

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



W 4, 5

Staff: Sheila Ryan-SF
Staff Report: May 26, 2006
Hearing Date: June 14, 2006

**STAFF REPORT AND FINDINGS FOR HEARING ON VIOLATION OF THE
COASTAL ACT
AND ISSUANCE OF CEASE AND DESIST ORDER**

NOTICE OF VIOLATION: CCC-06-NOV-04

CEASE AND DESIST ORDER: CCC-06-CD-04

RELATED VIOLATION FILE: V-1-04-005

PROPERTY LOCATION: Lot 4 in Block 90, Pacific Shores Subdivision,
north of Crescent City, Del Norte County,
APN 108-320-08 (**Exhibit 1**).

DESCRIPTION OF PROPERTY: Coastal property in Pacific Shores, near Lakes Earl
and Tolowa in Del Norte County.

PROPERTY OWNER: Kathleen Dawn Bicknell

VIOLATION DESCRIPTION: Unpermitted development including (but not limited
to): placement of fill, change in intensity of use
from a vacant lot to residential uses, vegetation
removal, placement of recreational vehicles, and
construction of a storage facility/gazebo building.

SUBSTANTIVE FILE DOCUMENTS:

1. Cease and Desist Order File No. CCC-06-CD-04
2. Notice of Violation File No. CCC-06-NOV-04
3. Coastal Development Permit Application File
No. 1-04-008
4. Exhibits 1 through 8

CEQA STATUS: Exempt (CEQA Guidelines (CG) §§ 15061(b)(3)),
and Categorically Exempt (CG §§ 15061(b)(2),
15307, 15308, and 15321).

I. SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission find that a violation of the Coastal Act has occurred and approve and issue Cease and Desist Order No. CCC-06-CD-04 (“Order”) to require removal of unpermitted development at Pacific Shores Subdivision Block 90, Lot 4, APN 108-320-08 in Del Norte County (“subject property”). The unpermitted development includes (but may not be limited to): placement of fill, change in intensity of use from a vacant lot to residential uses, vegetation removal, placement of recreational vehicles, and construction of a storage facility/gazebo building (**Exhibit 2**). Kathleen Dawn Bicknell (“Respondent”) owns the subject property.

The subject property is located in the Pacific Shores subdivision in unincorporated Del Norte County, north of Crescent City. Pacific Shores is a 1535-lot subdivision created in 1963. The subdivision has no developed community service and public utility infrastructure, minimal road improvements, and is situated tens of miles from police, fire, and ambulance emergency service responders. Estuarine areas and seasonal wetlands, which constitute significant environmentally sensitive habitat areas, are in close proximity to the subject property. The subject property and connecting roadways serving the subject property are subject to seasonal inundation by the waters of the nearby coastal lagoon known as Lakes Earl and Tolowa. Regarding coastal planning and development, the entire subdivision is an Area of Deferred Certification (“ADC”) and was not included in the Commission’s October 1983 certification of the Del Norte County Local Coastal Program. The Commission therefore possesses jurisdiction for issuing Coastal Development Permits and for enforcing the provisions of the Coastal Act in this area.

Unpermitted activity that has occurred on the subject property meets the definition of “development” set forth in Section 30106 of the Coastal Act (Public Resources Code). The development was undertaken without a Coastal Development Permit (“CDP”), in violation of Public Resources Code § 30600. Further, on March 10, 2006, the Commission denied the Respondent’s permit application seeking after-the-fact authorization for the development, based on a unanimous finding that the proposed development was inconsistent with the policies of the Coastal Act (see more extensive discussion of this in Section IV.E, *infra*), and all of the development (existing and proposed) therefore remains unpermitted. Therefore, the Commission may find that a violation of the Coastal Act has occurred, after which the Executive Director shall record a Notice of Violation (“NOVA”) in the Del Norte County Recorder’s Office.

The Commission may also issue a Cease and Desist Order under Section 30810 of the Coastal Act. The proposed Order would direct the Respondent to: 1) cease and desist from conducting or maintaining unpermitted development on the property; 2) remove all unpermitted development from the property, in accordance with the terms of the Order; and 3) restore impacted areas of the property.

The Motions to find that a violation of the Coastal Act has occurred and to issue the proposed Cease and Desist Order are found on page 4.

II. HEARING PROCEDURES

A. Notice of Violation Proceedings

The procedures for a hearing on whether or not a Coastal Act violation has occurred in response to a property owner's objection to a notice of intent to record a notice of violation are set forth in Section 30812 of the Coastal Act. Section 30812(c) and (d) provide the following direction:

(c) If the owner submits a timely objection to the proposed filing of the notice of violation, a public hearing shall be held at the next regularly scheduled commission meeting for which adequate public notice can be provided, at which the owner may present evidence to the commission why the notice of violation should not be recorded. The hearing may be postponed for cause for not more than 90 days after the date of the receipt of the objection to recordation of the notice of violation.

(d) If, after the commission has completed its hearing and the owner has been given the opportunity to present evidence, the commission finds that, based on substantial evidence, a violation has occurred, the executive director shall record the notice of violation in the office of each county recorder where all or part of the real property is located. If the commission finds that no violation has occurred, the executive director shall mail a clearance letter to the owner of the real property.

The Commission shall determine, by a majority vote of those present and voting, whether a violation has occurred. Passage of a motion to find that a violation has occurred will result in the Executive Director's recordation of a Notice of Violation in the County Recorder's Office in Del Norte County.

B. Cease and Desist Order

The procedures for a hearing on a proposed Cease and Desist Order are set forth in Section 13185 of the California Code of Regulations, Title 14 (14 CCR), Division 5.5, Chapter 5, Subchapter 8.

For a Cease and Desist Order hearing, the Chair shall announce the matter and request that all alleged violators or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any person, other than the violator or their representative. Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representatives may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons, after which staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 14 CCR Section 13185 and 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, will result in issuance of the Order.

III. STAFF RECOMMENDATION

A. Notice of Violation

1. Motion

I move that the Commission find that a violation of the Coastal Act has occurred as described in the staff recommendation for CCC-06-NOV-04.

2. Staff Recommendation of Approval

Staff recommends a **YES** vote. Passage of this motion will result in the Executive Director recording Notice of Violation No. CCC-06-NOV-04 in the Office of the County Recorder for Del Norte County. The motion passes only by an affirmative vote of a majority of Commissioners present.

3. Resolution That a Violation of the Coastal Act Has Occurred

The Commission hereby finds that a violation of the Coastal Act has occurred, as described in the findings below, and adopts the findings set forth below on the grounds that development has occurred without a coastal development permit.

B. Cease and Desist Order

1. Motion

I move that the Commission issue Cease and Desist Order No. CCC-06-CD-04 pursuant to the staff recommendation.

2. Recommendation of Approval

Staff recommends a **YES** vote. Passage of this motion will result in the issuance of Cease and Desist Order CCC-06-CD-04. The motion passes only by an affirmative vote of the majority of Commissioners present.

3. Resolution to Issue Cease and Desist Order

The Commission hereby issues Cease and Desist Order No. CCC-06-CD-04, as set forth below, and adopts the findings set forth below on the grounds that development has occurred without a coastal development permit, in violation of the Coastal Act, and the requirements of the Order are necessary to ensure compliance with the Coastal Act.

IV. FINDINGS FOR HEARING ON VIOLATION OF THE COASTAL ACT CCC-06-NOV-04 AND CEASE AND DESIST ORDER CCC-06-CD-04

A. History of Violation

The subject property is located in the Pacific Shores subdivision in unincorporated Del Norte County, north of Crescent City. Pacific Shores is a 1535-lot subdivision created in 1963. The subdivision has no developed community service and public utility infrastructure, minimal road improvements, and is situated tens of miles from police, fire, and ambulance emergency service responders. Estuarine areas and seasonal wetlands, which constitute significant environmentally sensitive habitat areas, are in close proximity to the subject property. The subject property and connecting roadways serving the subject property are subject to seasonal inundation by the waters of the nearby coastal lagoon known as Lakes Earl and Tolowa. Regarding coastal planning and development, the entire subdivision is an Area of Deferred Certification (“ADC”) and was not included in the Commission’s October 1983 certification of the Del Norte County Local Coastal Program. The Commission therefore possesses jurisdiction for issuing Coastal Development Permits and for enforcing the provisions of the Coastal Act in this area.

In a letter dated January 22, 2004, Commission staff formally notified Respondent that the unpermitted development on the subject property, which Respondent owns, were violations of the Coastal Act and that Respondent must resolve the Coastal Act violations (**Exhibit 3**). In a letter dated July 12, 2004, Commission staff reminded Respondent that the Coastal Act violations on the subject property had not yet been resolved and notified Respondent of the possibility that a NOVA could be recorded against the subject property (**Exhibit 4**).

Respondent subsequently submitted an incomplete application for a CDP (application No. 1-04-008) seeking after-the-fact approval of unpermitted development on the subject property and proposing additional new development including a septic tank, water storage tank, gasoline-powered generator and gasoline-powered water pump. The Commission heard CDP application No. 1-04-008 on March 10, 2006, and unanimously denied the permit request. In a letter dated March 14, 2006, Commission staff informed Respondent that the CDP application had been denied, based on the existing and proposed development’s inconsistency with Chapter 3 resource protection policies of the Coastal Act (**Exhibit 5**). See additional discussion regarding the unpermitted development’s inconsistency with Chapter 3 of the Coastal Act in Section IV.E of this report, below.

In a letter dated May 3, 2006, the Executive Director of the Commission sent a Notice of Intent (NOI) to record a NOVA and to commence Cease and Desist Order and Restoration Order Proceedings to Respondent (**Exhibit 6**). The NOI described the real property, identified the nature of the violation, named the owner of the property and informed her that if she objected to the filing of the Notice of Violation, an opportunity would be given to present evidence on the issue on whether a violation has occurred. The NOI also stated the basis for issuance of the proposed Cease and Desist and Restoration orders, stated that the matter was tentatively being placed on the Commission's June 2006 hearing agenda, and provided Respondent with the opportunity to respond to allegations in the NOI with a Statement of Defense form.

The respondent completed and returned the submitted a Statement of Defense form with attachments, which was received by the Commission staff on May 16, 2006 (**Exhibit 7**). The Statement of Defense form submitted by the Respondent is unclear and is not written in a manner that clearly specifies which allegations in the NOI the Respondent admits, denies, or has no personal knowledge of. The Statement of Defense is discussed in more detail in Section H, below.

B. Description of Unpermitted Development

The unpermitted development consists of the construction, placement and maintenance of development, including (but not limited to): placement of fill, change in intensity of use from a vacant lot to residential uses, vegetation removal, placement of recreational vehicles, and construction of a storage facility/gazebo building.

Unpermitted activity that has occurred on the subject property meets the definition of "development" set forth in Section 30106 of the Coastal Act (Public Resources Code). The development was undertaken without a Coastal Development Permit ("CDP"), in violation of Public Resources Code § 30600. Further, on March 10, 2006, the Commission denied the Respondent's permit application seeking after-the-fact authorization for the development, based on a unanimous finding that the proposed development was inconsistent with the policies of the Coastal Act (**Exhibit 8**) (see more extensive discussion of this in Section IV.E, *infra*), and all of the development (existing and proposed) therefore remains unpermitted.

C. Basis for Recordation of a Notice of Violation of the Coastal Act

1. Unpermitted Development Has Occurred

Coastal Act Section 30812 authorizes the Executive Director to record a Notice of Violation if real property has been developed in violation of the Coastal Act. As explained below, unpermitted development constitutes a Coastal Act violation. The unpermitted development activities at issue were undertaken by the Respondent and include (but may not be limited to): placement of fill, change in intensity of use from a vacant lot to residential uses, vegetation removal, placement of recreational vehicles, and construction of a storage facility/gazebo building on the property without a coastal development permit.

The cited activities meet the definition of “development” set forth in Section 30106 of the Coastal Act:

“Development” means, on land, in or under water, the placement of erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code, and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use (emphasis added)

Section 30600 of the Coastal Act provides:

(a) Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit.

The cited activities undertaken on the property constitute development under the Coastal Act and require a CDP. Respondent did not obtain a CDP for the development, and, in fact, the Commission denied the Respondent’s permit application seeking after-the-fact authorization for the development. Therefore, the Commission finds that unpermitted development, as defined by Sections 30106 and 30600 of the Coastal Act, has occurred, and a Notice of Violation may be recorded in this matter.

2. Requirements For the Recordation of a Notice of Violation Have Been Satisfied

Coastal Act Section 30812(g) states:

The executive director may not invoke the procedures of this section until all existing administrative methods for resolving the violation have been utilized and the property owner has been made aware of the potential for the recordation of a notice of violation. For purposes of this subdivision, existing methods for resolving the violation do not include the commencement of an administrative or judicial proceeding.

After repeated attempts by Commission staff to resolve this matter administratively, the Respondent has failed to take action to remove the unpermitted development and restore the impacted areas of the property. Commission staff informed Respondent of the potential for a NOVA recordation in letters dated July 12, 2004, and August 18, 2004, and the Executive Director notified Respondent of his intent to record a NOVA on May 3, 2006.¹ On March 10,

¹ Commission staff received a certified mail delivery receipt signed on May 8, 2006 by Kathleen Bicknell for the May 3, 2006 Notice of Intent letter.

2006, the Commission denied Respondent's application for a CDP to authorize the cited development, finding it inconsistent with the policies of the Coastal Act. All existing administrative methods for resolving the violation have been exhausted, and the Respondent has been made aware of the potential for the recordation of a NOVA as required by Coastal Act Section 30812(g). Development has occurred without the benefit of a CDP, warranting the recordation of a NOVA under Coastal Act Section 30812(d).

If Respondent resolves the cited violations, and barring any additional violations, the Executive Director will, in accordance with Coastal Act Section 308129(f), mail a clearance letter to Respondent and record a Notice of Rescission in the Del Norte County Recorder's Office, indicating that the NOVA is no longer valid. The Notice of Rescission shall have the same effect as a withdrawal or expungement under Section 405.61 of the Code of Civil Procedure.

D. Basis for Issuance of Cease and Desist Order

The statutory authority for issuance of this Cease and Desist Order is provided in Coastal Act Section 30810, which states, in relevant part:

(a) If the commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person ... to cease and desist.

(b) The cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material...

As explained in Section C.1 above, the cited activities at issue in this matter clearly constitute development as defined in Coastal Act Section 30106 and, as such, are subject to the permit requirements provided in Coastal Act Section 30600(a).

No CDP was obtained for the development on the property, as required under Coastal Act Section 30600(a). Consequently, the Commission is authorized to issue CCC-06-CD-04 pursuant to Section 30810(a)(1). The proposed Cease and Desist Order will direct the Respondents to ensure compliance with the Coastal Act by removing the unpermitted development and restoring the impacted areas.

E. Inconsistency with Chapter 3 of the Coastal Act; Coastal Resource Impacts

As discussed above, the Commission may issue a Cease and Desist Order under §30810 of the Coastal Act for the unpermitted development on the subject property. A showing of inconsistency with Chapter 3 of the Coastal Act is not required for Cease and Desist Orders to be issued under §30810, but we provide this information for background purposes. The unpermitted

development is inconsistent with the following resource protection policies of the Chapter 3 of the Coastal Act:

i. Section 30230 – Marine resources; maintenance

Coastal Act Section 30230 states the following:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

ii. Section 30231 – Biological productivity; water quality

Coastal Act Section 30231 states the following:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

iii. Section 30233 – Diking, filling or dredging; continued movement of sediment and nutrients

Coastal Act Section 30233(c) states the following:

In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled “Acquisition Priorities for the Coastal Wetlands of California”, shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

iv. Section 30240 – Environmentally sensitive habitat areas; adjacent development

Coastal Act Section 30240 states the following:

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

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Lakes Earl and Tolowa are an estuarine lagoon that comprise the core of the approximately 5,624-acre Lake Earl Wildlife Area (“LEWA”), which is managed by the California Department of Fish and Game (“CDFG”). The U.S. Fish and Wildlife Service (“USFWS”) has characterized Lake Earl and Lake Tolowa as “one of the most unique and valuable wetland complexes in California.” CDFG included Lake Earl as one of the 19 coastal wetlands identified in the 1974 report entitled “*Acquisition Priorities for Coastal Wetlands of California*,” which identified wetlands of such significance that CDFG considered them worthy of public acquisition. Furthermore, this wetland complex is specifically called out for heightened protection from fill and other adverse environmental impacts in Section 30233(c) of the Coastal Act. The lagoon system supports numerous habitat types including emergent wetlands, open water, mudflats, flooded pastures, woodland, sandy beach, and riverine habitat. The subject property is located approximately 200 feet from the shoreline of Lakes Earl and Tolowa, has essentially flat relief, and is located at an elevation of approximately 10 feet above sea level. The subject property and its connecting roadways are subject to seasonal inundation by the waters of Lakes Earl and Tolowa.

The unpermitted development on the subject property constitutes a significant disruption and negative impact to marine resources and environmentally sensitive wetland habitat (Sections 30230, 30233 and 30240 of the Coastal Act), because of adverse effects of the unpermitted fill and vegetation removal. Any fill or alteration of wetland hydrology (including diversion or draining of water from or into wetland areas) reduces its ability to function. Water is the main requirement for a functional wetland. If water is removed, or isn’t present in the wetland for as long (for example, because of adjacent filled areas that prevent water from infiltrating into the ground), then wetland function will be degraded. Therefore, wetland function could be degraded because of actions that 1) disrupt water supply through direct fill of a wetland, other sorts of covering of a wetland, diversion of water, or draining, 2) degrade water quality through chemical contamination or temperature modification, or 3) result in removal of wetland vegetation through grading, grazing, mowing, or placement of fill that covers and then eliminates the underlying vegetation. Degradation of function means that the same plants won’t grow, the wetland won’t

provide the same water filtration, percolation, and stormwater runoff storage, and wildlife use of that feature could be reduced.

The unpermitted development is also affecting the biological productivity and water quality of the surrounding area (Section 30231 of the Coastal Act). The subject property has no septic system and no municipal water supply. An unpermitted portable restroom is present on the site, but staff has no information about whether this facility is being adequately maintained, and the potential for wastewater and septic waste streams percolating into the surrounding area and contaminating the groundwater is high (the portable restroom is subject to removal under the proposed Order, along with all other unpermitted development on the subject property).

Therefore, the unpermitted development is inconsistent with Sections 30230, 30231, 30233 and 30240 of the Coastal Act.

v. Section 30250(a) – Location; existing developed area

Coastal Act Section 30250(a) states the following:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

No municipal water supply or wastewater treatment facilities are available to serve the subject property. Although the subject property is located within an established community services district, the Pacific Shores California Subdivision Water District has not developed water infrastructure or sewage disposal infrastructure to serve the subdivision.

The unpermitted development on the subject property has not been placed within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. Therefore, the unpermitted development is inconsistent with Section 30250(a) of the Coastal Act.

F. California Environmental Quality Act (CEQA)

The Commission finds that the issuance of Commission Cease and Desist Order CCC-06-CD-04, to compel removal of the unpermitted development and restoration of the property, is exempt

from any applicable requirements of the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Cease and Desist Order is exempt from the requirement of preparation of an Environmental Impact Report, based on Sections 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines.

G. Findings of Fact

1. Kathleen Dawn Bicknell owns the subject property, identified as Lot 4 in Block 90, APN 108-320-08, in the Pacific Shores Subdivision, north of Crescent City, Del Norte County.
2. Unpermitted development including placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, vegetation removal, placement of recreational vehicles, and construction of a storage facility/gazebo building has occurred on the subject property.
3. No exemption from the permit requirements of the Coastal Act applies to the unpermitted development on the subject property.
4. The unpermitted development is inconsistent with the Chapter 3 resource protection policies of the Coastal Act, including Sections 30230, 30231, 30233, 30240 and 30250(a).
5. On March 10, 2006, the Commission denied Respondent's after-the-fact CDP application seeking authorization of the unpermitted development.
6. The unpermitted development on the site constitutes a violation of the Coastal Act.

H. Violators' Defenses and Commission's Response

Respondent completed and returned the Statement of Defense form with attachments, which was received by the Commission staff on May 16, 2006 and is included in this staff report as **Exhibit 7**. The Statement of Defense form submitted by the Respondent is unclear and is not written in a manner that clearly specifies which allegations in the NOI the Respondent admits, denies, or has no personal knowledge of. The following paragraphs summarize the Respondent's defenses, insofar as Commission staff could interpret the statements contained in the Respondent's Statement of Defense form, and set forth the Commission's response to each defense.

1. Respondent's Defense:

“Intent reside U. S. citizen. Change (intensity?) of use from a vacant to (residential? me) uses: homestead with deed copies enclosed. Deed to homestead is intent to notify reside. (Unpermitted?) Homestead and deed violation description on property in subdivision with paved roads and street signs. I sent completed application of intent to reside on developed

subdivision surveyed by description Block 90 Lot 4 Pacific Shores Del Norte County. Totally developed your information public knowledge surveyed filed public record.”

Commission’s Response:

These statements appear to be referring, in part, to the Respondent’s 2004 CDP application, which sought after-the-fact approval for the cited unpermitted development and proposed additional new development including a septic tank, water storage tank, gasoline-powered generator and gasoline-powered water pump. The Commission heard CDP permit application No. 1-04-008 on March 10, 2006, and unanimously denied the permit request. In a letter dated March 14, 2006, Commission staff informed Respondent that the CDP application had been denied, based on the existing and proposed development’s inconsistency with Chapter 3 resource protection policies of the Coastal Act.

Respondent notes that her ownership of the property is a matter of public record and attaches a copy of the grant deed transaction through which Respondent obtained title to the subject property. The Commission agrees that Respondent has presented undisputed evidence that she owns the subject property and notes that as the owner of record, Respondent is required to comply with all applicable local, state, and federal laws, including Coastal Act permitting and resource protection requirements. The Commission denied the Respondent’s CDP application on the basis of the existing and proposed development’s inconsistency with the resource protection policies of the Coastal Act. Respondent is responsible for resolving the ongoing Coastal Act violations regarding the unpermitted development on the subject property. The proposed Order would require removal of all unpermitted development from the subject property and would resolve the Coastal Act violations on the subject property.

Commission staff disagrees with the Respondent’s apparent assertion that the Pacific Shores subdivision is “totally developed.” Only one permanent residence has been developed legally within the bounds of the subdivision. This residence was constructed prior to the 1972 Coastal Initiative (Proposition 20), and therefore did not require a CDP. As discussed previously in this report, no municipal water supply or wastewater treatment facilities are available to serve the subject property. Although the subject property is located within an established community services district, the Pacific Shores California Subdivision Water District has not developed water infrastructure or sewage disposal infrastructure to serve the subdivision, and the subject property has no septic system and no municipal water supply. The subdivision has minimal road improvements, and is situated tens of miles from police, fire, and ambulance emergency service responders. The subject property and connecting roadways serving the subject property are subject to seasonal inundation by the waters of the nearby coastal lagoon known as Lakes Earl and Tolowa.

The Commission sees no way in which Respondent’s citizenship or intent to reside on the property could serve as a defense, and the Commission does not understand Respondent’s reference to homestead. A further response to this last issue is provided in the next section.

2. Respondent's Defense:

“This land lot 4 is (not) undeveloped or reside on property next to Tell Boulevard with paved roads surveyed boundary. Documents: title insurance deed and homestead. Title insurance public record. Deed homestead enclosed. Reasonable intent to reside consider lawful public record: deed alone. Done. Additional cause homestead.”

Commission's Response:

Respondent has included with her Statement of Defense a notarized document entitled “Declaration of Homestead.” Homesteading in the historic sense does not apply to the subject property. Under the Homestead Act of 1862, vast amounts of public domain lands were turned over to private citizens. According to the National Park Service, 270 million acres, or approximately 10% of the area of the United States, was claimed and settled under this act. A homesteader had only to be the head of a household and at least 21 years of age to claim a 160-acre parcel of land. Each homesteader had to live on the land, build a home, make improvements and farm for 5 years before they were eligible to “prove up” and keep this “free land.” Commission staff notes that the subject property is not federal patent land subject to the Homestead Act of 1862, and even if it were, the Homestead Act expired in 1972 and was repealed in 1976, more than a quarter century before Respondent acquired this land.

The notarized document may be referring to the definition of “homestead” that is found in California Code of Civil Procedure Section 704.710. The so-called “homestead exemption” protects a certain dollar amount of the equity in a dwelling from creditor’s claims and exempts the dwelling from sale under Division 2 of Title 9 of Part 1 of the Code of Civil Procedure to the extent provided in Section 704.800. Whether or not the subject property has been notarized as a “homestead” does not eliminate the requirement for Respondent to comply with all applicable local, state, and federal laws, including Coastal Act permitting and resource protection requirements. As the owner of record, Respondent is responsible for resolving the ongoing Coastal Act violations regarding the unpermitted development on the subject property. The proposed Order would require removal of all unpermitted development from the subject property and would resolve the Coastal Act violations on the subject property.

The Commission sees no way in which Respondent’s title insurance could serve as a defense.

Staff recommends that the Commission find that a Violation of the Coastal Act has occurred (which will result in recordation of the following Notice of Violation) and issue the following Cease and Desist Order:

RECORDING REQUESTED BY:

California Coastal Commission

WHEN RECORDED MAIL TO:

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
Attention: Sheila Ryan

[Exempt from recording fee pursuant to Gov. Code § 27383]

DOCUMENT TITLE:

NOTICE OF VIOLATION OF THE COASTAL ACT

Re: Assessor's Parcel No. 108-320-08

Property Owners:

Kathleen Dawn Bicknell

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CALIFORNIA COASTAL COMMISSION
Attention: Sheila Ryan
45 FREMONT STRET, SUITE 2000
SAN FRANCISCO, CA 94105-2219

STATE OF CALIFORNIA OFFICIAL BUSINESS
Document entitled to free recordation
Pursuant to Government Code §27383

NOTICE OF VIOLATION OF THE COASTAL ACT
(Public Resources Code Section §30812)

I, Peter Douglas, declare:

1. I am the Executive Director of the California Coastal Commission.
2. A violation of the California Coastal Act of 1976 (Public Resources Code §3000, et seq.) has occurred on a certain parcel situated in Del Norte County, California, more particularly described as follows:

One approximately 0.5-acre parcel identified as Pacific Shores Subdivision Lot 4 in Block 90, north of Crescent City, Del Norte County (Assessor's Parcel Number 108-320-08)

Owner of Record: Kathleen Dawn Bicknell

The Violation consists of the undertaking of development activity without the authorization required by the California Coastal Act of 1976.

3. This property is located within the Coastal Zone as that term is defined in Coastal Act Section 30103.
4. The record owner of said real property is: Kathleen Dawn Bicknell.
5. The violation of the Coastal Act (Violation File No. V-1-04-005) consists of the following: unpermitted development including (but not limited to): placement of fill, change in intensity of use from a vacant lot to residential uses, vegetation removal, placement of recreational vehicles, and construction of a storage facility/gazebo building.

The requirements set forth in Section 30812 for notice and recordation of this Notice Of Violation have been complied with. Recording this notice is authorized under Section 30812 of the California Public Resources Code.

- 7. The California Coastal Commission notified the record owner, Kathleen Dawn Bicknell, of its intent to record a Notice of Violation in this matter in a letter dated May 3, 2006.
- 8. The Commission conducted a public hearing regarding the proposed recordation of the Notice of Violation on June 14, 2006. The Commission determined that the unpermitted development on Bicknell's property constituted a violation of the Coastal Act. Therefore, the Executive Director is recording the Notice of Violation as provided for under Section 30812 of the California Coastal Act.

Executed in _____, California, on _____.

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

PETER DOUGLAS, Executive Director

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

On this _____ day of _____, in the year _____, before me the undersigned Notary Public, personally appeared Peter Douglas, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Executive Director of the California Coastal Commission and acknowledged to me that the California Coastal Commission executed it.

Notary Public in and for Said State and County

CEASE AND DESIST ORDER CCC-06-CD-04, Bicknell

Pursuant to its authority under Public Resource Code Section 30810, the California Coastal Commission hereby orders and authorizes Kathleen Dawn Bicknell, her agents, contractors and employees, and any person(s) acting in concert with any of the foregoing (hereinafter referred to as “Respondent”) to:

1. Cease and desist from engaging in any further development on the property identified by Del Norte County as Pacific Shores Subdivision Block 90, Lot 4, Assessor’s Parcel Number 108-320-08 (hereinafter referred to as “subject property”).
2. Cease and desist from maintaining unpermitted development on the subject property.
3. Take all steps necessary to ensure compliance with the Coastal Act including removal of all unpermitted development from the subject property and restoration of all areas impacted from the unpermitted development and/or from its removal, according to the following terms and conditions:
 - a. All unpermitted development, including (but not limited to) vehicles, trailers, fill, debris, and storage facility/gazebo building (**Exhibit 2** site photos) and the unpermitted development specifically identified in Section III of this Order, on the property identified in Section II of this Order shall be removed no later than September 1, 2006. All materials that have been placed on the subject property without a CDP constitute unpermitted development and must be completely removed.
 - b. Any unpermitted fill materials consisting of soil, sand, concrete, or other similar materials that have been placed on the subject property shall be removed with hand labor utilizing rakes and shovels to avoid impacts to the underlying vegetation. All fill removal shall be conducted with great care for the adjacent and underlying vegetation, and shall not result in the excavation of pits or holes on the subject property. The fill shall be removed only as far as the level that reinstates the original site grade that existed prior to the placement of the fill on the subject property.
 - c. The removal of all unpermitted development on the subject property shall be completed no later than September 1, 2006. Respondent shall submit photographs of the property that clearly document the completion of all removal activities no later than September 30, 2006, to the attention of Sheila Ryan in the Commission’s San Francisco office at the address listed above.
 - d. Other than those areas subject to removal and restoration activities, the areas of the property and surrounding areas currently undisturbed shall not be disturbed by activities required by this Order.

- e. Waste materials must be disposed of at a licensed facility outside Coastal Zone (appropriate for the type of waste being disposed of). If the disposal site were located within the Coastal Zone, a CDP for such disposal would be required and must be obtained prior to such disposal.

I. Persons Subject to the Order

Persons subject to this Cease and Desist Order are Respondent, Respondent's agents, contractors and employees, and any persons acting in concert with any of the foregoing.

II. Identification of the Property

The property that is subject to this Order is identified by Del Norte County as Pacific Shores Subdivision Block 90, Lot 4, Assessor's Parcel Number 108-320-08.

III. Description of Unpermitted Development

Unpermitted development includes (but may not be limited to): placement of fill, change in intensity of use from a vacant lot to residential uses, vegetation removal, placement of recreational vehicles, and construction of a storage facility/gazebo building.

IV. Commission Jurisdiction and Authority to Act

The Commission has jurisdiction over this matter, as the property at issue is located within the Coastal Zone and in an area not covered by a certified Local Coastal Program. The Commission is issuing this Order pursuant to its authority under Coastal Act Section 30810.

V. Submittal of Documents

All documents submitted pursuant to this Order must be sent to:

California Coastal Commission
Attn: Sheila Ryan
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219

VI. Effective Date and Terms of the Order

The effective date of the Order is the date of approval by the Commission. The Order shall remain in effect permanently unless and until modified or rescinded by the Commission.

VII. Findings

The Order is issued on the basis of the findings adopted by the Commission at the June 2006 hearing, as set forth in the attached document entitled “Staff Report and Findings for Hearing on Violation of the Coastal Act and Issuance of Cease and Desist Order”.

VIII. Compliance Obligation

Strict compliance with the Order by all parties subject thereto is required. Failure to comply strictly with any term or condition of the Order including any deadline contained in the Order will constitute a violation of this Order and may result in the imposition of civil penalties, as authorized under Section 30821.6, of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure persists, in addition to any other penalties authorized under Section 30820.

IX. Extension of Deadlines

The Executive Director may extend deadlines for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least ten days prior to expiration of the subject deadline.

X. Appeal

Pursuant to Public Resources Code Section 30803(b), any person or entity against whom this Order is issued may file a petition with the Superior Court for a stay of this Order.

XI. Modifications and Amendments to this Order

This Order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission’s administrative regulations.

XII. Government Liability

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents in carrying out activities required and authorized under this Order, nor shall the State of California be held as a party to any contract entered into by Respondent or Respondent’s agents in carrying out activities pursuant to this Order.

XIII. Successors and Assigns

This Order shall run with the land, binding all successors in interest, future owners of the property, heirs and assigns of Respondent. Notice shall be provided to all successors, heirs and assigns of any remaining obligations under this Order.

XIV. No Limitation on Authority

Except as expressly provided herein, nothing herein shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this Order.

Executed in _____ on _____,
on behalf of the California Coastal Commission.

By: _____ Peter Douglas, Executive Director

Exhibits

1. Site map.
2. Site photos.
3. Notice of Violation letter dated January 22, 2004 from Commission staff to Respondent regarding the unpermitted development on the subject property.
4. Notice of Violation letter dated July 12, 2004 from Commission staff to Respondent with notification that a NOVA could be recorded against the subject property.
5. Letter dated March 14, 2006 from Commission staff to Respondent with notification that the CDP application had been denied, based on the existing and proposed development's inconsistency with Chapter 3 resource protection policies of the Coastal Act.
6. Notice of Intent to Record a Notice of Violation and to Commence Cease and Desist Order and Restoration Order Proceedings, from the Executive Director to the Respondents, dated May 3, 2006.
7. Statement of Defense with attachments received by Commission staff on May 16, 2006.
8. Staff report and findings for permit application No. 1-04-008; Commission unanimously denied application on March 10, 2006.

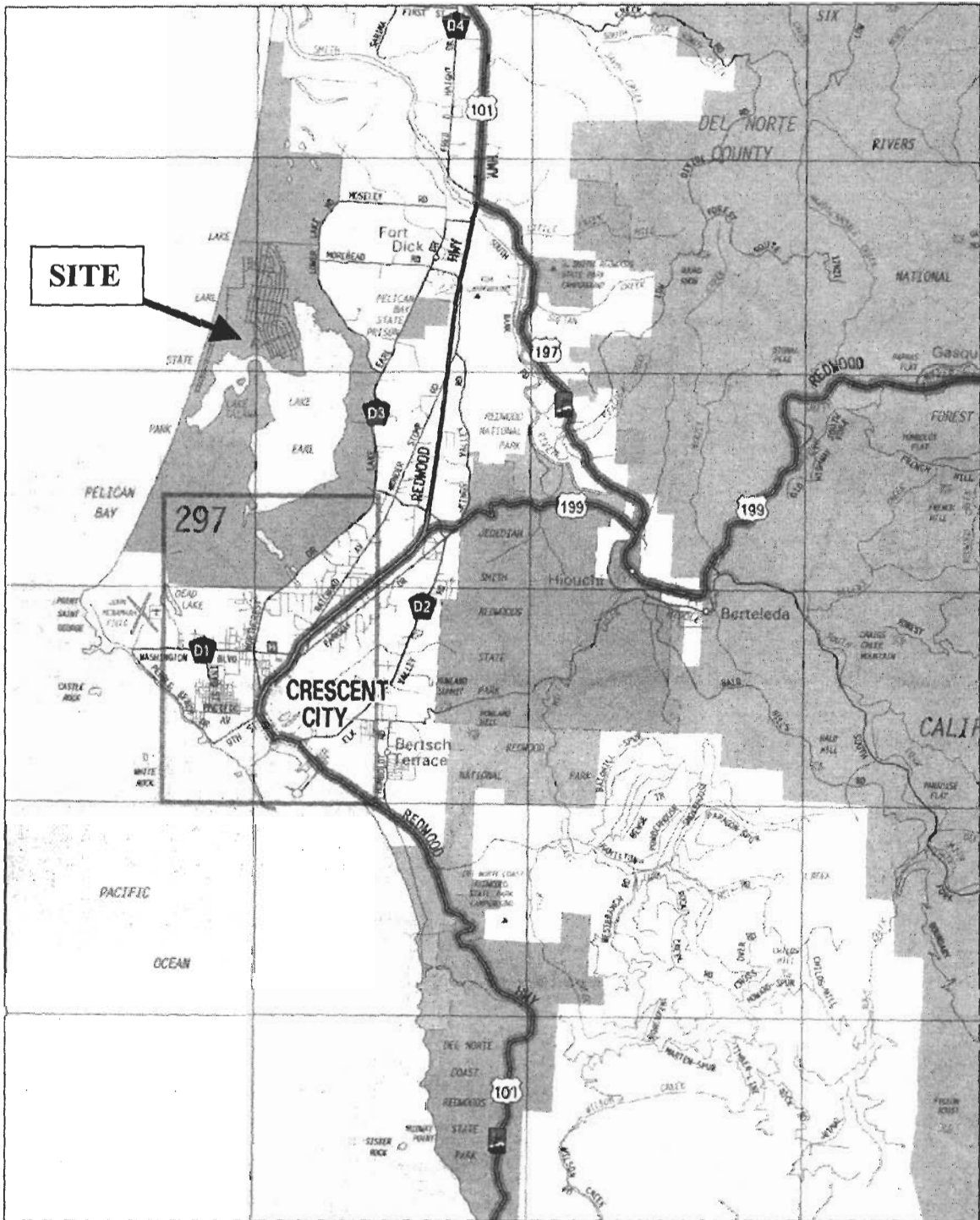




Exhibit 2a. Unpermitted tank, lumber, and building materials on subject property.



Exhibit 2b. Unpermitted tanks, lumber and building materials on subject property.



Exhibit 2c. Unpermitted trailers, building materials, and debris on subject property.



Exhibit 2d. Unpermitted trailers, building materials, and debris on subject property.



Exhibit 2e. Unpermitted trailers, debris and gazebo/storage building on subject property.



Exhibit 2f. Unpermitted trailers, debris and gazebo/storage building on subject property.

CALIFORNIA COASTAL COMMISSION

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



REGULAR AND CERTIFIED MAIL
7003-1010-0005-0457-5882

January 22, 2004

Kathleen Bicknell
PO Box 262
Gasquet, CA 95543-0262

RE: Coastal Act Violation File No. V-1-04-005; Unpermitted placement of fill in wetlands, change in intensity of use from a vacant lot to a residence, removal of vegetation, and placement of recreational vehicles on Pacific Shores subdivision Block 90, Lot 4, APN 108-320-08 in Del Norte County.

Dear Ms. Bicknell:

Kathleen D. Bicknell is listed as the owner of record for the property located in the Pacific Shores subdivision Block 90, Lot 4, APN 108-320-08 in Del Norte County. Coastal Commission staff has confirmed the existence of unpermitted development activities at the above-referenced property, consisting of placement of fill in wetlands, change in intensity of use from a vacant lot to a residence, removal of vegetation, trailer addition, addition of a storage facility, and recreational vehicles. These activities constitute development as defined in section 30106 of the Coastal Act:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; ... change in the density or intensity of use of land; ... construction, reconstruction, demolition, or alteration of the size of any structure...

Pursuant to Coastal Act section 30600, any person wishing to perform or undertake development in the coastal zone is required to obtain a coastal development permit (CDP), in addition to any other permit required by law, authorizing such development before such development takes place. We have reviewed our records and have determined that no CDP exists authorizing the above-mentioned development activity on your property.

To begin resolution of this violation on the subject property with the Coastal Commission, you may follow one of two courses of action. You may submit an application for a CDP with the Coastal Commission, proposing to remove the unpermitted development and restore the subject property to the condition it was in before the unpermitted development occurred. Alternatively, you may submit an application applying for after-the-fact CDP authorization of the unpermitted development.

If you choose to apply for after-the-fact authorization of the unpermitted development, your CDP application must include a detailed and comprehensive project description, outlining the exact nature of the development that has already occurred, including placement of fill, change in intensity of use from a vacant lot to a residence, clearing of vegetation, and the placement of the above-mentioned structures on the property. For each of the activities described above, your project description must include details as to the exact materials used in the development, the location of each aspect of the unpermitted development, the size of the development (in all three dimensions), the process of installation, and any equipment used in the development activities. Please indicate how your property will be serviced for water and sewer. Finally, please describe any exterior lighting that would be used to illuminate the site.

Your property is located in an area with pervasive environmentally sensitive habitat, including wetlands and habitat for the Oregon Silverspot butterfly, a species listed as threatened by the federal government. Therefore, in addition to a detailed project description and other requirements spelled out in the CDP application, an application for after-the-fact authorization must also be accompanied by a wetlands delineation and a biological habitat assessment report for your property. The wetlands delineation must be prepared by a qualified wetlands biologist, and must describe the exact location and nature of the wetlands on the property, pursuant to the Coastal Act's definition of wetlands. Your application must show the location of all development activities in relation to any wetlands present on or in proximity to the property, and must identify adequate buffer areas as needed to protect the wetland areas. The biological habitat assessment report must be prepared by a biologist with experience in reviewing habitat critical to species listed by the federal or state government as threatened or endangered, and that are known to be or have the potential to be present in the Pacific Shores subdivision area. The report must address the issue of any fish or wildlife species that use any non-wetland environmentally sensitive habitat areas (ESHAs) present on your property.

Typically, a permit applicant hires a consultant with expertise in these areas to prepare these reports. Hiring an environmental consultant can cost up to several thousand dollars, and preparing these reports can take several months. It is the responsibility of the applicant to find and hire a consultant, and to pay the relevant consulting fees.

A completed application for after-the-fact authorization to retain the unpermitted development must therefore contain, 1) a completed CDP application form, including a comprehensive and detailed project description, as well as any other material required in the application, 2) a \$1200 non-refundable application fee, 3) a wetlands delineation prepared by a qualified wetlands biologist, and 4) a biological habitat assessment report, outlining the presence or absence of any state or federal listed species on your land, prepared by a biologist with experience in this field.

You may instead choose to apply for a permit to remove the unpermitted development, and restore the property to the condition it was in before the unpermitted development activities occurred. Removal of the unpermitted development and restoration of the property would involve: abandoning the use of the property as a residence, and removing all structures on the property as well as any fill that has been placed on the property. Your project description must include a detailed description of how the removal of the structures and fill will be achieved,

including a description of any equipment to be used in removal, and a clear indication of the disposal site(s) proposed for the removed structures and fill material. Because of the potential presence of wetlands and/or other ESHA, an application for removal and restoration of the property may also require the submittal of a biological assessment addressing the presence, extent, and possible impacts to wetlands and other ESHA.

No matter which type of project application you choose to submit, after our office receives your permit application and accepts it as complete for filing, your project will be reviewed by staff for consistency with chapter three policies of the Coastal Act. Based on this consistency analysis, staff will make a recommendation for approval, approval with conditions, or denial of your project. The staff report and recommendation will then be scheduled for a public hearing before the Commission, and the Commission will at that time make a final decision concerning your project. Based on our understanding of the development activities, as described earlier in this letter, it is our belief that it will be easiest for staff to find an application to remove and restore consistent with chapter three policies of the Coastal Act. Finding an application for after-the-fact authorization to be consistent with the Coastal Act will be more difficult, if not impossible, due to the significant wetland and habitat resources already mentioned.

It is critical that you stop immediately all unpermitted development activities, and advise us within the next week (no later than **February 9, 2004**), as to how you plan to resolve this violation. Please submit to this office by **March 1, 2004**, a completed CDP application for either removal of the unpermitted development and restoration of the site, or after-the-fact authorization to retain the unpermitted development. I have included a blank CDP application form with this letter. I have also included a general letter we have written regarding Pacific Shores, and permit requirements.

Commission enforcement staff prefers to work cooperatively with alleged violators to resolve Coastal Act violations administratively, through the permitting process. However, if you fail to meet our requested permit application deadline, Commission staff will be forced to conclude that you do not wish to resolve this violation administratively and we will be obligated to seek formal action by the Commission to resolve this matter. For that reason, I provide the following citations of the Coastal Act so that you fully understand the consequence of violation cases subject to formal action.

Section 30803 of the Coastal Act authorizes the Commission to maintain a legal action for declaratory and equitable relief to restrain any violation of the Act. Coastal Act section 30809 states that if the Executive Director of the Coastal Commission determines that any person has undertaken or is threatening to undertake any activity that requires a permit from the Coastal Commission without first securing a CDP, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Commission may also issue a permanent cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. Moreover, section 30811 authorizes the Commission to order restoration of a site where development occurred without a CDP, is inconsistent with the Coastal Act, and is causing continuing resource damage.

In addition, section 30802(a) provides for civil liability to be imposed on any person who performs or who undertakes development without a coastal development permit or in a manner that is inconsistent with any coastal development permit previously issued by the Commission, in an amount that shall not exceed \$30,000 and shall not be less than \$500. Section 30802(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a coastal development permit or that is inconsistent with any coastal development permit previously issued by the Commission, when the person knowingly and intentionally performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists. Section 30821.6 provides that a violation of either type of cease and desist order or of a restoration order can result in the imposition of civil fines of up to \$6000 for each day in which the violation persists. Finally, Section 30822 allows the Commission to maintain a legal action for exemplary damages, the size of which is left to the discretion of the court. In exercising its discretion, the court shall consider the amount necessary to deter further violations.

You may contact me at (415) 904-5200, or in writing at the letterhead address, to discuss resolution of this enforcement action. If you have questions concerning applying for a CDP, please contact Permit Analyst Jim Baskin at (707) 445-7833.

Sincerely,

Dan Segan
Enforcement Staff
California Coastal Commission,

cc: Bob Merrill, North Coast District Manager
Nancy Cave, Statewide Enforcement Program Supervisor
Jim Baskin, North Coast Permit Analyst
Ernie Perry, Del Norte County Planning Director

enclosures: coastal development permit application form
copy of letter to Pacific Shores California Water District

CALIFORNIA COASTAL COMMISSION

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



July 12, 2004

SENT BY REGULAR & CERTIFIED MAIL 7003 1010 0005 0457 5721

Kathleen Bicknell
P.O. Box 262
Gasquet, CA 95543-0262

SUBJECT: Coastal Act Violation File No. V-1-04-005: Unpermitted placement of fill in wetlands; change in intensity of use from a vacant lot to residential use; vegetation removal; and placement of recreational vehicles on property within the Pacific Shores subdivision Block 90, Lot 4, APN 108-320-08, Del Norte County

Dear Ms. Bicknell:

On January 22, 2004, the California Coastal Commission sent you a letter detailing an alleged violation of the California Coastal Act's permit requirements located on your property, in the Pacific Shores subdivision at Block 90, Lot 4, (APN 108-320-08) in Del Norte County. The letter requested that you: a) inform us of how you intend to resolve this violation no later than February 9, 2004, and b) submit a completed Coastal Development Permit (CDP) application by March 1, 2004. United States Postal records indicate that you received this letter on February 6, 2004, but to date you have still not contacted this office, nor have you submitted a CDP application.

The unpermitted development on your property consists of: 1) the placement of fill in wetlands; 2) changing the intensity of use of a vacant lot to residential use; 3) vegetation removal; and 4) the permanent placement of recreational vehicles.

As outlined in the previous letter, you have two options for resolution of this Coastal Act violation. You can: 1) submit a CDP application to remove the unpermitted development and restore the affected property; or 2) submit a CDP application for after-the-fact CDP authorization to retain the unpermitted development.

In our letter of January 22 and in the "Pacific Shores California Water District" letter enclosed with it, we said that option 2 above, application to retain the cited unpermitted development, would require additional resource studies, because of the numerous resource issues associated with the Pacific Shores subdivision.

We hope that you will decide to resolve the violation voluntarily. However, should we fail to reach an administrative resolution of this matter, and if "the Commission finds, based on substantial evidence, a violation has occurred," sections 30812 and in particular, subsection

30812(d) of the Coastal Act authorize the Commission to record a Notice of Violation on your property.

Pursuant to Section 30812, if you fail to respond by the stated deadline, we will send you notice of the Commission's intent to record a Notice of Violation with the County Recorder's Office. Upon receipt of this notice, you will have twenty (20) days to inform the Executive Director of any objection you might have to the recordation of the Notice, and your desire to have the Commission conduct a public hearing before recording such a notice.

If no objection is raised within twenty days, the Notice of Violation will be recorded with the County. However, if you object to the Notice of Violation being recorded, you would be entitled to a public hearing at a Commission hearing. If at that public hearing the Commission finds that a violation exists, the Notice will be recorded. If the Commission finds that no violation has occurred, the Executive Director of the Commission will mail you notice of that finding.

It is my understanding that you still have not contacted Commission staff to discuss your permitting options. Thus I will extend your deadline to July 26, 2004 to contact us so that we might discuss the appropriate. You can also contact Bob Merrill of our North Coast office at 707-445-7833 to discuss any concerns you may have about the permitting process.

If you have any questions about this letter or this enforcement action, please do not hesitate to contact me at the letterhead above, or at 415-904-5290.

Sincerely,

Nancy L. Cave

Cc: Bob Merrill, North Coast District Manager
Diane Livia, Enforcement staff
Ernie Perry, Del Norte Planning Director

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET • SUITE 200
EUREKA, CA 95501-1865
VOICE (707) 445-7833
FACSIMILE (707) 445-7877

MAILING ADDRESS:
P. O. BOX 4908
EUREKA, CA 95502-4908



March 14, 2006

Kathlene Dawn Bicknell
P.O. Box 262
Gasquet, CA 95543-0262

Kathlene Dawn Bicknell
P.O. Box 305
Fort Dick, CA 95538-0305

RE: Coastal Development Permit Application No. 1-04-008 for Installation of Septic Tank, Water Pump, and Electrical Generator, Lake Earl Area, Del Norte County, California (APN 108-320-08)

Dear Ms. Bicknell:

This letter reports the Commission's action taken at the March 10, 2006 meeting in Monterey on the above-referenced project.

The Commission denied a coastal development permit for the proposed development primarily on the grounds that the proposed development would: (1) be inconsistent with the new development siting and design provisions of Section 30250(a) of the Coastal Act; and (2) not be consistent with other requirements of Section 30240 that environmentally sensitive habitat areas be protected against any significant disruption of habitat values, only uses dependent on those resources be allowed within such areas, and that development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas be sited and designed to prevent impacts which would significantly degrade those areas, and be compatible with the continuance of those habitat and recreation areas. Another copy of the written staff report containing the findings for denial of the permit is enclosed for your records.

The Commission's Enforcement Unit will be contacting you under separate cover with regard to addressing the unpermitted development that exists at the site

If you have any questions, please don't hesitate to call me at (707) 445-7833.

Sincerely,

James R. Baskin AICP, Coastal Planner

Encl: Findings of Denial for Coastal Development Permit Application No. 1-04-008

Cc: Ernie Perry, Director
County of Del Norte - Department of Community Development
981 H Street, Suite 110
Crescent City, CA 95531

RSM:JB/jb:lt

Exhibit 5
CCC-06-CD-04
(Bicknell)

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885

Via Certified and Regular Mail

May 3, 2006

Kathleen Bicknell
P.O. Box 305
Fort Dick, CA 95538

Kathleen Bicknell (second address)
P.O. Box 262
Gasquet, CA 95543

Subject: Notice of Intent to record Notice of Violation and Commence Cease and Desist Order and Restoration Order Proceedings

Violation No.: V-1-04-005

Location: Block 90, Lot 4, Pacific Shores, Del Norte County; APN 108-320-08

Violation Description: Unpermitted placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, vegetation removal, placement of recreational vehicles, and construction of storage facility/gazebo building.

Dear Ms. Bicknell:

The purpose of this letter is to notify you of my intent, as Executive Director of the California Coastal Commission ("Commission"), to record a Notice of Violation ("NOVA") for unpermitted development and to commence proceedings for issuance of a Cease and Desist Order and Restoration Order for unpermitted development. The unpermitted development includes placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, vegetation removal, placement of recreational vehicles, and construction of storage facility/gazebo building. This unpermitted development is located on property you own at Block 90, Lot 4, Pacific Shores, Del Norte County, APN 108-320-08 ("subject property"). The subject property contains and is adjacent to environmentally sensitive habitat.

Development is defined, for purposes of the Coastal Act,¹ in Section 30106 of the Coastal Act as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations... (emphasis added)

The placement of fill (in this case, in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, vegetation removal, placement of recreational vehicles, and construction of storage facility/gazebo building on the subject property constitute development under the Coastal Act, and as such are subject to Coastal Act requirements. Primarily, they are subject to the requirement in Section 30600(a), which requires that anyone performing such non-exempt development within the Coastal Zone obtain a Coastal Development Permit ("CDP"). These activities all occurred without the benefits of CDPs, making them violations of the Coastal Act.

The purpose of these enforcement proceedings is to resolve outstanding issues associated with the unpermitted development activities that have occurred at the subject property. The purpose of the NOVA is to warn prospective buyers about the Coastal Act violations on the subject property. Collectively, the Cease and Desist Order and Restoration Order will direct you to cease and desist from performing or maintaining any unpermitted development, will require the removal of unpermitted development, and will order any necessary restoration of the areas impacted by the unpermitted development. The NOVA, Cease and Desist Order and Restoration Order are discussed in more detail in the following sections of this letter.

In letters dated January 22, 2004, July 12, 2004 and August 18, 2004, the Coastal Commission sent you notice of violation letters regarding the unpermitted development on the subject property, which you own. In February 2004, you submitted an incomplete application for a CDP, apparently seeking after-the-fact approval of unpermitted development on the subject property. The Commission heard CDP permit application No. 1-04-008 on March 10, 2006, and unanimously denied the permit request.

¹ The Coastal Act is codified in Section 30,000 to 30,900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

Notice of Violation

The Commission's authority to record a Notice of Violation is set forth in Section 30812 of the Coastal Act, which states the following:

Whenever the Executive Director of the Commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the Executive Director may cause a notification of intention to record a Notice of Violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.

I am issuing this Notice of Intent to record a Notice of Violation because development has occurred in violation of the Coastal Act on the subject property. If you object to the recordation of a Notice of Violation in this matter and wish to present evidence to the Commission at a public hearing on the issue of whether a violation has occurred, you must respond, in writing, within 20 days of the postmarked mailing of this notification. If, within 20 days of mailing of the notification, you fail to inform Commission staff in writing of an objection to recording a Notice of Violation, I shall record the Notice of Violation in the Del Norte County Recorder's Office as provided for under Section 30812 of the Coastal Act.

If you object to the recordation of a Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, **you must do so in writing, to the attention of Sheila Ryan in the Coastal Commission's San Francisco office, no later than May 24, 2006.** Please include the evidence you wish to present to the Coastal Commission in your written response and identify any issues you would like us to consider.

Cease and Desist Order

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states the following:

(a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.

The Executive Director of the Commission is issuing this Notice of Intent to commence Cease and Desist Order proceedings because unpermitted development has occurred at the subject property. This unpermitted development consists of placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, vegetation removal, placement of recreational vehicles, and construction of storage facility/gazebo building. The Cease and Desist

Order would order you to desist from maintaining unpermitted development and from performing any further unpermitted development on your property.

Based on Section 30810(b) of the Coastal act, the Cease and Desist Order may also be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including immediate removal of any development or material. Staff will recommend that the Cease and Desist Order include terms requiring additional site investigations to ensure removal of all unpermitted development on the subject property, with a schedule for removing the unpermitted development.

Restoration Order

Section 30811 of the Coastal Act authorizes the Commission to order restoration of a site in the following terms:

In addition to any other authority to order restoration, the commission, a local government that is implementing a certified local coastal program, or a port governing body that is implementing a certified port master plan may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission, local government, or port governing body, the development is inconsistent with this division, and the development is causing continuing resource damage.

Commission staff has determined that the specified activity meets the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) Unpermitted development consisting of placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, vegetation removal, placement of recreational vehicles, and construction of storage facility/gazebo building has occurred on the subject property.
- 2) This development is inconsistent with the resource protection policies of the Coastal Act. The subject property is adjacent to biologically significant wetlands, and the unpermitted development constitutes a significant disruption and negative impact to the quality of environmentally sensitive wetland habitat, as well as to the quality of coastal waters contained in nearby Lakes Earl and Tolowa (Sections 30230 and 30231). The unpermitted placement of vehicles and structures has resulted in major vegetation removal and disturbance to the natural habitat (see Sections 30240(a) and (b)). The unpermitted development has also not been placed within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or...in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources as is required by Section 30250a of the Coastal Act.
- 3) The unpermitted development is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. Cal. Code Regs., Title 14 § 13190. The

unpermitted development has impacted environmentally sensitive habitat. Such impacts meet the definition of damage provided in Section 13190(b): “*any degradation of other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development*”. The unpermitted development includes placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, vegetation removal, placement of recreational vehicles, and construction of storage facility/gazebo building. The unpermitted development continues to be present and persists at the subject property; therefore, the damage to resources protected by the Coastal Act is continuing.

For the reasons stated above, I have decided to commence a Cease and Desist and Restoration Order proceeding before the Commission in order to restore the subject property to the condition it was in before the unpermitted development occurred. Restoration will require removal of all unpermitted development on the subject property and may include other potential actions required to restore the subject property to its prior condition.

The procedures for the issuance of Cease and Desist and Restoration Orders are described in Sections 13190 through 13197 of the Commission’s regulations. See Title 14 of the California Code of Regulations. Section 13196(e) of the Commission’s regulations states the following:

Any term or condition that the commission may impose which requires removal of any development or material shall be for the purpose of restoring the property affected by the violation to the condition it was in before the violation occurred

Accordingly, any Cease and Desist and Restoration Order that the Commission may issue will have as its purpose the restoration of the subject property to the conditions that existed prior to the occurrence of the unpermitted development described above.

Additional Procedures

Please be advised that Coastal Act Sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil penalties, respectively, in response to any violation of the Coastal Act. Coastal Act Section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000. Further, Section 30820(b) states that, in addition to any other penalties, any person who “knowingly and intentionally” performs any development in violation of the Coastal Act can be subject to a civil penalty of up to \$15,000 for each day in which the violation persists. Additional penalties of up to \$6,000 per day can be imposed if a cease and desist or restoration order is violated. Section 30822 further provides that exemplary damages may also be imposed for knowing and intentional violations of the Coastal Act or of any orders issued pursuant to the Coastal Act.

In accordance with Sections 13181(a) and 13191(a) of the Commission’s regulations, you have the opportunity to respond to the Commission staff’s allegations as set forth in this Notice of Intent to commence Cease and Desist Order and Restoration Order proceedings by completing

the enclosed Statement of Defense form. **The Statement of Defense form must be returned to the Commission's San Francisco office, directed to the attention of Sheila Ryan, no later than May 24, 2006.**

The Commission staff is tentatively scheduling the hearing for the NOVA, Cease and Desist Order and Restoration Order during the Commission meeting that is scheduled for the week of June 14-16, 2006 in Santa Rosa, CA. If you have any questions regarding this letter or the enforcement case, please contact Sheila Ryan at 415-597-5894, or send correspondence to her attention at the San Francisco address listed on the letterhead. We look forward to hearing from you and appreciate your anticipated cooperation.

Sincerely,

Kat Haage for

Peter Douglas
 Executive Director

cc without encl: Lisa Haage, Chief of Enforcement
 Alex Helperin, Staff Counsel
 Nancy Cave, Northern California Enforcement Supervisor

Encl: Statement of Defense form for Cease and Desist Order and Restoration Order

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL U.S. MAIL

SENDER: COMPLETE THIS SECTION

COMPLETE THIS SECTION ON DELIVERY

Postage	\$.63
Certified Fee	2.40
Return Receipt Fee (Endorsement Required)	1.85
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.88

Sent To: *Kathleen Bicknell*
 Street, Apt. No., or PO Box No.: *P.O. Box 305*
 City, State, ZIP+4: *Fort Dick, CA 95538-0305*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

*Kathleen Bicknell
 P.O. Box 305
 Fort Dick, CA
 95538-0305*

A. Signature Agent
 Addressee
Kathleen Bicknell
 B. Received by (Printed Name) Agent
 Addressee
Kathleen Bicknell
 C. Date of Delivery: *5/8*
 D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

Exhibit 6
 CCC-06-CD-04
 (Bicknell) Page 6 of 9

2. Article Number (Transfer from service label) 7004 1160 0001 3918 8436

PS Form 3800, June 2002
 3800, June 2002
 955001 CA 95543 \$0.63
 First-Class
 2.00 oz.
 Return Rcpt (Green Card) \$1.85
 Certified \$2.40
 Label #: 70041160000139188429
 Customer Postage \$4.88
 Subtotal \$0.00

CALIFORNIA COASTAL COMMISSION

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



STATEMENT OF DEFENSE FORM

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE COMPLETING THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by either a cease and desist order and restoration order issued by the Executive Director or a notice of intent to initiate cease and desist order and restoration order proceedings before the Coastal Commission. This document indicates that you are or may be responsible for, or in some way involved in, either a violation of the Coastal Act or a permit issued by the Commission. This form asks you to provide details about the (possible) violation, the responsible parties, the time and place the violation that (may have) occurred, and other pertinent information about the (possible) violation.

This form also provides you the opportunity to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. You must also enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You must complete the form (please use additional pages if necessary) and return it no later than May 24, 2006 to the Commission's enforcement staff at the following address:

Sheila Ryan
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

If you have any questions, please contact Sheila Ryan at 415-597-5894.

- 1. Facts or allegations contained in the notice of intent that you admit (with specific reference to the paragraph number in the notice of intent):**

2. **Facts or allegations contained in the notice of intent that you deny (with specific reference to paragraph number in the notice of intent):**

3. **Facts or allegations contained in the notice of intent of which you have no personal knowledge (with specific reference to paragraph number in the notice of intent):**

4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:

5. Any other information, statement, etc. that you want to offer or make:

6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):

CALIFORNIA COASTAL COMMISSION

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



STATEMENT OF DEFENSE FORM

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE COMPLETING THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

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This form also provides you the opportunity to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. You must also enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

The purchase of land Deed homestead title insured
You must complete the form (please use additional pages if necessary) and return it no later than May 24, 2006 to the Commission's enforcement staff at the following address:

Sheila Ryan
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

If you have any questions, please contact Sheila Ryan at 415-597-5894.

- 1. Facts or allegations contained in the notice of intent that you admit (with specific reference to the paragraph number in the notice of intent):

Change (intensity?) of use from a vacant lot ~~used~~ for residential (me) uses: Homestead with Deed copies enclosed. Deed to Homestead is intent to notify reside. (Unpermitted?) Homestead & Deed violation description

your Notice is developed in 1004 in Block 90
Discussion fact completed public record

Completed public record
Done
Discussion fact completed public record

On property in Subdivision with paved roads and street signs. I sent completed application of intent to reside on developed subdivision by description Block 90, surveyed Lot 4

2. Facts or allegations contained in the notice of intent that you deny (with specific reference to paragraph number in the notice of intent):

by description Block 90, Lot 4 Pacific Shores, Del Norte County ~~is not~~ developed I want notation of violation (NOVA) has been from description Totally developed your information public knowledge surveyed filed public record

3. Facts or allegations contained in the notice of intent of which you have no personal knowledge (with specific reference to paragraph number in the notice of intent):

Intent Reside U.S. Citizen Deed Alone.

~~Deny~~ Father Dan Bickell

Serious nothing further at all

4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:

Notify of hearing Monterey, Calif
 Notify of hearing Santa Rosa, Calif
 Reasonable meeting description or perhaps
 hearing. (Monterey Calif
 Santa Rosa Calif)

Discussion Public record ~~Done~~ Reasonable
 Meeting discussed public record ~~Done~~ hearing Public record
 This location. mileage to ~~distance~~ ~~Done~~
~~to~~ ~~not~~ ~~start~~ your services in regards
 CAUSE REASONABLE. ~~to~~ ~~not~~ tentatively meeting
 5. Any other information, statement, etc. that you want to offer or make: CAUSE mileage

This land lot 4 is (not) undeveloped
 on residence on property next to Tell
 Boulevard with paved roads surveyed
 boundary.
 (Second address whom) not true

6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):

Documents Title insurance Deed
 and Homestead. Title insurance public records
 Deed Homestead enclosed. Reasonable intent
 to reside consider lawful public record =
 Deed Alone. Done. Additional at use
 + home stead.

RECORDING REQUESTED BY:

Crescent Land Title Co
When Recorded Mail Document
and Tax Statement To:

Kathleen D. Bicknell
P. O. Box 262
Gasquet, CA 95543

Doc # 20032403
Page 1 of 1
Date: 4/10/2003 02:02P
Filed by: CRESCENT LAND TITLE
Filed & Recorded in Official Records
of COUNTY OF DEL NORTE
VICKI L. FRAZIER
COUNTY CLERK-RECORDER
Fee: \$8.65

Escrow No. 1759MB
Title Order No. 1759 5MB
APN: 108-320-08

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

The undersigned grantor(s) declare(s)

Documentary transfer tax is \$1.65 City tax \$

- computed on full value of property conveyed, or
- computed on full value less value of liens or encumbrances remaining at time of sale,
- Unincorporated Area City of _____

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Christine D. Steele, successor trustee of the John N. Belkiewicz Trust dated April 8, 1993

hereby GRANT(S) to Kathleen D. Bicknell, an unmarried woman

the following described real property in the City of

County of Del Norte,

State of California:

Lot 4 in Block 90 of Pacific Shores Subdivision according to the map thereof filed in the office of the County Recorder of Del Norte County, California on September 10, 1963 in Book 4 of Maps, page 153.

DATED: ~~April 3, 2003~~ April 8, 2003

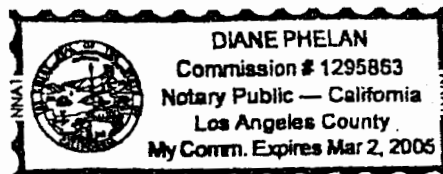
STATE OF CALIFORNIA
COUNTY OF Los Angeles
ON April 8, 2003 before me,
Christine D. Steele personally appeared

Christine D. Steele, Successor Trustee
Christine D. Steele

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Signature Diane Phelan



MAIL TAX STATEMENT AS DIRECTED ABOVE

4 0 40153

GRANT DEED
COPIES

Doc # 20046094
Page 1 of 2
Date: 8/23/04

RECORDING REQUESTED BY
& WHEN RECORDED MAIL TO:

Filed & recorded in Official Records
of COUNTY OF DEL NORTE
VICKI L. FRAZIER
COUNTY CLERK-RECORDER
Fee: \$18.00

KATHLEEN D. BICKNELL
P.O. Box 305
Fort Dick, CA 95543

Space Above This Line For Recorder's Use

DECLARATION OF HOMESTEAD
(Single Person)

KNOW ALL MEN BY THESE PRESENTS, I, KATHLEEN D. BICKNELL, do hereby declare:

That I hereby claim as declared the premises described as follows:

All that real property, situated in the County of Del Norte, State of California, described as follows:

Lot 4 in Block 90 of Pacific Shores Subdivision according to the map thereof filed in the Office of the County Recorder of Del Norte County, California on September 10, 1963 in Book 4 of Maps, page 153.

APN 108-320-08

Consisting of an unimproved lot 125 feet wide by 160 feet long with a gazebo

That I am an unmarried woman and the homestead owner of the above-declared homestead.

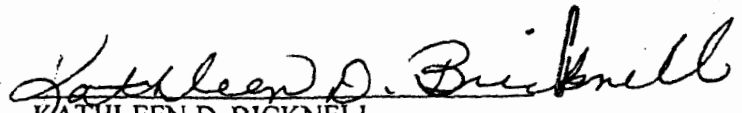
That I own the following interest in the above-declared homestead: ONE HUNDRED (100%) PERCENT.

That the above-declared homestead is my principal dwelling and I am currently residing in that declared homestead.

That my further act of causing this declaration to be recorded shall continue a representation that I reside in the above-declared homestead on the date this declaration is recorded.

That the facts stated in this Declaration are true as of my personal knowledge.

Dated: August 23, 2004.


KATHLEEN D. BICKNELL

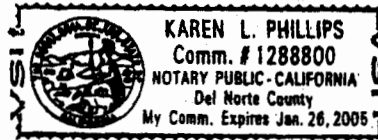
copies

STATE OF CALIFORNIA)
COUNTY OF DEL NORTE)

On this 23RD day of August, 2004, before me, KAREN L. PHILLIPS, a Notary Public, State of California, duly commissioned and sworn, personally appeared KATHLEEN D. BICKNELL, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument, the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL.


KAREN L. PHILLIPS, NOTARY PUBLIC



DECLARATION OF HOMESTEAD
(Single Person)

KATHLEEN D. BICKNELL

Date: August 23, 2004


STATE OF CALIFORNIA)
COUNTY OF DEL NORTE)

KATHLEEN D. BICKNELL, being duly sworn, deposes and says: that she, is the declarant named in and who made the within and annexed Declaration of Homestead; that she has read the same and knows the contents thereof; and that the matters therein stated are true of his own knowledge.


KATHLEEN D. BICKNELL

SUBSCRIBED AND SWORN to before me this 23RD day of August, 2004.




KAREN L. PHILLIPS, NOTARY PUBLIC

001015

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET • SUITE 200
EUREKA, CA 95501-1865
VOICE (707) 445-7833
FACSIMILE (707) 445-7877

MAILING ADDRESS:
P. O. BOX 4908
EUREKA, CA 95502-4908



F10a

Date Filed: February 13, 2004
49th Day: April 2, 2004
180th Day: August 4, 2004
Staff: Jim Baskin
Staff Report: February 24, 2006
Hearing Date: March 10, 2006
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 1-04-008

APPLICANT: **Kathlene Dawn Bicknell**

PROJECT LOCATION: Lot 4 in Block 90, Pacific Shores Subdivision, west of Fork Dick, Del Norte County, APN 108-320-08.

PROJECT DESCRIPTION: Installation of a septic tank, water storage tank, gasoline-powered generator, and gasoline-powered water pump on an unimproved lot currently occupied by three recreational vehicles.

LOCAL APPROVALS RECEIVED: None.

LOCAL AND OTHER AGENCY APPROVALS REQUIRED: 1) County of Del Norte Department of Public Health - Division of Environmental Health sewage disposal system permit; 2) State Water Resources Control Board, Division of Water Rights Water Right Allocation Permit; and 3) County of Del Norte Department of Community Development Recreational Vehicle Long-term Occupancy Use Permit.

SUBSTANTIVE FILE DOCUMENTS: 1) County of Del Norte Local Coastal Program; 2) Coastal Development Permit Application No. 1-04-008; 3) California Department of Fish and Game Lake Earl Wildlife Area Management Plan and Environmental Impact Report; 4) Pacific Shores Subdivision Special Study, Winzler & Kelly Engineers (July 1989); 5) North Coast Regional Water Quality Control Board, Basin Plan: Implementation Plans, Policy on the Control of Water Quality With Respect to On-Site Treatment and Disposal Practices, p. 4-10.01 to 4-25.00; and 6) Revised Findings for Coastal Development Permit No. 1-00-057.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission **DENY** the coastal development permit for the proposed installation of domestic water supply, wastewater disposal, and related water pumping and storage equipment on an approximately ½-acre lot within the *Pacific Shores* Subdivision near the unincorporated community of Fort Dick, Del Norte County. Staff believes that the project is not consistent with the Chapter 3 policies of the Coastal Act regarding the siting of new development in areas where there is adequate services to accommodate such development, or in areas not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, the long-term occupation of the parcel as would be facilitated by the proposed support amenities could result in significant impacts on environmentally sensitive coastal resources.

The project site is located within a large rural antiquated subdivision comprised of over 1,500 roughly one-half-acre lots with no developed community service and public utility infrastructure, only minimal road improvements, and situated a significant distance from police, fire, and ambulance emergency service responders. Several significant environmentally sensitive areas lie within close proximity to the project site and on the site itself, namely estuarine areas and seasonal wetlands, respectively. In addition, given its near sea-level elevation, the parcel and the connecting roadways serving the lot is subject to seasonal inundation by the waters of the coastal lagoon known as Lakes Earl/Talawa.

Although few details are provided in the submitted coastal development permit application, the apparent intent for the installation of the proposed septic tank, water storage tank, water pump, and generator is to facilitate long-term residency at the project

site currently being undertaken within a series of recreational vehicles that have been brought onto the site. The placement of these recreational vehicles, and the related removal of vegetation, and placement of fill were done without benefit of first securing a coastal development permit and is the subject of a related enforcement investigation by the Commission's Statewide Enforcement Unit.

Staff believes that both the installation of the proposed water supply and wastewater disposal site improvements and the long-term occupation of the recreational vehicles as a residential use are inconsistent with the new development policies and standards of the Coastal Act from a variety of perspectives.

First, the proposed residential development would not be located in an area with adequate public water supply for supporting long-term residential use at the property and where installation of a private individual water system would have significant adverse effects on coastal resources, inconsistent with Section 30250 of the Coastal Act. No municipal water supply is available to serve the property. Although located within an established community services district, the Pacific Shores California Subdivision Water District has not developed water infrastructure to serve the subdivision.

The applicant proposes to install a gasoline-powered water pump and storage tank of undisclosed size at the project site. Explicit statements within the application that no well drilling is being proposed and indicating that the source of the water supply would be from a "creek" at an undisclosed location on "Department of Fish and Game" property implies that the applicant intends to import water to the site from a nearby surface water source. However, the only mapped watercourse within close proximity to the project parcel is an embayment off of Lakes Earl/Talawa. Because of the lagoon's periodic opening to the Pacific Ocean, this waterbody fluctuates between saltwater and brackish water throughout the year. In addition, notwithstanding the salinity content, due to the presence of cattle grazing and other agricultural land uses within the Lake Earl basin, water drafted from Lake Earl would not be potable without extensive water treatment to remove sediment and coli-form bacteria introduced into this water by these land practices.

Moreover, the applicant has demonstrated no rights to enter onto lands under the control of the California Department of Fish and Game for fish and wildlife management purposes to extract water. Nor has the applicant secured a water right allocation from the State Water Resources Control Board to divert water from this apparent source. Given the proximity of forested and estuarine wetlands on and adjoining the property and the presence of habitat areas for federally-listed threatened species nearby, even if all necessary property rights could be secured, the routing of the water intake line through these wetland/sensitive habitat areas would not represent uses dependent on those resources, would likely result in significant degradation and disruption of habitat values, and would not be compatible with the continuance of those habitat areas, inconsistent

with coastal resources protection provision of Sections 30240 and 30250 of the Coastal Act.

Second, similar to the difficulties inherent with the proposed water supply, the applicant does not demonstrate how the proposed residential development would be located in an area with adequate services for providing safe and reliable wastewater disposal to support long-term residential occupancy at the site and where use of an onsite septic disposal system would not have similar adverse impacts effects on coastal resources, inconsistent with Sections 30231, 30240, and 30250 of the Coastal Act.

Staff notes that there are no feasible alternatives for providing municipal wastewater treatment facilities to the site. Although located within an established community services district, the Pacific Shores California Subdivision Water District has not developed sewage disposal infrastructure. Moreover, developing a community sewer system to serve the area is highly improbable. Even under a theoretical ultimate development scenario involving the full build-out of all of the remaining 940 privately-owned lots within the *Pacific Shores* subdivision that have not been purchased by public agencies, with a resulting overall density of only two dwellings per acre, assessments for paying the bonded capital improvement indebture associated with constructing a publicly-owned wastewater treatment plant, together with the *pro rata* share of fees to generate revenues necessary for the ongoing operation and maintenance of such a system render the option of a community sewer system economically infeasible.

The applicant proposes the sole use of a "septic tank" as the disposal system for sewerage generated at the site. No information was included in the application as to whether the septic tank would effectively function as a storage holding tank that would be periodically pumped by a licensed sewage hauler, or if the tank would serve in the traditional role of providing a chamber in which the separation of waste solids and their anaerobic digestion would occur with the resulting decanted effluent being in turn conveyed to some form of undisclosed leachfield system for ground infiltration and further biological treatment of residual nutrients within the wastewater. The former represents an impermissible form of sewage disposal, prohibited under both Regional Water Quality Control Board standards and local ordinance. The latter is similarly problematic, as it is highly doubtful that even a mounded leachfield system would meet the minimum state and local standards for such treatment facilities given the site's low elevation relative to the lagoon's surface level, the high permeability of the underlying sandy soils, and the shallow and/or perched groundwater conditions common throughout the *Pacific Shores* subdivision. Attempting leachfield disposal under such conditions would likely result in the release of untreated sewage into adjoining areas that would pose human health risks to persons who might come in contact with these wastes and adversely affect water quality and nearby environmentally sensitive habitat, inconsistent with Sections 30231, 30240, and 30250 of the Coastal Act.

Therefore, for all the above reasons, staff believes the proposed development is not consistent with the new development policies of Chapter 3 of the Coastal Act and must be denied.

The Motion to adopt the Staff Recommendation of Denial is found on page 5.

STAFF NOTES:

1. Standard of Review

The proposed project is located within the unincorporated boundaries of Del Norte County in an area situated on a low peninsula that juts into the coastal lagoon known as Lake Earl/Talawa. The County of Del Norte has a certified LCP, but the project site is within the "Pacific Shores Special Study Area," an Area of Deferred Certification (ADC) over which the Commission retains coastal development permit jurisdiction. Therefore, the standard of review that the Commission must apply to the project is the Coastal Act.

2. Commission Action Necessary

The Commission must act on the application at the March 10, 2006 meeting to meet the requirements of the Permit Streamlining Act.

I. MOTION, STAFF RECOMMENDATION AND RESOLUTION:

As discussed below, the staff recommends that the Commission determine that the development does not conform to the policies of the Coastal Act and **deny** the permit. The proper motion is:

MOTION:

I move that the Commission approve Coastal Development Permit No. 1-04-008 for the development proposed by the applicant.

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT:

The Commission hereby **denies** a coastal development permit for proposed development on the grounds that the development will not conform with the policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the amended development on the environment.

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Site Location and Description.

The project site is located at 633 Tell Boulevard (APN 108-320-08) approximately five miles southwest of the town of Fort Dick in unincorporated central Del Norte County (see Exhibit Nos. 1 and 2). The site consists of an approximately 21,500-square-foot parcel (Lot 4 in Block 90) situated within the *Pacific Shores* Subdivision. The *Pacific Shores* Subdivision is located north of Lake Talawa, south of Kellogg Road, between Lake Earl and the Pacific Ocean. The Subdivision comprises a total of 1,524 roughly ½-acre lots platted over an area of 1,486 acres (see Exhibit No. 3). Approximately 27 lineal miles of roadway were offered for dedication and subsequently accepted by the County and constructed with paved, chip-sealed, and/or gravel surfaces shortly after the subdivision was approved in 1963. Only the main north-to-south access road, Tell Boulevard, and several other cross streets have been maintained (i.e., vegetation clearing, minor drainage improvements). With the exception of the road system and a single-circuit, 12.5-kilovolt (kV) electrical transmission line with no substation facilities, since 1963 infrastructure improvements within *Pacific Shores* have been minimal and the subdivision remains essentially undeveloped. Only one permanent residence has been developed legally within the bounds of the subdivision. The residence was constructed prior to the 1972 Coastal Initiative (Proposition 20) and the Clean Water Act, and therefore did not require either a coastal development permit or installation of a septic disposal system consistent with contemporary design requirements.

The proposed site of the proposed development is located towards the southern end of Tell Boulevard, approximately 1¼ mile from its intersection with Kellogg Road at the entry to *Pacific Shores*. The parcel lies on the western side of the street and is situated approximately 200 feet from the inland extent of waters of Lake Earl/Talawa at the +8-foot MSL level as managed by the California Department of Fish and Game for flood control purposes (see Exhibit No. 7, page 8). The project parcel has essentially flat relief and is located at an elevation of approximately 10 feet above sea level. According to public records, the applicant obtained title to the ½-acre parcel on April 10, 2003, having paid the amount of \$1,500.

The parcel lies within an area of inter-mixed forested wetland, coastal scrub, and grassland vegetation. Vegetated cover on and near the site consists of a series of distinct bands fringing and extending back easterly from the shoreline of Lake Earl/Talawa (see Exhibit No. 4). Based on the environmental impact report prepared by the California Department of Fish and Game's Lake Earl Wildlife Area Management Plan, dated June 2003, and as verified in the field by staff from observations of the subject property from adjoining areas along Tell Boulevard and Middleton Drive, the rear third of the lot is dominated by tree and shrub layer obligate and facultative hydrophytic vegetation associated with "palustrine" or forested wetlands, consisting primarily of Hooker's willow (Salix hookeriana), red alder (Alnus rubra), and a ground cover of slough sedge (Carex obnupta). Vegetation on the middle third of the lot is representative of the mesic-to-xeric transition landward from the lagoon and is composed of shore pine (Pinus contorta ssp. contorta), wax myrtle (Myrica californica), and coyote bush (Baccharis pilularis). Other species present include twinberry (Lonicera involucrata), hairy honeysuckle (Lonicera hispidula), silk tassel (Garrya elliptica), salal (Gaultheria shallon). The front third of the lot along its Tell Boulevard frontage is comprised of a mixture of upland, native and non-native grasses and forbs, including sweet vernal grass (Anthoxanthum odoratum), velvet grass (Holcus lanatus), orchard grass (Dactylis glomerata), tall fescue (Festuca arundinacea), soft chess (Bromus hordeaceus), barley (Hordeum spp.), sheep sorrel (Rumex acetosella), curly dock (Rumex crispus), English plantain (Plantago lanceolata), Douglas' iris (Iris douglasiana), lupine (Lupinus bicolor), and bracken fern (Pteridium aquilinum). These transitions from wetland to upland vegetation types can be seen on the attached aerial photograph of the site (see Exhibit No. 4).

Lake Earl Wildlife Area

The project site is located approximately 200 feet from the shoreline of Lake Earl/Talawa. Lake Earl/Talawa and consist of a bilobal estuarine lagoon that comprises the core of the approximately 5,624 acres of the Lake Earl Wildlife Area.

Pursuant to Coastal Development Permit No. 1-00-057, the California Department of Fish and Game manages water levels in the lagoon by periodically breaching the ocean sandbar that impounds the waters of the lagoon along the western shore of Lake Talawa.

The U.S. Fish and Wildlife Service has characterized Lake Earl and Lake Talawa as comprising "one of the most unique and valuable wetland complexes in California." The lagoon system supports numerous habitat types including emergent wetlands, open water, mudflats, flooded pastures, woodland, sand beach, and riverine habitat. Lake Earl is an important resting and wintering area of the Pacific Flyway and is visited or home to over 250 species of birds. Forty species of mammals are known to occur within the coastal lagoon floodplain environs. In addition, 14 federal- and/or state-listed threatened, endangered, or candidate species of plants and animals, and 25 fish, amphibian, and Avian "species of concern" are known to occur at Lake Earl.

Because of the extremely high fish and wildlife values of the lagoon and adjacent wetlands, the California Department of Fish and Game (CDFG or "Department") included Lake Earl as one of the 19 coastal wetlands identified in the 1974 report entitled, "Acquisition Priorities for Coastal Wetlands of California." To better manage the wildlife and fisheries resources in and around the lagoon, CDFG and the California Department of Parks and Recreation acquired more than 5,000 acres of land within or adjacent to Lake Earl and Lake Talawa. An additional 2,600+ acres of land is leased from the State Lands Commission by the CDFG. Today, a total of 5,624 acres of land and water area under management by CDFG lies within the boundaries of the Lake Earl Wildlife Area (LEWA). Only approximately 281 acres of land below the 10-foot contour¹ remains in private hands. Since 1991, CDFG has continued to purchase property from willing sellers who own land around the lagoon, initially focusing on the more flood-vulnerable lots lying below a +10 feet MSL elevation, and later expanded to include all lots within the *Pacific Shores* subdivision.

Because of the large number of small privately-owned lots in *Pacific Shores*, the California Wildlife Conservation Board (WCB) is providing funding through the Smith River Alliance (SRA) for acquisition of these lots from willing sellers. As of the end of the 2005 calendar year, a total of 527 of the total 1,535 *Pacific Shores* lots were in state ownership. In November 2005, the WCB allocated an additional \$2 million towards the purchase of *Pacific Shores* lots. In addition, the WCB through the SRA is also working with the County of Del Norte to acquire *Pacific Shores* lots that are currently in property tax default. Public records indicate that the taxes assessed for the applicant's property have not been paid for the past two years.² The applicant has been contacted by SRA and has neither accepted an offer to buy or specifically declined to sell the subject property. Although specific details as to the purchase offers is privileged information, SRA staff indicates that the average purchase price for the *Pacific Shores* lots is approximately \$4,000 per lot.³

Development immediately adjacent to Lake Earl is minimal. Except for the land encompassed by the *Pacific Shores* subdivision, most land is either in public ownership as managed by the CDFG or CDPR, or is privately held and dedicated to agricultural, timberland, and resource conservation uses. Only small areas of land lying adjacent to the lagoon are developed with rural residential, commercial, and industrial uses (see Exhibit Nos. 3, 7, and 8). All of the existing developed residential housing in the project vicinity is situated above the +10 feet MSL elevation.

¹ This estimate is based upon a review of aerial photographs taken when the lagoon was inundated to +9.44 MSL. Refer to Table F.2-1 on page 2-6 of Exhibit 10 of the Revised Findings for Coastal Development Permit 1-00-057.

² County of Del Norte Treasurer-Tax Collector, pers. comm..

³ Patty McCleary, pers. comm.

When the Commission initially certified the Del Norte County LCP in 1981, it declared the *Pacific Shores* subdivision as an Area of Deferred Certification based on findings of numerous unresolved concerns regarding impacts to numerous coastal resources. Because of these findings, the likely difficulties applicants would have in securing development authorizations on lots within the subdivision is widely known in Del Norte County.

B. Project Description.

Based on information within submitted coastal development permit application (see Exhibit No. 5), the proposed project involves the installation of various equipment at the project site to provide water supply, wastewater disposal, and electrical generating facilities. Although not expressly stated in the project description of the application, the proposed facilities would apparently support long-term residential use of the property in recreational vehicles that have previously been brought onto the parcel and which are currently occupied. As illustrated in a series of photographs submitted with the coastal development permit application form, the proposal entails the placement of:

- A two-stroke, gasoline-powered portable water pump;
- A water storage tank, capacity unspecified;
- A septic tank, capacity unspecified; and
- A gasoline-powered welding generator, output unspecified

In addition, though not specifically proposed within the permit application, by the inclusion of information germane to such a structure, the project appears to seek authorization for a partially constructed eight- by twelve-foot octagonal gazebo building. Along with the placement of the recreational vehicles and associated removal of vegetation, this development has occurred on the project parcel without a coastal development permit.

The subject coastal development permit application was submitted after an enforcement action undertaken by the Commission's Statewide Enforcement Unit in January 2004. As indicated in the certified letter sent to the owner/applicant, among the options identified by enforcement unit staff for remedying the unpermitted development was obtaining a coastal development permit after-the-fact authorizing the change in use from a vacant lot to a residence, and the related removal of vegetation and the possible placement of fill within wetlands. However, the submitted application does not explicitly address the applicant's apparent objective of establishing long-term use of the recreational vehicles as either a permanent or part-time residence, and the associated vegetation clearing. Instead, only additional amenities purportedly for providing the residence with a water supply, on-site wastewater storage or sewage disposal, electrical power, and possibly an accessory structure have been requested.

C. Locating and Planning New Development / Protection of Water Quality and Environmentally Sensitive Habitat Areas

Section 30250(a) of the Coastal Act states, in applicable part:

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

Coastal Act Section 30250(a) requires that new development shall be located within or near existing developed areas able to accommodate it or in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. The intent of this policy is to channel development toward existing developed areas where services are provided and potential impacts to resources are minimized. Outside of existing developed areas, new development must nonetheless be located in areas with adequate public services and where no significant direct or cumulative adverse impacts to coastal resources would result.

Section 30231 of the Coastal Act also requires that:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

In addition, Section 30240 of the Coastal Act directs:

(a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

(b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The project site is located within the *Pacific Shores* subdivision, a large, rural antiquated subdivision comprised of over 1,500 roughly one-half-acre lots with no developed community service and public utility infrastructure, only minimal road improvements, and situated a substantial distance from police, fire, and ambulance emergency service responders. Several significant environmentally sensitive areas lie within or in close proximity to the project site, namely seasonal wetlands and estuarine areas. In addition, given its near sea-level elevation, the parcel and the connecting roadways serving the lot is subject to seasonal inundation by the waters of the coastal lagoon known as Lakes Earl/Talawa.

The installation of the proposed water supply and wastewater disposal site improvements to facilitate occupation of the recreational vehicles as a residential use is inconsistent with the new development policies of the Coastal Act from a variety of perspectives. First, the project description does not include a request to authorize placement of recreational vehicles on the property and the grading, fill and/or vegetation removal necessary for this. To avoid piecemeal development, the Commission generally does not authorize development that serves to support a primary use until the primary use is proposed and analyzed. Since no primary residential use is proposed by the applicant, the ancillary development to provide a water supply and wastewater disposal and the impacts they would have on coastal resources, are not justified.

Second, if the application is considered a proposal for residential development, it would not be located in an area with adequate public services for providing an adequate potable water supply for supporting long-term residential use at the property and where installation of a private individual water system would not have significant adverse effects on coastal resources, inconsistent with Section 30250 of the Coastal Act. No municipal water supply is available to serve the property. Although located within an established community services district, the Pacific Shores California Subdivision Water District has not developed water infrastructure to serve the subdivision.

The applicant proposes to install a gasoline-powered water pump and storage tank of undisclosed size at the project site. Explicit statements within the application that no well drilling is being proposed and indicating that the source of the water supply would be from a "creek" at an undisclosed location on "Department of Fish and Game" property implies that the applicant intends to import water to the site from a nearby surface water source on adjacent state fish and wildlife refuge lands.

However, the only mapped watercourse within close proximity to the project parcel is an embayment off of Lake Talawa. Because of the lagoon's periodic opening to the Pacific Ocean, this waterbody fluctuates between saltwater and brackish water throughout the year. In addition, notwithstanding the salinity content, due to the presence of cattle grazing and other agricultural land uses within the Lake Earl basin, water drafted from Lake Earl would not be potable without extensive water treatment to remove sediment

and coli-form bacteria introduced into this water by these land practices. Moreover, the applicant has not demonstrated any rights to enter into lands under the control of the California Department of Fish and Game, or that they have secured a water rights allocation from the State Water Resources Control Board to divert water from Lake Earl/Talawa. Thus the Commission finds that the applicant's proposal for water supply is not a feasible, legal means for providing domestic water supply for residential use of the property and is not consistent with Section 30250 of the Coastal Act.

Third, similar to the difficulties inherent with the proposed water supply, the applicant does not demonstrate how the proposed residential development would be located in an area with adequate services for providing safe and reliable wastewater disposal to support residential occupancy at the site and where use of an on-site septic disposal system would not have significant adverse effects on coastal resources, inconsistent with Section 30250 of the Coastal Act.

As regards possible connection to a public sewer, although located within an established community services district, the Pacific Shores California Subdivision Water District has not developed water or sewage disposal infrastructure. Moreover, developing a community sewer system to serve the area is highly improbable. Even under a theoretical ultimate development scenario involving the full build-out of all of the remaining 940 privately-owned lots within the *Pacific Shores* subdivision that have not been purchased by public agencies, with a resulting overall density of only two dwellings per acre, assessments for paying the bonded capital improvement indebtedure associated with constructing a publicly-owned wastewater treatment plant, together with the *pro rata* share of fees to generate revenues necessary for the ongoing operation and maintenance of such a system render the option of a community sewer system economically infeasible.⁴

In 1971, as delegated under the Federal Clean Water Act and the Porter-Cologne Water Quality Act (CWC §13000 *et seq.*), the California Regional Water Quality Control Board adopted requirements for individual onsite sewage disposal "septic" systems in the Basin Plan. These siting and construction requirements include minimum vertical and horizontal separation between septic system components and the highest anticipated surface and groundwater, respectively, and minimum and maximum percolation rates for soils beneath septic system leach fields to ensure their proper functioning. These standards were in-turn adopted locally by the County of Del Norte to allow the Regional Board to delegate individual onsite sewage disposal system permitting authority to the County (see Exhibit No. 6).

⁴ Further discussion regarding the infeasibility of development of a centralized publicly-operated treatment works can be found in the administrative record for the recent decision in *Tolowa Nation, et al., v. California Department of Fish and Game, et al.*, County of Del Norte Superior Court Case No. 04 CS 01254.

The applicant proposes the sole use of a "septic tank" as the disposal system for sewerage generated from residential use at the site. No evidence of County review or approval of the septic disposal system was submitted with the application. In addition, no information was included in the application as to whether the septic tank would essentially function as a low-capacity storage holding tank that would be periodically pumped by a licensed sewage hauler, or if the tank would serve in the conventional role of providing a chamber in which the separation of waste solids and their anaerobic digestion would occur, with the resulting decanted effluent being in turn conveyed to some form of leachfield system, to be install at an undisclosed location on the parcel, wherein the residual nutrients within the wastewater would undergo further biological treatment and ground infiltration.

The former represents an impermissible form of sewage disposal, prohibited under both state water quality standards and local ordinance as Section 14.12.060.K of the Del Norte County Code prohibits the use of holding tank systems for long-term residential uses. The latter is similarly problematic, as it is highly doubtful that even an above-grade, so-called "Wisconsin Mound" leachfield system with a time-release "dosage" pump would meet the minimum state and local standards for such treatment facilities for supporting long-term residential use of the property, given the site's low elevation relative to the lagoon's surface level, the high permeability of the underlying sandy soils, and the shallow and/or perched groundwater conditions common throughout the *Pacific Shores* subdivision. The Pacific Shores Subdivision Special Study (July 1989) found that the RWQCB requirement for sewage disposal in fast percolating material of 30 feet of separation from the leachfield to the water table would make it impossible to install leachfields anywhere in the *Pacific Shores* Subdivision. Attempting leachfield disposal under such conditions would likely result in the release of untreated sewage into adjoining land areas that would pose human health risks to persons who might come in contact with these wastes.

Additionally, as the lot is situated an approximate elevation of only ten feet above sea level, the property lies within the 100-year floodplain, as illustrated on the Federal Emergency Management Agency's Flood Insurance Rate Maps No. 065025 0025B and C, dated January 24, 1983 and July 3, 1986, (+12 feet MSL base flood elevation). So located, the project parcel is susceptible to periodic flooding which would render a leachfield-based disposal system inoperable with the potential for any untreated sewage that may be stored within the septic tank and/or leachfield to be released into floodwaters during such inundation events. Accordingly, on-site sewage disposal on this property could have adverse impacts on water quality and would not be consistent with Section 30231 of the Coastal Act. Even if the applicant's proposal is construed as only including onsite sewage storage, this is not permitted under state and local authorities, and therefore does not constitute an adequate sewage disposal method for use on the property. Thus, the applicant's proposal does not provide adequate wastewater disposal and is not consistent with Section 30250 of the Coastal Act.

Regarding the potential for adverse impacts to coastal resources to result from the proposed new development, the majority of the land within the *Pacific Shores* subdivision, including areas on and in proximity to the project site, can be characterized as a coastal dune system, interspersed with emergent, scrub-shrub, and palustrine wetlands. These areas form a mosaic of environmentally-sensitive nesting, breeding, forage, and holding habitats for an assortment of threatened, endangered, fully-protected, and/or rare plants and animals, including American Peregrine Falcon (*Falco peregrinus anatum*), White-tailed Kite (*Elanus leucurus*), Willow Flycatcher (*Empidonax traillii*), Oregon Silverspot Butterfly (*Speyeria zerene hippolyta*), and Wolf's Evening Primrose (*Oenothera wolfii*) (see Exhibit No. 7, "Excerpts, Lake Earl Wildlife Area Environmental Impact Report.") The installation and use of the proposed water supply, wastewater storage/treatment, and power-generation facilities has the potential to cause adverse individual and cumulative effects on sensitive coastal resources in several ways.

First, assuming rights-of-entry and water rights allocations could be obtaining from the involved state agencies, running the water pump line from the parcel's likely building sites near the lot's Tell Boulevard frontage through the forested wetlands fringing the Lake Earl/Talawa coastal lagoon, and the ongoing need to re-position the pump inlet in response to the varying freshet water levels, would result in soil compaction, denuding of ground cover, and the introduction of sediment in runoff that could damage any rare plant species along the waterline route and shallow aquatic habitat within the estuary margins by the frequent incursions of persons and equipment into these sensitive areas required to maintain such a facility.

Second, the release of untreated sewage from an inadequate-designed septic system would cause water quality impacts to sensitive wetland ESHA through the release of nutrient-rich effluent into the waters and adjacent riparian areas of the Lake Earl/Talawa coastal lagoon, potentially contributing to eutrophication and increased biological oxygen demand, with a corresponding incremental decrease in dissolved oxygen levels in portions of the water body that provide habitat to a variety of endangered and threatened fish and aquatic organisms.

Third, the proposed operation of the un-muffled, gasoline-powered water pump and welding generator would cumulatively introduce noise into the area that would degrade the habitat afforded to the various avian species by the open grassland and forested wetland areas on and near the site.

Finally, the resulting long-term residential occupancy of the site that the proposed water, wastewater, and electrical amenities would facilitate would allow a human presence to be established on essentially undeveloped rural land where no residential occupation currently exists. The proposed development would facilitate highly visible recreational vehicles, accessory structures, lighting, and intensified human activities at the site that are inconsistent with the current surrounding land uses. Additionally, if similar development were proposed for other sites in the area, cumulative impacts on wildlife habitat and

wildlife utilization of the area surrounding these parcels would result, in addition to cumulative impacts on other coastal resources.

Therefore, the Commission finds that the project is inconsistent with Coastal Act Section 30250(a) in that proposed development is not located: (1) within, contiguous with, or in close proximity to, existing developed areas able to accommodate it; or (2) where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects on coastal resources, and must be denied. The Commission also finds that the project is inconsistent with Sections 30231 and 30240 because the proposed development would have adverse impacts on water quality and sensitive habitats.

D. Violation

As noted above, portions of the proposed project including the placement of the recreational vehicles brought to the site, and installation of the foundation for the gazebo, have occurred at the site in an area of the Commission's retained jurisdiction without the benefit of a coastal development permit.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon Chapter 3 policies of the Coastal Act. Review of this permit application does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

E. California Environmental Quality Act

Section 13906 of the California Code of Regulation requires Coastal Commission approval of a coastal development permit application to be supported by findings showing that the application, as modified by any conditions of approval, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Public Resources Code Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would significantly lessen any significant effect that the activity may have on the environment.

As discussed herein, in the findings addressing the consistency of the proposed project with the Chapter 3 policies of the Coastal Act, the proposed project is not consistent with the policies of the Coastal Act that restrict require locating new development in areas with adequate services to accommodate the development and where the development would not have significant adverse effects on coastal resources.

Therefore, the Commission finds that the proposed project cannot be found consistent with the requirements of the Coastal Act and is not approved.

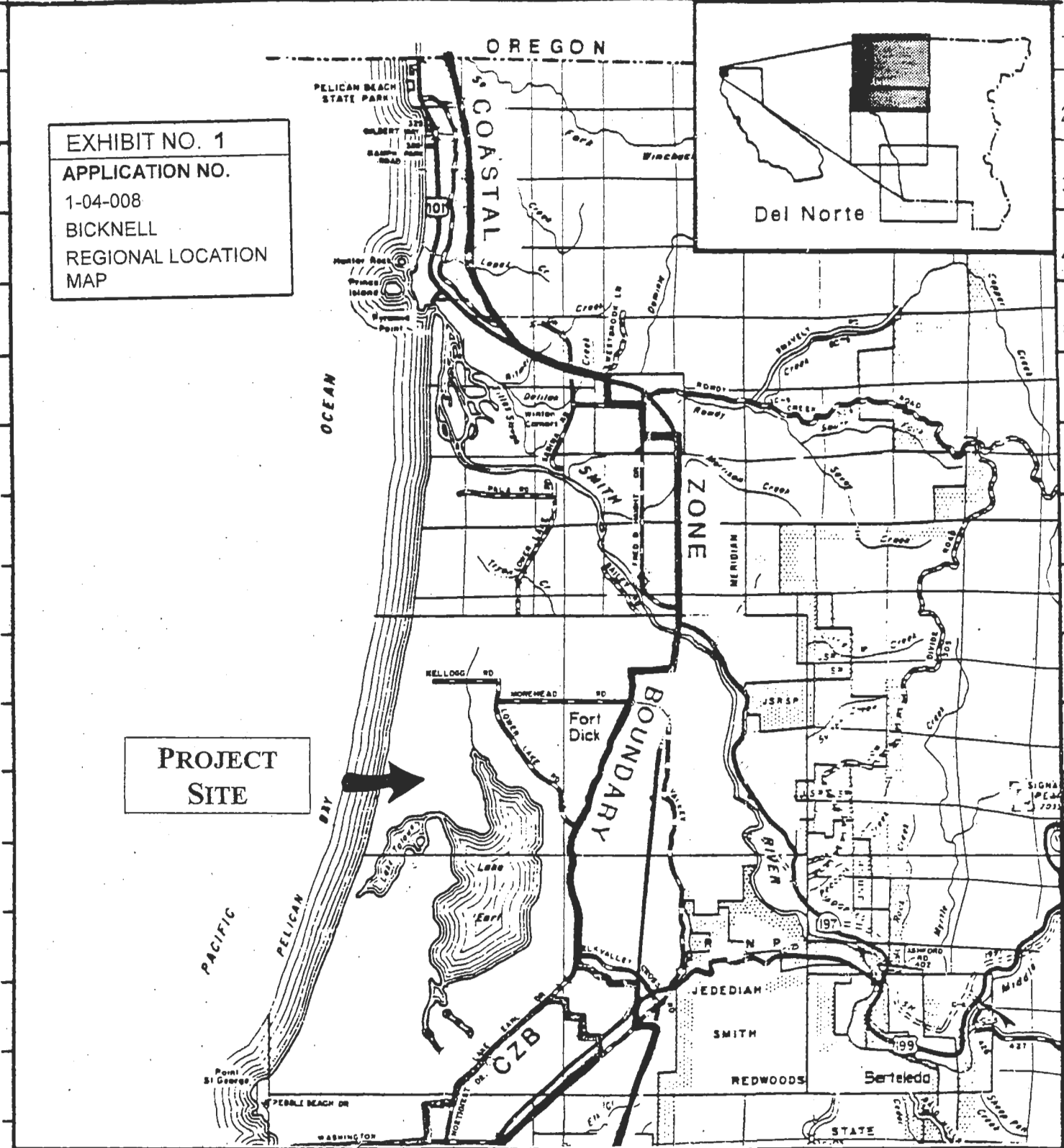
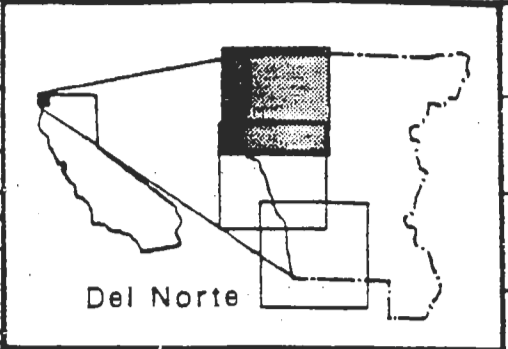
The Commission notes that its findings analyze the applicant's proposed development and do not purport to analyze all alternatives or whether permanent or temporary placement of a recreational vehicle that is self-contained, with its own water supply and waste disposal facilities, could be permitted at the property.

V. **EXHIBITS**

1. Regional Location Map
2. Vicinity Map
3. *Pacific Shores* Subdivision Overview Aerial Photograph
4. Project Site Aerial Photograph
5. Excerpts, Project Application – Enclosed Photographs
6. Excerpts, Del Norte County Code – Title 7 Health and Welfare, and Title 14 Buildings and Construction
7. Excerpts, Lake Earl Wildlife Area Environmental Impact Report
8. Lake Earl Feasibility Study Acquisition Program Progress Report Maps
9. Letter from Patty McCleary, Manager, Pacific Shores Conservation Project, dated February 4, 2006, received February 10, 2006

A B C D E F G H I J K L M N O

EXHIBIT NO. 1
APPLICATION NO.
1-04-008
BICKNELL
REGIONAL LOCATION
MAP



PROJECT
SITE



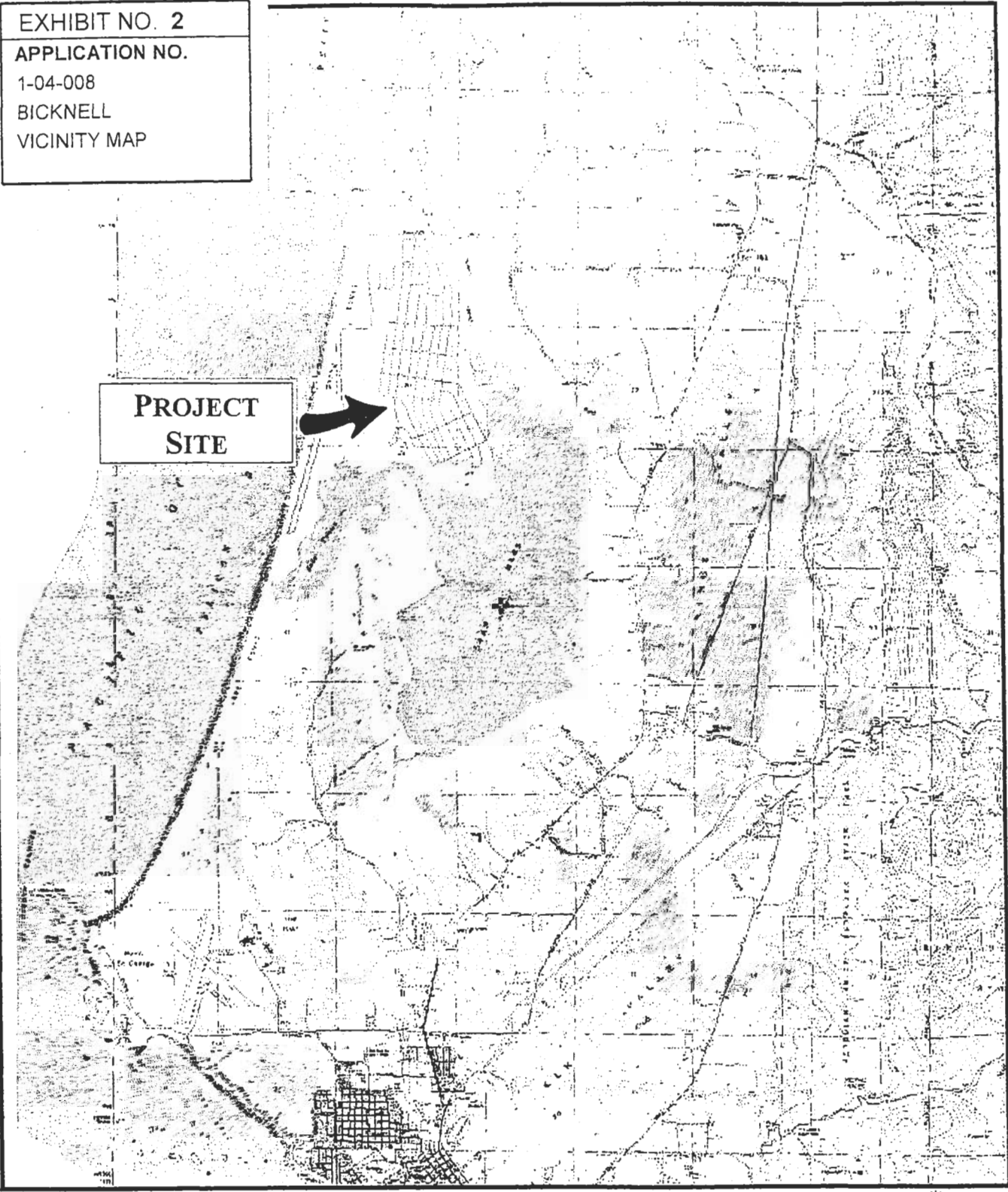
LOCATION MAP



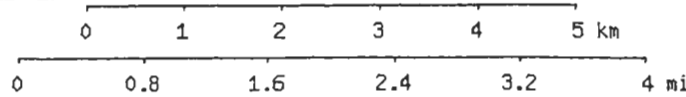
County of Del Norte

Exhibit 8
CCC-06-CD-04
(Bicknell) Page 17 of 54

EXHIBIT NO. 2
APPLICATION NO.
1-04-008
BICKNELL
VICINITY MAP



PROJECT
SITE



Map center is UTM 10 401286E 4631103N (WGS84/NAD83)
CRESCENT CITY quadrangle
Projection is UTM Zone 10 NAD83 Datum



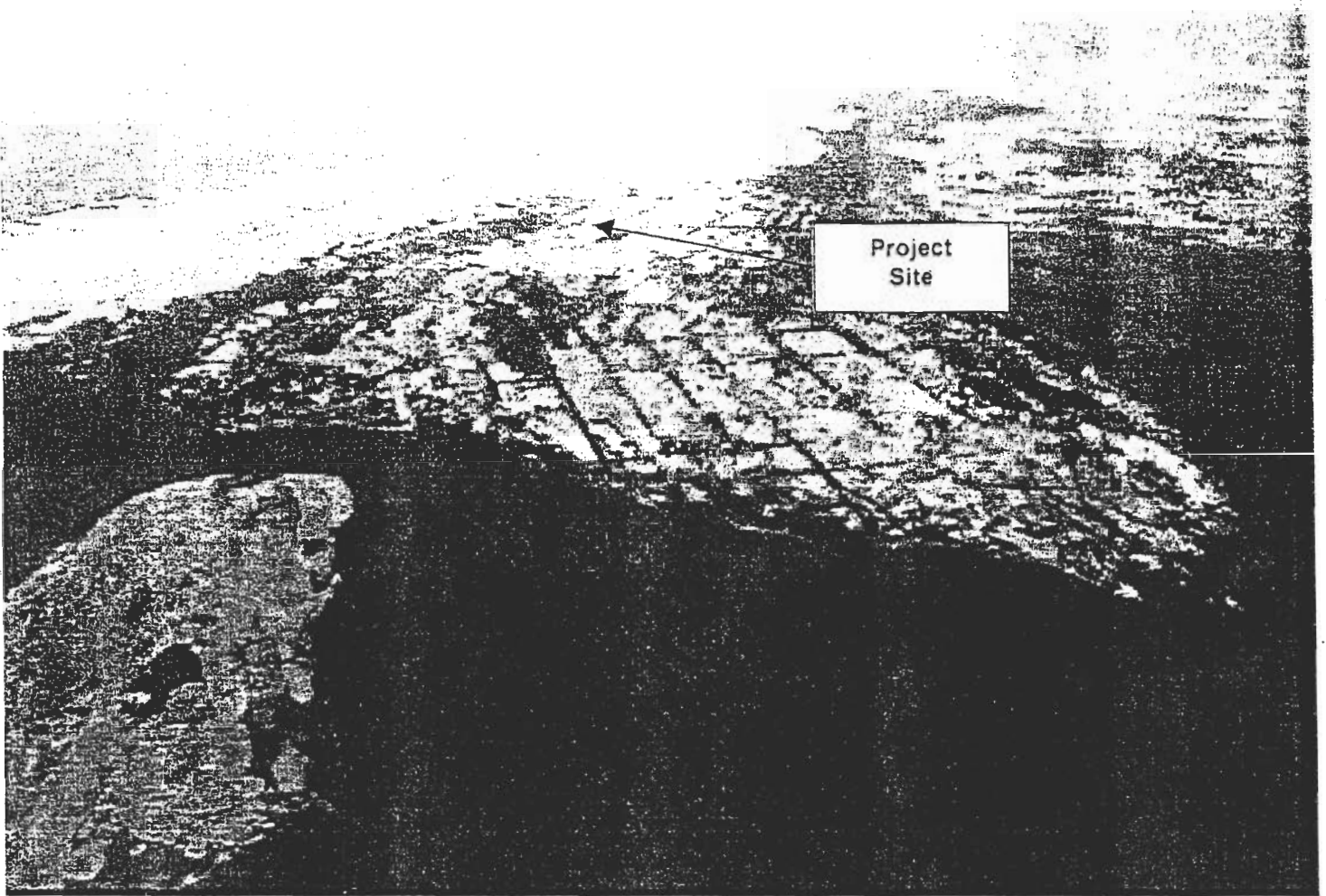
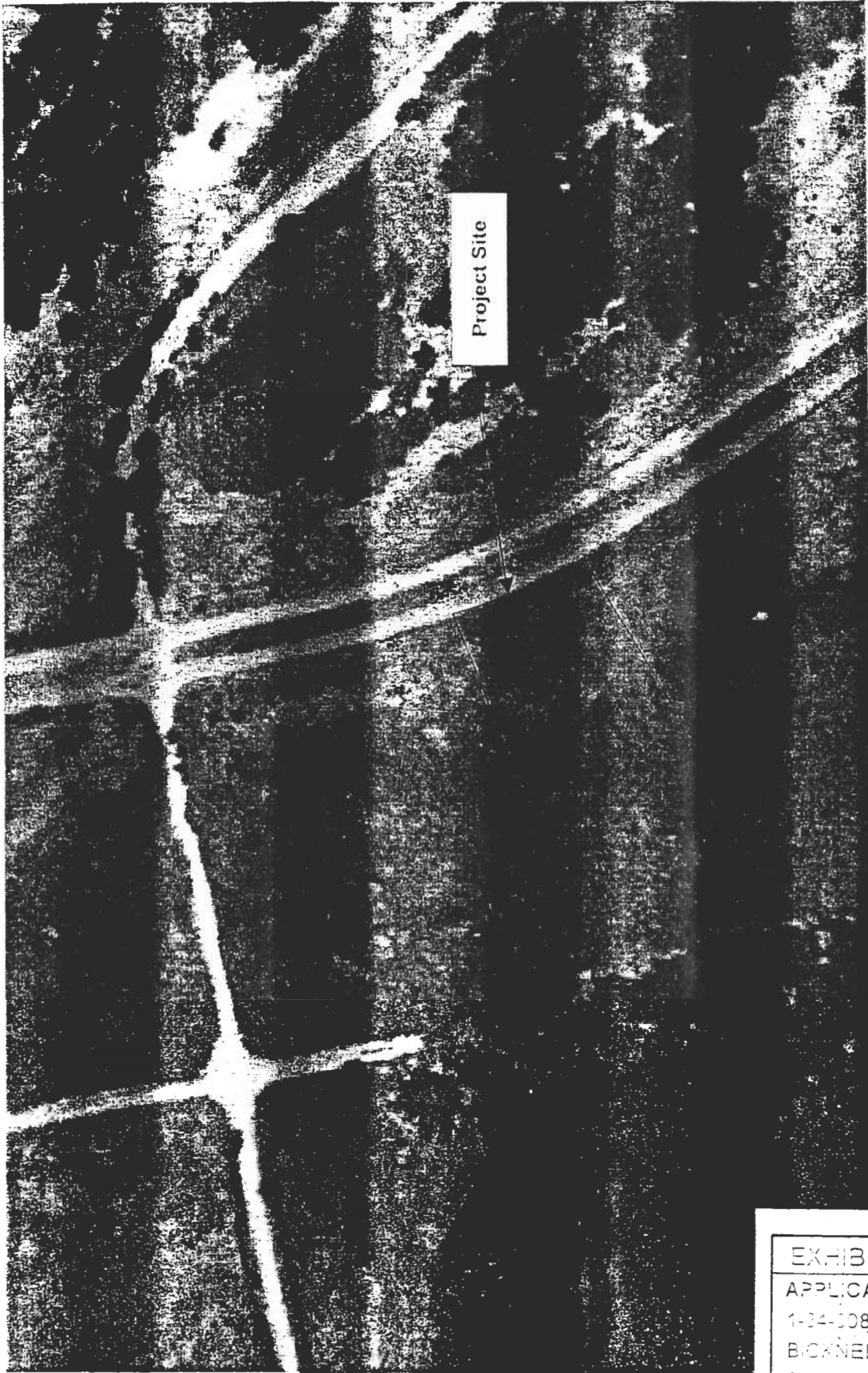
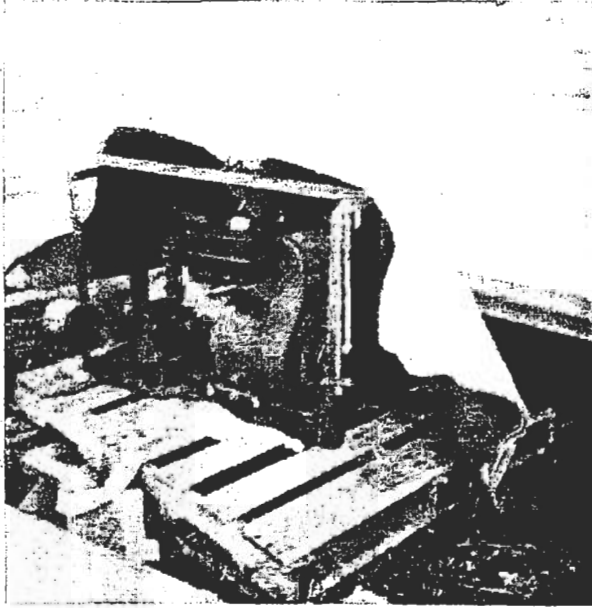


EXHIBIT NO. 3
APPLICATION NO. 1-04-008 BICKNELL PACIFIC SHORES SUBDIVISION OVERVIEW AERIAL PHOTOGRAPH



Project Site

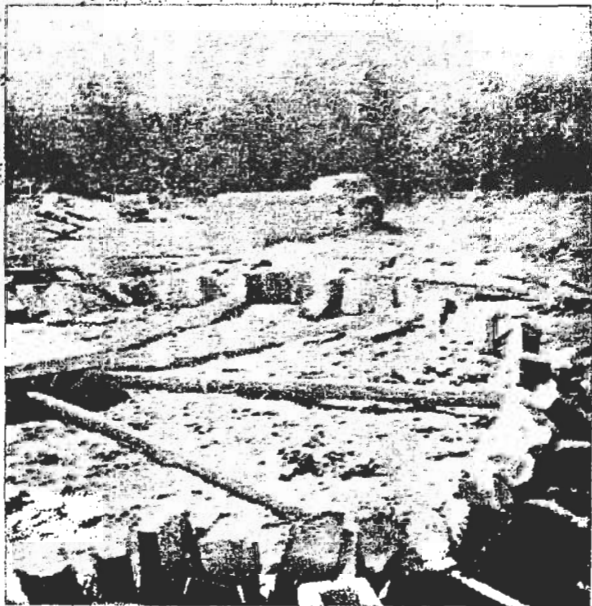
EXHIBIT NO. 4
APPLICATION NO.
1-04-008
BICKNELL
PROJECT SITE



Water pump
Generator



Generator
Welding
Generator



Parcel #4 BICKNELL

Parcel #4 BICKNELL
Site
Excavation
Site

EXHIBIT NO. 5
APPLICATION NO.
1-04-008
BICKNELL
EXCERPTS, PROJECT
APPLICATION-ENCLOSED
PHOTOGRAPHS

Title 7 - Health and Welfare

Chapter 7.09 Recreational Vehicles and Tents

7.09.110 Purpose

The purpose of this chapter is to enhance the appearance of the county by limiting the proliferation of recreational vehicles and tents being used for temporary lodging on a protracted basis which constitute a visual blight and reduces the quality of life within the county to the extent that the overall public health is detrimentally affected. (Ord. 97-12 § 2 (part), 1997.)

7.09.120 Definitions

As used in this chapter

"Development permit" means and includes, but shall not be limited to, a valid building permit or other valid permit acquired for the development of property for residential purposes, and any other valid permit obtained for the development of property as defined in Section 21.04.195, both within and outside of the coastal zone.

"Enforcement official" means any officer or department head of the county or other public agency charged with the duty of enforcing county ordinances or laws of the state.

"Recreational vehicle" means and includes, but shall not be limited to, a motor home, travel trailer, truck camper, or camping trailer, with or without motive power, designed for human habitation for recreational, emergency, or other occupancy, and which is either self-propelled, truck-mounted, or designed to be towable on the highways. For purposes of this chapter, "recreational vehicle" shall also include tents which may or may not be designed to be towable on the highways. (Ord. 97-12 § 2 (part), 1997.) ...

7.09.210 Prohibited activity

A. It is unlawful for any person to occupy or use any recreational vehicle, or attempt to occupy or use any recreational vehicle for purposes of sleeping or lodging on private or public property, unless otherwise excepted in this chapter, in the unincorporated area of Del Norte County for any period of time in excess of fourteen consecutive days during any thirty day period without first obtaining a permit for such use from the community development department.

B. It is unlawful for any person to occupy or use any recreational vehicle, or attempt to occupy or use any recreational vehicle for purposes of sleeping or lodging on private property in the unincorporated area of Del Norte County for any period of time without the written authorization of the legal owner of the parcel of property upon which the recreational vehicle is parked.

C. It is unlawful for any person to occupy or use any recreational vehicle, or attempt to occupy or use any recreational vehicle, for purposes of sleeping or lodging in any

parking lot on property with an approved parking capacity of over fifty vehicles. (Ord. 97-20 § 2, 1997; Ord. 97-12 § 2 (part), 1997.) ...

7.09.240 Permits

A. The community development department is authorized to issue permits for the use of recreational vehicles for a period of longer than fourteen days under the following circumstances:

1. The registered owner or other person in legal possession of the recreational vehicle has a development permit relating to the property upon which the recreational vehicle is parked; and
2. Adequate and safe provisions have been made for water and sewage; and
3. If electricity is supplied to the recreational vehicle, the connections have been approved for purposes of safety by the county's building inspector.

B. No permit issued under this section shall be valid for more than one year, however, a new permit may be issued if development is occurring within the time frame required under the development permit.

C. The applicant shall pay a fee for issuance of the permit in the amount as from time to time established by the board of supervisors. (Ord. 97-12 § 2 (part), 1997.)

Title 14 - Buildings and Construction

Chapter 14.12 On-Site Sewage Disposal Systems

14.12.050 Permit or approval required

No on-site sewage disposal system shall be constructed, enlarged, altered, repaired, relocated, removed, or demolished unless a permit has been obtained from the county building inspection department. To obtain a permit and/or approval, the applicant must file an application in a written form. (Ord. 88-34 § 2 (part), 1988.)

14.12.060 General standards, prohibitions, requirements

A. Approved Disposal Required. All sewage shall be treated and disposed of in an approved manner.

B. Discharge of Sewage Prohibited. Discharge of untreated or partially treated sewage or septic tank effluent directly or indirectly onto the ground surface or into public waters constitutes a public health hazard and is prohibited.

C. Discharges Prohibited. No cooling water, air conditioning water, water softener brine, oil, hazardous materials or roof drainage shall be discharged into any system.

D. System Capacity. Each system shall have adequate capacity to properly treat and dispose of the maximum projected daily sewage flow. The quantity of sewage shall be determined from Table B in Section 14.12.130, or other information the county

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determines to be valid that may show different flows. Such other information may include but not be limited to water meter readings, historical flow, etc.

E. Material Standards. All materials used in on-site systems shall comply with standards set forth in these rules.

F. Future Connection to Sewage System. In areas where a district has been formed to provide sewerage facilities, placement of house plumbing to facilitate connection to the sewerage system shall be encouraged.

G. Plumbing Fixtures Shall Be Connected. All plumbing fixtures in dwellings and commercial facilities from which sewage is or may be discharged, shall be connected to, and shall discharge into an approved on-site system.

H. Replacement Area. Except as provided in specific rules, system replacement area shall be kept accessible, free of vehicular traffic and soil modification.

I. Operation and Maintenance. All systems shall be operated and maintained so as not to create a public health hazard or cause water pollution.

J. Cesspools. The use of cesspools and seepage pits for on-site treatment and disposal shall be prohibited.

K. Holding Tanks. The use of holding tanks shall be prohibited except where the regional board or county health officer determines that:

1. It is necessary to abate an existing nuisance or health hazard; or
2. The proposed use is within a sewer service area, sewers are under construction or contracts have been awarded and completion is expected within two years, there is capacity at the wastewater treatment plant and the sewerage agency will assume responsibility for maintenance of the tanks; or
3. It is for use at a campground or similar temporary public facility where a permanent sewage disposal system is not necessary or feasible and maintenance is performed by a public agency.

L. Lot/Parcel Size. It is the general policy of the county that all new parcels proposed for on-site sewage systems shall have a minimum of twenty thousand square feet of usable area, unless it is demonstrated that a smaller lot size will conform with the provisions of this chapter and any potential cumulative effects on groundwater or surface water have been evaluated and considered. In all cases the minimum lot size/parcel size must conform with other county ordinances and the adopted general plan.

M. Property Lines Crossed. An on-site sewage treatment and disposal system shall be installed or proposed to be installed on the same parcel of land upon which the waste is being generated, and such land shall be the land of the owner of the system. When property lines are to be crossed or proposed to be crossed, a variance shall first be obtained. Variances for systems which cross property lines may only be considered when engineering investigation and design prove possible compliance with this chapter and the provisions of Chapter 20.54, Variances. Procedures for granting of variances shall be as set forth in Chapter 20.54. When a variance is granted to cross a property line, the county may impose conditions of approval which may include the following:

1. A recorded permanent utility easement and covenant against conflicting uses, in a form approved by the county, is required whenever a system crosses a property line. The easement must accommodate that part of the system, including setbacks, which lies beyond the property line, and must allow entry to install, maintain and

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repair the system and agreeing not to put that portion of the other lot or parcel to a conflicting use; and

2. Whenever an on-site system is located on one lot or parcel and the facility it serves is on another lot or parcel, the owner shall execute and record in the county land title records, on a form approved by the county, an easement and a covenant in favor of the county, and allowing its officers, agents, employees and representatives to enter and inspect, including by excavation, that portion of the system, including setbacks, on the other lot or parcel.

N. Temporary/Portable Toilets. Chemical or other acceptable portable toilets may be used for temporary or limited use such as recreational events, farm labor, construction sites, or public gatherings/ events; provided, the pumping or cleaning of the portable toilet is the contractual responsibility of the sewage disposal service providing the portable toilet. Each portable toilet shall display the name of the business that is responsible for servicing the unit. (Ord. 88-34 § 2 (part), 1988.)

14.12.080 Design criteria

A. Septic Tank. Septic tank size requirement and design shall be based on the current edition, adopted by the county, of the International Association of Plumbing and Mechanical Officials (IAPMO) Uniform Plumbing Code, except that the minimum size tank for residential use shall be one thousand two hundred gallons, the tank shall have more than one compartment and shall have inlet and outlet "T's" or baffles.

B. Leachfield System. For on-site systems of less than one thousand five hundred gallons per day (gpd), leachfield design and disposal area requirements shall be based upon the United States Public Health Services (USPHS) Manual of Septic Tank Practice (MSP). Those sections of the EPA Design Manual for on-site wastewater treatment and disposal systems that are equal to or more stringent than the basin plan and the MSP can be used for design and evaluation purposes. For on-site systems with greater than one thousand five hundred gallons per day (gpd), sizing shall be approved by the regional board.

C. Construction. Construction of disposal field and septic tanks shall be in conformance with the current edition, adopted by the county, of the IAPMO Uniform Plumbing Code. The county may require and/or approve more detailed or modified specifications when conditions warrant. Data supporting the suitability of an alternative means of construction shall be submitted by the applicant.

D. Sewage Flows. When quantities of sewage flow are not known or cannot be accurately determined, Table B in Section 14.12.130 shall be used to estimate sewage flow. Table B shall take precedence unless the applicant's engineer provides specific justification for different flows.

E. Setback Requirements. Minimum setback distances for individual waste treatment and disposal systems shall be as provided in Table A of Section 14.12.130.

F. Standard Systems. Standard on-site waste treatment and disposal systems may be developed for use in soil zones which have been demonstrated to comply with the provisions of this chapter and are effective designs of on-site sewage treatment and disposal. Standard systems shall be adopted after a public hearing by the board of supervisors.

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G. Intercept Drains. The use of intercept drains to lower the level of perched groundwater in the immediate leachfield area shall be acceptable under the following conditions:

1. Natural ground slope is greater than five percent;
2. Site investigations show groundwater to be perched on bedrock, hardpan, or an impermeable soil layer,
3. The intercept drain extends from ground surface into bedrock, hardpan, or the impermeable soil layer.

In no case shall the pervious section of an intercept drain be located less than fifteen feet upgradient or fifty feet laterally from any septic tank or leachfield, or twenty-five feet from any property line. Where all of the above conditions cannot be met, detailed engineering plans must be supplied or actual performance of the intercept drain demonstrated prior to approval.

H. Fills. The use of fills to create a leachfield cover shall be acceptable under the following conditions:

1. Where the natural soils and the fill material meet the evaluation criteria as described in Section III of the North Coast Regional Water Quality Control Board water quality control plan;
2. Where the quantity and method of fill application is described;
3. Where the natural slope does not exceed twelve percent;
4. Where site investigations by a registered geologist, registered sanitarian or registered civil engineer demonstrate that placement of fill will not aggravate slope stability or significantly alter drainage patterns or natural watercourses. The investigations are to be included in a report which contains engineered plans as well as a specific evaluation of the suitability of the system to accept wastewater and protect water quality;
5. Leachfield sizing shall be based on the most limiting soil type within the filled area;
6. Leachlines for wastewater disposal shall be placed entirely within natural soils. Except that fill material which has been in place for a sufficient period of time and otherwise has been demonstrated to meet site suitability criteria may be allowed. Fill material shall not be used to create a basal area for alternative systems or mounds.

I. Alternative Systems. Systems which have been demonstrated to the regional board to function in such a manner as to protect water quality and preclude health hazards and nuisance conditions may be approved by the county.

1. Mounds. Where site conditions are determined to be suitable, use of mounds for wastewater disposal may be considered. The mound design shall be based on current edition of the Design and Construction Manual for Wisconsin Mounds, Small Scale Wastewater Management Project, University of Wisconsin. Mound systems are subject to a program of maintenance which may include the requirement of a legally responsible entity.
2. Pit Privies. Pit privies may be utilized for sewage disposal on sites in rural areas which are designated by the board of supervisors for such use.

J. Compliance Certificate. Each submittal for a new installation shall contain a statement by the preparer stating that the submitted design complies or fails to comply

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with the provisions of this chapter and such statement shall contain a "wet signature" across the registration of the preparer issued by the state.

K. Qualifications Necessary of Person Preparing On-Site Waste Treatment and Disposal System Designs. One of the following registrations with the state is required of the person(s) preparing an on-site waste treatment and disposal system design:

1. California Registered Civil Engineer.
2. California Registered Sanitarian. (Ord. 88-34 § 2 (part), 1988.) ...

14.12.130 Appendix

Table A, minimum setback distances, and Table B, quantities of sewage flows, are set out as follows:

**TABLE A
MINIMUM SETBACK DISTANCES**

Item Requiring Setback	Sewage Disposal Area (including replacement area in feet)	Septic Tank and other treatment units (in feet)
Property Lines	10	10
Water line	10	10
Foundation lines of building, including outbuildings	10	5
Wells	100	100
Perennial flowing stream ¹	100	100
Ephemeral stream ²	50	50
<u>Ocean, lake, reservoir</u> ³	<u>100</u>	<u>50</u>
Cut bank, bluffs and sharp changes in slope	25 ⁴	25
¹ As measured from the line which defines the limit of the ten-year flood. ² As measured from the edge of the watercourse. ³ <u>As measured from the high water line.</u> ⁴ Where soil depth or depth to groundwater below the leaching trench are less than five feet, a minimum setback distance of fifty feet shall be required.		

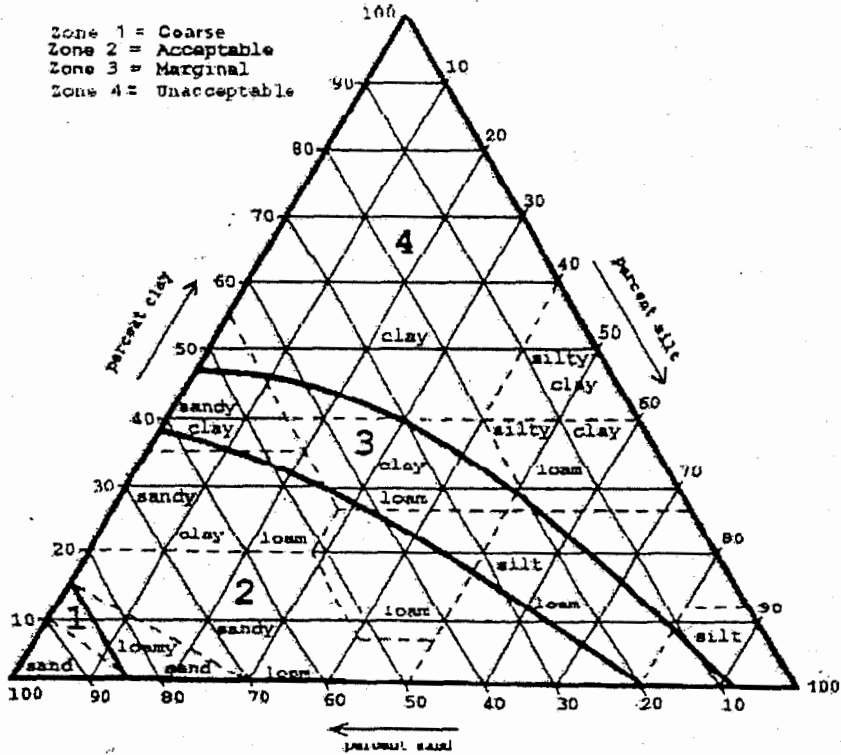
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TABLE B
QUANTITIES OF SEWAGE FLOWS

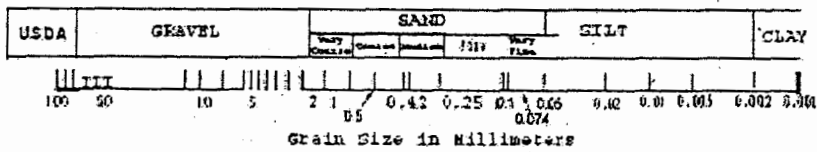
Type of Establishment	Minimum Gallons per Establishment Day	Gallons per Day
Airport	5 (per passenger)	150
Bathhouses and swimming pools	10 (per person)	300
Camps: (4 persons per camp site, where applicable)		
Campground with central comfort stations	35 (per person)	700
With flush toilets, no showers	25 (per person)	500
Construction camps (semi-permanent)	50 (per person)	1,000
Day camps (no meals served)	15 (per person)	300
Resort camps (night and day) with limited plumbing	50 (Per person)	1000
Luxury camps	100 (per person)	2000
Churches	5 (per seat)	150
Country clubs	100 (per resident member)	2000
Country clubs	25 (per nonresident member)	---
Dwellings:		
Boarding houses	150 (per bedroom)	600
Additional for non-resident borders	10 (per person)	---
Rooming houses	80 (per person)	500
Condominium, multiple - family dwellings (including apartments)	150 (per bedroom)	900
<u>Single-family dwellings</u>	<u>300 (not exceeding 2 bedrooms)</u> 450 with more than 2 bedrooms 75 (for third and each succeeding bedroom)	<u>450</u>
Factories (exclusive of industrial wastes)	35 (per person per shift)	300 with shower facilities
Factories (exclusive of industrial wastes)	15 (per person per shift)	150 without shower facilities
Hospitals	250 (per bed space)	2500
Hotels with private baths	120 (per room)	600
Hotels without private baths	100 (per room)	500

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Zone 1 = Coarse
 Zone 2 = Acceptable
 Zone 3 = Marginal
 Zone 4 = Unacceptable



Sieve openings in inches: 3 2 1 1/2 3/4 1/2 1/4
 U.S. STANDARD SIEVES: 10 20 40 60 NUMBERS 200



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process that occurs during downstream migration and acclimation to species (steelhead and coho, but especially the chinook, for which est occupy a considerable period). Only in recent years has an increased understanding of the apparent importance of estuarine rearing conditions arisen because of motivation to arrest the continued decline in salmonid populations in the Pacific Northwest. While not a specific focus of the Management Plan or this EIR, the role of estuaries in the life cycles of other fish species has been described (Barnhart and others 1992).

A complete description of recent fisheries science regarding the importance of estuaries for young Pacific Northwest salmonids is beyond the scope of this EIR, especially given that Lake Earl appears to play a rather limited estuarine habitat role for listed salmonids. A general description of the importance of estuarine habitat for salmonids is included in Appendix A to Amendment 14 to the Pacific Coast Salmon Plan of the Pacific Fishery Management Council; this document is incorporated by reference.⁵ As noted in the species summary for coho above, however, Appendix A to Attachment 14 may not fully address the role of estuaries in the life history of coho in California, where estuarine habitat may be an area of prolonged rearing.

4.1.1.3.3 Terrestrial Wildlife

The Management Plan describes a variety of wildlife species that are of management concern for the Department. The species listed in Table 4-3 have a regulatory status under the California or the federal Endangered Species Act. In addition, species that are "fully protected" pursuant to Fish & Game Code § 3511 are listed in Table 4-3. A number of additional species are described in the Management Plan owing to their status as "species of special concern" for the Department (Table 4-4); these species are not individually addressed in this EIR, because the Department believes that their habitat needs are substantially addressed by the habitat needs of the species that are addressed. The descriptions of these species from the Management Plan are incorporated into this EIR by reference.

Table 4-3. Terrestrial Wildlife Species Occurring in the Project Area Listed Under Federal or State Endangered Species Acts.⁶

Taxonomic Name	Common Name	Federal/State ESA Status	Federal Critical Habitat?
Insects			
<i>Speyeria zerene hippolyta</i>	Oregon Silverspot Butterfly	FT / --	Yes
Birds			
<i>Pelecanus occidentalis californicus</i>	California Brown Pelican	FE / CE (FP)	No
<i>Branta canadensis leucopareia</i>	Aleutian Canada Goose	FD / --	--
<i>Elanus leucurus</i>	White-tailed Kite	-- / -- (FP)	--

⁵ This informative document may be reviewed on the Pacific Fishery Management Council website: <http://www.pcouncil.org/Salmon/a14efh/efhindex.html>.

⁶ These listings may be reviewed at the state's listing of "Special Animals," dated July 2001; this is posted at: <http://www.dfg.ca.gov/whdab/html/lists.html>.

Taxonomic Name	Common Name	Federal/State ESA Status	Federal Critical Habitat?
<i>Haliaeetus leucocephalus</i>	Bald Eagle	FD / CE (FP)	--
<i>Falco peregrinus anatum</i>	American Peregrine Falcon	FD / CE (FP)	--
<i>Charadrius alexandrinus nivosus</i>	Western Snowy Plover	FT / --	Yes
<i>Empidonax traillii</i>	Willow Flycatcher	-- / CE	--
<i>Riparia riparia</i>	Bank Swallow	-- / CT	--
Mammals			
<i>Eumetopias jubatus</i>	Stellar's Sea Lion	FT / --	Yes

- FD Federal Delisted; remains subject to federal regulatory concern
 FE Federal Endangered
 FT Federal Threatened
 CE California Endangered
 CT California Threatened
 FP "Fully Protected" pursuant to California Fish & Game Code § 3511

Table 4-4. Terrestrial Wildlife Species of "Special Concern" in the Lake Earl Wildlife Area.

Taxonomic Name	Common Name
Amphibia	
<i>Plethodon elongatus</i>	Del Norte Salamander
<i>Rana aurora aurora</i>	Northern Red-legged Frog
<i>Rana boyleii</i>	Foothill Yellow-legged Frog
Birds	
<i>Gavia immer</i>	Common Loon
<i>Phalacrocorax auritus</i>	Double-crested Cormorant
<i>Pandion haliaetus</i>	Osprey
<i>Circus cyaneus</i>	Northern Harrier
<i>Accipiter striatus</i>	Sharp-shinned Hawk
<i>Accipiter cooperi</i>	Cooper's Hawk
<i>Falco columbarius</i>	Merlin
<i>Falco mexicanus</i>	Prairie Falcon
<i>Coturnicops noveboracensis</i>	Yellow Rail
<i>Asio flammeus</i>	Short-eared Owl
<i>Asio otus</i>	Long-eared Owl
<i>Athene cucularia</i>	Burrowing Owl
<i>Progne subis</i>	Purple Martin
<i>Poecile atricapillus</i>	Black-capped Chickadee
<i>Dendroica petechia</i>	Yellow Warbler
<i>Icteria virens</i>	Yellow-breasted Chat

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4.1.1.3.3.1 Insects

Oregon Silverspot Butterfly: The Management Plan includes a text discussion with respect to the Oregon silverspot butterfly (*Speyeria zerene hippolyta*). The Oregon silverspot butterfly (OSB) is a coastally restricted subspecies of the Zerene fritillary, a widespread butterfly species in montane North America. It was listed as "Threatened" in 1980, as it has been extirpated from much of its former range between Washington and Northern California. Currently, there are only six OSB populations, located at Lake Earl, Del Norte County, California; Rock Creek-Big Creek and Bray Point in Lane County, Oregon; Cascade Head and Mt. Hebo in Tillamook County, Oregon; and Clatsop Plains in Clatsop County, Oregon. Coastal land development, invasion of aggressive exotic plants, fire suppression, and ecological changes within its habitat have been cited as reasons for the decline of this species.

Near Lake Earl and Tolowa the OSB occurs in stabilized coastal dune habitat. This habitat provides two key features, nectar sources for adult butterflies and caterpillar host plants for larval stages. OSB caterpillars depend primarily on the early blue violet (*Viola adunca*) and secondarily on the Aleutian violet (*V. langsdorfi*). The early blue violet occurs in grassy uplands and edges where there is sufficient soil moisture. Much of the suitable area for these violets has been invaded by European beach grass and is severely degraded. The Aleutian violet is found in seasonal wetlands and has declined as a result of a lack of the disturbance that inhibits natural plant succession from emergent to shrub/forested wetland types.

Adult butterflies utilize plants for nectar during the plants' blooming periods. Plants commonly used are members of the aster family and include Canada goldenrod (*Solidago canadensis*), dune goldenrod (*Solidago spathulata*), California aster (*Aster chilensis*), pearly everlasting (*Anaphalis margaritacea*), dune thistle (*Cirsium edule*), and yarrow (*Achillea millefolium*). Two invasive exotic species, tansy ragwort (*Senecio jacobaea*) and false dandelion (*Hypochaeris radicata*), also provide nectar sources.

The OSB's life cycle is tied to the life cycle of violets. Adult females lay eggs in low-growing vegetation near violets in late summer. The first larval stage individuals remain dormant in plant litter until the spring and the emergence of the violets. The larvae go through five more instar phases and one pupal stage before metamorphosing into adults during the period between July and September.

4.1.1.3.3.2 Birds

Brown Pelican: Brown pelicans are listed as "Endangered" under the federal Endangered Species Act and the California Endangered Species Act (and are "fully protected" under Fish & Game Code § 3511). This species nests in the Channel Islands of southern California, and along the Baja California coast and in the Gulf of California southward to coastal southern Mexico. The only breeding population in U. S. waters is the Southern California Bight (SCB) population, which consists of breeding birds on West Anacapa Island, Santa Barbara Island, Isla Coronado Medio, and Isla Coronado Norte. Between breeding seasons, pelicans from other populations join SCB birds in wandering along the west coast of North America as far north as British Columbia. Disease outbreaks affecting local populations of pelicans have been known as an endangerment factor for the

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species, which is threatened by such outbreaks elsewhere. Other factors affecting this species include low productivity and colony failure, the dependence for food primarily on the northern anchovy, oil discharges and other spills from ships, the presence of relatively high levels of pesticides in the tissues of some pelicans, human and non-native-mammal disturbance at central California coast post-breeding roosts, physical injury and mortality due to fish hooks and entanglement of birds in abandoned fishing line, and El Niño events that cause pelican forage-fishes to move well offshore and away from pelican nesting islands.

Aleutian Canada Goose: The Aleutian Canada goose formerly was listed as "Threatened" under the federal Endangered Species Act. The federal government has delisted this subspecies, but the USFWS maintains a "watch" over the subspecies. Should the current positive population trend reverse, the federal government would issue additional regulations pursuant to the ESA.

The North Coast is a key fall and spring staging area in the annual migration of the geese between their breeding grounds in the Aleutian Islands and wintering areas in the Sacramento and San Joaquin valleys. These birds nest primarily on Buldir Island in the Aleutian chain. Highest abundances in the LEWA occur between February and May when several thousand birds may be seen feeding in pastures in and around the Wildlife Area. The birds migrate across the Gulf of Alaska, down the Oregon coast south to Lake Earl. From Lake Earl the birds pass over the Coast Range into the Sacramento Valley. The population of Aleutian geese is mostly transient; however, the entire flyway population stops at the LEWA for varying periods of time during migration.

White-tailed Kite: This species (a "fully protected species" under Fish & Game Code § 3511) has increased in abundance in the Lake Earl region in recent years. White-tailed kites are generally resident, although some evidence suggests that there are favored "wintering areas" in which abundances may be greatly increased locally. This species prefers open grasslands and pastures with limited cover of woody vegetation, in which nests typically are built during the breeding season. However, outside the nesting season the species uses small trees and large shrub clumps for nighttime roosts. Nests are usually tended by pairs, but following nesting this species may become gregarious, with a number of birds roosting colonially. Adults hunt on the wing for ground-dwelling prey such as small mammals, reptiles, amphibia, or large insects. Individuals may hover or "kite" before stooping to the ground.

Bald Eagle: The Bald eagle is listed as "Endangered" under the California Endangered Species Act and as a "fully protected species" under Fish & Game Code § 3511, but was proposed by the USFWS for delisting under the federal ESA in July of 1999. This species is an uncommon winter visitor to the Lake Earl region, and is now restricted to breeding mostly in Butte, Lake, Lassen, Modoc, Plumas, Shasta, Siskiyou, and Trinity counties.

This species requires large bodies of water, or free flowing rivers with abundant fish, and adjacent snags or other perches. It stoops from hunting perches, or from soaring flight, to pluck fish from water; however, it will wade into shallow water to pursue fish. Bald eagles may pounce on or chase injured or icebound waterbirds. In flooded fields eagles occasionally pounce on displaced voles or other small mammals. Groups may feed gregariously, especially on spawning fish. This species scavenges dead fish, water birds,

and mammals. Open, easily approached hunting perches and feeding areas are used most frequently. Eagles often perch high in large, stoutly limbed trees, on snags or broken-topped trees, or on rocks near water. They may roost communally in winter in dense, sheltered, conifer branches.

Peregrine Falcon: At Lake Earl the peregrine falcon (listed as "Endangered" under the California Endangered Species Act and as a "fully protected species" under Fish & Game Code § 3511) is an uncommon breeding resident, and is common as a winter migrant. Peregrine falcons often hunt over water for shorebirds and small waterfowl. In winter, peregrines are also found inland throughout the Central Valley, and occasionally known along the coast north of Santa Barbara, in the Sierra Nevada, and in mountains on the Channel Islands. Migrants occur along the coast and in the western Sierra Nevada in spring and fall. Riparian areas and coastal and inland wetlands are important habitats yearlong, especially in nonbreeding seasons. Coastal populations are increasing slowly.

Active nesting sites are known throughout northern California. Peregrines breed near wetlands, lakes, rivers, or other water on high cliffs, banks, dunes, or mounds. The nest is commonly a scrape or a depression on a ledge in an open site. The species will nest on human-made structures, and occasionally uses tree or snag cavities or old nests of other raptors.

Western Snowy Plover: This species is listed as "Threatened" under the federal Endangered Species Act; it does not have a listing status under California state law. In the fall and winter, snowy plovers are common on sandy marine and estuarine shores and isolated gravel bars all along the Humboldt and Del Norte county coast. Snowy Plovers forage primarily by gleaning insects and amphipods from the dry sands of upper beaches along the coast. They occasionally forage in wet sands for young sand crabs. At salt ponds and alkali lakes, they feed primarily on brine flies. Snowy plovers nest locally in these habitat types from April through August (known nesting locations will not be identified in this EIR).

Coastal breeding populations have suffered from impacts resulting from human disturbances and a loss of nesting habitat resulting from the invasion of exotic plant species into coastal nesting habitats. Inland nesting areas occur at the Salton Sea, Mono Lake, and at isolated sites on the shores of alkali lakes in northeastern California, in the Central Valley, and southeastern deserts. Plovers generally require a sandy, gravelly, or friable soil substrate for nesting. Nests typically are shallow depressions, sometimes lined with small pebbles, glass fragments, or gravel. Nests are frequently located near or under objects such as driftwood, rocks, or defoliated bushes. Nests also may be found on barren ground with little or no nearby cover.

Willow Flycatcher: The Willow Flycatcher is listed as "Endangered" under the California Endangered Species Act. Rare to locally uncommon, willow flycatchers are summer residents in wet meadow and montane riparian habitats between 2000 and 8000 feet in the Sierra Nevada and the Cascade Range, arriving in Northern California in May and June. Willow flycatchers prefer dense willow thickets for nesting and roosting. While relatively uncommon in the North Coast, willow flycatchers are relatively common spring and fall migrants in riparian habitats in much of the state, and formerly nested in willow thickets throughout most of lowland and montane California. This species builds an open

cup nest, and nests are frequently parasitized by brown-headed cowbirds, which may be related to the species' overall decline in abundance.

Bank Swallow: This species is listed as "Threatened" pursuant to the California Endangered Species Act. Bank swallows are neotropical migrants found primarily in riparian and other lowland habitats in California west of the deserts in the period between spring and fall. Swallow numbers peak by early May. In summer, they are restricted to riparian, lacustrine, and coastal areas with vertical banks, bluffs, and cliffs with fine-textured or sandy soils, in which nesting occurs. Bank swallows catch insects during long, gliding flights. They forage predominantly in open riverine and riparian habitat areas, but also forage in habitats dominated by scrub, grassland, wetlands, lakes and ponds, and cropland. Swallows feed on a wide variety of aerial and terrestrial soft-bodied insects.

It is believed that approximately 110-120 colonies remain within the state. As much as 75 percent of the current breeding population in California occurs along the Sacramento and Feather rivers. Locally a breeding colony is located north of Lake Earl on the banks of the Smith River. This species nests in holes excavated in cliffs and riverbanks, and is a colonially nesting species. Colonies range in size from 10 to more than 1500 pairs in California. Habitat required for nesting is fine-textured or sandy banks or cliffs in which adults dig horizontal nesting tunnels and burrows.

4.1.1.3.3.3 Mammals

Stellar's Sea Lion: Although population numbers are increasing on the Northern California coast the Stellar's (or northern) sea lion is listed as "Threatened" by the U.S. Fish and Wildlife Service under the federal Endangered Species Act and also is protected under the Marine Mammal Protection Act. Population declines in Southern California led to its listing, although it was the most abundant pinniped in southern California in the early 1900s. The entire California population was estimated at 1700 individuals in 1979 and at 4000 individuals in 1981.

Stellar's Sea lions forage opportunistically, singly or in large groups, in nearshore waters on a variety of fish, cephalopods, crustaceans, and other invertebrates. Sea lions forage near the outflow of Lake Earl and could potentially enter the lagoon complex during open periods; for this reason the species is included among the species addressed in this EIR. The species prefers offshore haulout and breeding sites with unrestricted access to water, near aquatic food supply in areas of minimal human disturbance; the species is disturbed or frightened by human presence.

4.1.1.3.3.4 Plants

No plant species that is listed as Rare, Threatened, or Endangered under the state or federal Endangered Species Act occurs at or near the Lake Earl Wildlife Area. However, several species that are considered as environmentally sensitive by the California Native Plant Society (CNPS) are known to occur in the vicinity (Table 4-5). These species are identified in the Management Plan; those accounts are incorporated by reference into this EIR. These species are inhabitants of dunelands and wetlands, and their habitats are addressed in this chapter; the Department believes that their habitat needs are

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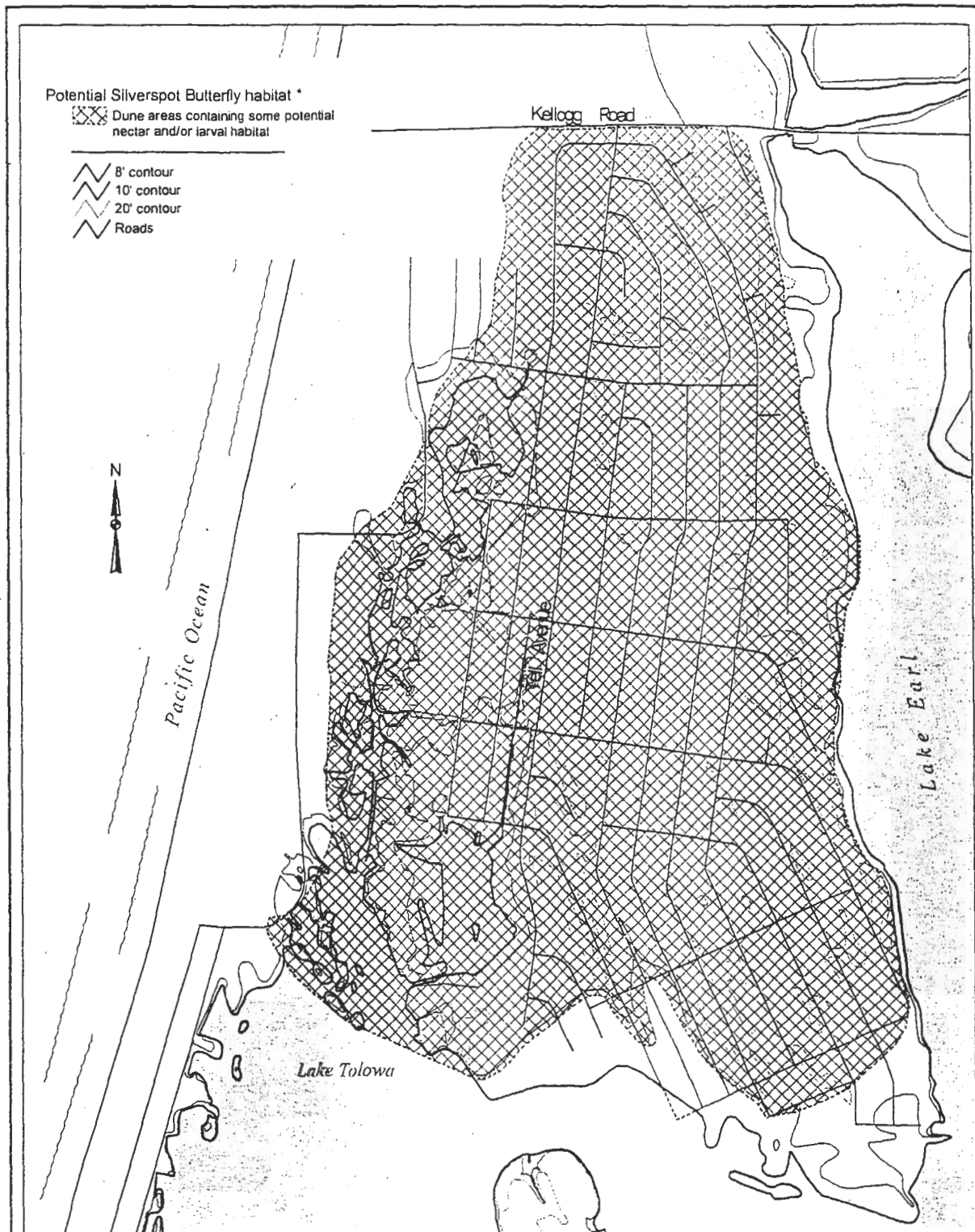


Figure 4-1. Potential Oregon Silverspot Butterfly Habitat In and Adjacent to the Lake Earl Wildlife Area

* Potential habitat based on habitat characteristics. Oregon Silverspot Butterfly habitat may exist outside areas identified as potential habitat.
 This map is for planning purposes only.
 Lake levels are shown as 8 feet MGS. (California Department of Water Resources, 1988)
 Potential habitat: California Department of Fish and Game and U.S. Fish and Wildlife Service (2002)
 Contour data: California Department of Water Resources (1988) and USGS Topographic Quadrangles 7.5-minute series.
 Base data: California Department of Fish and Game.
 Map by California Department of Fish and Game, Eureka (May 2003)

0 2500 Feet

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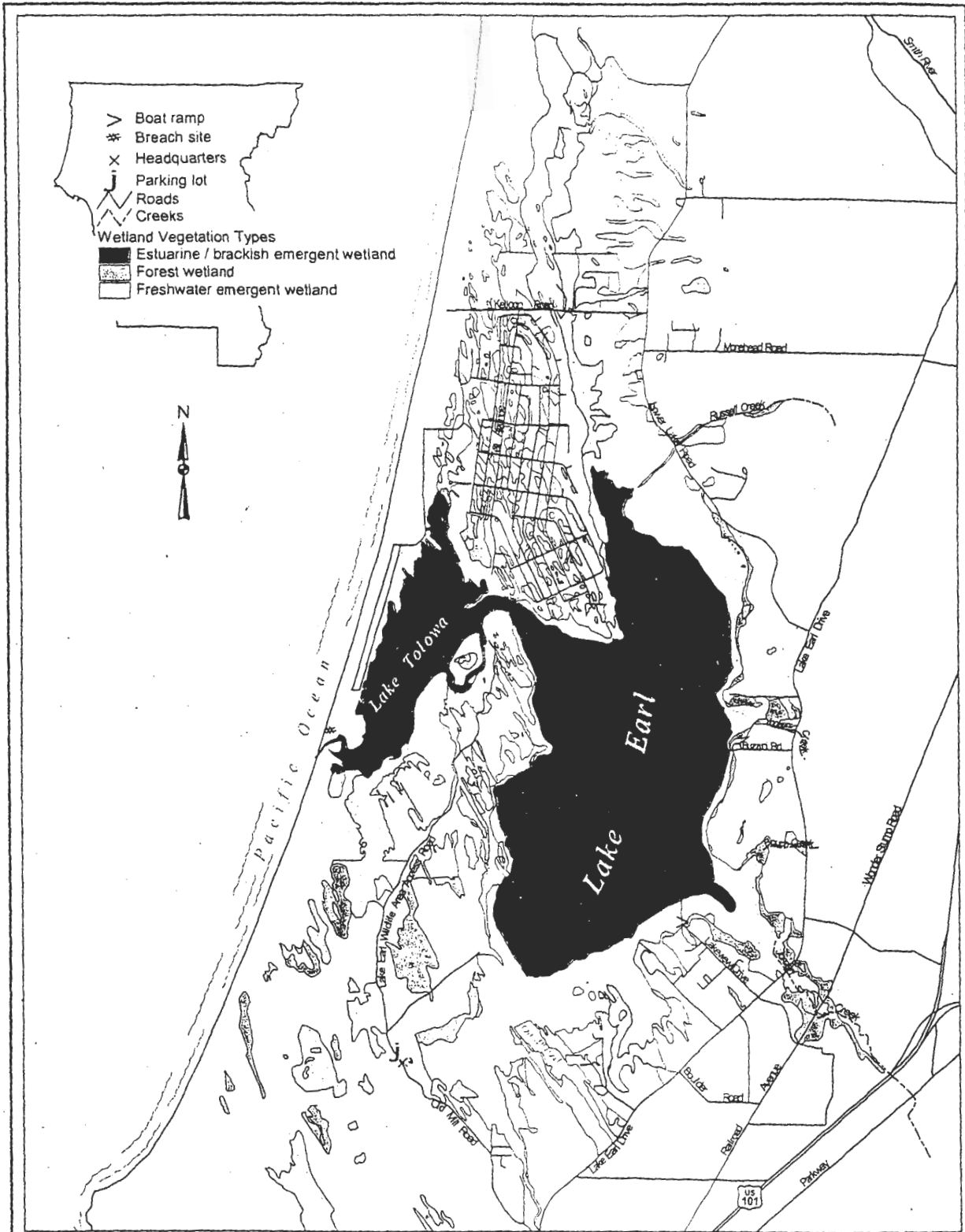


Figure 4-2. Major Wetland Types Present at Current Managed Water Surface Elevation (8'-10')

Also shows wetlands present for the preferred alternative (8-10). Wetland maps at other alternatives would be considered similar to this map; however, data do not exist to map wetland types at the other alternatives.
 This map is for planning purposes only.
 Lake levels are shown at 8 feet MSL (California Department of Water Resources, 1988).
 Vegetation modified from Tetre Tech, Inc. (1990), Estor (1988), and National Wetlands Inventory (1987), with aerial photograph verification.
 Streets: California Department of Forestry and Fire Protection (2001).
 Base data and facilities: California Department of Fish and Game.
 Map by California Department of Fish and Game, Eureka (August 2002).

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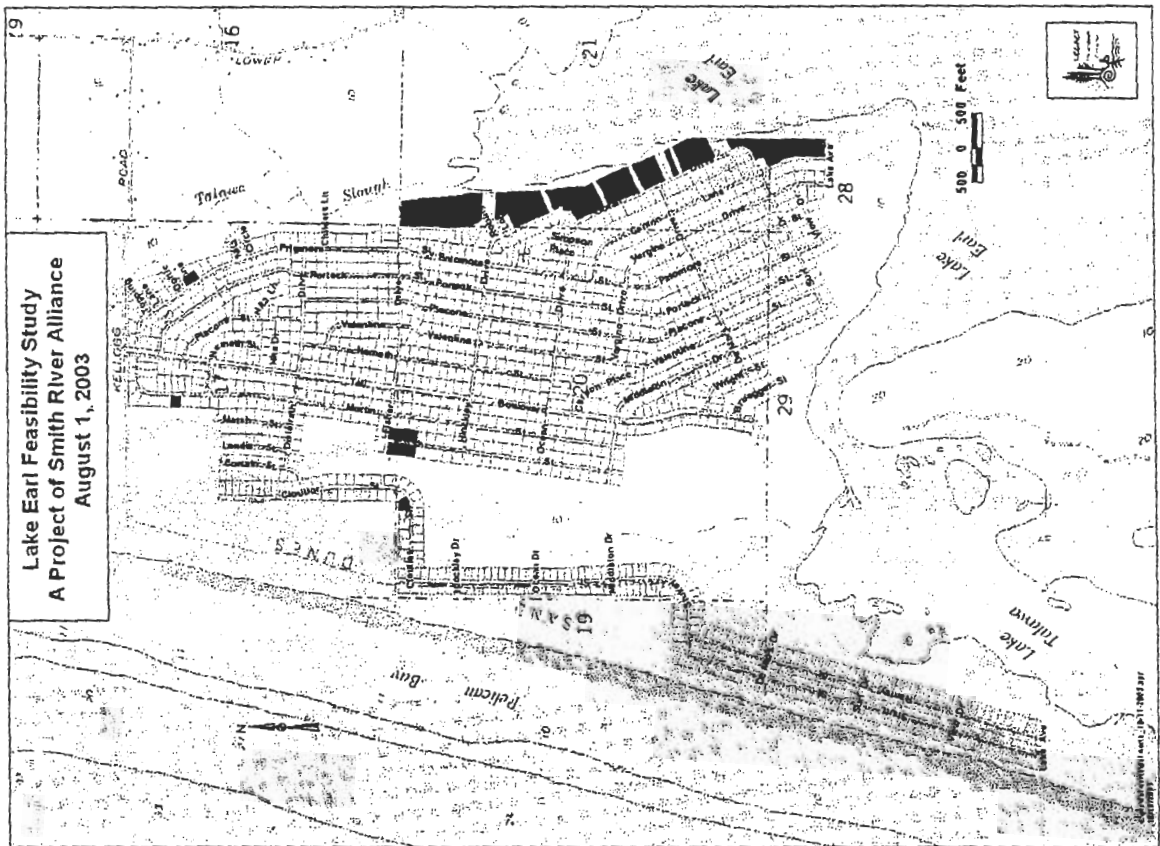
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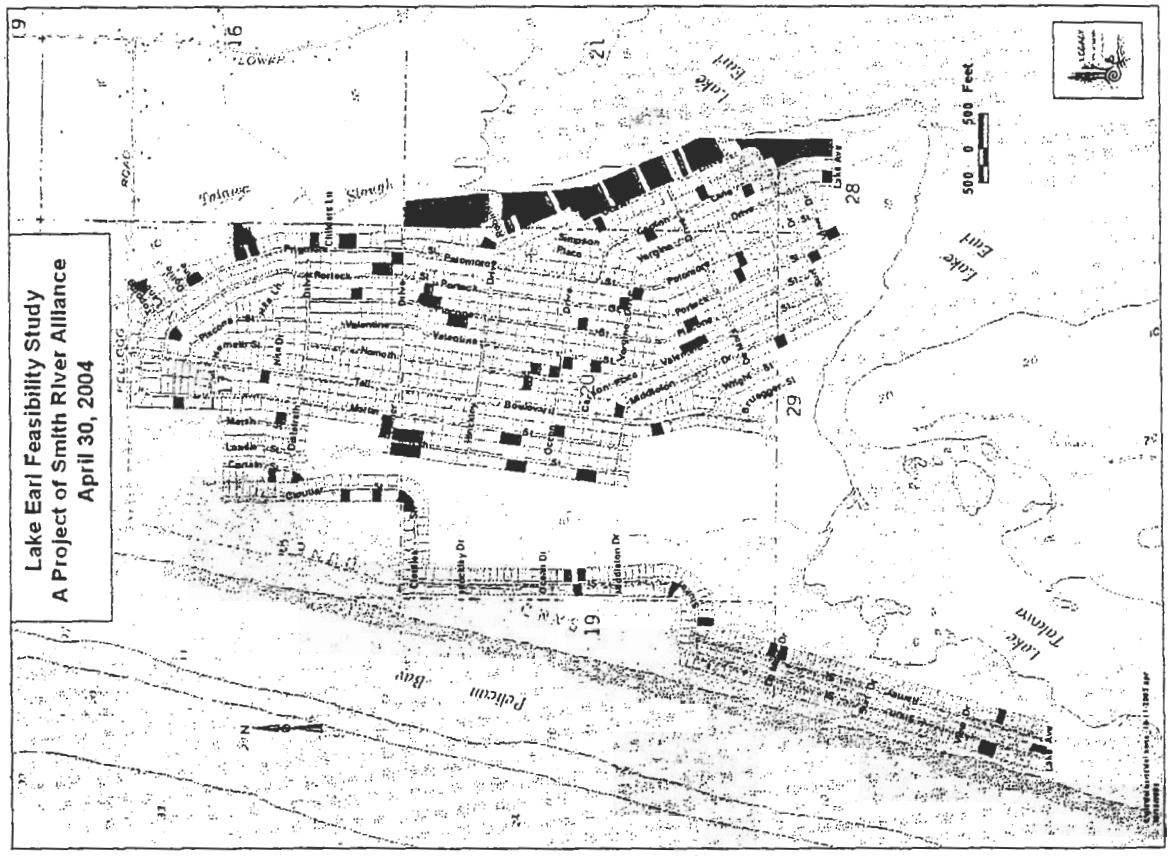
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EXHIBIT NO. 8

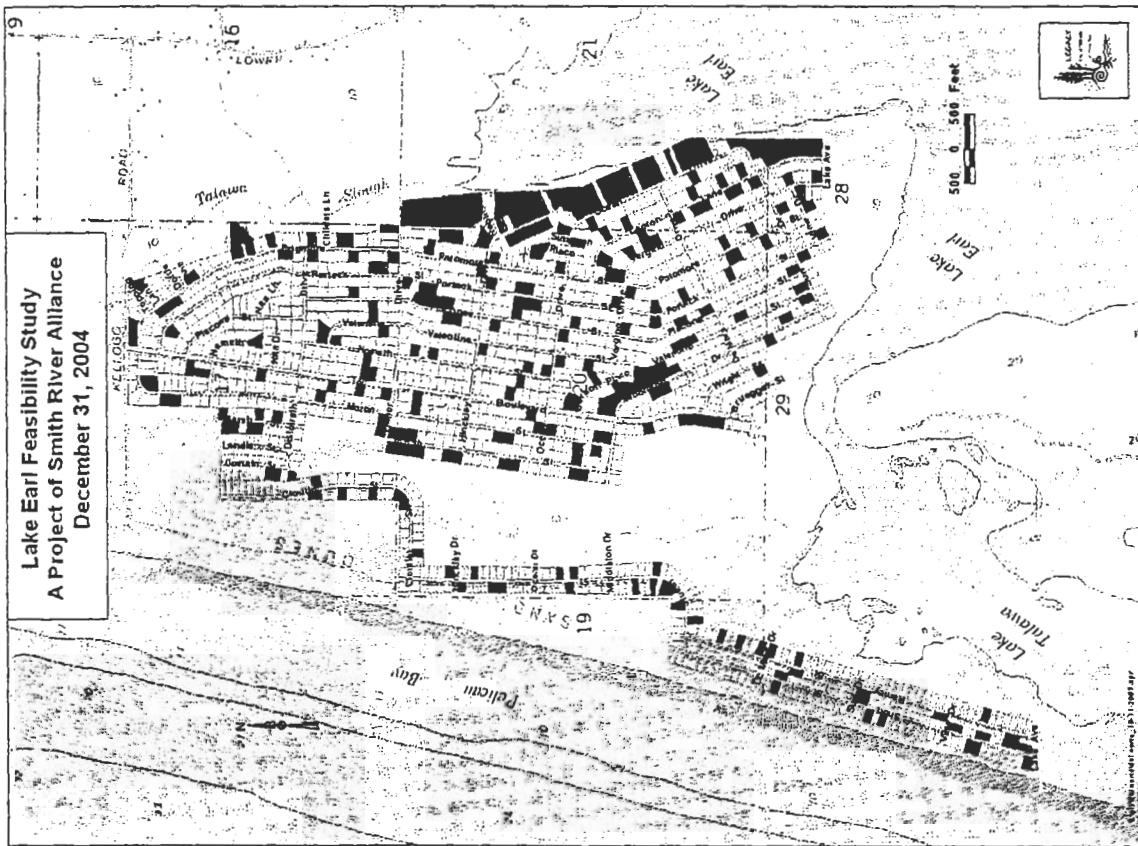
APPLICATION NO.

1-04-008 -- BICKNELL
LAKE EARL FEASIBILITY
STUDY ACQUISITION
PROGRAM PROGRESS
REPORT MAPS (1 of 7)

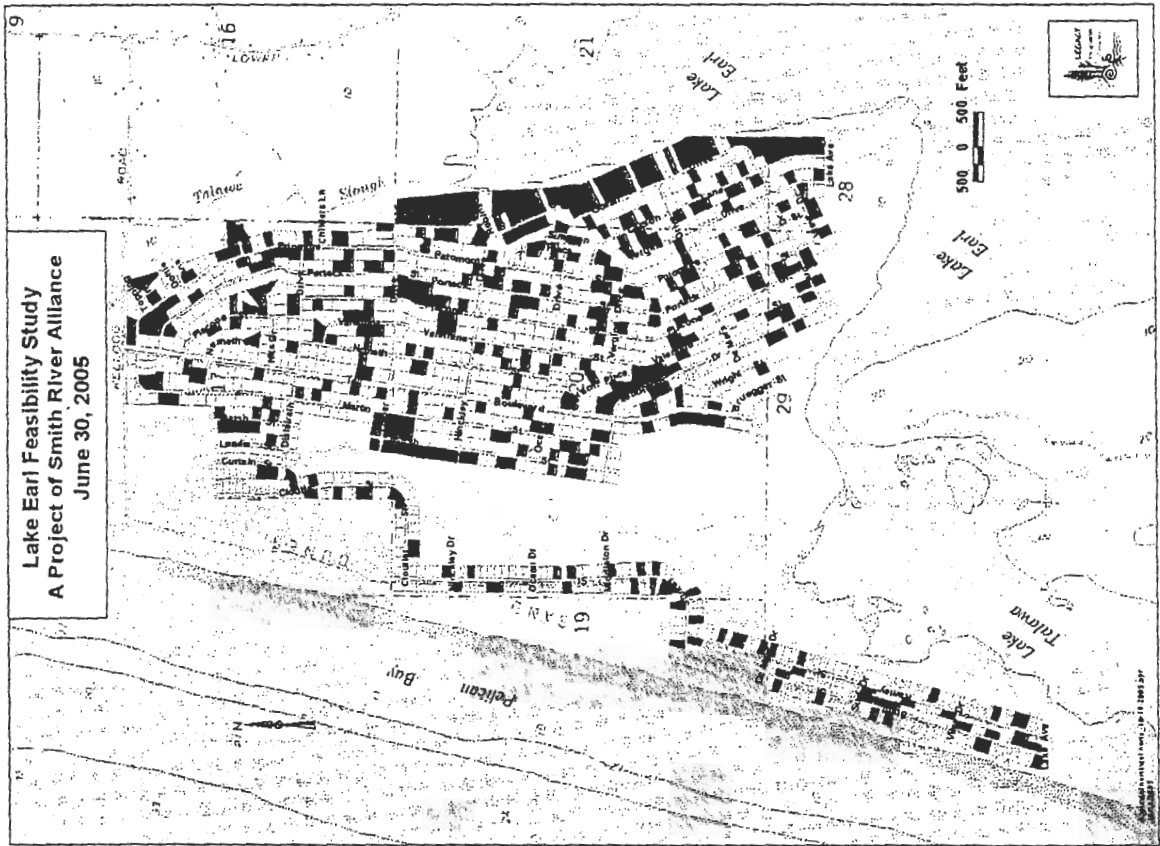




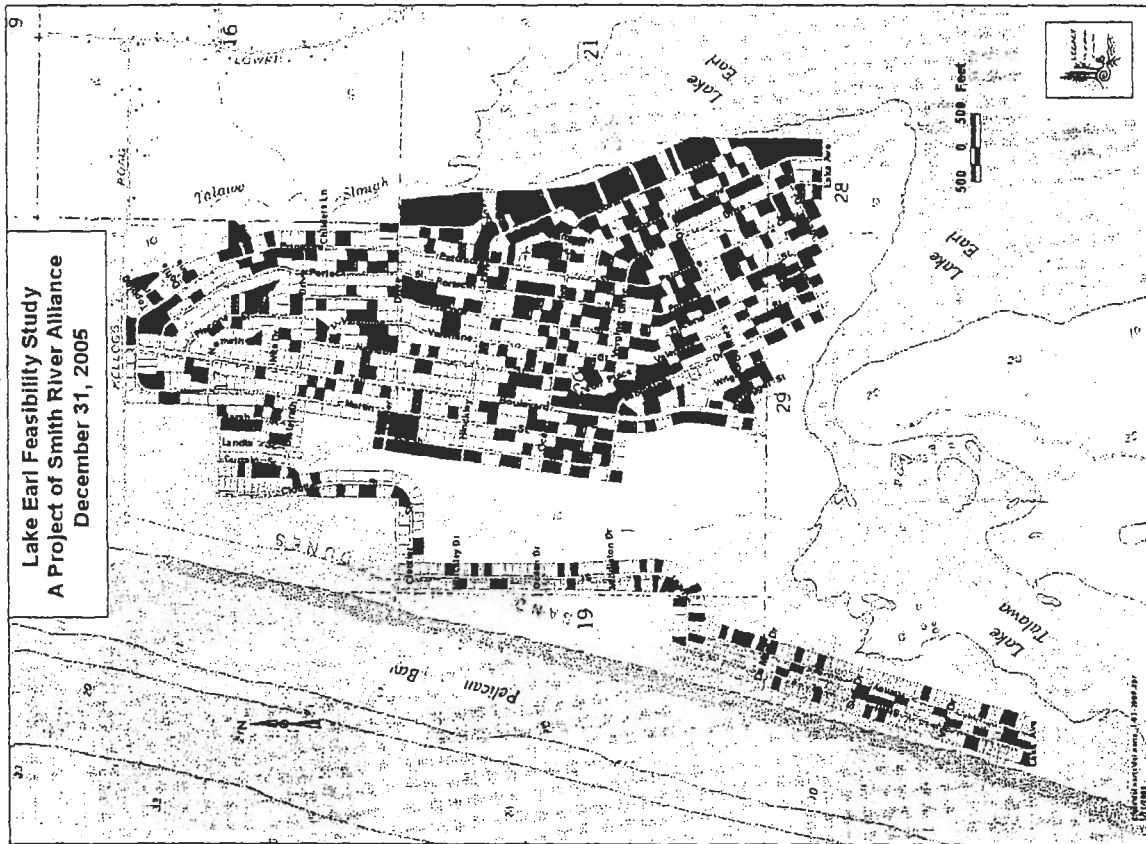
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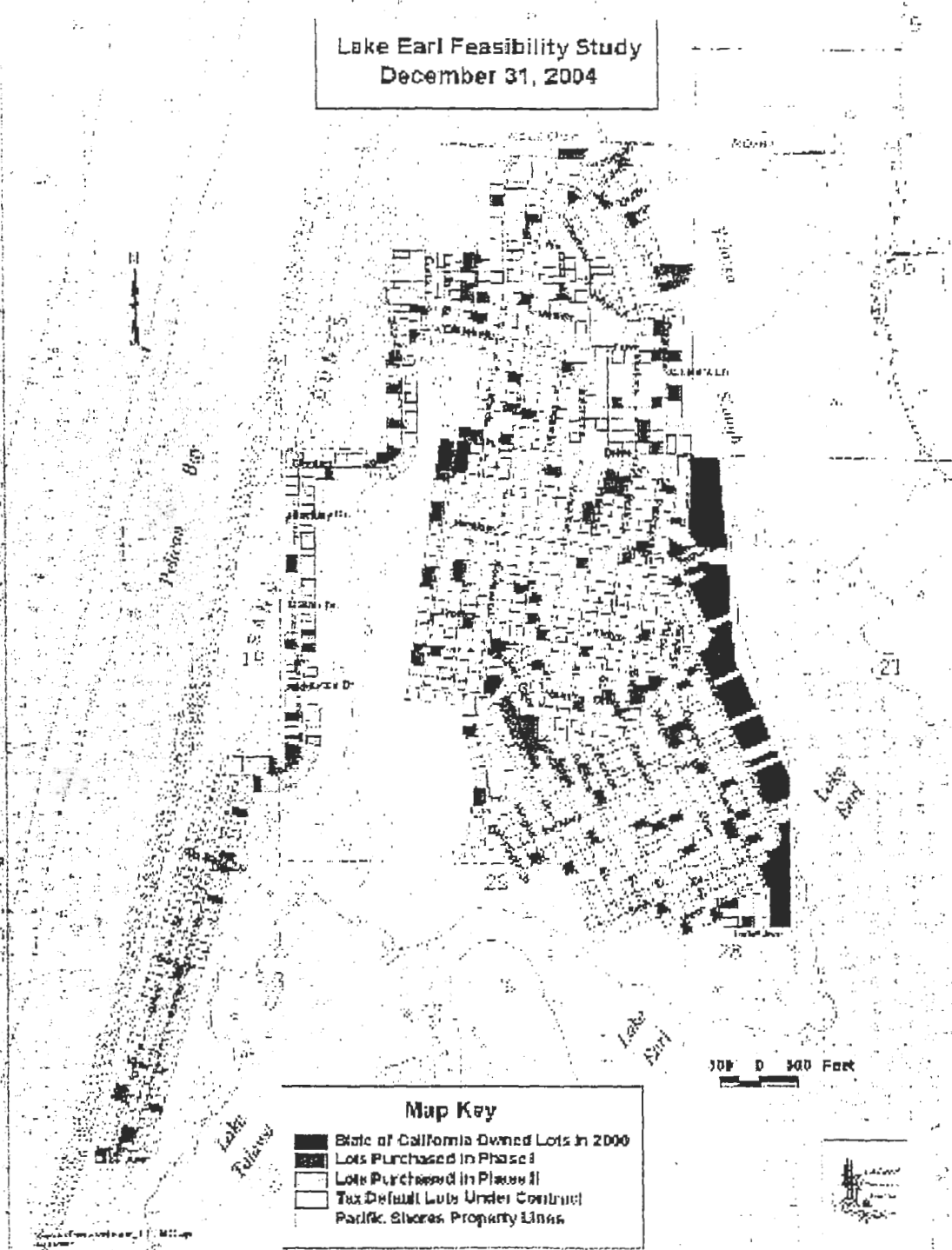


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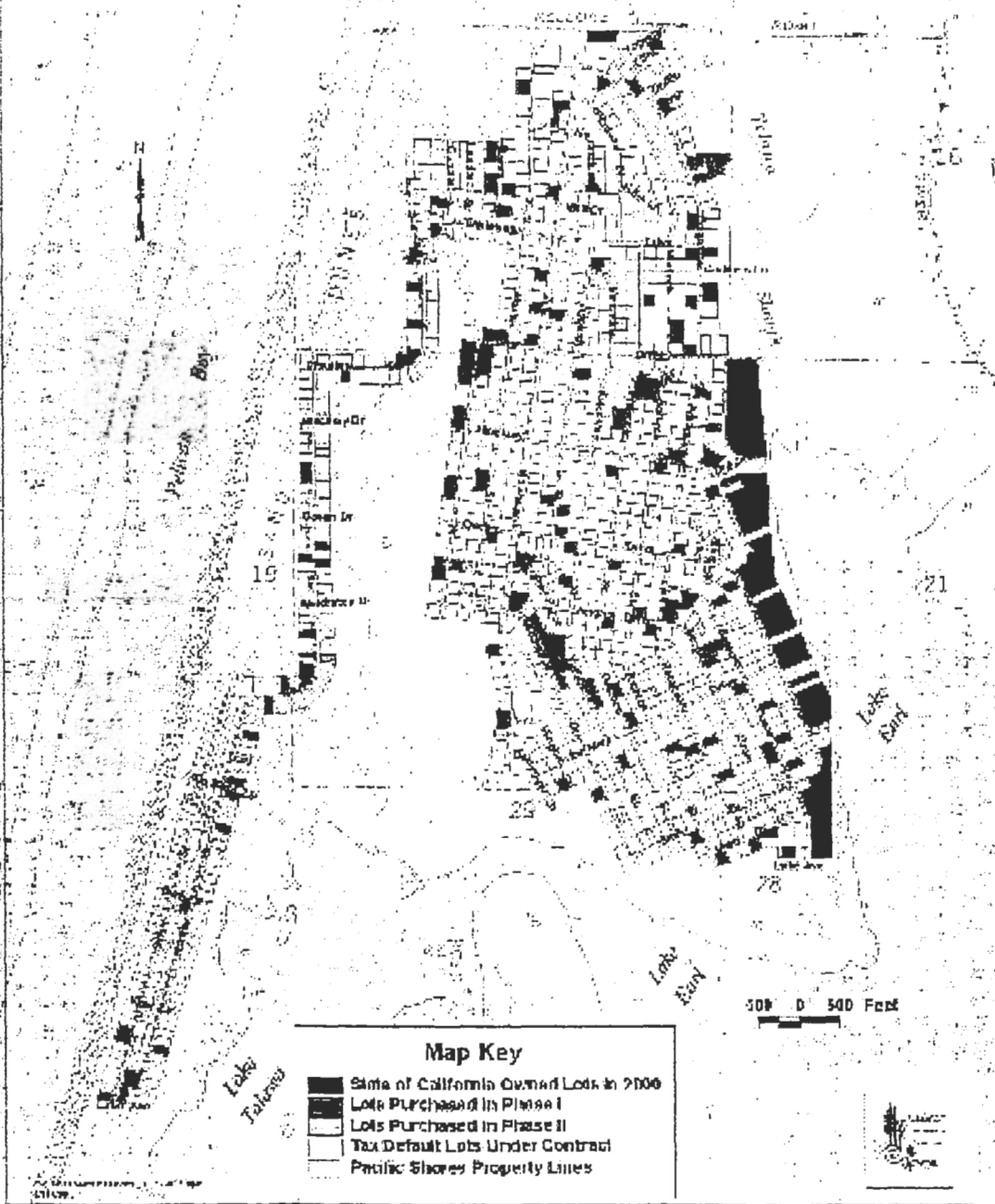
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Lake Earl Feasibility Study
December 31, 2004



6 of 7

Lake Earl Feasibility Study
December 31, 2004



797



PACIFIC SHORES CONSERVATION PROJECT

A COOPERATIVE PROJECT OF THE WILDLIFE
CONSERVATION BOARD, CALIFORNIA
DEPARTMENT OF FISH AND GAME
AND THE SMITH RIVER
ALLIANCE

RECEIVED

FEB 10 2006

CALIFORNIA
COASTAL COMMISSION

February 4, 2006

California Coastal Commission
45 Fremont St., Suite 45
San Francisco, California 94105

To Whom It May Concern,

Smith River Alliance (SRA), a non-profit conservation organization, and has been working to identify landowners in the Pacific Shores Subdivision interested in selling their lots to the State of California since July 2003. Pacific Shores lots acquired through this program are added immediately to the Lake Earl Wildlife Area, under management of the California Department of Fish and Game.

Lots are purchased only from willing sellers and the price paid is fair market value as established by an independent appraisal.

Since the beginning of the program SRA and/or the Wildlife Conservation Board has mailed letters soliciting interest in the program to Pacific Shores lot owners. During the two and a half year period there have been 8 mailings to lot owners. As individuals sell their property, or indicate that they are not interested in the program, they are removed from the list.

Since the beginning of the program over 487 lots have been acquired by the Wildlife Conservation Board.

This success may in part be attributed to our attention to detail. We respond to each lot owner inquiry and maintain contact records.

Over the last two years we have been contacted by over 500 people and have not been contacted by Ms. Bicknell (APN 108-320-08).

For your information I am enclosing copies of some of the recent outreach letters that have been sent to lots owners. Please let me assure you that if you meet a lot owner interested in learning more about this program I would be very happy to resend this information to them.

Sincerely,

Patty McCleary
Patty McCleary

EXHIBIT NO. 9
APPLICATION NO. 1-04-008 -- BICKNELL LETTER FROM PATTY McCLEARY, MANAGER, PACIFIC SHORES CONSERVATION PROJECT, DATED 2/4/06, RECEIVED 2/10/06 (1 of 8)

Exhibit 8
CCC-06-CD-04
(Bicknell) Page 45 of 54



PACIFIC SHORES CONSERVATION PROJECT

A COOPERATIVE PROJECT OF THE WILDLIFE
CONSERVATION BOARD; CALIFORNIA
DEPARTMENT OF FISH AND GAME
AND THE SMITH RIVER
ALLIANCE

April 21, 2005

Dear Pacific Shores Property Owner,

I am writing to let you know about an opportunity to sell your property in the Pacific Shores Subdivision to the Wildlife Conservation Board (WCB). Last year, WCB established a special fund to acquire lots in the Pacific Shores Subdivision, and in nine months completed the purchase of 240 lots.

WCB has enlisted the aid of the Smith River Alliance (SRA), a non-profit conservation organization, and has asked us to identify willing sellers interested in selling their lots to WCB. Pacific Shores lots acquired through this program are added immediately to the Lake Earl Wildlife Area, managed by the California Department of Fish and Game.

Last year we received over 500 inquiries about the program and we continue to work with lot owners who contact us. Funds are available for a limited time and there is no guarantee that funds will be available after August 2005.

We purchase only from willing sellers and the price paid is fair market value as established by an independent appraisal. The State pays all the normal costs of the transaction, including appraisal, title and escrow fees, recording fees and transfer taxes.

Lake Earl, California's largest coastal lagoon is widely recognized for its diverse coastal wetlands and its fish, wildlife and botanical resources. The Coastal Act prioritized it for restoration as one of California's 19 most valuable coastal wetlands. Over 10,000 acres of sensitive habitat and recreational lands are protected in Lake Earl Wildlife Area and Tolowa Dunes State Park. Pacific Shores subdivision lots purchased through this program will be similarly protected.

Call for more information about selling your lot today.

If you have an interest in selling your property, please contact me, Patty McCleary at your earliest convenience by telephone or email. I can be reached by telephone at 916-485-0840, or by email at patty@conservationsolutions.biz. If you have general questions about this program, contact Randy Nelson by e-mail at rnelson@dfg.ca.gov, or by phone at 916-323-8980.

Sincerely,

Patty McCleary

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FEB 1 0 2006

CALIFORNIA
COASTAL COMMISSION

298

SMITH RIVER ALLIANCE
2443 FAIR OAKS BOULEVARD, NO. 181, SACRAMENTO, CALIFORNIA 95825-7684

Exhibit 8
CCC-06-CD-04
(Bicknell) Page 46 of 54



PACIFIC SHORES CONSERVATION PROJECT

A COOPERATIVE PROJECT OF THE WILDLIFE
CONSERVATION BOARD, CALIFORNIA
DEPARTMENT OF FISH AND GAME
AND THE SMITH RIVER
ALLIANCE

July 9, 2005

Dear Pacific Shores Property Owner,

I am writing to remind you about an opportunity to sell your property in the Pacific Shores Subdivision to the Wildlife Conservation Board (WCB). Last year a special fund was established to purchase lots in Pacific Shores. As of June 2005, over five hundred lots have been purchased through the program.

Many of you have expressed an interest in receiving more information about the subdivision and the issues surrounding its non-development. I have enclosed a recent set of articles from the Del Norte Triplicate that may be of interest.

As you may know, WCB has enlisted the aid of the Smith River Alliance (SRA), a non-profit conservation organization, and has asked us to identify landowners interested in selling their lots to WCB. Pacific Shores lots acquired through this program are added immediately to the Lake Earl Wildlife Area, which is managed by the California Department of Fish and Game.

We purchase only from willing sellers and the price paid is fair market value as established by an independent appraisal--all the normal costs of the transaction, including title and escrow fees, recording fees and transfer taxes are paid for.

If you have an interest in selling your property, please contact me at your earliest convenience.

I can be reached by telephone at 916-485-0840, or by email at patty@smithriveralliance.org. If you have general questions about this program, please contact Randy Nelson by e-mail at rnelson@dfg.ca.gov, or by phone at 916-323-8980.

Sincerely,

Patty McCleary

RECEIVED

FEB 10 2006

CALIFORNIA
COASTAL COMMISSION

SMITH RIVER ALLIANCE
2443 FAIR OAKS BOULEVARD, NO. 181, SACRAMENTO, CALIFORNIA 95825-7684

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Exhibit 8
CCC-06-CD-04
(Bicknell) Page 47 of 54



PACIFIC SHORES CONSERVATION PROJECT

A COOPERATIVE PROJECT OF THE WILDLIFE
CONSERVATION BOARD, CALIFORNIA
DEPARTMENT OF FISH AND GAME
AND THE SMITH RIVER
ALLIANCE

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CALIFORNIA
COASTAL COMMISSION

October 5, 2005

Dear Pacific Shores Property Owner,

I am writing to remind you about an opportunity to sell your property in the Pacific Shores Subdivision to the Wildlife Conservation Board (WCB). Last year a special fund was established to purchase Pacific Shores lots and since then over five hundred lots have been purchased.

WCB has enlisted the aid of the Smith River Alliance (SRA), a non-profit conservation organization, and has asked us to identify landowners interested in selling their lots to WCB. Pacific Shores lots acquired through this program are added immediately to the Lake Earl Wildlife Area, which is managed by the California Department of Fish and Game.

Lake Earl Wildlife Area and Tolowa Dunes State Park surround the Pacific Shore Subdivision and include over 10,000 acres of coastal wetland and recreation lands. Lake Earl Wildlife Area includes California's largest coastal lagoon—recognized as one of California's 19 most valuable coastal wetlands.

Lots are purchased only from willing sellers and the price paid is fair market value as established by an independent appraisal—and we pay all the normal costs of the transaction, including title and escrow fees, recording fees and transfer taxes.

If you have an interest in selling your property and would like to learn more about this alternative--please contact me by telephone at 916-485-0840, or by email at patty@smithriveralliance.org.

If you have general questions about this program, and would like to speak with a WCB representative, you may contact Randy Nelson by e-mail at rnelson@dfg.ca.gov, or by phone at 916-323-8980.

Sincerely,

Patty McCleary

P.S. If you contact me before the end of October the purchase of your lot could be completed by December 31, 2005.

4 of 8

SMITH RIVER ALLIANCE

2443 FAIR OAKS BOULEVARD, NO. 181, SACRAMENTO, CALIFORNIA 95825-7684

Exhibit 8
CCC-06-CD-04

(Bicknell) Page 48 of 54



PACIFIC SHORES CONSERVATION PROJECT

A COOPERATIVE PROJECT OF THE WILDLIFE
CONSERVATION BOARD, CALIFORNIA
DEPARTMENT OF FISH AND GAME
AND THE SMITH RIVER
ALLIANCE

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FEB 10 2006

CALIFORNIA
COASTAL COMMISSION

January 13, 2006

Dear Pacific Shores Property Owner,

I am writing to remind you about an opportunity to sell your property in the Pacific Shores Subdivision to the Wildlife Conservation Board (WCB). Two Years ago a special fund was established to purchase Pacific Shores lots and since then over five hundred lots have been purchased.

WCB has enlisted the aid of the Smith River Alliance (SRA), a non-profit conservation organization, and has asked us to identify landowners interested in selling their lots to WCB and to help with the acquisition process. Pacific Shores lots acquired through this program are added immediately to the Lake Earl Wildlife Area, under management of the California Department of Fish and Game.

Lots are purchased only from willing sellers and the price paid is fair market value as established by an independent appraisal—and we pay all the normal costs of the transaction, including title and escrow fees, recording fees and transfer taxes.

If you have an interest in selling your property and would like to learn more about this opportunity--please contact me by telephone at 916-485-0840, or by email at patty@smithriveralliance.org.

If you have general questions about this program, and would like to speak with a WCB representative, you may contact Randy Nelson by e-mail at rnelson@dfg.ca.gov, or by phone at 916-323-8980.

Sincerely,

Patty McCleary

Patty McCleary

P.S. Please contact me as soon as possible and before February 20th to be included in the next closing!

598

WEDNESDAY

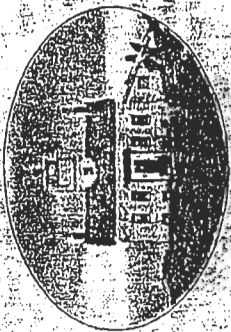
NOVEMBER 30, 2005

A special good morning to

Daily Triplicate subscriber

Karen Kinikin

of Crescent City



The Daily Triplicate

Del Norte County, Calif.

Life among the community since 1889

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State approves \$2 million to buy more property at Pacific Shores

Platted lots would be added to Lake Earl Wildlife Area

By Matt Mais

Triplicate staff writer

The state Wildlife Conservation Board has approved spending \$2 million to purchase nearly half of the privately owned lots in the Pacific Shores subdivision to add to the Lake Earl Wildlife Area.

The subdivision — located on the north shore of Lake Earl — spans more than a square mile and has never been developed.

It was platted more than 40 years ago and sold to investors.

But the sandy terrain there cannot support septic systems and the area is blanketed with wetlands and other habitat for threatened, and endangered species, making it nearly impossible for landowners to build.

"The \$2 million shows a renewed interest by the Wildlife Conservation Board," said Patty McCleary, deputy executive director of the Smith River Alliance.

The Wildlife Conservation Board is part of the California Resources Agency.

The Smith River Alliance, which has offices on South Fork Road and in Sacramento, has been facilitating sales by willing sellers to the state for the last two years.

McCleary said the state's \$2

million could purchase just more than 500 half-acre lots, which sell at about \$4,000 a piece.

Originally there were 1,535 lots in the Pacific Shores subdivision.

Of those, 527 have already been purchased by the state from willing sellers or from the county when owners defaulted on their property taxes, she said.

The land that has already been sold has become part of the Lake Earl Wildlife Area, which is managed by the California Department of Fish and Game.

The parcels that are supposed to be purchased with the \$2 million will also become part of the wildlife area.

McCleary said once escrow closes on nearly 35 Pacific Shores lots next month the Smith River Alliance will resume its effort to find more willing sellers.

"The future purchase of the balance of lots depends on whether there's interest in selling," McCleary said.

McCleary said most people who are given the opportunity to sell their lots do.

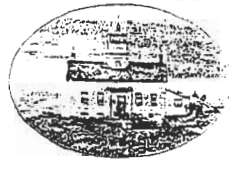
"People have been careful and thoughtful, but I would say 90 percent of those we contact do ultimately decide to sell."

Exhibit 8

CCC-06-CD-04

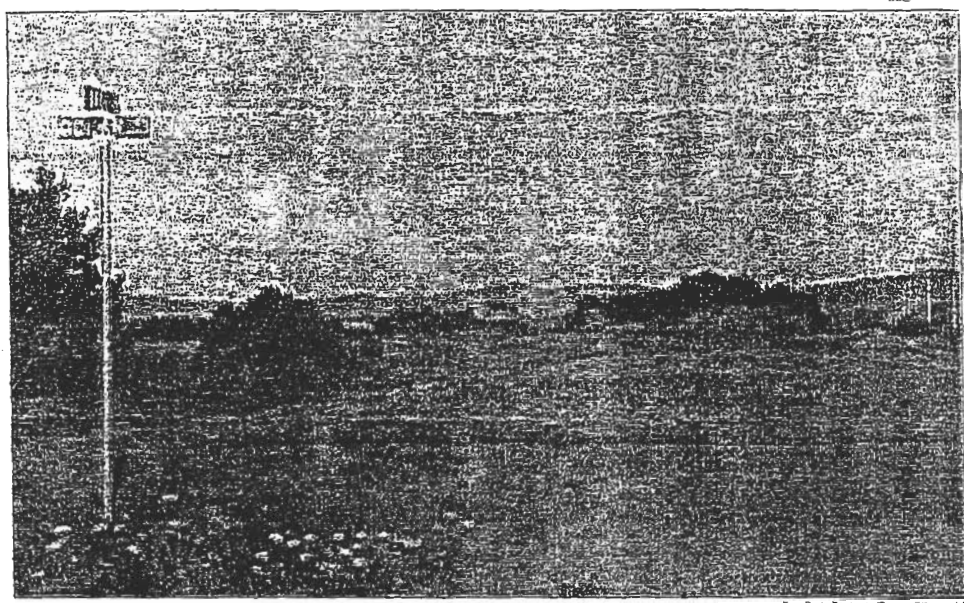
(Bicknell) Page 50 of 54

6 2 8



PROBLEMS AT PACIFIC SHORES

SATURDAY
NOVEMBER 20, 2004



Tell Boulevard is lined by undeveloped property as it runs north from Ocean Street in the Pacific Shores subdivision.

The Daily Triplicate/Susan Fitzgerald

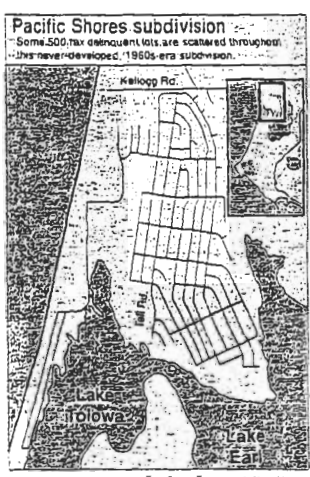
Empty estate

County may sell lots due to late taxes

By Susan Fitzgerald
Triplicate staff writer

People from Africa to South America could find themselves relieved of the burden of owning property at Pacific Shores, pending an agreement expected to come before the Board of Supervisors on Tuesday.

Pacific Shores is a subdivision of 1,523 half-acre lots around a stunning coastal lagoon within earshot of the ocean. The land north of Crescent City was platted in the 1960s, but never developed. Since then, environmental regulations have passed into law that make it unlikely the coastal property will be developed.
(See Taxes, Page A10)



The Daily Triplicate/Arthur Hanna

Subdivision is unsuitable for sewage system

By Katherine Kerlin
Triplicate staff writer

When the Pacific Shores subdivision was approved in 1963, almost everything was different. No one wore seatbelts, only scientists used computers and subdivision development was largely unregulated.

Over the past 41 years, environmental laws, specifically those regarding wastewater disposal, have changed the landscape for developers and land owners.

"You can't just grab a piece of paper and draw lines and roads and get it approved now," said Tom Dunbar of the California Regional Water Quality Control Board. "If Pacific Shores had developed in
(See Sewage, Page A10)

7 of 8

Taxes: More than 500 property owners owe the county

(Continued from Page A1)

Meanwhile, more than 500 lot owners haven't paid their taxes in at least five years.

While property taxes are only about \$20 to \$40 a year, county Tax Collector Dawn Langston said, auxiliary taxes imposed by Pacific Shores Water District are more than \$100 a year.

No water or wastewater system has been provided, however, and environmental conditions make development prospects remote.

"People see nothing is happening and they just throw up their hands," Langston said Friday.

Some quit paying taxes as long as 18 years ago, she said. "Eighteen years of taxes and interest, pretty soon that adds up to more than the property is worth."

Langston has two binders that stand nearly a foot high containing listings of Pacific Shores properties that are tax-delinquent, compared to a slim volume for the Smith River-Fort Dick area.

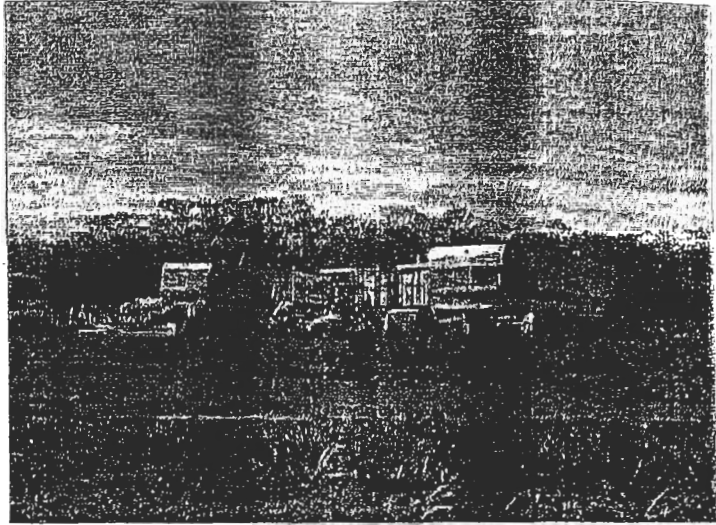
After delinquency reaches the five-year mark, the county has the power to sell the lots to make good the delinquency.

"If these revenues don't come in, the county has to find it elsewhere," Langston said, and the Wildlife Conservation Board has expressed interest in the Pacific Shores tax-delinquent properties.

With properties sold to the Wildlife Conservation Board on behalf of the state Department of Fish and Game, the county will receive an annual payment in lieu of taxes, although the state is delinquent on that payment, as a result of its budget crisis.

On Tuesday, the Board of Supervisors will consider an agreement with the Wildlife Conservation Board for an option to buy 25 parcels in the immediate future for about \$60,000, and half of 199 parcels by June of 2005.

The sales would boost county



The Daily Tropic/Susan Fitzgerald

While Pacific Heights never was developed, the subdivision does have residents, as illustrated by these trailers (above) and mailboxes (below).

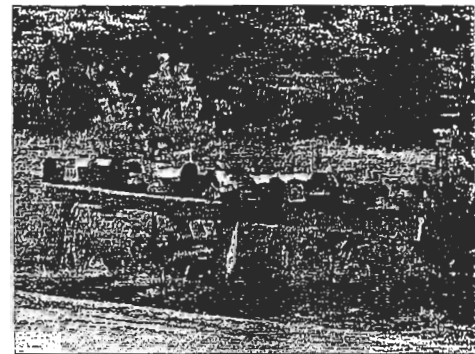
general fund by about \$200,000, said District 4 Supervisor Sarah Sampels, after all the delinquent tax bills are settled.

"It's going to give the county a boost in these lean times," said Sampels.

Twice previously, the county has tried to sell about 80 of the parcels through its regular auction of delinquent properties, but there were no local takers, Langston said. She estimated fewer than five percent of Pacific Shores owners are local.

While most Pacific Shores owners initially were in Southern California and Hawaii, owners now are all over the world, Langston said, as are the few buyers there have been in recent years.

Excited buyers with apparently little command of English call her office, Langston said, wanting to know about their newly



acquired property, only to be told they can't build on it.

Tracking down lot owners is getting to be as difficult as collecting the taxes, Langston said, as original owners die and their

heirs aren't interested.

"We get tax bills back with notes saying, 'I don't want this land,'" Langston said. "There's a lot of work involved" with no revenue to show for it.

Sewage: System unlikely given astronomical price tag

(Continued from Page A1)

1963, they could have gotten away with it."

Times change.

The California Water Quality Control Plan for the Northcoast Region was adopted in 1971. This basin plan set wastewater and potable water standards for individual sewage disposal systems.

In the 1980s, the Water Quality Control Board ruled that the only way Pacific Shores could comply with the basin plan was to install a

sewage system. Given its astronomical price tag, a sewage system is an unlikely choice.

Both the California Coastal Commission and the Water Quality Control Board said less costly septic system alternatives would not be suitable for Pacific Shores.

A septic system is a self-contained wastewater treatment system. For rural areas with larger lot sizes, septic systems are less costly than sewer systems

because they treat and dispose wastewater on-site. Their simple design also makes them less expensive to install and maintain.

There are numerous forms of septic systems, from aerated designs to eco-friendly composting toilets. Jim Baskin of the California Coastal Commission said the most common is the septic tank.

It treats wastewater by separating solids and liquids in the tank. The solids are digested by microbial action. Partially clarified liquid flows from the tank to a leachfield and slowly trickles from pipes into the gravel and soil, which act as biological filters.

According to Dunbar, the soil needs to be at least 15 percent silt and clay to filtrate effectively. The sandy soil at Pacific Shores, which is by the Toiowa sand dunes, would drain so quickly that bacteria would not get a chance to break down. This would allow waste to run into groundwater untreated.

The Wisconsin mound system works in a similar way, except that it is built above ground. This creates a vertical separation from the groundwater, but the sandy soil would create the same problem as it did for the septic tank.

A holding tank stores waste in a container until a truck can pump it and haul it away for proper disposal. If not properly maintained, the tank could spill. Baskin said holding tanks are

used mostly for RV parks and industrial purposes. They are generally not accepted under the basin plan.

Independent of lake level and wildlife issues, Dunbar said there is another big issue. Pacific Shores, a subdivision of 1,524 lots densely packed on 1,486 acres, is an urban, not rural, development.

Under the basin plan, on-site sewage disposal systems cannot be placed in urban developments. Such a system must be 200 feet from the lake and 100 feet from the well.

"Those lots can't contain a 100-foot separation between the well and the septic system," said Dunbar.

The basin plan also requires a five-foot separation between septic systems and the highest anticipated groundwater.

A 1999 staff report of the California Coastal Commission stated, "Development within Pacific Shores could not comply with these standards."

No matter the type of septic system, the same problems arise — sandy soil allows contaminants to enter groundwater, and the lot sizes at Pacific Shores are too small to comply with the basin plan.

"There are a lot of criteria not met by that subdivision," said Dunbar. "Pacific Shores is a perfect example of why we do things differently now than we did back in 1963."

Exhibit 8
CCC-06-CD-04
(Bicknell) Page 52 of 54

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