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# F6a

## MEMORANDUM

Date: August 7, 2008

To: Commissioners and Interested Parties

From: Peter Douglas, Executive Director  
Robert S. Merrill, District Manager – North Coast District

Subject: **Addendum to Commission Meeting for Friday, August 8, 2008**  
**North Coast District Item F6a, Appeal No. A-1-DNC-06-037 (JHP, LLC)**

### STAFF NOTE

This addendum presents certain revisions and additions to the staff recommendation for approval of the project with conditions mailed on July 25, 2008.

The revisions to the staff recommendation consist of corrections and clarifications of some of the staff notes and recommended special conditions and findings. These revisions include: (1) modifying Staff Note No. 3 to correct an outdated reference to the applicant's revised project description and project plans and clarifying that the proposed stormwater runoff facilities include certain culverts and outfall pipes that are associated with the desiltation basins and bioswales; (2) modifying Special Condition No. 2 which restricts the use of wetland areas on the property and 100-foot buffer areas around the wetlands to open space to clarify that the installation and maintenance of outfalls for the desiltation basins that are proposed to treat storm water runoff before discharge of the treated runoff to drainage courses within the open space area are allowed within the buffer areas; (3) modifying Special Condition Nos. 4, 5, and 6 to allow the applicant as an option to recording an offer to dedicate an open space easement over the wetlands and buffer area on the parcel, to grant in fee the open space area to an appropriate managing entity willing to accept the grant; (4) modifying Special Condition No. 8 to clarify that although public pedestrian, bicycle, and vehicular access is proposed and required on all the major streets of the subdivision, public parking is only proposed and would only be required within the 5-car "Visitor/Trail Parking" area proposed 300 feet west northwest of the entrance to the subdivision; (5) modifying

Special Condition No. 11 to change the deadline for completion of the public parking area to be prior to occupancy of the residences in the first phase of the subdivision rather than prior to recordation of the final subdivision map, consistent with the other deadlines specified in the special condition for completion of certain other public amenities and project mitigations required by the permit; and (6) correcting an outdated reference to the applicant's revised project description and project plans within the "Project Description" finding.

The additions to the staff recommendation presented in this addendum include new findings for approval of the project that were not included in the written staff recommendation mailed on July 25, 2008. The new findings reflect the basis for approval with conditions that is discussed in the Summary of the Staff Recommendation contained in the July 25, 2008 staff report.

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## **I. REVISIONS TO STAFF RECOMMENDATION**

The revisions to the staff report dated July 25, 2008, including the modification of special condition language and related findings for the Harbor Center Tract residential subdivision are discussed below.

Text to be deleted is shown in bold ~~striketrough~~, text to be added appears in **bold double-underline**.

### **A. REVISIONS TO STAFF NOTES**

1. Correct the first paragraph of Staff Note No. 3 on page 5 of the report as follows:
3. **Amended Project Description Submitted by Applicant for de novo Review**

For the purposes of *de novo* review by the Commission, the applicants have amended the project description and submitted a series of revised project plans that make changes to the residential development approved by the County. The **revised project description is dated July 1, 2008** and the most recent plans incorporating all project revisions are dated **April 1, 2008 July 16, 2008**.

REASON FOR CHANGES: The changes correct an outdated reference to the applicant's revised project description and project plans.
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2. Correct the second to the last paragraph of Staff Note No. 3 on pages 7 and 8 of the report as follows:

More specifically, as amended for purposes of the Commission's de novo review of the project, the proposed project description involves: (1) the resubdivision of the property into 94 parcels, including 3 open space lots, 67 lots for single-family detached homes, and 24 lots for town homes; (2) the construction of street improvements that involve an entry drive from Lake Earl Drive connecting to a loop system with associated connector streets and alleyways; (3) the installation of underground utilities, including water, sewer, electrical, telephone, and cable television lines; (4) the installation of bio-filtration swales, ~~and~~ desiltation (sedimentation) basins, **and associated culverts and basin outfalls** to increase infiltration, remove sediment and other pollutants from the runoff, and control the release of stormwater into the drainage and other wetlands of the site; (5) the installation of a public access trail that will provide public access to the site from Lake Earl Drive into the project site and along the wetlands area that extends through the site along the northeast boundary of the Harbor Center Tract which will be complemented by four approximately 150-square-foot observation areas and a five-space public access parking lot; (6) the installation of four private parks to serve the recreational needs of subdivision residents; and (7) the installation of buffer fencing to clearly demarcate the edge of the 100-foot-wide wetland buffers and help avoid encroachment of residential uses into the buffer areas.

REASON FOR CHANGES: The changes make it clear that the proposed stormwater runoff facilities include certain culverts and outfall pipes that are associated with the desiltation basins and bioswales.
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**B. REVISIONS TO SPECIAL CONDITIONS**

1. Revise Special Condition No. 2 on pages 9-11 of the staff report as follows:
  2. **OPEN SPACE AND STORMWATER RUNOFF TREATMENT AREA RESTRICTIONS**
- A. Open Space Restriction – Wetlands and Buffer North of A Street (Lot 92)**

No development, as defined in Section 30106 of the Coastal Act, shall occur within Lot 92 consisting of the riparian/wetland areas and surrounding 100-foot

buffer areas north of “A” Street as generally depicted within the boundaries of the Harbor Center Tract on the “Concept Layout Plan” prepared by Robert H. Foster Consultants, dated July 16, 2008, and included as Exhibit 8 of this staff report and as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for:

- i. The following development approved by Coastal Development No. A-1-DNC-06-037: (a) installation and maintenance of desiltation basin outfalls within the 100-foot buffer.**
  
- iii.** The following development, if approved by the Coastal Commission as an amendment to this coastal development permit: (a) planting of native vegetation and restoration of environmentally sensitive habitat, (b) removal of debris, sediment, and unauthorized structures, (c) installation and maintenance of future trail and road connections to the adjoining property to the northeast along the alignments of the two existing gravel and/or dirt roads in the locations generally shown on the “Concept Layout Plan,” prepared by Robert H. Foster Consultants, dated July 15, 2008, and (d) fuel modification.

**B. Open Space Restriction – Wetlands and Buffer South of A Street (Lot 93)**

No development, as defined in Section 30106 of the Coastal Act, shall occur within Lot 93 consisting of the riparian/wetland areas and surrounding 100-foot buffer areas south of “A” Street as generally depicted within the boundaries of the Harbor Center Tract on the “Concept Layout Plan” prepared by Robert H. Foster Consultants, dated July 16, 2008, and included as Exhibit 8 of this staff report and as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for:

- ii.** The following development, if approved by the Coastal Commission as an amendment to this coastal development permit: (a) planting of native vegetation and restoration of environmentally sensitive habitat, (b) removal of debris, sediment, and unauthorized structures, and (c) fuel modification.

**C. Open Space Restriction – Wetlands and Buffer At Southwestern Corner of Subdivision (Lot No. 94)**

No development, as defined in Section 30106 of the Coastal Act, shall occur within Lot 94 consisting of the riparian/wetland areas and surrounding 100-foot buffer areas at the southwestern corner of the subdivision south of Lot Nos. 16-24

as generally depicted within the boundaries of the Harbor Center Tract on the “Concept Layout Plan” prepared by Robert H. Foster Consultants, dated July 16, 2008, and included as Exhibit 8 of this staff report and as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for:

- i. The following development approved by Coastal Development No. A-1-DNC-06-037: (a) installation and maintenance of desiltation basin outfalls within the 100-foot buffer.**
  
- ii.** The following development, if approved by the Coastal Commission as an amendment to this coastal development permit: (a) planting of native vegetation and restoration of environmentally sensitive habitat, (b) removal of debris, sediment, and unauthorized structures, and (c) fuel modification.

**D. Stormwater Runoff Treatment Areas**

No development, as defined in Section 30106 of the Coastal Act, shall occur within the areas to be improved with stormwater runoff treatment facilities, including the desiltation basins and bio-filtration drainage swales designed to treat stormwater runoff from all streets and residential lots within the subdivision as generally depicted on the “Concept Layout Plan” prepared by Robert H. Foster Consultants, dated July 16, 2008, and as specifically depicted in the final Stormwater Runoff Treatment Facilities Plan approved by the Executive Director pursuant to Special Condition No. 10 of this permit except for:

1. The following development approved by Coastal Development No. A-1-DNC-06-037: (a) grading and installation of desiltation basins and bio-filtrations swales and associated culverts and basin outfalls; (b) maintenance of the desiltation basins, bio-filtration swales, and associated culverts and basin outfalls; and (c) installation of underground utilities.
  
2. The following development, if approved by the Coastal Commission as an amendment to this coastal development permit: (a) planting of additional vegetation within the desiltation basins and bio-filtration swales (b) repairs and improvements of the desiltation basins, bio-filtration swales, and associated culverts and basin outfalls; and (c) installation of additional underground utilities.

**E. PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT, the applicant shall submit for the review and approval of**

the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by each subsection of this condition

REASON FOR CHANGES: The special condition as originally written inadvertently precluded use of the 100-foot wetland buffers within the required open space areas for the installation and maintenance of outfalls for the desiltation basins that are proposed to treat storm water runoff before discharge of the treated runoff to drainage courses within the open space area. The change corrects this omission by expressly allowing for the basin outfalls to be located in the buffer areas of two of the required open space areas as depicted in the subdivision concept layout map.

2. Revise Special Condition No. 4 on pages 12-13 of the staff report as follows:

4. **OFFER TO DEDICATE EASEMENT OR GRANT FEE INTEREST OVER WETLAND AND BUFFER AREA NORTH OF A STREET (LOT 92)**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director, for review and approval, a proposed document(s) **either: (1) irrevocably offering to dedicate to a public agency or non-profit entity acceptable to the Executive Director, an easement over the areas identified below for wetland habitat protection and enhancement; or (2) irrevocably granting to a public agency or non-profit entity acceptable to the Executive Director, a fee interest over the areas identified below for wetland habitat protection and enhancement.** Once the documents **either irrevocably offering to dedicate an easement or irrevocably granting a fee interest over** the areas identified below are approved, and also **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit evidence that it has executed and recorded those documents, completing that offer to dedicate **an easement or that grant of a fee interest.** The land shall be offered for dedication **or granted in fee** subject to the restrictions on the use of that land set forth in the special conditions of this permit, and the offer to dedicate **an easement or the grant of the fee interest** shall reflect that fact. The offer **or grant** shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed but subject to the deed restrictions required by Special Condition No. 2. The offer **to dedicate an easement or the grant of the fee interest** shall run with the land in favor of the People of the State of California, binding all successors and assignees, **and, The offer to dedicate** shall be irrevocable for a period of 21 years, such period running from the date of recording. The entirety

of the following land shall be offered for dedication **or granted in fee**: Lot 92 consisting of the riparian/wetland areas and surrounding 100-foot buffer areas north of "A" Street as generally depicted within the boundaries of the Harbor Center Tract on the "Concept Layout Plan," prepared by Robert H. Foster Consultants, dated July 16, 2008, and included as Exhibit 8 of this staff report and as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit.

REASON FOR CHANGES: The special condition as originally written would require the applicant to record an offer to dedicate and open space easement over the wetlands and buffer area on the parcel to enable an appropriate governmental or non-profit entity to take over management responsibilities for the habitat and buffer area. The changes to the condition provide the option to the applicant of granting in fee the open space area if an appropriate entity is willing to accept the grant. Such a grant would afford even greater control of the property for habitat management to the receiving entity than would be afforded by a grant of easement.

3. Revise Special Condition No. 5 on page 13 of the staff report as follows:

5. **OFFER TO DEDICATE EASEMENT OR GRANT FEE INTEREST OVER WETLAND AND BUFFER AREA SOUTH OF A STREET (LOT 93)**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director, for review and approval, a proposed document(s) **either: (1) irrevocably offering to dedicate to a public agency or non-profit entity acceptable to the Executive Director, an easement over the areas identified below for wetland habitat protection and enhancement; or (2) irrevocably granting to a public agency or non-profit entity acceptable to the Executive Director, a fee interest over the areas identified below for wetland habitat protection and enhancement.** Once the documents **either irrevocably offering to dedicate an easement or irrevocably granting a fee interest over the areas identified below are approved, and also PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit evidence that it has executed and recorded those documents, completing that offer to dedicate **an easement or that grant of a fee interest.** The land shall be offered for dedication **or granted in fee** subject to the restrictions on the use of that land set forth in the special conditions of this permit, and the offer to dedicate **an easement or the grant of the fee interest** shall reflect that fact. The offer **or grant** shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest

being conveyed but subject to the deed restrictions required by Special Condition No. 2. The offer to dedicate an easement or the grant of the fee interest shall run with the land in favor of the People of the State of California, binding all successors and assignees, ~~and~~. The offer to dedicate shall be irrevocable for a period of 21 years, such period running from the date of recording. The entirety of the following land shall be offered for dedication or granted in fee: Lot 93 consisting of the riparian/wetland areas and surrounding 100-foot buffer areas south of "A" Street as generally depicted within the boundaries of the Harbor Center Tract on the "Concept Layout Plan," prepared by Robert H. Foster Consultants, dated July 16, 2008, and included as Exhibit 8 of this staff report and as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit.

REASON FOR CHANGES: The special condition as originally written would require the applicant to record an offer to dedicate and open space easement over the wetlands and buffer area on the parcel to enable an appropriate governmental or non-profit entity to take over management responsibilities for the habitat and buffer area. The changes to the condition provide the option to the applicant of granting in fee the open space area if an appropriate entity is willing to accept the grant. Such a grant would afford even greater control of the property for habitat management to the receiving entity than would be afforded by a grant of easement.

4. Revise Special Condition No. 6 on pages 13-14 of the staff report as follows:

6. **OFFER TO DEDICATE EASEMENT OR GRANT FEE INTEREST OVER WETLAND AND BUFFER AREA AT SOUTHWESTERN CORNER OF SUBDIVISION (LOT 94)**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director, for review and approval, a proposed document(s) either: (1) irrevocably offering to dedicate to a public agency or non-profit entity acceptable to the Executive Director, an easement over the areas identified below for wetland habitat protection and enhancement; or (2) irrevocably granting to a public agency or non-profit entity acceptable to the Executive Director, a fee interest over the areas identified below for wetland habitat protection and enhancement. Once the documents either irrevocably offering to dedicate an easement or irrevocably granting a fee interest over the areas identified below are approved, and also **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant

shall submit evidence that it has executed and recorded those documents, completing that offer to dedicate an easement or that grant of a fee interest. The land shall be offered for dedication or granted in fee subject to the restrictions on the use of that land set forth in the special conditions of this permit, and the offer to dedicate an easement or the grant of the fee interest shall reflect that fact. The offer or grant shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed but subject to the deed restrictions required by Special Condition No. 2. The offer to dedicate an easement or the grant of the fee interest shall run with the land in favor of the People of the State of California, binding all successors and assignees, ~~and,~~ The offer to dedicate shall be irrevocable for a period of 21 years, such period running from the date of recording. The entirety of the following land shall be offered for dedication or granted in fee: Lot 94 consisting of the riparian/wetland areas and surrounding 100-foot buffer areas at the southwestern corner of the subdivision south of Lot Nos. 16-24 as generally depicted within the boundaries of the Harbor Center Tract on the “Concept Layout Plan,” prepared by Robert H. Foster Consultants, dated July 16, 2008, and included as Exhibit 8 of this staff report and as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit.

REASON FOR CHANGES: The special condition as originally written would require the applicant to record an offer to dedicate and open space easement over the wetlands and buffer area on the parcel to enable an appropriate governmental or non-profit entity to take over management responsibilities for the habitat and buffer area. The changes to the condition provide the option to the applicant of granting in fee the open space area if an appropriate entity is willing to accept the grant. Such a grant would afford even greater control of the property for habitat management to the receiving entity than would be afforded by a grant of easement.

5. Revise Special Condition No. 8(A)(1) on pages 15-16 of the staff report as follows:
8. **PUBLIC ACCESS AND RECREATION REQUIREMENTS AND IMPROVEMENTS**
  - A. **Public Access Requirements**
    1. **Streets, Roads and Public Parking**

All streets, roads and parking shall be provided as described on the revised subdivision plan entitled, "Concept Layout Plan," prepared by Robert H. Foster Consultants, dated July 16, 2008. The publicly and privately maintained streets and public parking area identified on the above Concept Layout Plan as "A Street," "B Street," "C" Street, and "Visitor /Trail Parking" shall be for public street and parking purposes including, but not limited to, pedestrian, bicycle and vehicular access. The five-car visitor parking area **is the only required public parking and** shall be provided as described in the applicant's July 1, 2008 letter to the Commission providing a narrative that revises and supplements the project description. All of the streets and **the** public parking areas identified above shall be open for use by the general public 24 hours per day, ~~with the exception of standard limited parking restrictions for street sweeping/maintenance purposes.~~ Long term or permanent physical obstruction of these streets and **the** public parking areas shall be prohibited. All public entry controls (e.g. gates, gate/guard houses, guards, signage, etc.) and restrictions on use by the general public (~~e.g. preferential parking districts, resident-only parking periods/permits, etc.~~) ~~associated with~~ **of** these streets and **the** public parking area **for public street purposes, including but not limited to pedestrian, bicycle and vehicular access and the additional use of the public parking area for public parking** shall be prohibited.

REASON FOR CHANGES: The changes clarify that although public pedestrian, bicycle, and vehicular access is proposed and required on all the major streets of the subdivision, public parking is only proposed and would only be required within the 5-car "Visitor/Trail Parking" area proposed 300 feet west northwest of the entrance to the subdivision.

6. Revise Special Condition No. 11 on pages 21-22 of the staff report as follows:
11. **CONSTRUCTION/DEVELOPMENT PHASING**
  - A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a final construction/development phasing plan for review and approval by the Executive Director, which shall conform to the following:
    1. The plan shall demonstrate that:

- (a) All roads and infrastructure needed to serve all of the residential lots included in a particular development phase shall be completed prior to occupancy of the residences within that phase;
  - (b) All stormwater runoff treatment facilities needed to serve all of the roads, lots, and other lands within a particular development phase shall be completed shall be completed prior to occupancy of the residences within that phase;
  - (c) The public access parking area approved pursuant to Special Condition No. 8 shall be completed and open for public use prior to ~~recording of the final subdivision map for~~ occupancy of the residences within the first phase of the development;
  - (d) The public access trail approved pursuant to Special Condition No. 8 shall either be completed and opened for public use in its entirety prior to recordation of the final subdivision map for the first development phase of the subdivision or completed and opened for public use in phases integrated into the phasing of the subdivision. All portions of the public access trail located adjacent to or across the street from residential lots associated with a particular phase of the subdivision shall be completed and opened for public use prior to occupancy of the residences within that phase;
  - (e) The wetland buffer fencing approved pursuant to Special Condition No. 9 shall either be completed in its entirety prior to recordation of the final subdivision map for the first development phase of the subdivision or completed in phases integrated into the phasing of the subdivision. All portions of the approved buffer fencing located adjacent to or across the street from residential lots associated with a particular phase of the subdivision shall be completed prior to occupancy of the residences within that phase;
2. The plan shall include, at a minimum, the following:
- (a) A site plan showing the boundaries of each development phase and the public access parking, public access trail improvements, stormwater runoff treatment facilities, wetland buffer fencing improvements to be developed in each development phase; and
  - (b) A narrative description of the portions of the public access parking, public access trail improvements, stormwater runoff treatment facilities, and

wetland buffer fencing improvements to be completed in each development phase

- B. The permittee shall undertake development in accordance with the approval final construction/development phasing plans. Any proposed changes to the approved final construction/development phasing plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

REASON FOR CHANGE: After publication of the staff report, the applicant informed staff that in accordance with County procedures, the final subdivision map would likely be recorded prior to the commencement of any construction of infrastructure on the site. Thus, it would not be possible to complete the public access parking area prior to recordation of the map. Therefore, staff changed the deadline for completion of the public parking area to be prior to occupancy of the residences in the first phase of the subdivision, consistent with the other deadlines specified in the special condition for completion of certain other public amenities and project mitigations required by the permit.

**C. REVISIONS AND ADDITIONS TO FINDINGS**

1. Correct the second paragraph of Finding No. 3, "Project Description," on page 31 of the report as follows:
3. **Amended Project Description Submitted by Applicant for de novo Review**

For the purposes of *de novo* review by the Commission, the applicants have amended the project description and submitted a series of revised project plans that make changes to the residential development approved by the County. The **revised project description is dated July 1, 2008** and the most recent plans incorporating all project revisions are dated **April 1, 2008** ~~July 16, 2008~~.

REASON FOR CHANGES: The changes correct an outdated reference to the applicant's revised project description and project plans.

2. Add the following new findings on current page 37, between Finding No. 3, "Project Description," and current Finding No. 4, "California Environmental

Quality Act.” These new findings for approval of the project were not included in the written staff recommendation mailed on July 25, 2008. The new findings reflect the basis for approval with conditions that is discussed in the Summary of the Staff Recommendation contained in the July 25, 2008 staff report.

As the following findings are entirely new and there is no existing language of the findings to distinguish from the new, these findings are shown in straight type without bold highlighting and double underlines to make them easier to read.

4. **Planning and Locating New Development.**

A. **LCP Provisions**

The subject property is located within the urban boundary and is designated in the LUP as Low Density or Suburban Residential (up to two dwelling units per acre).

The Coastal Zoning Ordinance zones the subject property as Planned Community (PC). Chapter 21.23 establishes the prescriptive standards for the PC zoning district. Section 21.23.010 states, in applicable part:

*These district classifications are applicable to parcels of land which are suitable for and of sufficient size to contain a planned development project comprised of one or more land uses which are compatible with each other, interated in use and design to the districts adjacent to the parcel and are in accord with the General Plan or adopted specific plan. It is the intent of the PC district to designate lands which meet the intent of the district and for which a plan for project development has been adopted pursuant to this chapter...*

Section 21.23.030, “*The principal permitted Use,*” states in applicable part:

No uses shall be permitted without a use permit

Section 21.23.040, “*Uses permitted by a use permit,*” states in applicable part:

*Uses permitted subject to the securing of a use permit as specified in Chapter 21.45 shall be as follows:*

- A. *All residential uses permitted in R-1, R-2, R-3, and MH1 and 2 districts and commercial uses as in the C-1 district;*
- B. *Mobilehome subdivisions;*
- C. *Additional activities which are in the opinion of the planning commission, proper accessory activities to be included in the total*

*development with a particular PC district and which are compatible with subsection A of this section.*

Section 21.23.050, “*Project density*,” states in applicable part:

- A. *The residential density of the project shall not exceed the overall density set forth by the General Plan or adopted specific plan.*

## 2. Discussion

### Conformance with Land Use Plan and Zone Use Requirements

The subject property is designated in the Land Use Plan Map as Low Density. This land use designation is implemented through several zoning designations including the Planned Community or PC zone. Local Coastal Program Zoning Enabling Ordinance Chapter 21.40 establishes the prescriptive standards for development within Planned Community zoning districts. No use is allowed without a use permit. Uses allowed with a use permit include all residential uses allowed in the R-1, R-2 and R-3 zones, including single-family residences and residential duplexes as proposed for the applicant’s residential subdivision. Therefore, the proposed subdivision will create single-family residential lots that will conform with the use requirements of the Planned Community zoning district.

### Conformance with Land Use Plan and Zoning Density Requirements

Local Coastal Program Zoning Enabling Ordinance Chapter 21.23.050 states that the residential density of a project within the Planned Community zone shall not exceed the overall density set forth by the General Plan or adopted specific plan. The subject property is located within the urban boundary and is designated in the LUP as Low Density or Suburban Residential. The maximum permitted density specified in the LUP for this designation is two dwelling units per acre.

The 45.5-acre Harbor Center Tract is proposed to be subdivided into 94 parcels, three of which are to be reserved as undeveloped open space to protect the existing wetlands on the property. A total of 91 of the parcels are proposed for single-family residences. Thus, the proposed residential density of the 45.5-acre parcel calculates to be two dwelling units per acre, consistent with the maximum density limitations of the LUP and zoning ordinance.

### Adequate Services

As noted above, the project site is located within the urban limit line surrounding Crescent City that is designated in the County’s LUP. Thus the development is located within an area planned for urban growth served by municipal services. Water service for the proposed subdivision will be provided by the City of Crescent City, as evidenced by a

letter dated March 30, 2006 signed by the Director of Public Works stating that “the City of Crescent City will be providing the potable and fire protection water for each and every lot within the Harbor Center Tract Subdivision.” In addition, in a letter to Commission staff dated September 18, 2006, the Director indicated that at that time the City had sufficient capacity to add 800 connections. The development will tap into a 24-inch diameter water main that runs along Lake Earl Drive at the entrance to the property. Sewer service for the proposed subdivision will also be provided by the City of Crescent City. The development will connect to the County’s Community Services Area (CSA) sewer collection system. A feasibility study prepared for the development identified certain improvements to the existing collection system that are needed, including the installation of 0.7 miles of pressure main along the east side of Northcrest Drive. The project also includes development of on-site gravity and pressure sewer mains. Both the CSA and the City have agreed to serve the development. In the September 18, 2006 letter to Commission staff, the Crescent City Director of Public Works indicates that the City will have sufficient sewage capacity to serve the development.

#### Conclusion

The proposed development is consistent with the land use category and zoning designations for the site, and the future development of the property with single-family residences at a density of two residences per acre is consistent with the density limitations of the certified LCP. Adequate water and sewer services are available to serve the development. Therefore, the proposed development will be located within an area planned for urban growth with adequate services available to serve the development.

### **5. Environmentally Sensitive Habitat Areas.**

#### **1. LCP Provisions**

Section VI.C.6 of the County of Del Norte LUP's Marine and Water Resources chapter states:

*Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.*

Section VII.D.4 of the LUP's Marine and Water Resources chapter sets policy directives for the review of development in a variety of biologically significant areas and types, stating in particular regard to the establishment of wetland buffers:

...

*d. Performance standards shall be developed and implemented which will guide development in and adjacent to wetlands, both natural and man-made, so as to allow utilization of land areas compatible with other policies while providing adequate protection of the subject wetland...*

*f. Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which could significantly degrade such areas, and shall be compatible with the continuance of such habitat areas. The primary tool to reduce the above impacts around wetlands between the development and the edge of the wetland shall be a buffer of one-hundred feet in width. A buffer of less than one-hundred feet may be utilized where it can be determined that there is no adverse impact on the wetland. A determination to utilize a buffer area of less than one-hundred feet shall be done in cooperation with the California Department of Fish and Game and the County's [or the Commission's on appeal] determination shall be based upon specific findings as to the adequacy of the proposed buffer to protect the identified resource. Firewood removal by owner for on site use and commercial timber harvest pursuant to CDF timber harvest requirements are to be considered as allowable uses within one-hundred foot buffer areas....*

The Marine and Water Resources chapter of the LUP includes “riparian vegetation systems” and “riparian vegetation” among its list of “sensitive habitat types,” defining such as areas, respectively, as:

*The habitat type located along streams and river banks usually characterized by dense growths of trees and shrubs is termed riparian. Riparian systems are necessary to both the aquatic life and the quality of water courses and are important to a host of wildlife and birds;*

and

*Riparian vegetation is the plant cover normally found along water courses including rivers, streams, creeks and sloughs. Riparian vegetation is usually characterized by dense growths of trees and shrubs.*

Marine and Water Resources Policy VII.E.4.a of the County of Del Norte LUP states:

*Riparian vegetation shall be maintained along streams, creeks and sloughs and other water courses within the Coastal Zone for their qualities as wildlife habitat, stream buffer zones, and bank stabilization. [Emphases added.]*

Section IV.D.1.f of the LUP's Marine and Water Resources chapter establishes other standards for buffers, stating that:

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

2. Discussion

Section VI.C.6 of the County of Del Norte LUP's Marine and Water Resources chapter requires that environmentally sensitive habitat areas (ESHAs) shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas. LUP Marine and Water Resources Policy VII.D.4f states that development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which could significantly degrade such areas, and shall be compatible with the continuance of such habitat areas. This policy further states that the primary tool to reduce the above impacts around wetlands between the development and the edge of the wetland shall be a buffer of one-hundred feet in width. This policy only allows for a buffer of less than 100 feet if an applicant can demonstrate that there will be no adverse impacts to wetlands caused by the proposed development. To make this determination, specific findings must be adopted by the permitting authority, in cooperation with the California Department of Fish and Game, as to the adequacy of a reduced buffer to protect the resource area.

Ecologically, a buffer is a transition zone between one type of habitat and another. Depending upon the species utilizing the wetlands and riparian areas, functional relationships may exist between these ESHAs and the adjoining buffer areas. For example, while the more hydric/mesic resource-dependent species, such as amphibians or waterfowl may restrict their habitat use to the immediate wetland and riparian vegetated areas where they are dependent upon such areas during breeding seasons, these species also require adjacent buffer areas for wintering habitat. In addition, species with broader ecological niches, such as raptors and passerine songbirds, deer, bear, raccoon, skunks, or rabbits may spend a significant portion of their lifecycles traversing these adjoining upland areas hunting or browsing for food. Buffers also provide an area of refuge for plants and animals between their normal or preferred habitat and human activities. Furthermore, buffers also serve to lessen the impacts caused by road and paved area runoff, landscape fertilizing, and spills of other household hazardous materials that could

severely reduce a wetland's ecological value and the quality of the water flowing outward or downward into surface or sub-surface waters.

The subject property contains extensive wetland area. Most of the wetlands are associated with drainages that trend from the southeast to the northwest along the northeastern side of the property (See Exhibit No. 8). A smaller wetland area is located at the southwestern corner of the triangular shaped parcel. The wetlands include the drainage/stream courses themselves, riparian wetlands surrounding the drainage stream courses, and numerous seasonal wetlands in the vicinity of the drainage/stream courses that support wetland vegetation.

The primary issue raised in the appeal to the Commission of the decision of Del Norte County to approve the project with conditions was that the wetlands on the site were not adequately delineated and that therefore, the development as approved by the County did not provide sufficient habitat buffers between the wetland habitat and the buildable areas of the new residential lots to protect the wetland habitat. The Commission found that the contentions in the appeal concerning the protection of wetland habitat raised a substantial issue. The Commission continued the de novo portion of the hearing to allow the applicant to provide to the Commission certain information that would enable the Commission to evaluate the consistency of the project with the policies of the certified LCP. The principal information the Commission required was a final wetland delineation report prepared by a qualified wetland biologist to Coastal Act and LCP standards that included a final site map depicting the full extent of all wetlands on the property and the full extent of buffer area needed to protect the wetlands.

Since the October 2006 Commission meeting when the Commission found that the appeal raised a substantial issue, the applicant has employed two different consultants to prepare a revised wetland delineation for the site. Commission staff, including Senior Ecologist Dr. John Dixon has performed site visits with the applicant's consultants and reviewed wetland delineation reports submitted by the consultants. Dr. Dixon determined that the last submitted delineation report, dated February 25, 2008, and prepared by North Fork Associates, adequately delineated the wetlands on the portions of the Harbor Center Tract site that immediately surround the main drainage channels that extend through the site as well as the area to the southwest of the drainage channels, but that additional site investigations and analysis would be needed to adequately delineate other portions of the Harbor Center Tract and the larger Bay Meadows property.

The applicant decided to seek Commission approval of development on the portion of the property where the wetland delineation has been completed and deemed adequate by Commission staff before pursuing further wetland delineation on the remainder of the Bay Meadows property. Therefore, the applicant revised the project description of Appeal No. A-1-DNC-06-037 to limit the scope of development to the portions of the Harbor Center Tract site that immediately surround the main drainage channels that extend through the site as well as the area to the southwest of the drainage channels where the wetland delineation work has been completed. In the future, when the wetland

delineation work has been completed elsewhere on the property, the applicant has indicated he will likely seek separate coastal development authorization for future development of that area of the site from the County. To enable only the currently delineated area to be proposed for a residential subdivision, the applicant in the meantime applied for and received a coastal development permit from Del Norte County to adjust the boundaries of the Harbor Center Tract and the other three parcels that comprise the Bay Meadows area in a manner that reconfigures the Harbor Center Tract to coincide with the area where wetland delineations have been completed. As noted in Finding 2, "Site Description," above, the four parcels adjusted had been established as part of a 1986 resubdivision of the property. Exhibit 6 shows the configuration of the four parcels before and after the recent boundary line adjustment approved by the County. The Harbor Center Tract parcel was reduced in size from 54.7 acres to 45.5 acres. The parcel was reconfigured in a manner that transferred an approximately 16.1-acre area northeast of the main drainage through the site from the Harbor Center Tract to adjoining Parcel 1, and transferred an approximately 6.4-acre triangular-shaped area to the north of the former northern boundary of the Harbor Center Tract that includes a portion of the drainage channels and additional area to the southwest of the drainage channels from Parcel 1 to the Harbor Center Tract.

To address concerns raised in the appeal about the potential for residential uses to encroach into the 100-foot-wide wetland buffer areas, the amended subdivision plan locates all of the wetland habitat and wetland buffer area on three separate open space parcels, Lots 92-94. To further enhance the effectiveness of the proposed wetland buffers, the applicant has also included provisions in the amended project description for fencing the buffer areas from residential areas, providing bio-filtration swales and sedimentation basins to treat stormwater runoff before runoff enters the buffer areas and wetlands, and imposing limitations on the use of the property through the subdivision conditions, covenants, and restrictions to be recorded against the property that would require the buffers and wetlands to be retained as undeveloped open space and place certain limitations on the keeping of pets and other animals on the property to reduce predation of wildlife within the habitat areas.

To further protect the wetland habitat at the site, ensure the effectiveness of the wetland buffers, and ensure consistency with the LCP ESHA protection policies, the Commission attaches Special Condition Nos. 2, 4, 5, 6, 9, 10, 15, and 16. Special Condition No. 2 requires that the applicant deed restrict the wetland and wetland buffer areas as open space.

Special Condition Nos. 4-6 require that the applicant also either record offers to dedicate open space easements or irrevocably grant to a public agency or non-profit entity acceptable to the Executive Director, a fee interest over the wetland and wetland buffer areas for wetland habitat protection and enhancement. These conditions will allow the habitat areas to be taken over by an entity with the capability and interest in managing the habitat to maximize habitat values.

Special Condition Nos. 16 and 15 impose restrictions applicable to the residential lots and all common areas of the subdivision that (a) prohibit the planting of invasive species that could invade the habitat and (b) limit lighting to avoid impacts to wildlife.

Special Condition No. 9 requires implementation of the applicant's proposal to install buffer fencing along the boundaries of the buffer to help avoid human and pet intrusion into habitat areas. The buffer fencing will be of two types. To protect the wetland that exists in the southwest corner of the Harbor Center Tract and the offsite wetlands that exist west of the western property line, the applicant proposes to install a 5-foot-high chain link fence along the edge of the 100-foot buffer or along the western property line where the offsite wetlands are located more than 100 feet away from the site. The fence will help contain domestic pets and animals from roaming into the wetland in this area and the adjoining wildlife area lands owned and managed by the Department of Fish and Game. A more visually appealing three-foot-high wood rail fence is proposed along the edge of the wetland buffer that will buffer the wetlands along the drainage channel and associated wetlands that run generally along the northeastern side of the Harbor Center Tract. Special Condition 9 requires that the three-foot rail fence be of an open design that is permeable to wildlife. The buffer fences will generally be built along parcel and road right-of-way boundaries that front onto the buffers, although portions of the 3-foot-high rail fences will extend across town home lots 68-70 and 80-85.

Special Condition No. 10 requires implementation of the applicant's proposal to provide bio-filtration swales and desiltation basins to treat stormwater runoff before it drains into the wetland areas.

Finally, to ensure that the responsibilities for maintaining and managing the habitat and buffer area and improvements are clearly established, Special Condition No. 7 requires the submittal of a management and maintenance program for the review and approval of the Executive Director. The program must identify the entities responsible for management and maintenance of the wetland habitat and buffer areas as well as the buffer fencing, identify management and maintenance activities, and establish a funding program for these activities.

The Commission finds that as proposed and conditioned to preclude development within the wetland habitat and within 100-foot buffer areas surrounding the wetlands, install buffer fencing and stormwater treatment facilities, preclude the planting of invasive plants, restrict lighting, and record offers to dedicate the habitat and buffer areas or grant them in fee to a managing entity, the subdivision development will be sited and designed to prevent impacts which would significantly degrade the wetland habitat and will be compatible with the continuance of such habitat areas consistent with the wetland and environmentally sensitive habitat protection policies of the certified Del Norte County LCP.

**6. Protection of Water Quality**

**1. LCP Provisions**

Section VI.C.1 of the LUP's Marine and Water Resources chapter states:

*The County seeks to maintain and where feasible enhance the existing quality of all marine and water resources.*

Section VI.C.4 of the LUP's Marine and Water Resources chapter states:

*Wastes from industrial, agricultural, domestic or other uses shall not impair or contribute significantly to a cumulative impairment of water quality to the extent of causing a public health hazard or adversely impacting the biological productivity of coastal waters.*

**2. Discussion**

Storm water runoff from new residential development can adversely affect the biological productivity of coastal waters by degrading water quality. Recognizing this potential impact, Section VI.C.1 of the LUP's Marine and Water Resources chapter indicates that the County seeks to maintain and, where feasible, enhance the quality of water resources. LUP Marine and Water Resources Policy 4 goes further to prohibit waste discharges from land uses that would cause public health hazards or result in the impairment of the biological productivity of coastal waters.

The subject parcel is located on a gently sloping portion of uplifted coastal terrace planned and zoned for low-density residential development. Runoff from most of the vacant property generally flows easterly across the property into the principal wetland drainages that trend from the southeast to the northwest along the northeastern side of the property and which are proposed to be restricted as open space for habitat protection as part of lots 92 and 93. The runoff eventually discharges into streams that flow into the Lake Earl coastal lagoon.

Sedimentation impacts from runoff would be of concern both (a) during site grading and the construction and installation of the authorized roads, utilities and other infrastructure, and (b) from the completed development. To address runoff during construction activities in a manner consistent with LUP Marine and Water Resources Policy 4, the Commission attaches Special Condition No. 13. The special condition requires that the applicants submit for the review and approval of the Executive Director a final erosion control plan that would provide for the installation and use of various best management practices such as temporary sediment basins, sand bag barriers, silt fencing, and stabilization of stockpiled fill with geofabric covers, and basin traps.

To address runoff from the completed development, the applicant has submitted a preliminary drainage plan that addresses how stormwater from the completed development will be conveyed and treated prior to discharge. The design includes the use of bio-filtration swales and desiltation (sedimentation) basins to, increase infiltration, remove sediment and other pollutants from the runoff, and control the release of stormwater into the drainage and other wetlands of the site (See Exhibit 10). The bio-filtration swales will generally be located along the shoulders of the roadways on within the backyards of the residential lots and will extend off the roadways to the four proposed desiltation basins. The desiltation basins will be located near where the runoff is intended to enter the wetlands. Outfalls from the desiltation basins are proposed to extend into the wetland buffer areas for discharge into the wetlands. The applicant indicates that maintenance of the bio-filtration swales and desiltation basins will be the responsibility of the Home Owners Association.

The proposed use and proper implementation of the bio-filtration swales and desiltation basins to treat all of the stormwater runoff from the development will reduce the adverse impacts of stormwater discharge on water quality to a level of insignificance. To ensure that the proposed drainage facilities are implemented appropriately, the Commission attaches Special Condition Nos. 2, 7, and 10. Special Condition No. 10 requires the submittal of a final stormwater runoff treatment facilities plan that substantially conforms with the preliminary plan but includes certain additional provisions. A principal requirement of the condition is that the final plan must demonstrate that all stormwater runoff from streets, residential lots, and all other parts of the subdivision except the required open space areas where no development will occur will be directed into the stormwater runoff treatment facilities for treatment. In addition, to ensure the facilities will be designed with adequate capacity, the condition requires that the facilities be designed to treat, infiltrate, or filter the amount of storm water runoff produced by all storms up to an including the 85<sup>th</sup> percentile, 24-hour storm event.

Special Condition No. 7 requires the submittal for the review and approval of the Executive Director of a management and maintenance program for the proposed public access amenities and the stormwater runoff treatment facilities. The special condition requires that the program identify the entity(ies) who will be responsible for management and maintenance of the facilities, whether the entity is the Homeowners Association as proposed by the applicant or some other party, and demonstrate the entity has the legal authority to perform such management and maintenance. The condition also requires that the program identify the specific maintenance and management activities that are needed to ensure the stormwater runoff treatment facilities will function properly.

Special Condition No. 2 will ensure that the areas of the site that are planned for bio-filtration swales, desiltation basins, culverts, outfalls, and other improvements appurtenant to the proposed and required stormwater runoff treatment system are retained for that use and are not displaced by residential development. The special condition

prohibits any other development in these areas except for the authorized installation and maintenance of these facilities and, if authorized by a permit amendment approved by the Commission, improvements and modifications to the system.

The Commission notes that the proposed bio-filtration swales and desiltation basins will hold and convey water, and may support the growth of wetland plants. The Commission finds that the bio-filtration swales, desiltation basins, and the other improvements associated with the stormwater runoff treatment system are approved and required by the attached conditions as stormwater treatment facilities and not as wetland habitat enhancements. Consequently, the Commission has not required that wetland buffers be established between (a) the stormwater runoff treatment facilities and the other development authorized by Coastal Development Permit A-1-DNC-06-037 or (b) future development such as the future residences to be built pursuant to separate authorization.

The Commission thus finds that as conditioned, the proposed development is consistent with LUP Marine and Water Resources Policies 1 and 4 because existing water quality will be maintained and protected from impairing waste discharges by: (1) the use of erosion and sedimentation control best management practices during construction of the development; and (2) the construction, implementation, and management of a long term stormwater runoff treatment system utilizing bio-filtration swales and desiltation basins to treat stormwater runoff from the site.

## **7. Protection of Visual Resources**

### **1. LCP Provisions:**

Visual Resources Policy No. 1 of the LUP states:

*The County encourages the continuation of existing land uses, where appropriate, to maintain open views in highly scenic areas.*

Visual Resources Policy No. 2 of the LUP states:

*Proposed development within established highly scenic areas shall be visually compatible with their scenic surroundings, by being reflective of the character of the existing land uses while conforming to the land use criteria. As set forth in the land use component and subsequent zoning ordinance. (sic)*

### **2. Discussion:**

The Del Norte County LCP visual resource policies require development within highly scenic area to be visually compatible with the development's scenic surroundings. However, the LCP does not formally designate any areas within the coastal zone portions of Del Norte County as "highly scenic." Instead, the LUP designates numerous locales as either "view points" or "view corridors." In the expansive area in and around Lake Earl, several view points and one view corridor are designated, but none of these view points or view corridors are located in the vicinity of the proposed Harbor Center Tract Subdivision. The closest designated area is Lakeview Drive, which is approximately two miles away to the northeast.

The proposed 94-lot subdivision is not located in an area where the density of development will affect views to and along the coast. The subject property is located more than a mile away from the Lake Earl coastal lagoon and the open ocean and is separated from both by intervening parcels, and dense vegetation. Most of the site was historically dominated by redwood forest before it was logged and used for grazing for many years. Redwood forest community still occurs on the eastern and western peripheries and in isolated stands on the property. A significant portion of the property is now covered with disturbed perennial grassland, as well as dense riparian vegetation along the main watercourses that traverse the site and which are proposed to be restricted as open space for habitat protection. The development will largely be screened from view from Lake Earl Drive, the main public thoroughfare serving the area and the principal public vantage point that could be affected by the development.

Therefore, as (a) the subject site is not located within a designated highly scenic area, view point, or view corridor, (b) the development will largely be screened from view from public vantage points, and (c) the development will not affect views to and along the shoreline of Lake Earl or the coast line, the Commission finds that the proposed land division development as proposed and conditioned is consistent with the visual resource protection provisions of the certified LCP.

## **8. Public Access.**

### **1. Coastal Act Access Policies**

Projects located between the first public road and the sea and within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the LCP. Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Section 30210 states that maximum access and recreational opportunities shall be provided consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. Section 30211 states that development shall not interfere with the public's right of access to the

sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Section 30212 states that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected.

2. LCP Provisions

The Del Norte County LUP includes a number of policies regarding standards for providing and maintaining public access:

Section III.C of the LUP's Public Access chapter states that:

The County shall work actively towards the attainment of maximum coastal access for the public, where it is consistent with public safety, property owner rights and the protection of fragile coastal resources.

3. Discussion

In its application of the above policies, the Commission is limited by the need to show that any denial of a permit application based on this section, or any decision to grant a permit subject to special conditions requiring public access is necessary to avoid or offset a project's adverse impact on existing or potential access.

The project site is located between the first through public road and the sea, although as noted previously, the site is more than a mile from the shoreline of the Lake Earl coastal lagoon and the ocean itself. No dedicated public access exists on the site.

The applicant proposes to install a public access trail that will provide public access from Lake Earl Drive into the project site and then along the boundary of the open space area containing the wetland area and wetland buffer that transects the site from the southeast to the northwest. Starting from Lake Earl Drive, the trail will extend along the edge of Road A within the right-of-way of the road to Lot 34, at which point the trail will follow the buffer line across several residential parcels to its end near Lot 1. The trail will be improved as a 5-foot-wide sidewalk along proposed A Street and as a surfaced (gravel or equivalent) trail between A street and Lot 1 to the north. As discussed in Finding 5, "Environmentally Sensitive Habitat Areas," where the trail runs adjacent to the wetland buffer open space area, the trail will be separated from the open space by a 3-foot high open rail fence. The rail fence will serve to discourage trail users from entering into the wetland habitat and buffer area, but with its low height and open design will not

adversely affect views from the trail and will allow for the passage of wildlife through the fence.

The northern end of the trail coincides with an existing logging road that extends across the wetland on a culverted crossing to other parts of the Bay Meadows property under the same ownership. If additional residential subdivision development is approved in the future on these other lands, the applicant anticipates that the existing logging road and its crossing of the wetlands will be improved as part of such a future project for both vehicular and pedestrian access to ensure connectivity of the two areas. The applicant is also proposing that another logging road that extends perpendicular to proposed Road A near the entrance to the proposed subdivision be reserved for a future vehicular and pedestrian connection to the areas of the Bay Meadows property to the north of the Harbor Center Tract.

The trail will be built in phases. The applicant proposes to build the trail through each phase of the subdivision as that phase is developed. To provide a destination point for each phase of the trail, the applicant proposes to install an approximately 15-foot by 10-foot observation area that will be surfaced and landscaped as part of each phase.

Public Access parking will be provided in a five-car lot to be located approximately 300 feet west of the entry into the subdivision. The parking area will be paved.

The public access trails and parking areas are proposed to be maintained by the Homeowners' Association.

The Commission finds that if the trail route is effectively reserved for public access use, improved as proposed, and properly maintained, the trail will be a significant public access benefit. The trail will allow the public to access the large site within the coastal zone for walking, wildlife viewing, and other passive recreational pursuits consistent with the public access policies of the Coastal Act and certified LCP. To ensure that public rights to use the trail are established, that the trail and the proposed parking area to serve the trail are improved as proposed and properly maintained, the Commission attaches Special Condition Nos. 3, 8, and 7. Special Condition No. 3 requires that an offer to dedicate the trail, viewing areas, and public access parking area to an appropriate governmental or non-profit entity capable of managing the access facilities be recorded. Special Condition No. 8 requires the permittee to construct the public access trail, the public access observation areas, and the public access parking area as described in the revised project description submitted in the applicant's July 1, 2008 letter as modified by the special conditions of this permit. All public access and passive recreation improvements for observation area and trail purposes must be completed and open for use by the general public in accordance with the final construction phasing plan to be approved by the Executive Director pursuant to Special Condition No. 11. To ensure that the responsibilities for maintaining and managing the public access facilities are clearly established, Special Condition No. 7 requires the submittal of a management and

maintenance program for the review and approval of the Executive Director. The program must identify the entities responsible for management and maintenance of the public access facilities, identify management and maintenance activities, and establish a funding program for these activities.

When the development was originally approved by the County, the subdivision was planned as a gated community. Private gated communities between the first public road and the sea severely limit opportunities for public access to and along the coast, and are therefore incompatible with the public access requirements of Sections 30210 and 30212 which require that maximum public access be provided. In addition, gated communities contribute to traffic and parking congestion on arterial streets, as the public is forced to seek access ways to the coast solely from these large arterials. Gated communities also inhibit non-automobile circulation, since they limited pedestrians ability to access the coast from other neighboring developments. For these reasons, the Commission usually prohibits gated subdivisions.

For purposes of the Commission's de novo review of the development, the applicant revised the project description making many changes to the project. One of the changes was to eliminate the proposed gate at the entrance to the subdivision and other changes included providing the public access trail and public access parking lot described above. To ensure that the subdivision is not gated and that the principal streets of the subdivision are made available for public pedestrian, bicycle and vehicular access as currently proposed, the Commission attaches Special Condition No. 8. Section (A)(1) of Special Condition No. 8 requires that the principal streets of the subdivision identified on the Concept Layout Plan of the subdivision as "A Street," "B Street," and "C Street" shall be available for public access use 24 hours per day, and that no gates, gate/guard houses, signage that limits the access that is required to be provided, or other public entry controls are allowed. The condition does not require public access to the alley ways of the subdivision as these alley ways do not provide access to the trail and public viewpoints and are not needed to provide circulation for the public through the subdivision. In addition, the condition does not require that public parking be made available along the streets as the five car parking lot should be sufficient to serve visitors using the trail.

The Commission finds that as currently proposed and conditioned to (a) provide an improved public trail with viewing areas along the principal open space area of the development and provisions for possible future connection to adjoining areas, (b) an improved public parking area for public access users, and (c) ensuring that the principal streets of the subdivision will be available for public access use, the development will provide maximum public access to the coast consistent with the public access policies of the Coastal Act and Section III.C of the Del Norte County LUP's Public Access chapter.