

**CALIFORNIA COASTAL COMMISSION**

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



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

STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: Del Norte County

DECISION: Approval with Conditions

APPEAL NO.: A-1-DNC-99-038

APPLICANTS: Dale Foster

PROJECT LOCATION: Both sides of Lake Earl Drive, north of Blackwell Lane, Crescent City, Del Norte County (APN 110-130-29).(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-99-009C.

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 significant 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 also not demonstrated that a substantial issue is raised regarding the conformance of the project as approved with the relevant LCP policies. The LCP allows for commercial timber harvests within both the designated Resource Conservation Area, wetland buffer [RCA-2(wb)] area and within the Rural Residential Agriculture (RRA-1) zoning district where the timber harvest would occur. In this case, a coastal grading permit was granted with conditions modifying and reducing the timber harvest and vegetation disturbance areas to provide a higher degree of protection for adjacent wetland habitat values and restrict all timber harvest activities to the RRA-1 zoned area. More specifically, Special Condition No. 3 of GP99-009C requires that: *"All log landings and temporary access roads shall be located outside of the RCA-2 (w) & (wb) zoned areas."* Special Condition No. 6 requires that: *"All trees shall be felled away from the RCA-2(w) and (wb) zones, mechanical equipment shall be prohibited in the wetland/wetland buffer areas."* Special Condition No. 7 of states that: *"No disturbance shall occur within the RCA-2(wb) until such time as supplemental information regarding the impact of the project on the existing ecosystem is reviewed and approved by the Planning Commission."* With the addition of these conditions that limit disturbance within the RCA-2(wb) zoned area, the project as approved by the County provides an adequate buffer that is consistent with the LCP policies for the protection of wetland resources.

Further, the appeal does not establish that the area to be harvested is an ESHA. The vegetation within the proposed harvest area consists primarily of second growth conifers (spruce, pines etc.). Evidence

contained in the administrative record indicates that the area proposed for timber harvest does not include wetland or riparian 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 1997 Resource Conservation Area (RCA) rezone was conducted on the subject property which resulted in the precise identification of wetland resources, a wetland buffer area, and land suitable for residential development. All project-related development activities would be limited to the area designated for residential development. 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 area was not being utilized by the bald eagle. Therefore the area proposed for timber harvest does not meet the definition of an ESHA. 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 4.

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 subject 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-99-038 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 8). 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 an 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 areas.

**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 including authorization to conduct timber harvest activities within a designated wetland buffer area [RCA-2(wb)]. The Friends of Del Norte appealed the Planning Commission's approval of the Coastal Grading Permit GP99-009C 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(wb). However, the Board amended the project description to prohibit any disturbance within the designated 100-foot wetland buffer, until such time that supplemental information regarding the impact of timber harvest activities can demonstrate that timber harvest activities will not have a significant adverse effect on the ecosystem within the designated wetland buffer area. The Board of Supervisors also required that prior to the timber harvest a qualified person shall conduct a site inspection to confirm that there are no bald eagle nests within the subject trees.

The County then issued a Notice of Final Action on the Coastal Grading Permit, which was received by Commission staff on June 3, 1999 (Exhibit 4). 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 approximately 500 feet north of Blackwell Lane, on both sides of Lake Earl Drive, Crescent City, Del Norte County. The 4-acre parcel is bifurcated by Lake Earl Drive and is adjacent to former logging ponds. The parcel is currently vacant and has three zoning designations: 1) Rural Residential Agriculture-one acre minimum[RRA-1]; 2) Designated Resource Conservation Area, Wetland [RCA-2(w)]; and 3) Designated Resource Conservation Area, Wetland Buffer [RCA-2(wb)]. An RCA rezone was completed for the property in 1997 that resulted in the designation of the wetland, wetland buffer, and residential areas.

As originally proposed by the applicant, timber harvest would occur both within the wetland buffer area RCA-2(wb) zoning district which allows commercial timber harvest as a principal permitted use and within the RRA-1 zoning district. However, the County Board of Supervisors approval allows project-related activities to occur only within the RRA-1 area and prohibits any disturbance within the wetland buffer zone until such time as supplemental information can be evaluated by the Planning Commission in a formal application regarding the impact of future timber harvest on the ecosystem within the RCA-2(wb) area.

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 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 exempt from timber harvest plan requirements, 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 pursuant to CDF Timber Harvest rules, as a principal permitted use. All timber and vegetation removal and associated work would be completed in compliance with California Forest Practice Rules. The applicant's forester would be required to flag the 100-foot wetland buffer and all trees would be felled away from these areas. Further, no disturbance would occur within the wetland or the wetland buffer area including earthwork associated with temporary haul roads and log landings.

**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: those that concern the alleged inadequacy of the certified LCP policies to address protection of environmentally sensitive habitat areas, and 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 appellants contentions regarding the adequacy of the LCP to protect sensitive coastal resources are summarized in Section 1 on pages 5 and 6 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 are intended to provide guidance for 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 appellants contend that the trees to be harvested constitute an ESHA and that 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 second growth conifers and is located within an area planned for residential development at a density of one dwelling unit per acre. An Resource Conservation Area (RCA) rezone was conducted on the subject property in 1997. The RCA rezone resulted in the precise identification of wetland resources, a wetland buffer area, and land suitable for residential development. All project-related development activities would be limited to the area designated for residential development.

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, 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 two miles of a similar area known to be used by bald eagles and could potentially contain 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 of 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 1997 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 activities, as approved by the County would not result any activity within an ESHA. 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. Further, the County has conditioned the project to prohibit any disturbance within the designated wetland buffer area until such time that supplemental information regarding the impact of project-related activities on the ecosystem within 100-feet of the logging ponds which have been precisely mapped as a wetland resource.

b. Consistency with Policy No. 4 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 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 appellants contend that the subject 3-acre commercial timber harvest does not provide for the maintenance of riparian vegetation along the adjacent logging ponds. Riparian habitat is generally considered to be a form of ESHA. A wetland survey was performed in 1997, as part of a Resource Conservation Area (RCA) rezone (Marvin Day RCA Rezone) of the subject property. The 1997 wetland survey found that riparian vegetation was present directly adjacent to the logging ponds, however, found no riparian habitat located beyond the top of the bank. 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 logging ponds to top of the bank as wetland, (which includes the riparian vegetation below the top of the bank) and was subsequently zoned designated Resource Conservation Area, Wetland [RCA-2(w)].

Additionally, the area that is located 100-feet from the top of the bank of the ponds was zoned designated Resource Conservation Area, Wetland Buffer [RCA-2(wb)]. The remainder of the subject property was zoned Rural Residential Agriculture, one acre minimum lot size [RRA-1].

As approved by the County, all activities related to the commercial timber harvest will occur within the RRA-1 zoned property. However, pursuant to Special Condition No 7 of GP99-009C, timber harvest activities may be allowed within the RCA-2(wb) buffer area in the future based on review and approval by the Planning Commission of supplemental information regarding the impact of timber harvest activities on the local ecosystem.

Riparian resources have not been identified within the RCA-2(wb) zoned area or within the RRA-1 zoned area. Further, the County approval of the timber harvest activities expressly prohibits any disturbance within the designated wetland buffer area where riparian vegetation could be reasonably expected to occur. To this end, the County's approval of this project was based upon the factual content of the 1997 wetland delineation of the subject property which did not identify any riparian resources within the area proposed for timber harvest activities.

Therefore, the Commission finds that the project site does not constitute an ESHA with respect to riparian habitat. Furthermore, 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 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 of the LUP.

- 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.

The timber harvest, as proposed by the applicant, would have occurred directly adjacent to a wetland (ESHA), and within a designated wetland buffer area. In fact, Title 21 of the coastal zoning ordinance allows commercial timber harvest as a principal permitted use within a designated wetland buffer. 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 wetland buffer area. Special Condition No. 3 of GP99-009C requires that: "All log landings and temporary access roads shall be located outside of the RCA-2 (w) & (wb) zoned areas." Special Condition No. 6 of GP99-009C requires that: "All trees shall be felled away from the RCA-2(w) and (wb) zones, mechanical equipment shall be prohibited in the wetland/wetland buffer areas." Special Condition No. 7 of GP99-009C states that: "No disturbance shall occur within the RCA-2(wb) until such time as supplemental information regarding the impact of the project on the existing ecosystem is reviewed and approved by the Planning Commission." Although Special Condition No. 7 appears vague regarding the exact nature of "supplemental information" required and the level of review and approval by the Planning Commission, no substantial issue is raised because even if logging is ultimately allowed in the buffer zone, such use is allowed by right in the RCA-2 (wb) zone and the other conditions would ensure that the proposed harvesting would not adversely affect the

identified ESHA. Further, any subsequent approval by the Planning Commission would be appealable to the Coastal Commission, whether or not the "supplemental information" identifies the RCA-2(wb) as an ESHA.

In review and approval of the project, the County's reliance on a 1997 RCA rezone of the subject property constitutes factual and legal support for County approval action as it relates to identification and protection of environmentally sensitive habitat areas. Special Condition No. 7 prohibits any immediate disturbance within the designated 100-foot wetland buffer. By designating that the wetland buffer as off-limits to any disturbance relating to project implementation, the County has instituted buffer mitigation for potential project-related impacts above and beyond LCP requirements. 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 of the certified LCP which pertains to buffering of ESHAs 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 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.*

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. This policy also allows for a buffer of less one-hundred feet where it can be determined that there is no adverse impact on the wetland. And finally, this policy expressly allows commercial timber harvests are within the 100-foot buffer wetland buffer. It must be noted that logging within the wetland buffer area is not in and of itself inconsistent with the

intent of a buffer. The purpose of the 100-foot buffer requirement is to separate structures and other permanent development that accommodates uses that could result in on-going disturbance to an ESHA from the physical development itself. Logging by itself would not result in permanent structures or uses that would result in on-going disturbance to the adjacent ESHA. Although the LCP expressly allows timber harvest activities within buffer areas, the County's approval prohibits disturbance within the buffer area. The County relied on the Specific Area Policy No. 4.f to support its decision that maintaining a 100-foot buffer between the timber harvest activities and the ESHA was appropriate, even though the LCP could be interpreted as not affecting logging activities within 100-feet of an ESHA. 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 ESHAs. 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.

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### EXHIBITS:

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





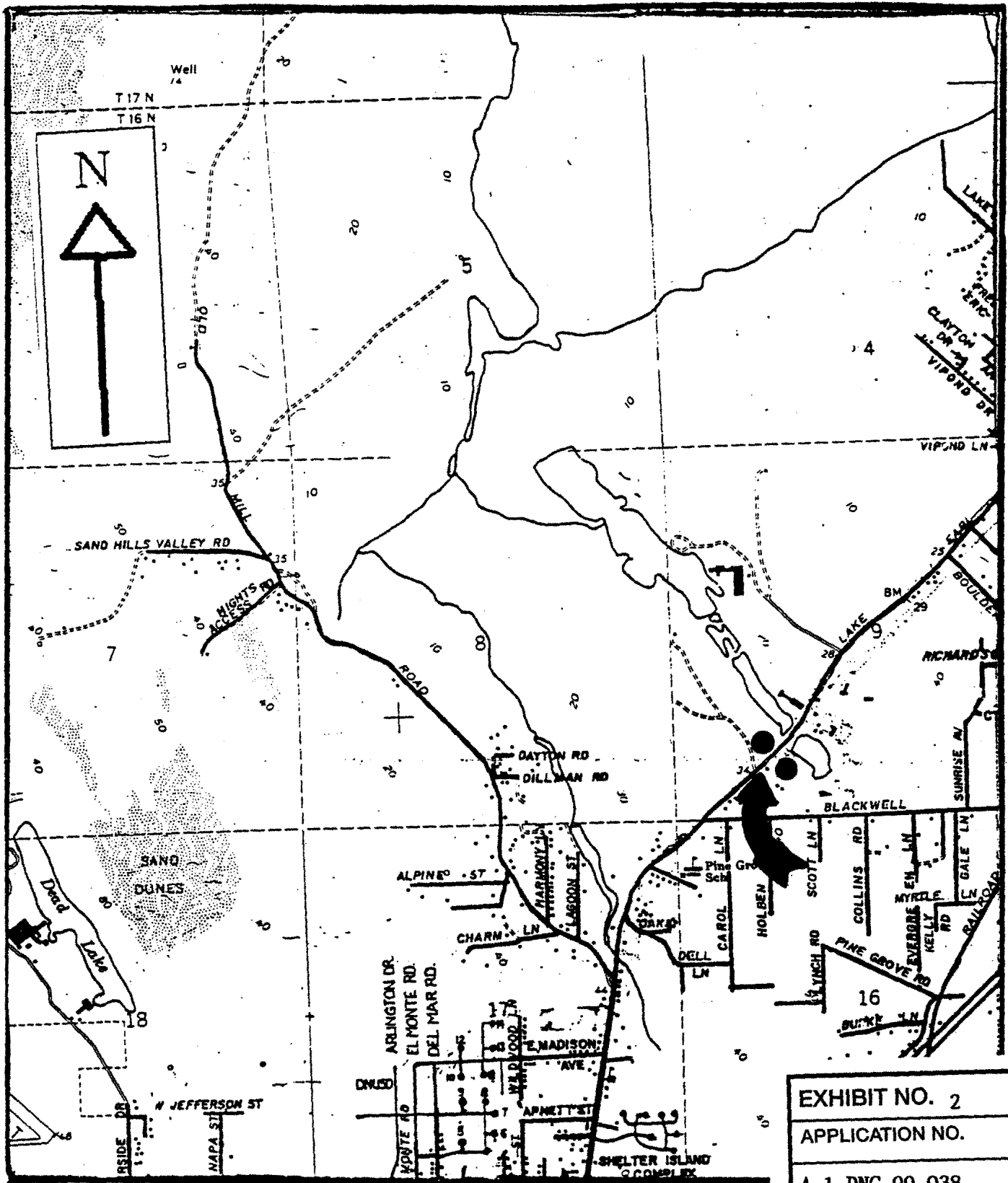


EXHIBIT NO. 2
APPLICATION NO.
A-1-DNC-99-038
SITE LOCATION MAP

# LOCATION MAP

FOSTER, DALE	GP99-009C
Coastal Grading Permit	110-130-29

THIS IS NOT AN OFFICIAL MAP  
FOR ASSESSMENT PURPOSES ONLY

/// Conversion Area

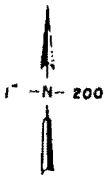
( ) Proposed Driveway

— Property Line

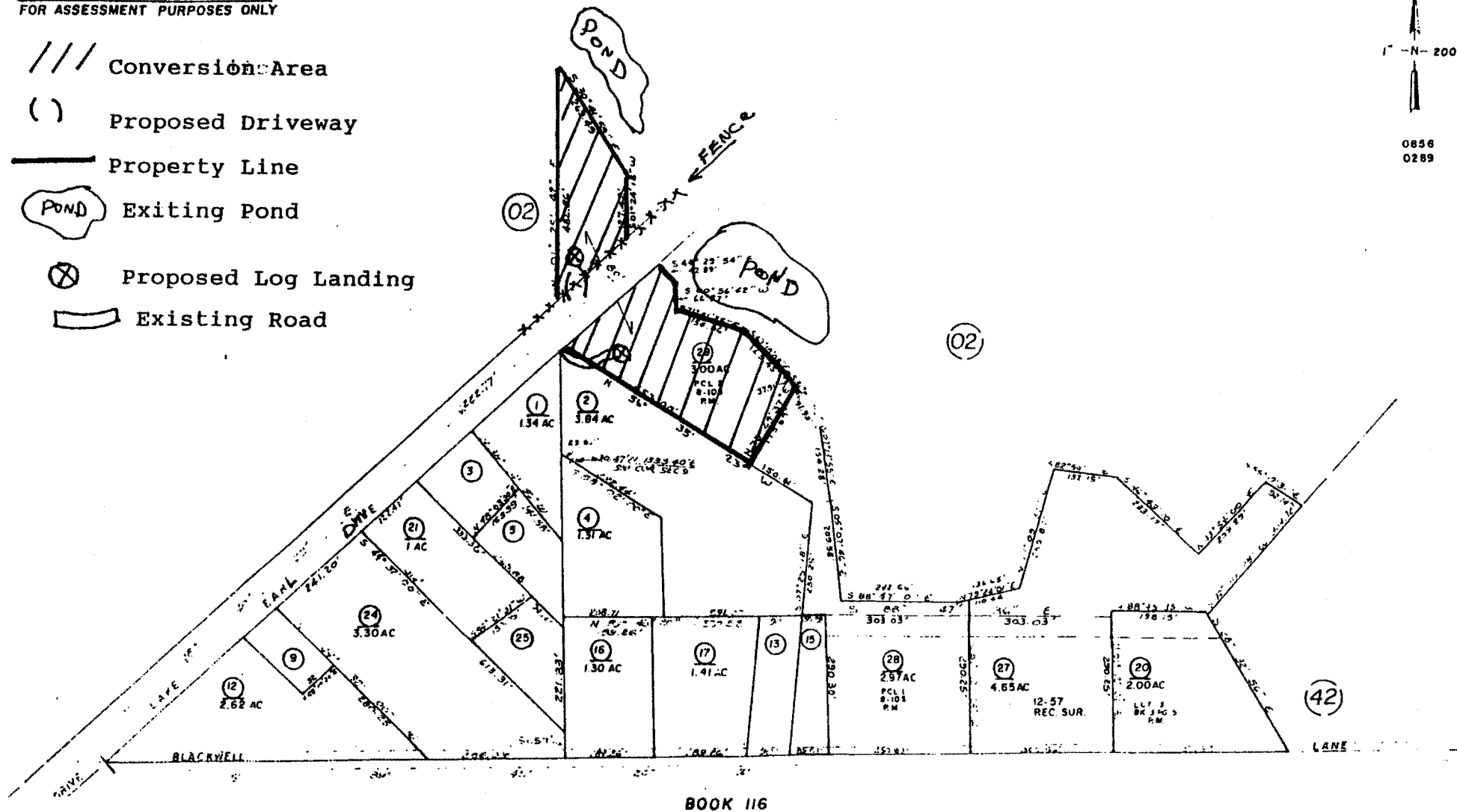
POND Existing Pond

⊗ Proposed Log Landing

Existing Road



0856  
0289



88 123

6  
17

EXHIBIT NO. 3
APPLICATION NO.
A-1-DNC-99-038
ASSESSOR'S PARCEL MAP

FOSTER, DALE  
Coastal Grading Permit

GP99-009C  
110-130-29



**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: **GP99-009C**

Project Description: **Coastal Grading Permit**

Project Location: **Both sides of Lake Earl Drive, .25 miles north of Blackwell Lane**

Assessor's Parcel Number: **110-130-29**

Applicant: **Dale Foster** Agent: **Feller & Associates**

Applicant's Mailing Address: **P.O. Box 1907, 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. 4

APPLICATION NO.

A-1-DNC-99-038

NOTICE OF FINAL ACTION  
AND FINDINGS AND

CONDITIONS OF APPROVAL

[MAY 11, 1999]

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

Attachment: Findings & Conditions

cc: CDD/ENGR  
BOS File  
Coastal Commission

PROJECT: Dale Foster - Coastal Grading Permit GP99-009C  
Page 4

tions has been placed on the project. The applicant is responsible for obtaining any permits required by other agencies.

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 below listed conditions.

5. FINDINGS:

- A) The project is consistent with the standards and policies of the General Plan and Title 21 Zoning;
- B) The project is exempt from the California Environmental Quality Act (Class 4 Exemption);
- 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;
- D) A survey has been conducted by a Registered Professional Forester to determine activity on the site by the Bald Eagle. The survey has determined the area was not being utilized for foraging and roosting during the wintering period by the Bald Eagle;
- E) There is no substantial evidence before the lead agency supporting the existence of an unusual circumstance so as to demonstrate a Significant Effect on the environment;
- F) The site is located greater than one mile from Lake Earl, specified by the Department of Fish and Game as an area utilized by the Bald Eagle during the winter period. The harvesting of less than three acres of trees greater than one mile from known habitat does not constitute substantial evidence that the project's incremental effects will have a cumulative impact on the Bald Eagle; and
- G) This project constitutes a de minimus contribution to the cumulative effect of other projects completed in the area, and its mere existence does not result in substantial evidence that the project's incremental effects are cumulatively considerable.

PROJECT: Dale Foster - Coastal Grading Permit GP99-009C  
Page 5

6. CONDITIONS:

ADOPTED BY BOARD OF SUPERVISORS ON MAY 11, 1999

- 1) This permit is a Coastal Permit for the removal of vegetation and timber as shown on the applicant's site map;
- 2) No timber/vegetation shall be removed from the designated RCA-2(w) area defined by the top-of-bank of the adjacent mill pond;
- 3) All log landings and temporary access roads shall be located outside of the RCA-2(w) & (wb) zoned area;
- 4) All timber/vegetation removal and associated work shall be completed in compliance with the California Forest Practice Rules. The applicant is responsible for obtaining any permits required by other agencies;
- 5) The applicant's forester shall flag the 100 foot wetland buffer prior to any grading/vegetation activity; and
- 6) All trees shall be felled away from the RCA-2(w) & (wb) zones, mechanical equipment shall be prohibited in the wetland/wetland buffer areas;
- 7) No disturbance shall occur within the RCA-2(wb) until such time as supplemental information regarding the impact of the project on the existing ecosystem is reviewed and approved by the Planning Commission; and
- 8) Prior to timber harvest, a Registered Professional Forester or other qualified person shall review the site to confirm there are no bald eagle nests in the subject trees and provide such written confirmation to the Planning Division of the Community Development Department.

**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: GP 99-009C Coastal Grading Permit  
with associated 3 acre timber cut

3. Development's location (street address, assessor's parcel no., cross street, etc.): Parcel 110-130-29  
Both sides of Lake Earl Dr. 25 miles N. of Blackwell

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. 5

APPLICATION NO.

A-1-DNC-99-038

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): GP 99-009C

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:

Dale Foster  
P.O. Box 1907  
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 101 N #18  
Crescent City, CA 95531

(2) Halstead, U.S. Fish + Wildlife  
Springer  
McKay, others who wrote letters on permits

(3) CA Dept of Fish and Game, Herb Pierce  
619 Second St  
Eureka, CA 955

(4) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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: GP99-009C, Foster, 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) Biological studies have not been conducted at this site
- 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 100 foot buffer does not adequately address concerns for endangered species and biological productivity, or provide adequate buffers 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.

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.

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

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 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." Foster and McNamara trees are both directly adjacent to wetlands.

Many 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 100 foot level. Therefore this important vegetative buffer will be removed with this grading permit, and this buffer does 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 2 miles 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 2 miles 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. 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.

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.

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





THIS IS NOT AN OFFICIAL MAP  
FOR ASSESSMENT PURPOSES ONLY

/// Conversion Area

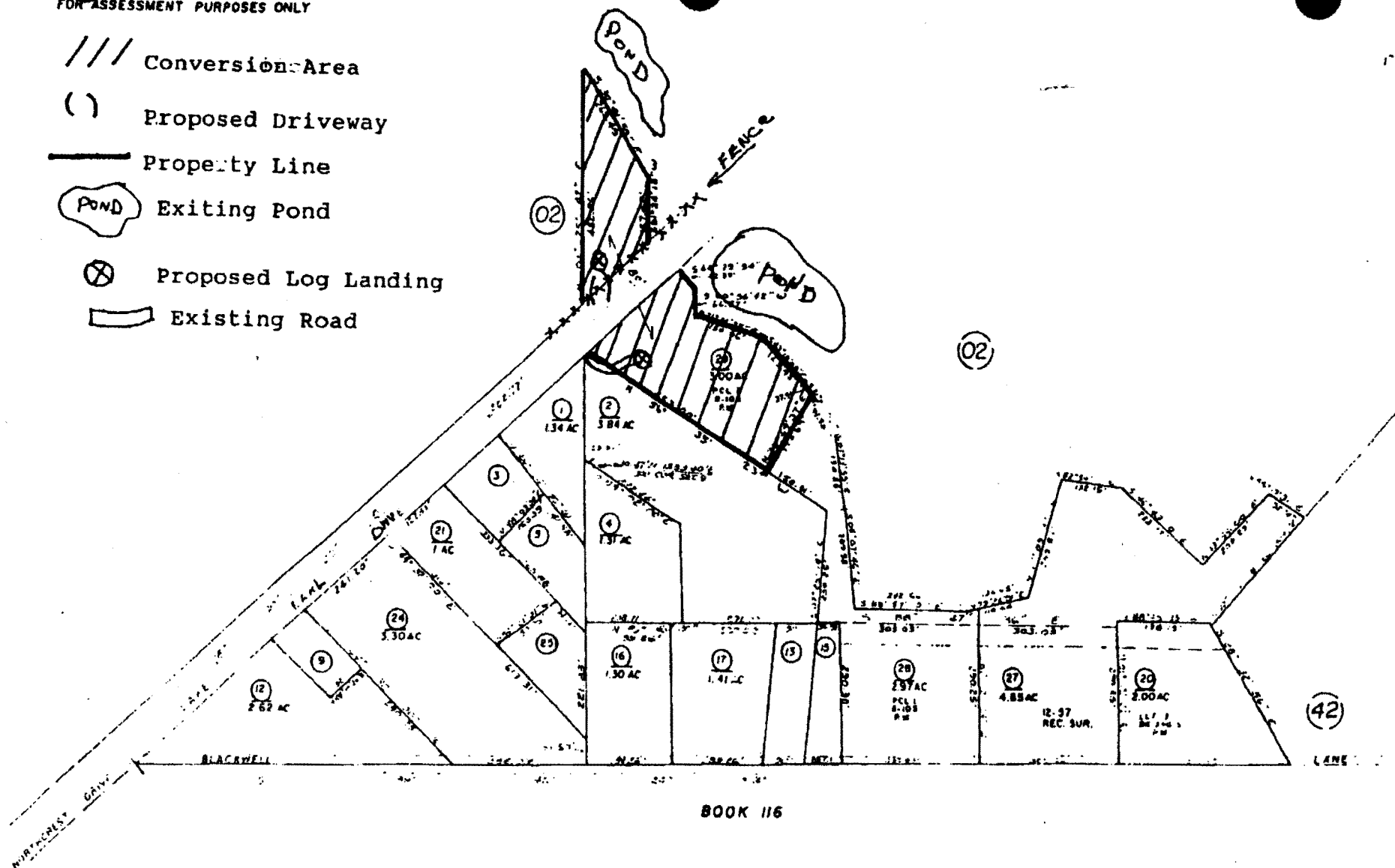
( ) Proposed Driveway

— Property Line

POND Exiting Pond

⊗ Proposed Log Landing

Existing Road



BOOK 116

FOSTER, DALE  
Coastal Grading Permit

GP99-009C  
110-130-29

V-25-99 04:40P DN OFFICE SUPPLY

707 465 3402

P.25



*Friends of Del Norte*

Post Office Box 229  
Gasquet, CA 95543

(707) 464-4003

*Committed to  
Our Environment  
Since 1973*

*President*  
Joe Gillespie

*Vice-president*  
Eileen Cooper

*Secretaries*  
Wendy Bertrand  
Susan Calla

*Treasurer*  
Ted Souza

*Board Members*  
Jack de Long  
Joe Gartland  
Alan Barron  
Natalie Schaefer

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May 25, 1999

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

JUN 01 1999  
CALIFORNIA  
COASTAL COMMISSION

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. 6
APPLICATION NO.
A-1-DNC-99-038
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  
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

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 stated .....6. 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. 7

APPLICATION NO.

A-1-DNC-99-038

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 Feiler'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. offish & 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

01 LOCUST STREET

FISHERY, CA 96001

530/223-2300

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



Ms. Diane Mutchie  
December 1, 1997  
Page Three

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.

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.

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:

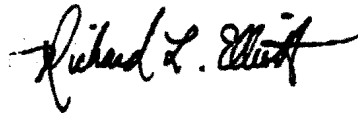
★ The narrower the vegetated uplands adjacent to wetland, the more susceptible wetland wildlife are to stresses and disturbances. Also, the narrower this zone is, the more susceptible the area is to loss of habitat function and productivity through natural changes or human induced impacts.

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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

State of California

## Memorandum

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-Del Norte Ranger Unit, Fortuna

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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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.

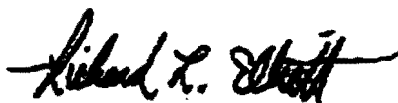
The boundary between the LEWA and the Feller property must be surveyed and marked. The property boundary and THP boundary are not now clearly delineated and the Registered Professional Forester and property owner indicated that they were unaware of the specific property boundary. The DFG recommends a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

The wet area or wetland associated with Brush Creek should be afforded <sup>with</sup> 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

Mr. Jim Muth  
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 - 8770  
487 - 4442

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

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EXHIBIT NO. 8
APPLICATION NO.
A-1-DNC-99-038
COUNTY STAFF REPORT (Page 1 of 22)

& Associates

STAFF REPORT

APP# GP99-009C

APPLICANT: Dale Foster

APPLYING FOR: Coastal Grading Permit

AP#: 110-130-29 LOCATION: Lake Earl Drive, north of Blackwell Lane

<u>PARCEL(S)</u>	<u>EXISTING</u>	<u>EXISTING</u>
<u>SIZE:</u> 3 acres	<u>USE:</u> vacant	<u>STRUCTURES:</u> none

PLANNING AREA: 9 GENERAL PLAN: Rural Res.(1u/1a),  
Resource Conservation Area

ADJ. GEN. PLAN: Same

ZONING: RRA-1, RCA-2(wb) ADJ. ZONING: Same, R1A, RCA-2(w)

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

<u>ACCESS:</u> Lake Earl Drive	<u>ADJ. USES:</u> Res./wetland
<u>TOPOGRAPHY:</u> Generally Flat	<u>DRAINAGE:</u> Surface

DATE OF COMPLETE APPLICATION: 2/11/99

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

4. STAFF RECOMMENDATION:

Feller and Associates, agent for Dale Foster, has submitted an application for a grading permit for vegetation removal on Mr. Foster's 4 acre parcel located on the east and west sides of Lake Earl Drive, immediately south of the the "Northcrest Incorporated" mill pond. The parcel is zoned RRA-1 (Rural Residential and Agriculture - 1 acre minimum), and RCA-2(wb) & (w) (Designated Resource Conservation Area - wetland buffer and wetland). The property is vacant. An RCA rezone was completed in 1997 on the property that resulted in the definition of the wetland, wetland buffer, and residential areas on the property. An archaeological walkover was also completed which resulted in a recommendation that no further study was required.

The applicant has proposed a timber harvest on the parcel in both the wetland buffer and RRA-1 zoned areas. The County Grading Ordinance requires a coastal grading permit for vegetation removal and earth work in RCA zones and coastal appeal areas. A site plan has been submitted indicating the location of the harvest as well as haul road and log landings. Title 21 Coastal Zoning (21.11A.030,B.) allows removal of commercial timber in designated wetland buffer areas pursu-

ant to the CDF Timber Harvest rules as a primary permitted use. Firewood removal for on-site residential use is also allowed for on-site residential use.

The project parcel was the subject of a minor subdivision by Marvin Day in 1997, and the project was circulated to the State Clearinghouse for review (SCH# 96092049). The subdivision was also forwarded directly to the California Department of Fish and Game for review and comment. The DFG did not forward any comments regarding potential impacts associated with development of a subdivision and building sites on the property. At the same time, the property was the subject of a wetland delineation and rezone that determined the extent of the wetland, wetland buffer, and residentially developable area. Other projects in the immediate area that have been circulated to the State Clearinghouse for review are Bay Meadows Major Subdivision (SCH# 97102100) south of the proposed project, and the Marvin Day RCA rezone (SCH# 91023076) east of the proposed project.

#### Addendum to Staff Report

The Planning Division has received a letter from Donald Koch of the California Department of Fish and Game regarding the potential for impacts to habitat of the Bald Eagle. The letter states there is reasonable potential for adverse impacts to the bald eagle. The letter, however, fails to supply substantial evidence supporting the existence of an unusual circumstance resulting in potential impacts to the bald eagle. The DFG determination relies on a speculative connection between the proposed site, and a site located two miles northwest adjacent to Lake Earl. The DFG considers the site to be adjacent to Lake Earl. As previously discussed, this project parcel, and the immediately adjacent parcels, have been the subject of subdivision and rezone requests in the past that have gone through complete Clearinghouse review, including review by the DFG. None of these prior projects have resulted in Bald Eagle concerns being expressed by the DFG.

Letters were received from the public regarding the potential for cumulative impacts to the environment caused by this project. 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 control 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 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.

A primary concern expressed at the March meeting was the harvesting of timber within the wetland buffer that was established to protect the adjacent wetland from development. Title 21 coastal zoning allows the commercial harvesting of timber within wetland buffer areas. The same coastal zoning also gives the Planning Commission discretionary power to require supplemental information to assess development within resource conservation zone. A revised condition has been included which would prohibit timber harvest within the RCA-2 Wetland Buffer zone until such time as additional information is submitted that evaluates physical and biological features existing on that portion of the property, and impact of the timber harvest on the existing ecosystem. This area is defined as a 100 foot strip of land measured from the edge of the pond. If supplemental information regarding the impact of the harvest on the existing ecosystem is submitted the project will be forwarded to the Planning Commission for review. The criteria for the supplemental report is listed in 21.11A.060 Coastal Zoning. This condition has been added to address disturbance within the buffer zone only. Timber harvest within the non-RCA zone would be allowed.

Scott Feller, Registered Professional Forester, has submitted bald eagle survey data, referred to during the March public hearing, that he has compiled during the bald eagle wintering period along the east side of Lake Earl. The data includes a portion this project site. Mr. Feller's information indicates no sitings of eagles in the area around the listed stations between November of 1998, and March of 1999. A condition requiring a Registered Professional Forester or other qualified person to review the project site to confirm there are no eagle nests in the subject trees has also been added. This condition requires a survey specifically for nests.

The applicant's forester is required to flag the 100 foot buffer in order to specify the area that will be restricted from disturbance. All log landings and temporary haul roads are prohibited in the wetland buffer area. All trees to be harvested are to be felled away from the wetland buffer. The project is also subject to permitting by CDF under a less than 3 acre harvest exemption. A condition requiring the project to be completed in accordance with other agency regula-

tions has been placed on the project. The applicant is responsible for obtaining any permits required by other agencies.

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 below listed conditions.

5. FINDINGS:

- A) The project is consistent with the standards and policies of the General Plan and Title 21 Zoning; and
- \*\* B) The project is exempt from 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;
- \*\* D) A prior survey was conducted this past winter by Scott Feller, Registered Professional Forester, for the purpose of determining bald eagle activity on the subject property and the survey determined that the subject property is not being utilized for foraging and/or roosting during the wintering period by the bald eagle; and
- \*\* E) There is no substantial evidence before the lead agency that the subject property is located within a particularly sensitive environmental area; and
- \*\* F) The subject project constitutes a minor private alteration in the condition of land and vegetation for forestry purposes; and
- \*\* G) 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 and it's mere existence does not result in substantial evidence that the project's incremental effects are cumulatively significant; and
- \*\*\* H) Although the subject property is approximately two miles 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

- \*\*\* I) 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:

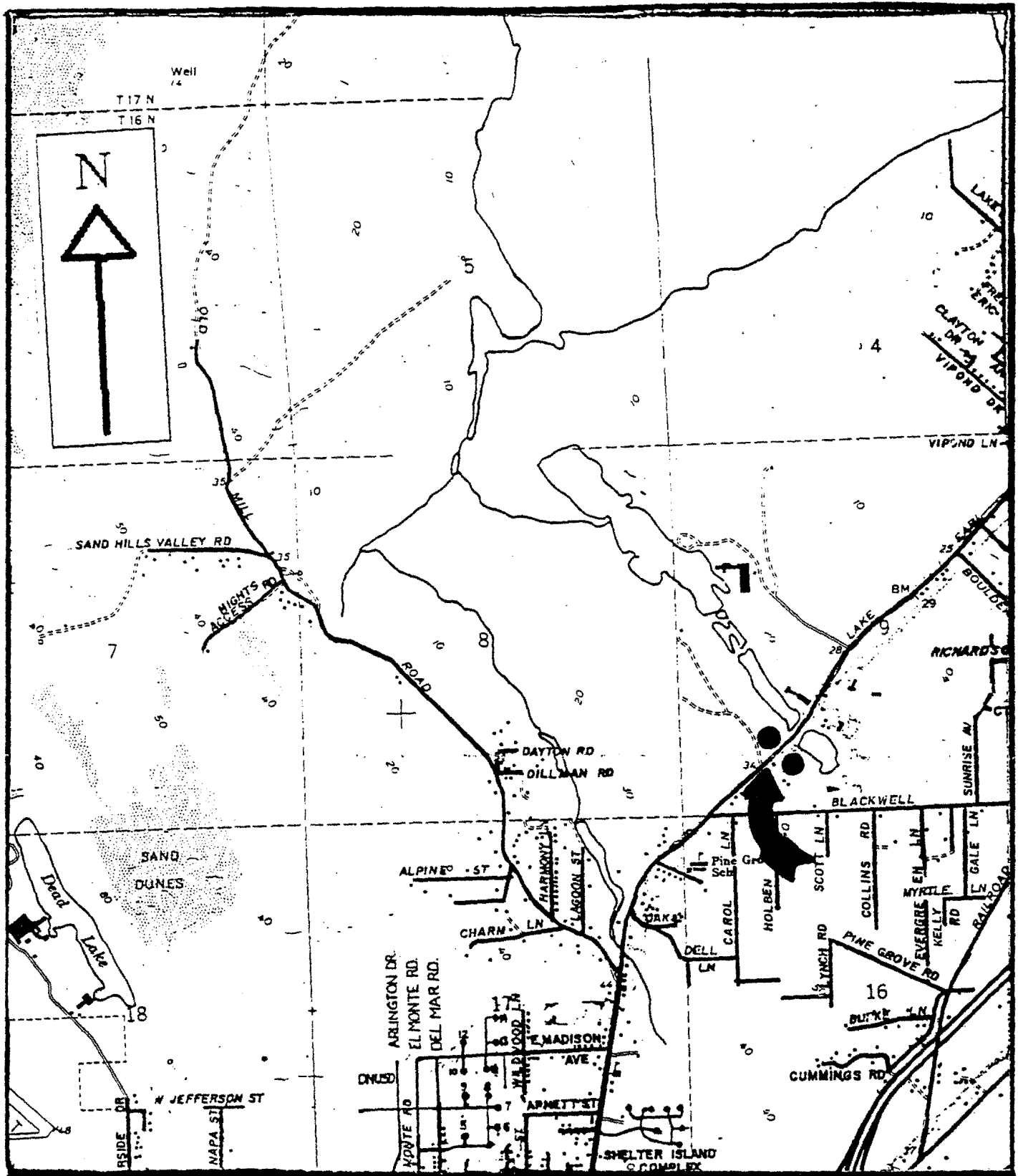
- 1) This permit is a Coastal Permit for the removal of vegetation and timber as shown on the applicant's site map;
- 2) No timber/vegetation shall be removed from the designated RCA-2(w) area defined by the top-of-bank of the adjacent mill pond;
- 3) All log landings and temporary access roads shall be located outside of the RCA-2(w) & (wb) zoned area;
- 4) All timber/vegetation removal and associated work shall be completed in compliance with the California Forest Practice Rules. The applicant is responsible for obtaining any permits required by other agencies;
- 5) The applicant's forester shall flag the 100 foot wetland buffer prior to any grading/vegetation activity; and
- \*\* 6) All trees shall be felled away from the RCA-2(w) zone, mechanical equipment shall be prohibited in the wetland/wetland buffer areas;
- \* 7) Prior to timber harvest, a Registered Professional Forester or other qualified person shall review the site to confirm there are no bald eagle nests in the subject trees and provide such written confirmation to the Planning Division of the Community Development Department.

\* Renumbered per PC Meeting 4/7/99

\*\* Amended per PC Meeting 4/7/99

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





# LOCATION MAP

FOSTER, DALE

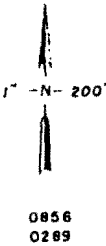
GP99-009C

Coastal Grading Permit

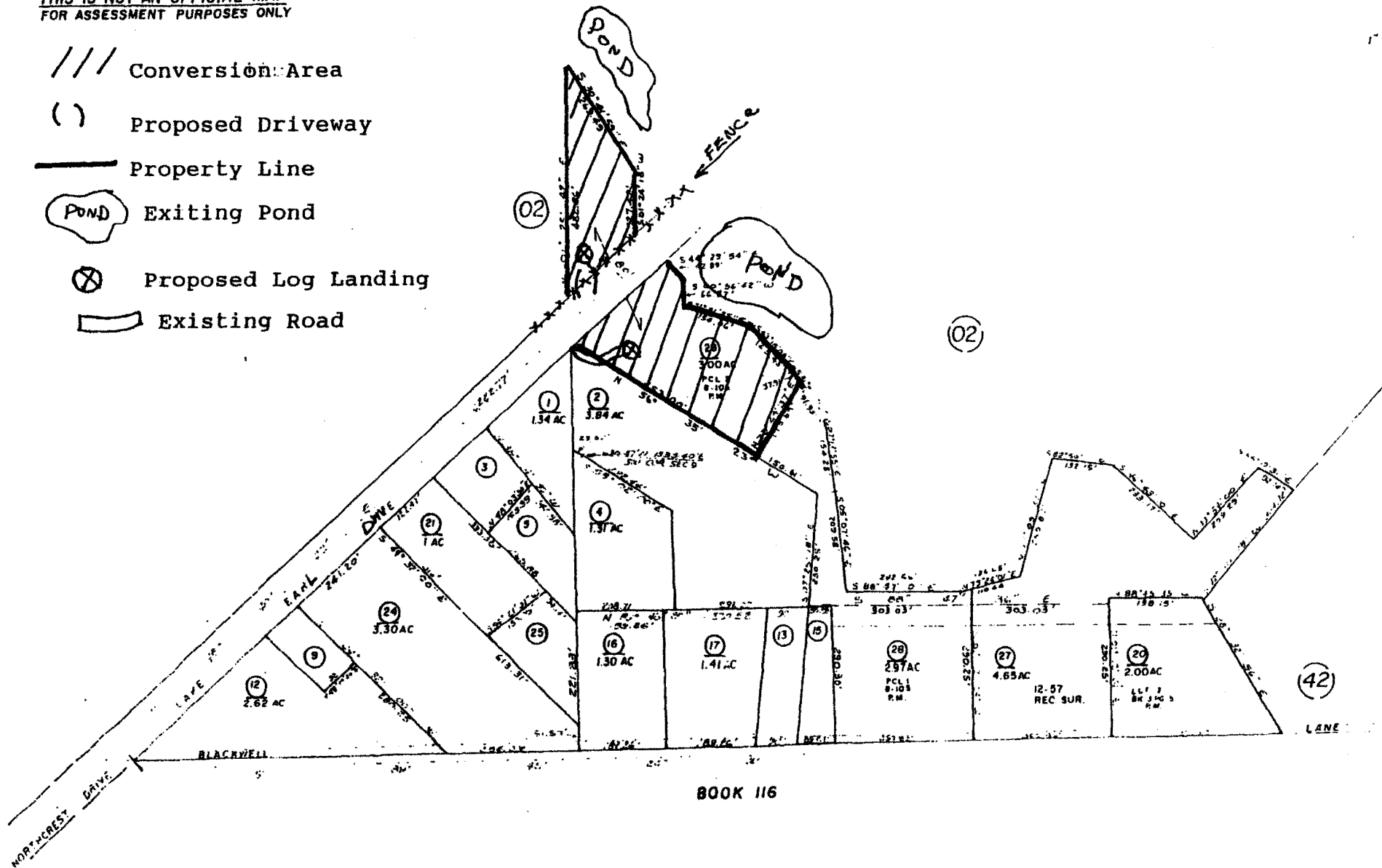
110-130-29

THIS IS NOT AN OFFICIAL MAP  
FOR ASSESSMENT PURPOSES ONLY

- /// Conversion Area
- ( ) Proposed Driveway
- Property Line
- POND Exiting Pond
- ⊗ Proposed Log Landing
- Existing Road



0856  
0289



86 123

6 1/2  
17 1/8

124

RECORD OF SURVEY AND  
BOUNDARY ADJUSTMENT  
FOR  
MARVIN AND CAROLL DAY  
SEC 9, T6N, R1W, H1M  
SHEET 1 OF 1  
JOB NO. 248771 JUNE, 1994

Richard B. Davis Co., Inc.  
P.O. Box 950, 140 Sandy Creek Rd.  
Smith River, CA 95567-0950

- LEGEND**
- INDICATES A 5/8" x 3/4" IRON ROD WITH 2" ALUM CAP ATTACHED STAMPED "DAVIS LE 1346 PROPERTY CORNER" SET BY THIS SURVEYOR
  - INDICATES A 5/8" x 3/4" IRON ROD WITH 2" ALUM CAP ATTACHED STAMPED "DAVIS LE 1346 PROPERTY CORNER" FOUND BY THIS SURVEYOR
  - ⊙ INDICATES A SECTION CORNER FOUND AS NOTED BY THIS SURVEYOR

**PURPOSE**

THE PURPOSE OF THIS MAP IS THE MERGER OF THE LANDS SHOWN HEREON INTO LOTS 1 AND 2 AS SHOWN IN BOOK 3 OF PARCEL MAPS, PAGE 3, DEL Norte COUNTY RECORDS.

**BASIS OF BEARINGS**

CALIFORNIA STATE PLANE COORDINATE SYSTEM, ZONE 1, WAS USED AS SHOWN ON PARCEL MAP, BOOK 3 OF PARCEL MAPS, PAGE 3, AND BASED ON FOUR MONUMENTS AT THE CORNERS OF SECTIONS 9/16/11 AND SECTIONS 9/16/12, AS SHOWN HEREON, TO OBTAIN TRUE NORTH BEARINGS, ROTATE THE BEARINGS AS SHOWN HEREON TO THE LEFT (COUNTER-CLOCKWISE) THROUGH THE CONVERGENCE ANGLE OF 1°25'42" (PROJEKT AVERAGE), TO OBTAIN SHOWN LEVEL DISTANCE. USE ONLY THE DISTANCE AS SHOWN HEREON BY 8.899742 (PROJEKT AVERAGE). RECORD INFORMATION AS SHOWN ON THIS PLAT HAS BEEN REDUCED TO GRID.

**REFERENCE DOCUMENTS**

DOCUMENT DESCRIPTION	DOCUMENT LOCATION
ADJACENT SURVEYS	248-02-41, 248-02-42, 248-02-43
DEED RECORDS	248-02-41, 248-02-42, 248-02-43

THE ABOVE DOCUMENTS CAN BE FOUND IN THE DEL Norte COUNTY RECORDER'S OFFICE AND ARE ADJACENT HEREON AS FOLLOWS: BOOK NUMBER OR LETTER - TYPE OF BOOK - PAGE NUMBER, TYPE OF BOOK AND AS - AGREEMENT: S - DEEDS; ON - OFFICIAL RECORDS; N - MAPS; PM - PARCEL MAPS (EXAMPLE: 248-02-41 DEEDS TO BOOK 3 OF DEEDS, PAGE 302. NOT ALL TYPES OF DOCUMENTS APPEAR ON THIS MAP).

**SURVEYOR'S STATEMENT**

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT AT THE REQUEST OF MARVIN AND CAROLL DAY, FEBRUARY 1994.

RICHARD B. DAVIS  
L.E. 1346, EXPIRATION DATE: 6/30/98

**COUNTY SURVEYOR'S STATEMENT**

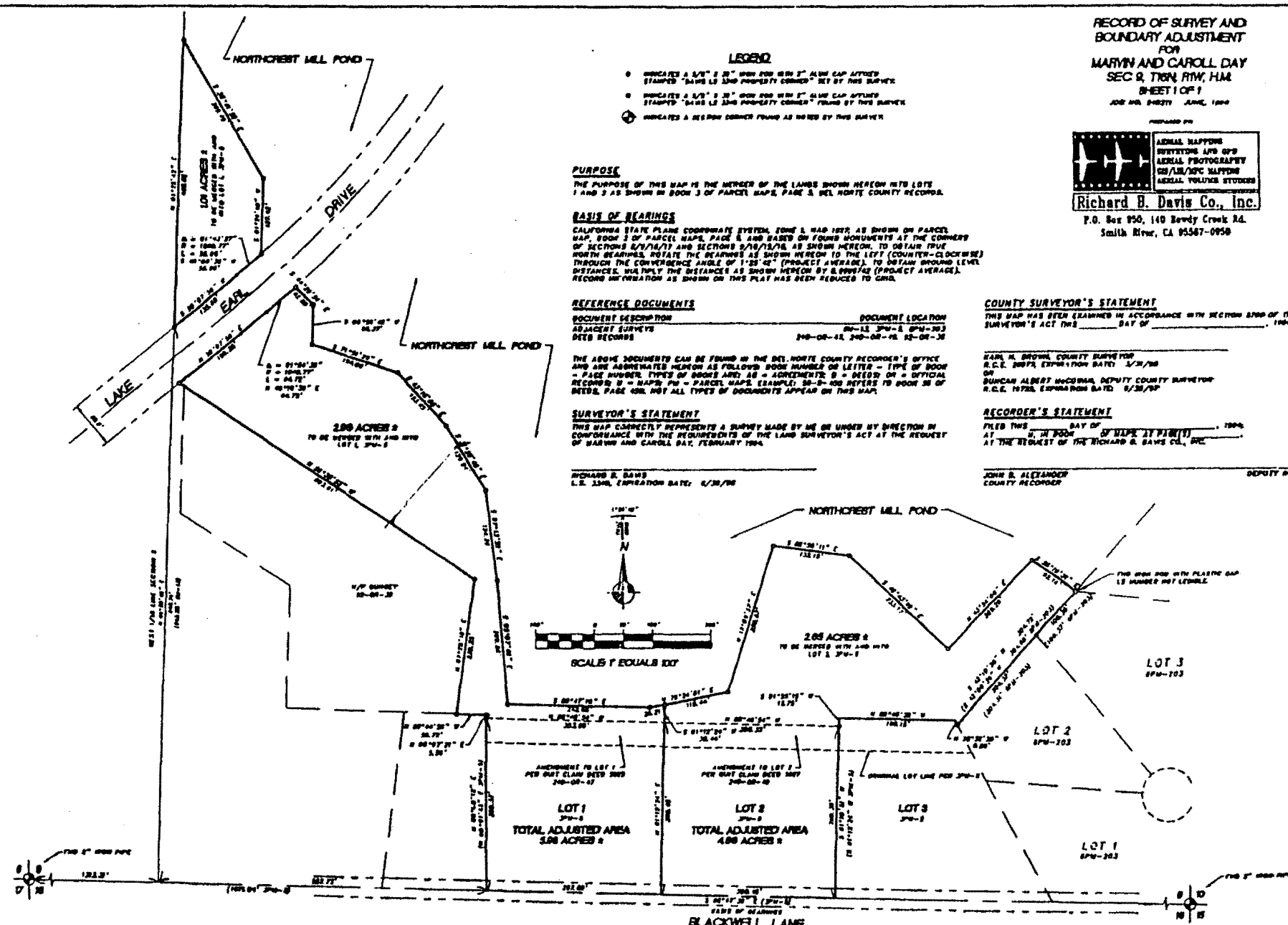
THIS MAP HAS BEEN EXAMINED IN ACCORDANCE WITH SECTION 8700 OF THE LAND SURVEYOR'S ACT THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 1994.

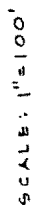
KARL H. BROWN, COUNTY SURVEYOR  
R.E.C. 2074, EXPIRATION DATE: 1/31/98  
OR  
DUNCAN ALBERT MCCORMACK, DEPUTY COUNTY SURVEYOR  
R.E.C. 1978, EXPIRATION DATE: 9/30/97

**RECORDER'S STATEMENT**

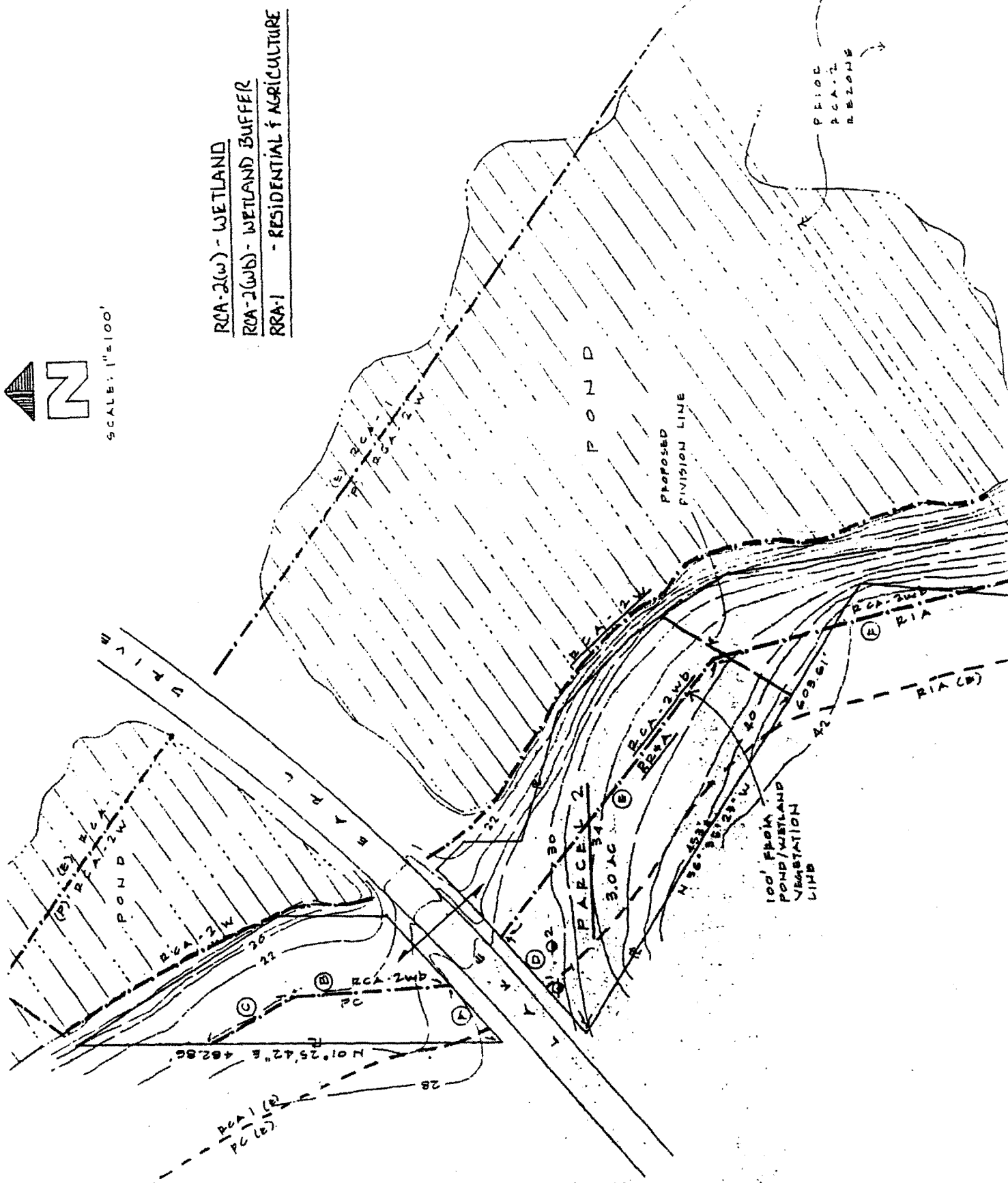
FILED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 1994.  
AT \_\_\_\_\_, IN ROOM \_\_\_\_\_ OF SAID COUNTY RECORDER'S OFFICE  
AT THE REQUEST OF THE RICHARD B. DAVIS CO., INC.

JOHN B. ALEXANDER  
COUNTY RECORDER





RCA-2(w) - WETLAND  
RCA-2(wb) - WETLAND BUFFER  
RRA-1 - RESIDENTIAL & AGRICULTURE



County of Del Norte  
Engineering and Surveying  
700 Fifth Street  
Crescent City, Ca 95531  
(707)464-7229

44-004

Grading Permit Application

Assessor's Parcel Number	<u>110-<sup>130</sup><del>03</del>-29</u>	Applicant/Agent (if different):	<u>Feller + Assoc.</u>
Property Owner:	<u>Dale Foster</u>	Phone Number:	<u>707-464-3866</u>
Address:	<u>2421 Lake Earl Drive</u>	Fax Number:	<u>707 465-6008</u>
	<u>Crescent City Ca. 95531</u>		

Project Description (include general description and reason for application):

Timber Harvest - Less Than 3acre Conversion To be obtained after or as a condition of grading permit

Attach a scaled site map showing all property lines, grading area, roads, structures, ditches, fences, swales, etc.

Approximate depth of cut and/or fill: 15' Feet for driveway

Approximate area to be graded: ≤ 3 acres Square Feet

Approximate quantity of material: 200 Cubic Feet

Removal of vegetation only: Yes X No

NOTICES

- 1.) Any work conducted after issuance of this permit but prior to the end of the appeal period is at the applicant's risk.
- 2.) Issuance of this permit does not authorize any work which will violate the provisions of any recorded or unrecorded covenants, conditions, restrictions, or easements. The permit holder is solely responsible for determining the existence of such covenants, conditions, restrictions, or easements.

AFFIDAVIT

I declare under penalty of perjury that this application and all the foregoing is true and correct.

Signed: [Signature]

Date: 1/29/99

APPROVALS

<u>Division</u>	<u>Required</u>	<u>Not Required</u>	<u>Approved By</u>	<u>Date</u>
Planning				
In Coastal Zone?				
Building				
Engineering	<u>✓</u>		<u>[Signature]</u>	<u>2/3/99</u>

PERMIT FEES

Grading Permit Fee	<u>200/25</u>	Cu. Yards @ \$	\$ <u>15.00</u>
Plan Check Fee	<u>200/27</u>	Cu. Yards @ \$	\$ <u>0</u>
Inspection Fee			\$ <u>30.00</u>
Total Fees			\$ <u>45.00</u>

Permit Issued By: C. Allen

Date Issued: 2/16/99

Permit Number:

Received

JAN 29 1999

Engineering

126

1. Nature study, fish and wildlife management and hunting and fishing, including the development of minor facilities such as duck blinds.

B. The principal permitted designated resource conservation area (wetland buffer) use includes uses such as:

1. Nature study, fish and wildlife management and hunting and fishing, including the development of minor facilities such as duck blinds;

2. Firewood removal by the owner for on-site residential use;

3. Commercial timber harvesting pursuant to California Department of Forestry timber harvest requirements.

C. The principal permitted designated resource conservation area (farmed wetland) use includes uses such as:

1. Agricultural uses such as grazing and pastoral activities, the raising and harvesting of crops on cultivated land (cultivated within the prior ten years) and the maintenance and repair of existing dikes, levees, drainage ditches and other similar agricultural drainage systems;

2. Nature study, fish and wildlife management and hunting and fishing, including the development of minor facilities such as duck blinds.

D. The principal permitted designated resource conservation area (estuary) use includes uses such as:

1. Nature study, fish and wildlife management and hunting and fishing, including the development of minor facilities such as duck blinds;

2. Maintenance and improvement of boating facilities consistent with the General Plan Coastal Element land use policies.

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

1. Nature study, fish and wildlife management and hunting and fishing, including the development of minor facilities such as duck blinds and recreation trails;

2. Firewood removal by the owner for on-site residential use;

3. Commercial timber harvest of conifers pursuant to California Department of Forestry Forest Practice Rules for special treatment areas and stream protection zones and where:

a. Heavy equipment is not used,

b. At least fifty percent of the coniferous tree canopy and all of the hardwood tree canopy is retained;

4. Wells, within rural areas;

5. Maintenance of existing flood-control and drainage channels;

6. Roads, road maintenance and repair. Where new stream crossings are proposed they shall be limited, when feasible, to right-angle crossings of the stream corridors.



# FACSIMILE TRANSMISSION

CALIFORNIA DEPARTMENT OF FISH AND GAME  
NORTHERN CALIFORNIA-NORTH COAST REGION (REGION 1)  
601 LOCUST STREET  
REDDING, CALIFORNIA 96001

INFORMATION (530) 225-2360  
CALNET 442-2360

FAX (530) 225-2381  
CALNET 442-2381

To: Jay Sarina  
Del Norte County Planning Department  
Fax #: (707) 465-1470

Date: March 3, 1999

Pages: 2, including this cover sheet.

From: Don Koch

Telephone: \_\_\_\_\_

Subject: Dale Foster Coastal Grading Permit

ADDITIONAL INSTRUCTIONS:

**RECEIVED**

MAR - 4 1999  
8:15 AM *gjn*  
PLANNING  
COUNTY OF DEL NORTE

STATE OF CALIFORNIA - THE RESOURCES AGENCY

GRAY DAVIS, Governor

DEPARTMENT OF FISH AND GAME  
NORTHERN CALIFORNIA-NORTH COAST REGION  
601 LOCUST STREET  
REDDING, CA 96001  
(530) 225-2300



March 3, 1999

**RECEIVED**

Mr. Jay Sarina  
Del Norte County Planning Department  
700 Fifth Street  
Eureka, California 95531

MAR - 4 1999  
8:15 AM *ajm*  
PLANNING  
COUNTY OF DEL NORTE

Dear Mr. Sarina:

The California Department of Fish and Game (Department) has received the public hearing notification for the Dale Foster Coastal Grading Permit for removal of timber and associated vegetation under a California Department of Forestry and Fire Protection Timber Harvest Exemption. The project site contains potential habitat for an endangered species, the bald eagle (*Haliaeetus leucocephalus*). It is adjacent to Lake Earl and the Standard Veneer Log Pond. In recent years, the use of the Lake Earl area by wintering bald eagles has increased. The site is within two miles of a similar area used by wintering bald eagles last year. Large trees close to rivers, lagoons, lakes or ponds provide perches for wintering bald eagles. Foraging and roosting have been the primary eagle activities in forest stands immediately adjacent to the lagoon.

We understand that the project is proposed under a Class 4 California Environmental Quality Act categorical exemption. Section 15300.2 describes the exceptions to categorical exemptions and provides in Subsection (c) that 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. There is a reasonable potential for adverse impacts to the bald eagle. Under these circumstances, it is premature to conclude that a categorical exemption is adequate.

The Department recommends the area be surveyed for wintering bald eagles prior to approval of the project. If you have any questions about our comments, please contact staff biologist Herb Pierce at (707) 441-5790.

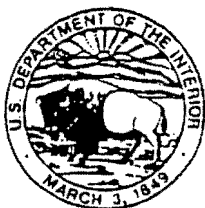
Sincerely,

Donald B. Koch  
Regional Manager

cc: Ms. Amidee Brickey  
US Fish and Wildlife Service  
1125 16th Street  
Arcata, California 95521

Messrs. Herb Pierce and Armand Gonzales  
California Department of Fish and Game  
619 Second Street  
Eureka, California 95501





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,

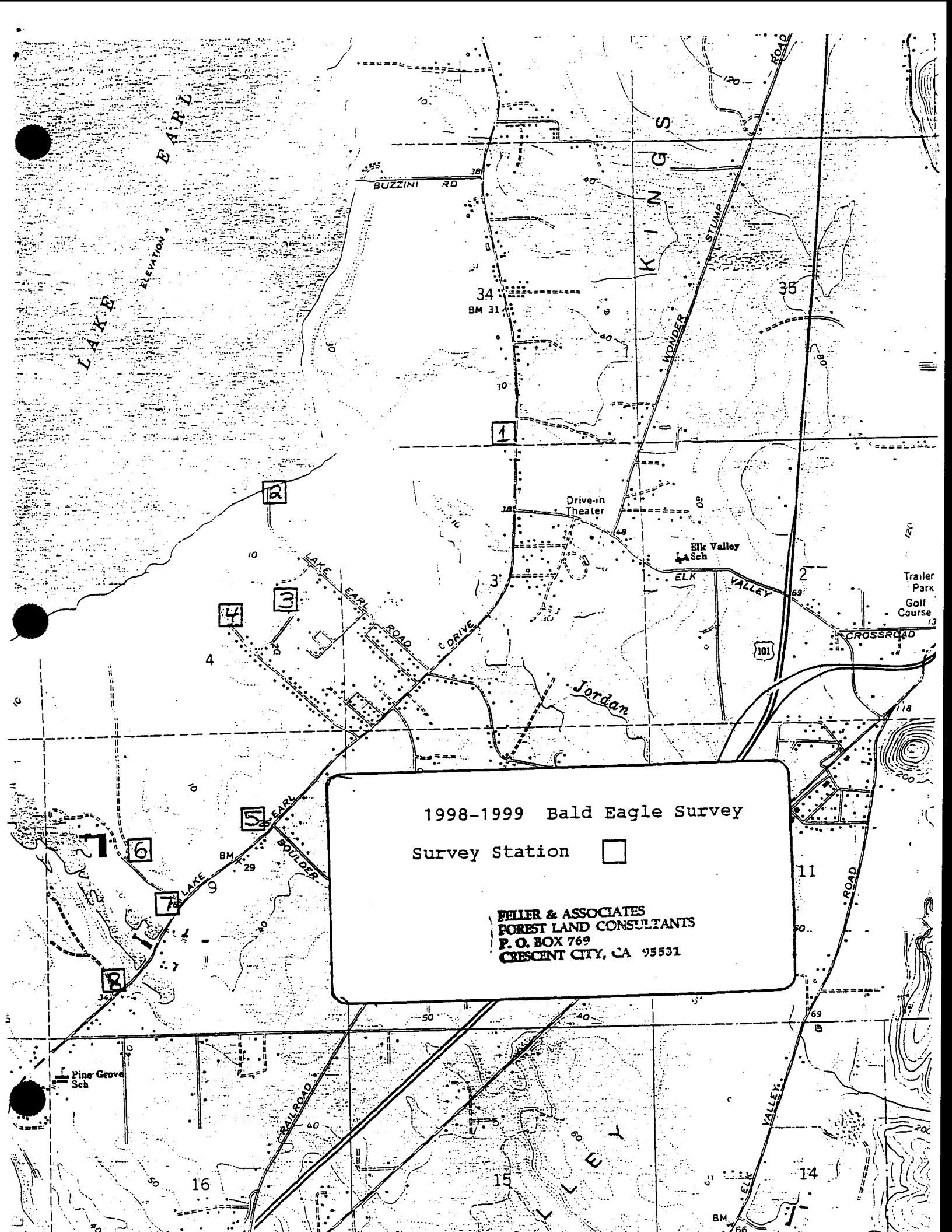
Bruce G. Halstead  
Project Leader

# 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
11/17/91	7:15 AM	8:00 AM										
11/20/94	3:45 PM	4:30 PM										
12/7/98 SF	4:40 PM	5:30 PM										
12/14/98 SC	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 1 blue heron 200' w of #2
2/13/99 SF	7:45 AM	9:20 AM										Large Black Bird over field
2/14/99 SF	4 PM	4:35 PM										
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 by 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



1610 Panorama Drive  
Arcata, CA 95521  
April 5, 1999

**RECEIVED**

APR - 6 1999

PLANNING  
COUNTY OF DEL NORTE

Del Norte County Planning Department  
700 5<sup>th</sup> Street  
Crescent City, CA 95531

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.

HANDED OUT BY STAFF  
PLANNING COMMISSION  
MEETING OF

4/7/99 *afw*

Sincerely yours,

*Paul F. Springer*

Paul F. Springer



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.

879 NINTH STREET • ARCATA, CA 95521

(707) 822-6918 • Fax (707) 822-0827 • email: nec@igc.apc.org

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

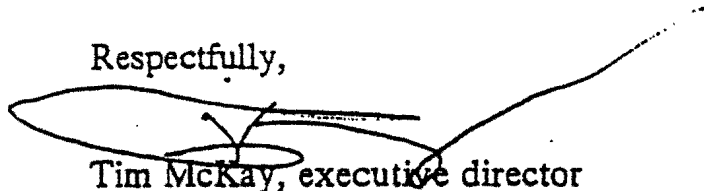
Please advise us in writing of any consultations that your agency might conduct with regard to either the Forest Practices Act, the ESA or the Clean Water Act.

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,

A handwritten signature in dark ink, appearing to read 'Tim McKay', is written over a horizontal line. The signature is fluid and cursive.

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

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

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).)

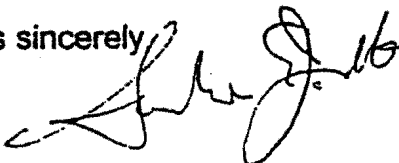
In summary, the outstanding biodiversity and high quality wildlife resources of the Lake and its watershed distinguish it sufficiently to justify a more thorough environmental review based on all or any of these factors. In particular, the county needs to begin examining the cumulative impacts on water 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 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 21<sup>st</sup>, 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.