by wintering bald eagles last year. The Service has determined that without surveys for wintering bald eagles prior to approval, the proposed projects have the potential to incidentally take bald eagles.

All maps and data used to provide this technical assistance are on file at this office. If you have questions regarding this response, please contact Mr. Ken Hoffman at the Arcata Fish and Wildlife Office at (707) 822-7201.

Sincerely,

Bruce G. Halstead
Project Leader

HANDED OUT BY STAFF
PLANNING COMMISSION
MEETING OF

4/7/99 JFW

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APR - 2 1999

PLANNING
COUNTY OF DEL NORTE

1610 Panorama Drive
Arcata, CA 95521
April 5, 1999

RECEIVED

Del Norte County Planning Department
700 5th Street
Crescent City, CA 95531

APR - 6 1999

PLANNING
COUNTY OF DEL NORTE

Dear Sirs:

I am a retired wildlife biologist with the U. S. Fish and Wildlife Service and adjunct professor in the Wildlife Department at Humboldt State University. In the course of directing field investigations of graduate students on waterfowl, wading birds, and raptors of Lake Earl and vicinity, I have made dozens of trips to the area since 1973. The following comments concern Grading Permits #GP99-007C, APN 110-020-64, McNamara and #GP99-009C, APN, 110-130-29, Foster.

The McNamara site contains forest bordering Lake Earl. Snags in the trees there provide perches for various species of raptors and herons. Similar nearby lakeshore habitat has been frequented by Bald Eagles and Peregrine Falcons, both Federally Listed Endangered Species.

The Foster site is adjacent to sizeable former log ponds. These wooded ponds provide prime habitat for nesting Wood Ducks and for migrating and wintering Ring-necked Ducks. A few of the latter have also nested in the area. The pond on the east side of Lake Earl Drive is the site of the first recorded nesting of the rarer Hooded Merganser in the area and constitutes one of only four or five known nestings in the North Coast Region. Both the Ring-necked Duck and Hooded Merganser reach their southern coastal breeding limit in the region.

Clearing of trees in both the McNamara and Foster tracts would eliminate perches, roosting and nesting sites for the aforementioned species and other wildlife. In addition, it would reduce or eliminate the space needed to provide needed buffer from disturbance by adjacent human activity and development.

Numerous other projects involving timber harvest and clearing have occurred in the past around Lake Earl, considered the most important coastal lagoon in California. The present wildlife value of the McNamara and Foster properties and the cumulative nibbling effect of the continued removal of small but important tracts of wooded habitat surrounding the lake need to be assessed before further forest clearing is permitted.

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PLANNING COMMISSION
MEETING OF

4/7/99 *afv*
✓

Sincerely yours,

Paul F. Springer

Paul F. Springer



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COUNTY OF DEL NORTE

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PLANNING COMMISSION
MEETING OF

4/7/99

the **Northcoast
Environmental
Center**

Bruce Halstead, U.S. Fish and Wildlife Service
1125 16th Street, Room 209
Arcata CA 95521

April 2, 1999

Joe Fassler, California Department of Forestry
118 Fortuna Blvd.
Fortuna CA 95540

FAX 725.9827

→ Ernie Perry, Del Norte County Planning Dept.
700 Fifth Street
Crescent City CA 95531

**Re: 3 acre exemption logging associated with Del Norte
County Grading Permits GP99-007C McNamara and
GP99-009C Foster, ESA consultations for listed species.**

Messers Perry, Fassler, and Halstead:

It has again come to our attention that proposed activities on the shores of Lake Earl may cause damage to public trust values, and species of fish and wildlife that are listed for protection under the Endangered Species Act (ESA). As reported to us, the above referenced county grading permits, are linked to plans for logging mature Sitka spruce trees under exemption from the California Forest Practices Act.

We are quite familiar with Lake, the largest coastal lagoon in California, and its history of conservation problems. Species listed under the ESA that could be affected by activities in the Lake Earl watershed include: tidewater goby, coho salmon, bald eagle, peregrine falcon and several others.

We are requesting by this letter that you exercise your affirmative duty to assure that permitted activities do not result in the take of any listed species, the destruction of their habitat, the loss of protected wetlands, or a degradation of water quality as to impact its beneficial uses.

379 NINTH STREET • ARCATA, CA 95521

(707) 822-8913 • Fax (707) 822-0827 • email: nec@igc.apc.org

NEC to USFWS, CDF, & DNCPD, 4.2.99, re: Lake Earl logging, p 2.

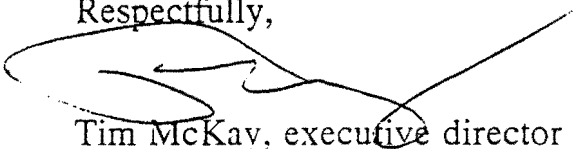
Please advise us in writing of any consultations that your agency might conduct with regard to either the Forest Practices Act, the ESA or the Clean Water Act.

Also, please advise us as to what other agencies, in your professional opinion should be involved in assessing these proposed projects, such as: the California Coastal Commission, the State Lands Commission, the Army Corps of Engineers or the California Department of Fish and Game.

We believe that your agency has a public trust responsibility to assure that permit conditions eliminate adverse impacts on the public trust values outlined above. We request that you issue no permits until such mitigations are agreed to by the applicant.

Thanks for your time and consideration in these important matters.

Respectfully,



Tim McKay, executive director

TM/me

CC: Friends of Del Norte County
Redwood Region Audubon Society
California Coastal Commission
Senator Wes Chesbro
Assemblymember Virginia Strom-Martin
California Department of Fish and Game
U.S. Army Corps of Engineers

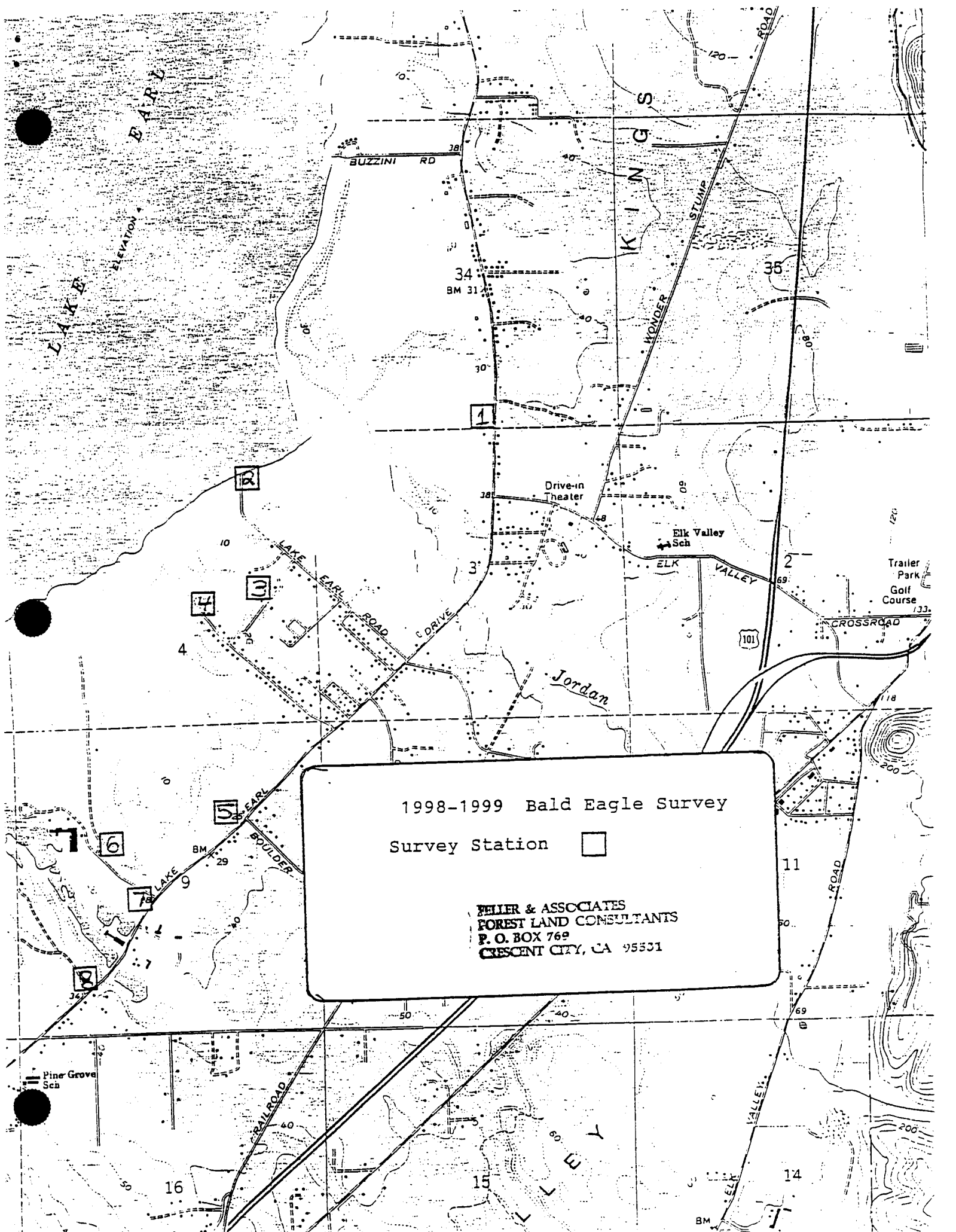
FILLER & ASSOCIATES
FOREST LAND CONSULTANTS
P. O. BOX 769
CRESCENT CITY, CA 95531

BALD EAGLE SURVEY 1998 - 1999 Lake Earl Area

Date/Surveyor	Loop started	Loop completed	Sta. 1	Sta. 2	Sta. 3	Sta. 4	Sta. 5	Sta. 6	Sta. 7	Sta. 8	Sta. 9	Comments
11/17/97	7:15 AM	8:00 AM										
11/20/97 SF	3:45 PM	4:30 PM										
12/7/98 SF	4:40 PM	5:30 PM										
12/14/98 SF	7:20 AM	8:15 AM										
12/31/98 SF	3:55 PM	4:40 PM										
1/11/99 SF	7:05 AM	7:40 AM										
1/11/99 SF	4:50 PM	5:30 PM										
1/12/99 SF	9:40 AM	10:55 AM										
1/12/99 SF	4:45 PM	5:20 PM										
1/24/99 SF	4:10 PM	5:05 PM										
2/12/99 SF	6:45 AM	7:35 AM										
2/15/99 SF	5:05 PM	5:35 PM										
2/10/99 SF	6:50 AM	7:35 AM										2 eggs to 1 blue heron 200' up of 1
2/13/99 SF	7:45 AM	9:20 AM										Large Black Bird over lake + 1/2
2/14/99 SF	4 PM	4:35 PM										5/2
2/15/99 SF	6:50 AM	8:05 AM										
2/21/99 SF	3:30 PM	4:15 PM										
2/27/99 SF	8:15 AM	9 AM										eggs in field @ #2
2/28/99 SF	4:20 PM	5:05 PM										agitated ducks by 2-
3/6/99 SF	7:30 AM	8:30 AM										blue heron 6x 7 in field
3/17/99 SF	2:30 PM	4 PM										
3/18/99 SF	6:45 AM	7:20 AM										
3/13/99 SF	6:55 AM	7:30 AM										
3/13/99 SF	4:30 PM	5:20 PM										

HANDED OUT BY STAFF
PLANNING COMMISSION
MEETING OF

4/7/99



Sandra E. Jerabek, M.Sc.
Consultant
750 Sand Hill Road, Crescent City, CA 95531
707 465-4440 / for fax, call first

March 3, 1999
Planning Commissioners
Del Norte County Planning Commission

RECEIVED
DATE 3-3-99 *apm*
PLANNING COMMISSION

Dear Commissioners:

RE: McNamara, Foster Projects
& the value of Lake Earl Basin habitats

Staff recommendations fail to call for adequate environmental review on these two projects because they ignore California Environmental Quality Act provisions for areas experiencing cumulative impacts, as well as other factors. The Lake Earl Basin has very high value as a unique and sensitive environmental system, which is certainly experiencing the cumulative impacts of many small and large cutting and development projects.

As you may know, the County Board of Supervisors is pursuing a partnership with Redwood National & State Parks to develop destination tourism and business around the outstanding natural resources of our area. Other counties have called this process "Gateway" economic development planning. That is, our County is attempting to consciously structure itself to be the **Gateway** for tourists visiting the Parks, and the Smith River National Recreation Area. Other areas have enjoyed major economic benefits from very consciously positioning themselves in this way.

Our County Board of Supervisors shows vision in pursuing this course of action, because nature tourism is the fastest growing segment of the travel industry, and these so-called "nature tourists" are known to be higher income people willing to spend money and travel great distances to enjoy outstanding natural features and wildlife. The more remote and isolated, the better, as long as the resources are breath-taking. A subgroup of this tourism niche are the birdwatchers. **In 1991, for example, 24 million Americans traveled for the express purpose of birdwatching, and spent billions of dollars.**

Our county does indeed have "breath-taking" natural resources to offer, including more recorded bird species (400+) than some entire states. This is in large part due to the wildlife habitat and other special values provided by the drainage basin, or watershed, of Lakes Earl/Talawa.

Lake Earl is California's largest coastal lagoon, which probably makes it the largest coastal lagoon on the entire west coast. Perhaps even more important, however, the **U.S. Fish & Wildlife Service has ranked Lake Earl as the second most important coastal embayment in California, second only to San Francisco Bay**, because of its great biodiversity and high quality wildlife resources. This makes our coastal lagoon a

Sandra E. Jerabek, M.Sc.

Consultant

750 Sand Hill Road, Crescent City, CA 95531

707 465-4440 / for fax, call first

state and national treasure, and perhaps even a treasure trove for selective local economic development and nature tourism niche marketing.

From this standpoint, it seems that a prudent role for the Planning Commission is to safeguard this economic treasure by scrutinizing development proposals in terms of the larger values of the resource. The Class 4 Categorical Exemptions proposed by staff for the McNamara and Foster properties are not in this spirit, and also appear to be in violation of the California Environmental Quality Act, which says that these exemptions cannot be used if the project is located in a sensitive environment, if there are cumulative impacts over time, or if there is a significant environmental effect due to unusual circumstances. (Article 19, Section 15300.2. Exceptions a), b) and c).)

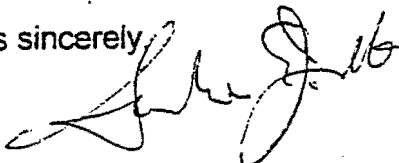
In summary, the outstanding biodiversity and high quality wildlife resources of the Lake and its watershed distinguish it sufficiently to justify a more thorough environmental review based on all or any of these factors. In particular, the county needs to begin examining the cumulative impacts on water quality, habitat, and wildlife, in the Lake Earl basin, of the many recently-approved, current and potential proposals for cutting trees and developing areas.

One last point, which is not grounded in the law, but is more along the lines of an observation from someone who truly enjoys marketing our county to visitors: As part of our Gateway planning process, County and City alike should take a long look at the appearance we present to visitors. Believe me, appearance counts. Americans have taught the world how to market appearance, after all. What will a visitor see when we send them out on Lake Earl Drive, to visit various points in the Lake Earl Wildlife Area and State Park Projects?

If the county continues to approve clearcutting right up to Lake Earl Drive, as is proposed in the Foster project, or up to any important scenic roadway, it may discover it has traded away significant, long-term economic benefits for the entire community in exchange for individual short-term gain that is small. It is now urgent that the County begin to evaluate these tradeoffs.

I have heard John Thompson say, "his trees are much more valuable to his family standing up," than otherwise. And clearly Thompson's business benefits all of us by serving as a visitor magnet. Of course, he and his family have done a really excellent job of marketing what they have, while the rest of the county still has a lot of work ahead to figure out marketing niche strategies that will enable us to realize our full potential. Lake Earl has this potential to be a visitor magnet, perhaps in some ways like Thompson's trees, if we don't chip it away project by project.

Yours sincerely



Sandra E. Jerabek

HANDED OUT BY STAFF
PLANNING COMMISSION
MEETING OF

4/7/99

Susan E. Morrison
701 Clayton Dr.
Crescent City, CA 95531

March 15, 1999

Ernest Perry, Director
County of Del Norte
Community Development Department
Crescent City, CA 95501

RECEIVED

MAR 19 1999

PLANNING
COUNTY OF DEL NORTE

Dear Mr. Perry:

I am writing regarding the McNamara application for a grading permit in conjunction with a three-acre timberland conversion exemption. I am adjacent land-owner in the area of the proposed activity located off of Clayton Drive and Vipond Drive approximately one eighth of a mile from Lake Earl. I have been in regular contact with your staff since I first received the required notice of this proposed action on February 24th, 1999.

I spoke at the recent Planning Commission regarding this proposal and am now submitting the comments I made at the meeting in written form for the record.

I request that the Community Development Department and the Planning Commission reject this proposal. If the Department or Commission does not feel comfortable rejecting the proposal immediately, then I request that any decision on the proposal be postponed for eight weeks. My requests are based on four issues that I believe have not been adequately addressed during the review of the project proposal and, which, I believe once thoroughly researched and reviewed would lead both the Community Development Department and the Planning Commission to reject the MaNamara proposal.

Issue #1

My first argument against this proposal is with regard to the three-acre timberland conversion exemption that will be undertaken in conjunction with the grading permit. According to California Department of Forestry regulations, only one three-acre exemption is allowed per contiguous ownership parcel. Richard McNamara has recently (over the last two weeks) authorized the harvesting of wood for sale in an approximately three-acre area

on the parcel in question. Mr. McNamara has, thereby, taken his one allowable three- acre exemption.

Several neighbors have reported the ongoing cutting during late February and early March. Del Norte County Sheriff's Deputy's responded to these complaints and spoke to Mr. McNamara to gain assurance that the person doing the harvesting had Mr. McNamara's permission to do so. Mr. McNamara told the Deputy that this person, Mike Amos, did have his permission. On February 21st, 1999, Mike Amos told my partner, Kelly Miess, that he was cutting the wood and selling it as firewood.

The cutting that has been undertaken recently is unauthorized and is being done in a "Resource Conservation Area - 2" that specifically prohibits this type of activity. In addition, the preliminary staff report on the project, dated February 11, 1999, specifically states that no disturbance is allowed in the RCA-2 area.

Mr. McNamara not only authorized this activity, as can be verified through Sheriff's logs but was fully aware of its illegality. He was served with a cease and desist letter by the Del Norte Community Development Department on February 23, 1999. Even after receiving this letter, Mr. McNamara continued to allow the unauthorized cutting. County Community Development as well as California Department of Forestry have records of the unauthorized activity, complaints regarding the activity and action taken in an attempt to stop it. This flagrant disregard for the rules and laws of our county should be taken into consideration as this three-acre exemption from harvest regulations is considered.

Issue #2

This cut will have a devastating impact on the adjacent property owners and the wildlife habitat surrounding Lake Earl. One week's notice is just not sufficient notice for such significant action. As an adjacent land owner myself, I could not even meet the Planning Commission's agenda deadline to submit a letter given such short notice.

The adjacent property owners who will be primarily impacted by this cut, the Adkins, have lived in Del Norte for nearly twenty years, have operated several important business and have made significant contributions during that time. The harvesting of these trees, which they understood to be a legal buffer between themselves and the McNamara subdivision, will have a devastating impact on their way of life. These trees begin less than thirty feet from their kitchen window and if cut will turn a protective buffer into an open field exposing them to both the subdivision from which they sought distance and the wind and weather from the southwest off the lake. I believe that more time should be provided to allow for research into the issues associated with this harvest exemption.

Issue 3

I have read the finding associated with the mid 1980's rezone of this property and believe that the cutting being proposed is specifically not allowable under those findings - in particular, under item "C" of those findings which discusses allowable vegetation removal. I believe it is very likely that additional documentation exists that would confirm that the proposed cut is not allowable. One week is just not enough time to adequately research those issues.

Issue 4

I believe that the "CEQA Class 4 Exempt" recommendation of the County Community Development Department is incorrect and that the permit should, therefore, be denied. Specifically, the CEQA exemption should be denied under items "A", "B" and "C" of Article 19 of CEQA, Section 15300.2. The cumulative impacts of removing the forested edge surrounding Lake Earl have not been considered. Approval of the project as recommended would, thus, circumvent adequate environmental review. In speaking with the Adkins', I understand that they have seen bald eagles, herons, and egrets on their property which is approximately one eighth of a mile from the lake and which is certainly at least potential habitat for a number of critical species.

In closing, I am asking that the Community Development Department and the Planning Commission reject the McNamara proposal. If the Department or Commission does not feel comfortable rejecting the proposal immediately, then I request that any decision on the proposal be postponed for eight weeks.

Sincerely,



Susan E. Morrison

February 18, 1999

RECEIVED

FEB 18 1999

Ernie Perry
DEL NORTE COUNTY PLANNING COMMISSION
700 - 5th Street
Crescent City, CA 95531

PLANNING
COUNTY OF DEL NORTE

RE: Richard McNamara Application #DNC LCP 2-98 McNamara

Today, for the first time, we were made aware of a three acre clear-cutting plan which directly affects our property, property value, quality of life, privacy, wind protection and our overall perception of the 20+ acre **buffer zone** which we agreed to by not opposing the new subdivision plan submitted by Mr. McNamara and Tidewater two years ago.

We respectfully request an eight week postponement in bringing this matter before the planning commission. We understand that we will be notified of this plan in the newspaper next week and it is going to be heard at the Planning Commission meeting on March 3rd.

That gives us and other interested parties insufficient notice and time to investigate the overall impact of this proposed logging plan.

Considering the fact that it took over two hundred years for the subject old growth spruce to reach their size and height, we feel that a minimum eight week postponement is a reasonable request.

Respectfully,



Bob & Francine Adkins
1151 Lakeview Drive
Crescent City, Ca 95531

3

