

# **W12a**

**APPEAL A-1-DNC-22-0071 (EVANS)**

**MARCH 8, 2023**

**CORRESPONDENCE**

**RE:Commission Appeal No. A-1-DNC-22-0071**

**Appeal of local permit #B36878C**

**Attention:Tamara Gedik and Doyle Coyne**

February 21, 2023

I am responding to the Friends of Del Norte's appeal of permit #B36878C because I was granted a Coastal Development Permit at the local level, and I feel all of their concerns have already been addressed when they appealed twice during that process.. I also disagree with some of the assertions made by the FODN in this appeal.

FODN claim they have a right to appeal the proposed development on lot 9 (permit #B36878C) because in 2004 FODN opposed the development of lot #47 on Lakeside Loop and, in their words, "won our appeal to the Coastal Commission." FODN do not explain what they mean by stating they won their appeal to the Coastal Commission. I didn't see an appeal number listed by FODN. I used the appeal that is commonly referred to as the Trinity Development on lot 47. The developers of lot 47 chose to discontinue their project, but they could have pursued the project because the Coastal Commission decision on the permit was "Approval with Conditions". I have the appeal listed that shows the appeal number I am referring to.

The excerpt below is from the Coastal Commission report from lot 47 and here is a link to the full document. The Coastal Commission decision is highlighted.

<https://documents.coastal.ca.gov/reports/2004/9/TH7c-9-2004.pdf>

**"Filed: August 3, 2004                      49th Day: September 21, 2004    Staff:Robert Merrill  
Staff Report:August 26, 2004                      Hearing Date:September 9, 2004  
Commission Action: STAFF REPORT: APPEAL SUBSTANTIAL ISSUE & DE NOVO  
APPEAL NO.:A-1-DNC-04-043    APPLICANTS: Trinity Development    AGENT:Jim  
Vining    LOCAL GOVERNMENT: County of Del Norte**

**DECISION: Approval with Conditions**

**PROJECT LOCATION: 270 LakeSide Loop (lot 47), adjacent to Lake Earl off of Vipond Drive, north of Crescent City, Del Norte County (APN 110-450-47).**

**PROJECT DESCRIPTION: Construct a 2,762-square-foot, two-story, single family residence with an attached garage, a 50-foot long driveway, a septic tank and leach field, and a proposed well"**

Throughout their appeal of lot 9 FODN used the phrase, "See also the Friends of Del Norte appeal of Lakeside Loop lot 47". The development I am proposing for lot 9 is

unique and specific to lot 9. I do not own lot 47 nor do I have a relationship with the owners of lot 47.

In the current appeal to the development of lot 9, FODN makes several misleading statements and, in my opinion, don't follow the guidelines as laid out in the appeal form. I will point out these issues in the following paragraphs.

In the section of the appeal **“the extent and scope of the development as approved or denied by the local government”** FODN states “The LCP is dated 1983, the subdivision was approved in the 1980's, most of the documents pertaining to the subdivision are close to forty years old.” As the Coastal Commission reviews the Local Coastal Permit (LCP) for lot 9 they will see that there are updated reports and documents that were required by Del Norte County before they approved the LCP. We did not rely on 40 year old documents. We have an updated Bald Eagle Survey, Biological Assessments in 3 different seasons of the year, a wetlands delineation, updated engineering of the proposed septic system, and all other necessary updated required information for the permit. It seems ironic to me that FODN complains that the original subdivision documents are too old, yet they consistently make reference to the lot 47 appeal from 2004, which is 18 years old.

Under **GROUND'S FOR appeal SIX: WATER QUALITY AND SEPTIC SYSTEM** FODN writes, “It seems that originally Michael Young & Associates intended for all the septic systems to be mound systems, and then later that was changed. It appears that the proposed system for lot 09 is not a mound system.” (FODN is referencing the entire McNamara Subdivision in this statement). Jacob Sedgley, a Del Norte County Planner included a document from Michael Young & Associates that states that Michael Young & Associates did not plan to put a mound system on lot 9. Additionally, FODN actually attached a document to the appeal that shows lot 9 was not originally intended to use a mound septic system. In the document “appeal Lot 47 Coastal Appeal text, LL, Friends of Del Norte\_2004.pdf” you can read page 24 to find a list of lots that require mound systems according to Michael Young & Associates, and lot 9 is not in that list. To quote the FODN document: “Michael Young (1985 to 1990) designs and recommends mound systems for lots 4, 5, 6, 7, 8, 10, 11, 12, 14, 15 (periphery lots with septic systems that have less than 6.5 feet clearance below surface elevation, or less than 16.5 feet msl.)” Del Norte County also has a map of the subdivision that indicates lot 9 was not originally planned with a mound system. The mound system was not required for lot 9 because it did not fall within the range that would require a mound system.

FODN stated the Del Norte County LCP is from 1983. This is the current LCP. My permit meets the requirements of the LCP. In an appeal the appellant is supposed to

show that a permit is in violation of the current LCP. If there is a problem with an outdated County LCP it needs to be addressed by the agencies creating and using that document, but that is outside the scope of my building permit for lot 9. I can only apply for a permit based on the actual LCP, not one that may be created in the future.

FODN does not restrict their appeal to the development on lot 9. When I read the appeal form they completed that was one of the listed requirements. They discuss other pieces of property that are not part of this permit and they discuss property I don't even own, like lot #47, as grounds for this appeal, because they are afraid those properties will be developed if the LCP is approved on lot 9.

It is odd to me that FODN include lot #46 in their listing of properties they are afraid will be developed if the permit is approved on lot #9. Lot #46 is owned by the California Wildlife Conservation Board. The address of the owner, according to the Del Norte County Parcel Viewer web-site is 1807 13th Street, Suite 103, Sacramento, CA 95814-7137 and the tax rate is \$0. My understanding of the California Wildlife Conservation Board is that they are not a land development agency.

According to the appeal form there are guidelines for a proper appeal. "For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP or to Coastal Act public access provisions.

Please clearly identify the ways in which the development meets or doesn't meet, as applicable, the LCP and Coastal Act provisions, with citations to specific provisions as much as possible.

Appellants are encouraged to be concise, and to arrange their appeals by topic area and by individual policies."

I believe FODN failed to follow each of these three guidelines.

First, they are trying to appeal far more than the proposed development of lot 9 by including properties that are not part of the LCP for lot 9. Additionally, FODN ignored the multiple times the permit was proven to be within the LCP at the local level by several different experts in their fields.

Second, this appeal does not use specific citations to specific LCP and Coastal provisions that are not being met. The permit met all the provisions cited by FODN in their appeal.

Third, the FODN 26 page appeal is not concise! The appellants repeat the same information multiple times and add information that is not relevant to the building permit in question. In their appeal, FODN discuss global warming, the need to always re-evaluate the level of Lake Earl, anecdotes about duck hunters, neighbors flying drones, bird nests falling out of trees, two different floods that had no impact on any buildings around the lake or on lot 9, and an entire paragraph about “Director Kunstal’s assessment of when and why county roads flood”, which are things that have nothing to do with this permit.

And although the FODN cites LCP policies they don’t prove those policies are not followed by the CDP. For example FODN finds fault with the wetlands delineation that was completed during the permit process for lot 9, although it was conducted by two experts in their field, Mr. Wear and Mr. Galea. FODN states we need to do more mapping because Lake Earl is ESHA, but there is an LCP in place to protect Marine and Water Resources. The LCP was followed by including a wetlands buffer and we have included deed restrictions to help prevent impacts that could degrade the area. See the policy below:

**“LCP Policy, Marine and Water Resources LCP V11,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 area, 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 the specific findings as to the adequacy of the proposed buffer to protect the identified resource.”

A deed restriction has been put in place to restrict additional development on this lot once the current project is completed. Safeguards to the surrounding area include the following provisions and more! The building site is close to the street, Lakeside Loop, and is over 100 feet from the delineated wetland. The well site is proposed to fall within the wetlands buffer, but the above policy does allow for this exception. Del Norte County’s LCP also imposes restrictions on the use of herbicides and pesticides, the finished height of the home, and requires us to follow International Dark Sky Lighting recommendations for outdoor lighting.

Although in **GROUND**S for Appeal FIVE: FODN claims “Del Norte County’s LCP does not allow for direct impacts to ESHA” they do not cite the LCP to show this. The County staff Report page 10 says “this project is conditioned to reduce impacts to ESHA to the maximum extent feasible.” The County has considered every impact this permit will have and has determined it is a reasonable use of lot 9. The building site will require the removal of 4 Sitka Spruce trees. The Sitka Spruce on Lot 9 is under attack by English Ivy. Mitigation for removing the trees includes the control of that invasive species. Although FODN claims to have “examined the trees on lot 09” and “have seen far worse ivy infestations” they are not experts in the field, and they do not have permission to be on the property to examine anything. They acknowledge that we have “a plan crafted by an expert” to handle the infestation, but if their appeal is successful in prohibiting development on lot 9 there will be no plan put in place to control the English Ivy. According to one of the documents that FODN attached to their appeal, English Ivy was already “causing some tree death” of Sitka Spruce in 2020. The document I am referring to was created by Deborah Jaques in 2020. A screenshot of the document is shown below.

**Lake Earl Wetlands**  
**Southeast Shore Sitka Spruce Forest Heron Colony**  
**Located in Forests surrounding 1151 Lakeview Drive, including to the South and Southeast**  
**Notes by Deborah Jaques for the CDFW NDDB System**  
**2/13/2020**

Great Blue Herons were first detected nesting adjacent to my property at 1151 Lakeview Drive sometime before between 2007-2012 and have attempted to nest each year since. I am a professional biologist and visited the property/colony area periodically each summer 2009-2019 but field notes were limited. A few of the recovered notes are below. Birds and nests are difficult to see from the forest floor. Large forested private property to the south (22 acres) where most nesting has taken place changed hands from McNamara to Tidewater. Nesting expanded onto lands protected by a conservation easement on my property around 2015. Some nest trees are traditional, but birds also move around within the forest track. Adjacent landowners intended to develop the acreage but have not been successful to date, however, there may not be any restrictions against tree cutting, etc. English Ivy is taking over the forest and is reducing the understory and causing some tree death. Herons forage in the adjacent Lake Earl lagoon and associated wetlands and use of the colony may vary with breach regimes, water levels and availability of prey.

Recovered Field Notes:

**29 May 2012**

Great Blue Heron colony on McNamara lands has expanded. Chicks heard at 3+ nests, eggs seen under 2 nests in original high split 2 top tree. Lagoon breach late (March 30) this year.

**June 1 2012.** First find of more nests on forest on lake side of trail through McNamara lands. Eggshells under 2 more trees.

Nest Tree #1 is Sitka spruce 420 cm dbh.

Nest Tree #2 is Sitka Spruce, 440 cm dbh

4 June, Lake Earl level is up. Recently sealed and rain has continued.

**4 June 2012. GTBH Colony McNamara-Tidewater property**

Tree #3. Sitka Spruce, 540 cm dbh. Eggshells below (1) hatched. Saw nest earlier. WPT#36. Heard chicks and adult today. Ivy covered. Trunk split at top.

Tree #1. WPT#38. Eggshells below, measured earlier.

Tree #2. WPT #39. Hear chicks now, see eggshell below.

Note: Google Earth image July 2015 appears to show small colony southeast of my house and is highest resolution.

**31 July – August 3, 2014**

Nesting in Spruce only. 56" dbh. Chicks feed above but can't see, only hear. See eggshells and guano below, as well as both GTBH and GREG feathers. Much loud feeding at night.

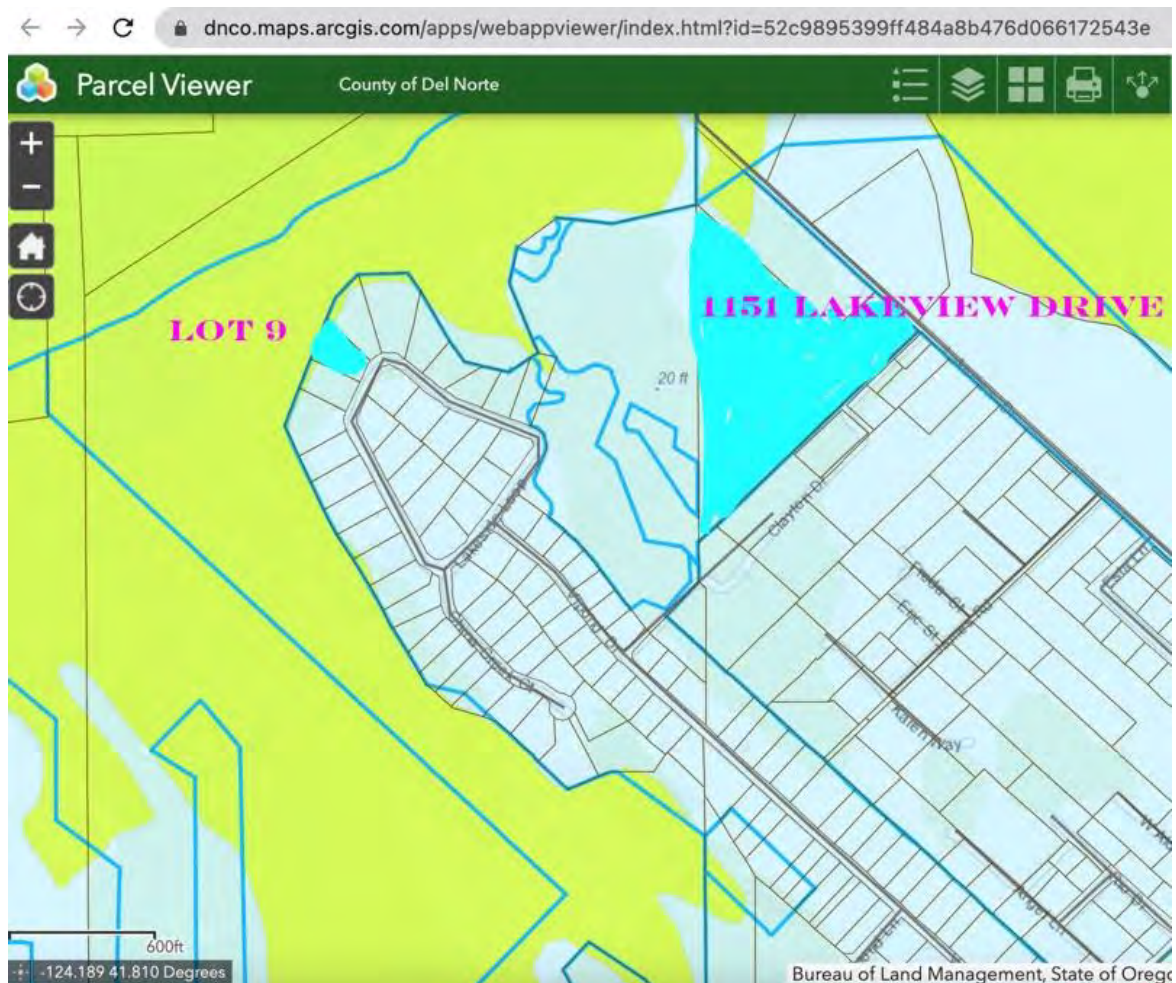
Second nest is visible, also small spruce. Possibly 1 pair GREG and 1 pair GTBH nesting here. Both species fly in and out. 4 GREG fly into roost at dusk.

**2020 Note:** Nesting colony has been used each year with some apparent variation in numbers and success over time. At least 3 pair/3 nests (6 adult birds) documented but may be more.

D. Jaques was the owner of 1151 Lakeview Drive in 2020 which is very close to Lakeside Loop and the lot 9 development. It would appear to me that D. Jaques has a conflict of interest with the lot 9 project if D. Jaques is still the owner of that property. The owner of 1151 Lakeview Drive has a financial interest in seeing that no other development happens around their property. If FODN can stop development of the lots on Lakeside Loop and the 22 acres that are referenced in their appeal then 1151

Lakeview Drive will have permanent greenspace around it which has the potential to increase the property value.

The following map, taken from Parcel Viewer, shows the proximity of 1151 Lakeview Drive to Lot 9 on Lakeside Loop. Each of the properties is labeled and colored aqua.



I included the map below that FODN submitted in their appeal, in which they marked a map of with a yellow highlighter and wrote the designations of “undeveloped ESHA”, “Approx. ESHA” and “ESHA” with a black sharpie. This is not detailed and specific information pertaining to development of Lot 9. This map has a yellow border that makes it look as if ESHA areas around Lake Earl end here, but there is ESHA that continues in the Lake Earl Wildlife Area far beyond these borders.





For example: there is the existing Lake Earl Wildlife Area, the Tolowa Dunes State Park, and the area known as Pacific Shores that are now owned and protected by various state agencies. And there is a push by an environmental group to buy all the lots at Pacific Shores which would increase green space and presumably ESHA. See the screenshot below from the Smith River Alliance website [Lake Earl Landowners | Smith River Alliance](#) It was taken on 02/14/2023

## Lake Earl Landowners

Do you own land in or near the Pacific Shores Subdivision? Would you like to learn more about your property so that you can determine if the time is right to sell?

Originally created in 1963, the subdivision lots were sold to people like yourself, most of whom were living in southern California and Hawaii. Property owners dreamed of one day living in Del Norte County near the ocean.

Around the same time, hundreds of paper subdivisions were created by drawing lines for parcels and roads on a subdivision map. The developers of the Pacific Shores subdivision, like most of this era, did not include water, sewer and power services with the lots that were sold, and these services were never provided.

Did you know that no parcels have ever been developed, and that 72% of the lot owners have sold their land for public use and moved on? Today, the area is half wild and half dumping ground and for many, not the stuff that dreams are made of.

I am contacting you, to ask if you have an interest in selling your lot or lots in the Pacific Shores Subdivision. Recent Park Bond Acts provide funding for acquiring habitat rich parcels such as the land surrounding Lake Earl, including the Pacific Shores Subdivision. Funds are available for acquisition of lots from willing sellers, and I am interested to know if you would like to learn more about participating.

### The Process

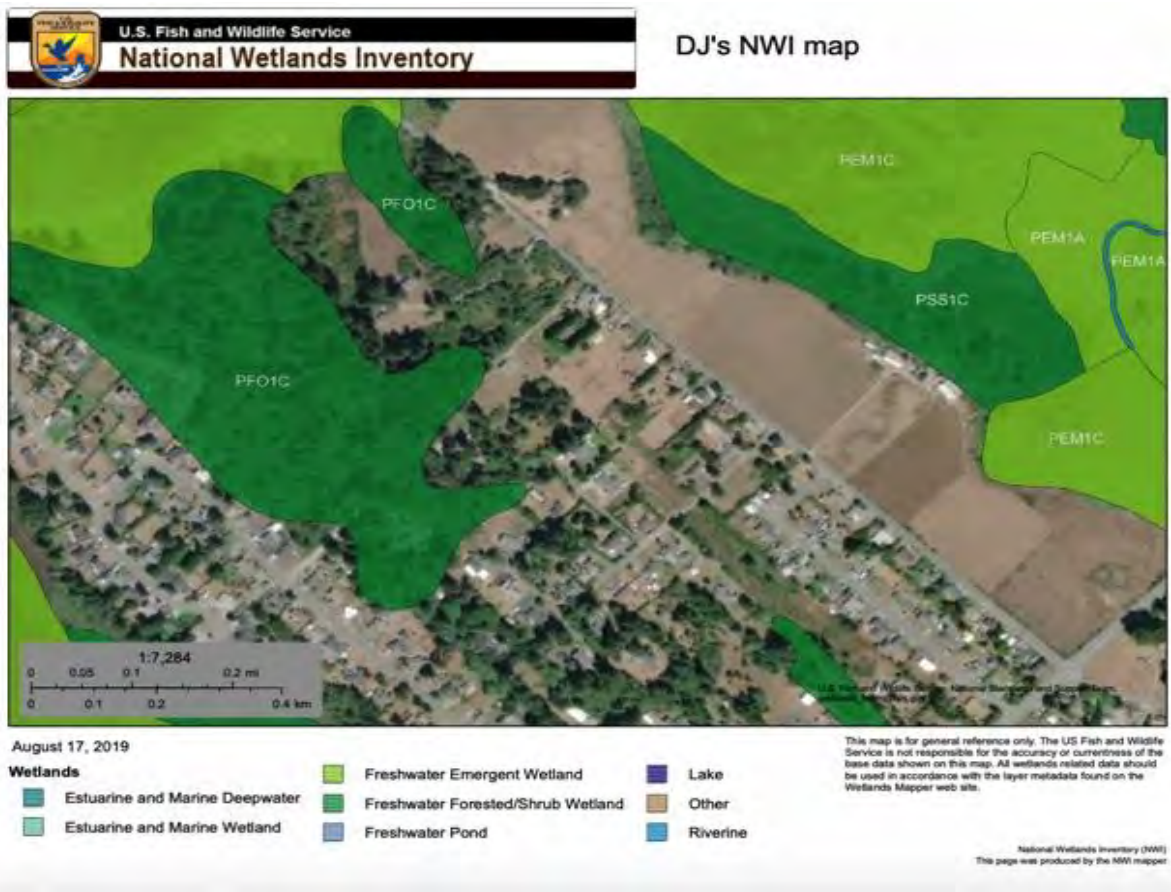
After I have answered all of your questions about the area and the subdivision, if you were interested in selling your land, I would order a Preliminary Title report from First American Title Company for the property, which will confirm ownership and the I would prepare a Purchase Agreement for your signature which included all transaction terms, including our offer to pay all escrow fees. In addition, the property would be inspected primarily to see if there has been any trash dumping on the land.

### Background

The Lake Earl area was first identified as an acquisition priority in 1975 by the Department of Fish and Game, and a series of public acquisitions began in 1977, as willing sellers were identified, to protect sensitive habitat near the Lake. Originally, the subdivision contained over 1,535 lots, and as of today, over 1,100 parcels have been purchased and added to the Lake Earl Wildlife Area, with fewer than 400 remaining in private ownership.

Land acquired through this program will be added to the Lake Earl Wildlife Area.

**Please let me know if you have any questions or are ready to sell your property.** Please use the form below to contact us regarding your land in or near the Pacific Shores Subdivision.



Another document that FODN attached to their appeal is a screen shot from the U.S. Fish and Wildlife Service National Wetlands Inventory Map. It is misleading because FODN presents this as an accurate map, when in reality it is only approximate information. In the lower right corner of the map there is a disclaimer that reads, “ This map is for general reference only. The US Fish and Wildlife service is not responsible for the accuracy or currentness of the base data shown on this map.” Also, I don’t see lot 9 on the map.

FODN claims it is important to not cut 4 Sitka spruce trees that are on lot 9. They included a memo created by Chad Roberts PHd in 2020 regarding “Sitka Spruce Conservation in California”. In that memo Chad Roberts cited a resource that he used, the NatureServe web-site, and he advises the reader to find updated information on the NatureServe web-site. Mr. Roberts wrote “Rather than my attempting to synopsze the complex NatureServe process in this memo, I recommend consulting the NatureServe website for the entire methodology, including 2020 updates.”

On February 12, 2023 I used the NatureServe website <https://www.natureserve.org/> to look for information about Sitka Spruce and I found a map that shows Sitka Spruce



Conservation Status in California, and it is “No Status Rank”. Additional Information from the website shows “no status on the U.S. Endangered Species Act.” I’ve enclosed a screenshot of the map.



I think FODN might have intended the information from Chad Roberts to be evidence for section c (5) **whether the appeal raises only local issues as opposed to regional or statewide significance** but the map I found does not support that claim. In their appeal FODN wrote “The value of these particular ESHAs is also of statewide significance, as experts foretell that with climate warming, Sitka spruce habitat in California may be moving far north, perhaps withdrawing up close to Oregon, where Del Norte County is located. (presentation in Brookings OR by Noah Siegel mycology expert and author) In [the] future Del Norte spruce habitat may be a refugia for this particular ecology in California.” They fail to show the regional or statewide significance of the Sitka Spruce with the information from Chad Roberts and Noah Siegel.

The speculation about climate change creating a situation in which the only Sitka spruce habitat in the state of California will be in Del Norte county has no data. FODN states the habitat “may be moving far north, perhaps withdrawing up close to Oregon”. The reference to the presentation in Brookings Oregon adds no support to their claim. To say something may happen, or perhaps it will happen, is not conclusive evidence. FODN does not include any scientific data to link the cutting down of 4 Sitka Spruce on lot 9 to a significant impact on that species in Del Norte County and the state. Sitka spruce are a very hardy species according to many sources. According to the article that I read about Sitka Spruce, it is actually a very hardy species. The article [Sitka Spruce is Tall and is Invading Norway](#) states “Sitka spruce, or *Picea sitchensis*, can reach heights of 317 feet or 96.7 meters. It is one of the largest coniferous trees, it is the third-tallest conifer species, and is the largest spruce species. In summary, it’s a big tree. Unlike the giant sequoia, the Sitka spruce is not endangered. It’s not even threatened. Sitka spruce is highly valued because it grows fast, even in poor soils where other trees would fail to grow at all. If ideal conditions are met, it’s possible for annual growth of 4.9 feet or 1.5 meters. It is so good at growing that Norway considers the Sitka spruce to be an invasive species according to [Aftenposten](#).”

Additionally, the information provided by FODN in the Chad Roberts memo on Sitka spruce states that the species can thrive in varied and harsh conditions. “Sitka spruce in its natural range currently occurs along the Pacific coast of North America from Mendocino County in northern California to Kodiak Island in southern Alaska (Figure 2). Within this range, the species is often a pioneering species on sites with rather harsh environmental conditions, such as coastal dunes and sparsely vegetated river bars. Sitka spruce is considered a ‘facultative’ wetland indicator in the continental US, indicating that it’s as likely to occur on chemically reducing substrates (i.e., in wetland conditions) as it is in upland sites, and one vernacular name for the species is ‘tidewater spruce.’ However, Sitka spruce also pioneers in prairies, on exposed coastal bluffs, and in other decidedly non wetland locations. For example, Franklin & Dyrness (1973) described Sitka spruce as a dominant late-seral species in some highly productive coastal conifer forests in Oregon and Washington, as well as in more stressful coastal dune plant communities and low-elevation riparian communities.”

FODN include other reasons they believe 4 Sitka Spruce should not be cut down on lot 9. They feel it will cause harm to birds and their nests if those trees are not there to block wind. They include an anecdote about a nest that fell out of a tree, but the nest was not on lot 9. There was nothing to show the bird nest was in an area that would be affected by more wind if the 4 trees were removed. Frank Galea found no bald eagle nests on lot 9 and the tree removal plan is timed at a time that would protect birds. There is a restriction on further tree removal on the lot after the 4 trees are cut down.

Any tree cutting after this will require a permit which will have to be approved by California Department of Fish and Wildlife. FODN states this is not a strong enough safeguard for the remaining trees even though CDFW will be a regulating agency in the process. If an environmental agency can't trust CDFW, who can they trust?

FODN includes a vague story of a "neighbor" with a drone causing harm to birds. They fail to identify the exact location of the incident, fail to identify anyone by name, do not disclose the date of the incident, or include any other evidence that would show this was done by anyone living near lot 9, or that something like this would happen because lot 9 is developed.

They continue in this section to bring up the issue of the level of Lake Earl as a statewide concern. "As climate warms, the Lake Earl Coastal Lagoon ESHA maximizing its capacity to hold water for migratory birds and other wildlife is of statewide significance in a state with a generally drying climate." FODN failed to show how the development on lot 9 would have an impact on lake level.

FODN discusses a "wildlife corridor" in their appeal but it is described in very vague terms. They say "residents along the east side of Lake Earl are well aware of its busy wildlife corridor...in the vicinity" of lot 9. They have a wildlife camera "between Lakeview Drive and the Lakeside Loop Lots 9-12 and 45-48."



(This screenshot was taken 02/17/2023 from Google Earth. The original photo is from the summer of 2015, long after the lake levels were set to the current levels. You can see how far the lake is away from lot 9. I added a label to show the approximate location of lot 9.) This aerial viewpoint seems to be the perspective of the wildlife camera per the description by FODN. This image shows how much space wildlife has available as a corridor between Lake Earl and lot 9. If a home is built on lot 9 near Lakeside Loop road there isn't an explanation of how it would affect the movement of the wildlife. The state owns thousands of acres of green space around the lake, and the wildlife can still travel freely along the lake even if a home is built on lot 9 near Lakeside loop.

FODN raised a concern about the Tidewater Goby in their appeal, and as I stated earlier, the septic system will not endanger the health of humans, and therefore it will not endanger the Tidewater Goby, or any other species. According to the web-site [Tidewater Goby - Pacific Coast Science and Learning Center \(U.S. National Park Service\)](#) "The endangered tidewater goby (*Eucyclogobius newberryi*) is endemic to the coastal areas of California. As a result of loss of habitat, changes in water quality, introduced predators, and drought, gobies can now only be found in about half of the places where they once lived." The development of lot 9 will not create any of the threats listed. There will be no loss of habitat for the Tidewater Goby, no change to water quality, no introduced predators and no drought caused by the development on Lot 9.

Tidewater Goby may actually be more threatened by the Herons and Egrets living near the lake because they eat Tidewater Goby. According to this article [Tidewater Goby — Santa Clara River Parkway](#) "Many piscivorous birds, including egrets (*Egretta* spp.), herons (*Ardea herodias*, *Butorides striatus*, *Nycticorax nycticorax*), cormorants (*Phalacrocorax* spp.), terns (*Sterna* spp.), mergansers (*Mergus* spp.), grebes (*Podiceps* spp., *Podilymbus* spp., *Aechmophorus* spp.), and loons (*Gavia* spp.), frequent the coastal lagoon habitats, mainly in fall and winter, and may feed on tidewater gobies (Rathbun 1991)."

FODN claims there are Herons and Egrets in trees near Lake Earl, and suggests they may move from their current nesting grounds to lot 9. Have the FODN considered that this could have a very negative effect on their prey, the Tidewater Goby.

A very large threat seems to be the breaching of lagoons. Per the web-site [Tidewater Goby \(\*Eucyclogobius newberryi\*\) | U.S. Fish & Wildlife Service](#) "A recently identified threat to tidewater goby habitat is the artificial breaching of lagoons (i.e., when humans remove the sandbar that acts as a barrier between the lagoon and ocean)



for flushing waterways or habitat restoration projects that benefit other species, like steelhead trout. Artificial breaching causes lagoons to be converted to open marine systems, allowing an influx of salt water into the lagoon. While tidewater gobies are naturally exposed to tidal conditions when high tides periodically breach sandbars, frequent or untimely artificial breaching degrades the lagoon's water quality and can kill tidewater gobies." The artificial breaching regime of Lake Earl is important to the Tidewater Goby, but it is not impacted by the development on lot 9. The article goes on to say "Through research and monitoring, the Service is working to develop a better understanding of how climate change impacts tidewater gobies and is using this information to inform recovery actions and management decisions. The Service's efforts to better understand the tidewater goby have resulted in increased levels of surveys and monitoring in nearly every lagoon along the California coast. These efforts have led to the discovery of the species in locations where tidewater gobies were not known to be living. The Service is working alongside other federal agencies, state agencies, conservation organizations and universities to protect and recover the tidewater goby." The building on Lot 9 will not create climate change any more than if it were built on another lot. Additionally the US Fish and Wildlife service stated they are actually finding more Tidewater Gobies as they increase the monitoring of this species. In 2014 they wanted to change the status of the species from Endangered to threatened, and it is possible with this new data they could make that change.

According to the UC Davis article [Tidewater Goby](#) "Favorable habitat includes shallow open water with emergent vegetation. Aquatic vegetation is important for protection and presumably feeding, while open water is important to breeding", Perhaps the key to Tidewater Goby preservation is shallow water, and not deeper lake levels, and FODN admits the lake level and breaching regimes should always be re-examined. FODN says in this appeal "someone should always be re-evaluating the lake level and breaching regimes". They admit this might result in lowering the lake level. Yet throughout the appeal they only focus on the effects of raising the lake. Just to be clear though, the breaching regime re-evaluation is important, but whether the lake levels are lowered or raised won't affect the house on lot 9, due to the elevation of the building site. However increase the depth of the lake may adversely affect the Tidewater Goby if they really do thrive in shallow open water.

FODN states the lake level may need to be maximized as a regional or state-wide concern, but building a home on lot 9 will not affect decisions about the lake level. The current lake level maximum is 8-10ft msl for Lake Earl, and the building site on lot 9 is at an elevation that will be protected by that or higher lake levels. If people cannot breach the lake at 8-10ft msl there is a natural breaching of the lake, which historically happens



at 10-14ft msl. As you can see from this Google Earth image taken February 12, 2023 the elevation of the building site on Lot 9 is 6 meters, or 18 feet, even though the FODN says “Again, any available elevation maps are unofficial, unclear, and date from the 1980’s.” Elevation doesn't change, so a 1980’s elevation map would still be relevant today, but to make it very clear, I used the very current elevation source, Google Earth. I held the cursor on the building site and then took a screenshot.



Here is the Elevation 

The home on lot 9 will be at an elevation that will keep it from being flooded yet the FODN is really trying to push the idea that this lot will be flooded. The fact is that only a small piece of the lot, which is at a much lower elevation and is not being developed, could possibly have water on it when the lake reaches higher levels. You can see that even with higher lake levels established in the 1980’s the lake is several hundred feet from lot 9 in July 15, 2015,

FODN included a past flooding that is entirely irrelevant to lot 9 and the information is very vague. They say, “In extreme weather events this area may again flood due to a combined Lake Earl/Smith River flood, or just one of each. In the U.S. Army Corps Smith River Floodplain document, a major Smith River flood is described (1970s we believe), where the Smith River flooded south into Lake Earl so that their waters were combined, and the lagoon could not be breached because it was unsafe and impossible to do so. We don’t know how high the combined waters climbed on lot 9.” A short

summary of that information: FODN don't know the date of a flood and they concluded that there is no information on the effect it had on lot 9. This is not relevant to my permit not meeting the LCP because it has no specific information about the effect flooding had on any property. If people can't breach due to safety concerns there isn't a problem because the lake will naturally breach, and this anecdote does nothing to show there will be a flooding problem.

FODN proposed that a deed restriction be added to current and prospective owners' deeds stating that the lagoon levels fluctuate. They include one example about the lake not being breached at 10ft msl and reaching 10.78ft msl. "The most recent example would be that in late March 2003 the lagoon reached an elevation of 10.78ft msl before it could be breached. No structures were touched by water or damaged"

According to the FODN the last time the lake "flooded", meaning the lake level was above 10ft msl was 20 years ago, and it had no effect on any structures. I don't see that as any reason to be concerned enough to add information to property owners' deeds about lake levels. I fail to see what relevance this has to building a structure on lot 9, since no structures around the lake were even touched or damaged. The development on lot 9 will be at an elevation that would be safe from even the highest lake levels that would be reached before the lake naturally breaches.

FODN were not being concise when they brought up the issue about county roads flooding. Other county roads have nothing to do with this permit. FODN added this opinion about Lower Lake Road, which is miles away from lot 9. "We also must disagree with Director Kunstal's assessment of when and why county roads flood, and that this flooding is an obstacle to future adaptive management options. This is an area of high groundwater, at present evidence does not exist to prove that Lower Lake is flooded by the lagoon as opposed to rainfall raising the high groundwater to reach the surface. However we do have photo and well sample documentation that does establish that groundwater near the lagoon is high and not always related to lagoon water elevations." (Please note that they are clearly stating they do not have evidence that the lake level is affecting groundwater levels, something I will address in more detail later.) A bridge over Tolowa Slough and some road work would address the other issues mentioned. We apologize but there is not time to submit all of this information, and it is certainly more appropriate to submit as CDFW works on future addendums to the LEWA management plan." The paragraph I just cited in the appeal on lot 9 is totally irrelevant to my permit on lot 9, so why was this included in their appeal?

They say they are concerned that the periphery edge of lot 9 is sometimes covered by Lake Earl even though there will be no development on that part of the lot. However,

they recommend building “a bridge over Tolowa Slough and some road work” which sounds far more invasive than my lot development with a restrictive deed.

In the section **GROUNDS for Appeal SEVEN:VISUAL RESOURCES, HIGHLY SCENIC AREAS** FODN states “The development of lot 09 sets a precedent for shoreline development which will be visible from popular public trails on the CDFW Lake Earl Wildlife Area Peninsula, in particular the views from popular Cadre Point and Goose Point; the Cadre Point loop trail;the Lakeview trail. (We will submit a map, and photos.) Also development of 9 more shoreline lots will cumulatively and significantly impact the view. County staff responded that this location was not the list of highly scenic areas, but still the County decision does not conform to the following LCP Policies because the Lake Earl Wildlife Area is a high scenic area with trails that may be the most popular in the County because most of the County population lives nearby, on the coastal plain. Tourists, a chief economic driver, also visit these trails;in fact, the Redwood National & State Parks visitor center refer visitors out to these trails, particularly if people say that they would like to go “birding”.”

FODN is inaccurate when they add the phrase the “development of 9 more shoreline lots”. There is one lot proposed for development in this permit, not nine. Although County staff responded to the FODN that “this location was not [in] the list of highly scenic areas” of Del Norte County, FODN dismissed the county's response. FODN made the unsubstantiated claim that “Lake Earl Wildlife Area may be the most popular in the County because most of the County population lives nearby, on the coastal plain.” Saying an area is popular because people live near it is illogical. They have no data to back up their opinion of the popularity of Lake Earl Wildlife Area trails. They do not include information on the number of visitors to any of the scenic locations in Del Norte County. Is Cadre Point truly more popular than the new Redwood Sky Walk, Stout Grove, Jedediah Smith State Park, South Beach, Pebble Beach, Smith River, or any of the other spectacular tourist areas in Del Norte County? FODN misspelled Cadra Point Loop Trail in their appeal, and it seems that they would be able to correctly spell a resource they deem so popular.

Part C section (1) of the **Substantial Issue Determination says** “when determining whether the appeal raises substantial issue, the Commission may consider factors, including but not limited to: The degree of factual and legal support for the local government’s decision.”

This is a point that I would like to elaborate upon. The local government had an Environmental Review Committee review the facts of the CDP on lot 9. The local government required Biological Surveys in three seasons of the year, an updated bald

eagle survey, a current engineered septic system, a wetlands delineation, and all the usual and customary requirements for a building permit. The local government also used information from the original subdivision plans to make their decision.

FODN claims there is a problem with using the original subdivision information and they have a concern about not having a soil sample from lot 9. When I applied for a permit for lot 9 from Del Norte County I was given a list of information I would need to gather for the permit. At that time I asked Houawa Moua, REHS, Senior Environmental Health Specialist for Del Norte County if lot 9 needed soil samples and analysis. Mr Moua told me that I did not need that because there had been no ground disturbance since the original soil samples were done for the subdivision. The county was extremely focused on securing facts in regards to this permit, yet FODN claims they are overlooking important issues.

FODN wrote "We question if wetland characteristics in the soil might be more definitive now and at higher elevations, because the lagoon has been allowed to reach twice the water level and more than it did during the 1980s' and to linger at higher levels, over a period of decades."

They question the engineering of the septic system based on lake levels. They write "Again, how can this septic design rely on data that was gathered before the lagoon water levels were restored to 8-10ft msl. Moreover it has been decades now that water levels have been managed for these higher levels. Are the groundwater levels different now? The maps in use for this subdivision continue to show the lagoon at 4ft msl and no one seems willing to address this uncomfortable issue. However this may be critical for the health of people and Tidewater gobies alike. We strongly believe this issue requires much greater scrutiny."

Just to clarify, there is an answer to the question of how lake levels affect the groundwater and the health of people around the lake. In 2000 Del Norte County employee Richard Mize, MD, Public Health Officer, answered the question of whether or not the lake level affects septic systems in a document addressed to "Friends of the Lake ". Given the intense involvement FODN has with anything involving development near Lake Earl it seems that they would have already known the results of that document. Also, FODN claim to be experts in the local flood plain, so I assume they would know how the direction the groundwater flows, yet they asked twice in their appeal whether or not anyone has considered the effect of a higher lake level on groundwater.

I shared information from the document written in 2000 with Jacob Sedgley when FODN raised this same issue at the county level appeal. The conclusion in 2000 is that lake levels will not affect groundwater levels, because the underground water drains towards the lake in that area. Here is a copy of the email I sent Jacob Sedgley regarding this matter on November 29, 2022. I added red to emphasize the parts of the document I felt were relevant.

*BEGINNING OF EMAIL MESSAGE TO JACOB SEDGLEY*

November 29, 2022

Hi Jacob,

Please let me know if I need to do anything to prepare for the December Board of Supervisors meeting on lot 9 of Lakeside Loop.

In the current Friends of Del Norte Appeal to the county they insist there is no information regarding the impact of the groundwater in relation to current lake levels. Over the Thanksgiving holiday my mom found documents from 2000 that addressed lake levels and groundwater. They were prepared by Richard Mizem, MD, the Public Health Officer for Del Norte County at that time.

There were questions raised at that time (2000) about the water level of Lake Earl in relation to wells and septic tanks around the lake, not just the ones on Lakeside Loop, and these are quotes from the documents that seem relevant to the recent concerns raised by the Friends of Del Norte.

The first document is titled **“A Position Paper on Current Issues Involving Lake Earl From the Perspective of the Del Norte County department of Public Health” By Richard Mize, MD, Public Health Officer** and it is **dated May 27, 2000.**

“Over the years a number of health related questions have arisen. I will briefly discuss the recurrent ones. **1. Lake Earl, at high levels, endangers the water quality in surrounding wells and contributes to the failure of septic systems.**

**Once in the past,** when the lake reached 10 feet 3 inches in elevation, a stock well was overtopped and lake water poured down the well. That well has since been destroyed, and the next lowest well head is at 10’5” or 10’6”.

Are there contaminated wells around the lake? Yes. Is this from the lake being high? Not directly. Most of the wells are shallow, and were constructed prior to the passage of the county well ordinance. No wells constructed before the ordinance passed was sealed (no well driller in the county even had the capacity to seal a well), and unsealed wells are prone to the contamination from surface water. The lake elevation rises from heavy rainfall, and heavy rainfall also causes extensive collections of surface water, which is what actually contaminates the well. Specifically, this is not from underground backflow from the lake. **The water elevation in the wells is always higher than the lake-the underground water flows towards the lake, rather than from the lake towards the wells.** The only potential situation that is otherwise is in the Pacific Shores area itself, since the ground elevation on the ocean side of the dune is lower than the lake level. However, anywhere else in the Lake Earl watershed where the surface elevation is lower than the lake level the area simply fills with water.”

During periods of high ground water, do septic systems fail? Yes, just as they do in many other low-lying areas of the county with high ground water. At the Health department we have increasingly become aware of the number of failed and failing septic systems in areas remote from the lake. Again, these systems were constructed in the past at a time when there was considerably less concern about adequate soils analysis that now exists. **Any septic system that would be currently permitted would continue to function adequately with high lake levels.**

The other document is also by Mr. Mize and is titled **“Responses to Questions Posed by Friends of the Lakes and is dated July 3, 2000**

***“As long as the elevation of the bottom of the leach field is 2’ above groundwater level, and the leach field itself has been designed properly and is functioning properly, there should not be any problem with functioning of the septic system. If the groundwater levels are higher, but the system is not being used to capacity (i.e., if a system designed for 500 gallons/day is actually only having 300 gallons/day put into it) the system will often continue to function adequately. It is important to note that groundwater level is not directly related to the lake level, and is always higher than the lake level. This means that the direction of groundwater flow is always towards the lake, except in the Pacific Shores area, where there can be groundwater flow towards the ocean. Thus, for everyone living east of Tolowa Slough, (i.e., everyone on Kellogg Road east of the slough, everyone on Lower Lake Road, etc), groundwater flow is always towards the lake, regardless of the lake’s elevation.”***

I hope this helps address the issue of having the well inside the 100 foot wetlands buffer and it helps alleviate concerns about the septic system being built with the new higher

lake level of 10 feet. And please let me know if I should do anything to prepare for the December board meeting.

Thanks for all your hard work,

Connie Evans

*END OF MY EMAIL MESSAGE To Jacob Sedgley*

The public health officer of Del Norte County said a septic system built to the permit standards of the year 2000 would be adequate with higher lake levels. Therefore, any approved system built in the year 2023 should also be adequate. The well is going to be above the 12 foot elevation contour line, and it will be built to current standards, so the lake levels will not affect it.

FODN found fault with much of the factual evidence provided for the CDP on lot 9. They said reports by biologists Mr. Galea and his associate Kyle Wear were flawed. They criticized the recommendations of Stover Engineering for the current septic system and falsely claimed we had changed original plans from a mound system to a different system. They criticized the permit process that will be required to remove any further Sitka Spruce, even though the CDFW will be part of that permitting process. They said Houawa Moua, REHS, Senior Environmental Health Specialist for Del Norte County was wrong to not order a soil sample on lot 9. They dismissed the fact finding and expertise of Del Norte County planner Jacob Sedgley, the Del Norte County Environmental Review Committee, and Director Heidi Kunstal. In spite of all the facts, they concluded the County was not following the LCP.

When Director Kunstal was asked at the appeal meeting with the Del Norte Board of Supervisors if Lake Earl would flood a home built on lot 9, she said no, with a short explanation. She referenced a 12 foot contour line which is a reference to the elevation of 12 feet. She was explaining that the home on lot 9, in relation to the 12 foot contour line, will be at a high enough elevation to prevent it from being flooded. She included the fact that there are homes already built near Lake Earl that could be flooded if lake levels get too high and that those homes are at a lower level than the home that will be built on lot 9. Director Kunstal answered the question she was asked with simple and direct facts. Despite her correctly answering the question the FODN tried to discredit her by referencing her answer in their appeal. The question Director Kunstal answered was not about the relationship to the 12 foot contour line and whether or not lot 9 was entirely in or out of the 12 foot contour line. She was asked if the home would flood when the

lagoon was at its maximum depth and she answered that question. I want to add that the home is being built at an elevation around 18 feet and the lake naturally breaches at levels between 9-14 feet, and the home is outside the 100 foot wetlands buffer. FODN states in another part of the appeal that the margin of lot 9 is “submerged in the Lake Earl Coastal Lagoon”. This is misleading. I just walked the margin of lot 9, in January of 2023, and it was not submerged. The lake was very far from Lot 9. I took pictures on that day if the Coastal Commission is interested in that information.

There is a restrictive deed to prevent development on that part of Lot 9 so the impact on coastal resources is very insignificant. The FODN says the permit should be denied because of the **(3) the significance of the coastal resources affected by the decision**. They say there will be the removal of “some Sitka Spruce”, but the permit has the actual number which is 4. The permit has addressed the 4 trees that will be removed and the mitigation for those trees.

**(4) the precedential value of the local government’s decision for future interpretations of its local coastal program.** This permit is for the principal permitted use and zoning of this lot. There have been several similar sized homes built in the subdivision, as proven by comparisons to other homes in the neighborhood by County Planner Jacob Sedgley and Director Kunstal. The County followed all the guidelines of the current LCP with no unique interpretation of the current LCP. There are numerous examples in the permit of extra requirements for the local CDP due to the lot having Sitka Spruce on and near it, and the location of lot 9 near Lake Earl Wildlife Area, Lake Earl, and wetlands.

**In the category “Environmentally-Sensitive Habitat Areas”** lists 3 criteria for ESHA. The last criteria is that the area could be easily disturbed or degraded by human activities and developments. They included duck hunting as an example of a human activity in this area. However, the duck hunting incident is a story about a human bothering a human, not disturbing or degrading ESHA. Duck hunting on Lake Earl was allowed before McNamara Subdivision was created and has been allowed ever since. The CDP on lot 9 doesn’t have any relationship to the CDFW regulations on hunting in Lake Earl Wildlife Area.

The duck hunting story seems to be an issue that is trying to raise an unwarranted concern. There are other examples of that strategy in the appeal. Although the well on lot 9 is not in the floodplain they state, “Did CDFW staff understand that the well was virtually in the floodplain?” Why the concern? The well can either be in or out of the floodplain and it is out of the floodplain.



Another example is when they state, "A critical utility appears to be immediately next to a flood plain." If a utility is placed next to a floodplain that means it is not in a flood plain.

FODN raises concerns about the business McNamara Meadows. My husband and I filed for a fictitious business name and the FODN have no grounds for their claim that it is a land development business. More to the point, I believe I have the legal right to start a business and to also get a building permit on lot 9. I did not violate any LCP policies to start a business while applying for a building permit on lot 9. FODN did not cite any policies that were specific to this part of their appeal to show I am violating the LCP.

FODN discussed "Unity of Ownership" as a concern because I own more than one lot on Lakeside Loop. They think I should lose my property rights to develop lot 9 because they think they have a better idea. They suggested the permit on lot 9 should be denied because "The Biological Assessment spruce forest ESHA map suggests that a less damaging site might be on lots 11, 13 or even 45, but the map is unclear because of what are apparently shadows." First of all, I don't own lot 13 so it is unclear why they would include it in this appeal. Also, FODN adds they are basing their opinion about the feasibility of building on various lots using a map that they say is unclear. I have very clear information and documentation to support the building permit on lot 9. FODN did not cite any LCP that says a land owner can't have a CDP to build on one lot because they own a lot near or adjacent to that lot. I did not find any results when I searched the phrase "Unity Of Ownership" in conjunction with the California Coastal Commission or the Del Norte County LCP.

Del Norte County reviewed the CDP and the LCP guidelines before finding permit **#B36878C** feasible. That means they reviewed all the facts and determined that the permit was reasonable and it followed the guidelines of the LCP.

Please let me know if you need any clarification, or have any questions or concerns.

Sincerely,

Connie Evans

## Gedik, Tamara@Coastal

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**From:** jonnel covault [REDACTED] >  
**Sent:** Thursday, March 2, 2023 5:16 PM  
**To:** NorthCoast@Coastal  
**Cc:** Gedik, Tamara@Coastal; Coyne, Doyle@Coastal  
**Subject:** Friends of Del Norte Comment and Photos 3-3-23  
**Attachments:** #2 Aerial view Lakeside Loop from South.pdf; #3 Aerial view Lakeside Loop from NW.pdf; Lot 8 Lakeside L, 1-9-23 lagoon up on lawn 9.7ft msl.HEIC; Lot 8 Lakeside L, 1-9-23 lawn & water 9.7ft msl.HEIC; Friends of Del Norte Comment 3-3-23 Appeal No. A-1-DNC-22-0071 (Evans, Del Norte Co.).pdf

Dear Coastal Commission Staff,

Attached in PDF form are additional comments from Friends Of Del Norte regarding the Lot #9 appeal, W12a. In addition we attached 5 photos that are related to our comment. We would like the Commissioners to see them if possible.

Thank you,

Jonnel Covault  
Friends Of Del Norte





# Friends of Del Norte

*Conserving our Natural Heritage Since 1973*

*Protecting the Wildlands, Waters and Wildlife*

Crescent City, CA 95531

March 3, 2023

*Submitted with five photo attachments.*

RE: California Coastal Commission March 2023 Appeal No. A-1-DNC-22-0071  
(Evans, Del Norte Co.)

**Dear Commissioners and Staff:**

**Friends of Del Norte obviously supports and appreciates the Coastal staff finding of Substantial Issue(s). We wish to thank the Coastal Commission staff for their important work and thorough review. The subject Lot 9 on Lakeside Loop in the McNamara Subdivision is located on and in the Lake Earl lagoon and CDFW's Lake Earl Wildlife Area.**

We want to begin by expressing our empathy for Ms. Evans, the owner of five periphery lots, including the subject lot 9. We sincerely wish that circumstances were different.

We would like the Commissioners to see the attached photos if possible, as they show the Lakeside Loop subdivision surrounded by the Lake Earl lagoon as described in the Staff Report.

The last three photos show Lot 8 which is the only developed lot in the group of contiguous currently undeveloped lots on the outside or periphery of Lakeside Loop (southwest to northwest to north along the outside). Unlike most of the other already developed periphery lots, this contiguous group is generally situated at lower elevations, and thus the interface with the lagoon is of increasing importance. We missed the opportunity to comment on the development of Lot 8. Lot 9 is north of Lot 8 and immediately adjacent.

*Appeal by Friends of Del Norte, Comments March 3, 2023.*

Page 1

The attached photo of Lot 8, taken when the lagoon was at 8.4ft msl, shows part of the yard and fence(s) where the property meets the lagoon, i.e. the Lake Earl Wildlife Area. The following two photos show Lot 8 from a slightly different angle as the lagoon has risen to approximately 9.7ft msl. You can see the sun reflecting on the water where it has risen up inside the fence of Lot 8. County staff have communicated that there is no record of a CDP for the Lot 8 fence construction.

If this CDP goes to de novo hearing then we have a few additional, supportive suggestions. We ask that the following additional information be required under section G of the Coastal Staff Report:

- A plan for minimizing damage while drilling the well (if the well is eventually approved), and for revegetating the area afterwards. As noted in the Staff Report, the County's Environmental Review Committee requested such a plan but apparently did not receive it.
- Under G) c.) Drainage and Runoff Control Plan and 4) Updated Biological Surveys, we suggest that Coastal staff require review and incorporation of the Chapter regarding Tidewater goby habitat in "The Tetra Tech Report, Intensive Habitat Study of Lake Earl for the US Army Corps 2000." This Chapter includes mapping of goby habitat in Lake Earl and Lake Tolowa. Generally Tetra Tech states that the higher the lagoon, the more goby shallow habitat is available. We will also be submitting additional goby mapping that was part of the Lake Earl Management Plan CEQA and Coastal Commission review.
- Under G) 8) (which is the analysis of Surrounding Permitted Developments) and on page 29 of the Staff Report, part j.) should also show the relationship to the lagoon by including elevations to map lagoon ESHA on these other properties.
- Visual Resources ... B. General Visual Resource Areas: ... Views within the coastal region of Del Norte County with particular visual distinctiveness, integrity, harmony and/or of special interest to the general public include the following: 1. View of water bodies (e.g., ocean, estuary, streams); 2. Views of sensitive habitats and open space (e.g., wetland, rocky intertidal). We continue to ask that view points from the Lake Earl Wildlife Area peninsula trails be protected, as these trails look east across Lake Earl to Lakeside Loop. Development on the outside of Lakeside Loop is not in character with the adjacent areas, nor is it in character with the rest of the east side of Lake Earl.
- County-imposed conditions/mitigations: Considering that this development will destroy Sitka spruce ESHA and may impact wetland ESHA and Lake Earl lagoon ESHA, the mitigations proposed by the County are well intended but inadequate. We ask that these be entirely re-examined if this goes to de novo.

For example (Notice of Action, condition 13) the goal for the property owner should be eradication of English Ivy, and not just "control" as conditioned by the County. In fact, the County asked only for removal of ivy as it climbs into the canopy of the spruce trees. Viewing the property from the public road, it is immediately clear that relatively little English ivy has climbed up into the trees; it could be relatively quickly girdled and killed further up on the tree. Most of the ivy is apparent as a carpet on the ground, and the County's condition should be expanded to require its removal as well, etc. Elk scat is

visible on the ground suggesting that Roosevelt elk are indeed using these undeveloped lots as a wildlife corridor. Another example regarding the County conditions is that lawn and yard chemicals should be prohibited, as these forest and lagoon ESHAs become “yard,” and not only restricted.

We will be submitting additional information if this CDP is re-opened in the de novo phase. Thank you again.

**Respectfully submitted,**

***Jonnel Covault***

**Jonnel Covault  
Board Member  
Friends of Del Norte**

Submitted with five photo attachments.







