

**CALIFORNIA COASTAL COMMISSION**

NORTH COAST DISTRICT OFFICE

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RECORD PACKET COPY

**W23a**

Filed:	October 31, 2002
49 <sup>th</sup> Day:	Opened and Continued
Staff:	Jim Baskin
Staff Report:	December 20, 2002
Hearing Date:	January 8, 2003
Commission Action:	

STAFF REPORT: APPEALSUBSTANTIAL ISSUE

LOCAL GOVERNMENT:	County of Del Norte
DECISION:	Approval with Conditions
APPEAL NO.:	<b>A-1-DNC-02-152</b>
APPLICANT:	<b>The Redland Company</b>
PROJECT LOCATION:	145 Redland Lane, Smith River, Del Norte County, APN 102-080-47.
PROJECT DESCRIPTION:	Subdivision of a 9.4-acre parcel into four lots ranging in size from .58 acre to one acre with a 6.5- acre remainder parcel.
APPELLANTS:	Commissioners <b>Sara Wan &amp; John Woolley</b>
SUBSTANTIVE FILE: DOCUMENTS	1) Del Norte County Zoning Amendment R0203C; 2) Del Norte Tentative Parcel Map Approval MS0211C; and 3) Del Norte County Local Coastal Program

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Commission staff further recommends that that Commission find that the project as approved raises a substantial issue of conformance with the policies of the certified LCP regarding the protection of environmentally sensitive habitat areas (ESHAs). The permit application materials submitted to the County and the project record prepared by the County for the development did not fully address the presence and extent of wetlands and riparian vegetation ESHAs on or in proximity to the lots being created by the subdivision. Although a technical analysis accompanied the applicant's request for a reduced-width buffer around aquatic wetlands associated with two ponds and a connecting stream course at the site, the study indicated that other wetlands exists at the project site within the proposed buffer area. The project record provides no further discussion of these terrestrial wetlands, other riparian vegetation environmentally sensitive habitat areas at the site, nor makes specific recommendations regarding buffers or other measures to protect these coastal resources. In addition, the County's permit approval did not include specific findings as to the adequacy of the proposed buffer to protect the identified resource as required by the LCP.

Staff also recommends that the Commission continue the *de novo* portion of the appeal hearing to a subsequent meeting because the Commission does not have sufficient information from the applicant to determine if the current project can be found consistent with the environmental protection and stormwater runoff policies of the certified LCP.

The Motion to adopt the Staff Recommendation of Substantial Issue is found on Page 6.

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#### **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 constituting major public works or major energy facilities may be appealed whether

information for completeness or prepare a recommendation on the substantial issue question for the Commission's December meeting agenda. Consistent with Section 13112 of Title 14 of the California Code of Regulations, since the Commission did not timely receive the requested documents and materials, staff prepared a staff report recommending that the Commission open and continue the hearing during the December Commission meeting. The Commission opened and continued the hearing on December 13, 2002.

**I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE:**

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

**MOTION:**

I move that the Commission determine that Appeal No. A-1-DNC-02-152 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

**STAFF RECOMMENDATION:**

Staff recommends a **NO** vote. Failure of this motion will result in a *de novo* hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

**RESOLUTION TO FIND SUBSTANTIAL ISSUE:**

The Commission hereby finds that Appeal No. A-1-DNC-02-152 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

**II. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

**A. APPELLANTS' CONTENTIONS**

exist beyond the edge of the ponds within the proposed buffer area. The appellants assert that the County should have required further analysis as to the extent and significance of these terrestrial wetlands including the identification of adequate buffers. Having not undertaken such analysis, the appellants conclude that the project as approved by the County is inconsistent with LCP provisions for the protection of wetlands from two perspectives: (1) development in areas adjacent to environmentally sensitive habitat areas has not been shown to be sited and designed to prevent impacts which would significantly degrade such areas, and be compatible with the continuance of such habitat areas; and (2) adequate buffers between building sites created by the subdivision and the edge of all wetlands have not been established to reduce impacts of future development.

3. Protection of Riparian Vegetation.

The appellants further contend that the project as approved is inconsistent with LCP policies requiring that riparian vegetation be maintained along streams, creeks and sloughs and other watercourses within the Coastal Zone for their qualities as wildlife habitat, stream buffer zones, and bank stabilization. Similar to how the County ought to have required delineation of the full extent of wetlands on the project parcel, the appellants maintain that the County should have required the applicant to map and analyze the extent of all riparian vegetation at the site and their habitat characteristics. Moreover, although the project approval included conditions that bar development within the proposed 100- to 25-foot wide wetland buffers, the approved buffer does not fully encompass all of the riparian vegetation found on the site. Accordingly, the appellants reason that the County should have included a permit requirement that all riparian vegetation be retained consistent with the LCP's ESHA policies.

**B. LOCAL GOVERNMENT ACTION**

On June 12, 2002, Regan Carroll, agent-of-record for The Redland Company, submitted completed Coastal Development Permit Application Nos. MS211C and R0203C to the Del Norte County Community Development Department for the subdivision of a 9.4-acre parcel into four parcels ranging in size from 0.58 acre to one acre with a 6.5 acre remainder parcel and application of a "Density" (-D) combining zone overlay onto the subject property's Rural Residential (RR-1) base zone designation. The purpose of requesting the zoning reclassification in addition to the subdivision was to provide the developer with the ability to cluster building sites onto parcels of less than the one-acre minimum lot size required by RR-1 zoning district standards.

Following completion of the Community Development Department staff's review of the project, on October 2, 2002, Del Norte County Planning Commission approved with conditions Tentative Minor Subdivision Map Coastal Development Permit No. MS0211C for the subject development. The Planning Commission attached a number of special conditions, including requirements that: (1) the project be subject to approval of the zoning amendment by the County Board of Supervisors and certification by the

unincorporated town of Smith River (see Exhibit Nos.2-4). The property consists of a generally flat, grass-covered lot situated on an uplifted marine terrace that contains wetlands and riparian vegetation within a gulch along its western-central portion. These resource areas consist of two seep-fed ponds and a connecting watercourse with a well-established tree- and brush-covered riparian corridor along their margins. Plant cover on the elevated portions of the parcel is comprised of upland grasses, forbs, and landscaping shrubs and trees. The portion of the property within the gulch side slopes is covered by thickets of Red alder (Alnus rubra) interspersed with Sitka Spruce (Picea sitchensis), with a variably dense understory comprised of Himalaya blackberry (Rubus discolor), California blackberry (Rubus ursinus), salmonberry (Rubus spectabilis), cascara sagrada (Rhamnus purshiana), and tansy ragwort (Senecio jacobaea). Areas within the ponds were covered by a combination of obligate hydrophytes, including pondweed (Potamogeton sp.), water lentil (Lemna sp.), and wappato (Sagittaria sp.), and surrounded by sedges (Carex sp.). Given the presence of surface hydrology and the composition of plants within the ponds, connecting stream, and the adjacent gulch slopes, the area comprises a mixture of wetland and riparian vegetation environmentally sensitive habitat areas as defined by the certified LCP. Other than yard and landscaping improvements associated with the single-family use by one of the applicant company's principals on an adjoining parcel, the project parcel is presently vacant.

The project site lies within the LCP's "Smith River" sub-region and subject to the specific area policies and rural land division requirements for "Planning Area No. 1, Ocean View Drive." The subject property is comprised of a vacant, legal 9.4-acre parcel designated in the Land Use Plan Rural Residential – One Dwelling Unit per One Acre (RR 1/1) and on the Coastal Zoning Map as Rural Residential (RR-1). The subject property is not within any viewpoint, view corridor, or highly scenic area as designated in the Visual Resources Inventory of the LCP's Land Use Plan. Due to the property's location on a private road and the surrounding private land development pattern, public views to and along the ocean across the property are limited. Additionally, given the presence of mature vegetation between the highway and project parcel, views of the site from Highway 101 and other public recreational areas are limited to a relatively brief gap in the roadside vegetation along southbound Highway 101 as it passes the parcel's 30-foot-wide highway frontage.

The proposed development consists of the creation of four parcels of 0.58 acre, 0.63 acre, 0.67 acre, and one acre in size by land division of a vacant 9.4 acre property wherein a 6.5 remainder parcel would be retained (see Exhibit No. 5). To allow for the creation of parcels of less than one-acre in size, a zoning amendment to add a Density (-D) combining zone designation to the property is concurrently proposed. The -D combining zone provides for the creation of varying parcel sizes and clustered building sites beyond that allowed by the underlying RR-1 base zone lot size and setback standards (see Exhibit No. 6). The -D combining zone would not allow for an increase in the number of parcels that is otherwise permissible under the underlying RR-1 base zone.

- The precedential value of the local government's decision for future interpretations of its LCP; and
- 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 with respect to the allegations below, a substantial issue exists with regard to the approved project's conformance with the certified Mendocino County LCP.

a. Creation of Substandard-sized Parcels

The appellant contends that the proposed project as approved would result in the creation of three substandard sized parcels inconsistent with the standards of the Rural Residential (RR-1) zoning district in which the subject property is situated. The appellants acknowledge that the County Planning Commission concurrently approved a resolution to its Board of Supervisors recommending application of a Density (-D) combining zone designation to the property that would allow less than one acre parcels to be platted, and conditioned the subdivision approval on Board approval of the -D designation and Commission certification of the zoning reclassification as a LCP amendment. However, the appellants note that pursuant to Section 30604(b) of the Coastal Act, after certification of a local coastal program, a coastal development permit can only be issued if the local government or Coastal Commission finds that the proposed development is in conformity with the certified local coastal program. Thus, the appellants contend that the County acted prematurely in approving the tentative subdivision prior to formal application of the -D designation. As a result the project as approved, with three lots less than one-acre in size, is inconsistent with the policies and standards of the LCP as currently certified contrary to the adopted findings.

LCP Policies:

Section 21.50.020 of the Local Coastal Program Zoning Enabling Ordinance (LCPZEO) states, in applicable part:

*County entitlements equivalent to coastal development permits. Where development within the California Coastal Zone requires the issuance of a permit or other entitlement pursuant to Titles 14, 16 and 21 of the Del Norte County Code (e.g., General Plan amendment, zoning amendment, use permit, variance, building or grading permit or tentative subdivision*

that would allow for the creation of less than one-acre parcels and conditioned the subdivision approval on effective certification of the LCP amendment by the local government and the Commission, the zoning amendment had yet to be either enacted by the Board of Supervisors or certified by the Commission at the time of the Planning Commission's action on the subdivision. Accordingly, the one-acre parcel minimum of the RR-1 base zone designation is the applicable prescriptive standard rather than the varying lot size provisions of the -D combining zone yet to be applied to the property.

The Commission also notes that in addition to the procedural implications associated with approving the subdivision prior to the zoning amendment to add the -D designation being considered by the approving authorities, there may be other ramifications to basing the subdivision approval on the assumption that the zoning amendment would be enacted and certified as proposed. It is not a certainty that either the County's Board of Supervisors or the Coastal Commission would approve the zoning change as in its current form as under LCPZEO Section 21.50B.050C, the Board "*may approve, modify, or disapprove any recommendation of the (Planning) commission*" regarding a proposed zoning amendment." [parenthetic added]

Furthermore, pursuant to Section 30513, the Commission could reject the -D combining zone LCP amendment outright and/or make suggested modifications to ensure that the zoning change would adequately carry out the policies of the Land Use Plan. For example, the Commission might conclude that the application of the -D designation might lead to significant adverse impacts to coastal resources unless other provisions were included in the LCP amendment (e.g., concurrent addition of Building Site (-B) or Coastal Area (-C) combining zone designations, whereby the minimum size of building envelopes or other measures to protect coastal resources would be applied). Any of these possible alternate Commission actions to approving the zoning amendment in its current form could affect the configuration of the subdivision proposal and further render the approved tentative parcel map inconsistent with the LCP.

Consequently, there is not a high degree of factual or legal support for the County's decision to approve the project as being consistent with the certified LCP. Therefore, the Commission finds that, as discussed above, the appeal raises a substantial issue with respect to conformance of the approved project with LCPZEO Section 21.16.050 regarding the minimum lot size for parcels within the Rural Residential zoning district.

b. Protection of Wetlands ESHA

The appellants further contend that the project record for the approved development did not include adequate analysis and development conditions to address the potential of the subdivision and rezoning to adversely effect wetlands, inconsistent with the policies and standards of the Del Norte County LCP. The appellants assert that a thorough examination of the property's environmental resources is necessary for demonstrating that the development has been sited and designed to prevent impacts or degradation to

*Review of this information shall be in cooperation with the Department of Fish and Game and the County's determination shall be based upon specific findings as to whether an area is or is not an environmentally sensitive habitat area based on land use plan criteria, definition, and criteria included in commission guidelines for wetland and other wet environmentally sensitive habitat areas as adopted February 4, 1981. The Department of Fish and Game shall have up to fifteen days upon receipt of County notice to provide review and cooperation. [emphasis added]*

With regard to other standards for buffers, Section IV.D.1.f of the LUP's Marine and Water Resources chapter states that:

*Natural vegetation buffer strips may be incorporated to protect habitat areas from the possible impacts of adjacent land uses. These protective zones should be sufficient along water courses and around sensitive habitat areas to adequately minimize the potential impacts of adjacent land uses. [emphasis added]*

Discussion:

The above LCP policies provide for the regulation of new development to protect Environmentally Sensitive Habitat Areas (ESHA). The Land Use Plan's Marine and Water Resources chapter defines ESHA's as including wetlands and riparian vegetation areas and identifies the establishment of buffer zones around ESHAs as the primary tool to protect them. Ecologically, a buffer is a transition zone between one type of habitat and another. Buffers provide an area of refuge for plants and animals between their normal or preferred habitat and human activities. Buffers also serve to lessen the impacts caused by road and paved area runoff, landscape fertilizing, and spills of other household hazardous materials that could severely reduce a wetland's ecological value and the quality of the water flowing outward or downward into surface or sub-surface waters.

LUP Marine and Water Resources Policy VII.D.4f requires that buffer areas shall be established adjacent to all wetlands to provide sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. LUP Policy VII.D.4f further states that the width of the buffer area shall be a minimum of one hundred (100) feet. Alternately, if an applicant can demonstrate, contingent upon coordinated consultation with the California Department of Fish and Game, that one hundred feet is not necessary to protect the wetland area from adverse impacts caused by the proposed development, and specific findings are adopted by the County as to the adequacy of a reduced buffer to protect the resource area, the buffer may be reduced to less than 100 feet in width.

by Galea Wildlife Consultants) and a note shall be placed on the map stating that the area within the wetland buffers are (*sic*) not suitable for residential development and (that) no vegetation removal is permitted. [parentheses added]

It is possible that if the project were to proceed as approved by the County, future development on the parcel created by the subdivision could proceed in locations just beyond the proposed 100- to 25-foot-wide wetland buffer. Without knowing the full extent of wetlands on the property and the full amount of area needed for wetland buffers, the potential future owners of the remainder parcel may purchase the property with the expectation of being able to further subdivide the remainder property and utilize all of the area not restricted to open space under the currently approved project for residential development, including those areas that may actually be needed to provide sufficient buffer area between the existing wetlands on the site and future development. Such an expectation would not be unreasonable given the action of the County to identify wetlands and buffer areas as part of the current application and restrict the identified areas as open space. Accordingly, there is a practical need to determine the full extent of areas needing to be reserved as wetland or buffer as part of the review of the permit application, even though no development is proposed therein at this time.

LUP Marine and Water Resources Policy VII.D.4f indicates that any development within 100 feet of an ESHA has the potential to impact the ESHA. The section also states that a development proposal that has the potential to impact an ESHA of indeterminate or contested extent may be subject to a biological survey. The study submitted by the applicant did not comprehensively address the presence and extent of all wetland ESHAs on the subject property. Similarly, the study describes the proposed buffer zone around the impoundment wetlands as consisting partly of other wetland areas, inconsistent with the requirement that buffers be applied commencing from the edge of the wetlands. Neither does the study discuss what buffering would be needed around the other emergent scrub-shrub and palustrine wetlands.

Therefore, as: (1) no detailed biological survey for the land division was prepared to identify the extent of all wetlands on the site consistent with the criteria within LUP Marine and Water Resources Policy VII.D.4g; and (2) no specific findings were adopted by the County to substantiate the adequacy of the proposed reduced-width buffer to protect all wetlands on the site, the Commission finds that there is insufficient factual and legal support for the County's decision that the development is consistent with ESHA protection policies of the certified LCP. Therefore, a substantial issue is raised of the conformance of the project as approved with Marine and Water Resources Policy VI.C.6. Furthermore, without such a survey to determine the extent of all environmentally sensitive habitat and whether building sites exist outside of such habitat areas and their prescribed buffers, a substantial issue is also raised with the requirements of LUP Marine and Water Resources Policy VII.D.4f, which states that development shall not be permitted unless it has been shown to be sited and designed to prevent impacts which

*wildlife habitat, stream buffer zones, and bank stabilization.* [emphases added]

Discussion:

The above LCP policies and standards provide for the regulation of new development to protect riparian vegetation ESHAs. Marine and Water Resources Policy VII.E.4.a requires riparian vegetation be "maintained." Although the LCP does not specifically define what maintenance of riparian vegetated areas entails, the term is generally understood to mean that the vegetation system is to be "kept in its existing state," "preserved from failure or decline," or "retained in its original location, extent and condition."<sup>1</sup>

As discussed in the Site Description Findings Section II.C, portions of the property within the gulch area situated along the parcel's western-central axis are vegetated with a well-established, dense tree- and shrub-cover plant community that meets the definition for riparian vegetation. These areas extend well over 100 feet outward from the western and northeastern margins of northern pond and from both sides of the connecting stream.

Although the habitat assessment prepared for the project did acknowledge and generally describe the extent of this vegetation system, the report did not address the LCP policies requiring that riparian vegetation be maintained. Furthermore, except for those portions of the riparian corridor located coterminously within the proposed 25- to 100-foot wide wetland buffer zone in which development would presumably be precluded, no provisions were included in the approval of the project for maintaining the riparian vegetation located beyond the buffer.

Thus, as approved by the County, the project would include no provisions for maintaining any of the site's riparian vegetation that may exist beyond the bounds of the wetlands buffer contrary to the provisions of LUP Marine and Water Resources Policies VI.C.6 and VII.E.4.a that direct that: (a) development shall not be permitted unless it has been shown to be sited and designed to prevent impacts which could significantly degrade environmentally sensitive habitat areas and be compatible with the continuance of such areas; and (b) riparian vegetation 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.

Consequently, there is not a high degree of factual or legal support for the County's decision to approve the project as being consistent with the certified LCP. Therefore, the Commission finds that, as discussed above, the appeal raises a substantial issue with

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<sup>1</sup> Merriam-Webster Collegiate Dictionary, Tenth Edition

identified, especially the locations where hydrophytes were the predominant cover, no soil samples were taken and evaluated, and a precise map of the potential wetland area was not prepared. It is not clear whether any or all of the area surrounding the impoundment area and in the adjoining riparian corridor are actually wetlands. To properly determine the extent of any wetlands in the area, the applicant must submit wetland evaluation prepared consistent with LUP Marine and Water Resources Policy VII.D.4g.

#### **Riparian Vegetation Habitat Assessment**

As discussed in the finding above analyzing whether the project raises a substantial issue of conformance of the approved development with the certified LCP, LUP Marine and Water Resources Policy VII.E.4.a requires that riparian vegetation 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. As currently approved, other than the provisions within the habitat and wetland assessment for the establishment of buffers with 25- to 100-foot width around the pond wetlands within which development would be precluded, there are no specific measures included in the permit to assure that all riparian vegetation along streams, creeks and sloughs and other water courses at the site would be retained. Although some of the riparian vegetation at the site lays co-terminus to the approved buffer area, the project record does not conclusively document whether all such vegetation would receive the protection mandated by LUP Marine and Water Resources Policy VII.E.4.

Therefore, knowing the full extent of riparian vegetation at the project site would be important for the Commission's *de novo* review of the application. Without such information, it would be difficult for the Commission to determine whether the parcel as subdivided, could be developed in the future in a manner that is fully consistent with the certified LCP. A riparian vegetation assessment of the property prepared consistent with the requirements of LUP Marine and Water Resources Policy VII.D.4g is therefore needed. The riparian analysis must also include an analysis of how much of an ESHA buffer is necessary to protect the riparian ESHA from significant degradation from future development of the property pursuant to LUP Marine and Water Resources Policy VI.C.6

#### **Drainage Plan**

Although not an issue raised as part of this appeal, if the project were to be considered by the Commission in a hearing *de novo*, all aspects of the project's consistency with the certified LCP must be reviewed. This would include the policies and standards regarding the protection of marine resources and water quality. As currently approved, there is scant information in the public record for the project regarding stormwater runoff and erosion controls to be used

8. Appeal, filed October 31, 2002 (Wan & Woolley)
9. Wetlands Site Visit Report
10. Agency Correspondence
11. General Correspondence

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**PROJECT  
SITE**

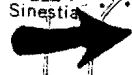


EXHIBIT NO. 2  
APPLICATION NO.  
A-1-DNC-02-152  
REDLAND COMPANY  
VICINITY MAP

Hunter Rock

Prince Island

Pyramid Point

Low Rock

DUNES  
SAND

Gaging Sta.

Sinestia

Trailer  
Parks

Ship Ashore  
Landing Strip

Ship Ashore  
Race Track

Tillas

Island

Slough

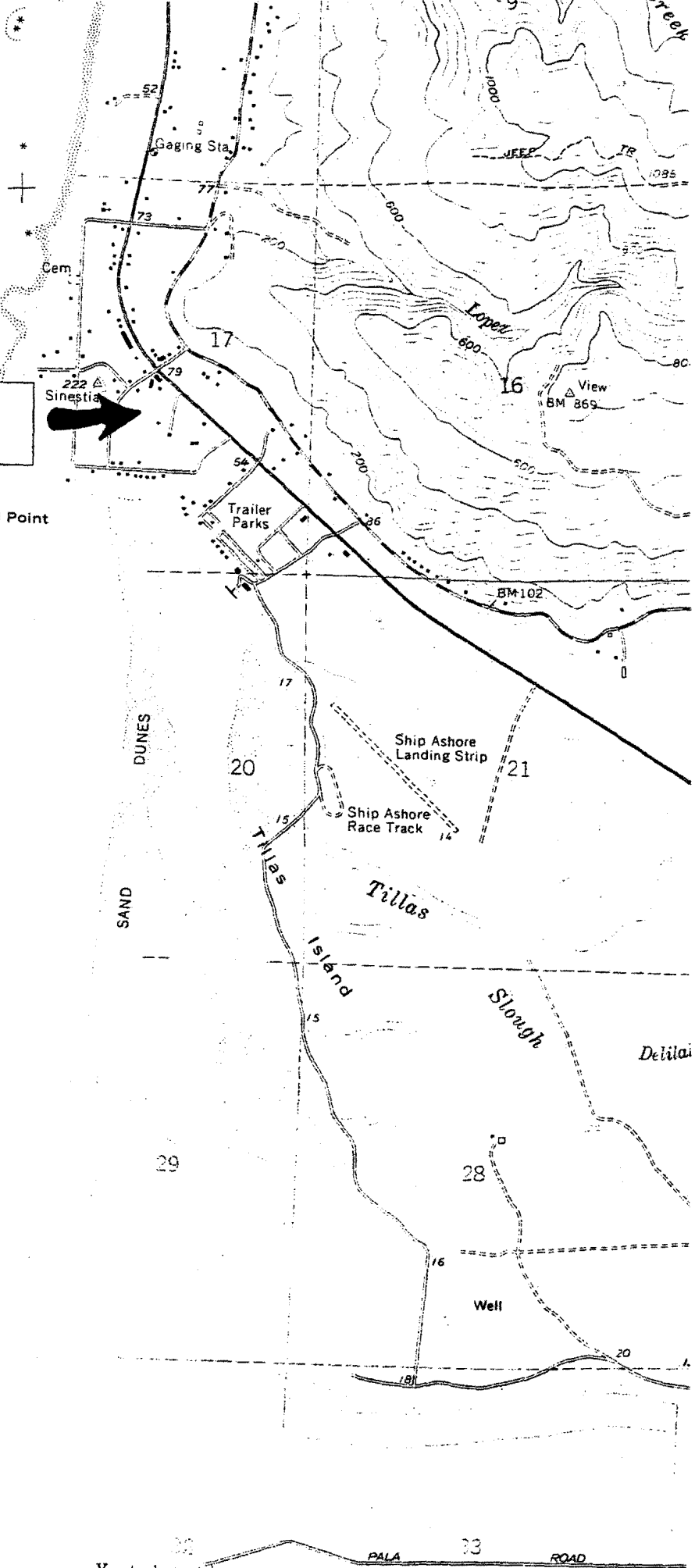
Well

Yontocket  
(Site)

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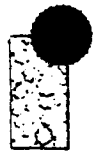
PALA

ROAD





WOODLOT-1 D.U. / 2 ACRES



WOODLOT-1 D.U. / 3 ACRES



WOODLOT-1 D.U. / 5 ACRES



1 D.U. / ACRE



1 D.U. / 2 ACRES



RURAL MOBILEHOME PARK



RURAL NEIGHBORHOOD  
(DENSITY AS DESIGNATED)

Reservation Ranch  
Segmentation Area

COUNTY  
PARK

OCEAN  
VIEW

COASTAL

COUNTY PARK

PROJECT  
SITE

EXHIBIT NO. 4

APPLICATION NO.  
A-1-DNC-02-152  
PORTION, LAND USE  
PLAN MAP-SMITH RIVER  
PLANNING AREA

EXHIBIT NO. 6

APPLICATION NO.

A-1-DNC-02-152  
EXCERPT, LOCAL COASTAL  
PROGRAM ZONING  
ENABLING ORDINANCE-  
CHAPTER 21.36 (1 of 2)

9. Crescent City Area - Policies 15 (L.C. Bliss Shores State Park) - Master Plan shall include specific listed improvements;

10. Crescent City Area - Policy 18 (Parcel Number 110-300-01) - Requirements shall for division of land;

11. Crescent City Area - Policy 23 (L.C. Bliss Shores State Park) - Master Plan development shall include specific listed improvements;

12. Crescent City Area - Policy 26 (Point St. George) - Option to be selected at time of development application, (including bonus density provision) with all requirements of either to be required in permit;

13. Klamath Area - Policy 10 (Assessor's Parcel Number 140-060-01 and 04, Public Reserve Area) - Prioritized uses shall be required in permit. (Ord. 93-17 §1, 1993; Ord. 83-03(part))

21.35.070 Zoning maps. The depiction of the C coastal area combining district upon the county zoning maps shall include a parenthetical reference as to the type of coastal area designated, i.e., hazard (H), access (A), highly scenic visual resource areas (V) or special development pattern area (S). (Ord. 83-03(part))

## Chapter 21.36

### D COMBINING DISTRICT

#### Sections:

- 21.36.010 Intent.
- 21.36.020 Application.
- 21.36.030 Restrictions.

21.36.010 Intent. The intent of this chapter is to create a district which, when combined with a basic zoning district, will not allow further land division of lots created by a subdivision. This in turn will allow cluster-type developments, and/or varied lot sizes which would best utilize unique site situations yet remain consistent with density and use requirements of the county General Plan or adopted specific plan. (Ord. 83-03(part))

21.36.020 Application. This D district may be combined with any A, RR, R or CT zoning district. The regulations set forth in this chapter shall apply in lieu of the

DEL NORTE COUNTY COMMUNITY DEVELOPMENT DEPAR  
981 H STREET, SUITE 110  
CRESCENT CITY, CA 95531

EXHIBIT NO. 7

APPLICATION NO.

A-1-DNC-02-152  
REDLAND COMPANY  
NOTICE OF FINAL  
LOCAL ACTION (1 of 10)

NOTICE OF ACTION

- I. Notice is hereby given that the **Planning Commission** of Del Norte County took the following action on **October 2, 2002** regarding the application for development listed below:

Action: ☒ Approved ☐ Denied ☐ Continued ☐ Recommended EIR  
☐ Forwarded to Board of Supervisors

Application Number: MS0211C

Project Description: Minor Subdivision

Project Location: 145 Redland Lane, Smith River

Assessor's Parcel Number: 102-080-47

Applicant: The Redland Company

Applicant's Mailing Address: 1155 Tennessee Street, San Francisco, Ca. 94107

Agent's Name & Address: Regan Carroll, PO Box 149, Smith River, Ca. 95567

RECEIVED

OCT 17 2002

CALIFORNIA  
COASTAL COMMISSION

A copy of any conditions of approval and/or findings adopted as part of the above action is 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 of your NOTICE OF APPLICATION STATUS or the Planning Division of the Community Development Department if you have questions.

III. Notice is given that this project:

Is not appealable to the California Coastal Commission, however, a local appeal period does exist.

- ☒ Is appealable to the California Coastal Commission.

- ☒ Any appeal of the above decision must be filed with the Clerk of the Board of Supervisors by October 14, 2002 for consideration by the Board of Supervisors.

- ☒ 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 will be notified of its status by the Coastal Commission Office.

(Continued on the next page)

APP# MS0211C  
R0203C

**APPLICANT:** The Redland Company

AP#: 102-080-47

LOCATION: Redland Lane

PARCEL(S)

EXISTING

EXISTING

SIZE: 9.4 ac.

USE: Vacant

STRUCTURES: None

PLANNING AREA: 1    GENERAL PLAN: RR(1/1)

ADJ. GEN. PLAN: Same

ZONING: RR-1

**ADJ. ZONING:** Same

1. PROCESSING CATEGORY:    NON-COASTAL            APPEALABLE COASTAL    X  
   NON-APPEALABLE COASTAL    PROJECT REVIEW APPEAL

2. FIELD REVIEW NOTES: DATE: 6/6/02 HEALTH DEPT X BUILDING INSP X  
PLANNING X ENGINEERING/SURVEYING X

ACCESS: Redland Ln. and Mouth of Smith River Rd. ADJ. USES: Res. and Vacant  
TOPOGRAPHY: Generally Flat DRAINAGE: Surface

DATE OF COMPLETE APPLICATION: 6/12/02

3. ERC RECOMMENDATION: Previous Negative Declaration Applies. SCH# 2002062086.  
Approval with conditions.

**4. STAFF RECOMMENDATION:**

The Redland Co. has submitted an application for a minor subdivision and Density "D" Overlay Rezone of a 9.4-acre parcel into four parcels and a remainder. The parcels are approximately 1.0 ac., .63 ac., .58 ac., .67 ac. and 6.5 ac. each in size. The subject property has a General Plan Land Use designation of RR (1/1) (Rural Residential - one dwelling unit per acre) and a zone designation of RR-1 (Rural Residential - one dwelling unit per acre). The property is located on Redland Lane off of Highway 101 and Mouth of Smith River Road in Smith River.

10/03/02

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early 1980s, was located within 60 feet of the east bank.

The lower pond ends at an existing access road. A culvert runs under the road at this location. The pond overflow is run through a pipe that empties into a narrow trench off-site that runs downhill to the south. Lawns manicure both sides of the trench. The trench continues downhill, off-site, as part of the drainage system for the residential area beyond the subject parcel. Neither pond has potential for anadromous fish.

Based on the Assessment, the wildlife biologist has recommended buffers of less than 100 feet for both ponds. For the upper pond he recommends that the buffer for the East Side of the pond be the top of bank, where at its widest the bank is 13 feet from the edge of the pond. On the attached map, a 25-ft. buffer is shown that meets and exceeds his 13-ft. recommendation. On the west side of the side of the pond it is recommended that the top of bank be used as the buffer which is more gentle and greater in width than the east side of the pond. The attached map identifies a 50-foot buffer from the top of bank, which meets and exceeds the recommendation. Furthermore, a 100-foot buffer is recommended from upper pond's north edge that takes in the seep, which is the source of water for both ponds. This buffer also includes most or the entire habitat that could be called wetlands that exist north of the pond.

The area between the two ponds where the waterflow runs downhill is considered a wetland. The area is thick with vegetation with the exception of the east edge that is manicured lawn. Galea notes that this condition has been in effect many years and that it can be maintained without adversely impacting the wetland area. The attached map shows a 50-ft. buffer from the centerline of the vegetated area between the ponds that creates a total buffer in this area of 100 ft. The buffer extends to the lower pond approximately 50 ft. from the edge of pond. All recommended buffers will be required to shown on the parcel map and a note placed on the map stating that no development shall occur within the designated buffered area. The Habitat and Wetland Assessment and associated mapping were sent to Karen Kovacs, Sr. Wildlife Biologist for the California Department of Fish and Game for review and comment. Ms. Kovacs has verbally accepted the buffer recommendations for the project and will follow up with a written letter acknowledging the acceptance of the reduced buffer recommendation.

The three proposed lots on the south side of the parcels were also reviewed as part of the assessment. The lots are all mowed and open with no ditches, drainages or wetland attributes present.

#### Water Supply and Sewage Disposal

All proposed parcels will utilize community water provided by the Smith River Community Services District. On-site sewage disposal testing was conducted for the four parcels and the remainder. Testing indicated that the Wisconsin Mound sewage disposal systems are required for proposed parcel one through three. Testing for proposed parcels one and the remainder indicated that conventional sewage disposal systems may be utilized. Each parcel will be required to show a potential developable area (pda) of a minimum of 20,000 square feet on the parcel map. This assures future property owners that a building site, primary and reserve

proposed development downslope of the ponds and connecting stream. As stated before, the 90-degree crossing of the outlet stream will be addressed as part of the grading plan.

#### RCA Designation

Coastal staff is advocating that the subject wetland area be rezoned as part of this project to include RCA-2 zoning and has indicated that when the "D" overlay request is before the Coastal Commission, Coastal staff may recommend that the RCA-2 be included. The Local Coastal Plan process does not specifically identify this property as having a Resource Conservation Area (RCA) therefore Coastal staff has acknowledged that the RCA rezone process is not a procedural obligation of the County at this time. However Coastal Staff has stated that they may recommend to the Coastal Commission as a condition of approval of the "D" overlay that the RCA-2 rezone be imposed.

The imposition of the RCA-2 rezone is not as effective as the conditional approval of the subdivision map. The recommendation of County staff will impose a permanent no-build setback on the "wetland" areas of concern. This map restriction runs with the land as compared to rezone, which is a legislative action potentially subject to change. County staff has previously used this map restriction process on previous projects where no RCA zoning exists but a sensitive habitat is found to be on the property under consideration.

#### Noise

A noise attenuation zone requirement is also placed on the project approval due to the parcels proximity to Highway 101. A note shall be placed on the parcel map stating that any residential development placed within 142 feet of the nearest lane of Highway 101 may be required to include noise attenuation design to meet interior CNEL or Ldn levels of 45 dBA.

#### Revisions to Negative Declaration as a Response to Comments

The following revisions apply to the circulated negative declaration in response to comments received:

##### Item IV (c)

The ponds and the connecting stream were mapped and a habitat and wetland assessment has been prepared by a qualified biologist. The recommendations of the biologist have been reflected in the staff recommendation.

##### Item VIII (c)

There is no significant drainage alterations or pattern changes proposed as part of the project. A drainage plan is required to address the limited minor changes in localized drainage as a result of construction of the access road.

#### Conclusion

A Negative Declaration has been posted with the State Clearinghouse for the proposed project with the two above comments received from the California Coastal Commission and Glenn Payne Sr.. Staff recommends the Commission adopt the findings and the Negative Declaration and approve the project subject to the conditions listed below.

7) Each of the lots created shall have a designated potential development area, which is no smaller than 20,000 sq.ft. in size which is consistent with the locations on the approved project map. Driveways and potential development areas (pda's) shall be shown on the parcel map and total area of each site indicated. No development shall occur outside the designated potential development area identified on the parcel map;

8) The owner and any subsequent owners shall be on notice that if any archaeological resources are encountered during any construction activities; such construction activities shall be halted, the Planning Division notified, and a qualified archaeologist shall be hired at the owner's expense to evaluate the find. A covenant deed restriction shall be developed to provide such notice prior to recordation of the final or any phase of the map;

9) \*\*\*\*The parcel map shall identify all wetland buffers shown on map identified as Exhibit A and a note shall also be placed on the map stating that the area within the wetland buffers are not suitable for residential development and no vegetation removal is permitted;\*\*\*\* Amended per PC meeting 10/2/02\*\*\*\*

10) Prior to recordation of the parcel map any final soils testing required by Klamath Basin Standards shall be completed. The final location and design for the proposed Wisconsin Mound Sewage Disposal system(s) shall be prepared by a registered engineer. These shall be submitted to the County Building Inspection Division for review and acceptance;

11) The proposed water supply shall be from an approved public water source or from some other source approved for the purpose by the Health Office prior to recordation of a parcel map. If testing indicates, it may be necessary to place a note on the final or parcel map advising any prospective purchaser that: "The installation of filtration treatment equipment may be desirable on proposed individual wells in order to avoid any unacceptable levels of such minerals or corrosiveness. This equipment may be costly to install and maintain.";

12) A note shall be placed on the parcel map referring to the engineered sewage disposal system report by name and date, stating that the report is on record with the County Community Development Department, Building Inspection and Planning Divisions;

13) An encroachment permit from the Community Development Department, Engineering and Surveying Division shall be obtained for any work in the Mouth of Smith River Road right-of-way;

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## CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

MAILING ADDRESS:

710 E STREET • SUITE 200

P. O. BOX 4908

EUREKA, CA 95501-1865

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APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENTPlease Review Attached Appeal Information Sheet Prior To Completing  
This Form.SECTION I. Appellant(s)

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

Commissioners Sara J. Wan and John Woolley

(See Attachment 1)

Zip

Area Code

Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government:

County of Del Norte

2. Brief description of development being appealed:

Zoning Amendment to add a Density (-D) Combining Zone and subdivide  
a 9.4-acre parcel into four lots ranging in size from .58 acre to one  
acre with a 6.5-acre remainder parcel3. Development's location (street address, assessor's parcel  
no., cross-street, etc.):

145 Redland Lane, Smith River, CA

APN 102-080-47

4. Description of decision being appealed:

a. Approval; no special conditions: \_\_\_\_\_

b. Approval with special conditions: \_\_\_\_\_ ✓

c. Denial: \_\_\_\_\_

Note: For jurisdiction 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: A-1-DNC-02-152

DATE FILED: October 31, 2002

DISTRICT: North Coast

EXHIBIT NO. 8

APPLICATION NO.

A-1-DNC-02-152

REDLAND COMPANY

APPEAL, FILED 10/31/02

(WAN &amp; WOOLLEY) (1 of 8)

RECEIVED

OCT 31 2002

CALIFORNIA  
COASTAL COMMISSION

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.)

(See Attachment 2)

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.

Signed:   
Appellant or Agent

Date: 10/31/02

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

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**ATTACHMENT #1:  
APPELLANTS**

☒ **Sara J. Wan, Chair**  
22350 Carbon Mesa Road  
Malibu, CA 90265  
(310) 456-6605

☒ **John Woolley**  
Board of Supervisors  
825 - 5<sup>th</sup> Street  
Eureka, CA 95501-1153  
(707) 476-2393

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- i.) A base map delineating topographic lines, adjacent roads, location of dikes, levees, flood control channels and tide gates.
- ii.) Vegetation map.
- iii.) Soils map.

Review of this information shall be in cooperation with the Department of Fish and Game and the County's determination shall be based upon specific findings as to whether an area is or is not an environmentally sensitive habitat area based on land use plan criteria, definition, and criteria included in commission guidelines for wetland and other wet environmentally sensitive habitat areas as adopted February 4, 1981. The Department of Fish and Game shall have up to fifteen days upon receipt of County notice to provide review and cooperation. [emphasis added]

Marine and Water Resources Policy VII.E.4.a of the County of Del Norte LUP states that, "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." [emphases added]

### **Conformance Analysis**

On October 2, 2002, the County of Del Norte Planning Commission forwarded a supporting recommendation to the Board of Supervisors that a Density (-D) combining zone be applied to the subject project site. Concurrent with that action, the Planning Commission granted a conditional tentative parcel map approval for the subdivision of a 9.4-acre parcels into four parcels ranging in size from .58 to one acre in size with a 6.5-acre remainder parcel. The subdivision approval was conditioned upon subsequent approval of the -D combining zone reclassification by the Board of Supervisors and subsequent certification of the LCP amendment by the California Coastal Commission. In granting the tentative parcel map approval, the Planning Commission adopted findings that the project is consistent with the policies and standards of the Local Coastal Plan and Title 21 – *Coastal Zoning* of the Del Norte County Code.

As cited above, the minimum lot size for the Rural Residential zoning district in which the project site is one acre. Accordingly, as the concurrently requested zoning amendment for application of a -D combining zone onto the property has not yet been approved by the Board of Supervisors or certified by the Coastal Commission, the flexibility that the -D designation would provide with respect to creating lots in variance from the lot size minimum standards of the R-R base zoning district does not currently apply to the property. Pursuant to Section 30604(b) of the Coastal Act, after certification of a local coastal program, a coastal development permit can only be issued if the local government or Coastal Commission finds that the proposed development is in conformity with the certified local coastal program. Thus, the County acted prematurely in approving the tentative subdivision prior to formal application of the -D designation. As a result the project as approved, in which three lots with less than one-acre in size would result, is inconsistent with the policies and standards of the LCP as currently certified contrary to the adopted findings.

The project site also contains wetlands and riparian vegetation along its western-central portions. These areas consist of impounded water areas and a series of adjoining and connecting watercourses and seeps. These areas were the subject of a "site visit report" prepared by Gilea Wildlife Consulting for the purpose of establishing buffers around these areas. As cited above, the LUP's Marine and Water Resources chapter contains policies intended to ensure that these environmentally sensitive areas are protected from development. Policy VII.D.4.f requires that development be sited and designed to prevent impacts and degradation and establishes a default

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Site Visit Report, Redland Minor Subdivision Proposal, Smith River, CA. APN # 102-080-47  
Habitat and Wetland Assessment, August, 2002.

An assessment of habitat and wetland attributes for the Redland property was conducted in August, 2002 by Frank Galea, Certified Wildlife Biologist. This property, approximately 8.5 acres in size, is under proposal for splitting into four separate properties, forming a minor subdivision. Currently, the property has two man-made ponds on it, one at a slightly higher elevation than the other, separated by approximately 250 feet. The ponds were excavated many years ago, and have no potential for anadromous fish. The upper pond is spring (or seep)-fed, while the lower pond receives the overflow from the upper pond, after the overflow runs down through a wetland area.

The upper pond is the larger of the two. It was very shallow, with the greatest depth at only 3-4 feet. The upper end (north) of the larger pond contains a muddy bog, with minimal water flow over it, and little vegetation. At the upper end of the bog thick stands of riparian and upland vegetation was found. The seep from which the upper pond is fed lies a short (approximately 15 feet) distance up into this thick vegetation. Farther north of the pond is a very dense stand of tall salmonberry, extending all the way to the property line, approximately 300 north of the pond. Approaching the source of the water from the north through dense stands of salmonberry resulted in no evidence of waterflow until one approaches the boggy area to within approximately 15 feet, although some wetland plants (mainly sedges) were evident.

The upper pond has relatively steep (40 to 80 percent) banks on the east side. The banks are covered with diverse vegetation, including grasses, Himalayan blackberry, native blackberry, tansy ragwort, chitum, and red alder. Planted species on the slope include desert succulents, rhododendron, and Oregon grape. The only species with definite wetland association were a few horsetails. Overall, the slope was steep, especially toward the midst of the pond, and the soil appeared very well drained. At the top of the bank on the east side the ground leveled and was kept manicured by mowing. This condition has been maintained for a long time, based upon the land owners statement and aerial photographs available through Del Norte county.

The lower pond ended at an access road, where a culvert ran under the road. The overflow was run through a pipe which empties into a very narrow, small trench, running downhill to the south. Both sides of the small trench were manicured by lawns. The trench continued downhill as part of a drainage system for a residential area. There was no possible access for salmonids within the system examined.

EXHIBIT NO. 9

APPLICATION NO.

A-1-DNC-02-152

REDLAND COMPANY

WETLANDS SITE

VISIT REPORT (1 of 3)

[illegible]

102-080-47

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