

CALIFORNIA COASTAL COMMISSION

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original staff report

W9a

MEMORANDUM

Date: September 8, 2014

To: Commissioners and Interested Persons

From: Alison Dettmer, Deputy Director
Bob Merrill, District Manager
Cristin Kenyon, Coastal Planner

Subject: **Addendum to Commission Meeting for Wednesday, September 10, 2014**
North Coast District Item W9a, CDP Application A-1-DNC-14-0028 (John Pappas)

This addendum presents certain revisions to the staff recommendation for approval of the project with conditions mailed on August 29, 2014. Since publication of the staff report, staff has met with the applicant who has requested certain changes and clarifications to the recommended special conditions. Special Condition No. 4, "Final Erosion and Runoff Control Plan" has been modified to substitute a requirement that the storage yard be graded as necessary to ensure stormwater runoff from the storage yard is directed to a required bio-swale for treatment instead of specifically requiring that perimeter berms be installed for that purpose. By setting a design goal and not prescribing how the goal is achieved, the revised condition allows the property owner to select the best runoff control tools for the site after the existing drainage of the site has been analyzed.

Special Condition No. 4(B) has also been modified. This condition requires that all runoff and erosion control measures are regularly inspected, repaired or replaced as needed, and maintained in good condition throughout the life of the development. The condition has been modified to clarify that the inspection will be conducted by the property owner. The property owner requested this change to clarify that the Commission is not requiring inspection of the site by another agency or hired third party. Staff continues to recommend approval of the permit with the conditions recommended in the August 29, 2014 staff report as modified herein.

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

Modifications to Special Conditions.

- *Special Condition No. 4 on pages 16-18 of the staff recommendation shall be modified as follows:*

4. Final Runoff and Erosion Control Plan.

A. WITHIN SIX MONTHS OF COMMISSION ACTION ON PERMIT NO. A-1-DNC-14-0028 (UNLESS EXTENDED BY THE EXECUTIVE DIRECTOR FOR GOOD CAUSE) AND IN ANY EVENT PRIOR TO THE PLACEMENT OF ANY ADDITIONAL MATERIALS ON SITE, the Permittee shall submit, for review and approval of the Executive Director, a final plan for erosion and run-off control.

1. The plan shall demonstrate the following:
 - a) Stormwater drainage will be managed over the life of the project to prevent runoff of stormwater from the storage yard or erosion of the stockpiled material into surrounding wetlands, and to avoid contact of uncontaminated stormwater with stored materials.
 - b) When work on the material piles is not actively occurring, all piles shall be protected by temporary perimeter sediment barriers such as compost berms, temporary silt dikes, fiber rolls, silt fences, sandbags, gravel bags, or biofilter bags.
 - c) When work on the material piles is not actively occurring, all piles shall either be (1) covered with a waterproof covering made of polyethylene, polypropylene or hypalon and anchored; or (2) seeded with non-persistent erosion-control species (e.g., sterile barley) or native, regionally appropriate plants. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California, shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the governments of the State of California or the United States shall be utilized for erosion control, revegetation, landscaping, or other purposes.
 - d) A vegetated swale shall be installed along the southern edge of the storage yard to facilitate drainage and treat runoff. ~~A berm or swale shall also be installed between the primary access road and the storage yard to prevent erosion and runoff from the storage yard into the wetlands along the western edge of the property. In addition, permanent berms shall be constructed between the storage yard and the delineated wetland buffers to the north and east of the yard. Perimeter berms shall be designed to contain runoff.~~ **The storage yard shall be graded as necessary to ensure that all runoff from the storage yard** from an 85th percentile storm event **is directed to the bioswale.** ~~and **The bioswale**~~ **perimeter swales** shall be designed to infiltrate runoff from an 85th percentile storm event.

- e) To minimize wildlife entanglement and plastic debris pollution, the use of temporary rolled erosion and sediment control products with plastic netting (such as polypropylene, nylon, polyethylene, polyester, or other synthetic fibers used in fiber rolls, erosion control blankets, and mulch control netting) is prohibited. Any erosion-control associated netting shall be made of natural fibers and constructed in a loose-weave design with movable joints between the horizontal and vertical twines. When no longer required, temporary sediment control BMPs shall be removed and disposed of properly.
2. The plan shall include, at a minimum, the following components:
- a) A drainage plan showing that runoff ~~from~~ in the storage yard from an 85th percentile storm event shall be directed towards the required bio-swales for treatment and away from designated wetlands or wetland buffers, and uncontaminated runoff from areas surrounding the storage yard shall be directed away from material piles.
 - b) A narrative report describing all temporary and permanent runoff and erosion control measures.
 - c) A site plan showing the location of all temporary and permanent runoff and erosion control measures.
 - d) A detailed plan for the bioswales showing bioswale dimensions and proposed vegetation types and planting locations, and calculations demonstrating the bioswales ~~are~~ is designed to treat runoff from an 85th percentile storm event
 - e) A schedule for installation and maintenance of all temporary and permanent runoff and erosion control measures.
- B. The required runoff and erosion control measures shall be maintained in good condition throughout the life of the development. The runoff and erosion control measures shall be inspected by the property owner before the onset of the rainy season each year, prior to forecasted rain events, during extended rain events, and after the conclusion of the rainy season, and shall be fixed or replaced if damage or deterioration is observed.
- C. The Permittee shall undertake development in accordance with the approved final erosion and runoff control plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

Modifications to Findings

- *Finding D, "Marine and Water Resources," within the "Pollution Control Measures," section, the second full paragraph of page 27 of the staff recommendation shall be modified as follows:*

To ensure that best management practices (BMPs) are implemented to control the erosion of stockpiled material and minimize sedimentation of coastal waters, the Commission attaches

Special Condition No. 4, requiring approval of a final erosion and runoff control plan that includes requirements for the installation of the BMPs proposed by the applicant, as well as additional BMPs necessary to ensure the protection of coastal resources. In addition to requiring temporary perimeter sediment barriers around material piles, Special Condition No. 4 requires, among other provisions, that all material piles be covered or seeded to protect against the erosive forces of wind and rain and prevent contact with and possible contamination of stormwater. Special Condition No. 4 also requires ~~that permanent berms be constructed between the storage yard and the delineated wetland buffers to the north and east of the yard, and a berm or swale be installed to the west of the yard, between the yard and access road.~~ **a drainage plan showing that runoff in the storage yard from an 85th percentile storm event will be directed towards the required bio-swale at the southern end of the property for treatment and away from designated wetlands and wetland buffers, and uncontaminated runoff from areas surrounding the storage yard will be directed away from material piles.** The condition specifies that ~~perimeter berms be designed to contain runoff from an 85th percentile storm event and perimeter swales~~ **the bioswale at the southern end of the property** be designed to infiltrate runoff from an 85th percentile storm event. These permanent BMPs will serve to prevent run-on of uncontaminated stormwater into the storage yard, as well as runoff of stormwater from the storage yard into surrounding wetlands. ~~Secondary containment is especially critical on the western edge of the storage yard, as there is no buffer between the primary access road and the extensive wetlands along the western edge of the property.~~ Special Condition No. 4 also requires that all runoff and erosion control measures be regularly inspected, repaired or replaced as needed, and maintained in good condition throughout the life of the development.

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**W9a**

Filed:	6/2/14
49 th Day:	Waived
Staff:	C. Kenyon-A
Staff Report:	8/29/14
Hearing Date:	9/10/14

**STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE & DE NOVO****Appeal No.:** **A-1-DNC-14-0028****Applicant:** **John Pappas****Appellants:** Friends of Del Norte**Local Government:** Del Norte County**Local Decision:** Approval with Conditions.**Location:** On the north side of Elk Valley Road behind the Crescent City Hay and Feed Store, approximately 0.1 miles east of Highway 101, in the unincorporated Crescent City area, Del Norte County (APN 117-110-25).**Project Description**
(as approved by the County): Use Permit for a storage yard.**Project Description**
(as amended *de novo*): After-the-fact authorization for the storage and processing of materials previously deposited on site without the benefit of a CDP, as well as authorization for (1) the removal of material piles from within wetland buffer areas, (2) the removal of specified unpermitted materials located on the site, and (3) the storage and processing of new materials in the future.

Staff Recommendation: Substantial Issue on Appeal and Approval with Conditions
De Novo.

SUMMARY OF STAFF RECOMMENDATION

On June 2, 2014, Friends of Del Norte filed an appeal of Del Norte County's approval of Coastal Development Use Permit No. UP1406C for the use of a 7.47-acre parcel as a fill material storage yard. The northern half of the subject parcel supports extensive wetland vegetation, while approximately four acres on the southern half of the property are currently largely devoid of vegetation, the result of unpermitted vegetation clearing and fill placement that occurred in 2012. The approved Coastal Use Permit authorizes the use of this four-acre area of the site for the storage of materials previously deposited on the property without the benefit of a permit and for the storage of new materials in the future.

Commission staff recommends that the Commission find that the appeal raises a substantial issue regarding consistency of the approved project with the water quality, ESHA, wetland, and Elk Creek Wetland protection policies of the certified LCP because (1) the wetland delineation fails to demonstrate that wetlands have been properly delineated and protected against impermissible fill, and (2) sufficient pollution control measures have not been incorporated into the project approval. The wetland delineation performed for the subject property prior to County approval was based on the conditions of the site after unpermitted vegetation clearing and fill rather than the conditions that existed prior to the development. In addition, the approved coastal development permit did not include any containment Best Management Practices (BMPs) to control runoff and erosion.

For the purposes of *de novo* review by the Commission, the applicant submitted an addendum to the wetland delineation to address the inadequacies of the original delineation by investigating the extent of wetlands that existed prior to unpermitted development and including additional sample points. It is the opinion of staff that the new delineation identifies all on-site wetlands that existed at the time of development and currently. To ensure that buffers will be sited and designed to prevent impacts which would significantly degrade adjacent environmentally sensitive habitat areas, and development will be compatible with the continuance of those habitat areas, staff recommends [Special Condition Nos. 6-9](#). These conditions require the Permittee, consistent with the project as revised *de novo*, to remove all existing unpermitted material piles from within wetland buffers and install durable boundary markers around the development footprint. Further, the wetlands and wetland buffers would be subject to an open space restriction and result in a 3.2-acre development footprint large enough for a commercially-viable storage yard.

To address the issue on appeal that the development lacks sufficient pollution control measures, staff recommends [Special Condition No. 1](#), limiting the types of materials allowed to be received, processed, and stored on site, and [Special Condition No. 4](#), requiring approval of a final erosion and runoff control plan that includes BMPs to ensure no eroded sediment and polluted runoff from the project enters adjacent wetlands or nearby Elk Creek and to avoid material pile contact with uncontaminated stormwater. Commission staff also recommends, consistent with the project description as revised *de novo*, [Special Condition No. 2](#), requiring the Permittee to

remove asphalt currently stored on site within six months from the date of Commission action to prevent leaching of contaminants into coastal waters.

Finally, to ensure that the subject property is not used as a waste disposal site, inconsistent with its zoning designation, the applicant proposes and staff recommends [Special Condition No. 5](#) which sets a five year limit on the length of time deposited materials may remain on site.

The motion to adopt the staff recommendation of substantial issue is found on [page 5](#), and the motion to adopt the staff recommendation of approval with conditions is found on [page 15](#).

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APPENDICES

[Appendix A](#) – Commission's Appeal Jurisdiction Over the Project

[Appendix B](#) – Substantive File Documents

[Appendix C](#) – Excerpts from the Del Norte County Certified LCP

[Appendix D](#) – History of Development on Site

EXHIBITS

Exhibit 1 – Regional Location Map

Exhibit 2 – Vicinity Map

Exhibit 3 – Parcel Map

Exhibit 4 – Zoning Map

Exhibit 5 – Elk Creek Wetland Special Study Area Map

Exhibit 6 – Aerial Photos

Exhibit 7 – Site Photos

Exhibit 8 – Notice of Local Action

Exhibit 9 – Appeal from Friends of Del Norte

Exhibit 10 – Biological Assessment and Wetland Restoration Plan

Exhibit 11 – Wetland Delineation Results and Maps

Exhibit 12 – Additional Information Submitted for De Novo Review

Exhibit 13 – General Location of On-site Wetlands and Wetland Buffers

I. MOTION AND RESOLUTION ON SUBSTANTIAL ISSUE

Motion:

I move that the Commission determine and resolve that Appeal No. A-1-DNC-14-0028 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

Staff recommends a **NO** vote on the foregoing motion. Following the staff recommendation by voting no will result in the Commission conducting a *de novo* review of the application, and adoption of the following findings. Passage of this motion via a yes vote, thereby rejecting the staff recommendation, will result in a finding of No Substantial Issue, and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners.

Resolution:

The Commission hereby finds that Appeal No. A-1-DNC-14-0028 presents a substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS

A. APPEAL JURISDICTION AND PROCEDURES

IMPORTANT NOTE:

The Commission will not take public testimony during the substantial issue phase of the appeal hearing unless at least three (3) commissioners request it. Unless the Commission finds that the appeal raises no substantial issue, the *de novo* phase of the hearing will immediately follow at this meeting, during which the Commission will take public testimony. Written comments may be submitted to the Commission during either phase of the hearing.

Appeal Jurisdiction and Grounds for Appeal

The Coastal Commission effectively certified the County of Del Norte's local coastal program (LCP) in 1983. After certification of an LCP, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (CDPs). Pursuant to Coastal Act Section 30603, Del Norte County's approval of the subject

project is appealable to the Commission because the approved development is both (1) located within 100 feet of a wetland, and (2) not designated as the principal permitted use under the certified LCP. The Commission's Appeal Jurisdiction is further discussed in [Appendix A](#) which is hereby incorporated by reference. The grounds for appeal of a local government action approving a CDP for development in an appealable area are limited to allegations that the approved development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act.

Appeal Procedures

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that the appeal raises no substantial issue¹ of conformity of the approved project with the certified LCP. Since the staff is recommending substantial issue, unless three Commissioners object, it is presumed that the appeal raises a substantial issue and the Commission may proceed to its *de novo* review at the same or subsequent meeting. The Commission will not take public testimony during this phase of the appeal hearing.

If three Commissions object, the Commission will hear arguments and vote on the substantial issue question. Proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission on the substantial issue question are the applicants, appellants, and persons who made their views known to the local government (or their representatives). Testimony from other persons regarding substantial issue must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised.

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

The Del Norte County Planning Commission approved Coastal Use Permit No. UP1406C with conditions at its hearing held on May 7, 2014. The Coastal Commission's North Coast District Office received a pre-Notice of Local Action on the approved development on May 9, 2014 (**Exhibit 8**). The County's notice indicated that an appeal of the County's decision on the subject permit must be filed with the Clerk of the Board of Supervisors by May 19, 2014 for consideration by the Board. Since no local appeal was filed with the Board, Notice of Local Action was deemed filed on May 20, 2014 and the Commission's appeal period began that day and ran for 10 working days, ending on June 3, 2014. On June 2, 2014, Friends of Del Norte filed an appeal of the County's decision to grant the permit (**Exhibit 9**).

C. SITE DESCRIPTION

The subject 7.47-acre parcel is owned by the Ted Pappas Partnership and is located off of Elk Valley Road, immediately south of Elk Creek, in the unincorporated Crescent City area (**Exhibits 1 & 2**). The property is accessed off of a driveway on the north side of Elk Valley

¹ The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: (a) the degree of factual and legal support for the local government's decision; (b) the extent and scope of the development as approved or denied by the local government; (c) the significance of the coastal resources affected by the decision; (d) the precedential value of the local government's decision for future interpretations of its LCP; and, (e) whether the appeal raises only local issues, or those of regional or statewide significance.

Road between the Seaview RV Park and the Crescent City Hay and Feed Store. The property is bounded to the south and east by commercial and industrial properties and to the north and west by a portion of the Elk Creek Wetlands Wildlife Area, a 160-acre wildlife area managed by the California Department of Fish and Wildlife (CDFW).

The parcel is zoned Manufacturing (M) with a small amount of General Resource Conservation Area (RCA-1) existing along the extreme western property line (**Exhibit 4**). Previous industrial development has heavily-impacted the parcel, and a layer of gravel fill approximately two feet deep covers the development area.

Approximately four acres on the southern end of the relatively-flat parcel are mostly devoid of vegetation, while the northern half of the parcel supports extensive wetland vegetation. These on-site wetlands are contiguous with wetlands and riparian habitat to the north and west managed by CDFW. This system of wetland and riparian habitats slopes down to Elk Creek, which ranges in distance from approximately 300 feet to 700 feet from the northern edge of the cleared portion of the subject property. Elk Creek originates in the forested uplands of Jedediah Smith Redwoods State Park and flows in a general southwesterly direction to the Crescent City Harbor. Elk Creek is a Class 1, Third Order coastal stream that provides habitat for a variety of fish species such as the coho salmon (*Oncorhynchus kisutch*), a federally-listed endangered species, steelhead trout (*Oncorhynchus mykiss*) a state-listed threatened species, the federally-listed tidewater goby (*Eucyclogobius newberryi*), and coastal cutthroat trout (*Oncorhynchus clarki*).

The subject property is located within the Elk Creek Wetland Special Study Area, an area encompassing the lower reaches of the Elk Creek watershed that is recognized by the County's certified LCP as a sensitive habitat requiring particular attention in the process of coastal planning (**Exhibit 5**). The County's LCP contains a number of coastal resource protection policies particular to the Elk Creek Wetland Special Study Area that apply to the property in question (See [Appendix C](#) for a list of relevant Elk Creek Wetland LCP policies).

In early 2012, the property owner entered into an agreement with the Crescent City Harbor District's contractor (Dutra Group) to use the site for the storage of waste material from the Crescent City Harbor's inner boat basin restoration project. Without the benefit of a CDP, Dutra cleared vegetation and a layer of topsoil from approximately four acres on the southern half of the Pappas property and deposited approximately 9,000 cubic yards of material from the harbor restoration project in piles around the perimeter of the cleared area. Deposited materials included sandy soil, rocks, concrete, asphalt, and plastic. During rain events in the spring of 2012, a large pile of unpermitted sandy sediments eroded into adjacent vegetation and a County Emergency Coastal Permit was obtained to move the sediments out of the vegetation and install sediment fences around piles.

See [Appendix D](#) for a History of Development of the Site.

D. DESCRIPTION OF APPROVED PROJECT

On May 7, 2014, the Del Norte County Planning Commission approved Coastal Use Permit No. UP1406C with conditions for use of the Pappas property as a storage yard. Under The County's Coastal Zoning Code (DNCC), "storage yards" are an allowed use in the Manufacturing Zone

District pursuant to obtaining a Use Permit (DNCC §21.31.030). Under DNCC Section 21.50.020, where development within the coastal zone requires the issuance of a Use Permit, the Use Permit also serves as the CDP.

In addition to the Coastal Use Permit, the property owner will need to obtain Grading Permits from the County for the previous placement of approximately 9,000 cubic yards of material on site without the benefit of a CDP, as well as for the placement of additional materials on site and other future grading. The requirement to obtain a new grading permit is triggered when the cumulative volume of material on the site exceeds 500 cubic yards, fills (stockpiles) exceed 3 feet in height or fill slopes exceed 5:1, and/or cuts exceed 5 feet in height or cut slopes exceed 2:1 (DNCC §14.05.050). Normally under Del Norte County's LCP, where development within the Coastal Zone requires the issuance of a Grading Permit, the Grading Permit serves as the CDP and is called a Coastal Grading Permit. However, because in this case the Coastal Use Permit acts as a valid coastal permit, the application for a Grading Permit will not need further coastal permit authorization and will be reviewed pursuant to County regulations for non-coastal projects (DNCC §14.06.02; See [Appendix C](#) for the full text of DNCC regulations).

Because no future CDP is needed for on-site grading, Coastal Use Permit No. UP1406C granted coastal development permit authorization for the storage of Harbor District materials previously deposited on the property, and allowed for receiving new materials in the future, such as spoils generated from construction projects. Pursuant to County Special Conditions Nos. 8 and 9 of the Coastal Use Permit, the County also granted CDP authorization for the removal of fill material from within on-site wetland buffers as described in the "Pappas Property Biological Assessment and Wetland Restoration Plan" prepared by the applicant's consultant (**Exhibit 10**).

The County granted its approval of the Coastal Use Permit subject to 15 special conditions, including, but not limited to, conditions requiring (1) materials stored on site be "natural" materials including soil, rock, and vegetation; (2) proof of permitting from other regulatory agencies upon County request; (3) acquisition of a Grading Permit when activities rise to the level at which a permit is required by the County's grading ordinance; and (4) adherence of all future Grading Permits issued for this site to the conditions of this permit. The County's approval also contains a number of special conditions that involve the property's wetland delineation, conducted by the applicant's consultant on January 24th, 2014 (**Exhibit 11**). County Special Condition No. 7 requires that, prior to issuance of the Coastal Use Permit, the applicant mark the wetlands and wetland buffers in the field, and that the County in coordination with CDFW inspects the wetland and wetland buffer markings. Special Condition No. 8 prohibits any further disturbance to areas identified as wetlands or wetland buffers except for work necessary to improve wetland conditions. Special Condition No. 9 requires that, prior to permit issuance, a monitoring plan be submitted to the County that specifies a timeline for removal of materials located in the wetland buffers, with the maximum time set at one year from the date of approval. Finally, Special Condition No. 15 requires that, prior to permit issuance, a Grading and Drainage Base Map of the project site be submitted that defines the project area relative to the property lines, topography, access routes, drainage features, and wetland buffers (See **Exhibit 8** for staff findings and a full list of conditions of approval).

E. APPELLANT’S CONTENTIONS

As set forth in Section 30603 of the Coastal Act, after certification of its LCP, an appeal of a local government-issued CDP is limited to allegations made on the grounds that the approved development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act.

The appellant (Friends of Del Norte) alleges that, because: (1) an inaccurate wetland delineation has potentially allowed wetland fill to be placed for an impermissible use without restoration of the wetland habitat and without mitigation for the temporal loss of wetland habitat, and (2) insufficient pollution control measures have been incorporated into the project as approved, the project as approved is inconsistent with policies of the certified LCP relating to the protection of water quality, wetlands, environmentally sensitive habitat areas (ESHAs), and the Elk Creek Special Study Area. In addition, the appellant alleges that the approved use of the site as a storage facility is inconsistent with the land use and zoning designation of the parcel (See [Appendix C](#) for relevant LCP policies).

As discussed below, the Commission finds that all of the contentions raised by the appellant are valid grounds for appeal. The Commission further finds that two of the three contentions raised by the appellant raise a substantial issue of conformance of the approved development with the policies of the certified LCP regarding the protection of water quality, wetlands, ESHAs, and the Elk Creek Special Study Area. The three contentions are discussed separately below.

F. ANALYSIS

Inaccuracy of the Wetland Delineation Allows for Impermissible Wetland Fill

The appellant contends that the wetland delineation performed for the subject property prior to County approval of the project is inaccurate and therefore the extent of on-site wetlands was not adequately defined. The County’s land use plan’s (LUP) chapter titled “Marine and Water Resources” (hereafter “MWR”), Section VII-D (Wetlands), Part 4 (Policies and Recommendations) limits the allowable uses for fill in wetlands to the same kinds of uses for which filling of wetlands is permitted under Section 30233 of the Coastal Act, and requires a 100-foot wide buffer around wetlands unless findings are made that a reduced buffer would not have an adverse impact on the wetlands. As the wetland delineation performed for the subject property was inaccurate and the location of on-site wetlands was therefore not properly identified, the appellant contends that the approved Coastal Use Permit potentially allows unpermitted uses for fill in wetlands and fails to establish adequate wetland buffers, inconsistent with the LCP’s wetland policies. The appellant further contends that restorative actions besides the removal of deposited materials should be undertaken and mitigation required for the temporal loss of wetland habitat that occurred.

The applicant’s consultant conducted a wetland delineation for the subject property on January 24th, 2014 and presented the results in a report titled “Pappas Property Wetland Delineation” (**Exhibit 11**). The consultant chose five sets of paired sample points along the north and east edges of the cleared portion of the site and examined these ten sample points for the presence of wetland hydrology, hydric soils, and hydrophytic vegetation (See **Exhibit 11, pg. 3** for the location of the sample points).

The consultant found wetland conditions along the north edge of the cleared portion of the site, and at the southeast corner of the property. He proposed a 100-foot buffer for the northern wetland and a 50-foot buffer for the wetland in the southeast corner (See **Exhibit 11, pg. 4** for the map of wetlands and wetland buffers). He performed a reduced buffer analysis for the proposed 50-foot buffer in an earlier report titled “Pappas Property Biological Assessment and Wetland Restoration Plan,” submitted in November 2013 (**Exhibit 10, pg. 9**). The main justification given for the reduced buffer is that this wetland patch is artificially created (the result of a drainage ditch along the eastern edge of the property directing water towards the southeast corner of the site), and it lacks biological significance because it is small and surrounded on all sides by commercial and industrial development. In addition to the wetlands to the north and southeast of the storage yard, the consultant alludes to the fact that there are also potential wetland conditions along the western edge of the property, but states that “no buffer is required along the west edge as the primary access road onto the property is located along the property edge.” The Coastal Use Permit relies on the consultant’s wetland delineation and proposed buffers to establish the edges of the approved storage yard.

The appellant contends that the wetland delineation performed for the subject property prior to County approval is inaccurate because it was performed during a period of dry weather, after the unpermitted removal of vegetation and topsoil from a large portion of the site, and therefore none of the three potential wetland indicators could be effectively utilized. The appellant also contends that the cleared vegetation still piled on site includes willows, potential evidence that wetlands covered a greater portion of the site prior to the unpermitted development.

The four-acre portion of the site that is currently cleared of vegetation and identified as uplands is surrounded by wetlands to the north and west in areas that were also heavily disturbed by the historic mill development. That wetlands were able to naturally recover in these surrounding areas serves to substantiate that they potentially did the same in the currently cleared portion of the site as it was left largely unused for decades. Aerial photographs taken throughout the decade prior to the unpermitted development show that a large portion of the currently cleared area was historically covered with grasses, trees, and shrubs. CDFW staff visited the subject property in March 2013 shortly after the unpermitted development occurred (See **Exhibit 7, pg. 1** for photographs from this site visit). In a phone conversation with Commission staff on June 11, 2014, CDFW staff confirmed that extensive wetlands exist to the north and west of the currently cleared portion of the site, and it is possible and likely that they also existed in portions of the cleared area before the unpermitted development occurred.

Monthly climate data from the National Weather Service Forecast Office (<http://www.nws.noaa.gov/climate/>) confirms that the wetland delineation was conducted during a dry period of an unusually dry winter, and therefore hydrology was not a helpful wetland indicator. As for the soils, because of the historic development and use of the site as a lumber mill, the entire property is covered with a few feet of fill material, including areas where wetlands have become established on top of the fill material. Thus, when soil test pits were dug 18-inches deep, mostly gravel fills were found and there was no evidence of hydric soils. In addition, the data form completed for sample point 1A states that the sample point was located just inside a silt fence. The fact that this sample point was inside one of the silt fences used to contain stockpiled materials indicates that sampling may have occurred in areas covered by

recent, unpermitted fill. Because of the presence of both historic fill and potentially recent, unpermitted fill, soil was not a helpful wetland indicator.

Because of the atypical site conditions mentioned above, the paired sample points chosen for the delineation shared the same gravel fills and absence of wetland hydrology (with the exception of sample point 2B). The determination between upland and wetland sites was therefore based solely on the presence of wetland vegetation. As discussed in Appendix D, a large amount of vegetation was cleared in 2012 without CDP authorization in preparation for the deposition of the Harbor District's waste material. The delineation was erroneously based solely on the presence of wetland vegetation that remained on the site after unpermitted vegetation removal. As a result, the delineated edge of the wetland habitat on the northern half of the property follows the current edge of vegetation.

However, large piles of cleared vegetation are still present on the site, and historic aerial photographs of the site are available. The piles of vegetation and aerial photographs potentially provide evidence of the type and extent of vegetation before unauthorized development occurred, yet neither was considered in the wetland delineation. Instead, potential evidence of additional wetland habitat was improperly omitted and the delineation was based solely on the conditions of the site after the unpermitted development occurred.

Furthermore, the only points that were sampled were along the north and east edges of the cleared area where vegetation was still present. There was a failure to take samples in all areas of the site that historically supported vegetation based on the aerial photographs. In addition, although the delineation alludes to the fact that the western edge of the site exhibits wetland conditions, the delineation did not formally delineate these wetlands or establish a buffer, using as reasoning the fact that there is a road directly adjacent to the wetland and therefore no space for a buffer. Without a mapped delineation of this western wetland boundary, there is no clear protection of the wetland, as the County's special conditions refer only to the more limited extent of wetlands formally identified by the applicant's consultant.

The County contends that Special Condition No. 7 of the Coastal Use Permit ensures the appropriateness of the wetland delineation because it requires that, prior to issuance of the permit, the applicant mark the wetland and wetland buffer edges and notify the County to inspect the wetland and wetland buffer markings in coordination with CDFW. Although this special condition insures that the applicant's consultant's delineation of wetlands and wetland buffers is marked in the field, it does not require a new or revised delineation if CDFW does not approve of the delineation.

As for the recommended buffers, based on the wetland delineation at the time of County approval, the southeast wetland appears small and isolated and thus biologically insignificant, justifying the reduced 50-foot buffer. However, because the delineation failed to evaluate the conditions of the site prior to the unpermitted development, the actual extent of wetlands on site at the time of County approval was unknown and this southeast wetland could be more significant than it appears, requiring a larger buffer area.

The failure of the wetland delineation to evaluate what wetlands may have been present at the site prior to the unpermitted clearing of vegetation demonstrates that the County's determination that the development is consistent with the LCP wetland fill policies is not based on a high degree of factual support. Therefore, for all the above reasons, the appeal raises a substantial issue with respect to the accuracy of the wetland delineation and thus the conformity of the County-approved development with LCP policies regarding the protection of wetlands.

Sufficiency of Pollution Control Measures

The appellant contends that the approved development lacks sufficient pollution control measures to prevent adverse impacts to nearby sensitive habitats and coastal waters. Specifically, the appellant alleges that the materials allowed on site have not been adequately limited to avoid the potential release of contaminants into nearby wetland and riparian habitats and Elk Creek.

The County's LCP contains a number of policies protecting wetland and riparian ESHAs and water quality. The County's LUP, Section IV-C (Sensitive Habitat Types) identifies wetlands as a sensitive habitat type and specifically lists the "Elk Creek Marsh" as a principal location for this habitat type. MWR Sections VI-C(6) and VII-D, Part 4(f) require that development in areas adjacent to environmentally sensitive habitat areas be sited and designed to prevent impacts that could significantly degrade such areas. MWR Section VI-C(4) requires that wastes from industrial or other uses not impair or contribute significantly to a cumulative impairment of water quality. The County's LUP also contains a number of policies specific to the lower reaches of Elk Creek and its associated wetlands and wildlife, including the requirement that new development adjacent to the Elk Creek wetlands not result in adverse levels or additional sediment, runoff, wastewater or other disturbances ["Elk Creek Wetland – Special Study," Section VI-C(3)].

A substantial issue exists as to whether the approved stockpiling of existing and future materials adjacent to wetlands and upslope of Elk Creek is adequately limited to prevent degradation to these adjoining resources. The County's approval only requires that materials brought on site be confined to "natural materials including soil, rock, vegetation and similar materials" prohibiting "the placement of non-natural materials such as asphalt, pipes, concrete, tires, and other trash." While this condition provides examples of what are "natural" and "non-natural" materials, it does not provide a clear definition for either type of material or an exhaustive list of allowable materials. The requirement that materials be "natural" is therefore not specific or clear enough to insure that materials will be contaminant-free or compatible with adjacent ESHAs. In addition, the County's approval does not include specific requirements and timing for the removal of "non-natural" construction waste currently stored on site, such as existing piles of asphalt and plastic. Without a better understanding of the type of permitted development, it is not possible to insure that the limited pollution controls, including the established buffers, are sufficient to prevent adverse impacts to water quality and adjacent ESHAs.

In addition, the project description does not include (and the County's approval does not require) any containment Best Management Practices (BMPs) to ensure that no eroded sediment and polluted runoff from the project enters adjacent wetlands or nearby Elk Creek or to avoid contact of uncontaminated runoff with stored materials. In his biological assessment for the project, the applicant's consultant argues that water runoff flows from east to southwest across the property

and therefore all runoff is away from Elk Creek and associated wetlands and “increased erosion control and water quality is not a major issue.” This assessment of on-site hydrology is incomplete. The applicant’s consultant’s own map of the site includes topographic lines clearly indicating that the northern edge of the approved storage yard slopes down towards the wetland-rich northern half of the property (**Exhibit 11, pgs. 3-4**). Furthermore, as reported by the consultant, the piles of Harbor District material placed near this northern edge of the storage yard eroded in a northerly direction, indicating that not all storage yard runoff will flow away from Elk Creek and associated wetlands, and therefore containment measures are critical for the protection of coastal resources.

The County staff report suggests that erosion and runoff control measures are not necessary as part of this permit because they will be required through future Water Quality Control Board permitting and County Grading Permits. The site is presently under an active General Construction Storm Water Permit with the Regional Board, and the SWPPP prepared for the property by Stover Engineering pursuant to that permit requires containment BMPs, such as requiring materials placed in the storage yard to be surrounded by silt fences and requiring any piles expected to remain on site for long periods to be covered or planted with erosion-control seeding. The current SWPPP applies to the Harbor District material placed on site without the benefit of a permit and stays active until the piles are stabilized. The property owner will be required to update the construction general permit as new sources of material are received on site. The property owner will also need Grading Permits from the County for the previous placement of approximately 9,000 cubic yards of material on site, as well as for the placement of additional materials on site and other future grading. While County Grading Permits, the Regional Board’s General Permit, and permits from other regulatory agencies may require additional on-site pollution control measures, all the necessary BMPs must be a requirement of the CDP, as other permits and agencies do not have the exact same definitions, mandates, or priorities and therefore may not adequately address issues of consistency with the LCP.

As part of this Coastal Use Permit, the County has also granted CDP authorization for the removal of fill material from on-site wetland buffers as described in the “Pappas Property Biological Assessment and Wetland Restoration Plan” prepared by the applicant’s consultant (**Exhibit 10**). During a Commission staff site visit on June 9, 2014, the property owner and his consultant indicated that the piles would likely be removed from the wetland buffers with an excavator. The fact that heavy equipment will be operating in wetland buffers and disturbing significant amounts of substrate without any methods in place to control erosion or maintain water quality raises further issue with the adequacy of the approved project’s pollution control measures.

In summary, the County’s approval does not include sufficient pollution control measures to ensure that the approved project does not significantly degrade adjacent wetland and riparian habitats or the water quality of Elk Creek. Therefore, the appeal raises a substantial issue as to whether the project as approved by the County conforms with the policies and standards of the certified LCP, including but not limited to MWR Sections IV-C, VI-C(4, 6), VII-D, VII-D, Part 4(b, f), and “Elk Creek Wetland – Special Study,” Section VI-C(3).

Consistency with the Land Use and Zoning Designation of the Site

The appellant contends that commercial/industrial storage is not a permitted land use within the Resource Conservation Area (RCA) District. The Pappas property is zoned Manufacturing and Industrial (M) with a small amount of RCA-1 existing along the western property line. While it is true that a storage yard is not an allowable use within the RCA-1 district, the approved storage yard does not encroach into the area designated RCA-1, and thus no RCA rezone is required. Only areas in the M district would be a part of the approved storage yard, and under Del Norte County Municipal Code, storage yards are an allowed use pursuant to obtaining a Use Permit within the M District (DNCC §21.31.030.N). Therefore the Commission finds that the appeal raises no substantial issue with regard to the project's consistency with the site's land use and zoning designations.

G. CONCLUSION

The Commission finds that the appeal raises a substantial issue with respect to conformance of the County-approved development with LCP policies regarding the protection of water quality, wetland and riparian ESHAs, and the Elk Creek Special Study Area. The Commission finds the appeal raises a substantial issue of conformity of the approved project with these LCP policies because: (1) the evidence in the record does not support the accuracy of the wetland delineation relied upon by the County at the time of approval, and therefore the accuracy of the determination that the development is consistent with LUP policies regarding permissible uses for wetland fill and establishing adequate wetland buffers, and (2) the approval includes insufficient pollution control measures.

The scope of development that has been approved is significant. Coastal Use Permit No. UP1406C grants both (1) after-the-fact CDP authorization for the storage of approximately 9,000 cubic yards of excavated materials from the Harbor District's inner boat basin reconstruction project, and (2) CDP authorization for an unlimited amount of future material storage on site. This unlimited future grading would be receiving CDP authorization without an accurate understanding of the location of wetlands and without controls to prevent against eroded sediments and polluted runoff entering surrounding wetland and riparian ESHAs or Elk Creek, a Class 1, Third Order coastal stream the provides important habitat for the federally-listed coho salmon. The protection of biological productivity and quality of coastal waters and environmentally sensitive wetlands is an issue of statewide concern addressed by Sections 30230, 30231, 30233, and 30240 of the Coastal Act, as it has been long established that coastal waters, and wetlands in particular, provide significant public benefits, such as fish and wildlife habitat, water quality filtration and recharge, flood control, and aesthetic values. Furthermore, the approval of the proposed development without conditions requiring erosion and runoff control measures establishes an adverse precedent for allowing the County to omit such conditions during the CDP process with the justification that they will be added later on through other types of permits required by the local government and other regulatory agencies.

For the reasons stated above, the Commission finds that Appeal No. A-1-DNC-14-0028 raises a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved development with the certified LCP.

III. MOTION AND RESOLUTION ON DE NOVO

Motion:

I move that the Commission approve Coastal Development Permit No. A-1-DNC-14-0028, subject to conditions, pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves coastal development permit A-1-DNC-14-0028 for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified Del Norte County LCP. Approval of the permit complies with the California Environmental Quality Act because either: 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment; or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

IV. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
- 3. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 4. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

V. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

- 1. Limits on Materials and Processing.** Materials received, stored, and processed on site shall only include solid concrete, soil, rock, gravel, and finer sediments such as sand, as well as green materials including untreated wood wastes. Materials containing hazardous or contaminated materials, putrescible waste, dredged material, food material, animal material, biosolids, comingled solid waste, asphalt, and wood containing lead-based paint or wood preservative are expressly prohibited. Prior to the placement of any new materials on site, the Permittee shall confirm that materials are non-hazardous and uncontaminated either through documentation that the material source is appropriate and/or through analysis of the materials for potential contaminants based on the location and history of the source area. Evidence that the materials placed on site are non-hazardous and uncontaminated shall be available to the Executive Director upon request. On-site processing shall be limited to the separation of rocks and gravels from fines, other sorting of material, and chipping of vegetation.
- 2. Removal of Materials Consistent With Proposed Project Description. WITHIN 6 MONTHS OF THE DATE OF COMMISSION ACTION ON PERMIT NO. A-1-DNC-14-0028 (UNLESS EXTENDED BY THE EXECUTIVE DIRECTOR FOR GOOD CAUSE),** the Permittee shall remove all asphalt located anywhere on site.
- 3. Del Norte County's Environmental Health Division Permits. PRIOR TO THE PLACEMENT of any construction and demolition debris or compostable materials (as defined by Chapter 3, Article 5.9 and Chapter 3.1 of Title 14, Division 7 of the California Code of Regulations) on site,** the Permittee shall submit evidence of any necessary notification of Del Norte County's Environmental Health Division, a copy of any required operation plan or permit, or evidence that no such authorization is required. The Applicant shall inform the Executive Director of any changes to the project required by the County as part of any operation plan or permit. Such changes shall not be incorporated into the project until the Permittee obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.
- 4. Final Runoff and Erosion Control Plan.**
 - A. WITHIN SIX MONTHS OF COMMISSION ACTION ON PERMIT NO. A-1-DNC-14-0028 (UNLESS EXTENDED BY THE EXECUTIVE DIRECTOR FOR GOOD CAUSE) AND IN ANY EVENT PRIOR TO THE PLACEMENT OF ANY ADDITIONAL MATERIALS ON SITE,** the Permittee shall submit, for review and approval of the Executive Director, a final plan for erosion and run-off control.
 1. The plan shall demonstrate the following:
 - a) Stormwater drainage will be managed over the life of the project to prevent runoff of stormwater from the storage yard or erosion of the stockpiled material into surrounding wetlands, and to avoid contact of uncontaminated stormwater with stored materials.
 - b) When work on the material piles is not actively occurring, all piles shall be protected by temporary perimeter sediment barriers such as compost berms,

temporary silt dikes, fiber rolls, silt fences, sandbags, gravel bags, or biofilter bags.

- c) When work on the material piles is not actively occurring, all piles shall either be (1) covered with a waterproof covering made of polyethylene, polypropylene or hypalon and anchored; or (2) seeded with non-persistent erosion-control species (e.g., sterile barley) or native, regionally appropriate plants. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California, shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the governments of the State of California or the United States shall be utilized for erosion control, revegetation, landscaping, or other purposes.
 - d) A vegetated swale shall be installed along the southern edge of the storage yard to facilitate drainage and treat runoff. A berm or swale shall also be installed between the primary access road and the storage yard to prevent erosion and runoff from the storage yard into the wetlands along the western edge of the property. In addition, permanent berms shall be constructed between the storage yard and the delineated wetland buffers to the north and east of the yard. Perimeter berms shall be designed to contain runoff from an 85th percentile storm event and perimeter swales shall be designed to infiltrate runoff from an 85th percentile storm event.
 - e) To minimize wildlife entanglement and plastic debris pollution, the use of temporary rolled erosion and sediment control products with plastic netting (such as polypropylene, nylon, polyethylene, polyester, or other synthetic fibers used in fiber rolls, erosion control blankets, and mulch control netting) is prohibited. Any erosion-control associated netting shall be made of natural fibers and constructed in a loose-weave design with movable joints between the horizontal and vertical twines. When no longer required, temporary sediment control BMPs shall be removed and disposed of properly.
2. The plan shall include, at a minimum, the following components:
- a) A drainage plan showing that runoff from the storage yard shall be directed towards the required bio-swales for treatment and away from designated wetlands or wetland buffers, and uncontaminated runoff from areas surrounding the storage yard shall be directed away from material piles.
 - b) A narrative report describing all temporary and permanent runoff and erosion control measures.
 - c) A site plan showing the location of all temporary and permanent runoff and erosion control measures.
 - d) A detailed plan for the bioswales showing bioswale dimensions and proposed vegetation types and planting locations, and calculations demonstrating the bioswales are designed to treat runoff from an 85th percentile storm event
 - e) A schedule for installation and maintenance of all temporary and permanent runoff and erosion control measures.

- B. The required runoff and erosion control measures shall be maintained in good condition throughout the life of the development. The runoff and erosion control measures shall be inspected before the onset of the rainy season each year, prior to forecasted rain events, during extended rain events, and after the conclusion of the rainy season, and shall be fixed or replaced if damage or deterioration is observed.
- C. The Permittee shall undertake development in accordance with the approved final erosion and runoff control plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. Storage Limits and Record-Keeping. No materials placed on site shall be stored on site for longer than 5 years. The Permittee shall keep an accurate, up-to-date inventory of materials delivered and stored on site. This inventory shall include a record of the types and quantities of materials received on site, the specific locations where received materials are stored on site, the dates materials are received, and the dates materials are removed from the site. The inventory shall be updated any time materials are added to or removed from the property. The inventory shall be available to the Executive Director upon request.

6. Wetland Protection Plan.

- A. **WITHIN SIX MONTHS OF COMMISSION ACTION ON PERMIT NO. A-1-DNC-14-0028 (UNLESS EXTENDED BY THE EXECUTIVE DIRECTOR FOR GOOD CAUSE) AND IN ANY EVENT PRIOR TO THE PLACEMENT OF ANY ADDITIONAL MATERIALS ON SITE**, the Permittee shall submit, for review and approval of the Executive Director, a final wetland protection plan. The final wetland protection plan should include the following:
 - 1. A final site plan showing the delineated wetland edge as modified by the “Addendum to Pappas Property Wetland Delineation” dated July 2014, as well as a 100-foot buffer from the wetlands on the north side of the property and a 50-foot buffer from the wetlands on the southeast corner of the property. The site plan shall show the wetland and wetland buffers in relation to the property lines and the edges of the storage yard.
 - 2. A plan for the removal from the wetland buffers of all previously unpermitted material within one (1) year from the date of Commission action on CDP No. A-1-DNC-14-0028 (or as extended by the Executive Director for good cause), including, but not limited to, all material piles from the Crescent City Harbor restoration project as well as older piles. The plan shall detail what construction equipment, if any, will be used to move the materials out of the wetland buffers. The plan shall also include construction best management practices (BMPs) to prevent adverse impacts to adjacent wetlands.
 - 3. A plan for installing fencing, K-rail, berms, bollards, or another type of durable boundary marker approved by the Executive Director between the storage yard and the wetland buffers on the north and east sides of the yard, and between the access road and the wetlands along the western property line to demarcate the boundaries

of the storage yard and access road. The plan shall depict the length, height, design, and location of the boundary markers. In addition, the plan shall demonstrate that the applicant will maintain the boundary markers over the life of the development.

- B. **WITHIN 1 YEAR FROM THE DATE OF COMMISSION ACTION ON PERMIT NO. A-1-DNC-14-0028 (UNLESS EXTENDED BY THE EXECUTIVE DIRECTOR FOR GOOD CAUSE)**, the Permittee shall submit to the Executive Director evidence of removal of all previously unpermitted material within wetland buffers delineated on the final site plan submitted pursuant to Special Condition No. 6(A)(1).
- C. The Permittee shall undertake development in accordance with the approved final wetland protection plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

7. Open Space Restriction.

- A. No development, as defined in Section 30106 of the Coastal Act, shall occur within delineated environmentally sensitive wetland areas or associated wetland buffer areas as shown on the final site plan required under Special Condition No. 6(A)(1) of this permit, **except for the following development authorized by this CDP:**
 - 1. The removal of material piles from wetland buffers and any associated best management practices (BMPs) pursuant to the plan required under Special Condition 6(A)(2).
 - 2. **AND the following development, if approved by the California Coastal Commission as an amendment to this coastal development permit:** (a) soil stabilization measures; (b) habitat restoration and enhancement activities; (c) vegetation clearance if required by the California Department of Forestry and Fire Protection (CDF) to meet fire safety standards; (d) maintenance of existing utilities and community services infrastructure; and (e) removal of debris and unauthorized structures.
- B. **PRIOR TO ISSUANCE OF THE “NOTICE OF INTENT TO ISSUE COASTAL DEVELOPMENT PERMIT NO. A-1-DNC-14-0028” (NOI)**, 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 metes and bounds legal description and corresponding graphic depiction drawn to scale and prepared by a licensed surveyor of the portion of the subject property affected by this condition, as generally described above and as generally shown in Exhibit 13 and shown on the final site plan required by Special Condition No. 6(A)(1) of this permit. The open space restricted areas include delineated environmentally sensitive wetland areas and associated wetland buffer areas.

- 8. **Generic Deed Restriction. WITHIN 6 MONTHS FROM THE DATE OF COMMISSION ACTION ON PERMIT NO. A-1-DNC-14-0028 (UNLESS EXTENDED BY THE EXECUTIVE DIRECTOR FOR GOOD CAUSE) AND IN ANY EVENT PRIOR TO THE PLACEMENT OF ANY MATERIALS ON SITE**, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that

the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

- 9. Future Development Restrictions.** This permit is only for the development described in Coastal Development Permit No. A-1-DNC-14-0028. Any additional future development or any proposed changes to the permit as conditioned, including but not limited to storage of materials for greater than five years and storage of materials other than those allowed under Special Condition No. 1, shall require additional coastal development permit authorization from either Del Norte County or the Commission. Such a permit application shall be accompanied by written evidence and analysis demonstrating that the development will be consistent with all applicable LCP provisions and Coastal Act policies including requirements that the development protect water quality from stormwater runoff and be sited and designed to prevent impacts which would significantly degrade the adjacent wetlands and environmentally sensitive habitat areas and shall be compatible with the continuance of those habitat areas.
- 10. Local Permits.** The applicant shall submit copies of all grading permits issued by Del Norte County for the approximately 9,000 cubic yards of waste material from the Crescent City Harbor District's project currently stored on site and for any future grading authorized, as well as any future amendments to Use Permit No. UP1406C or any new use permits granted by the County for the use of the site as a storage yard. The Applicant shall inform the Executive Director of any changes to the project required by the County as part of any future grading or use permits. Such changes shall not be incorporated into the project until the Permittee obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.
- 11. Conditions Imposed by Local Government.** This action has no effect on conditions imposed by Del Norte County pursuant to an authority other than the Coastal Act, including, but not limited to all such conditions imposed on the development by Del Norte County Use Permit No. UP1406C pursuant to state general plan and zoning laws.
- 12. Permit Expiration and Condition Compliance.** Because some of the proposed development has already commenced, this coastal development permit shall be deemed issued upon the Commission's approval and will not expire. Failure to comply with the special conditions of this permit may result in the institution of an action to enforce those conditions under the provisions of Chapter 9 of the Coastal Act.

VI. FINDINGS AND DECLARATIONS

A. DE NOVO PROCEDURES

If the Commission finds that a locally approved CDP raises a substantial issue with respect to the policies of the certified LCP, the local government's approval no longer governs, and the Commission must consider the project *de novo*. Since the proposed project is in part within an area for which the Commission has certified a LCP and not between the first public road and the sea, the applicable standard of review for the Commission to consider is whether the development is consistent with Del Norte County's certified LCP. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the project. Testimony may be taken from all interested persons at the *de novo* hearing.

B. SITE AND PROJECT DESCRIPTION

A description of the site is hereby incorporated by reference from Section [II-B](#) of the Substantial Issue portion of this staff report beginning on page 6 and [Appendix D](#) beginning on page 41.

C. ADDITIONAL INFORMATION PROVIDED FOR DE NOVO REVIEW

For the purposes of *de novo* review by the Commission, the applicant has provided Commission staff with supplemental information consisting of an addendum to the wetland delineation for the site and a revised project description. The supplemental information addresses issues raised by the appeal where applicable, and provides additional information concerning the amended project proposal that was not a part of the record when the County originally acted to approve the CDP. The addendum to the wetland delineation is described in [Section VI-D](#) below.

Amended Project Description for De Novo Review

The applicant submitted an amended project description dated July 30, 2014, that was further supplemented in a letter dated August 20, 2014 (See Exhibit 12, pgs. 1 & 7-8). The amended project description clarifies that the applicant is seeking after-the-fact authorization for the storage and processing of materials previously deposited on site without the benefit of a CDP, as well as authorization for storing and processing new materials in the future, such as rock, sand, soil, solid concrete, asphalt, and vegetation. According to the description, processing would be limited to the separation of rocks and gravels from fines, other sorting of materials, and chipping of vegetation. In addition, the applicant proposes to remove, within one year of Commission action, material piles previously placed within 100 feet of wetland habitats including piles of waste material from the Crescent City Harbor District's restoration project as well as older piles. The amended project description also proposes to remove all asphalt from the site within 6 months to one year, and that individual piles of material brought to the site will be stored for no longer than five years. The amended project description further includes proposed best management practices (BMPs) to address the appeal contention that the project as approved by the County did not include sufficient pollution control measures. The proposed BMPs include (1) grading the ground within the processing area to direct runoff away from wetlands; (2)

constructing a bioswale along the southern edge of the property; and (3) constructing small dirt berms around stored material piles in order to minimize sediment transport.

D. MARINE AND WATER RESOURCES

Establishing On-site ESHA and ESHA Buffers

MWR Section VII-D, Part 4 limits the allowable uses for fill in wetlands to the same kinds of uses for which filling of wetlands is permitted under Section 30233 of the Coastal Act, requires development in areas adjacent to wetlands be sited and designed to prevent impacts that could significantly degrade such areas, and requires a 100-foot wide buffer around wetlands unless findings are made that a reduced buffer would not have an adverse impact on the wetlands.

The applicant is seeking authorization to store and process materials such as soil, concrete, and rock on a site that supports extensive wetland ESHAs. Because material storage and processing is not one of the seven uses enumerated under Section 30233 of the Coastal Act for which the filling of wetlands is allowed, the proposed development must avoid wetlands and a buffer must be established between the development and wetlands to be consistent with MWR Section VII-D, Part 4. An accurate wetland delineation is therefore necessary to identify the location of on-site wetlands and establish adequate wetland buffers.

For purposes of de novo review, the applicant has submitted an addendum to the wetland delineation for the site to address the issues with the original delineation raised on appeal (See **Exhibit 12**). One main issue raised on appeal was that sample points were only taken along the northern and eastern edges of the area cleared without the benefit of a CDP, and no sample points were taken within cleared areas that historically supported vegetation or along the western property line where vegetation still exists. For the addendum, in order to investigate the potential historic extent of on-site wetlands, the applicant's consultant mapped the conditions of the property prior to unpermitted clearing of vegetation and deposition of material, including the location of older material piles, the location of remnant building pads and paved areas from the demolished mill, and the extent of on-site vegetation. The applicant's consultant then dug six sample pits within the storage area where vegetation existed prior to the recent unpermitted development to look for evidence of hydric soils and wetland hydrology. The applicant's consultant also took two sample points along the western edge of the property. While no evidence of wetlands was identified within the cleared portion of the site, wetland hydrology and vegetation were discovered along the western edge of the property. The addendum includes a revised map of on-site wetlands that delineates these additional wetlands (See **Exhibit 12, pg. 5, "Figure 2"**). This revised map also extends the delineated wetland at the southeast corner of the property to encompass the existing willow-dominated vegetation in the area. This wetland boundary now extends farther west to the historic edge of vegetation and farther north up to a remnant paved area. The northern wetland edge remains unchanged from the original delineation. The Commission Staff Ecologist has reviewed the wetland delineation addendum and concurs with its results.

As mentioned above, the LCP requires a minimum buffer of 100 feet between development and the edge of a wetland, or a reduced buffer if it can be determined that there is no adverse impact on the wetland [LUP Chapter MWR §VII-D, 4(f)]. The purpose of establishing buffers is to

maintain an adequate distance between sensitive habitats and the potentially disruptive activities associated with the proposed development. These buffer areas will help protect wetlands from the direct effects of nearby disturbance, provide necessary habitat for organisms that spend only a portion of their life in the wetland such as amphibians, reptiles, birds, and mammals, obstruct the entry of domestic animals and humans into wetlands, and reduce noise and visual disturbances that can disrupt feeding, nesting, and behavior patterns of wildlife. In addition, buffers can intercept eroded materials and absorb runoff to minimize the amount of pollutants potentially entering wetlands and receiving waters.

The revised wetland delineation map shows a 50-foot buffer between the wetlands on the north and southeast of the site and the proposed storage yard. The additional information provided by the applicant for de novo review contains a buffer analysis to provide justification for buffers smaller than the 100-foot minimum specified in the LCP (See **Exhibit 12, pg. 11**). This analysis states that the wetlands in question are surrounded by development. While this is true for the southeast wetland, it is not the case for the extensive wetlands on the northern half of the property, which are adjacent to and contiguous with biologically rich wetlands and riparian habitat to the north and west of the property managed by CDFW as part of the Elk Creek Wetlands Wildlife Area. This system of wetlands and riparian habitat is part of the lower Elk Creek watershed which is recognized by the County's certified LCP as a sensitive habitat. Elk Creek, a Class 1, Third Order coastal stream provides habitat for a variety of fish species such as the coho salmon (*Oncorhynchus kisutch*), a federally-listed endangered species, steelhead trout (*Oncorhynchus mykiss*) a state-listed threatened species, the federally-listed tidewater goby (*Eucyclogobius newberryi*), and coastal cutthroat trout (*Oncorhynchus clarki*). The Elk Creek lower watershed also supports numerous terrestrial common mammal species and various reptiles and amphibians including salamanders (*Dicamptodon* sp.), the western toad (*Bufo* sp.), the Pacific tree frog (*Pseudacris regilla*), the common western fence lizard (*Sceloporus occidentalis*), garter snake (*Thamnophis* sp.), and Pacific gopher snake (*Pituophis catenifer*). The northern half of the subject property slopes down toward Elk Creek, located within 500 feet of the northern edge of the property. Because the northern wetlands are upslope from and in close proximity to Elk Creek, eroded sediment and polluted runoff from material piles placed nearby have the potential to impact this sensitive habitat. Given the biological significance and sensitivity of the northern wetland and the susceptibility of the area to erosion towards Elk Creek, the Commission finds that a 100-foot buffer is necessary between the northern wetlands and the proposed storage yard.

In contrast, the southeastern wetland is relatively small and isolated by surrounding commercial and industrial development. Because of its lack of a direct hydrological connection to Elk Creek, a reduced 50-foot buffer is justified around this southeastern wetland. The access road directly adjacent to the wetlands along the western edge of the property is an existing feature that has been used as an access road since before the enactment of the Coastal Act. As this existing pre-Coastal Act development is located within a few feet of ESHA, the establishment of an open space buffer adjacent to the western wetlands is precluded.

With the 100-foot buffer required along the northern edge of the storage area and a 50-foot buffer around the ESHA in the southeastern corner of the site, the property is left with approximately 3.2 acres for the proposed storage yard. The revised project description submitted

by the applicant for purposes of the Commission's de novo review indicates that 3.2 acres is a commercially-viable size for a storage and processing site (**Exhibit 12, pg. 9**). The Commission attaches [Special Condition No. 6](#) requiring the applicant to submit a wetland protection plan within 6 months of Commission action. As part of this wetland protection plan, the Commission requires the applicant to submit a final site plan modifying the latest wetland delineation (**Exhibit 12, pg. 5, "Figure 2"**) to show a 100-foot buffer from the wetlands on the northern side of the property rather than a 50-foot buffer.

Currently, there are a number of material piles located in the wetland buffers, including piles of sediment, concrete, and asphalt. This existing development within buffers compromises the buffers' role of providing essential open space between development and wetlands to protect the wetlands from the impacts of development. The applicant has proposed to remove all material piles within buffer areas within one year of permit issuance. This work will require extensive excavation within the buffer areas and will likely necessitate the use of heavy equipment directly adjacent to wetlands. To ensure that the removal of material piles from within wetland buffer areas does not result in a significant disruption of habitat values, the Commission attaches [Special Condition No. 6\(A\)\(2\)](#). This condition requires the Permittee to submit a plan for the removal of all material piles within one year from the date of Commission action. The plan must identify what construction equipment, if any, will be used to move the piles and include construction BMPs to prevent impacts that could significantly degrade adjacent wetlands. To ensure that the removal plan is carried out in a timely manner, [Special Condition No. 6\(B\)](#) further requires that the applicant submit evidence of removal of existing development from within wetland buffers within one year of Commission action. With the exception of this restoration work, a resource dependent use, all other project elements will be located entirely outside of the wetland buffers.

To ensure that future storage yard activities remain outside of the wetlands and wetland buffers, the Commission attaches [Special Condition No. 6\(a\)\(3\)](#), requiring a plan for installing fencing, K-rail, berms, bollards, or another type of durable boundary marker approved by the Executive Director between the proposed storage yard and access road and surrounding open space that can be maintained for the life of the development. The boundary markers will demarcate the edges of the development footprint and obstruct entry into the areas of the site to remain in open space. Demarcating the boundaries of the storage yard will help prevent third parties who bring material to the site and are unaware of the development restrictions from accidentally depositing material in wetland buffers or wetlands. Once cleared of piles and left undisturbed, it is likely that the buffers will naturally revegetate, given that surrounding wetland and riparian habitats have been able to naturally recover in areas heavily disturbed by the former mill development. With restored habitat, the buffers will become a better defense against impacts from the storage yard as vegetation helps stabilize soils, intercept eroded materials, slow the rate of stormwater flow, and absorb and treat runoff and pollutants.

To further ensure that all future development does not encroach into the wetland ESHA or the recommended buffer areas, the Commission attaches Special Conditions Nos. 7-9. [Special Condition No. 7](#) restricts development within the wetland and wetland buffer areas on the property, as depicted on the final plan to be submitted pursuant to Special Condition No. 6(A)(1). Special Condition No. 7 prohibits all development in the affected areas except for (1) the

removal of material piles from wetland buffers pursuant to the plan required under Special Condition 6(A)(2); (2) soil stabilization measures; (3) habitat restoration and enhancement activities; (4) vegetation clearance if required by the California Department of Forestry and Fire Protection to meet fire safety standards; (5) maintenance of existing utilities and community services infrastructure; and (6) removal of debris and unauthorized structures. [Special Condition No. 8](#) requires that the applicant execute and record a deed restriction that imposes the special conditions of the permit as covenants, conditions, and restrictions on the use of the property to ensure that both the applicant and future purchasers of the property are notified of the prohibitions on development within the wetland and wetland buffer areas established by Special Condition No. 7. Such notification of future purchasers will eliminate expectations on the part of the purchasers that they may be able to expand storage of materials into the buffers. Special Condition No. 8 indicates that the use limitations of Special Condition No. 7 will restrict the use of the property so long as the development it authorizes remains in existence on or with respect to the subject property. If the use is abandoned and a new use is proposed, the property owners at the time could seek a permit amendment or new authorization that would eliminate or modify the buffer requirements if approved by the Commission. [Special Condition No. 9](#) requires that any future development of the property shall require additional CDP authorization from either Del Norte County or the Commission. Such a permit application shall be accompanied by written evidence and analysis demonstrating that the development will be consistent with all applicable LCP provisions and Coastal Act policies including requirements that the development protect water quality from stormwater runoff and be sited and designed to prevent impacts which would significantly degrade the adjacent wetlands and environmentally sensitive habitat areas and shall be compatible with the continuance of those habitat areas.

The Commission finds that with the removal of debris piles from buffers, the use of boundary markers demarcating the development footprint, the restrictions on future development within wetlands and buffers, and the pollution control measures discussed in the following section, buffers will be sited and designed to prevent impacts which would significantly degrade adjacent environmentally sensitive habitat areas, and development will be compatible with the continuance of those habitat areas consistent with the certified LCP's marine and water resources policies [MWR Sections VI-C(6) and VII-D, Part 4(f)] and Section 30240(b) of the Coastal Act.

Pollution Control Measures

MWR Section VI-C(3) calls for the maintenance of water quality to protect public health and the biological productivity of coastal waters. MWR Section VI-C(4) further specifies that wastes from industrial or other uses not impair or contribute significantly to a cumulative impairment of water quality. The County's LUP also contains a number of policies specific to the lower reaches of Elk Creek and its associated wetlands and wildlife, including the requirement that new development adjacent to the Elk Creek wetlands not result in adverse levels or additional sediment, runoff, wastewater or other disturbances ["Elk Creek Wetland – Special Study," Section VI-C(3)].

The applicant is seeking after-the-fact authorization for the storage and processing of materials previously deposited on site without the benefit of a CDP, as well as authorization for receiving, storing, and processing new materials in the future, such as spoils generated from construction projects. The Harbor District project and future construction projects have the potential to

generate contaminated materials that, if stored on site, could leach into groundwater or become entrained in runoff, threatening nearby sensitive habitats and coastal waters. The proposed storage yard is not paved, enclosed, or otherwise equipped to prevent contaminated materials from coming into contact with stormwater. Therefore the Commission attaches [Special Condition No. 1](#), expressly prohibiting the storage and processing of materials containing hazardous or contaminated materials, putrescible waste, dredged material, food material, animal material, biosolids, comingled solid waste, asphalt, and wood containing lead-based paint or wood preservative. Special Condition No. 1 also requires the Permittee to confirm that materials to be imported onto the site are non-hazardous and contaminant-free. Confirmation can be made either through documentation that the material source is appropriate and/or through analysis of the materials for potential contaminants based on the location and history of the source area.

On appeal, an issue was raised with the County's condition that only "natural" materials be allowed on site because the County did not provide a clear definition of "natural" materials or an exhaustive list of allowable materials and therefore the condition was not specific or clear enough to insure that materials would be contaminant-free or compatible with adjacent ESHAs. In response, Special Condition No. 1 only allows solid concrete, plastic, soil, rock, gravel, and finer sediments such as sand, as well as green materials including untreated wood wastes. Del Norte County's Environmental Health Division is the enforcement agency that provides regulatory oversight over operations and facilities receiving construction and demolition debris such as concrete, and compostable materials such as green waste. If these materials are placed on site, the Permittee will be required to notify Environmental Health, and may be required to submit a plan of operation or apply for a Solid Waste Facility Permit. To ensure that the project ultimately approved by County Environmental Health is the same as the project authorized herein, the Executive Director attaches [Special Condition No. 3](#), which requires the applicant to submit to the Executive Director evidence of any necessary notification of Del Norte County's Environmental Health Division, a copy of any required operation plan or permit, or evidence that no such authorization is required. The condition requires that any project changes resulting from the County's approval not be incorporated into the project until the applicant obtains any necessary amendments to this CDP.

Special Condition No. 1 also restricts the type of processing that can occur on site, limiting processing to the separation of rocks and gravels from fines, other sorting of material, and chipping of vegetation. This restriction is consistent with the applicant's proposal and ensures that other types of processing with greater potential environmental impacts, such as the crushing of concrete, will not occur on site without additional coastal development permit authorization and thus additional consideration of potential impacts and necessary BMPs.

Currently the subject property contains numerous sediment piles, three piles of cleared brush, two piles of rocks sorted by size, a pile of concrete blocks, a pile of asphalt rubble, a pile of large black plastic cylinders, and miscellaneous debris from illegal dumping and human encampments. The County has determined that the sediment piles do not contain dredged material and therefore are compliant with the Commission's Special Condition No. 1. The asphalt currently stored on site, however, is not consistent with Special Condition No. 1 and could potentially release contaminants into nearby sensitive habitats and coastal waters. To prevent potential degradation

of these adjoining resources, the Commission attaches [Special Condition No. 2](#) to ensure that all asphalt on site is removed within 6 months from the date of Commission action.

The development involves moving and stockpiling potentially large amounts of materials near sensitive habitats, including soils and fine sediments. Stormwater that has come into contact with material piles could contain entrained sediment and other pollutants that would contribute to degradation of the quality of coastal waters and any intervening sensitive habitat. If stored sediments erode into nearby wetlands and Elk Creek, they can affect visibility through the water, plant productivity, animal behavior and reproduction, and the ability of animals to obtain adequate oxygen from the water. Sediments may also physically alter or reduce the amount of habitat available in a wetland or watercourse by creating a bottom habitat composed of substrate materials unsuitable for the pre-existing aquatic community. In addition, sediment is the medium by which many other pollutants are delivered to aquatic environments, as many pollutants are chemically or physically associated with sediment particles. To avoid such impacts, the applicant proposes to construct berms around stored material piles in order to minimize sediment transport. In addition, to direct runoff from the storage yard away from wetlands and Elk Creek and filter stormwater before it enters the County's drainage inlet to the southwest of the subject property, the applicant proposes to grade the ground within the processing area and construct bioswales along the southern edge of the property.

To ensure that best management practices (BMPs) are implemented to control the erosion of stockpiled material and minimize sedimentation of coastal waters, the Commission attaches [Special Condition No. 4](#), requiring approval of a final erosion and runoff control plan that includes requirements for the installation of the BMPs proposed by the applicant, as well as additional BMPs necessary to ensure the protection of coastal resources. In addition to requiring temporary perimeter sediment barriers around material piles, Special Condition No. 4 requires, among other provisions, that all material piles be covered or seeded to protect against the erosive forces of wind and rain and prevent contact with and possible contamination of stormwater. Special Condition No. 4 also requires that permanent berms be constructed between the storage yard and the delineated wetland buffers to the north and east of the yard, and a berm or swale be installed to the west of the yard, between the yard and access road. The condition specifies that perimeter berms be designed to contain runoff from an 85th percentile storm event and perimeter swales be designed to infiltrate runoff from an 85th percentile storm event. These permanent BMPs will serve to prevent run-on of uncontaminated stormwater into the storage yard, as well as runoff of stormwater from the storage yard into surrounding wetlands. Secondary containment is especially critical on the western edge of the storage yard, as there is no buffer between the primary access road and the extensive wetlands along the western edge of the property. Special Condition No. 4 also requires that all runoff and erosion control measures be regularly inspected, repaired or replaced as needed, and maintained in good condition throughout the life of the development.

As conditioned, the Commission finds that the proposed project provides feasible mitigation measures to protect sensitive species and the biological productivity and quality of coastal streams and wetlands consistent with sections 30230, 30231 and 30233 of the Coastal Act and the corresponding policies and recommendations of the marine and water resources chapter of the certified LUP.

E. CONSISTENCY WITH ZONING DESIGNATION

The Pappas property is zoned Manufacturing and Industrial (“M”) with a small amount of Resource Conservation Area RCA-1 existing along the western property line. As conditioned, an approximately 3.2 acre portion of the site zoned “M” would be used to store, sort, and process materials such as soil, rock, gravel, and concrete from the Crescent City Harbor District and other locations. Under Del Norte County’s coastal zoning regulations, storage yards are an allowed use pursuant to obtaining a Use Permit within the M zoning district (DNCC §21.31.030.N).

While storage yards are allowed with a use permit, waste disposal sites are not one of the enumerated allowable uses in the M zoning district and therefore should be prohibited. Neither storage yards nor waste disposal sites are defined within Del Norte County’s coastal zoning regulations. However, DNCC Section 21.31.010 states in part that the M district is intended to apply to areas suited to normal operations of industries, and Section 21.04.370 defines “industry” as the manufacture, fabrication, reduction or destruction of any article, substance or commodity, or any other treatment thereof in such a manner as to change the form or character thereof. According to this definition, industry is about changing the form or character of materials. In contrast, waste disposal is the accumulation of refuse and discarded material without any transformation of the material. In the list of uses requiring a use permit in the M District, storage yards are grouped with junkyards, wrecking yards, contractor yards, and lumber yards (DNCC §21.31.030.N). These businesses involve the storage of materials for later use (contractor yard), for salvage or conversion to a new use (junkyards, wrecking yards), or for processing into a more valuable product (lumber yards). Based on the definition of industry and the businesses associated with storage yards in Del Norte County’s coastal zoning regulations, one can conclude that a storage yard is a site that stores material for later reuse, salvage, or processing. In contrast, a dump site only accepts waste material with no intention of future reclamation or removal from the site.

The County’s original approval of the storage yard did not limit the amount of time received materials could remain on site. Materials could therefore be left on site indefinitely with no intention of reuse, rendering the site a waste disposal site, inconsistent with the zoning designation. To ensure that the subject property is used as a storage yard rather than a waste disposal site, the Commission attaches [Special Condition No. 5](#) which sets a five year limit on the length of time deposited materials may remain on site. To ensure adherence to these time limits, Special Condition No. 5 also requires the Permittee to keep an accurate, up-to-date inventory of the types and quantities of materials received and stored on site. As conditioned, the Commission finds that the proposed development is consistent with the M zoning district applicable to the site.

F. VISUAL RESOURCES

The Del Norte County LCP visual resource policies require development within highly scenic areas 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 “viewpoints” or “view corridors.” No identified viewpoints or view corridors are located in the vicinity of the subject

parcel. The nearest identified visual resource is Citizen's Dock at the Crescent City Harbor, which is approximately a quarter mile away and separated by Elk Valley Road, Highway 101, and numerous intervening parcels.

The proposed storage yard is not located in an area where it will affect views to and along the coast. The property is east of Highway 101 and surrounded by dense vegetation and commercial and industrial properties. The nearest public vantage points to the subject property are Elk Valley Road to the south and the Elk Creek Wetlands Wildlife Area to the north and west. The development will not be visible from Elk Valley Road as it is set back from the road behind a row of commercial and industrial properties. Additionally, the dense wetland and riparian vegetation covering the north side of the property and surrounding it to the north and west will screen the proposed storage yard from the adjacent Elk Creek Wetlands Wildlife Area.

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

G. ALLEGED VIOLATION

Prior to the application for this CDP, vegetation and a layer of topsoil were cleared from approximately four acres on the southern half of the Pappas property and approximately 9,000 cubic yards of fill materials were deposited and sorted on site without the benefit of a CDP. The cleared brush and topsoil and the deposited fill materials were placed adjacent to wetlands. During rain events in the spring of 2012, a substantial amount of deposited sediments eroded into adjacent wetlands. An Emergency Coastal Permit was obtained from the County to move these sediments out of the wetlands and contain runoff from the piles with sediment fences.

Although development has taken place at the project site without the benefit of a coastal development permit, consideration of the current application by the Commission has been based solely upon the development's conformance with Del Norte County's certified LCP. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Del Norte County is the lead agency for the purposes of CEQA review. The County adopted a Mitigated Negative Declaration for the project on May 7, 2014.

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirement of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment.

The Commission incorporates its findings on conformity with Coastal Act policies at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed herein, in the findings addressing the consistency of the proposed project with the certified Del Norte County LCP, the proposed project has been conditioned to be found consistent with the certified Del Norte County LCP. Mitigation measures which will minimize all adverse environmental impacts have been made requirements of project approval. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A

Commission's Appeal Jurisdiction Over the Project

On May 7, 2014, the Del Norte County Planning Commission approved Coastal Use Permit No. UP1406C with conditions for the use of a 7.47-acre parcel as a storage yard. The subject property is on the north side of Elk Valley Road behind the Crescent City Hay and Feed Store, approximately 0.1 miles east of Highway 101.

After certification of Local Coastal Programs (LCPs), Section 30603 of the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (CDPs). Section 30603 states that an action taken by a local government on a CDP application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within 300 feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within 100 feet of any wetland or stream, or within 300 feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area. Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified LCP and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission pursuant to Section 30603 of the Coastal Act because the approved development is both (1) located within 100 feet of a wetland, and (2) not designated as the principal permitted use under the certified LCP.

(1) Within 100 Feet of a Wetland

The biological assessment and wetland restoration plan (November 2013) and the wetland delineation (January 2014) prepared by Galea Wildlife Consulting for the Pappas Property both identify a wetland at the southeast corner of the property and define a 50-foot buffer between the wetland habitat and the approved storage yard. As the approved development is located within 100 feet of a wetland feature, the subject development is appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act.

(2) Not the Principal Permitted Use

Under The County's Coastal Zoning Code, a storage yard is an allowed use in the Manufacturing Zone District pursuant to obtaining a Use Permit. Because the approved use of the site as a storage yard is not designated as the principal permitted use under the certified LCP, the County CDP is appealable to the Commission pursuant to Section 30603(a)(4) of the Coastal Act.

On May 9, 2014, the Commission's North Coast District office received a Notice of Action from The County stating that the County Planning Commission had approved Coastal Use Permit No. UP1406C with conditions on May 7, 2014 (**Exhibit 8**). The County's notice indicated that an appeal of the County's decision on the subject permit must be filed with the Clerk of the Board

of Supervisors by May 19, 2014 for consideration by the Board. Since no local appeal was filed with the Board, the Commission's appeal period began on May 20, 2014 and ran for 10 working days, ending on June 3, 2014. On June 2, 2014, the Commission received an appeal of the County's decision from Friends of Del Norte (**Exhibit 9**).

APPENDIX B

Substantive File Document

Del Norte County certified local coastal program (LCP)

Appeal File No. A-1-DNC-14-0028, including local record for Del Norte County Coastal Use Permit No. UP1406C

Letter submitted to Jim Barnts, Del Norte County Engineer; from Galea Wildlife Consulting; Subject: Emergency Coastal Grading Permit for Pappas Property, APN 117-110-25; dated February 25, 2013

Application for Del Norte County Emergency Coastal Permit; prepared on behalf of John Pappas; dated March 1, 2013

Letter submitted to John Pappas; from Heidi Kunstal, Deputy Director of Del Norte County Building and Planning; Subject: Emergency Coastal Permit for APN 117-110-25; dated March 1, 2013

Memorandum submitted to the Del Norte County Planning Commission; from Heidi Kunstal, Deputy Director of Del Norte County Building and Planning; Subject: Notification of Issuance of an Emergency Coastal Permit for APN 117-110-25 (Ted Pappas Partnership c/o John Pappas); dated March 4, 2013

Pappas Property Biological Assessment and Wetland Restoration Plan, Del Norte County; prepared by Galea Wildlife Consulting; received by Del Norte County Planning December 3, 2013

Plan of Operation, Pappas Property, Elk Valley Road, Del Norte County; prepared by Galea Wildlife Consulting

Letter submitted to Richard Young, Crescent City Harbor District; from Fred Blatt, Chief of Nonpoint Source and Timber Harvest Division of the North Coast Regional Water Quality Control Board; Subject: Notice of Violation; dated January 17, 2014

Storm Water Pollution Prevention Plan for the Pappas Property; prepared for John Pappas by Stover Engineering; dated January 2014

Pappas Property Wetland Delineation; prepared by Galea Wildlife Consulting; received by Del Norte County Planning Division February 7, 2014

Initial Study and Proposed Negative Declaration for a Use Permit for a Storage Yard; lead agency: Del Norte County Community Development Department; dated March 18, 2014

Letter submitted to Randy Hooper, Del Norte County Planning Division; from Stephen Bargsten, Senior Environmental Scientist for the North Coast Regional Water Quality Control Board; Subject: John Pappas Property – Environmental Review of a Use Permit for Storage Yard (Soil, Rock, and Sand); dated April 21, 2014

Memorandum submitted to the Del Norte County Planning Commission; from Randy Hooper, Planner; Subject: Comments Received, Staff Response (Pappas Use Permit); dated May 7, 2014

APPENDIX C
Excerpts from the Del Norte County Certified LCP
(Emphasis added)

I. RELEVANT LAND USE PLAN (LUP) POLICIES AND STANDARDS

LUP “Marine and Water Resources” chapter, Section IV (Sensitive Habitat Types) in part states as follows:

... ..

- C. Sensitive Habitat Types: Several biologically sensitive habitat types, designated through the application of the above criteria, are found in the Coastal Zone of Del Norte County. These include: offshore rocks; intertidal areas; estuaries; wetlands; riparian vegetation systems; sea cliffs; and coastal sand dunes. A brief description of these sensitive habitat types is given below:

... ..

4. *Wetlands: Also termed marshes, swamps and bogs, wetlands in the coastal zone vary from brackish to freshwater and range from seasonally flooded swales to year round shallow lakes. Like estuaries, wetlands tend to be highly productive regions and are important habitats and feeding grounds for numerous wildlife species.*
5. *Riparian Vegetation Systems: The habitat type located along stream and river banks usually characterized by dense growth 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.*

... ..

LUP “Marine and Water Resources” chapter, Section IV-C (Sensitive Habitat Types) Table 1 (Sensitive Habitat Types and Their Principal Locations) specifically lists “Elk Creek Marsh” as a “principal location” for the wetlands sensitive habitat type.

LUP “Marine and Water Resources” chapter, Section VI-C (LCP Policies) in part states as follows:

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

... ..

3. *All surface and subsurface waters shall be maintained at the highest level of quality to insure the safety of public health and the biological productivity of coastal waters.*
4. 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.

... ..

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

... ..

LUP “Marine and Water Resources” chapter, Section VII-D (Wetlands), Part 1 defines “Wetland” as follows:

1. *Definition: "Wetland" means lands within the Coastal Zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, bogs, and fens. The land use category will be Resource Conservation Area.*

LUP “Marine and Water Resources” chapter, Section VII-D (Wetlands), Part 2 identifies “major wetland areas of the Coastal Zone” in part as follows:

... ..

2. *Principal Distributions: Wetland habitats are found throughout the generally flat-lying coastal plain of Del Norte County. The following identifies the major wetlands areas of the Coastal Zone.*

... ..

m. Elk Creek Wetland

... ..

LUP “Marine and Water Resources” chapter, section VII-D (Wetlands), Part 4 (Policies and Recommendations) states in part as follows:

- a. The diking, filling, or dredging of wetlands shall be permitted in accordance with other applicable provisions of this program, where there is no feasible less environmentally damaging alternative and where feasible mitigation measures have been provided to minimize adverse environmental effects. Such projects shall be limited to those identified in Section 30233 of the Coastal Act.
- b. Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation...

... ..

- 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 determination shall be based upon specific findings as to the adequacy of the proposed buffer to protect the identified resource...
- g. Due to the scale of the constraints maps, questions may arise as to the specific boundary limits of an identified environmentally sensitive habitat area. Where there is a dispute over the boundary or location of an environmentally sensitive habitats area, the following may be requested of the applicant:
- i.) A base map delineating topographic lines, adjacent roads, location of dikes, levees, flood control channels and tide gates.
 - ii.) Vegetation map.
 - iii.) Soils map.
- Review of this information shall be in cooperation with the Department of Fish and Game and the County's determination shall be based upon specific findings as to whether an area is or is not an environmentally sensitive habitat area based on land use plan criteria, definition, and criteria included in commission guidelines for wetland and other wet environmentally sensitive habitat areas as adopted February 4, 1981. The Department of Fish and Game shall have up to fifteen days upon receipt of County notice to provide review and cooperation.

LUP "Marine and Water Resources" chapter, Section VII-E (Riparian Vegetation), Part 4 (Policies and Recommendations) states in part as follows:

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

... ..

LUP "Elk Creek Wetland – Special Study" chapter, Section VI-C (LCP Policies) states in part as follows:

... ..

2. *A buffer strip, shall be maintained in natural conditions around the Elk Creek wetlands where adjacent land uses are found incompatible with the productivity or maintenance of the wetlands.*
3. *New development adjacent to the Elk Creek wetlands shall not result in adverse levels or additional sediment, runoff, noise, wastewater or other disturbances.*

... ..

6. *Riparian vegetation along the course of Elk Creek and its branch streams shall be maintained for their qualities of wildlife habitat and stream buffer zones.*
7. *In areas where the boundary of the Elk Creek wetland is in doubt, a detailed survey of a parcel and the location of the marsh shall be required to determine the suitability of said parcel for dwelling or other building site and sewage disposal system before a permit is issued.*

... ..

II. RELEVANT IMPLEMENTATION PLAN (IP) POLICIES AND STANDARDS

Chapter 14.05 of the coastal zoning regulations addresses grading, excavation and filling in part as follows:

... ..

14.05.040 Prohibited grading. No grading shall be done or caused to be done:

- A. *That will endanger any public or private property, result in the deposit of debris on any public way or significantly affect any existing wetland, drainage or other resource conservation area unless the hazard is eliminated by construction of retaining structures, buttress fills, drainage devices, landscaping, vegetation buffers, or other means required as a condition of a building and grading permit or other entitlement;*

... ..

- C. *As on-site preparation preparatory to or in association with any development which requires a permit or other entitlement, including but not limited to coastal zone permits, tentative maps, use permits, reasoning's, building permits, mobile home installation permits and sewage disposal permits, until the permit or entitlement to which the grading relates is issued;*
- D. *That does not comply with applicable grading standards, unless an engineered alternative is approved as a part of a valid building and grading permit. (Ord. 83-03 (part), 1983.)*

14.05.050 Exceptions from permit requirement. All grading shall require the issuance of a building and grading permit pursuant to this title except that such permit shall not be required for the following:

... ..

- H. *Within the California Coastal Zone, grading subordinate to a use established prior to 1976 or by a coastal permit (or equivalent) such as gardens, yards, landscaping, native wooded habitat maintenance and driveways where:*
 1. *Cuts and/or fills do not exceed five and/or three feet respectively; and*
 2. *The subordinate use area does not conflict with the requirements of any RCA, W or C zoning district,*
- I. *Outside of the California Coastal Zone, grading where:*
 1. *Less than five hundred cubic yards of material is involved, and*

2. Cuts which do not exceed five feet and are no steeper than two horizontal to one vertical, and
3. Fill less than one foot deep placed on natural terrain with a slope flatter than five horizontal to one vertical, or less than three feet in depth, not intended to support structures and which does not obstruct a drainage course:

... ..

No exemption shall apply to any grading that significantly effects any off-site drainage or that significantly effects the lateral support of or increases the stresses in or pressure upon any adjacent or contiguous property not owned by the owner of the land upon which such grading is performed.

No exemption provided in this section shall apply to any activity for which a permit or other entitlement for use is required to be issued by Del Norte County unless the application for that permit includes a grading plan for any grading related to the activity which has been found to be in conformance with the grading standards or an engineered alternative has been approved. (Ord. 86-04 § 1 (part), 1986; Ord. 83-03 (part), 1983.)

... ..

Chapter 14.06 of the coastal zoning regulations addresses entitlement procedures for building and grading permits in part as follows:

... ..

14.06.020 County entitlements equivalent to coastal development permits.

- A. Where development within the California Coastal Zone requires the issuance of a building and/or grading permit pursuant to Title 14 of the Del Norte County Code, the permit shall serve as the coastal development permit, subject to compliance with this chapter.
- B. Projects which are exempt from coastal permit requirements or have presiding entitlement (e.g., use permit, PC zone) which is of sufficient detail and acts as a valid coastal permit at the time of application, they shall be reviewed pursuant to county regulations for non-coastal projects.

... ..

Chapter 21.11 of the coastal zoning regulations (RCA1 General Resource Conservation Area District) states in part as follows:

21.11.010 Intent. *Resource conservation areas are those environmentally sensitive habitat areas which are identified by the General Plan Coastal Element as wetlands, farmed wetlands, riparian vegetation, estuary and coastal sand dunes. The general resource conservation area zone is intended to designate those resource conservation areas which require further data, particularly mapping, prior to new or additional development and to serve as a transition zone until such data is made available, reviewed and adopted by the county. Changes of zone from general resource conservation area to another classification are to be made subject to the requirements of Section 21.11.060 herein and only where such uses are in accord with the General Plan or adopted specific plan.*

... ..

21.11.020 Applicability.

This zone shall be applied to those parcels or portions of parcels adjacent to or with in the resource conservation areas which are identified by the General Plan Coastal Element for which the requirements of Section 21.11.060 have not been met. (Ord. 83-03 (part))

21.11.030 The principal permitted use.

The principal permitted resource conservation area general use includes:

- A. *Fish and wildlife management;*
- B. *Nature study;*
- C. *Hunting and fishing including development of duck blinds and similar minor facilities. (Ord. 83-03 (part))*

21.11.040 Uses permitted with a use permit.

Uses permitted with a use permit include:

- A. *Wetland restoration per Section 21.11A.070. (Ord. 83-03 (part))*

... ..

Chapter 21.31 of the coastal zoning regulations (M Manufacturing and Industrial District) states in part as follows:

... ..

21.31.010 Intent. *This district classification is intended to apply to areas suited to normal operations of industries, subject only to such regulations as are needed to control congestion and protect surrounding areas. Changes of district from manufacturing and industrial district to another classification are to be made only where such uses are in accord with the General Plan or adopted specific plan.*

... ..

21.31.030 Uses permitted with use permit.

Uses permitted with a use permit in a M district shall be as follows:

- A. *Exploration and/or the removal of stone, minerals, oil, gas, etc., pursuant to Chapter 7.36 of the Del Norte County Code;*
- B. *Refining of petroleum or other fuels and/or the byproducts and/or the bulk storage of such;*
- C. *Distillation of bones, fat rendering or tanneries;*
- D. *Stockyards and slaughterhouses;*
- E. *Fish or meat processing;*
- F. *Professional offices;*
- G. *Sawmills and planing mills;*
- H. *Pulp mills and paper mills;*
- I. *Manufacture of acid, chemicals, cement, explosives, fireworks, fertilizer, gas, glue, gypsum, inflammable fluids or gases and/or the bulk storage of such;*
- J. *Smelting of copper, iron, tin, zinc or other ores;*
- K. *Animal hospitals, enclosed kennels and veterinary clinics;*
- L. *Other commercial and industrial uses which might be objectionable for reason of production or emission of noise, offensive odor, smoke, dust, bright lights, vibration or involving the handling of explosive or dangerous materials;*
- M. *Hog ranches;*
- N. *Junkyards, wrecking yards, contractor yards, lumber yards and storage yards;*

O. Off-site advertising signs. (Ord. 83-03 (part))

Chapter 21.04 of the coastal zoning regulations (Definitions) defines industry as follows:

21.04.370 Industry. *"Industry" means the manufacture, fabrication, reduction or destruction of any article, substance or commodity, or any other treatment thereof in such a manner as to change the form or character thereof, including, in addition, the following: bottling works, building materials or contractors' yards, cleaning and dyeing establishments, creameries, junkyards, wrecking yards, laundries, lumber yards, milk bottling or distributing stations, stockyards, storage elevators, truck storage, service or repair, warehouses and wholesale storage. (Ord. 83-03 (part))*

APPENDIX D

History of Development on Site

Historically, the subject property was part of a larger parcel that was the location of a large lumber mill complex built in the 1940's. The main lumber mill building was located near the northern end of the subject property, with a number of smaller buildings and structures to the south. Acres of logging decks extended west from the mill access road (now the western edge of the subject property) to the banks of Elk Creek, on land now owned by CDFW. The mill ceased operations in the early 1970's, and all structures were removed from the site by the mid-1980's, although a number of building pads, a layer of gravel fill, and the dirt access road remain. Despite being heavily disturbed by this past industrial use and associated fill, much of the land has been re-colonized in the intervening years by primarily riparian and wetland vegetation.

Since the mid-1980's, the southern half of the subject property has been used periodically as a site for the temporary stockpiling of materials, although the Commission has no record of coastal development permits having been issued for such development. For example, according to the County staff report, the County used the site for storage and processing during the reconstruction of Elk Valley Road. Additionally, illegal trash dumping and human encampments have been a common occurrence throughout the site. Today there are remnant piles of debris, construction material, and vegetation around the site.

In early 2012, the property owner entered into an agreement with the Crescent City Harbor District's contractor (Dutra Group) to use the site for the storage of approximately 9,000 cubic yards of waste material from the Crescent City Harbor restoration project. The Crescent City Harbor District's inner boat basin was destroyed in the 2011 tsunami and was later reconstructed, including the basin's perimeter slope which was excavated, graded, and re-armored with riprap.

Prior to importing sediments, Dutra first cleared vegetation and a layer of topsoil from approximately four acres on the southern half of the Pappas property, potentially removing wetland vegetation and grading wetlands. Dutra deposited the brush and topsoil in piles at the perimeter of the cleared area, on or adjacent to potential wetland habitats. Next, Dutra deposited approximately 9,000 cubic yards of materials from the harbor restoration project in piles around the perimeter of the cleared area, in and adjacent to potential wetlands. These materials included sandy soil, rocks, concrete, asphalt, and plastic. According to the applicant, minimal processing then occurred on site, such as the size-sorting of rocks.

The largest pile of material deposited was a pile of sandy sediments placed along the eastern edge of the cleared area measuring approximately 270 feet long (north to south), 75 feet wide, and 12 feet tall. During rain events in the spring of 2012, this pile eroded into adjacent vegetation. According to materials submitted by the applicant's agent and wetland delineator, the soil flow covered approximately 400 square feet of potential wetland habitat (See **Exhibits 6 & Exhibit 8, pgs. 6-8** for aerial photographs of the site before and after development undertaken without the benefit of a CDP; See **Exhibit 7, pg. 1** for photographs of the site from March 2013, before any remedial actions were taken).

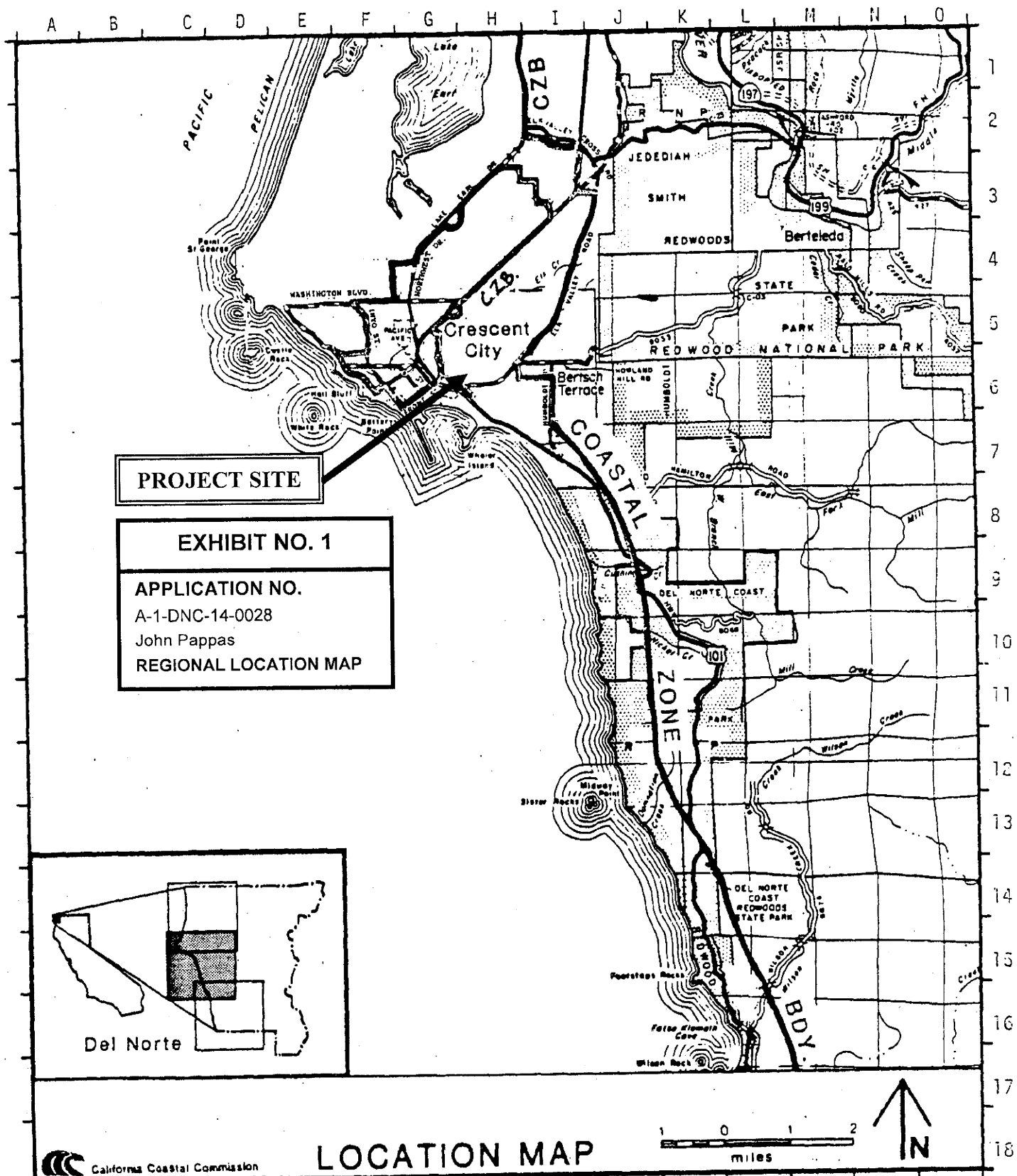
In early 2013, Del Norte County became aware of the significant quantity of material being stockpiled on the parcel without a Coastal Grading Permit, and, in response, the County's Engineering Division issued a Notice of Violation and a Stop Work Order on February 22, 2013. The property owner was directed to commence necessary work to control site runoff. The applicant submitted an application for an Emergency Coastal Permit, which was granted by the County on March 1, 2013. Under the emergency permit, an excavator was used to move piles of cleared vegetation and Harbor District sediments that had eroded into wetland habitat towards the center of the site. In addition, sediment fences were installed around the piles.

Pursuant to the terms of the Emergency Coastal Permit, the applicant submitted a Coastal Grading Permit application to the County for after-the-fact CDP authorization of temporary material storage on site with eventual removal to an off-site location. This application was reviewed by the County Environmental Review Committee in March 2013 and deemed incomplete because the applicant had not been able to find a party willing to accept the unpermitted stockpiled material for transfer from the site.

At this point, the County coordinated with the applicant to try a different approach for obtaining after-the-fact coastal development permit authorization for the unpermitted development. Under the new approach, the applicant would apply for a Coastal Use Permit rather than a Coastal Grading Permit. A Coastal Use Permit for use of the site as a storage yard would provide CDP authorization for ongoing storage of the Harbor District material on site. The applicant prepared additional project information for this amended project description, and in March 2014, the application was deemed complete.

The North Coast Regional Water Quality Control Board also responded to the disposal of Harbor District material on the Pappas site, issuing a Notice of Violation (NOV) to the Crescent City Harbor District on January 17, 2014 for violation of Clean Water Act Section 401 Water Quality Certification Orders and the General Construction Storm Water Permit (General Permit). Regional Board staff had inspected the Pappas property on April 18, 2013 and observed potential wetland areas buried by the stockpiled material and evidence of sediment being transported via stormwater runoff offsite towards Elk Creek. In their NOV letter, the Regional Board instructed the Harbor District to obtain all the required permits for past and potential future use of the Pappas property including coverage under the General Permit and preparation of an appropriate Storm Water Pollution Prevention Plan (SWPPP). In response to the NOV, Stover Engineering, on behalf of the applicant, developed a SWPPP and obtained a Waste Discharger Identification. The SWPPP, dated January 2014, required a number of pollution control measures, including the deployment of silt fencing downslope of disturbed soil areas, the seeding of sediment piles, and the sampling of runoff downstream of the silt fences for pH and turbidity (See **Exhibit 7, pgs. 2-3** for photographs of the site after these pollution control measures were implemented).

Commission staff visited the property on June 9, 2014 and again on July 15, 2014. In addition to numerous vegetated sediment piles and three piles of cleared brush, Commission staff observed two piles of rocks sorted by size, a pile of concrete blocks, a pile of asphalt rubble, a pile of large black plastic cylinders, and miscellaneous debris (See **Exhibit 7, pgs. 2-3** for pictures of the various piles).



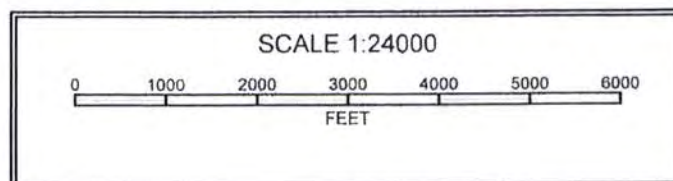
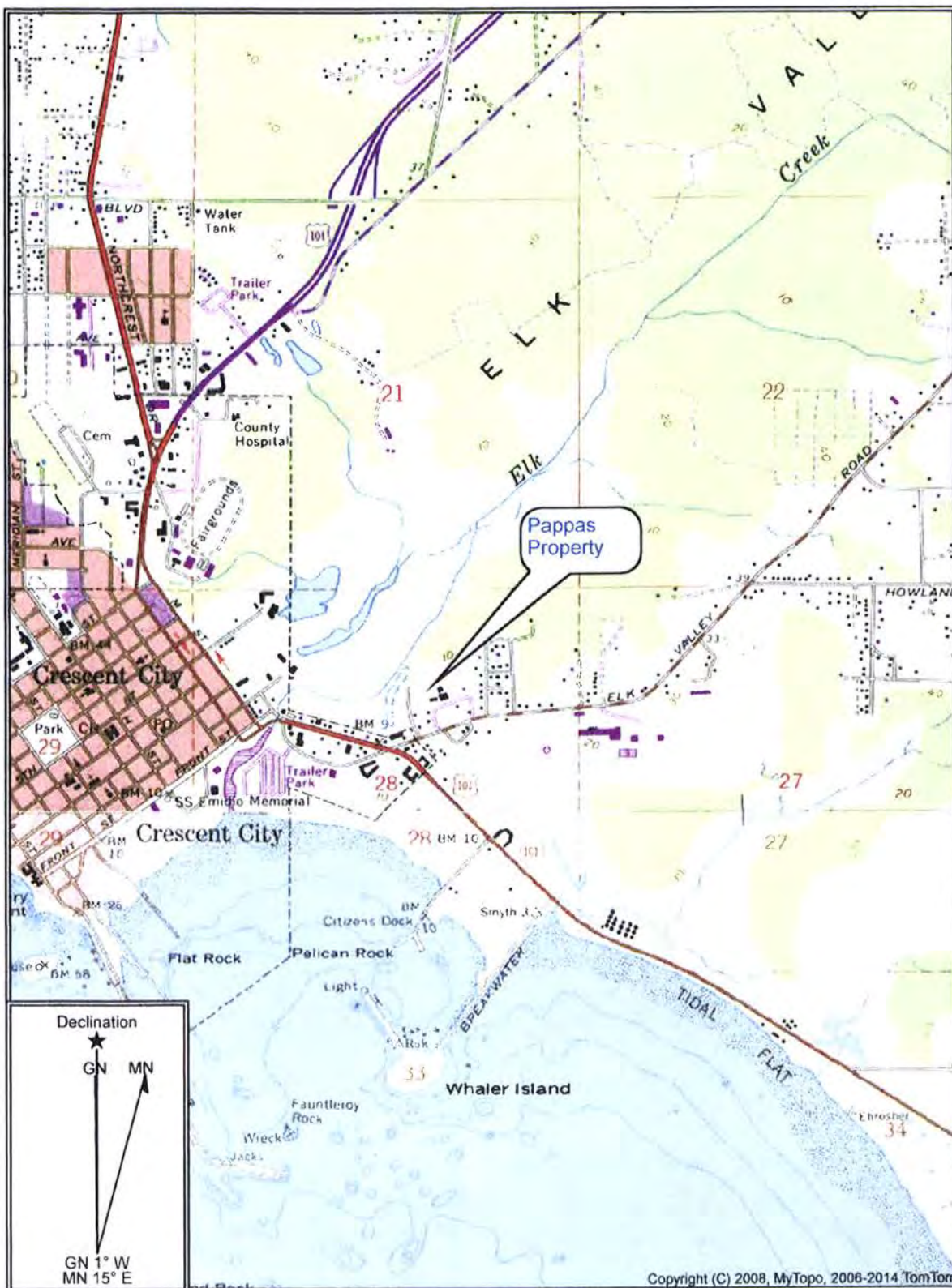


EXHIBIT NO. 2
APPLICATION NO.
 A-1-DNC-14-0028
 John Pappas
 VICINITY MAP

THIS IS NOT AN OFFICIAL MAP
FOR ASSESSMENT PURPOSES ONLY.

POR. SEC. 28 & SEC. 21, T.16N., R.1W., H.B. & M.

117-11

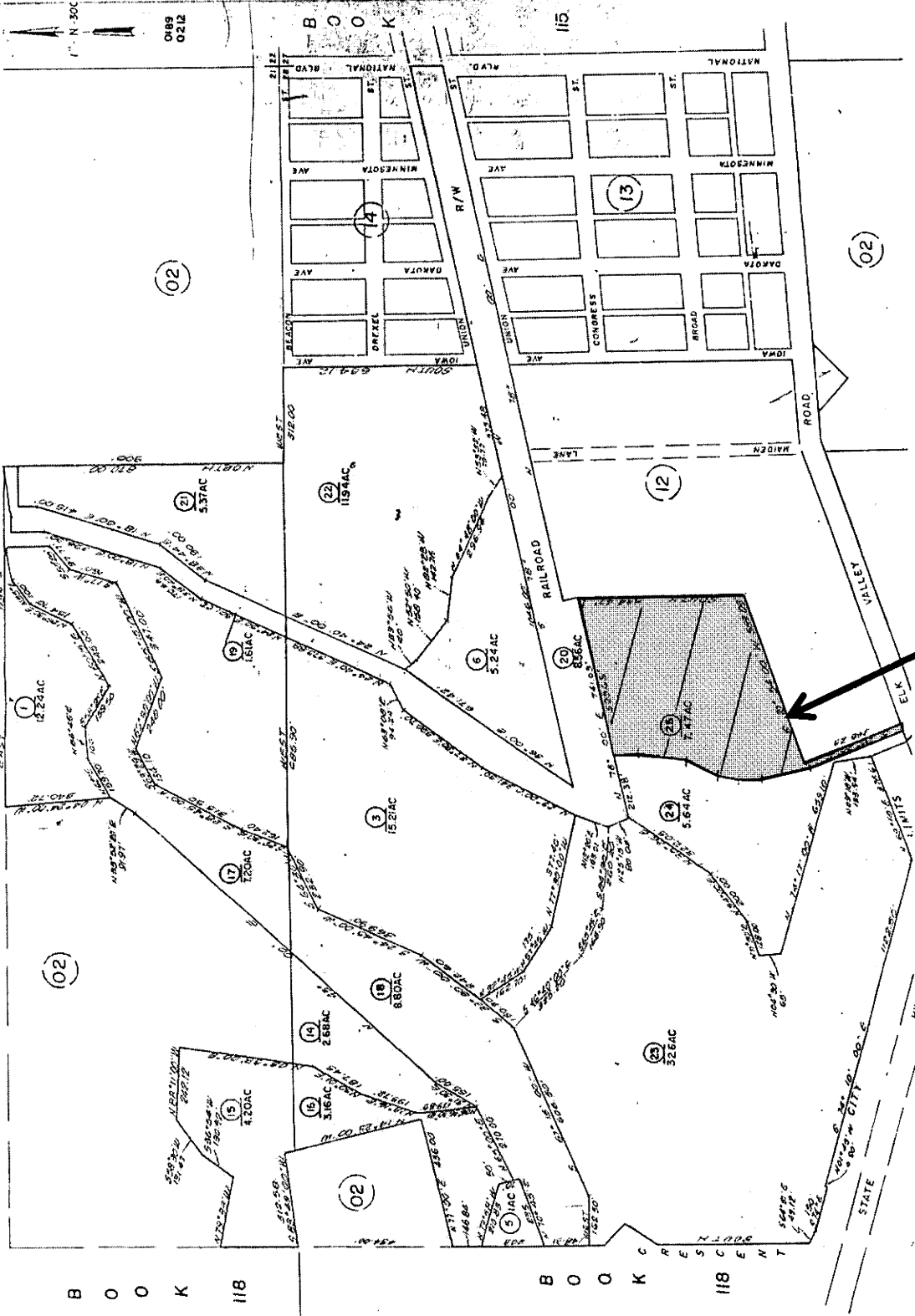


EXHIBIT NO. 3
APPLICATION NO.
A-1-DNC-14-0028
John Pappas
PARCEL MAP

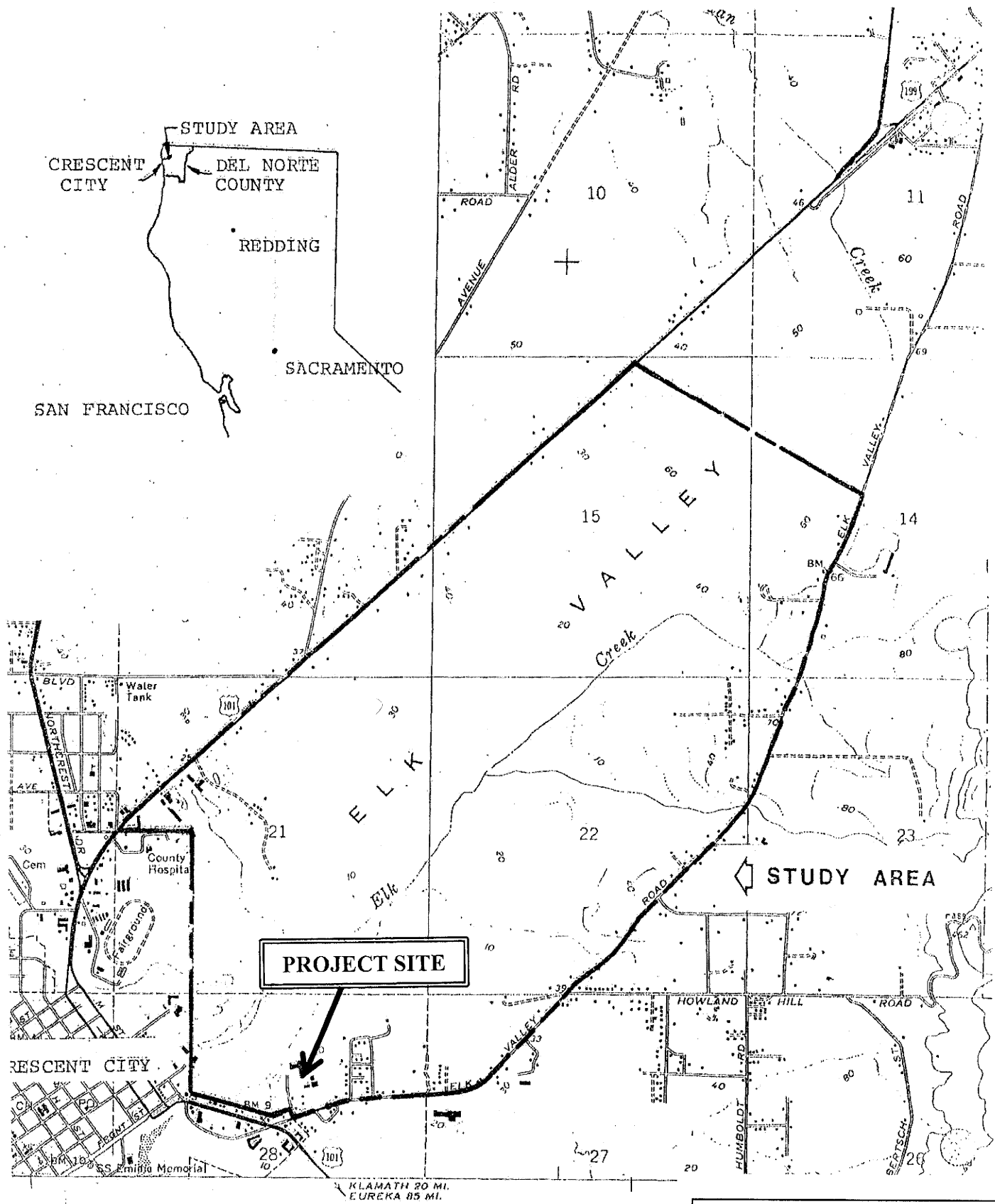


Figure 1: Location Map
141

EXHIBIT NO. 5

APPLICATION NO.

A-1-DNC-14-0028 - John Pappas
ELK CREEK WETLAND SPECIAL
STUDY AREA MAP

Pappas Property: Before and After Unpermitted Disposal of Harbor District Materials

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Adelman, California Coastal Records Project.
www.californiacoastline.org

October 13, 2002



EXHIBIT NO. 6

APPLICATION NO.

A-1-DNC-14-0028

John Pappas

AERIAL PHOTOS

September 27, 2013





Site Photos of Unpermitted Vegetation Clearing and Fill

Taken by Michael Van Hattem, California Department of Fish and
Wildlife. **March 7, 2013**

EXHIBIT NO. 7

APPLICATION NO.

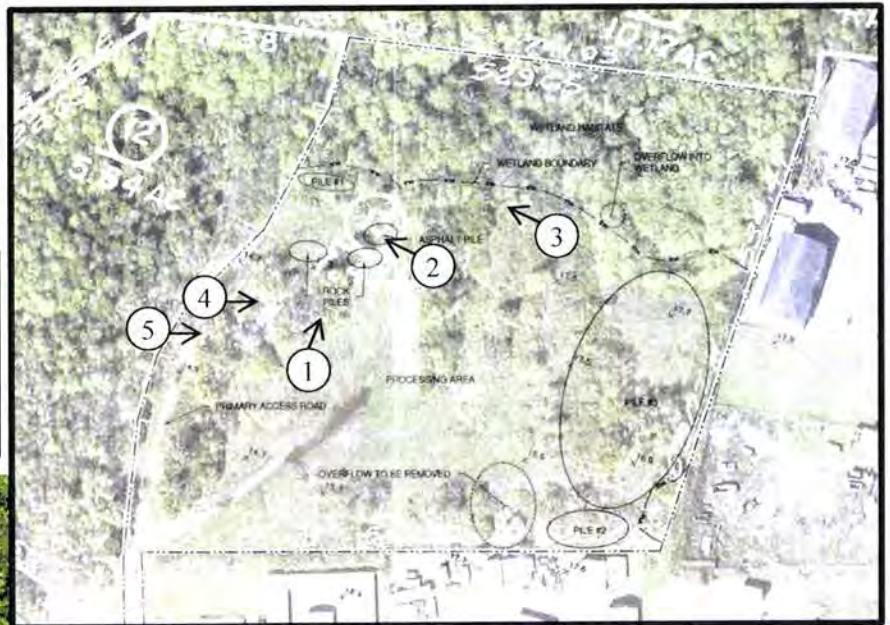
A-1-DNC-14-0028

John Pappas

SITE PHOTOS (1 of 3)

Recent Site Photos

Taken by Coastal Commission staff,
June 9, 2014



Two rock piles, sorted by size



Asphalt rubble



Concrete blocks



Pile of cleared vegetation and remnant building pad



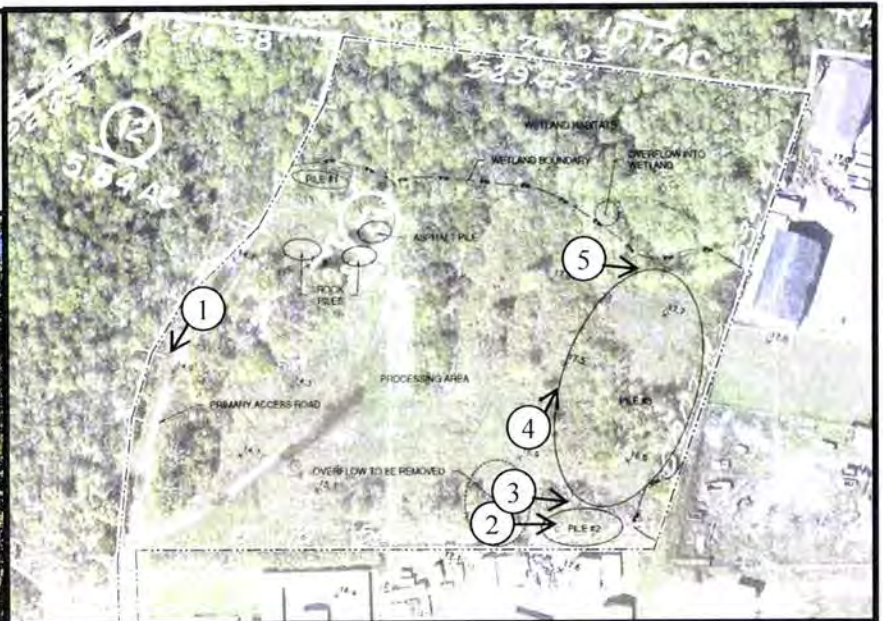
Plastic piping



2 of 3

Recent Site Photos

Taken by Coastal Commission staff,
June 9, 2014



Access road adjacent to western wetland



Sediment pile



Sediment piles



Piles of cleared vegetation and sediment pile



Sediment pile adjacent to northern wetland



393

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

NOTICE OF ACTION

EXHIBIT NO. 8

APPLICATION NO.

A-1-DNC-14-0028 – John Pappas

NOTICE OF FINAL LOCAL
ACTION (1 of 14)

- I. Notice is hereby given that the **Planning Commission** of Del Norte County took the following action on **May 7, 2014** regarding the application for development listed below:

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

Application Number: UP1406C

Project Description: Use Permit for a Storage Yard

Project Location: Elk Valley Road, Crescent City

Assessor's Parcel Number: 117-110-25

Applicant: John Pappas

Applicant's Mailing Address: 2320 Parkway Drive, Crescent City, CA 95531

Agent's Name & Address: Frank Galea, 200 Racoon Crt, Crescent City, CA 95531

RECEIVED

MAY 09 2014

CALIFORNIA
COASTAL COMMISSION
NORTH COAST DISTRICT

A copy of any conditions of approval and/or findings adopted as part of the above action is attached.

- II. If Approved:

☒ This County permit or entitlement serves as a Coastal permit. No further action is required unless an appeal is filed in which case you will be notified.

This County permit or entitlement DOES NOT serve as a Coastal permit. Consult the Coastal Zone Permit procedure section of your NOTICE OF APPLICATION STATUS or the Planning Division of the Community Development Department if you have questions.

- III. Notice is given that this project:

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

☒ Is appealable to the California Coastal Commission.

☒ Any appeal of the above decision must be filed with the Clerk of the Board of Supervisors by May 19, 2014 for consideration by the Board of Supervisors.

☒ Any action of the Board of Supervisors on this item may be appealed to the California Coastal Commission within 10 working days or 21 calendar days subject to the requirements of Chapter 21.52 DNCC and Coastal Regulations.

Must be forwarded to the California Coastal Commission for final action. You will be notified of its status by the Coastal Commission Office.

(Continued on the next page)

Is not subject to Coastal Commission regulations, however, a local appeal process is available. Written appeals must be filed with the Clerk of the Board of Supervisors by N/A. Consideration will be by the Board of Supervisors.

Requests for deferment of road improvement standards or for modification of road improvement standards must be filed in writing with the Clerk of the Board of Supervisors by N/A, with a copy provided to the Secretary of the Planning Commission. Consideration will be by the Board of Supervisors.

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

N/A Record of Survey and new deeds must be filed within 24 months of the date of approval.

New deeds must be filed within 24 months of the date of approval.

EXTENSIONS – MAJOR & MINOR SUBDIVISIONS OR BOUNDARY ADJUSTMENTS – Maps (or Records of Survey/Deeds) must be filed within 12 months after the original date of expiration.

NOTICE – SECTION 1.40.070

The time within which review of this decision must be sought is governed by the California Code of Civil Procedure, Section 1094.6, and the Del Norte County Ordinance Code, Chapter 1.40. Any petition seeking judicial review must be filed in the appropriate court not later than the 90th day following the date on which this decision was made; however, if within 10 days after the decision was made, a request for the record of the proceedings is filed and the required deposit in an amount sufficient to cover the estimated cost of preparation of such record is timely deposited, the time within which such petition may be filed in court is extended to no later than the 30th day following the date on which the record is either personally delivered or mailed to you or your attorney of record.

FISH AND GAME FILING FEES

Projects subject to CEQA are also subject to the following fees as required by the California Department of Fish and Game:

Applicable Fee - ☒ Neg. Dec. (\$2,231.25) ☐ EIR (\$3,079.75) ☐ Exempt

This fee is due and payable to the County Clerk's Office. The applicant or agent is responsible for paying the current Fish and Game fee, which is subject to change. If not paid within 5 working days of the date of action of the Planning Commission, your project may be invalid by law (PRC 21089(b)) and will be referred to Fish and Game's Department of Compliance and External Audits in the Clerk's monthly deposit and report to Fish and Game.

ATTENTION APPLICANT

As a subdivider or adjuster of property, this notice is to advise you that **all taxes** must be paid in full prior to the recordation of your map or deeds. If the map or deeds are filed **after December 16th**, you must pay **all taxes due PLUS NEXT YEAR'S TAXES** before the map or deeds can be recorded.

If you have any questions regarding the payment of taxes, call the Del Norte County Tax Collector's Office at (707) 464-7283.

BELOW ARE LISTED THE CONDITIONS OF APPROVAL FOR YOUR PROJECT. PLEASE BE AWARE THAT COMPLIANCE WITH THESE CONDITIONS, AS WELL AS ANY APPLICABLE COUNTY STANDARDS, IS YOUR RESPONSIBILITY AS THE APPLICANT. NEITHER THE PLANNING COMMISSION NOR ANY OTHER AGENCY OF THE COUNTY OF DEL NORTE WILL TAKE ANY ACTION TO COMPLY WITH THE CONDITIONS OR DO ANY OTHER WORK TO FINALIZE YOUR PROJECT. YOUR PROJECT WILL NOT BE FINALIZED UNTIL THESE CONDITIONS AND/OR STANDARDS HAVE BEEN MET. IF YOU HAVE ANY QUESTIONS REGARDING THE CONDITIONS AND/OR STANDARDS FOR YOUR PROJECT, YOU SHOULD CONTACT THE DEPARTMENT OR AGENCY WHICH REQUIRED THAT CONDITION AND/OR STANDARD

1. This permit is for the use of this site as a storage yard for natural materials including soil, rock, vegetation and similar materials. The placement of non-natural materials such as asphalt, pipes, concrete, tires, and other trash is expressly prohibited;
2. This permit is not automatically transferrable but is eligible to be transferred upon application to the Del Norte County Community Development Department;
3. Development shall be pursued in a diligent manner and completed in a reasonable period of time. If development has not commenced the permit will expire two years from the date of final approval. Application for extension of permit must be made prior to the date of expiration;
4. The project shall be completed in substantial accord with the submitted plot plan;
5. A Notice of Conditional Approval with signature block shall be recorded prior to issuance of the Use Permit at the applicant's expense;
6. The property owner shall maintain the site in as dust free of a condition as possible (including the access road);
7. Prior to the issuance of the Use Permit the applicant or his agent shall mark the wetland and wetland buffer on the property. Marking of the wetland and wetland buffer shall be apparent in the field and be made as permanent as possible in order to direct future activities at the site away from the wetland and wetland buffer. Once the wetland and wetland buffer have been marked onsite the County Planning Division shall be notified and the County in coordination with the California Department of Fish and Wildlife shall inspect the wetland marking and wetland buffer marking;
8. No further disturbance may occur in areas identified as wetlands and wetland buffers except for work necessary to improve wetland conditions;
9. Prior to the issuance of the use permit a monitoring plan shall be developed by the applicant or his agent. The monitoring plan shall be submitted to the County Planning Division for review and acceptance. The monitoring plan shall specify a timeline acceptable to the County for removal of materials located in the wetland buffer(s) at the time of the consideration of this permit. In no case shall the removal of the material take place longer than one (1) year from the date of approval;
10. It is the responsibility of the applicant to apply for and maintain permits from other regulatory agencies for this project. Proof of permitting shall be furnished by the applicant, to the County, upon request;
11. No material may be placed in the Special Flood Hazard Area without being analyzed by a California Registered Professional Engineer;
12. This entitlement is specifically conditioned on the applicant agreeing to indemnify and hold harmless the County of Del Norte, the Planning Commission of the County of Del Norte, the Board of Supervisors of the County of Del Norte, their officers, employees and agents against any and all claims arising out of the issuance of the entitlement and specifically against any expense arising from defending any legal action challenging the issuance of the entitlement, including but not limited to the value of time devoted to such defense by County officers, employees and agents and the amount of any judgment, including costs of suit and attorney fees, recovered against the County or any of its officers, employees or agent in such legal action. The County of Del Norte reserves the option to either undertake the defense of any such legal action or to tender such defense to the applicant. Should the County tender such defense to the applicant and the applicant fail or neglect to diligently defend such legal action, the County may consider such failure or neglect to be a material breach of this conditions and forthwith revoke this entitlement;
13. The Property Owner shall secure a Grading Permit from the Engineering Division when activities rise to the level where a permit is required by the County's grading ordinance. Specifically, at a minimum, a Grading Permit shall be secured when the cumulative volume of material on the site exceeds 500 cubic yards, fills (stockpiles) exceed 3 feet in height or fill slopes exceed 5:1 (x:y), and/or cuts exceed 5 feet in height or cut slopes exceed 2:1 (x:y);

14. All future Grading Permits issued for this site shall adhere to the conditions of this permit including no activity within the wetland and wetland buffer; and
15. Prior to the issuance of the Use Permit, a Grading and Drainage Base Map of the project site shall be submitted. The Base Map shall define the project area relative to the property lines, topography of the project area, access routes, drainage features, and buffers. The map shall be prepared by a CA Registered Civil Engineer or Land Surveyor. A note shall be placed on the Grading and Drainage Base Map stating how the wetland buffer is delineated in the field.

Agent: Frank Galea

APP# UP1406C

STAFF REPORT

APPLICANT: John Pappas

APPLYING FOR: Use Permit for a Storage Yard

APN: 117-110-25

LOCATION: Elk Valley Road, Crescent City

PARCEL(S)

SIZE: 7.47 acres

EXISTING

USE: Manufacturing

EXISTING

STRUCTURES: None

PLANNING AREA:

7 GENERAL PLAN: Gen. Ind., RCA

ADJ. GEN. PLAN: Same, Ind. Comm.

ZONING: M, RCA-1

ADJ. ZONING: Same, C-4, A-5, RCA-1-C(H), M-C(H)

1. PROCESSING CATEGORY:

☐ NON-COASTAL

☒ APPEALABLE COASTAL

☐ NON-APPEALABLE COASTAL

☐ PROJECT REVIEW APPEAL

2. FIELD REVIEW NOTES: DATE: 2/7/14

☒ ENVIRONMENTAL HEALTH

☒ BUILDING INSP

☒ PLANNING

☒ ENGINEERING/SURVEYING

ACCESS: Elk Valley Road

ADJ. USES: Commercial, Industrial, Public Land

TOPOGRAPHY: Flat

DRAINAGE: Surface

DATE OF COMPLETE APPLICATION: March 13, 2014

3. ERC RECOMMENDATION: Post public hearing notice. Adopt Negative Declaration and approve permit with conditions.

4. STAFF RECOMMENDATION:

Frank Galea, acting as agent for John Pappas, has submitted a Use Permit application for a Storage Yard upon a ±7.5 acre parcel. Mr. Pappas' parcel is zoned M (Manufacturing) with a small amount of RCA-1 (General Resource Conservation Area) existing along the extreme west property line. Under Del Norte County Code "Storage Yards" are a use allowed pursuant to obtaining a Use Permit within the Manufacturing Zone District (DNCC §21.31.030.N). The proposed Storage Yard does not encroach into the area designated RCA-1 (the existing access road borders the RCA-1 area to the west) therefore no RCA rezone is required and only areas designated M would be a part of the Storage Yard.

The subject parcel is accessed off of a driveway north of Elk Valley Road which enters the property between the Seaview RV Park and the Crescent Hay and Feed Store. The subject project is located immediately behind the Crescent Hay and Feed Store in the unincorporated Crescent City area.

04/18/14



Figure 1: Overhead View of Pappas Property (April 1989)

For a number of years the parcel was a developed manufacturing site. According to the Assessor's Office the property was developed as a mill dating back to at least the mid 1950's. According to the current property owner, all operations at the mill ceased in the early 1970's. Several years later (around the early-mid 1970's) the mill that was located on the property was destroyed by fire and the salvageable machinery was sold however several fire-damaged buildings remained on the property until the 1980's when all of the structures were removed. The Assessor's Office has confirmed that in 1986 all improvement value was removed from the property. Since that time the site has periodically used for various outdoor industrial type activities including temporary storage associated with construction activities such as the rehabilitation of Elk Valley Road and other regional projects. A series of site visits by County staff, as well as a review of available aerial photography of the site, has revealed the presence of several concrete pads upon which the previous industrial buildings were located as well as a still-existing access road. Over the intervening years, between the time at which the mill burned and the present, the property has become overgrown with Himalayan blackberry, trash dumping, illicit squatting by transients, and general disarray despite efforts by the property owner to secure the site.

On November 15, 2006 a magnitude 8.3 earthquake occurred in the Kuril Islands of Japan that generated a tsunami that hit the Japanese coast and generated tsunami warnings for the west coast of the United States. The Crescent City Harbor was severely damaged with approximately \$20 million dollars estimated in damage. Before completion of repairs on March 11, 2011 a 9.0-magnitude undersea earthquake struck off the shore of Japan generating a tsunami which covered the entire Pacific Ocean again damaging the Crescent City Harbor, this time essentially destroying the inner boat basin and necessitating that the rebuilding of much of the harbor infrastructure.

A component of re-building the harbor included rebuilding of approximately 2,100 ft of perimeter slope in the inner boat basin. Construction methods for this work involved excavation and grading of slope and

re-armoring with riprap pursuant to the harbor flood resistant engineered design. As a result of this excavation the contractor had a need to dispose of this excavated slope material and the Pappas site was identified as a storage site for the material. It is staff's understanding of the project that the initial plan was to process and recycle material for re-use in the construction of the inner boat basin however, ultimately, less of the material was able to be recycled than originally hoped for.

In response to a request from Mr. Pappas for clarification on the use of the site for Harbor-related construction County Engineer James Barnts provided a letter (February 16, 2012) which stated "temporary storage" may be allowed on the property given no storage would occur in wetlands and no processing would be allowed. Mr. Barnts' letter also states that a Use Permit may be required for activities such as crushing and on-going storage on the property. Mr. Barnts' letter essentially limited the storage to a temporary use within previously disturbed areas (associated with the past industrial activities) with the intent of keeping use of the site to a minimum amount of activity unless a Use Permit were to be approved.



Figure 2: Overhead View of Pappas Property (June 2012)

It appears that sometime after Mr. Barnts' letter was received the property owner entered into an agreement with the Harbor's contractor (DUTRA) to utilize the site. In early 2013 the Community Development Department was notified of the disposal of rock, earth, soil, and vegetation on the Pappas property by Eileen Cooper. Upon notification Staff conducted a drive-by inspection to confirm the report and noted the presence of large piles of material placed on the site.



Figure 3: View of Pappas Property (January 2013)

In response Mr. Barnts prepared a letter (dated January 22, 2013) requesting that Mr. Pappas meet with the Engineering Division to resolve the matter. On February 1, 2013 Mr. Barnts wrote another letter to Mr. Pappas which provided details on permitting steps. In his letter Mr. Barnts attached a Grading Permit application and requested that a Site Plan, Biological Assessment & Wetland Delineation, and a Traffic Impact Study be submitted. After meeting with Mr. Pappas and his agent a Stop Work Order was given (dated February 22, 2013) in order formally initiate corrective actions.



Figure 4: Overhead View of Pappas Property (June 2013)

In recognition that a Grading Permit may not be able to be obtained prior to a looming wet front that was forecast to arrive within days of the Stop Work Order the property owner was directed to request an Emergency Coastal Permit in order to commence with immediate, necessary work to control site runoff. On February 25, 2013 Mr. Pappas' agent, Frank Galea, prepared an application for an Emergency Coastal Permit. Pursuant to the County's Coastal Zoning Ordinance (DNCC §21.50.050.D) an Emergency Coastal Permit was granted on March 1, 2013.

Pursuant to the terms of the Emergency Coastal Permit Mr. Galea submitted a Coastal Grading Permit application which was reviewed by the County Environmental Review Committee at its March 2013 meeting at which the application was determined to not be complete. Several items were not submitted with the application which were necessary for the application to be considered. On August 6, 2013 a letter was written to Mr. Pappas regarding his incomplete Coastal Grading Permit application reminding him of his obligation, under the terms of his Emergency Coastal Permit, to obtain a Grading Permit for the unpermitted work. Mr. Galea responded, on Mr. Pappas' behalf, with a Biological Impacts Report and Wetland Mitigation Plan on August 15, 2013.

After not receiving any of the additional information requested by the ERC for the consideration of the application Engineering Division staff contacted Mr. Galea for an update on the project on October 1, 2013. On October 3, 2013 further information was received from Mr. Galea indicating that he had been attempting to find a party to receive material and had made contact with the Airport Manager (who indicated that they would not be able to take the material at the airport) and Tidewater Contractors, who operate several quarries and storage & processing yards.

As noted earlier the original intention of DUTRA and the Harbor District was to recycle as much of the inner boat basin construction material for reuse however this did not occur and with little interest in others taking the material Mr. Pappas was left with most of this material remaining onsite. As such another approach was developed in which the unpermitted grading could be dealt with as well as establishing parameters on the property in order to direct future activities away from environmentally sensitive habitat areas (ESHA). In coordination with the property owner and his agent the permit was modified from being a Coastal Grading Permit into a Use Permit which, pursuant to obtaining a Use Permit, the M Zone District allows for.

In January 2014 a revised project was submitted by Mr. Galea on behalf of Mr. Pappas that would provide for a review pursuant to the standards of the California Environmental Quality Act (CEQA). As such, County Planning Division Staff presented the amended project to the ERC at its February 2014 meeting at which it was determined to, once again, be incomplete. Staff recommended that information relating to potential future use of the site be included in the application in order to supplement the information provided relating to what had already occurred onsite (i.e. the unpermitted grading). In response, Mr. Galea prepared additional project information which was reviewed by staff. The item was again presented to the ERC in March 2014 and the project was determined to be complete.

In his project proposal Mr. Galea indicates that the Pappas site could be used "once or twice (per) year as needed". Galea indicates that dependent upon the size of the projects that use the site that approximately 10-20 truckloads of material would be brought onsite per project. Galea proposes that the site be open from 7:00am to 6:00pm with no night operations being anticipated. Galea states that while, foot traffic cannot be stopped, a locked gate will restrict vehicle access during times at which the site is not being used.

Once determined to be complete by the ERC staff was then able to prepare the initial study under CEQA and circulate the proposed CEQA document to the various responsible state agencies and the State Clearinghouse. The initial study and Draft Negative Declaration (DND) are attached to this Staff Report. The principal issues identified in the DND relate to the protection of wetlands and water quality.

On January 17, 2014 a Notice of Violation (NOV) was issued to the Harbor District for the placement of material on the Pappas site. Stover Engineering subsequently developed a Stormwater Pollution Prevention Plan (SWPPP) and obtained a Waste Discharger Identification (WDID). Staff has contacted Stover Engineering regarding the current status of the NOV. Jon Olson of Stover Engineering has indicated that the NOV has not been formally lifted but it is anticipated that the materials submitted by his office address the NOV sufficiently. During the CEQA review process the Gil Falcone of the North Coast Regional Water Quality Control Board (Water Board) contacted the County via phone regarding the accuracy of the wetland delineation with inconsistencies noted on several of Mr. Galea's maps (specifically, the location of Pile #3) and overall concern with potential for impact to the wetland areas nearby. At the time of the preparation of this Staff Report the Water Board has not formally provided a comment letter however it is anticipated that a comment letter may be received prior the Planning Commission meeting. If that is the case, the comment letter will be provided to the Commission for review and the staff recommendation may be amended if needed.

During the review of the project County staff had several conversations with staff from the California Department of Fish and Wildlife (CDFW) relating the wetland delineation and recommended buffer. As a result of staff's discussion over appropriate permit conditions conditions were added to include CDFW staff into the condition review process. Specifically, in order to ensure the appropriateness of the wetland delineation Staff has recommended condition #7 which requires that prior to the issuance of the permit that the applicant mark the wetland edge, as delineated, and wetland buffer and to notify the County to inspect the wetland edge (and wetland buffers) in coordination with the CDFW. Furthermore, condition #9 requires that prior to the issuance of the Use Permit that a monitoring schedule be developed which provides for an acceptable timeframe in which materials currently located within wetland buffers be removed. Mr. Galea has suggested that the material be removed within three (3) years however the County is recommending that the materials be removed within one (1) year in order to not allow for the materials to become permanently established within the buffer and also to avoid potential future impacts in the buffer area (where material will need to be excavated).

As mentioned previously Eileen Cooper initially reported the use of Mr. Pappas' property by the Harbor and over the course of the review of this project staff has had several conversations with Mrs. Cooper. Mrs. Cooper has expressed concern and suggested that the timing of Mr. Galea's wetland delineation was not appropriate due to unseasonably dry conditions during the time frame in which Mr. Galea conducted his wetland delineation. While a review of weather during the time frame in which Mr. Galea conducted his wetland delineation does confirm Ms. Cooper's observation of dry conditions these are obviously factors that would have been outside of Mr. Galea's control. Mr. Galea's qualifications as a wetland delineator are included in his submitted reports which are attached to this Staff Report. Mr. Galea has also provided data logs examining vegetation, soil characteristics, and water quality to support his delineation. At this point it appears that the wetland delineation is appropriate and staff has taken the extra step of recommending that prior to the issuance of the permit that the County and the Department of Fish and Wildlife coordinate on the final approval of the wetland and wetland buffer identification via an onsite inspection and monitoring established in conditions #7 and #9.

While this permit establishes the ability of an operator to utilize the site it does not confer that right; in

other words, this Use Permit addresses the zoning requirement of the County's Coastal Zoning Ordinance which requires that a Use Permit be obtained in order for an M Zoned parcel to be utilized as a Storage Yard. Similarly, a land use permit may entitle an individual to construct a residence in a commercial zone however that individual would still be required to obtain a Building Permit, as an example. In this case, future use of the site may constitute "development" as defined by the Coastal Act and may trigger the requirement for a Grading Permit under the County's Grading Ordinance however before a Grading Permit could be considered the zoning requirement to obtain a Use Permit must first be established; that is the intent of this Use Permit, to establish the "Storage Yard" use on this parcel.

While Mr. Galea has proposed that the Pappas property be used up to twice per year it is difficult to project all potential future uses of the site. As such, broad conditions are recommended which limit materials being brought to this Storage Yard to natural materials such as soils, rock, vegetation, etc. and expressly prohibit non-natural materials such as asphalt, pipes, tires, and trash. If activities related to the Storage Yard are subject to the Grading Ordinance (see condition #13) testing may be required by the County to demonstrate that the materials are free of contamination. Furthermore, the County will require through future Grading Permits that BMP's be incorporated when the Storage Yard is utilized and that all other conditions of this Use Permit be complied with including, but not limited to, avoidance of wetlands, wetland buffers, and other ESHA. A small amount of the parcel, along the western edge (relatively associated with the RCA-1 area) is depicted as Zone A (1% Flood Risk aka 100-Year Special Flood Hazard Area) however the majority of the Storage Yard is Zone X (outside the Special Flood Hazard Area). As such, staff recommends that prior to the issuance of the permit a qualified professional prepare a report for compliance with the Flood Damage Prevention Ordinance (see condition #11). Staff also recommends a condition to require that all other required permits be obtained for use of the site and that proof of permits be provided to the County upon request (see condition #10). Staff also recommends that a condition be included in order to maintain the site in as dust free of a condition as possible during use, including the gravel access road to the Storage Yard (see condition #6). Finally, staff recommends that prior to the issuance of this permit that a Base Map be prepared by a qualified professional in order to establish a baseline of this parcel by which future activities can be measured against. The Base Map will provide information relating to topography, drainage, and must also include the defined wetland and wetland buffer. Standard conditions are also recommended which address permit expiration, adherence to the submitted plan of operation, etc.

As previously noted, an initial study was prepared a Draft Negative Declaration was circulated for review and comment. At the time of the preparation of this Staff Report no formal comments have been received however Staff has been in discussion with the California Department of Fish and Wildlife and North Coast Regional Water Quality Control Board relating to the wetland, wetland buffer, and water quality issues.

5. FINDINGS:

- A. Under Del Norte County Code a "Storage Yard" is a permissible use subject to securing a Use Permit with the Manufacturing Zone District (DNCC §21.31.030.N);
- B. As the Storage Yard does not encroach into RCA designated areas an RCA rezone is not required;
- C. An initial study has been prepared and a Draft Negative Declaration has been circulated to affected Responsible Agencies and the State Clearinghouse for review and comment. If approved, the Negative Declaration will be adopted;
- D. Comments received through the CEQA review process have been incorporated into the approval of this permit through conditions;

- E. Future use of the Storage Yard is subject to the County Grading Ordinance and all other local and state codes regulating development in the Coastal Zone;
- F. Submitted materials include an analysis of the wetland buffer consistent with Section VII of the Marine and Water Resources Chapter of the Del Norte County Local Coastal Program (Subsection D. Wetlands, 4. Policies and Recommendations, f. Reduced buffers) which has been reviewed by the County and the Department of Fish and Wildlife;
- G. Portions of the project area exist within the Special Flood Hazard Area and are subject to the County's adopted Flood Damage Prevention Ordinance;
- H. As conditioned, the project is consistent with the General Plan, the Local Coastal Program, and the County Code; and
- I. As conditioned, the project will not be detrimental to the conditions of the neighborhood or persons working or residing therein.

6. CONDITIONS:

- 1. This permit is for the use of this site as a storage yard for natural materials including soil, rock, vegetation and similar materials. The placement of non-natural materials such as asphalt, pipes, concrete, tires, and other trash is expressly prohibited;
- 2. This permit is not automatically transferrable but is eligible to be transferred upon application to the Del Norte County Community Development Department;
- 3. Development shall be pursued in a diligent manner and completed in a reasonable period of time. If development has not commenced the permit will expire two years from the date of final approval. Application for extension of permit must be made prior to the date of expiration;
- 4. The project shall be completed in substantial accord with the submitted plot plan;
- 5. A Notice of Conditional Approval with signature block shall be recorded prior to issuance of the Use Permit at the applicant's expense;
- 6. The property owner shall maintain the site in as dust free of a condition as possible (including the access road);
- 7. Prior to the issuance of the Use Permit the applicant or his agent shall mark the wetland and wetland buffer on the property. Marking of the wetland and wetland buffer shall be apparent in the field and be made as permanent as possible in order to direct future activities at the site away from the wetland and wetland buffer. Once the wetland and wetland buffer have been marked onsite the County Planning Division shall be notified and the County in coordination with the California Department of Fish and Wildlife shall inspect the wetland marking and wetland buffer marking;
- 8. No further disturbance may occur in areas identified as wetlands and wetland buffers except for work necessary to improve wetland conditions;
- 9. Prior to the issuance of the use permit a monitoring plan shall be developed by the applicant or his agent. The monitoring plan shall be submitted to the County Planning Division for review and acceptance. The monitoring plan shall specify a timeline acceptable to the County for removal of materials located in the wetland buffer(s) at the time of the consideration of this permit. In no case shall the removal of the material take place longer than one (1) year from the date of approval;
- 10. It is the responsibility of the applicant to apply for and maintain permits from other regulatory agencies for this project. Proof of permitting shall be furnished by the applicant, to the County, upon request;
- 11. No material may be placed in the Special Flood Hazard Area without being analyzed by a California Registered Professional Engineer;

12. This entitlement is specifically conditioned on the applicant agreeing to indemnify and hold harmless the County of Del Norte, the Planning Commission of the County of Del Norte, the Board of Supervisors of the County of Del Norte, their officers, employees and agents against any and all claims arising out of the issuance of the entitlement and specifically against any expense arising from defending any legal action challenging the issuance of the entitlement, including but not limited to the value of time devoted to such defense by County officers, employees and agents and the amount of any judgment, including costs of suit and attorney fees, recovered against the County or any of its officers, employees or agent in such legal action. The County of Del Norte reserves the option to either undertake the defense of any such legal action or to tender such defense to the applicant. Should the County tender such defense to the applicant and the applicant fail or neglect to diligently defend such legal action, the County may consider such failure or neglect to be a material breach of this conditions and forthwith revoke this entitlement;
13. The Property Owner shall secure a Grading Permit from the Engineering Division when activities rise to the level where a permit is required by the County's grading ordinance. Specifically, at a minimum, a Grading Permit shall be secured when the cumulative volume of material on the site exceeds 500 cubic yards, fills (stockpiles) exceed 3 feet in height or fill slopes exceed 5:1 (x:y), and/or cuts exceed 5 feet in height or cut slopes exceed 2:1 (x:y);
14. All future Grading Permits issued for this site shall adhere to the conditions of this permit including no activity within the wetland and wetland buffer; and
15. Prior to the issuance of the Use Permit, a Grading and Drainage Base Map of the project site shall be submitted. The Base Map shall define the project area relative to the property lines, topography of the project area, access routes, drainage features, and buffers. The map shall be prepared by a CA Registered Civil Engineer or Land Surveyor. A note shall be placed on the Grading and Drainage Base Map stating how the wetland buffer is delineated in the field.

NOTICE OF A
RECOMMENDATION FOR
NEGATIVE DECLARATION
(15072 Amended State CEQA Guidelines)

Notice is hereby given that a recommendation has been made by the Del Norte County ERC (Environmental Review Committee) that the below project will not have a significant adverse effect on the environment based on an initial study and analysis of available information.

This recommendation is proposed for adoption by the Del Norte County Planning Commission as "lead agency". Any public comment or response to this recommendation should be made on or before May 19, 2014.

A copy of the proposed Negative Declaration is available for public review in the Community Development Department, 981 H Street, Suite 110, Crescent City, CA 95531. Additional information may be obtained by contacting the Department at (707) 464-7254.

ITEM(S) TO BE CONSIDERED:

*** Use Permit for a Storage Yard. This project involves the consideration of a request to establish the subject property for use as a storage yard. More specifically, this permit would allow for receiving materials such as spoils generated from construction projects such as road and highway construction, maintenance, and repair as well as other similar projects. Additionally, the application requests approval to store material previously brought on to the subject property. The material already on the parcel originated from the reconstruction of the inner boat basin that was damaged in the 2011 Tsunami and is classified as excavated fill material. A wetland delineation has been prepared which identifies wetlands on the property and recommends buffers from all sensitive resources. Future use of the site is anticipated to be minimal. Application materials indicate that the site may be used up to twice per year. The subject parcel is zoned Manufacturing and General Resource Conservation Area. The zoning code requires that a use permit be secured for the proposed use. The project is located behind the Hay and Feed Store off of Elk Valley Road, south of Crescent City. – UP1406C – APN 117-110-25 located on Elk Valley Road, Crescent City.

RECEIVED

MAY 09 2014

CALIFORNIA
COASTAL COMMISSION
NORTH COAST DISTRICT

Signature on File

Planner
Del Norte County Community
Development Department

Adopted by the Del Norte County Planning Commission as "lead agency" on May 7, 2014.

FILED

MAY 08 2014

ALISSIA D. NORTHRUP
CLERK/RECORDER
DEL NORTE COUNTY

Signature on File

Chairman
Del Norte County Planning
Commission

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

EDWARD G. KERN JR., Governor

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
1385 EIGHTH STREET, SUITE 130
ARCATA, CA 95521
VOICE (707) 826-8950 FAX (707) 826-8960

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Friends of Del Norte

Mailing Address: PO Box 229

City: Gasquet, CA

Zip Code: 95543

Phone: 707-465-8904

SECTION II. Decision Being Appealed

1. Name of local/port government:

Del Norte County

2. Brief description of development being appealed:

John Pappas, Use Permit for a Storage Yard- UP1406C

3. Development's location (street address, assessor's parcel no., cross street, etc.):

APN 117-110-25, Elk Valley Rd., Crescent City

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions
☒ Approval with special conditions:
☐ Denial

RECEIVED**JUN 02 2014****CALIFORNIA
COASTAL COMMISSION
NORTH COAST DISTRICT****EXHIBIT NO. 9****APPLICATION NO.**

A-1-DNC-14-0028 John Pappas
APPEAL FROM FRIENDS OF
DEL NORTE (1 of 6)

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO:

A-1-DNC-14-0028

DATE FILED:

6/2/14

DISTRICT:

North Coast

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- ☐ Planning Director/Zoning Administrator
☐ City Council/Board of Supervisors
☒ Planning Commission
☐ Other

6. Date of local government's decision: Hearing Date: May 7, 2014

7. Local government's file number (if any): UP1406C

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Ted Pappas, Ted Pappas Partnership, 2320 Parkway Drive, Crescent City, CA 95531

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Project Sponsor: Frank Galea, 200 Racoon Court, Crescent City, CA 95531

(2) Eileen Cooper, 2644 Roy Ave, Crescent City, CA 95531

(3)

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

Friends of Del Norte, Committed to our environment since 1973

A nonprofit, membership based conservation group, advocating sound environmental policies for our region.
PO Box 229, Gasquet, CA 95543

June 2, 2014

ATT: Coastal Commission, Bob Merrill, Kasey Sirkin,
CC: Del Norte County Planning, CA Fish and Wildlife-M. VanHatten, CA Regional Water Quality- Stephen Bargsten

Coastal APPEAL: John Pappas - Use Permit for Storage Yard - UP1406C, Del Norte County

There has been unpermitted, illegal, significant grading of wetlands and removal of wetland vegetation. There has been illegal dumping of undisclosed material with potential to contaminate wetlands and riparian areas. This use permit fails to adequately address impacts from these violations. This use permit fails to provide an accurate wetland delineation, adequately defining where wetlands exist, and therefore fails to establish adequate wetland buffers to mitigate wetland impacts for continued industrial use. Because accurate delineations have not been done, this use permit potentially allows unpermitted LCP/LUP use (industrial storage) within wetland and/or wetland buffer/RCA zones. Mitigations for continued use based on this delineation is inadequate and will likely result in continued impairment of wetlands (ESHA), inconsistent with Del Norte LCP.

Concern that the project is not conditioned to protect against dumping of materials that can pollute water/wetlands. Natural material can be hazardous.

In this case, the applicant accepted large volumes of indeterminate soils from the harbor reconstruction project, along with other large quantities of harbor construction waste onto wetland and riparian areas. It is of concern that dredge soils from the harbor may have been accepted as well. It is our understanding from Del Norte Planning that disposed soils were from the perimeter of the boat basin and were probably not contaminated. These materials were dumped illegally, onto or adjacent to wetlands, without permits and without knowledge about the content of soils or disclosure. A large pile of soil (about 20 feet high) was removed. Have those soils finally been tested clean? The project conditions do not specify requirements for testing of materials that could prevent water contamination, or a requirement of content clearance. "Natural" materials is not sufficient language to prevent contamination of water, inconsistent with LCP protections for water quality. Construction waste that has been and will continue to be stored is not natural, such as concrete blocks with embedded conduit and wires, asphalt, and large black plastic piping. Conditions regarding the types of materials that will be allowed for future storage so close to ESHA riparian/wetlands is of concern.

The Regional Water Board has issued a water quality violation in relation to these wetland grading violations and dumping. Please review their concerns (planning packet pages 163-168).
As stated by California Regional Water Quality Control Board:

3-1

3 of 6

Please be advised that land based storage, disposal, and reuse of waste materials, including but not limited to soils, rock, road and highway spoils, construction spoils, dredge spoils, and other material may be subject to State water quality regulations governing the disposal of waste to land and may require permitting by the Regional Water Quality Control Board. Note that in reviewing any proposal to place a waste material, such as dredge material, road and highway spoils on land at a site other than an authorized disposal site (e.g., a solid waste disposal site), Regional Water Board staff must consider the potential impacts to receiving water quality associated with that proposed reuse/disposal. Specifically, we must be provided sufficient information to be able to determine that, under ambient environmental conditions, contaminants in the material will not be released in concentrations exceeding applicable water quality objectives or in concentrations that could reasonably be expected to affect beneficial uses of waters of the State.

There is absolutely no reason to believe that disposal of materials will be minimal, as the need for disposal is from Caltrans, who has very large projects proposed within Del Norte County.

Concerns regarding adequate wetland delineation and buffers to wetland/riparian ESHAs. Commercial/industrial storage is not a permitted LCP/LUP use within RCA zones- Coastal wetlands. Grading wetlands for such uses is not permitted.

Our LCP requires protection of wetland ESHA and a minimum standard buffer of 100 feet to wetlands. A reduced buffer may be allowed if a biological evaluation and recommendations of California Dept of Fish and Wildlife determines sufficiency. No agency consult was done, and reduced buffers have been implemented. When a formal project is proposed directly adjacent to RCA-1 zones, an accurate wetland delineation is needed to determine the exact extent of the wetlands, as RCA-1 is a general approximation of wetland/ESHA locations. Delineations can result in more extensive RCA areas. If a wetland delineation is not done accurately, unpermitted uses can occur within wetland or buffer areas. Rezoning from RCA-1 to more exact RCA-2 zones is the usual protocol within Del Norte coastal zoning ordinances.

It is troubling that we still do not have an accurate description of the wetlands, in that the wetland delineation was done during the driest time of the past year during an unusual drought (confirmation by county staff report). Rainfall records (<http://www.nws.noaa.gov/climate/getclimate.php?wfo=eka>) show that about 1.14 inches of rain fell at the beginning of January and 1.31 inches fell at the beginning of December. The delineation was done on January 24th just before rain was predicted. And the delineation box checked that there were no unusual conditions, a misleading and inaccurate statement. A dry winter after a dry summer resulted in historically dry soils, where accurate hydrologic evaluation could not be done. Rain came directly after the delineation was done, and this deficiency was brought to the attention of Del Norte County during the environmental review process, when rain was falling regularly.

Accurate hydrological information is important in this delineation because soils and vegetation have been greatly disturbed. Other wetland delineation irregularities exist as vegetation notes that appear arbitrary. Thus, an accurate hydrological evaluation was not and could not have been done on January 24th, yet reduced buffers are provided. Because a large central area, which previously had thick vegetation, has recently been severely graded (removal of topsoil, and cleared of all vegetation), the vegetation and some surface soil indicators are gone from large areas. The vegetation that was piled approximately 30 feet high included willows. Thus, hydrological evaluation is essential. We do appreciate the conditioned requirement that the wetlands/ buffers be posted in the field and that California Fish and Wildlife will belatedly inspect the wetland buffer markers. However, the CA Dept. of Fish and Wildlife has no authority to require that the delineation be redone, and some of the buffers are reduced, without consult, in conflict with the LCP. The CA Dept. of Fish and Wildlife agent, Michael van Hattem, who is responsible for local project review has stated that although he may be invited to review the field markings for wetland buffers on the property, CA Fish and Wildlife would not be able to have the delineation redone. Therefore, we are concerned that the delineation mistakes will not be corrected by belatedly conditioning the project to allow CA Fish and Game an inspection of the buffer field markers.

Wetland Replacement mitigation and/or restorative action may be needed for large areas where topsoil has been severely graded

We are concerned that some of the wetlands have been irreparably degraded by severe grading of top soils, and vegetation removal. With such violations at hand, restorative actions, not just removal of dumped material, as well as wetland replacement mitigation might be necessary. As this situation has gone on for too long, we ask that immediate removal of material via an enforcement action be taken.

The grading of soils and removal of vegetation throughout the property appears to have occurred within wetland areas. Grading of soils is severe in the central area, and wetland replacement ratios may be necessary. Please see before and after photos in Del Norte Planning packet (pages 113, 114, figures 2,3,4). The impacted property is adjacent to and contiguous with biologically rich wetland/riparian areas owned by the CA Dept. of Fish and Wildlife (see county planning packet photos).

In conclusion, the property was cited as a Regional Board Water Quality Violation, and was required to have a restoration plan by Del Norte County. There has been no restoration plan for replacement of the huge volume of willow/wetland vegetation that was removed,

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or restorative measures for the volumes of topsoil that were graded, including grading of probable wetland areas. We have an inaccurate wetland delineation, and illegal Coastal grading in a large central area. We do not know about the content of the sandy soils that were dumped, and the conditions do not specify requirements for testing of materials or restriction of materials that could prevent water contamination, or a requirement of content clearance. Given the past history of the site, this is troubling. There is absolutely no reason to believe that disposal of materials will be minimal, as the need for disposal is from Caltrans, who has very large projects proposed within Del Norte County.

This project is inconsistent with the following LCP policies:

LCP Policy, Marine and Water Resources,

LCP IV: Sensitive Coastal Habitats:

Under Table 1: Sensitive Habitat Types and Their Principle Locations: Wetlands and Riparian

LCP Policy, Marine and Water Resources,

LCP VII.D: Wetlands, 4: Policies and Recommendations

f.) Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which could significantly degrade such areas, and shall be compatible with the continuance of such habitat areas. The primary tool to reduce the above impacts around wetlands between the development and the edge of the wetland shall be a buffer of 100 feet in width. A buffer of less than 100 feet may be utilized where it can be determined that there is no adverse impact on the wetland. A determination to be done in cooperation with the California Dept. of Fish and Game and the County's determination shall be based on specific findings as to the adequacy of the proposed buffer to protect the identified resource.

LCP Policy, Marine and Water Resources, VII. D. Wetlands:

4. g. Due to the scale of the constraints maps, questions may arise as to the specific boundary limits of an identified environmentally sensitive habitat area. Where there is a dispute over boundary or location of an environmentally sensitive habitats area, the following may be requested of the applicant:

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

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

LCP VII.E: Riparian Vegetation, 4: Policies a:

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

LCP Policy, Marine and Water Resources, VI. C:

1. The County seeks to maintain and where feasible enhance the existing quality of all marine and water resources.
3. All surface and subsurface waters shall be maintained at the highest level of quality to insure the safety of the public health and the biological productivity of coastal waters.
4. 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.
6. Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Elk Creek Special Study VI.C- LCP Policies

2. A buffer strip shall be maintained in natural conditions around the Elk Creek wetlands where adjacent land uses are found incompatible with the productivity or maintenance of the wetlands.
3. New development adjacent to the Elk Creek wetlands shall not result in adverse levels or additional sediment, runoff, noise, wastewater or other disturbances.
4. Snags shall be maintained within the Elk Creek wetland for their value to wildlife.
5. No motorized vehicle traffic shall be permitted within the Elk Creek wetlands except for agriculture or forestry.

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6. Riparian vegetation along the course of Elk Creek and its branch streams shall be maintained for their qualities of wildlife habitat and stream buffer zones.

LCP: Land Use: I -Categories: D-Resource Conservation Areas, allowable uses:

1. Fish and wildlife management
2. Nature Study
3. Wetland Restoration
4. Hunting and Fishing
5. In estuaries, boat launching, consistent with other land use policies
6. In farmed wetlands, agricultural operations but uses should maintain long-term habitat values
7. Recreational facilities included in State Park and Recreation/Dept. of Fish and Wildlife Master Plan and amended to LCP
8. In riparian habitat: i-recreational trails; ii-hunting and fishing; iii-timber harvesting where heavy equipment is not used and 50% conifer canopy retained and all hardwood canopy retained, and consistent with forest practice rules; iv-maintenance of existing flood control and drainage channels; v-wells within rural areas; vi-firewood removal by owner for use in residence on site; vii- road maintenance and repair of existing roads. New stream crossings shall be limited when feasible to right angle crossings of streams and stream corridors.
9. ~~Maintenance of flood drainage control and drainage channels~~
10. Removal of windblown trees which threaten existing structures.

Thank you,

Signature on File

Eileen Cooper

~~APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)~~

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Eileen Cooper, vice president Friends of Del Norte, on behalf of the board, 707-465-8904

Signature on File

Signature of Appellant(s) or Authorized Agent

Date: 6/2/2014

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize

Eileen Cooper

to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature on File

Signature of Appellant(s)

Eileen Cooper, vice president Friends of Del Norte

Date:

6/2/2014

6 of 6



GALEA WILDLIFE CONSULTING

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PAPPAS PROPERTY BIOLOGICAL ASSESSMENT AND WETLAND RESTORATION PLAN, DEL NORTE COUNTY

Submitted to: Del Norte County Community Development
Crescent City, CA 95531

Prepared by: Frank Galea, Certified Wildlife Biologist
E-mail: frankgalea@charter.net

Galea Wildlife Consulting
200 Raccoon Court
Crescent City, CA 95531

Submitted: November, 2013

By:


Signature on File

RECEIVED
DEC 03 2013
PLANNING
COUNTY OF DEL NORTE

EXHIBIT NO. 10

APPLICATION NO.

A-1-DNC-14-0028 John Pappas
BIOLOGICAL ASSESSMENT AND
WETLAND RESTORATION PLAN (1
of 10)

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Introduction

John Pappas owns a 7.47 acre property (APN # 117-110-25) located on Elk Valley Road in Crescent City, California (Figure 1). This property is zoned for commercial use, having historically been the site of a lumber mill, and is currently located within the coastal zone of Del Norte County.

Approximately $\frac{1}{2}$ of the property is re-colonized wetland vegetation, primarily willows. Minor impacts to resources in the form of vegetative fill in and adjacent to wetlands occurred and are to be mitigated. This report describes those impacts and includes a restoration plan to mitigate for those effects, plus describes the future planned use of this property and the mitigations proposed for wetland protection.

Physical Environment

The climate of northern California is characterized as Mediterranean, with cool, wet winters and warm, dry summers with frequent fog. Along the coastline, proximity to the Pacific Ocean produces high levels of humidity and results in abundant fog and fog drip precipitation. The maritime influence diminishes with distance from the coast, resulting in lesser amounts of fog, drier summer conditions and more variable temperatures. Annual precipitation in the project watershed ranges from 60 - 150 inches occurring primarily as rain during the winter months. Air temperatures measured in Crescent City area vary from 41°F to 67°F annually.

Historic Conditions

Historically, this property was part of a larger parcel which was the location of the Hamilton Brothers lumber mill. Built in the 1940's, this large mill complex included a lumber mill, dry kilns, tepee burners, housing for workers, plus many acres of logging decks. Heavy equipment of excessive weights were used to move the large, old-growth redwood logs, therefore log decks were first created by laying approximately two feet of gravel over the cleared site. It is highly likely, based on a 1963 aerial photograph of the Pappas property showing the working saw mill, that the entire current remainder property has a underlying base of two feet of gravel. This base is evident along the current wetland edge where silt fences were placed to protect wetland habitats.

The historic saw mill and associated log decks reached all the way from Elk Valley road to Elk Creek (approximately 1,000 feet, north to south).

Current Conditions

The property is located between commercial properties along Elk Valley Road, and Elk Creek, located to the immediate north of the property. Once fully developed as a lumber mill, the property is now either open ground with soil and rock storage, or re-colonized wetland vegetation. Invasive Himalayan berry (*Rubus discolor*), tansy ragwort (*Senecio jacobaea*) cotoneaster (*Cotoneaster horizontalis*), English ivy (*Hedera helix*) and other invasive plants occur sporadically on the property. The property is commonly used by transients for camping. The property is fenced along the south and east boundaries, both adjacent to commercial properties.

The current Pappas property is approximately 350 feet north of Elk Valley Road (average, and the property line is angled away from the road). The processing area is approximately 350 feet wide (north to south), therefore the processing area is at least 300 feet distant from Elk Creek, whereas the historic mill site reached all the way to Elk Creek. Potential wetland habitats, primarily in the form of willow (*Salix* sp.) and red alder (*Alnus rubra*), have re-colonized the old mill site. Approximately 1/2 of the property is now completely vegetated over.

Approximately 4 acres of the southern portion of the property is open ground, the site of years of use as a storage and processing area for soils extracted off property. The property was used by Del Norte County as a storage and processing area when re-building Elk Valley Road. For many years the property was not gated and some illegal dumping of dirt and brush occurred, some within the margins of potential wetlands. Recently, soil and rock from the Crescent City Harbor Project have been stored in the processing area.

Project Description

The Applicant is applying for a permit to allow the following activities on the property;

1. The storage and processing of materials such as extracted soils, rock and asphalt from the Crescent City Harbor and other locations. Processing will be limited to the separation of rock and gravels from fines.
2. The removal and storage of soils and vegetation inadvertently placed along the edge of marginal wetlands.
3. The removal of brush which re-grew in the processing area, to be piled and burned.
4. Grading of the ground within the processing area (approximately 5 acres) to properly facilitate storm water run-off away from wetland areas if necessary.

Impacts to Wetland Habitats

A minimal amount of wetland boundaries were affected by recent storage of soils. Also, when clearing the four acre processing area of brush, the vegetation and a minimal amount of topsoil was deposited in piles slightly on or adjacent to potential wetland habitats. These piles of vegetation were actually placed on top of existing piles of dirt which had been on-site for years, likely deposited illegally or as part of a past local project.

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Two piles of vegetation on old dirt piles (Piles 1 and 2), plus a large area of stored soil (Pile 2) were measured and assessed for potential impacts to wetlands (Figure 2). Pile 1 is located in the northwest corner of the processing area, while Pile 2 is in the southeast corner. Pile 3 is in the northeast corner of the processing area.

The vegetation at Pile 1 was completely removed using an excavator. Very little topsoil was present under the vegetation, and after removal, all that remains is an old dirt pile located just south of the wetland edge, forming a berm. A sediment fence is located between the berm of soil and the wetland edge. The vegetation removed was re-piled in the midst of the processing area, well away from the wetland edge.

No obvious impacts to wetlands occurred. There are no impacts to willows, and there is no sign of fill dirt where the vegetation had been piled. Overall, there were no impacts to wetlands due to Pile #1.

Pile 2 was also a pile of vegetation put on top of an old pile of dirt. The vegetation from the pile was removed and placed in the midst of the processing area, away from the wetland edge. The old dirt pile is 66 feet long (west to east) and 21 feet wide. This occurred within an open area in the southeast corner of the process area. This location is not within wetland habitats, but is adjacent to potential wetlands along the east property boundary. As there was a pre-existing pile of dirt at this location, there were no impacts to wetlands resulting from Pile #2.

Pile 3 is a large amount of soils from the Crescent City Harbor Project which was placed along the east edge of the processing area. This edge is primarily upland, although some willows are growing towards the south edge of the pile, where the edge appears to be more mesic (moist). This pile is approximately 270 feet long (north to south) and 75 feet wide, and approximately 12 feet tall, on average. This soil has differing composition throughout, and during last spring's rains some soils were able to flow off the slope.

One such overflow of soils incurred into wetland habitats located immediately north of Pile #3. This soil flow covered an area 20 feet X 20 feet in size. This soil has since been removed and placed on Pile #3. The overflow location is relatively small in size, and is in an area of willows, spruce and some upland plants, demonstrating a transitional area between uplands and wetlands. No standing water is near the overflow area, and the amount of impacts to wetlands from the soil overflow is minimal.

Effects of Impacts to Wetland Habitats

Only a minimal area (400 square feet) of wetland habitats was impacted by fill. At Piles 1 and 2 vegetation was piled on top of existing dirt piles, therefore there were no impacts to wetlands. Overall, the impacts to potential wetlands from these three piles was minimal and will be mitigated.

Impacts to Wildlife Species

Along the coast of northern California, many migratory songbirds utilize wetland and riparian habitats for nesting. Species such as the winter wren (*Troglodytes troglodytes*), Chestnut-backed chickadee

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(*Poecile rufescens*), American robin (*Turdus migratorius*), and the Pacific-slope flycatcher (*Empidonax difficilis*) are examples of local species utilizing dense, riparian thickets for nesting.

No nests were observed in riparian habitats adjacent to the impact area during initial review or subsequent reconnaissance. As the processing area was in use during the early spring when birds begin nesting, it is likely that avian species sought to nest in more removed, preferred habitats at the north end of the property.

Reptiles and amphibians commonly found in the area include the Coast garter snake (*Thamnophis elegans terrestris*), the northern Pacific treefrog (*Pseudacris regilla*), the northern red-legged frog (*Rana aurora*) and the Oregon ensatina (*Ensatina eschscholtzii oregonensis*). No significant impacts to any of these species occurred due to the minimal impacts to potential wetlands at this site, as no preferred habitat was impacted.

The Pappas property is located just south of Elk Creek. This watershed is an important system for anadromous fish, including the federally-listed coho (*Oncorhynchus kisutch*) salmon. The Elk Creek drainage is relatively flat, lacking in slope throughout, and is therefore comprised of large areas of freshwater marsh, palustrine (seasonally flooded) and other wetlands, and habitat for many wetland-dependant species. The lower end of Elk Creek was historically impacted by filling, pond creation (for timber mills) and diversion of natural hydrology. Little or no restoration has occurred to remedy the situation.

The California Department of Fish and Wildlife (CDF&W) owns and manages a large area of watercourse, wetland, and riparian habitat just east of the mouth of Elk Creek, including the property immediately west of the Pappas parcel (the Pappas family sold this property to CDF&W years ago). CDF&W considers the Elk Creek watershed as a critical area of concern, especially considering the importance of protecting the coho salmon. Fortunately, the amount of impacts at this site are minimal and no sediments were transported anywhere near Elk Creek. There were no impacts to fisheries.

Erosion and Water Quality Control

Hydrologic Regime

Water runoff occurs on the Pappas property from east to southwest. A large drainage inlet was placed by Del Norte County just southwest of the Pappas property, apparently as a response to hydrologic study during the Elk valley Road project. Mr. Pappas reports that, during the rainy season, water runoff enters the property from the southeast corner and runs along the south fenceline, and exits out the southwest corner toward the drainage inlet. Currently, there is no drainage ditch on the Pappas property to facilitate drainage, and this would be a recommendation for the future.

Currently, the hydrologic regime on the Pappas property is for water runoff to flow from east to southwest, therefore all runoff is away from elk Creek and associated wetlands. Therefore, increased erosion control and water quality is not a major issue for the recovery of this property.

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RESTORATION GOALS

The goal of this project is to restore potential wetland habitats on the Pappas property back to original conditions, while allowing for the remainder of the property to be used for rock and soil storage and processing.

Mitigation for Impacts

Although impacts to natural resources were minimal, the following mitigations are proposed as compensation;

1. Pile #3, a large sand pile, is located within 100 feet of wetlands. As mitigation, within the next 3 years the Applicant proposes to remove all materials within 100 feet of wetlands north of the pile, and within 50 feet of wetlands east of the pile (Figure 3). The difference in buffer size is due to the fact that the wetland patch in the southeast corner of the property is small, has minimal value for wildlife and was created by drainage overflow from surrounding commercial properties.
2. Piles #1 will be completely removed and any portion of Pile #2 which is within 50 feet of wetlands will be removed within three years of actuation of the emergency grading permit.
3. The pile of asphalt will be removed from the current location near potential wetlands within 2 months of actuation of the emergency grading permit.
4. An overflow of sand just west of Pile #2 will be removed and piled out of hydrologic regime flow.
5. As Pile #2 is located within a more mesic location, with high potential for willow colonization, that portion of Pile #2 once cleared will be allowed to become re-colonized by willows and other native vegetation. This will increase the vegetation area by approximately 700 square feet.
6. The overflow area immediately northwest of Pile #3 will be re-vegetated with willow cuttings to facilitate recovery of natural vegetation.
7. A 100 foot no-use (no storage, no processing of materials) buffer area will be delineated from the edge of current vegetation, along the north side of the processing area (Figure 3). A 50 foot buffer area will be delineated along the edge of buffers in the southeast corner. These buffers will help protect potential wetlands from sediment sources during future use of the processing area. The current processing area of the property will be reduced in size and removed from the potential wetland edge.
8. The west side of the property cannot utilize such a buffer as this is the location of the primary access road, which is already heavily rocked. The south side of the processing area needs no buffer as there are no adjacent potential wetlands.

Potential for Full Wetland Recovery

A minimal amount of wetland habitats were impacted. The only real impact to wetlands was in an area 20 feet X 20 feet in size, where a small amount of soil entered potential wetland habitats and is since removed. The vegetation piles which were removed caused no impacts to potential wetlands. To facilitate willow re-colonization of the impacted (20' x 20') area, we propose to plant 10 willow cuttings, obtained from the dense willow thickets found on within the property. Willow saplings would be planted by hand, using only a shovel. Willow plantings will be placed within the impacted area in late fall, and vegetation will be allowed to re-colonize the Pile #2 location. As winters and springs in Del Norte County are long and wet, these plants have had abundant rainfall and surface water flow to survive the drier summer.

Justification for Reduced Buffer: The southeast corner of the property contains a small wetland area caused by drainage from adjacent commercial properties. The Applicant proposes a 50 foot buffer to this wetland patch.

As per section VII.D.4 of the LUP's Marine and Water Resources chapter, section f: *A buffer of less than one-hundred feet may be utilized where it can be determined there is no adverse impact on the wetland.*

The following criteria are used to determine if significant impacts to resources would occur from a reduced buffer:

1. Biological significance of adjacent lands: The lands adjacent to this wetland patch are commercial in nature and not biologically significant. The property is located within a commercial development complex. Properties to the east and south are already completely developed commercially. As this small wetland patch is located in the midst of a commercial zoning area, and is surrounded by developed properties and a main road, the wetland patch has no biological significance.
2. Sensitivity of species to disturbance: This location has little potential for use by wildlife due to the proximity of commercial businesses on three sides of the wetland patch, and due to the small size of the wetland patch. The wetland patch was created by drainage overflows from adjacent commercial properties. No sensitive species are known to occur in the immediate area.
3. Susceptibility of parcel to erosion: The parcel and surrounding area is completely flat, having once been part of a mill yard. The wetland patch is not susceptible to erosion, nor is the surrounding parcel as the site is very flat.
4. Use of natural, topographic features to locate development: The Applicant is proposing soil and rock storage and processing on an old mill site within a commercial area. There are no topographic features to utilize as the entire area is very flat.
5. Use of existing cultural features to locate buffer zones: There are no existing cultural features to aid in screening any resources.
6. Lot configuration and location of existing development: This commercial property already cleared and developed and no change in lot configuration will occur.
7. Type and scale of development proposed: The type of activity proposed is the same as past use of this commercial property, soil and rock storage and processing. The scale of the proposed activities is relatively small, but directly comparable to past activities. It is located within an existing, fenced parcel and is not near any residential areas.

STAFF QUALIFICATIONS

Impacts assessment and report writing for this project was conducted by Principal Biologist Frank Galea. Frank is the primary Biological Consultant and owner of Galea Wildlife Consulting, established in 1989. Frank is certified as a Wildlife Biologist through the Wildlife Society. Frank's qualifications include a Master of Science Degree in Wildlife Management from Humboldt State University and a Bachelor of Science in Zoology from San Diego State University. Frank has been assessing habitat and conducting field surveys for Threatened and Endangered species for over 20 years. Frank has taken an accredited class on wetland delineation through the Wetland Training Institute, and has successfully completed a Watershed Assessment and Erosion Treatment course through the Salmonid Restoration Federation.

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Hydrology: An area has wetland hydrology if it is inundated or saturated in the upper 12 inches of the soil for at least five percent of the growing season in most years (Environmental Laboratory 1987). In Crescent City, the growing season is approximately 200 days. Therefore, five percent of the growing season in this region corresponds to approximately 10 days. Factors that influence hydrology include precipitation, topography, soil permeability, and plant cover. Examples of primary wetland field indicators include inundation, saturation in the upper 30 centimeters (12 inches), watermarks, drift lines, sediment deposits, and drainage patterns. Secondary indicators are associated with living plant roots in the upper 30 centimeters (12 inches) of soil, water stained leaves, local soil survey, and FAC-neutral test for plants, soil cracking, and oxidized rhizospheres.

Vegetation: To be considered a jurisdictional wetland, more than 50 percent of the dominant plant species must be hydrophytic, i.e., have an indicator status as facultative, facultative wetland, or obligate wetland vegetation (Reed 1988). Hydrophytic vegetation is "the sum total of macrophytic plant life that occurs in areas where the frequency and duration of inundation or soil saturation produce permanently or periodically saturated soils of sufficient duration to exert a controlling influence on the plant species present," as defined by the Corps (Environmental Laboratory 1987). Plant indicator status definitions are included in the Table 1 below:

Table 1. Plant Indicator Status Categories

Indicator Category	Indicator Abbreviation	Definition
Obligate Wetland Plants	OBL	Plants that occur almost always (>99 percent) in wetlands under natural conditions, but which may also occur rarely (<1 percent) in non-wetlands.
Facultative Wetland Plants	FACW	Plants that occur usually (>67 percent-99 percent) in wetlands but also occur (1-33 percent) in non-wetlands.
Facultative Plants	FAC	Plants with a similar likelihood (34 percent-66 percent) of occurring both in wetlands and non-wetlands.
Facultative Upland Plants	FACU	Plants that occur sometimes (1 percent-33 percent) in wetlands, but occur more often (>67 percent-99 percent) in non-wetlands.
Obligate Upland Plants	UPL	Plants that occur rarely (<1 percent) in wetlands, but occur almost always (>99 percent) in non-wetlands under natural conditions.

Source: Reed 1988

It should be noted that Crescent City receives on the average 67 inches of rain per year and is one of the wettest places in California. The ample amount of water available for hydric plants may allow them to grow in uplands where, on other regions of the state, they may not. The amount of precipitation received as well as the coastal environment leads to a greater distribution of facultative species and sometimes "facultative wet" species in areas that do not exhibit hydric soils or wetland hydrology.

RESULTS

A wetland delineation was completed on July 24th, 2014, based on the one parameter method advocated by the California Coastal Commission. Thereby, only one indicator of wetlands (hydric soils, dominance of wetland vegetation or hydrology indicative of wetlands) was necessary per sample plot to determine if a location was wetland.

EXHIBIT NO. 11

APPLICATION NO.

A-1-DNC-14-0028 John Pappas
WETLAND DELINEATION
RESULTS & MAPS (1 of 4)

Using Hydrogeomorphic wetland classes (modified from Brinson et al. 1995), the site is best classified as a Slope wetland area, adjacent to a Riverine wetland created by Elk Creek, which is approximately 400 feet to the north of the processing area. Although located near the ocean, no tidal wetlands are located near this property and no tidal effects reach this far inland. The property is sloped toward the southwest, with slightly higher elevations found in the northeast corner. Overall, the entire property is relatively flat.

Non-typical conditions were encountered due to the historic nature of the site as a processing facility. Vegetation was present around the edge of the processing area where colonization had occurred through the gravel layer. Delineation sampling was conducted around this edge where vegetation was present and allowed sampling.

No water levels were encountered during soil test pits although all were dug to 18 inches. Soils at all but one sample site were dry. A small amount of standing water was noted just north of sample 2B. Most soil samples contained high amounts of gravels due to the historic use of the area as a mill site and log decks. No gleyed soils were encountered during surveys.

Wetland conditions were found along the north edge of the processing area, and at the southeast corner of the property (Figure 2). Wetlands were not present at the northeast corner of the processing area or along the east edge of the processing area. The southeast corner of the property is the terminus point for a drainage ditch located along the east edge of the property which flows to the south. This drainage ditch likely ran farther south historically and emptied onto the lot to the south, or farther, to Elk Valley Road. The lot south was not developed until after 1989, at which time natural drainage flow of the drainage ditch was blocked. Currently, due to the lack of outflow, water flow from the drainage ditch reaches the southeast corner of the Pappas property and then pools, with little outflow toward the south. Once depths become sufficient, water then moves west, along the edge of the Pappas property. For this reason the southeast corner of the property is far more wet and shows greater amounts of wetland vegetation (willows) than that portion of the property immediately to the north.

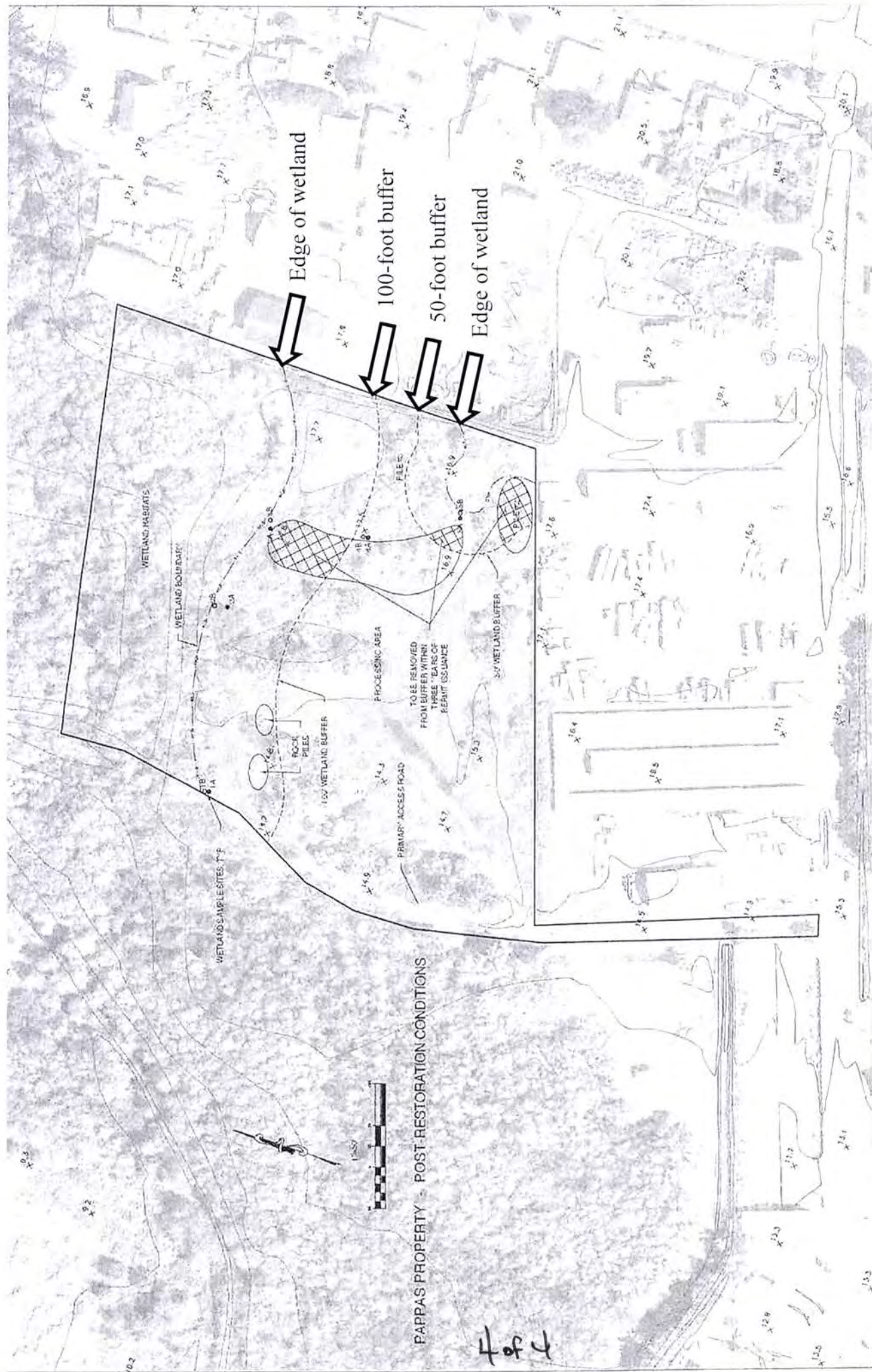
SUMMARY

The Pappas property contains a defined wetland edge along the north end of the current processing area where wetland species such as willows have re-colonized an old mill site. Upland vegetation dominated the eastern edge of the property, except for a pocket of inundation in the southeast corner.

Current proposals for the Pappas property include 100 foot buffers to established wetland habitats along the north perimeter of the processing area, and a 50 foot buffer to the small pocket of inundation and wetland in the southeast corner of the property. No buffer is required along the west edge as the primary access road onto the property is located along the property edge. Sediment fencing is proposed along wetland edges and around sand piles as part of an approved Storm Water Pollution and Prevention Plan.



Wetland Delineation (Galea Wildlife Consulting, January 24, 2014)



Wetland Delineation with buffers (Galea Wildlife Consulting, January 24, 2014)
 (yellow dot = test site identified as wetland; red dot = test site identified as upland)



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August 20th, 2014

Mr. Bob Merrill
California Coastal Commission
1385 8th Street, Suite 130
Arcata, CA 95521

Dear Mr. Merrill,

I am writing to clarify the proposed purpose of the Pappas project site, per your request. Mr. Pappas wishes to be able to use his property for the purpose of temporary storage of materials, such as rock, sand, dirt, solid concrete, asphalt and vegetation, such as that which would be removed or needed for a future, local construction site. The goal is to be able to provide a work area where such materials could be temporarily stored and minimally sorted and processed for future transport off the property. It is not Mr. Pappas's intent to use his property for any permanent disposal of materials, or to use the property for any composting of soils or vegetation. As we agreed, temporary storage means no longer than five years. Mr. Pappas will keep a record of all materials brought on site, with dates of entry and site of origin, which will be available to the Commission and the County of Del Norte upon request.

Asphalt would only be stored in inert form, with no processing on site, until the asphalt could be removed to either a recycling site or a permanent disposal site. There would be no processing or rendering of asphalt. Vegetation would be temporarily stored. Vegetation might be chipped on site in order to allow transportation, however no composting or long-term storage of vegetation would occur.

As you are aware, old dirt piles currently exist within the processing area. It is Mr. Pappas's intent to sell this soil within five years and not store it permanently on the property. There is also one small pile of asphalt which will be removed from the property within 6 months to one year. Please provide "After the fact" authorization to temporarily store these piles with the intent to store and later sell the material. Thank you.

Sincerely,

/s/ Frank Galea
Frank Galea
Certified Wildlife Biologist, M.S.

EXHIBIT NO. 12

APPLICATION NO.

A-1-DNC-14-0028 John Pappas
ADDITIONAL INFORMATION
SUBMITTED FOR DE NOVO
REVIEW (1 of 12)



GALEA WILDLIFE CONSULTING

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COASTAL COMMISSION
NORTH COAST DISTRICT

ADDENDUM TO PAPPAS PROPERTY WETLAND DELINEATION – JULY 2014

Introduction

John Pappas owns a 7.47 acre property (APN # 117-110-25) located on Elk Valley Road in Crescent City, California (Figure 1). This property is zoned for commercial manufacturing, having historically been the site of a lumber mill, and is located within the coastal zone of Del Norte County.

A wetland delineation was conducted on this property by Galea Wildlife Consulting in January of 2014. This addendum will supplement the delineation and provide additional information as requested by the California Coastal Commission (CCC).

Physical Environment

The climate of northern California is characterized as Mediterranean, with cool, wet winters and warm, dry summers with frequent fog. Along the coastline, proximity to the Pacific Ocean produces high levels of humidity and results in abundant fog and fog drip precipitation. The maritime influence diminishes with distance from the coast, resulting in lesser amounts of fog, drier summer conditions and more variable temperatures. Annual precipitation in the project watershed ranges from 60 - 150 inches occurring primarily as rain during the winter months. Air temperatures measured in Crescent City area vary from 41°F to 67°F annually.

Historic Conditions

Historically, this property was part of a larger parcel which was the location of the Hamilton Brothers lumber mill. Built in the 1940's, this large mill complex included a lumber mill, dry kilns, tepee burners, housing for workers, plus many acres of logging decks. The historic saw mill and associated log decks reached all the way from Elk Valley road to Elk Creek (approximately 1,000 feet, north to south). Heavy equipment of excessive weights were used to move the large, old-growth redwood logs, therefore log decks were first created by laying approximately two feet of gravel over the cleared site.

It is highly likely, based on a 1963 aerial photograph of the Pappas property showing the working saw mill, that the entire current remainder property has an underlying base of two feet of gravel. This gravel base is evident along the current wetland edge where silt fences were placed to protect wetland habitats.

2012

METHODS

Vegetation had been cleared in 2012 when the construction company leased the Pappas property for the use of storing and processing materials from the harbor reconstruction project. The area where vegetation was cleared was discerned using Google-map imagery, and delineated on an aerial photograph. It is unknown what plant species were removed as the site was cleared over a year before the first wetland delineation took place. The CCC asked for soil sample pits to be dug as deep as possible to demonstrate the statement that a thick, dense layer of gravels and cobbles laid under the area where vegetation had been removed.

The Pappas property has two feet of gravel covering the proposed project area; therefore a pick axe was used in an attempt to dig down into soils. Using a pick axe, depths of 6-8 inches in sample areas were obtainable, however once some degree of depth was reached we invariably ran into large rocks and cobbles and could continue no farther. Six small pits were dug to at least 4 inches. These locations were mapped using GPS and each pit was photographed.

The western edge of the processing area was delineated for wetlands at two sample points. This edge was omitted in the first report due to the primary access road being located along the exact west edge of the property. We also assessed conditions at a pit located at the main gate going into the property which was dug by persons unknown after the first delineation was completed.

RESULTS

Six small sample pits were dug in the area where vegetation had been previously removed within the processing area (Figure 1). All pits were very difficult to dig even with a pick axe due to dense gravels and cobbles occurring from the surface downward. Although depths of up to 10 inches were reached, larger cobbles or solid rocks were found all through and at the bottom of each pit and digging further was not possible. None of the pits demonstrated any indications of hydric conditions. These results demonstrate that the area where vegetation had been removed contains very poor soil quality.

Wetlands along the western edge of the property were delineated using vegetation, soils and hydrology. Although plant species did not indicate wetland conditions and rock and gravel again filled soil sample pits, signs of hydrology and the presence of willows suggested that the wetland delineation line could be demarcated along the western edge of the primary access road to the property, which also serves as the western edge of the property.

Generally, overstory vegetation along the west edge of the processing area was characterized by myrtlewood (*Laurus nobilis*), paper birch (*Betula papyrifera*), willows (*Salix* sp.), plus scattered red alder (*Alnus rubra*), shore pine (*Pinus contorta* var. *contorta*) and Sitka spruce (*Picea sitchensis*). The understory was primarily composed of exotic species such as *Cotoneaster*, Himalayan blackberry (*Rubus armerniacus*) and pampas grass (*Cortaderia selloana*). Although the vegetation at sample plots along the west edge not indicative of wetland habitats, the presence of willows plus indications of saturation and water lines located approximately 10 feet farther west suggested that the west edge of the road would best serve as the delineated wetland edge.

Per CCC staff requests, the additional wetland perimeter information was mapped onto overhead aerial photographs (Figure 2).

3 of 12



PAPPAS PROPERTY - ORIGINAL CONDITIONS

Figure 1. Aerial View of Pappas Property showing where vegetation was removed and locations of pre-Harbor Restoration dirt piles. Points 1-6 are locations of sample soil sites to demonstrate deep gravel base. Scale 1" = 100 feet.

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AUG 05 2014

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COASTAL COMMISSION
NORTH COAST DISTRICT

BIOLOGICAL ASSESSMENT AND PROPOSED PROJECT DESCRIPTION FOR PAPPAS MATERIALS PROCESSING AND STORAGE SITE, ELK VALLEY ROAD, CRESCENT CITY, CA. JULY 30, 2014

Introduction

John Pappas owns a 7.47 acre property (APN # 117-110-25) located on Elk Valley Road in Crescent City, California (Figure 1). This property is zoned for commercial use, having historically been the site of a lumber mill, and is currently located within the coastal zone of Del Norte County.

This project has been approved by Del Norte County but appealed to the California Coastal Commission (CCC). As the CCC may elect to treat this as a *de novo* application, the proposal for this project has been somewhat altered from what was submitted to the county. If approved by the CCC, this project may have to be re-submitted to the County of Del Norte for clarification and minor changes to the county permit.

Approximately ½ of the property is re-colonized wetland vegetation, primarily willows. Minor impacts to resources in the form of vegetative fill in and adjacent to wetlands occurred and are to be mitigated. This report describes those impacts and includes a restoration plan to mitigate for those effects, plus describes the future planned use of this property and the mitigations proposed for wetland protection.

Physical Environment

The climate of northern California is characterized as Mediterranean, with cool, wet winters and warm, dry summers with frequent fog. Along the coastline, proximity to the Pacific Ocean produces high levels of humidity and results in abundant fog and fog drip precipitation. The maritime influence diminishes with distance from the coast, resulting in lesser amounts of fog, drier summer conditions and more variable temperatures. Annual precipitation in the project watershed ranges from 60 - 150 inches occurring primarily as rain during the winter months. Air temperatures measured in Crescent City area vary from 41°F to 67°F annually.

Historic Conditions

Historically, this property was part of a larger parcel which was the location of the Hamilton Brothers lumber mill. Built in the 1940's, this large mill complex included a lumber mill, dry kilns,

tepee burners, housing for workers, plus many acres of logging decks. Heavy equipment of excessive weights were used to move the large, old-growth redwood logs, therefore log decks were first created by laying approximately two feet of gravel over the cleared site. The historic saw mill and associated log decks reached all the way from Elk Valley road to Elk Creek (approximately 1,000 feet, north to south). It is highly likely, based on a 1963 aerial photograph of the Pappas property showing the working saw mill, that the entire current remainder property has a underlying base of two feet of gravel. This base is evident along the current wetland edge where silt fences were placed to protect wetland habitats.

Current Conditions

The property is located between commercial properties along Elk Valley Road, and Elk Creek, located to the immediate north of the property. Once fully developed as a lumber mill, the property is now either open ground with soil and rock storage, or re-colonized wetland vegetation. Invasive Himalayan berry (*Rubus armeniacus*), tansy ragwort (*Senecio jacobaea*) cotoneaster (*Cotoneaster horizontalis*), English ivy (*Hedera helix*) and other invasive plants occur sporadically on the property. The property is commonly used by transients for camping. The property is fenced along the south and east boundaries, both adjacent to commercial properties. The primary access road is located along the west edge of the property, delineated that way when the California Department of Fish and Game bought the remainder property to the west from the Pappas property, but did not want this 7.47 acres as the Department felt it was best left for commercial purposes.

The current Pappas property is approximately 350 feet north of Elk Valley Road (average, and the property line is angled away from the road). The proposed processing area is approximately 350 feet wide (north to south), therefore the processing area is at least 300 feet distant from Elk Creek, whereas the historic mill site reached all the way to Elk Creek. Potential wetland habitats, primarily in the form of willow (*Salix* sp.) and red alder (*Alnus rubra*), have re-colonized the old mill site. Approximately ½ of the property is now completely vegetated over. A wetland delineation was conducted by Galea Wildlife Consulting in January of 2014 and added to in July of 2014 (see attached addendum).

Approximately 4 acres of the southern portion of the property is open ground, the site of years of use as a storage and processing area for soils extracted off property. The property was used by Del Norte County as a storage and processing area when re-building Elk Valley Road. For many years the property was not gated and some illegal dumping of dirt and brush occurred, some within the margins of potential wetlands. Some of these piles remain and are mapped as "old piles", as requested by the CCC. Recently, soil and rock from the Crescent City Harbor Project have been stored in the processing area. These piles have been seeded and silt fencing was placed between the piles and potential wetland habitats. A SWPPP Plan was prepared and approved by the Regional Water Quality Control Board and implemented on the property.

Project Description

The Applicant is applying for a permit to allow the following activities within the processing area of the property;

1. The storage, sorting and processing of materials such as extracted soils, rock and asphalt from the Crescent City Harbor and other locations. Processing will be limited to the separation of rock and gravels from fines.
2. The removal and storage of soils and other materials previously placed along the edge of marginal wetlands.
3. Grading of the ground within the processing area (approximately 5 acres) to properly facilitate storm water run-off away from wetland areas if necessary. This may entail the creation of bioswales along the south edge of the property for water transport and sediment trapping.
4. The creation of small dirt berms surrounding soil storage piles in order to minimize sediment transport while storing materials.

The Applicant is proposing to continue to use the remaining 3-4 acres of his property as a materials storage, sorting and processing site. Such sites are needed in the Crescent City area, as was demonstrated in the recent Crescent City Harbor Project. There are very few sites in the area which can be used for such a purpose which would not have far greater significant impacts on natural resources than using the Pappas site. Processing does not include such uses as creating asphalt, or installation of a "batch" plant.

The degree that the Pappas property will be used for materials storage, sorting and processing in the future is unknown, as use is determined on a project-to-project basis, determined by conditions not in the Applicants control. For the immediate future, the Applicant must remove a portion of stored materials away from the wetland edge, as proposed by the Applicant and cited as a condition of use in the County permit. This was offered by the Applicant as a mitigation conditional to permit approval.

It would be reasonable to anticipate that this property would be used once every two years for materials storage, sorting and processing for local construction projects. It would be reasonable to anticipate that the entire 3-4 acre processing area would be used.

Possible Alternatives to Permit Approval and Mitigations

Alternative 1 – No Buffers to Wetland Habitats

The Applicant is permitted to use the southern four acres of his property for the purpose of a materials storage, sorting and processing site. No buffers to potential wetland habitats would be required. As a mitigation to working in proximity to potential wetland habitats, the Applicant would;

1. Remove all old (having been in place greater than 2 years) soil and rock piles located within 100 feet of wetland habitats within one year of issuance of a permit.
2. Remove all new soil, asphalt and rock piles located within 100 feet of wetland habitats within one year of issuance of a permit.
3. Create a bioswale along the south fence line of the property in order to facilitate storm water runoff and prevent sediment transport.
4. Construct small dirt berms around soil storage piles in order to minimize sediment transport while storing materials.
5. Utilize no more than 4 out of the total 7.47 acres as a processing area.

Alternative 2 – Preferred Alternative – Reduced Buffers and Mitigation

The Applicant is permitted to use the southern portion (3-4 acres) of his property for the purpose of a materials storage, sorting and processing site. Fifty foot buffers to protect wetlands would be required along the north edge of the processing area and in the southeast corner where a group of willows is located. No buffers would be implemented along the west edge of the processing area as the primary access road is located along the west edge of the property. Fifty foot buffers as proposed would reduce the processing area down to approximately 3.5 acres. As a mitigation to working in proximity to potential wetland habitats, the Applicant would;

1. Remove all old (having been in place greater than 2 years) soil and rock piles located within 100 feet of wetland habitats within two years of issuance of a permit.
2. Remove all new soil, asphalt and rock piles located within 100 feet of wetland habitats within two years of issuance of a permit.
3. Construct small dirt berms around soil storage piles in order to minimize sediment transport while storing materials.
4. Utilize no more than 4 out of the total 7.47 acres as a processing area.

Alternative 3 – 100 Foot Buffers to Wetlands along North Edge

The Applicant is permitted to use the southern portion (3-4 acres) of his property for the purpose of a materials storage, sorting and processing site. 100 foot buffers to protect wetlands would be required along the north edge of the processing area and fifty foot buffers in the southeast corner where a group of willows is located. No buffers would be implemented along the west edge of the processing area as the primary access road is located along the west edge of the property. As a mitigation to working in proximity to potential wetland habitats, the Applicant would;

1. Remove all old (having been in place greater than 2 years) soil, and rock piles located within 100 feet of wetland habitats within two years of issuance of a permit.
2. Remove all new soil, asphalt and rock piles located within 100 feet of wetland habitats within two years of issuance of a permit.
3. Utilize no more than 3.2 out of the total 7.47 acres as a processing area.

This proposal would reduce the processing area down to approximately 3.1 acres, including access roads. This is considered the minimum size for a materials storage, sorting and processing site. Any increased reduction in the processing area footprint would negate the commercial viability of this property.

Effects to Wetland Habitats

Wetland conditions were found along the north edge of the processing area, and at the southeast corner of the property where there is a small clump of willows. The southeast corner of the property is the terminus point for a drainage ditch located along the east edge of the property which flows to the south, thereby willows can survive in that more mesic location. Wetlands were not present at the northeast corner of the processing area or along the east edge of the processing area, based on a wetland delineation.

Wetland habitats found around the proposed processing area are marginal wetland habitats. No standing water is located on the property. The primary indicator of potential wetland conditions are

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willow and red alder. Elk Creek and associated wetland habitats are located over 300 feet to the north of the processing area.

The processing area within the property has been used for a materials storage, sorting and processing site for many years, therefore there would be no increased effect to surrounding potential wetland habitats. The mitigations as proposed under Alternatives 2 and 3 would decrease the size of the processing area and mitigate impacts to natural resources. Alternative 3 would have the largest buffers for wetland habitats and provide the most protection.

Impacts to Wildlife Species

Along the coast of northern California, many migratory songbirds utilize wetland and riparian habitats for nesting. Species such as the winter wren (*Troglodytes troglodytes*), Chestnut-backed chickadee (*Poecile rufescens*), American robin (*Turdus migratorius*), and the Pacific-slope flycatcher (*Empidonax difficilis*) are examples of local species utilizing dense, riparian thickets for nesting.

No nests were observed in riparian habitats adjacent to the impact area during initial review or subsequent reconnaissance. At the south end of the property, the processing area has been in use over the years, therefore it is likely that avian species sought to nest in more removed, preferred habitats at the north end of the property.

Reptiles and amphibians commonly found in the area include the Coast garter snake (*Thamnophis elegans terrestris*), the northern Pacific treefrog (*Pseudacris regilla*), the northern red-legged frog (*Rana aurora*) and the Oregon ensatina (*Ensatina eschscholtzii oregonensis*). No significant impacts to any of these species occurred due to the minimal impacts to potential wetlands at this site, as no preferred habitat for these species would be impacted.

The Pappas property is located just south of Elk Creek. This watershed is an important system for anadromous fish, including the federally-listed coho (*Oncorhynchus kisutch*) salmon. The Elk Creek drainage is relatively flat, lacking in slope throughout, and is therefore comprised of large areas of freshwater marsh, palustrine (seasonally flooded) and other wetlands, and habitat for many wetland-dependant species. The lower end of Elk Creek was historically impacted by filling, pond creation (for timber mills) and diversion of natural hydrology. Little or no restoration has occurred to remedy the situation.

The California Department of Fish and Wildlife (CDF&W) owns and manages a large area of watercourse, wetland, and riparian habitat just east of the mouth of Elk Creek, including the property immediately west of the Pappas parcel (the Pappas family sold this property to CDF&W years ago). CDF&W considers the Elk Creek watershed as a critical area of concern, especially considering the importance of protecting the Coho salmon. The impacts from this site would be minimal and sediment transport would be controlled by BMPs and by proposed mitigations.

Erosion and Water Quality Control Plan

The Pappas property is very flat. Water runoff occurs on the Pappas property from east to southwest, based on elevations. Along the east boundary of the property there is an old drainage ditch which flows to the south, but does not connect at the end to an off-property drain. During the rainy season water runoff enters the property from the southeast corner and runs along the south fence line, and exits out the southwest corner toward the drainage inlet. Currently, there is no drainage ditch on the Pappas property to facilitate drainage, and this may be a possibility in the future. A bioswale along this south line is proposed for Alternative 1.

Currently the hydrologic regime on the Pappas property is for water runoff to flow from east to southwest, therefore all runoff is away from Elk Creek and associated wetlands to the north. The runoff continues off property to the south where it enters a large drainage inlet near Elk Valley Road, which empties to the west into Elk Creek very near the mouth of the creek at the harbor.

As the property is very flat and there are no creeks or natural channels on the property erosion is not a significant concern. The proposal is for all piles of soils and sand stored on the property would be surrounded by earthen berms to prevent sediment transport. Proposed buffers to wetlands will also act to prevent sediment transport into wetland habitats as there would be no materials storage within the buffers.

A SWPPP plan is currently approved on the Pappas property, which has detailed conditions to prevent erosion and provide for water quality. The Applicant would have to have an approved SWPPP plan in place in the future for any materials storage, sorting or movement. Conditions mandated in the Del Norte County grading plan also are designed to protect water quality and prevent erosion.

Justification for Reduced Buffers:

As per section VII.D.4 of the LUP's Marine and Water Resources chapter, section f: *A buffer of less than one-hundred feet may be utilized where it can be determined there is no adverse impact on the wetland.*

The following criteria are used to determine if significant impacts to resources would occur from a reduced buffer:

1. Biological significance of adjacent lands: The lands adjacent to wetlands are commercial in nature and not biologically significant. The property is located within a commercial development complex. Properties to the east and south are already completely developed commercially. As this wetland is located adjacent to a materials processing site, in proximity to a commercial zoning area, and is surrounded by developed properties, these wetlands have reduced biological significance.

2. Sensitivity of species to disturbance: This location has minimal potential for use by wildlife due to being adjacent to a materials processing site and in proximity to commercial businesses. No sensitive species are known to occur in the immediate area.

3. Susceptibility of parcel to erosion: The parcel and surrounding area is completely flat, having once been part of a mill yard. The wetland is not susceptible to erosion, nor is the surrounding parcel as the site is very flat.

4. Use of natural, topographic features to locate development: The Applicant is proposing soil and rock storage and processing on an old mill site within a commercial area. There are no topographic features to utilize as the entire area is very flat.

5. Use of existing cultural features to locate buffer zones: There are no existing cultural features to aid in screening any resources.

6. Lot configuration and location of existing development: This commercial property already cleared and developed and no change in lot configuration will occur. The Applicant has proposed to reduce the size of commercial development by using wetland protection buffers.

7. Type and scale of development proposed: The type of activity proposed is the same as past use of this commercial property, soil and rock storage and processing. The scale of the proposed activities is relatively small, but directly comparable to past activities. It is located within an existing, fenced parcel and is not near any residential areas.

STAFF QUALIFICATIONS

Impacts assessment and report writing for this project was conducted by Principal Biologist Frank Galea. Frank is the primary Biological Consultant and owner of Galea Wildlife Consulting, established in 1989. Frank is certified as a Wildlife Biologist through the Wildlife Society. Frank's qualifications include a Master of Science Degree in Wildlife Management from Humboldt State University and a Bachelor of Science in Zoology from San Diego State University. Frank has been assessing habitat and conducting field surveys for Threatened and Endangered species for over 25 years. Frank has taken an accredited class on wetland delineation through the Wetland Training Institute, and has successfully completed a Watershed Assessment and Erosion Treatment course through the Salmonid Restoration Federation.

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Open Space Deed Restriction Area

Created by Coastal Commission staff

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Open Space

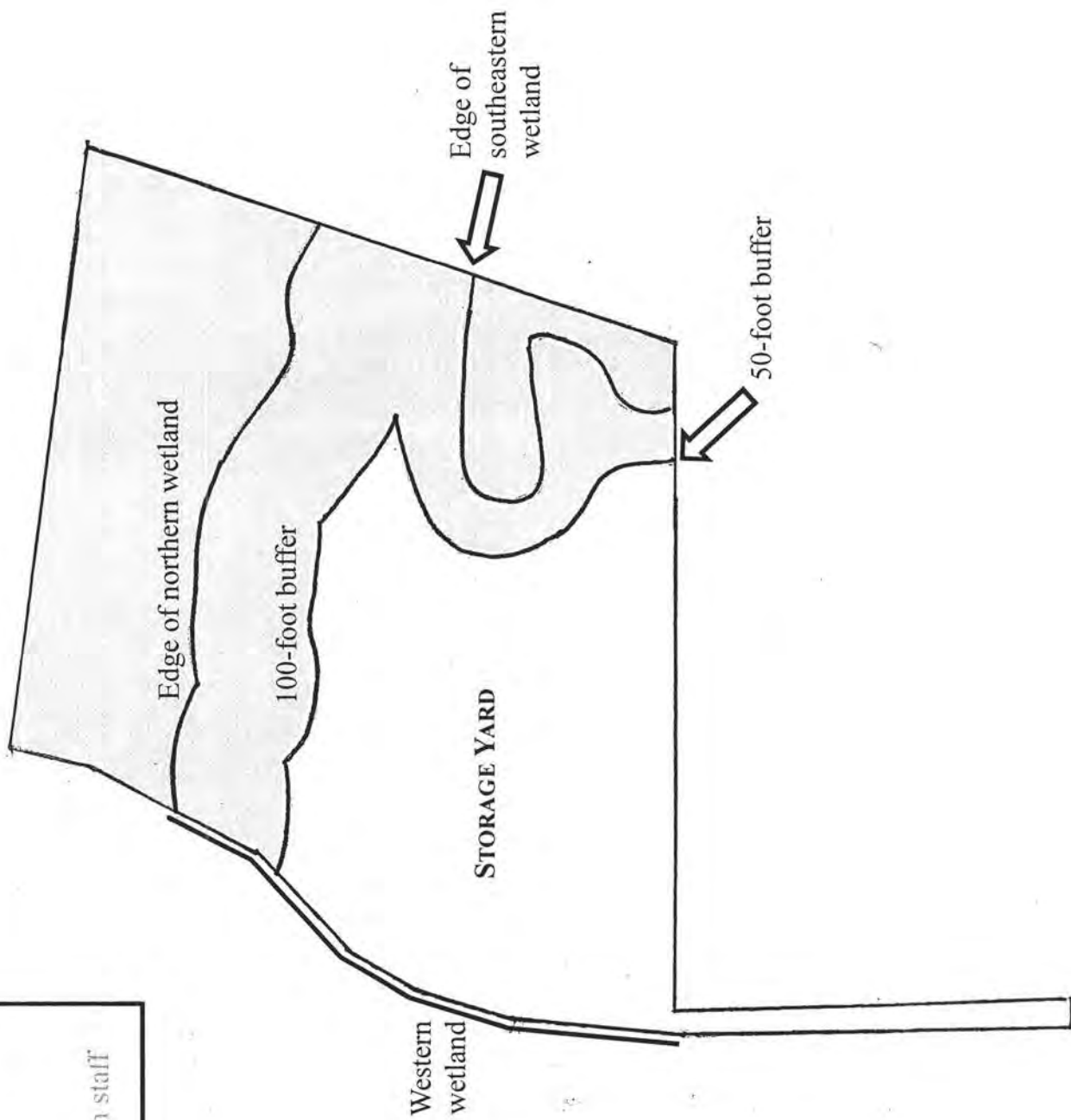


EXHIBIT NO. 13

APPLICATION NO.

A-1-DNC-14-0028 John Pappas

OPEN SPACE DEED
RESTRICTION AREA