

CALIFORNIA COASTAL COMMISSION

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



Th 9 and 10

ADDENDUM

September 6, 2007

TO: Coastal Commissioners and Interested Parties

FROM: Lisa Haage, Chief of Enforcement

SUBJECT: ADDENDUM TO **ITEM Th 9 and 10**, COASTAL COMMISSION CEASE AND DESIST ORDER CCC-07-CD-05 AND RESTORATION ORDER CCC-07-RO-03 FOR THE COMMISSION MEETING OF **September 6, 2007**

Documents included in this addendum:

1. August 31, 2007 letter from Lake Earl Coastal Lagoon Alliance to the California Coastal Commission expressing support for the staff recommendation for the issuance of the proposed Cease and Desist Order and Restoration Order.
2. September 4, 2007 letter from Erin Haley, Commission enforcement staff, to Ms. Jeannie Mitchell, confirming Ms. Mitchell's representations regarding the site.
3. September 4, 2007 letter from Erin Haley, Commission enforcement staff, to Mr. James Emerson, regarding staff's telephone conversations with Mr. Emerson.



Lake Earl Coastal Lagoon Alliance

Committed to Restoring the Wild Lagoon

"If there is magic on this planet, it is contained in water."

Loren Risky

(707) 951-3020
PO Box 229
Gasquet, CA 95543

August 31, 2007

-- FAXED, Attn. Nancy Cave @ 415 904-5235 --

California:

Center for
Biological Diversity

Coastwalk

Environmental
Protection
Information Center

Friends of Del Norte

Lake Earl Audubon
Branch

Redwood Region
Audubon Society

Northcoast
Environmental
Center

Redwood Chapter,
Sierra Club

California
Sierra Club

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Esteemed Commissioners:

RE: **Support for Cease and Desist Order CCC-07-CD-05
and Restoration Order No. CCC-07-RO-03** (Emerson),
Commission meeting September 6, 2007, Items 9 & 10
re the Pacific Shores subdivision
North of Crescent City, Del Norte County

The Lake Earl coastal lagoon is a gem of biodiversity with statewide and national importance. The Lake Earl Coastal Lagoon Alliance (LECLA) advocates for protection and restoration of this unique wetlands complex, and is already on record supporting your enforcement actions taken against illegal development in the Pacific Shores subdivision.

With the September items, in a little over a year the Commission will have taken action on seven illegal developments within this ill-fated subdivision. We applaud your staff for continuing to move forward in the face of numerous obstacles, and in spite of threats against their persons during a visit to the subdivision.

Regarding the Pacific Shores lots before you today: our review of the National Wetland Inventory map¹ shows that two of these lots are mapped almost entirely as wetlands. One of these is literally in a marsh connecting to the coastal lagoon at higher water levels.

Oregon:

Oregon Wild
(formerly Oregon
Natural Resources
Council)

Siskiyou Project

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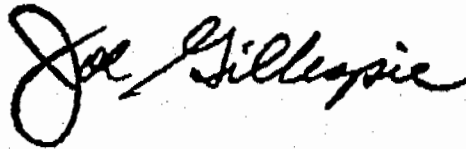
¹ Dated 1987, based on aerial photos from 1983 aerial photographs.
Page 1 of 2

We also want you to know that illegal development at Pacific Shores has escalated in the last few months. For example:

- It appears that the Bicknell lot, subject of your Cease & Desist Order in June 2006, is continually occupied, with even more accumulation on site. Marking the first time that sanitation has been observed on this site, in the last few days a porta-potty been added.
- Half a dozen new trailers and RVs have been added on the Wilson lot, the subject of your Cease & Desist Order in December 2006.
- RVs have parked on lots, coming and going all summer long, perhaps half a dozen RV encampments total.
- Vehicles and trailers are routinely dumped, and then set on fire.

We urge you to begin discussions with the California Attorney General's Office and the County of Del Norte to move toward an effective solution, and to abate immediately the health hazards and pollution threats to the lagoon.

Thanking you for your vital work,

A handwritten signature in black ink, reading "Joe Gillespie". The signature is fluid and cursive, with the first name "Joe" being more prominent and stylized than the last name "Gillespie".

Joe Gillespie

on behalf of the LECLA member organizations
as listed on our letterhead

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VIA REGULAR MAIL

September 4, 2007

Ms. Jeannie Mitchell
18925 Ridge Road
Red Bluff, CA 96080-9260

RE: **Coastal Act Violation File Nos. V-1-05-011 & V-1-05-010:** Coastal Act violations on property at Block 23, Lot 13 (APN 108-051-18) and Block 23, Lot 14 (APN 108-051-19), Pacific Shores, Del Norte County

Dear Ms. Mitchell,

This letter is to confirm the matters discussed during our two telephone calls earlier this evening. During the calls, you told me that you received the August 31, 2007 Notice of Violation letter sent to you by California Coastal Commission (the "Commission") staff and had some concerns and some clarifications. You represented that you no longer have any property interest in either the property at Block 23, Lot 13 (APN 108-061-18) or the property at Block 23, Lot 14 (APN 108-051-19) (collectively the "subject properties"), or any of the development on either of the properties. You stated that Mr. James Emerson, with whom you had originally purchased the subject properties, sent you a quitclaim deed in either May or June of this year, that you signed the quitclaim deed giving Mr. Emerson full ownership of the subject properties, and had the quitclaim deed notarized.¹ You then mailed the quitclaim deed back to Mr. Emerson, but failed to keep a copy for yourself. This sequence of events, as related by you, is consistent with the information given to Commission staff during a phone call with Mr. Emerson on August 21, 2007, in which he told Commission staff that he had a signed quitclaim deed from you granting Mr. Emerson full ownership, however Mr. Emerson has not yet recorded this deed with the Del Norte County Recorder's office. Neither of you have been able to provide the Commission with a copy of the deed.

Currently, Commission staff is pursuing enforcement action against Mr. Emerson for the unpermitted development on the subject properties, based on the understanding that he is an owner of all three parcels being addressed in the hearing, and on his representation that he owns and is maintaining the presence of the unpermitted development placed on the sites, including the two in which you were at least a prior owner. A public hearing regarding these sites is currently scheduled to be held in front of the Commission on September 6, 2007, and the proposed Orders would direct Mr. Emerson to remove all unpermitted development and restore

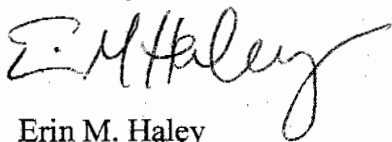
¹ The other property that you co-owned with Mr. Emerson at Block 23, Lot 12 (APN 108-051-17) is not part of a current Commission enforcement action, but was also included in the quitclaim deed transferring your ownership interest to Mr. Emerson.

Mitchell
September 4, 2007

impacted areas. This hearing is being held in Eureka, California. We sent you notice of this hearing so that you could participate if you wished, and suggested that if you wanted to send a letter we would be pleased to present it to the Commission for you. Commission staff understands that you do not plan on attending the hearing and that you didn't feel you could send a letter, but would welcome your attendance. In the absence of that or a letter from you, in order to make sure that your views are known, we will make this letter part of the record for this proceeding.

If you have any questions regarding this matter, any further information relating to the unpermitted development on the subject properties or the ownership change, or would like to discuss this in any way, please feel free to contact me at the address in the letterhead or at (415) 904-5220. We thank you for your cooperation and your attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "E. M. Haley", with a stylized, flowing script.

Erin M. Haley
Statewide Enforcement Analyst

cc: Lisa Haage, Chief of Enforcement
Nancy Cave, Enforcement Supervisor
Bob Merrill, North Coast District Manager
Alex Helperin, Staff Counsel

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**VIA REGULAR MAIL**

September 4, 2007

Mr. James Emerson
4762 Moreland Dr.
Anderson, CA 96007

RE: Coastal Act Violation File Nos. V-1-05-011, V-1-05-010, & V-1-07-016: Coastal Act violations on property at Block 23, Lot 13 (APN 108-051-18), Block 23, Lot 14 (APN 108-051-19), and Block 85, Lot 9 (APN 107-182-10), Pacific Shores, Del Norte County

Dear Mr. Emerson,

This letter is to confirm the matters discussed during our conference call with you, California Coastal Commission (the "Commission") staff counsel Alex Helperin, and myself on August 21, 2007. During the call, you told us that Ms. Jeannie Mitchell, with whom you originally purchased the property at Block 23, Lot 13 (APN 108-061-18) and the property at Block 23, Lot 14 (APN 108-051-19) (collectively the "subject properties"), had signed a quitclaim deed granting you full ownership of the subject properties.¹ You stated that you are now the sole owner of the properties, that she no longer had any interest in the subject properties, or in any of the development on the subject properties. At the time of the phone call, and as of the current date, as far as Commission staff has been able to discover, you have not yet recorded the deed with the Del Norte County Recorder's office. We requested that you send us a copy of the deed, but you declined to do so. In addition, we pointed out to you that you had not responded to our Notice of Intent, nor had you returned the "Statement of Defense", or provided any defenses to the action pending before the Commission this month. You indicated that you did not plan to do so.

We also had a telephone call with Ms. Mitchell this evening (September 4, 2007), in which she confirmed your version of the events of the ownership transfer. She represented that you sent her a quitclaim deed in either May or June of this year, that she signed the quitclaim deed giving you full ownership of the subject properties, and then she had the quitclaim deed notarized. She stated that she then mailed the quitclaim deed back to you.

During the conference call, we also had a discussion about the unpermitted development on the subject properties and on the property at Block 85, Lot 9 (APN 107-182-10) (hereafter included in "subject properties"). While you acknowledge that there are trailers, motor homes, fill, and a variety of vehicles on the three properties subject to the on-going Commission enforcement

¹ The other property that you co-owned with Ms. Mitchell at Block 23, Lot 12 (APN 108-051-17) is not part of a current Commission enforcement action, but was also included in the quitclaim deed transferring Ms. Mitchell's ownership interest to you.

Mitchell
September 4, 2007

action, you disputed the Commission's definition of "development." You dispute whether placement of trailers, motor homes, fill, and long term storage of vehicles on the properties are actually development as you understand the word to be defined. However, according to Section 30106 of the Coastal Act, development is defined as follows:

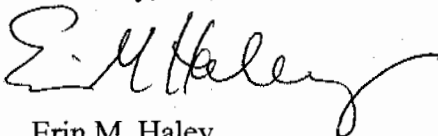
"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the 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 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 harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....

Placement of trailers, motor homes, fill, and long term storage of vehicles, particularly including inoperable vehicles, on your properties are all placement of "solid materials", therefore all of those items meet the Coastal Act's definition of development. Since you never applied for or received any coastal development permits to place the development on your properties, then you are subject to Commission enforcement action, as previously stated in the Notice of Intent letters sent to you on July 23, 2007 and July 26, 2007.

As you know, a public hearing regarding these sites is currently scheduled to be held in front of the Commission on September 6, 2007, and the proposed Orders would direct you to remove all unpermitted development and restore impacted areas. This hearing is being held in Eureka, California. Commission staff understands that you do not plan on attending the hearing, and you have not submitted a Statement of Defense.

If you have any questions regarding this matter, or would like to discuss this in any way, please feel free to contact me at the address in the letterhead or at (415) 904-5220. We thank you for your cooperation and your attention to this matter.

Sincerely,



Erin M. Haley
Statewide Enforcement Analyst

cc: Lisa Haage, Chief of Enforcement
Nancy Cave, Enforcement Supervisor
Bob Merrill, North Coast District Manager
Alex Helperin, Staff Counsel

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Th 9 & 10

Staff: E. Haley-SF
Staff Report: August 24, 2007
Hearing Date: September 6, 2007

STAFF REPORT AND FINDINGS FOR HEARING ON ISSUANCE OF CEASE AND DESIST ORDER AND RESTORATION ORDER

**CEASE AND DESIST ORDER
AND RESTORATION ORDER:**

CCC-07-CD-05 and CCC-07-RO-03

RELATED VIOLATION FILES:

V-1-05-011; V-1-05-010; V-1-07-016

PROPERTY LOCATION:

V-1-05-011: Block 23, Lot 13 (APN 108-051-018);
V-1-05-010: Block 23, Lot 14 (APN 108-051-019);
V-1-07-016: Block 85, Lot 9 (APN 107-182-10); all
in Pacific Shores Subdivision, north of Crescent
City, Del Norte County (**Exhibit 1**).

DESCRIPTION OF PROPERTY:

Coastal property in Pacific Shores, near Lakes Earl
and Tolowa in Del Norte County.

PROPERTY OWNER:

James R. Emerson

VIOLATION DESCRIPTION:

V-1-05-011: Unpermitted placement of fill (in
and/or adjacent to wetlands), change in intensity of
use of land from vacant lot to residential uses,
removal of major vegetation, and placement of at
least two trailers and/or mobile homes, and multiple
vehicles.

V-1-05-010: Unpermitted placement of fill (in
and/or adjacent to wetlands), change in intensity of
use of land from vacant lot to residential uses,
removal of major vegetation, and placement of at
least one trailer and/or mobile home, and a vehicle.

V-1-07-016: Unpermitted placement of fill (in
and/or adjacent to wetlands), change in intensity of
use of land from vacant lot to residential uses,

removal of major vegetation, and placement of a trailer, at least four boats, and at least one overturned box van.

SUBSTANTIVE FILE DOCUMENTS:

1. Cease and Desist Order File No. CCC-07-CD-05
2. Restoration Order File No. CCC-07-RO-03
3. Exhibits 1 through 7

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 AND FINDINGS

Staff recommends that the Commission issue Cease and Desist Order No. CCC-07-CD-05 and Restoration Order No. CCC-07-RO-03 (collectively, the “Orders”). The recommended Orders are to require removal of unpermitted development at Pacific Shores Subdivision Block 23, Lot 13 (APN 108-051-018) (referred to individually as “property A”), Block 23, Lot 14 (APN 108-051-019) (referred to individually as “property B”), and Block 65, Lot 10 (APN 107-182-10) (referred to individually as “property C”), all in Del Norte County (collectively, the “subject properties”). The unpermitted development includes (but may not be limited to): placement of fill (in and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, placement of mobile homes or trailers, and placement of vehicles including an overturned box van (**Exhibit 3**)¹. James R. Emerson (“Respondent”) is an owner of the subject properties and has acknowledged performing unpermitted development at the sites².

The subject properties are located in the Pacific Shores subdivision in unincorporated Del Norte County, north of Crescent City. Pacific Shores is a 1,535-lot subdivision created in 1963. The lots are roughly a half-acre in size. The subdivision has no developed community service or public utility infrastructure, minimal road improvements, and is situated tens of miles from police, fire, and ambulance emergency service responders.

¹ For more details regarding the unpermitted development, please see Section IV(A) of this report.

² Mr. Emerson originally purchased Block 23, Lot 13 and Block 23, Lot 14 in joint tenancy with a Ms. Jeannie Mitchell. However, on August 21, 2007, he told Commission staff that Ms. Mitchell had executed a quitclaim deed(s) transferring her interest to Mr. Emerson, so that he now has ownership. Mr. Emerson has yet to provide staff with a copy of the new deed(s) and he said that he has not yet recorded them, so they cannot be obtained from the County Recorder’s Office, but since Mr. Emerson has denied that Ms. Mitchell has any interest or responsibility in the property or the development, staff is proposing that the Commission take action against only Mr. Emerson at this time. Ms. Mitchell has been mailed notice of the Commission hearing. It was sent to her official address as provided by the Del Norte County Recorder’s office.

The subject properties include, and are surrounded by, estuarine areas and seasonal wetlands, which constitute significant environmentally sensitive habitat areas (**Exhibit 7**). According to the U.S. Fish and Wildlife Service National Wetlands Inventory³, properties A and B are almost entirely Palustrine emergent persistent seasonally flooded wetlands. Properties A and B also both contain violet species (mostly *Viola adunca*), the host plant to Oregon Silverspot butterfly, a Federally Threatened Species. Property C contains Palustrine scrub-shrub, broad-leaved deciduous, seasonally flooded wetland.

According to the Department of Fish and Game's Lake Earl Wildlife Area Management Plan, dated June 2003, the subject properties A and B contain coastal dunes and coastal maritime forest and property C contains freshwater emergent wetland.

The subject properties and connecting roadways serving the subject property are subject to seasonal inundation by the waters of the nearby coastal lagoon system known as Lakes Earl and Tolowa. This large estuarine lagoon is specifically called out for heightened protection from fill and other adverse environmental impacts in Section 30233(c) of the Coastal Act. The coastal lagoon complex supports numerous habitat types including emergent wetlands, open water, mudflats, flooded pastures, woodland, sandy beach, and riverine habitat.

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, as well as for enforcing the provisions of the Coastal Act in this area.

Unpermitted activity that has occurred on the subject properties includes the placement of solid materials and structures (such as vehicles and mobile homes or trailers) on land, placement of fill (in and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, and removal of major vegetation, all of which meet the definition of "development" set forth in Section 30106 of the Public Resources Code ("Coastal Act"). The development was undertaken without a Coastal Development Permit ("CDP"), in violation of Coastal Act Section 30600. Therefore, the Commission may issue a Cease and Desist Order under Section 30810 of the Coastal Act. The unpermitted development is also inconsistent with several of the policies in Chapter 3 of the Coastal Act (including those in Sections 30230, 30231, 30233, 30240 and 30250(a)), and is causing continuing resource damage. Therefore, the Commission may issue a Restoration Order under Section 30811 of the Coastal Act. The proposed Orders would direct the Respondent to: 1) cease and desist from conducting or maintaining unpermitted development on the subject properties; 2) remove all unpermitted development from the subject properties, in accordance with the terms of the Orders; and 3) restore impacted areas of the subject properties. The motions to issue the proposed Cease and Desist Order and the proposed Restoration Order are found on pages 4 and 5 of this report.

³ U.S. Fish and Wildlife Service. July 2007. National Wetland Inventory website. U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. <http://www.fws.gov/nwi/>, accessed on August 23, 2007.

II. HEARING PROCEDURES

A. Cease and Desist and Restoration Order

The procedures for a hearing on a Cease and Desist Order and Restoration Order are outlined in 14 CCR Section 13185. See also 14 CCR Section 13195.

For a Cease and Desist Order and Restoration Order hearing, the Chair shall announce the matter and request that all parties 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, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) 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 time 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 13186, incorporating by reference Section 13065. See also 14 CCR Section 13195. 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 and Restoration Order, either in the form recommended by the Executive Director, or as modified by the Commission. Passage of the motion below, per the Staff recommendation or as amended by the Commission, will result in issuance of the Cease and Desist Order and Restoration Order.

III. STAFF RECOMMENDATION

A. Cease and Desist Order

1. Motion

I move that the Commission issue Cease and Desist Order No. CCC-07-CD-05 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-07-CD-05. 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-07-CD-05, 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.

B. Restoration Order

1. Motion

I move that the Commission issue Restoration Order No. CCC-07-RO-03, pursuant to the staff recommendation.

2. Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in the issuance of Restoration Order CCC-07-RO-03. The motion passes only by an affirmative vote of a majority of Commissioners present.

3. Resolution to Issue Restoration Order:

The Commission hereby issues Restoration Order number CCC-07-RO-03, as set forth below, and adopts the findings set forth below on the grounds that 1) development was conducted on the properties without a coastal development permit, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage.

IV. FINDINGS FOR CEASE AND DESIST ORDER CCC-07-CD-05 AND RESTORATION ORDER CCC-07-RO-03⁴

A. Description of Unpermitted Development

Unpermitted development on all three subject properties consists of placement of fill (in and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, and removal of major vegetation. Each of the subject properties also has its own individual additional elements of unpermitted development. Specifically, Property A, located at Block 23, Lot 13 (APN 108-051-018), has at least two mobile homes or trailers and multiple vehicles on

⁴ These findings also hereby incorporate by reference Section I of this August 24, 2007 staff report (“STAFF REPORT AND FINDINGS FOR HEARING ON ISSUANCE OF CEASE AND DESIST ORDER AND RESTORATION ORDER”) in which these findings appear, titled “Summary of Staff Recommendations and Findings.”

site. Property B, located at Block 23, Lot 14 (APN 108-051-019), has at least one mobile home or trailer, at least one vehicle, and debris placed onsite. Property C, located at Block 85, Lot 9 (APN 107-182-10), is used to store at least four boats, a trailer, debris, and one over-turned box van. The Respondent is a party responsible for placing and maintaining the unpermitted development on each of the three subject properties.

The unpermitted development at issue in this matter clearly 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 Coastal Act Section 30600. These findings will, at times, refer to the unique unpermitted development on each of the properties separately; however, where the findings don’t specify an individual property, the phrase “unpermitted development” will be used generally to mean development that has occurred on all three subject properties.

B. History of Violation and Communications Between Respondent and Staff

The subject properties are 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 or public utility infrastructure, minimal road improvements, and is situated tens of miles from police, fire, and ambulance emergency service responders.

The subject properties include, and are surrounded by, estuarine areas and seasonal wetlands, which constitute significant environmentally sensitive habitat areas. According to the U.S. Fish and Wildlife Service National Wetlands Inventory⁵, the subject properties A and B contain Palustrine emergent persistent seasonally flooded wetlands. In its natural state, palustrine emergent wetlands (persistent) are dominated by plant species that normally remain standing at least until the beginning of the next growing season. Common plants found in this habitat include cattails, bulrushes, sawgrass and other sedges, and true grasses, such as reed, manna grasses, sloughgrass, and whitetop. A variety of broad-leafed persistent emergents such as purple loosestrife, dock, waterwillow, and various species of smartweeds are also present. Properties A and B also both contain violet species (mostly *Viola adunca*), the host plant to Oregon Silverspot butterfly, a Federally Threatened Species. Subject property C contains Palustrine scrub-shrub broad-leafed deciduous seasonally flooded wetland. This type of wetlands includes areas dominated by woody vegetation less than 20 feet tall. The species include true shrubs, young trees, and trees or shrubs that are stunted because of environmental conditions. Seasonally flooded wetlands mean that surface water is present for extended periods especially early in the growing season, but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface. Subject property C is especially prone to seasonal flooding (**Exhibit 3k**).

⁵ U.S. Fish and Wildlife Service. July 2007. National Wetland Inventory website. U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. <http://www.fws.gov/nwi/>.

According to the Department of Fish and Game's Lake Earl Wildlife Area Management Plan, dated June 2003, the subject properties A and B contain coastal dunes and coastal maritime forest and property C contains freshwater emergent wetland (**Exhibit 7**). Coastal dune habitat commonly includes plants such as sand verbena (*Abronia latifolia*), beach buckwheat (*Eriogonum latifolium*), beach sagewort (*Artemisia pycnocephala*), silver bursage (*Ambrosia chamissonis*), beach evening primrose (*Camissonia cheiranthifolia*), beach blue grass (*Poa douglasii*), and a variety of other grasses and forbs. Silvery phacelia (*Phacelia argentea*), a plant listed by the California Native Plant Society as rare, is found within this community. Forested wetlands are dominated by trees that can tolerate seasonal or temporary inundation during the dormant period (winter) and saturated soils and/or high groundwater during the growing season (summer). Within the Lake Earl Wildlife Area, forested wetlands are dominated by willows (*Salix hookeriana*, *S. sitchensis*, *S. lasiolepis*, *S. spp.*), red alder (*Alnus rubra*), Sitka spruce (*Picea sitchensis*), skunk cabbage, thimbleberry (*Rubus parviflorus*), Oregon crabapple (*Malus fusca*), and twinberry (*Lonicera involucrata*). The freshwater emergent wetland category includes permanently flooded marshes, wet meadows, isolated ponds, dune hollows, and grazed wet pastures. These wetlands are represented by a high diversity of species and a great deal of intersite variability. Wet meadows are interspersed with wet pasture in low areas that are flooded for short periods, usually in winter. In summer, standing water may not be evident, but soils may be saturated. A mixture of grasses, rushes, and sedges characteristically dominates these meadows. Typical species include tufted hairgrass, reed canary grass, water foxtail (*Alopecurus geniculatus*), velvet grass (*Holcus lanatus*), sweet vernal grass (*Anthoxanthum odoratum*), spikerush, brown-headed rush (*Juncus phaeocephalus*), and skunk cabbage (*Lysichiton americanum*).

The subject properties and connecting roadways serving the subject properties are subject to seasonal inundation by the waters of the nearby coastal lagoon complex known as Lakes Earl and Tolowa. This large estuarine 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 complex supports numerous habitat types, including emergent wetlands, open water, mudflats, flooded pastures, woodland, sandy beach, and riverine habitat, and is host to a number of threatened species (see discussion in Section C.2.b.iv of this report for more details). The subject properties have essentially flat relief and are located at an elevation of approximately 10 feet above sea level.

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 CDPs, as well as for enforcing the provisions of the Coastal Act, in this area.

On August 8, 2007, the Commission issued a Cease and Desist Order and Restoration Order to Respondent to address unpermitted development performed by Respondent on another property in the Pacific Shores subdivision not at issue in this action. While researching the property records during that violation investigation, Commission staff discovered that Respondent owns at least five properties in Pacific Shores. Of these five properties, as of this time, three are known

to contain unpermitted development not previously the subject of Commission action, and these are the three properties subject to this action.

On July 16, 2007, staff received a phone call from the Respondent in response to letters from staff sent to him in an attempt to address his previous Coastal Act violations. During this phone call, staff also raised the issue of the unpermitted development on the subject properties and attempted to discuss a resolution of these violations as well. Respondent acknowledged that he knew of the development and that he had made no attempt to get any permits for the development. During the phone call with Respondent, staff offered the opportunity to Respondent to resolve the violations amicably, but the discussion was unsuccessful. Respondent stated that he was planning to move out of the country in the near future and was not interested in Coastal Commission matters or in taking actions to resolve or address the violations. He told staff that he would refer the matter to his attorney (whom he declined to identify) but staff has never been contacted by any attorney representing Respondent.

Therefore in a letter dated July 23, 2007, the Executive Director of the Commission sent a Notice of Intent (NOI) to commence Cease and Desist Order and Restoration Order Proceedings to Respondent. In an attempt to be as thorough as possible and to ensure notice was received, this letter was sent to the address listed in the County Recorder's Office via regular mail, certified mail, and also by posting a copy at each of the subject properties (**Exhibit 4**). The NOI described the real properties, identified the nature of the violations, named the owner of the properties and informed him of the possibility of recordation of a Notice of Violation ("NOVA") under the Coastal Act. The NOI also stated the basis for issuance of the proposed Orders, stated that the matter was tentatively being placed on the Commission's September 2007 hearing agenda, and, in accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, provided Respondent with the opportunity to respond to allegations in the NOI with a Statement of Defense form and invited him to contact staff to discuss an amicable resolution of the matter. The NOI requested that Respondent submit his response or objection to Commission staff in writing by August 13, 2007, consistent with the deadline requirements set forth in the Commission's regulations.

The certified mail copy of the July 23, 2007 NOI was mailed via certified and regular mail to Respondent at the address listed with the Del Norte County Recorder. It was received and signed for at his address (by a Crystal Garis)⁶. Receipt of the July 23, 2007 NOI was confirmed by a signed receipt card for the certified mail copy of the July 23, 2007 NOI. However, Ms. Garis apparently tried to forward the certified mail copy of the NOI to Respondent at an address in Pacific Shores. Unfortunately, Pacific Shores does not have service by the post office, so the certified mail copy of the NOI letter was ultimately returned to staff. The regular mail copy of the July 23, 2007 NOI that was mailed to Respondent's official address has not been returned, so under the standard practices of the local post office, which have been confirmed by staff, this copy of the NOI was also presumably received at the Respondent's official mailing address. Staff does not have any other official address for Respondent. In anticipation of the potential difficulties involved in mailing notice to owners of Pacific Shores lots (based on staff's past

⁶ Commission staff had been told by Respondent that Ms. Garis is Respondent's daughter-in-law.

experience), and in an abundance of caution to ensure all proper notice was given regarding the proposed enforcement Orders, staff also worked with County code enforcement staff to also provide for delivery of the letter to the sites. On July 25, 2007, Del Norte County code enforcement staff visited the subject properties and posted two copies of the NOI dated July 23, 2007, on stakes at the edge of each of the subject properties. During this site visit, County staff also documented the existing unpermitted development with photographs. The majority of the unpermitted development placed on the subject property by the Respondent was still in place as of July 25, 2007. One of the trailers had been moved off of the subject "property B" at Block 23, Lot 14. However, on August 21, 2007, staff with the California Department of Fish and Game called Commission staff to report that another trailer and vehicle had recently been moved back on to that lot.

On July 26, 2007, the Executive Director of the Commission sent Respondent a NOI to record a Notice of Violation for unpermitted development on each of the subject properties (**Exhibit 5**). Under Section 30812, Respondent had an opportunity to object to such a recordation by August 15, 2007. No objection was received, and on August 22, 2007, a Notice of Violation was sent to the Del Norte County Recorder's office for recordation.

On August 21, 2007, staff called Respondent to again attempt resolution of the violations. Once again, the discussion was unsuccessful. Staff also took the opportunity to remind Respondent of the September, 2007 hearing date and location.

C. Basis for Issuance of Cease and Desist and Restoration Orders

1. 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...

The activities listed in the prior section clearly constitute "development." "Development" is defined by **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...**; construction, reconstruction, demolition, or alteration of the size of any structure...; and the **removal...of major vegetation...** (emphasis added)*

Development requires a CDP in accordance with Section 30600(a) of the Act which provides in pertinent part:

“... in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person... wishing to perform or undertake any development in the coastal zone... shall obtain a coastal development permit.”

No CDP was obtained from the Commission for the development on the property, as required under Coastal Act Section 30600(a) and (c). Consequently, the Commission is authorized to issue CCC-07-CD-05 pursuant to **Section 30810(a)**. The proposed Cease and Desist Order will direct the Respondent to ensure compliance with the Coastal Act by removing the unpermitted development, allowing vegetation to grow back and returning impacted areas of the property to their pre-violation condition.

2. Basis for Issuance of Restoration Order

The statutory authority for issuance of this Restoration Order is provided in Coastal Act Section 30811, which states, in relevant part:

In addition to any other authority to order restoration, the commission... may, after a public hearing, order restoration of a site if it finds that [a.] the development has occurred without a coastal development permit from the commission..., [b.] the development is inconsistent with this division, and [c.] the development is causing continuing resource damage.

a. Development Has Occurred Without a Coastal Development Permit

As previously explained in Section C.1. of this report, Commission staff has verified, and the Respondent did not dispute, that the cited development on the subject properties was conducted without a CDP from the Commission (or from any other entity). The following paragraphs provide evidence that the unpermitted development is also inconsistent with the Coastal Act and is causing continuing resource damage.

b. Unpermitted Development is Inconsistent with Chapter 3 of the Coastal Act

The unpermitted development is inconsistent with **Sections 30230, 30231, 30233, 30240 and 30250(a)** of the Coastal Act. For brevity, the discussion regarding the inconsistency of the unpermitted development with **Sections 30230, 30231, 30233, and 30240** of the Coastal Act is grouped together after the text excerpts of these four sections because the impact discussion for all four sections is related. The inconsistency of the unpermitted development with Section 30250(a) is discussed separately at the end of this section of the report.

i. Section 30230 – Marine resources; maintenance

Coastal Act **Section 30230** states as follows:

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 as follows:

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(a)** states as follows:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

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

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

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

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

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

(6) Restoration purposes.

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

Coastal Act **Section 30233(c)** states as follows:

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" [of which the Lakes Earl and Tolowa lagoon complex is one], 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 as follows:

(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 form an estuarine lagoon complex that comprises the core of the approximately 5,624-acre Lake Earl Wildlife Area, which is managed by the California Department of Fish and Game (“DFG”). The U.S. Fish and Wildlife Service has characterized Lake Earl and Lake Tolowa as one of the most unique and valuable wetland complexes in California. This wetland complex is one of California’s major coastal wetlands, one of DFG’s acquisition priorities, and, because listed among DFG’s 19 coastal wetland Acquisition Priorities, requires heightened protection from fill and other adverse environmental impacts pursuant to **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 properties have essentially flat relief and are located at an elevation of approximately 10 feet above sea level. The subject properties and their connecting roadways are subject to seasonal inundation by the waters of Lakes Earl and Tolowa.

The unpermitted development on the subject properties constitutes a significant alteration, disruption, and negative impact to marine resources and environmentally sensitive coastal wetland habitat (**Sections 30230, 30231, 30233 and 30240**) of the Coastal Act), because of adverse effects of the unpermitted fill and major vegetation removal. Placement of material in wetlands, including material other than dirt or sand, is fill. 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 example, because of adjacent filled areas that prevent water from infiltrating into the ground), then wetland function will be degraded. Therefore, wetland function would be degraded by 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 will not grow, the wetland will not provide the same water filtration, percolation, and stormwater runoff storage function, and habitat value and wildlife use of that feature could be reduced.

The unpermitted development is likely also affecting the biological productivity and water quality of the surrounding area (which is to be protected under **Section 30231** of the Coastal Act). The unpermitted fill is interfering with surface water flow, and potentially causing depletion of natural vegetation buffers. The subject properties have no septic system and no municipal water supply. Commission staff has no information regarding how Respondent is disposing of sewage, or if any existing system is being adequately maintained. The potential for wastewater and septic waste streams percolating into the surrounding area and contaminating the groundwater is high given the absence of waste disposal infrastructure. The subject properties have a low elevation relative to the lagoon’s surface level, presenting the risk that untreated sewage from Respondent’s properties could contaminate the public waters. Furthermore, the Pacific Shores subdivision is characterized by shallow or perched groundwater conditions and underlying sandy soils that are highly permeable. The subject properties’ natural characteristics and geography, combined with Respondent’s unpermitted development, present a high risk of release of untreated sewage into adjoining areas that would pose human health risks to persons who might come in contact with the waste. This unpermitted development also threatens to

adversely affect the water quality and nearby environmentally sensitive habitat area. The unpermitted development at issue here is currently located within and adjacent to the wetland, inconsistent with the setback necessary to protect water quality and biological diversity pursuant to **Section 30231** of the Coastal Act, and it does not maintain a natural vegetation buffer area to protect the wetland habitat, as required by **Section 30231**.

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.

Analysis of Chapter 3 Impacts

No municipal water supply or wastewater treatment facilities are available to serve the subject properties. Although the subject properties are located within an established community services district, the Pacific Shores Subdivision California Water District has not developed water infrastructure or sewage disposal infrastructure to serve the subdivision. As noted above, the Pacific Shores Subdivision also lacks any other public services such as road maintenance, electricity service, mail delivery, fire and police services and access to other emergency service providers.

The unpermitted development on the subject properties 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. In fact, no such services are available and the unpermitted development is having significant adverse effects on coastal resources as described above. Therefore, the unpermitted development is inconsistent with **Section 30250(a)** of the Coastal Act.

c. Unpermitted Development is Causing Continuing Resource Damage

The unpermitted development is causing continuing resource damage, as defined in **Section 13190** of the Commission's regulations (14 CCR), which states:

"The elements of the term 'continuing resource damage,' as such term is used in section 30811 of the Public Resources Code, shall have the following meanings:

"(a) 'Resource' means any resource which is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.

"(b) 'Damage' means any degradation or 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. (emphasis added)

"(c) 'Continuing,' when used to describe 'resource damage', means such damage which continues to occur as of the date of issuance of the Restoration Order."

As described above, the remaining unpermitted development degrades the wetlands, wetlands habitat, water quality, and biological productivity of the wetland, as described in the prior section. These are resources as defined by **13190(a)**, above, and the degradation constitutes damage as defined in **13190(b)**.

Because the unpermitted development remains on the subject properties, and the effects it is having on coastal resources as noted above continue to occur, the resource damage is "continuing" as that term is defined in **Section 13190(c)**, above, as well, and as is required by Coastal Act **Section 30811** for issuance of a Restoration Order. As of this time, all of the unpermitted development that is the subject of these proceedings remains at the subject properties. The unpermitted fill and the removal of vegetation continue to impact the wetlands and the protected resources within and adjacent to the wetland areas by continuing to cause increased erosion, and continuing to prevent the wetlands from existing or functioning.

D. Inconsistency with Del Norte County Code: Title 7 Health and Welfare and Title 14 Buildings and Construction

Although not required for issuance of Orders under Coastal Act Sections 30810 and 30811, relevant sections of the Del Norte County Codes are provided to underscore the inconsistencies of this development with local regulations and policies as well as with the Coastal Act.

The unpermitted development on the subject properties is inconsistent with the following Del Norte County Health and Building Codes regulating recreational vehicles and on-site sewage disposal:

1. County Health and Welfare Code; Recreational Vehicles and Tents

Section 7.09.110 – Purpose

Del Norte Health and Welfare Code Section 7.09.110 states the following:

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.)

Section 7.09.120 – Definitions

Del Norte Health and Welfare Code Section 7.09.120 states the following:

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.

...

"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.)

Section 7.09.210 – Prohibited Activity

Del Norte Health and Welfare Code Section 7.09.210(a) states the following:

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.

Section 7.09.240(a) – Permits

Del Norte Health and Welfare Code Section 7.09.240(a) states the following:

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. (Ord. 97-12 § 2 (part), 1997.)*

Analysis of applicable County Code provisions:

There are several recreational vehicles, as defined by Del Norte County Health and Welfare Code Section 7.09.120 (noted above), located on the subject properties. DFG first reported trailers on the subject properties in October, 2006. These recreational vehicles and other development were first reported to Commission staff after they were observed on the subject property on June 27, 2007, by State Fish & Game staff during a site inspection. DFG staff reports that the development has been on the subject properties for longer than that, however. The County Community Development Department has issued no permit for this use. Furthermore, none of the circumstances listed in section 7.09.240 of the County Health and Welfare Code that authorize the County Community Development Department to issue recreational use permits apply to the subject properties. Photographs of the subject properties taken in June, 2007, and July, 2007, by Commission staff and County Code Enforcement staff indicate that the recreational vehicles have remained on the subject “property A” for at least a month and are evidently being used for permanent lodging purposes in violation of the policies and provisions of sections 7.09.110 and 7.09.210 of the Del Norte County Health and Welfare Code. Respondent confirmed to staff during a phone call on August 21, 2007 that he is using the subject properties for on-going residential purposes.

2. County Buildings and Construction Code; On-Site Sewage Disposal Systems

Section 14.12.050 – Permit or approval required

Del Norte Buildings and Construction Code Section 14.12.050 states the following:

- A. No alternative on-site sewage disposal system shall be constructed, enlarged, altered, repaired, relocated, removed, or*

demolished unless a permit has first been obtained from the health officer.

B. No standard on-site sewage disposal system shall be constructed, enlarged, altered, repaired, relocated, removed, or demolished unless a permit has first been obtained from the building department.(Ord. 2005-25B § 4, 2005; Ord. 88-34 § 2 (part), 1988.).

Section 14.12.060 – General standards, prohibitions, requirements

Del Norte Buildings and Construction Code Section 14.12.060(a-b) states the following:

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.

Analysis of applicable County Code provisions:

As discussed above, the Pacific Shores Subdivision California Water District has not developed a sewage disposal infrastructure. Additionally, Respondent has not obtained or applied for any of the above-mentioned permits or approvals required by Del Norte County for treatment and disposal of sewage generated on the subject properties. Commission staff has no evidence of lawful disposal of sewage, or information regarding how Respondent is disposing of sewage. The potential for wastewater and septic waste streams percolating into the surrounding area and contaminating the groundwater is high given the absence of waste disposal infrastructure.

E. California Environmental Quality Act (CEQA)

The Commission finds that the issuance of Commission Cease and Desist Order CCC-07-CD-05 and Restoration Order CCC-07-RO-03, to compel removal of the unpermitted development and restoration of the subject properties back to pre-development conditions, is exempt from any applicable requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21,000 *et seq.*, for multiple reasons, including that it will not have significant adverse effects on the environment, within the meaning of CEQA. The Orders are exempt from CEQA based on Sections 15061(b)(3) and section 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines, which are in Title 14 of the California Code of Regulations.

F. Findings of Fact

1. James Emerson is an owner of the subject properties, identified as Block 23, Lot 13 (APN 108-051-018), Block 23, Lot 14 (APN 108-051-019), and Block 85, Lot 9 (APN 107-182-10), in the Pacific Shores Subdivision, north of Crescent City, Del Norte

County. He also acknowledged performing unpermitted development on the subject properties.

2. Unpermitted development including placement of fill (in and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, and placement of solid materials (including, depending on the parcel, mobile homes or trailers, boats, and other vehicles) has occurred on the subject properties.
3. No coastal development permit was applied for or obtained for this development.
4. No exemption from the permit requirements of the Coastal Act applies to the unpermitted development on the subject properties.
5. The unpermitted development is inconsistent with several Chapter 3 resource protection policies of the Coastal Act, including Sections 30230, 30231, 30233, 30240, and 30250(a).
6. The unpermitted development is causing continuing resource damages.
7. The unpermitted development is inconsistent with the Del Norte County Health and Welfare and Buildings and Construction Codes, including Sections 7.09.210, 7.09.240, 14.12.050, and 14.12.060.
8. The unpermitted development on the site constitutes a violation of the Coastal Act.
9. On July 16, 2007, Commission staff confirmed with Respondent during a telephone call that unpermitted development existed on the subject properties.
10. On July 23, 2007, the Commission's Executive Director informed Respondent that pursuant to Title 14, California Code of Regulations, Sections 13181(a) and 13191(a), the Commission intended to initiate cease and desist and restoration order proceedings against him, outlined steps in the cease and desist and restoration order process, and provided a Statement of Defense form to Respondent, pursuant to the regulations.
11. The Statement of Defense was due August 13, 2007. No response was received by the deadline set forth in the Commission's July 23, 2007 letter, which was provided in accordance with the deadline requirements in Title 14, California Code of Regulations, Sections 13181(a).

G. Respondent Has Failed to Raise Any Defenses to Issuance of the Orders

Respondent was provided the opportunity to identify his defenses to issuance of these Orders in a written Statement of Defense, as provided in the Commission's Regulations, but has failed to do so.

Section 13181(a) of the Commissions Regulations states, in part:

“The notice of intent shall be accompanied by a ‘statement of defense form’ that conforms to the format attached to these regulations as Appendix A. The person(s) to whom such notice is given shall complete and return the statement of defense form to the Commission by the date specified therein, which date shall be no earlier than 20 days from transmittal of the notice of intent.”

As of the date of this report, Respondent had not presented any defenses to the allegations as set forth in the July 23, 2007 NOI. The final date for submittal of the statement of defense form was August 13, 2007. Respondent did not submit the SOD by the August 13, 2007 deadline, and did not request additional time to do so. Since the completion of a Statement of Defense form is mandatory under Section 13181, Respondent has failed to raise and preserve any defenses that he may have. The Statement of Defense is necessary to enable the Executive Director to prepare a recommendation to the Commission as required by Section 13183 of the Commission’s Regulations that includes rebuttal evidence to matters raised in the Statement of Defense and summarizes any unresolved issues. Since Respondent did not submit an Statement of Defense, Respondent has waived his right to present defenses for the Commission’s consideration in this matter.

Staff recommends that the Commission issue the following Cease and Desist Order and Restoration Order:

**CEASE AND DESIST ORDER NO. CCC-07-CD-05 AND
RESTORATION ORDER NO. CCC-07-RO-03**

1.0 PERSONS SUBJECT TO THESE ORDERS

The persons subject to Cease and Desist Order No. CCC-07-CD-05 and Restoration Order No. CCC-07-RO-03 (hereinafter, “Orders”) are James Emerson, his employees, agents, contractors, and anyone acting in concert with the foregoing, and successors in interest and future owners of the subject properties (hereinafter, “Respondent”).

2.0 IDENTIFICATION OF SUBJECT PROPERTIES

The properties that are the subject of these Orders are Block 23, Lot 13 (APN 108-051-018), Block 23, Lot 14 (APN 108-051-019), and Block 85, Lot 9 (APN 107-182-10), in the Pacific Shores Subdivision, north of Crescent City, in Del Norte County (hereinafter, “subject properties”). Unless otherwise specified, all requirements specified in these Orders apply equally to each of these lots.

3.0 DESCRIPTION OF COASTAL ACT VIOLATION

The unpermitted development on the subject properties that is the subject of these Orders includes: 1) placing fill in and/or adjacent to wetlands; 2) changing the intensity of use from vacant land to residential uses; 3) removing major vegetation; and 4) placing and maintaining structures on the properties including, but not limited to, storage of vehicles (trucks, boats, and an overturned box van), trailers and/or motor homes.

4.0 COMMISSION AUTHORITY TO ACT

The California Coastal Commission (“Commission”) is issuing these Orders pursuant its authority under Sections 30810 and 30811 of the California Public Resources Code (“PRC”).

5.0 FINDINGS

These Orders are being issued on the basis of the findings adopted by the Commission on September 6, 2007, as set forth in the foregoing document entitled: STAFF REPORT AND FINDINGS FOR HEARING ON ISSUANCE OF CEASE AND DESIST ORDER AND RESTORATION ORDER, and Exhibits thereto.

6.0 EFFECTIVE DATE

These Orders shall become effective as of the date of issuance by the Commission and shall remain in effect permanently unless and until rescinded by the Commission.

7.0 COMPLIANCE OBLIGATION

Strict compliance with the terms and conditions of these Orders is required. If the Respondent fails to comply with any of the requirements of these Orders, including any deadline contained herein, it will constitute a violation of the Order(s) and may result in the imposition of civil penalties of up to six thousand dollars (\$6,000) per day for each day in which the compliance failure persists, in addition to any other penalties authorized under Chapter 9 of the Coastal Act, PRC §§ 30800-30824, including exemplary damages under PRC Section 30822.

8.0 EXTENSIONS OF DEADLINES

If the Executive Director of the Commission determines that the Respondent has made a showing of good cause, he/she may grant extensions of the deadlines contained herein. Any extension requests must be made in writing to the Executive Director and received by the Commission staff at least 10 days prior to the expiration of the subject deadline.

9.0 SITE ACCESS

Respondent shall provide Commission staff and staff of any agency having jurisdiction over the work being performed under these Orders with access to the subject properties at all reasonable times. Nothing in these Orders are intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission and other relevant agency staff may enter and move freely about the following areas: (1) the portions of the subject properties on which the violations are located, (2) any areas where work is to be performed pursuant to these Orders or pursuant to any plans adopted pursuant to these Orders, (3) adjacent areas of the properties, and (4) any other area where evidence of compliance with these Orders may lie, as necessary or convenient to view the areas where work is being performed pursuant to the requirements of these Orders or evidence of such work is held, for purposes including but not limited to inspecting records, operating logs, and contracts relating to the subject properties and overseeing, inspecting, documenting, and reviewing the progress of Respondent in carrying out the terms of these Orders.

10.0 APPEALS AND STAY RESOLUTION

Pursuant to PRC Section 30803(b), the Respondent, against whom these Orders are issued, may file a petition with the Superior Court for a stay of these Orders.

11.0 GOVERNMENT LIABILITY

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by the Respondent in carrying out activities authorized

under these Orders, nor shall the State of California be held as a party to any contract entered into by the Respondent or his agents in carrying out activities pursuant to these Orders.

12.0 GOVERNING LAW

These Orders shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California, which apply in all respects.

13.0 NO LIMITATION OF 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.

14.0 SEVERABILITY

If a court finds any provision of these Orders invalid or unenforceable under any applicable law, such provision shall, to that extent, be deemed omitted, and the balance of the Orders will be enforceable in accordance with its own terms.

15.0 CEASE AND DESIST ORDER REQUIREMENTS

Pursuant to its authority under PRC Section 30810, the Commission hereby authorizes and orders Respondent to:

- A. Cease and desist from maintaining unpermitted development (as described in Section 3.0, above) on the subject properties,
- B. Cease and desist from conducting any further unpermitted development on the subject properties,
- C. Remove all unpermitted development, including, but not limited to, fill within and adjacent to the wetland, mobile homes and/or trailers, and any vehicles being stored on the property, from the subject properties, and
- D. Remedy the violations at the subject properties in a manner that will ensure compliance with the Coastal Act by complying with the requirements of these Orders as described herein.

16.0 RESTORATION ORDER REQUIREMENTS

Pursuant to its authority under PRC Section 30811, the Commission hereby orders and authorizes the following:

16.1 REMOVAL AND COMPLIANCE PLAN

A. Within 60 days of the issuance of these Orders, Respondent shall submit a Removal and Compliance Plan, for the review and approval of the Executive Director, to address all unpermitted development on the properties, including, but not limited to, all of the unpermitted development listed in Section 3.0 of these Orders, by, at a minimum: (i) providing for the removal of any fill placed on the properties, all structures, and stored vehicles; (ii) revegetating the site consistent with section 16.2 below; and (iii) reversing Respondent's unpermitted conversion of the subject properties to residential uses by ceasing to use the subject properties for residential purposes. All solid materials that have been placed on the subject properties without CDPs constitute unpermitted development and must be completely removed. The removal of the fill within the wetland area must be addressed in the Restoration Plan, as described below.

B. The Removal and Compliance Plan must contain the following provisions:

- a. A detailed description of proposed removal activities.
- b. A timetable for removal.
- c. Identification of the location of a disposal site for removed material. The site must be a licensed disposal facility authorized to accept such material. If the disposal site is located in the Coastal Zone and is not an existing sanitary landfill, a Coastal Development Permit shall be required. Any hazardous materials must be transported to a licensed hazardous waste disposal facility in compliance with all applicable laws.

C. If mechanized equipment is used, the Removal and Compliance Plan must contain the following provisions:

- a. Type of mechanized equipment required for removal activities;
- b. Length of time equipment will be used;
- c. Routes utilized to bring equipment to and from the property;
- d. Storage location for equipment when not in use during removal process;
- e. Hours of operation of mechanized equipment;
- f. Contingency plan in case of a spill of fuel or other hazardous release from use of mechanized equipment that addresses clean-up and disposal of the hazardous materials and water quality concerns;
- g. Measures to be taken to protect water quality.

D. The Removal and Compliance Plan shall indicate that removal shall **commence no later than 10 days after the approval of the Removal and Compliance Plan by the Executive Director.**

E. The Removal and Compliance Plan shall be fully implemented and all work shall be consistent with the terms of the final approved plan, including that removal and compliance shall be completed according to the time schedule provided in the approved plan, and in compliance with all California and other applicable laws. Thereafter, Respondent shall restore the subject property in accordance with Sections 16.2 and 16.3, below.

F. Within **10 days of completion of the removal**, submit, for the review and approval of the Executive Director, a report documenting the complete removal of the unpermitted development specified in Section 3.0. The report shall include plans showing the location on the subject property where all of the removed development lay at the time of this order and photographs that clearly show all portions of the subject property, the locations of which are annotated to a copy of the plans required by Section 15.4.

1. Should the Executive Director determine that further recommendations and requirements for additional removal and compliance activities are required, a revised or supplemental Removal and Compliance Plan will be prepared and submitted to the Executive Director.
2. The Executive Director will determine if the revised or supplemental Removal and Compliance Plan must be processed as a CDP, a new Restoration Order, or a modification of these Orders, and an appropriate schedule for completion.

16.2 REVEGETATION PLAN

A. Within 45 days of the issuance of these Orders, Respondent shall submit, for the review and approval of the Executive Director, a Revegetation Plan that demonstrates that the areas impacted by the construction, placement, or removal of unpermitted development on the subject property will be restored using planting of species endemic to and appropriate for this portion of Del Norte County, including wetland and coastal dunes. The Revegetation Plan shall include all areas impacted by the unpermitted development (hereinafter "Planting Area") and demonstrate that the disturbed areas will have a similar plant density, total cover and species composition to that typical of an undisturbed wetland area in this portion of Del Norte County within 5 years from the initiation of revegetation activities.

B. The Revegetation Plan shall be prepared by a qualified restoration ecologist or resource specialist, with credentials acceptable to the Executive Director, and it shall (i) propose the use of species of vegetation native to Pacific Shores, (ii) provide for a result consistent with surrounding native plant communities, and (iii) include indicators to be used in monitoring reports to establish the level of success of the Revegetation Plan.

C. All revegetation activities pursuant to the approved Revegetation Plan shall be implemented in accordance with the schedule and requirements of the approved Revegetation Plan and no later than 10 days after the completion of the requirements of the Removal and Compliance Plan. The Revegetation shall be performed using accepted planting procedures required by the restoration ecologist or resource specialist and approved by the Executive Director. Such planting procedures may suggest that planting would best occur during a certain time of the year. If so, and if this necessitates a change in the planting schedule, the 10 day deadline to implement the Revegetation Plan may be extended as provided for under the provisions of Section 8.0, herein.

D. The Revegetation Plan shall describe the monitoring and maintenance methodology and shall require Respondents to submit a written report (“ Report”) on an annual basis for a period of five years from the date of implementation of the Revegetation Plan (no later than December 31st of each year), for the review and approval of the Executive Director, evaluating compliance with the approved Removal and Compliance Plan. If needed, the annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet the objective of significant evidence of successful reestablishment of vegetation native to the area.

1. The annual reports shall also include photographs taken annually after completion of the removal and restoration work, from the same pre-designated locations (annotated to a copy of the site plans) that clearly show where the restoration was conducted, indicating the progress of recovery in the restoration areas.
2. At the end of the five-year period, Respondents shall submit a final detailed report prepared by a qualified resource specialist for the review and approval of the Executive Director.
3. Should the Executive Director determine that further recommendations and requirements for additional restoration activities are required, a revised or supplemental Revegetation Plan will be prepared by a qualified restoration ecologist or resource specialist, with credentials acceptable to the Executive Director.
4. The Executive Director will determine if the revised or supplemental revegetation plan must be processed as a CDP, a new Restoration Order, or a modification of these Orders, and an appropriate schedule for completion.

E. Within 7 days following the complete removal of all unpermitted development Respondents shall begin implementation of the Revegetation Plan in accordance with the requirements and schedule contained therein, and in compliance with the Coastal Act and other applicable laws.

16.3 GOALS AND PERFORMANCE STANDARDS

A. Restoration of the subject properties shall include removal of all unpermitted development, re-contouring of the wetland that was damaged by the placement of fill, and revegetation of all areas on the subject property impacted by the unpermitted development. Revegetation shall consist of native plant species endemic to this portion of Del Norte County.

B. The goal of the restoration shall be restoration and revegetation of all graded areas and areas impacted by the unpermitted development so that disturbed areas show significant evidence of resembling their pre-development condition within 12 months from the initiation of revegetation activities.

17.0 SUBMITTAL REQUIREMENTS

All plans, reports, photographs and any other materials required by these Orders shall be sent to:

California Coastal Commission
Headquarters Enforcement Program
Attn: Erin M. Haley
45 Fremont Street, Suite 2000
San Francisco, CA 94105
Facsimile (415) 904-5235

With a copy sent to:

California Coastal Commission
North Coast District
710 "E" Street, Suite 200
Eureka, CA 95501-6813

18.0 EXECUTIVE DIRECTOR'S REVIEW

If the Executive Director determines that any modifications or additions to the submitted Plans under 16.0 are necessary, he shall notify Respondents. Respondents shall complete the requested modifications and resubmit the Removal Plan for approval within 10 days of the notification.

Issued this 6th day of September, 2007 in Eureka, California

Peter M. Douglas, Executive Director
California Coastal Commission

Date

Exhibits

1. Site map.
2. Aerial photograph.
3. Site photographs.
4. Notice of Intent (NOI) dated July 23, 2007 to commence Cease and Desist Order and Restoration Order Proceedings.
5. NOI dated July 26, 2007 to record a Notice of Violation Action (“NOVA”).
6. Wetlands overlay map of Lake Earl Wildlife Area.
7. Map titled “Major Vegetation Types in and Adjacent to the Lake Earl Wildlife Area”, from the Lake Earl Management Plan, adopted January 2003.





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Exhibit 2. 2002 Aerial photograph of Pacific Shores subdivision. Approximate location of subject properties marked with stars.

Exhibit 2
CCC-07-CD-05
CCC-07-RO-03
(Emerson II)



Exhibit 3a. July 31, 2007 photo of Block 23, Lot 13, “property A”, unpermitted fill, trailers, and multiple vehicles.



Exhibit 3b. July 31, 2007 photo of Block 23, Lot 13, “property A”, closer view of unpermitted fill, trailers, and multiple vehicles on subject property.

Exhibit 3 a-b
CCC-07-CD-05
CCC-07-RO-03
(Emerson II)



Exhibit 3c. July 31, 2007 photo of Block 23, Lot 13, “property A”, unpermitted trailers, vehicles, and fill on subject property.



Exhibit 3d. July 31, 2007 close up view of Block 23, Lot 13, “property A”, unpermitted trailers and vehicles on subject property, and a view of Pacific Shores natural vegetation.



Exhibit 3e. July 31, 2007 photo of Block 23, Lot 14, “property B”, unpermitted fill at subject property. Also a view of the July 26, 2007 NOVA NOI posted on sign.



Exhibit 3f. July 25, 2007 photo of Block 23, Lot 14, “property B”, debris and unpermitted fill on subject property.



Exhibit 3g. July 25, 2007 photo of Block 85, Lot 9, “property C”, unpermitted trailer, boat, and fill at subject property.



Exhibit 3h. July 25, 2007 photo of Block 85, Lot 9, “property C”, unpermitted over-turned box van, trailer, and fill at subject property. Also, a view of the July 23, 2007 NOI posted on a stake behind the van.

Exhibit 3 g-h
CCC-07-CD-05
CCC-07-RO-03
(Emerson II)



Exhibit 3i. July 25, 2007 photo of Block 85, Lot 9, “property C”, unpermitted boats, over-turned box van, and fill at subject property. Also, July 23, 2007 NOI posted on stake.



Exhibit 3j. July 31, 2007 photo of Block 85, Lot 9, “property C”, unpermitted trailer, over-turned box van, and fill at subject property. Also, posted July 26, 2007 NOVA NOI.



Exhibit 3k. April, 2007 photo of Block 85, Lot 9, “property C”, underwater during regular, seasonal inundation. Department of Fish and Game staff reported that the unpermitted trailer, boats, and over-turned truck were moved onto the subject property in June, 2007, after the water receded.

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 Mail (#7006 3450 0001 1752 5712),
Regular Mail, and Hand Delivery

July 23, 2007

Mailing Address

James R. Emerson
18925 Ridge Road
Red Bluff, CA 96080-9260

Hand Delivery:

Block 23, Lot 13 (APN 108-051-018); Block 23, Lot 14 (APN 108-051-019); Block 65, Lot 10 (APN 107-182-10)

Subject:

Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings

Violation Nos.:

V-1-05-010; V-1-05-011; V-1-07-016

Location:

All three sites are within the Pacific Shores subdivision in Del Norte County. V-1-05-011: Block 23, Lot 13 (APN 108-051-018); V-1-05-010: Block 23, Lot 14 (APN 108-051-019); V-1-07-016: Block 65, Lot 10 (APN 107-182-10)

Violation Description:

V-1-05-011: Unpermitted placement of fill (in and/or adjacent to wetlands), change in intensity of use of land from vacant lot to residential uses, removal of major vegetation, and placement of at least one mobile home.

V-1-05-010: Unpermitted placement of fill (in and/or adjacent to wetlands), change in intensity of use of land from vacant lot to residential uses, removal of major vegetation, and placement of at least one trailer and/or mobile home, and several vehicles.

V-1-07-016: Unpermitted placement of fill (in and/or adjacent to wetlands), change in intensity of use of land from vacant lot to residential uses, removal of major vegetation, and placement of at least four boats and at least one box van.

Dear Mr. Emerson:

As indicated in the Coastal Commission staff's letter to you dated July 3, 2007, you are listed as the owner or co-owner of several lots in the Del Norte County subdivision of Pacific Shores, including APNs 107-182-10, 108-051-019, and 108-051-018. These properties (the "subject properties") are located in an area with pervasive environmentally sensitive habitat areas (ESHAs), which are afforded protection under the Coastal Act. The ESHAs include wetlands and habitat for the Oregon Silverspot butterfly, a species listed as threatened by the federal government. No water or sewer services have been developed for Pacific Shores, and the Commission has not approved any coastal development permit ("CDP") applications for residential development on individual lots in Pacific Shores. There are no CDPs authorizing any development on any of the three lots in question.

Commission staff sent you a letter dated June 28, 2007, via certified mail (#7005 3110 0002 6240 1073) and regular mail to inform you of the violations occurring on another property which you own, at Block 41, Lot 22 (APN 108-161-22). In that letter, staff highlighted your ownership of other parcels in Pacific Shores, including the subject properties, and reminded you that any activity on those properties that constitutes "development," as that term is defined pursuant to Section 30106 of the California Coastal Act¹ (quoted below), requires a CDP. Also in that letter, staff noted that the Executive Director of the Coastal Commission is authorized, after providing notice and the opportunity for a hearing as provided in section 30812 of the Coastal Act, to record a Notice of Violation against properties with unpermitted development, under Section 30812 of the Coastal Act, as well as to seek other administrative and judicial remedies to resolve cited violation activity. The purpose of such notice is to avoid any third parties from unwittingly purchasing a property with an unresolved Coastal Act violation on the property. On July 3, 2007, I sent to you a Notice of Intent to record a Notice of Violation against the property at Block 41, Lot 22, and to commence Cease and Desist Order and Restoration Order Proceedings. This letter also informed you that all development within the Coastal Zone must receive a CDP.

Commission staff has confirmed the existence of unpermitted development on three additional lots you own in Pacific Shores. The unpermitted development includes, but is not limited to, placement of fill (in and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, and removal of major vegetation at all three lots. The unpermitted development also includes the long-term storage of a camper/mobile home at Block 23, Lot 13, (APN 108-051-018); at least two trailers/mobile homes, and several vehicles at Block 23, Lot 14 (APN 108-151-019); and at least four boats and one box van full of trash at Block 65, Lot 10 (APN 107-182-010). None of this development has been permitted under the Coastal Act. Therefore, the purpose of this letter is to notify you of my intent, as Executive Director of the Commission, to record a Notice of Violation ("NOVA") against each of the subject properties to reflect the fact that development has occurred thereon in violation of the Coastal Act (for failure to secure a

¹ The Coastal Act is codified in sections 30,000 to 30,900 of the California Public Resources Code ("PRC"). All further section references, including references to sections of the Coastal Act, are actually to sections of the PRC, and thus, to the Coastal Act, unless otherwise indicated.

permit), and to commence proceedings for issuance of a Cease and Desist Order and Restoration Order to address the unpermitted development. The subject properties are in the subdivision of Pacific Shores, in Del Norte County, and contain and are adjacent to environmentally sensitive habitats.

Development is defined, for purposes of the Coastal Act, in Section 30106, 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 and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, major vegetation removal, and placement of vehicles, boats, and campers, trailers and/or mobile homes that have occurred on the subject properties each constitute development under the Coastal Act. Moreover, none of it qualifies for any of the exemptions in the Coastal Act. As such, each of these activities is subject to the requirement in Section 30600(a) that anyone performing such non-exempt development within the Coastal Zone obtain a Coastal Development Permit ("CDP"). These activities all occurred without the benefit of CDPs, which means they are 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 properties. Collectively, the Cease and Desist Order and Restoration Order will direct you to cease and desist from performing or maintaining any unpermitted development on the subject properties, will require the removal of unpermitted development, and will order any necessary restoration of the areas impacted by the unpermitted development to return the subject properties to their pre-violation condition. The Cease and Desist Order and Restoration Order are discussed in more detail in the following sections of this letter.

Cease and Desist Order

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

(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. . . .

As the Executive Director of the Commission, I am issuing this Notice of Intent to commence Cease and Desist Order proceedings because unpermitted development that requires a permit from the Commission has occurred at the subject properties. This unpermitted development includes placement of fill (in and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, major vegetation removal, and placement of vehicles, boats, and campers, trailers and/or mobile homes. The Cease and Desist Order would order you to desist from maintaining unpermitted materials and structures and from performing any further unpermitted development on your properties.

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

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 activities meet the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) Unpermitted development (development not authorized by a coastal development permit from the appropriate entity) consisting of the placement of fill (in and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, major vegetation removal, and placement of vehicles, boats, campers, trailers and/or mobile homes has occurred on the subject properties.
- 2) This development is inconsistent with the resource protection policies of the Coastal Act. The subject properties are adjacent to (and may contain some) biologically significant

wetlands. The project may involve fill of wetlands (see Section 30233), but even if it does not, the unpermitted development constitutes a significant disruption and negative impact to the quality of environmentally sensitive wetland habitat (see Section 30240), as well as to the quality of coastal waters contained in nearby Lakes Earl and Tolowa (see Sections 30230 and 30231). The unpermitted placement of vehicles and structures has resulted in major vegetation removal and disturbance to other environmentally sensitive habitat areas (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 30250(a) 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 and marine and other aquatic resources, which are resources protected by the Coastal Act and listed in the definition of resource in Section 13190(a) of the Commission's regulations. Such impacts meet the definition of damage provided in Section 13190(b) of those regulations: "*any degradation or 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 and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, major vegetation removal, and placement of vehicles, box vans, boats, and campers, trailers and/or mobile homes. Finally, the unpermitted development remains, and the effects thereof continue to occur and persists at the subject properties; therefore, the damage to resources protected by the Coastal Act is "continuing," as that term is defined in Section 13190(c) of the Commission's regulations.

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 properties to the condition they were in before the unpermitted development occurred. Restoration will require removal of all unpermitted development on the subject properties and may include other actions required to restore the subject properties to their 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, in part, 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 removal requirement that the Commission may impose as part of any Restoration Order it issues will have as its purpose the restoration of the subject properties 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 per violation. 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 per violation for each day in which each 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.

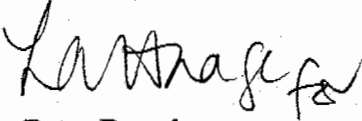
Although we would like to resolve this informally and would like to work with you to do so, we also note that the Executive Director of the Coastal Commission is authorized, after providing notice and the opportunity for a hearing as provided in section 30812 of the Coastal Act, to record a Notice of Violation against the subject property, under Section 30812 of the Coastal Act, as well as to seek other administrative and judicial remedies. The purpose of such notices is to avoid any potential parties from unwittingly purchasing a property with a Coastal Act violation on the property. **If you are willing to resolve the violation and hereby avoid the potential for such a recordation, please contact Erin Haley at the Commission's San Francisco office by Thursday, July 26, 2007.**

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 Erin Haley, no later than August 13, 2007.**

The Commission staff is tentatively scheduling the hearing for the Cease and Desist Order and Restoration Order during the Commission meeting that is scheduled for the week of September 5-7, 2007 in Eureka, CA. We prefer to resolve violations amicably when possible. One option that you may consider is agreeing to a "consent order". A consent order is similar to a settlement agreement. A consent order would provide you with an opportunity to resolve this matter consensually, and to have greater input into the process and timing of removal of the unpermitted development and restoration of the subject properties, and would allow you to negotiate a penalty amount with Commission staff. If you are interested in negotiating a consent order,

please contact Erin Haley at (415) 904-5220 or send correspondence to her attention at the address listed on the letterhead when you receive this letter to discuss options to resolve this case. Again, we hope we can resolve this matter amicably and look forward to hearing from you.

Sincerely,



Peter Douglas
Executive Director

cc without encl: Lisa Haage, Chief of Enforcement
Alex Helperin, Staff Counsel
Nancy Cave, Northern California Enforcement Supervisor
Erin Haley, Statewide Enforcement Staff
Bob Merrill, North Coast District Manager

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

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 (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 **August 10, 2007** to the Commission's enforcement staff at the following address:

Erin Haley
45 Fremont Street, Suite 2000
San Francisco, CA 94105

If you have any questions, please contact Erin Haley at 415-597-5894.

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

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

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

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



Via Certified Mail (#7006 3450 0001 1752 5736).
Regular Mail, and Hand Delivery

July 26, 2007

Mailing Address

James R. Emerson
18925 Ridge Road
Red Bluff, CA 96080-9260

Hand Delivery:

Block 23, Lot 13 (APN 108-051-18); Block 23, Lot 14 (APN 108-051-19); Block 65, Lot 10 (APN 107-182-10)

Subject:

Notice of Intent to Record Notice of Violations

Violation Nos.:

V-1-05-010; V-1-05-011; V-1-07-016

Location:

All three sites are within the Pacific Shores subdivision in Del Norte County. V-1-05-011: Block 23, Lot 13 (APN 108-051-18); V-1-05-010: Block 23, Lot 14 (APN 108-051-19); V-1-07-016: Block 65, Lot 10 (APN 107-182-10)

Violation Description:

V-1-05-011: Unpermitted placement of fill (in and/or adjacent to wetlands), change in intensity of use of land from vacant lot to residential uses, removal of major vegetation, and placement of at least one mobile home.

V-1-05-010: Unpermitted placement of fill (in and/or adjacent to wetlands), change in intensity of use of land from vacant lot to residential uses, removal of major vegetation, and placement of at least one trailer and/or mobile home, and several vehicles

V-1-07-016: Unpermitted placement of fill (in and/or adjacent to wetlands), change in intensity of use of land from vacant lot to residential uses, removal of major vegetation, and placement of at least four boats and at least one box van

Dear Mr. Emerson:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to record a Notice of Violation for unpermitted development located on your property. Our previous Notice of Intent letter (dated July 23, 2007) was to notify you of my intention to commence proceedings for a Cease and Desist order and a Restoration Order for the unpermitted development. The letter also mentioned that Section 30812 of the Coastal Act states that, after providing notice and the opportunity to make written request for a hearing, as the Executive Director of the Commission I have the authority to record a Notice of Violation against the subject property. Also mentioned in the previous letter, Section 30812 further authorizes other administrative and judicial remedies. In that letter, we invited you to respond by July 26, 2007 in an effort to resolve the violation and avoid recordation of Notice of Violation. As of today, July, 26, 2007, we have received no response from you.

The purpose of recording a Notice of Violation on the subject property is to give notice to any potential purchasers and to avoid such purchasers from unknowingly purchasing a property with a Coastal Act violation on the property.

As you know from the previous Notice of Intent letter, the unpermitted development in question is located on property you own at Block 23, Lot 13, (APN 108-051-018); Block 23, Lot 14 (APN 108-151-019); and Block 65, Lot 10 (APN 107-182-010) (the "subject properties"), all in the Pacific Shores Subdivision in Del Norte County. The unpermitted development on the subject properties includes, but is not limited to, placement of fill (in and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, and removal of major vegetation at all three lots. The unpermitted development also includes the long-term storage of a camper/mobile home at Block 23, Lot 13, (APN 108-051-18); at least two trailers/mobile homes, and several vehicles at Block 23, Lot 14 (APN 108-151-19); and at least four boats and one box van full of trash at Block 65, Lot 10 (APN 107-182-10). The legal descriptions of these properties are as follows:

A PARCEL OF LAND LOCATED IN THE STATE OF CALIFORNIA, COUNTY OF DEL NORTE, WITH A SITUS ADDRESS OF 445 TELL BLVD, CRESCENT CITY CA 95531-7920 CURRENTLY OWNED BY EMERSON JAMES R/MITCHELL JEANNIE HAVING A TAX ASSESSOR NUMBER OF 108-051-18 AND DESCRIBED IN DOCUMENT NUMBER 5924 DATED 09/06/2006 AND RECORDED 09/08/2006.

A PARCEL OF LAND LOCATED IN THE STATE OF CALIFORNIA, COUNTY OF DEL NORTE, WITH A SITUS ADDRESS OF 455 TELL BLVD, CRESCENT CITY CA 95531-7920 CURRENTLY OWNED BY EMERSON JAMES R/MITCHELL JEANNIE HAVING A TAX ASSESSOR NUMBER OF 108-051-19 AND BEING THE SAME PROPERTY MORE FULLY DESCRIBED AS MH ID # NG1454 AND DESCRIBED IN DOCUMENT NUMBER 5928 DATED 09/06/2006 AND RECORDED 09/08/2006.

A PARCEL OF LAND LOCATED IN THE STATE OF CALIFORNIA, COUNTY OF DEL NORTE, WITH A SITUS ADDRESS OF 400 CLOUTIER ST, CRESCENT CITY CA CURRENTLY OWNED BY EMERSON JAMES R HAVING A TAX ASSESSOR NUMBER OF 107-182-10 AND DESCRIBED IN DOCUMENT NUMBER 411-537 DATED 01/15/2005 AND RECORDED 01/26/2005.

This letter is being sent to you as the owner of record of the above subject properties.

Exhibit 5
CCC-07-CD-05
CCC-07-RO-03
(Emerson II)
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Notice of Violation

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

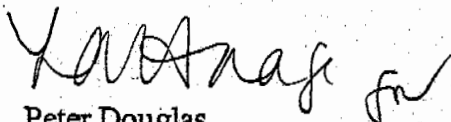
Whenever the executive director of the Commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed by regular and certified mail 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, as discussed above, unpermitted development has occurred at your property, in violation 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 respond in writing, to the attention of Erin Haley, using the address provided on the letterhead, within twenty days of the postmarked mailing of this notice (i.e., August 15, 2007).** If you fail to object within that twenty-day period, we are authorized to record the Notice of Violation against your property in the Del Norte County Records' office pursuant to Section 30812 of the Coastal Act. If you object to this recordation and believe that there has not been unpermitted development on your property, please provide us with any information that you believe supports your contention with your objection. For your information, under additional provisions of Section 30812, any such recordation of a Notice of Violation will be removed after the final resolution of the violations, and you will be provided with a "clearance letter" confirming such action at that time.

If you object to this recordation, and desire a hearing, such a hearing would focus on whether a violation exists on the subject property and would tentatively be heard during the Commission meeting, which is scheduled for September 5-7, 2007 in Eureka, CA. This will be the same meeting and the same hearing item as the scheduled hearing for the proposed Cease and Desist Order and Restoration Order.

As noted in our previous communication, we prefer to resolve violations amicably when possible. If you are interested in speaking about anything regarding the on-going enforcement actions for your property, please contact Erin Haley at (415) 904-5220 or send correspondence to her attention at the address listed on the letterhead. We look forward to working with you to resolve these enforcement actions.

Sincerely,



Peter Douglas
Executive Director

cc without encl: Lisa Haage, Chief of Enforcement
Alex Helperin, Staff Counsel
Nancy Cave, Northern California Enforcement Supervisor
Erin Haley, Statewide Enforcement Staff
Bob Merrill, North Coast District Manager

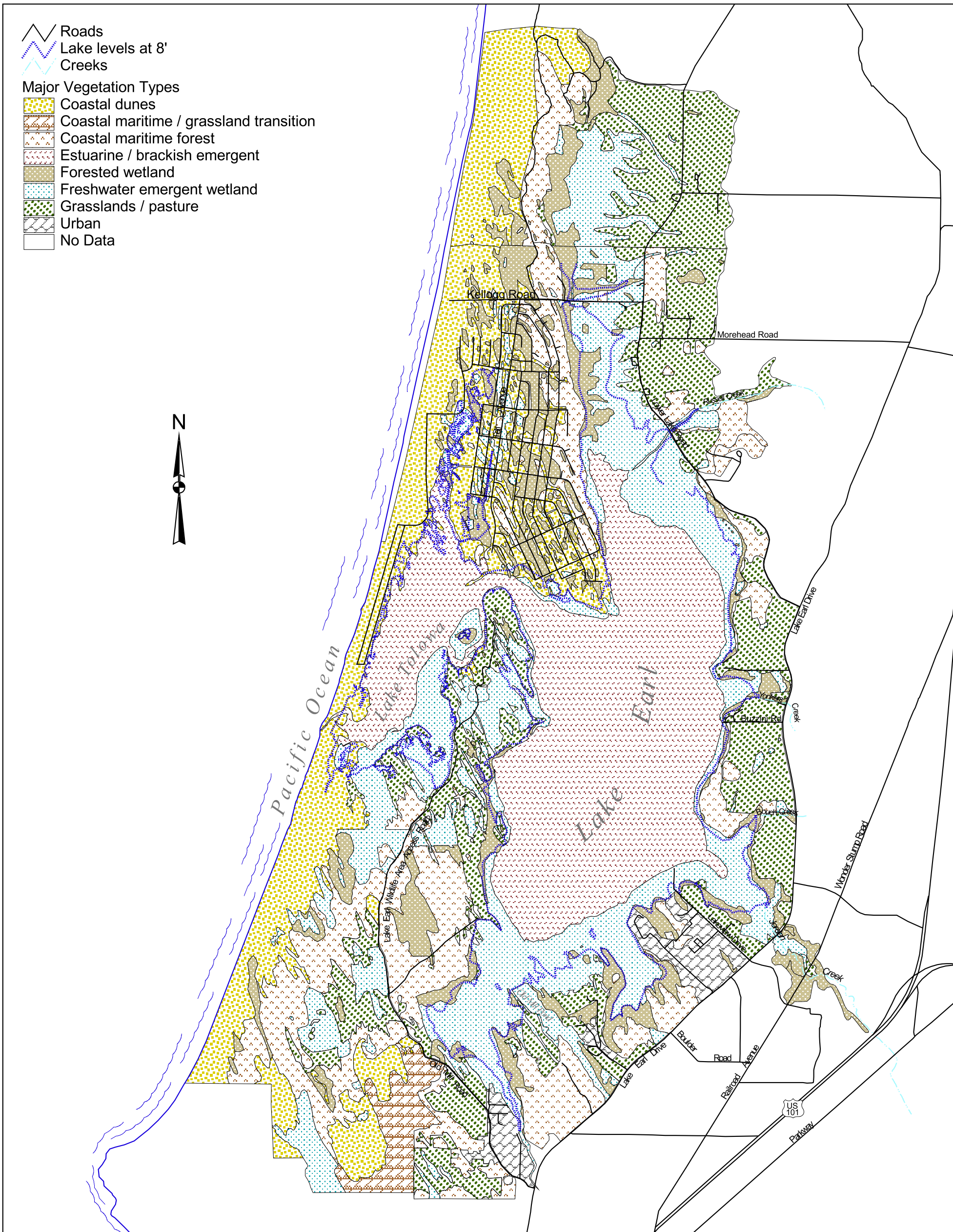


Figure 14. Major Vegetation Types in and Adjacent to the Lake Earl Wildlife Area

This map is for planning purposes only.
 Lake levels are shown at 8 feet MSL (Department of Water Resources, 2001).
 Data sources: Vegetation (modified), Tetra Tech, Inc. (1999), Eicher (1988), and NWI (1987).
 Vegetation verified by aerial photos, Richard B. Davis (1996). Roads (2000)(modified) and
 Facilities (2002), California Department of Fish and Game. Streams (2001), California Department of Forestry.
 Map: California Department of Fish and Game, Eureka (July 2002).