

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
1385 8th STREET SUITE 130
ARCATA, CA 95521
VOICE (707) 826-8950
FAX (707) 826-8960



W12a

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

MARCH 8, 2023

EXHIBITS

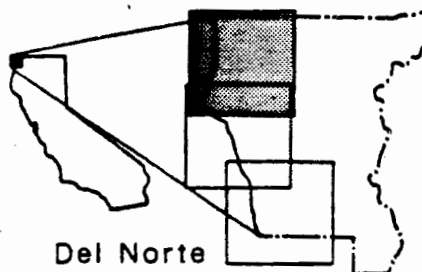
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- Exhibit 6 – Notice of Final Local Action
- Exhibit 7 – Appeal Filed by Friends of Del Norte

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

OREGON

COASTAL



Del Norte

PELICAN BEACH STATE PARK

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OCEAN

EXHIBIT NO. 1

CDP APPEAL NO.

A-1-DNC-22-0071

(Evans)

Regional and Vicinity
Maps

ZONE

BOUNDARY

Fort Dick

RELLOGG RD

MOREHEAD RD

LOOSE LAKE RD

LAKE LAKE RD

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Point St George

PEBBLE BEACH DR

WASHINGTON

NORTHWEST DR

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PROJECT LOCATION

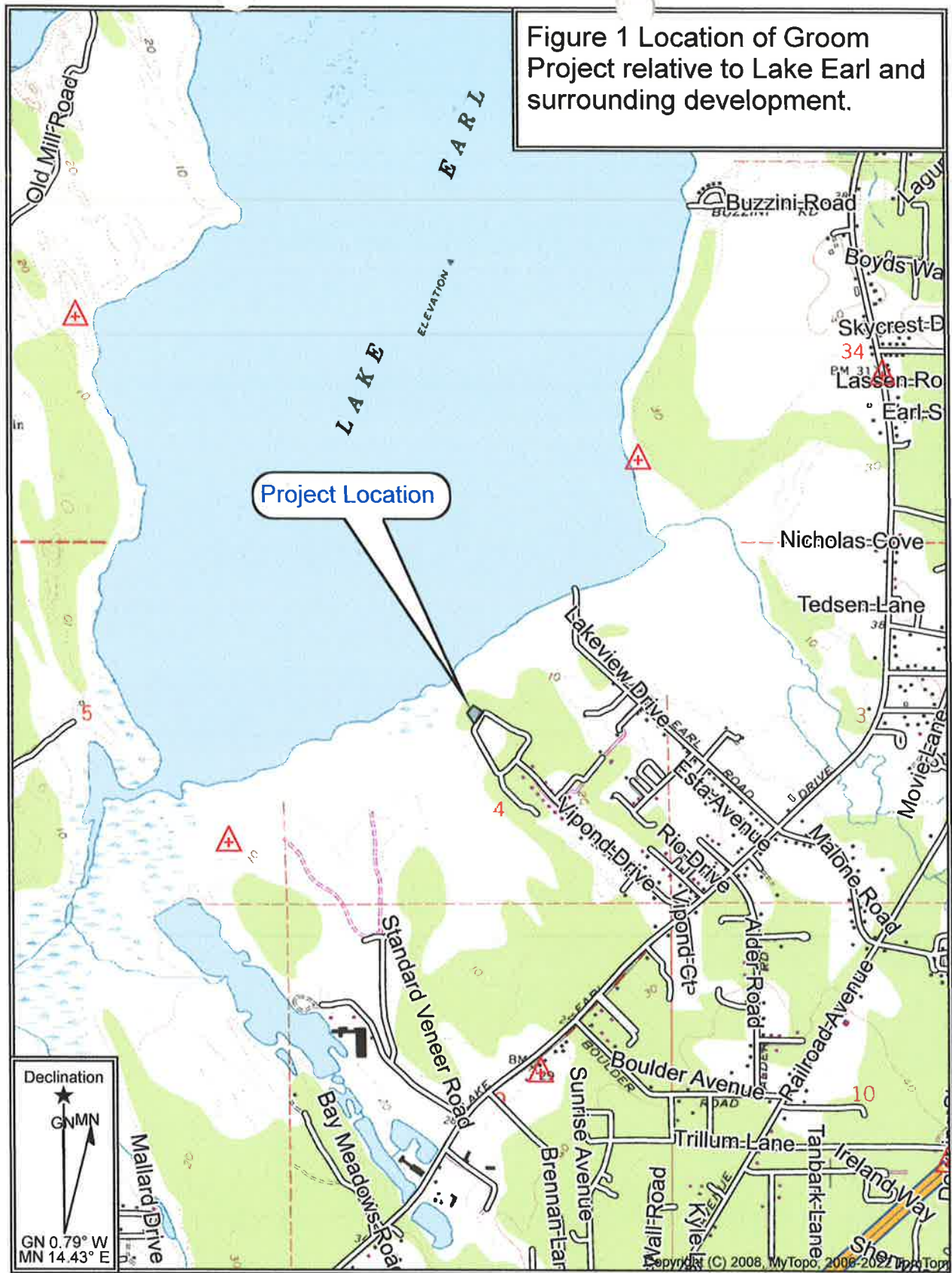


California Coastal Commission

LOCATION MAP



County of Del Norte





BEARINGS AND DISTANCES IN PARENTHESES ARE SECOND VALUES BASED ON THE TRUE MERIDIAN. THE THIRD VALUE AS SHOWN ABOVE THE NORTH ARROW WAS CALCULATED AT THE MEAN LONGITUDE OF SECTION 9. A COMPARISON OF THE TRUE AND GRID BEARINGS AS SHOWN HEREON FOR DIFFERENT SURVEYS OR SUBDIVISIONS WILL RESULT IN THE ROTATION ANGLE FOR THAT PARTICULAR LINE.

NO MONUMENTS OF THE ORIGINAL SWAMP AND OVERLAP SURVEYS WERE RECOVERED OTHER THAN THE CORNER OF SECTIONS 3, 4, 9 AND 10. THE CORNER LOCATIONS ALONG THE NORTHERLY LINES OF "PARCEL 2" FALL IN LAKE EARL. THE ORIGINAL S. 4. 0. SURVEYS WERE BASED ON PROJECTED RATHER THAN ACTUAL SECTIONAL SUBDIVISIONS IN THIS AREA. THE NORTHERLY PORTION OF "PARCEL 1" AS SHOWN HEREON IS SITUATED IN LAKE EARL, AND THE BOUNDARIES WERE CALCULATED AS DESCRIBED IN THE DEED. "PARCEL 2" WAS CALCULATED BY INTERSECTING THE NORTH LINE WITH THE PROJECTION OF THE MONUMENTED EAST LINE OF THE MCNAMARA LOTS.

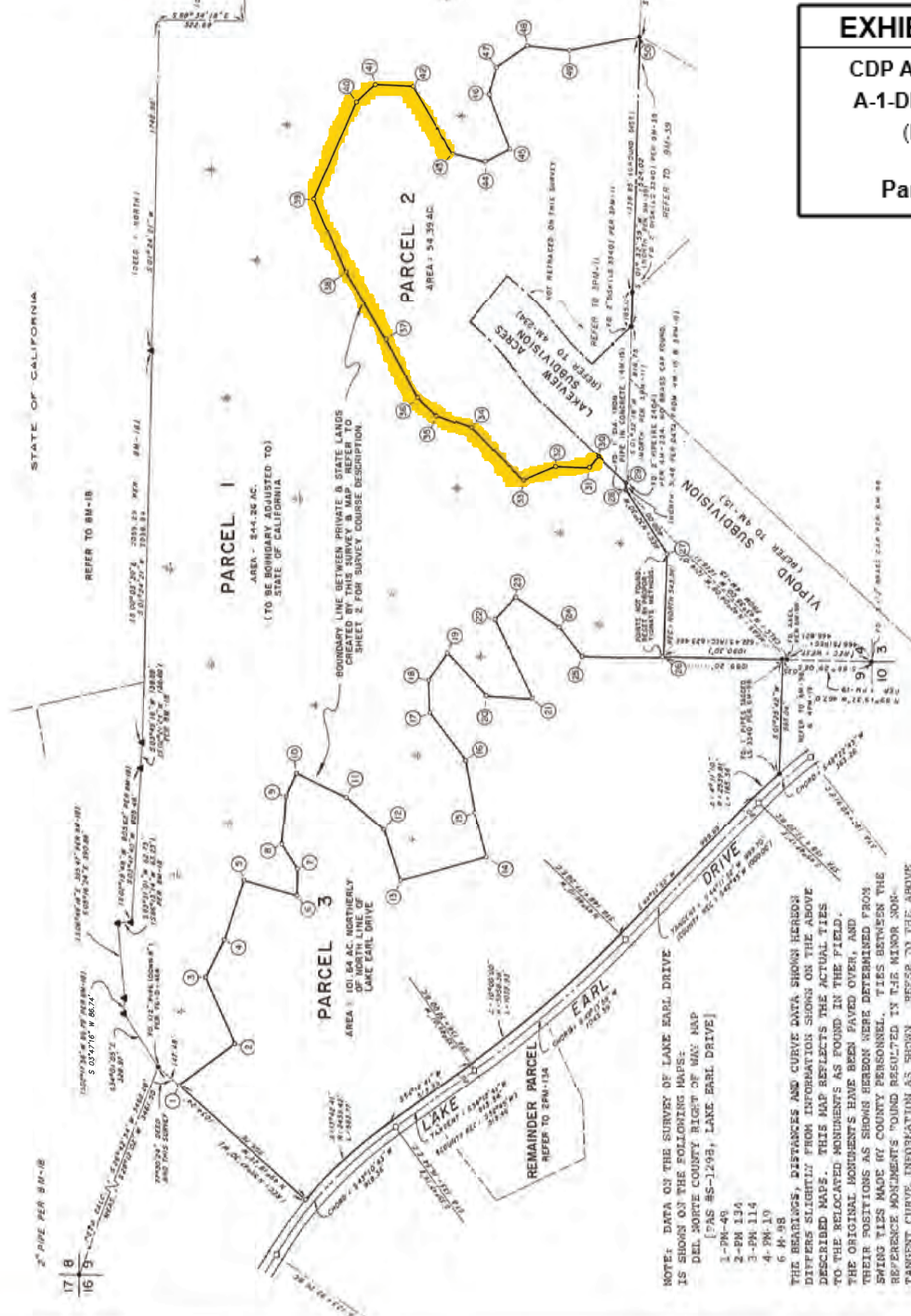


EXHIBIT NO. 2

CDP APPEAL NO.
A-1-DNC-22-0071
(Evans)

Parcel Maps

PARCEL MAP
FOR
MR. & MRS. RICHARD C. MCNAMARA
IN

SECTIONS 4 & 9 T16N, R1W H.M.

RICHARD B. JAVIS
SURVEYING & MAPPING
711 H STREET
CRESCENT CITY, CALIFORNIA

SHEET 1 OF 2 SHEETS

Book 5 PA 17

NOTE: DATA ON THE SURVEY OF LAKE EARL DRIVE IS SHOWN ON THE FOLLOWING MAPS:
DEL NORTE COUNTY RIGHT OF WAY MAP
[7] AS 48-1209, LAKE EARL DRIVE

- 1 - 1948-43
- 2 - 1948-43
- 3 - 1948-114
- 4 - 1948-110
- 6 - 1948-93

THE BEARINGS, DISTANCES AND CURVE DATA SHOWN HEREON DIFFERS SLIGHTLY FROM INFORMATION SHOWN ON THE ABOVE DESCRIBED MAPS. THIS MAP REFLECTS THE ACTUAL TIES TO THE RELOCATED MONUMENTS AS FOUND IN THE FIELD. THE ORIGINAL MONUMENTS HAVE BEEN PAVED OVER, AND THEIR POSITIONS AS SHOWN HEREON WERE DETERMINED FROM SWAMP TIES MADE BY COUNTY PERSONNEL. TIES BETWEEN THE REFERENCE MONUMENTS "FOUND" RESULTED IN THE MINOR NOTED TANGENT CURVE INFORMATION AS SHOWN. REFER TO THE ABOVE LISTED MAPS FOR COMPARISON.

ABBREVIATED LINE TABLE (L1, L2, ETC.)

LINE	BEARING	DISTANCE
1	N 22°29'53"E	82.96
2	S 49°04'17"E	24.97
3	S 35°15'41"E	98.00
4	N 35°15'41"E	98.00
5	N 42°54'21"E	81.41
6	S 28°04'20"E	18.00
7	N 16°21'37"E	42.84

ABBREVIATED CURVE TABLE (C1, C2, ETC.)

CURVE	CHORD BEG.	CHORD END	CHORD TANGENT	CHORD RADIUS	CHORD DIST.
1	104°35'03"	100.00	132.53	100.00	100.00
2	104°35'03"	50.00	31.27	79.11	50.00
3	54°25'01"	100.00	34.98	91.45	100.00
4	54°25'01"	50.00	17.49	45.72	50.00
5	90°00'00"	100.00	157.08	141.42	100.00
6	90°00'00"	50.00	78.54	70.71	50.00
7	25°22'00"	350.00	156.99	155.68	350.00
8	25°22'00"	300.00	134.56	133.44	300.00
9	25°22'00"	250.00	112.13	111.21	250.00
10	90°00'00"	100.00	39.27	35.36	100.00
11	56°52'01"	100.00	39.25	55.23	100.00
12	28°38'50"	100.00	30.00	49.48	100.00
13	48°04'17"	100.00	31.28	83.33	100.00
14	48°04'17"	50.00	15.64	41.66	50.00
15	73°59'58"	100.00	13.37	13.36	100.00
16	45°34'02"	100.00	79.53	77.45	100.00
17	44°25'58"	100.00	77.35	75.62	100.00
18	24°25'58"	300.00	129.31	128.90	300.00
19	24°25'58"	250.00	107.76	107.35	250.00
20	10°38'59"	350.00	55.02	61.93	350.00
21	10°38'59"	300.00	46.25	51.71	300.00
22	55°34'00"	825.00	278.21	278.21	825.00
23	55°34'00"	1175.00	253.71	253.71	1175.00

FINAL MAP OF MCNAMARA SUBDIVISION FOR RICHARD C. & GENEVIEVE MCNAMARA IN SECTION 4, T16N R1W, H.M.

PREPARED BY



SHEET 1 OF 2



PLANNING COMMISSION NOTES:

- (1) NATIVE WOODED HABITAT (AS DEFINED BY SECTION 21.04.560 DEL NORTE COUNTY CODE) BELOW THE 12 FOOT ELEVATION SHALL NOT BE REMOVED, EXCEPT WHERE A STRUCTURE IS REQUIRED FOR THE PROPOSED PROJECT OR WHERE A STRUCTURE IS THREATENED BY A WINDFALL TREE.
- (2) INDIVIDUAL SEPTIC SYSTEMS PLACED ON LOTS ARE RESTRICTED TO SPECIFIC AREAS. REFER TO REPORT BY MIKE YOUNG AND ASSOCIATES DATED NOVEMBER 10, 1988 ON FILE WITH THE DEL NORTE COUNTY BUILDING AND PLANNING DEPARTMENT. AS OF THE DATE OF SAID REPORT LOTS 4, 5, 6, 7, 8, 10, 11, 12, 14, AND 15 ARE REQUIRED TO HAVE WISCONSIN MOUND SYSTEMS.
- (3) CONSTRUCTION OF ANY STRUCTURES IS PROHIBITED BELOW THE 12' CONTOUR.

Exhibit A

ONSITE WASTEWATER
TREATMENT SYSTEM
SITE SKETCH
JN 4840.03
UPDATED 9/26/22 BY GBG
STOVER ENGINEERING

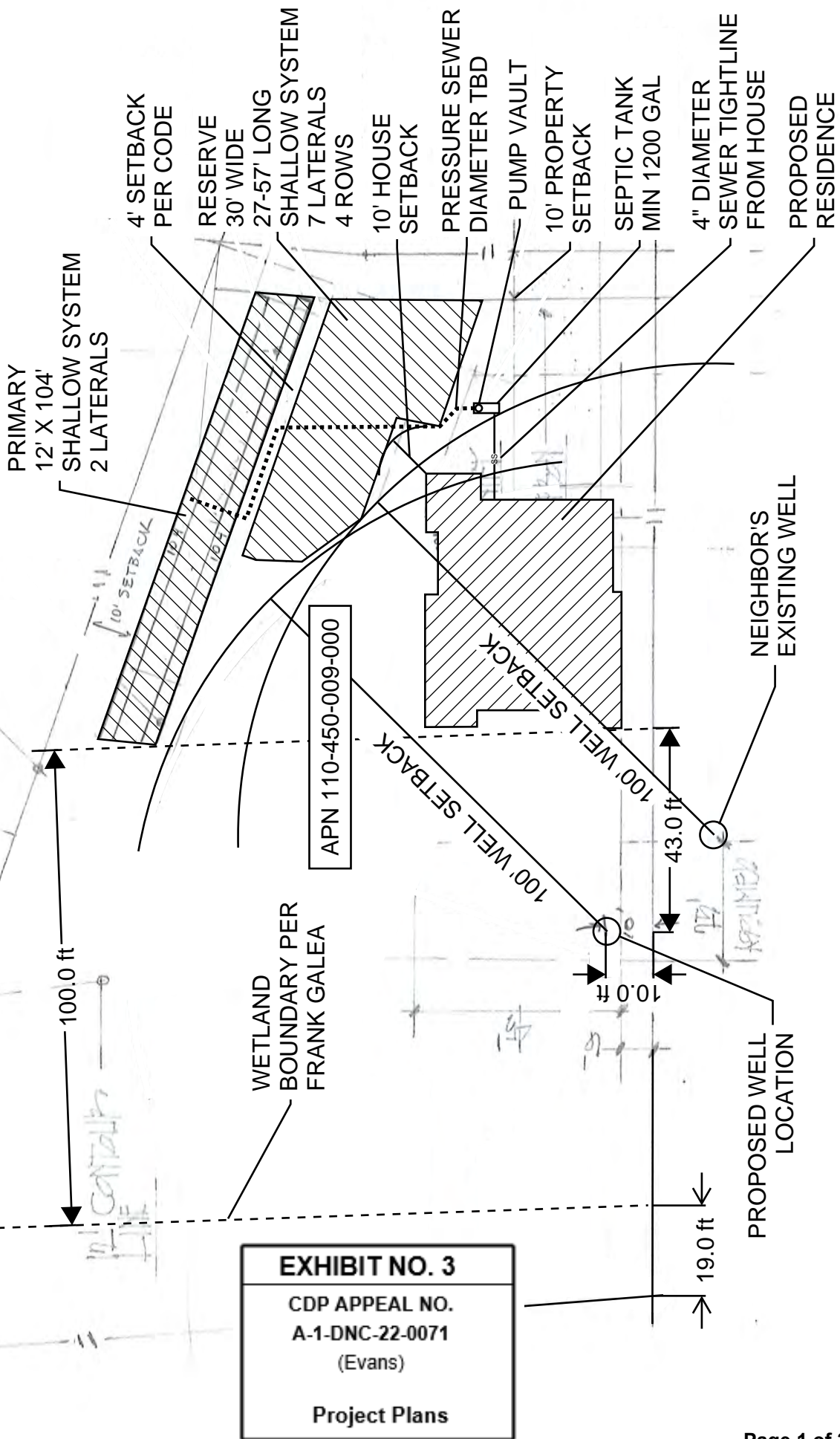
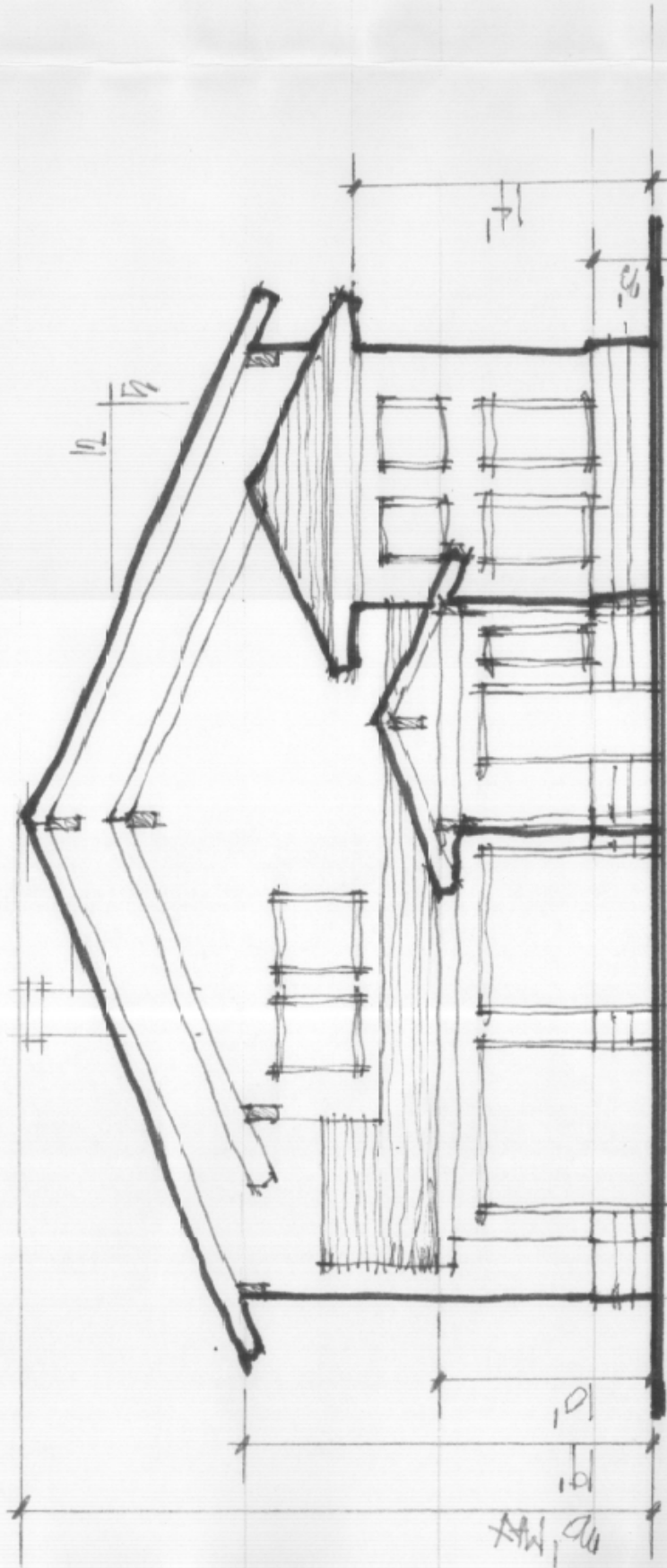


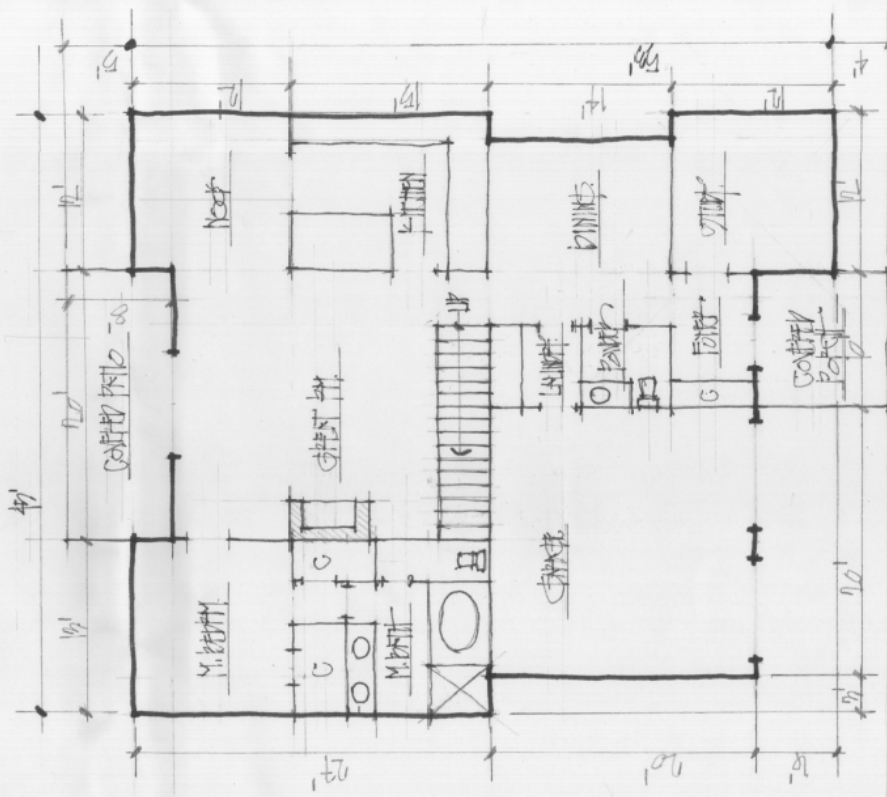
EXHIBIT NO. 3	
CDP APPEAL NO.	
A-1-DNC-22-0071	
(Evans)	
Project Plans	

LAKESIDE LOOP CONCEPTUAL SITE PLAN LOT 9 1"=30'



CONCEPTUAL ENTRY ELEVATION

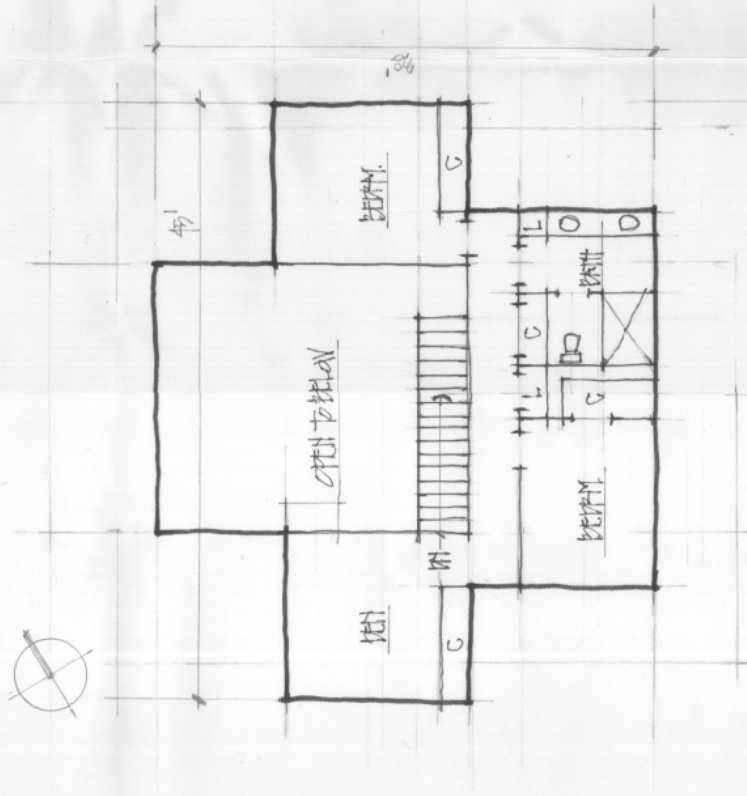
SCALE: 1/8" = 1'-0"



CONCEPTUAL GROUND FLOOR PLAN

SCALE: 1/8"=1'-0"

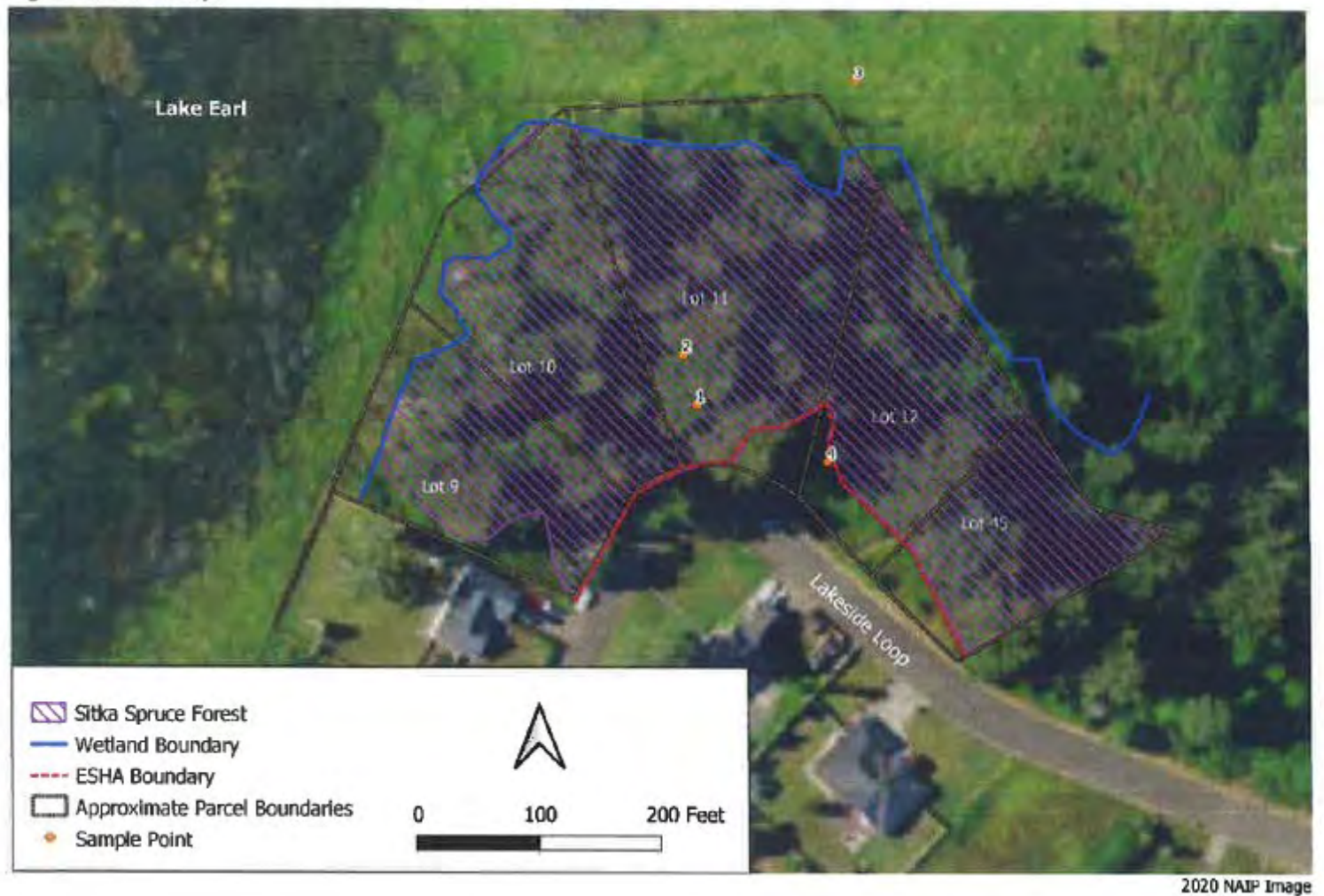
2,595 SF



CONCEPTUAL UPPER FLOOR PLAN

SCALE: 1/8"=1'-0"

Figure 2. ESHA Map.



Source: February 2022 "Botanical Resources Assessment: McNamara Subdivision (Lots 9-12 & 45)" prepared by Kyle Wear, Botanical Consultant.

EXHIBIT NO. 4

CDP APPEAL NO.
A-1-DNC-22-0071
(Evans)
ESHA Map from
Consultant

National Flood Hazard Layer FIRMette



124°11'26"W 41°48'45"N

Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

Without Base Flood Elevation (BFE)
Zone A, V, A99

With BFE or Depth
Zone AE, AO, AH, VE, AR

Regulatory Floodway

SPECIAL FLOOD HAZARD AREAS

0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile
Zone X

Future Conditions 1% Annual Chance Flood Hazard
Zone X

Area with Reduced Flood Risk due to Levee. See Notes.
Zone X

Area with Flood Risk due to Levee
Zone D

OTHER AREAS OF FLOOD HAZARD

NO SCREEN

Area of Minimal Flood Hazard
Zone X

Effective LOMRs

Area of Undetermined Flood Hazard
Zone D

OTHER AREAS

GENERAL STRUCTURES

Channel, Culvert, or Storm Sewer

Levee, Dike, or Floodwall

Cross Sections with 1% Annual Chance Water Surface Elevation

Coastal Transect

Base Flood Elevation Line (BFE)

Limit of Study

Jurisdiction Boundary

Coastal Transect Baseline

Profile Baseline

Hydrographic Feature

OTHER FEATURES

Digital Data Available

No Digital Data Available

Unmapped

MAP PANELS

The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on **2/16/2023 at 6:58 PM** and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.

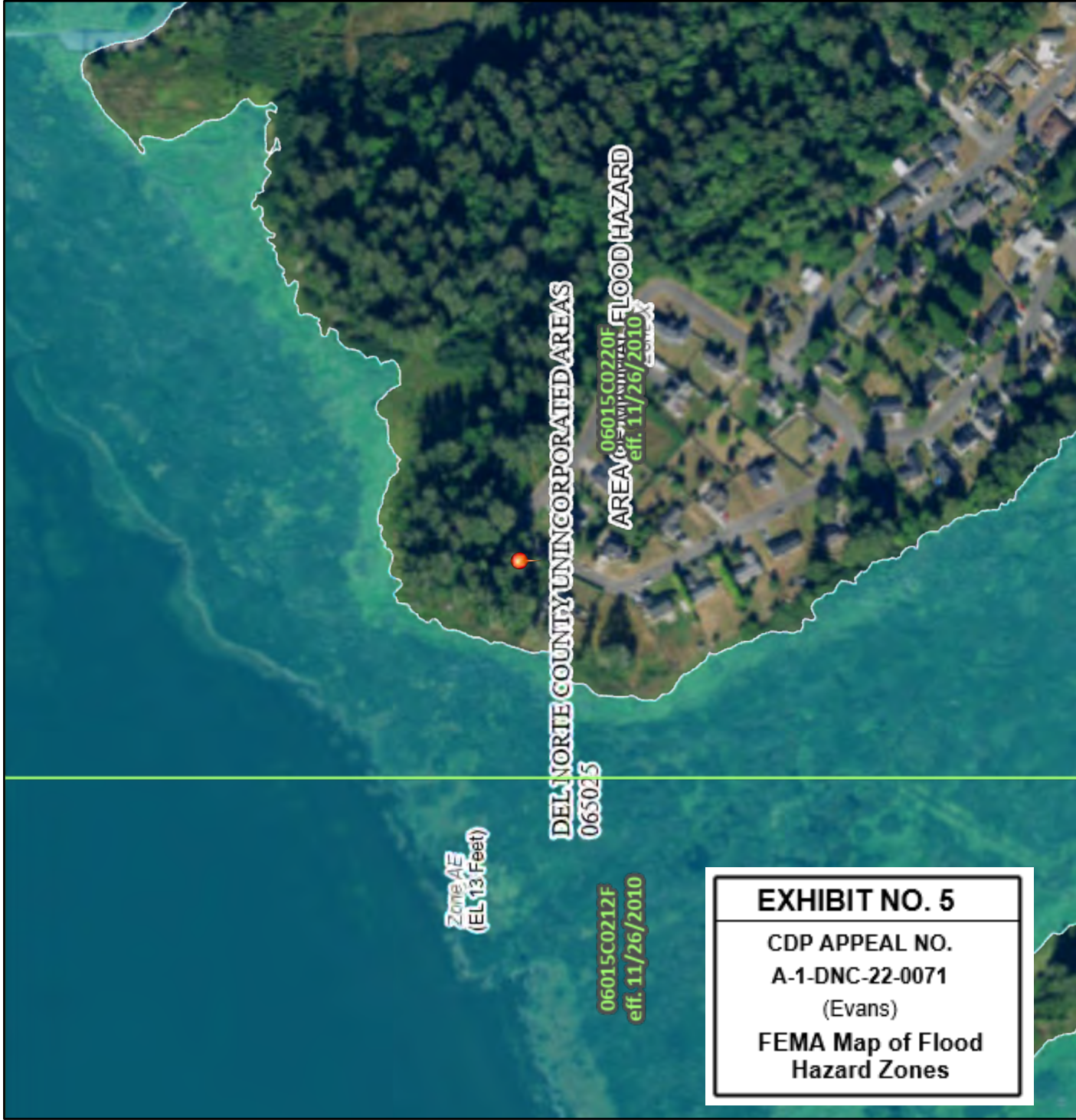


EXHIBIT NO. 5

CDP APPEAL NO. A-1-DNC-22-0071 (Evans)

FEMA Map of Flood Hazard Zones

0 250 500 1,000 1,500 2,000 Feet

1:6,000

124°10'49"W 41°48'18"N

Basemap: USGS National Map: Orthoimagery: Data refreshed October, 2020



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

EXHIBIT NO. 6

CDP APPEAL NO.

A-1-DNC-22-0071

(Evans)

**Notice of Final Local
Action**

Planning & Code Enforcement
(707) 464-7254

Engineering
(707) 464-7229

Roads
(707) 464-7238

Building Inspection
(707) 464-7253

Environmental Health
(707) 465-0426

December 14, 2022

NOTICE OF FINAL ACTION

Action has been completed by Del Norte County on the below described project located within the Coastal Zone.

PROJECT#: B36878C

DATE OF PLANNING COMMISSION ACTION: October 5, 2022

DATE OF BOARD OF SUPERVISORS ACTION: December 13, 2022

OWNER: Connie M. Jager (aka Connie Evans)

APPLICANT: Connie Evans

AGENT: n/a

RECEIVED

DEC 15 2022

**CALIFORNIA
COASTAL COMMISSION
NORTH COAST DISTRICT**

REQUEST/PROJECT DESCRIPTION: Coastal Development Permit for a New Residence

ENVIRONMENTAL DETERMINATION: CEQA Class 3 Categorical Exemption (PRC §15303)

LOCATION: APN 110-45-009-000, 210 Lakeside Loop, Crescent City, CA 95531

STAFF PLANNER: Jacob Sedgley

PLANNING COMMISSION ACTION TAKEN: Approved with conditions.

BOARD OF SUPERVISORS ACTION TAKEN: Uphold the Planning Commission's approval of a Coastal Development Permit for a New Residence (B36878C) and add conditions 26 and 27 regarding nesting birds and the use of lawn chemicals as requested by the County Planner.

The Planning Commission, on **October 5, 2022**, approved the above described project. See attached documents for the findings and conditions in support of this decision.

The above project was appealed at the local level to the Board of Supervisors on **October 17, 2022**. A public hearing was conducted on **December 13, 2022**, and resulted in the Board of Supervisors upholding the Planning Commission's approval of a Coastal Development Permit for a New Residence (B36878C) and adding conditions 26 and 27 regarding nesting birds and the use of lawn chemicals as requested by the County Planner.

This project is appealable to the Coastal Commission pursuant to Public Resources Code, Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission district office.

Attachments: Staff Report inclusive of Final Findings and Conditions
Board Report
Appeal to the Board of Supervisors
October Planning Commission Meeting Minutes

STAFF REPORTAPPLICANT: Evans, ConnieAPPLYING FOR: Coastal Development Permit for a New ResidenceAPN: 110-450-009LOCATION: 210 Lakeside Loop, Crescent City, CA 95531PARCEL(S)SIZE: .69 acresEXISTINGUSE: VacantEXISTINGSTRUCTURES: NonePLANNING AREA: 3GENERAL PLAN: RNADJ.GEN.PLAN: Same, RCAZONING: R1-B13ADJ. ZONING: Same, RCA-2(fw)1. PROCESSING CATEGORY:☐ NON-COASTAL☒ APPEALABLE COASTAL☐ NON-APPEALABLE COASTAL☐ PROJECT REVIEW APPEAL2. FIELD REVIEW NOTES:

May 6, 2022

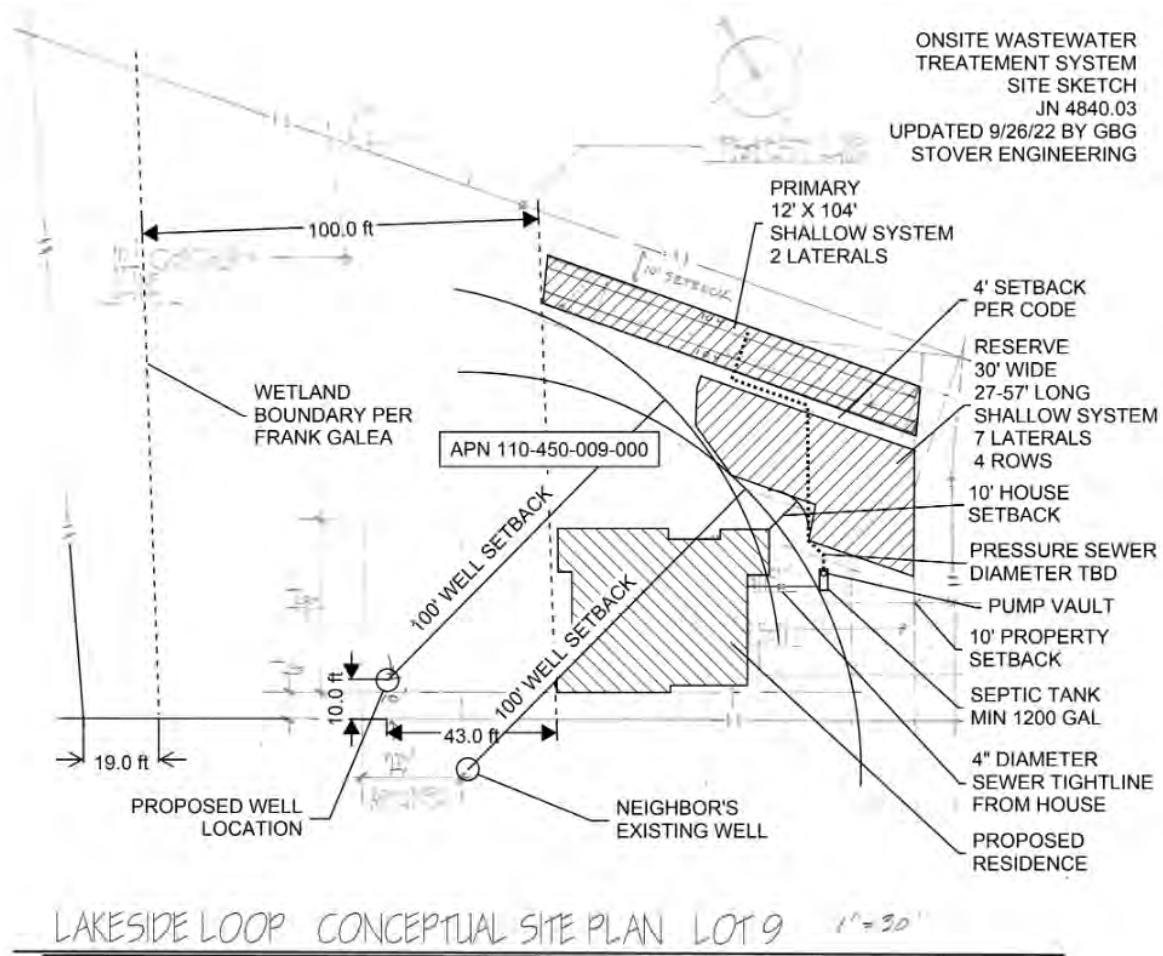
☒ ENVIRONMENTAL HEALTH☒ BUILDING INSP☒ PLANNING☒ ENGINEERING/SURVEYINGACCESS: Lakeside LoopADJ. USES: ResidentialTOPOGRAPHY: FlatDRAINAGE: Surface to surrounding wetlandsDATE OF COMPLETE APPLICATION: September 15, 2022

3. ERC RECOMMENDATION: Application complete pending receipt of (1) a revised plot plan demonstrating proposed development is not within 100 feet of a wetland and (2) an alternatives analysis for siting the proposed development. CEQA Class 3 Categorical Exemption. Post Public Hearing Notice. Approve with conditions.

4. STAFF RECOMMENDATION:

Connie Evans has submitted a coastal development permit application for construction of a new single-family residence. The parcel is located on the northwest corner of Lakeside Loop, in close proximity to the wetlands associated with the Lake Earl Wildlife Area. The area is zoned R1-B13 or One-Family Residential with a 13,000 square foot minimum lot size, and has a General Plan Land Use designation of RN or Rural Neighborhood. The parcel was originally created as part of the McNamara Subdivision, as shown in Book 10 of Maps, Pages 119-120. The proposal includes provisions for a two-story residence measuring 30 feet in height from ground to peak elevation and a footprint of 2,395 square feet. The living area of the residence includes three bedrooms and two bathrooms, den and living room areas, and

The proposal lies within the County's Post Local Coastal Program Certification Appeals Jurisdiction. As such, it is the responsibility of the Planning Commission to determine whether or not the project is consistent with provisions of both the Local Coastal Program (LCP) and Title 21 of the Del Norte County Code (DNCC). Sections included in this staff report discuss aspects of the County's LCP relevant to this proposal. The image below represents the finalized plot plan submitted by the applicant. This plot plan is referenced in the conditions as Exhibit A.



A variety of biological documents were prepared for this project. For clarity, a list of the documents is provided below. Each document is discussed in its own subsection below.

- a) *Biological Assessment for Groom Property, Lot 9. Lakeside Loop, Del Norte County.* Prepared by Frank Galea, Galea Biological Consulting, dated March 2022.
- a. *Appendix A – Species List from CNDDB*
 - b. *Appendix B – Bald Eagle Habitat Assessment*
 - c. *Appendix C – Wetland Delineation Report*
 - i. Note: This appendix is entitled *Botanical Resources Assessment McNamara*

Subdivision (Lots 9-12 & 45), prepared by Kyle Wear, dated February 2022. This document is the first of two botanical resource assessments prepared for the parcel.

ii. Note: This document contains four appendices including:

1. *Appendix A – NRCS Soil Map*
2. *Appendix B – Special Status Plant Scoping List*
3. *Appendix C – Special Status Natural Communities Scoping List*
4. *Appendix D – Wetland Determination Forms*

b) *Addendum to Biological Assessment for Groom Property, Lot 9. Lakeside Loop, Del Norte County.* Prepared by Frank Galea, Galea Biological Consulting, dated May 2022.

a. Note: This document was prepared in response to feedback provided by County staff and the Environmental Review Committee as listed in the Environmental Review Committee minutes dated May 12, 2022.

c) *Botanical Survey Results McNamara Subdivision (Lots 9-12 & 45)* prepared by Kyle Wear, dated July 2022.

a. Note: This document is the second of two botanical resource assessments prepared for the parcel.

Biological Assessment for Groom Property, Lot 9. Lakeside Loop, Del Norte County. (excluding App. C)

This document is the first of the environmental documents provided to the County. The document details a complete review of the property and wetland delineation that was conducted in February 2022. Potential hydrophytic vegetation in the form of slough sedge (*Carex obnupta*) was observed in the understory, otherwise the property was primarily vegetated with salal (*Gaultheria shalon*) with an overstory of dispersed Sitka spruce. Invasive species such as Himalayan blackberry (*Rubus armeniacus*), cotoneaster (*Cotoneaster horizontalis*), and English ivy (*Hedera helix*) were also present. Wetlands were delineated by consulting botanist Kyle Wear. Wetlands were located along the lakeshore edge of the lot, approximately 200 feet north of the street. Groupings of slough sedge (*Carex obnupta*) found in the understory were not qualified as wetlands.

Additionally, the report states that in December 2021 the property, along with four nearby parcels also owned by Ms. Evans, was reviewed for its potential as bald eagle habitat. No nests were observed in any of the trees on the property. According to the report, bald eagles utilize Lake Earl and the surrounding spruce stands in the fall and winter, when migrating waterfowl are present in high numbers and provide a food source for the eagles. They utilize the stands around the lake for roosting and for hunting platforms, including the stand at the end of Lakeside Loop. Eagles do not nest around Lake Earl.

The analysis found that at least 344 acres of potential bald eagle roosting/nesting habitat is available within 0.2 miles of the Lake Earl shoreline. The five lots in question constitute only four acres, or 1.1 percent, of the total amount of available habitat. Additionally, the lots are located within a permitted residential area, with an abundance of traffic and other human activity in the immediate area. While bald eagles can and do roost in trees located in the five lots evaluated, the report argues that their proximity to homes makes the lots sub-optimal habitat for nesting/roosting, especially considering the other 340 acres around the lake, almost all of which is not adjacent to human activity. The report concludes that this project would have no impacts on bald eagles and that development of the lots would not entail the removal of these lots as roosting habitat. Additionally, the report states that development of the sub-optimal habitat would not be a detriment to the migratory bald eagles which utilize Lake Earl during the winter months.

The report states that Sitka spruce are found scattered throughout the property. Sitka spruce, while seemingly abundant within the immediate area, are rare in their overall geographic extent and stands of Coastal Sitka spruce are considered as Environmentally Sensitive Habitat Area (ESHA) by the California Coastal Commission.

The Marine and Water Resources chapter of the certified LCP, Section VI (General Policies), Subsection C (LCP Policies) reads as follows:

"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."

The Marine and Water Resources chapter of the certified LCP, Section VII (Specific Area Policies and Recommendations), Subsection D (Wetlands), No. 4 (Policies and Recommendations), Part f, reads as follows:

"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. Firewood removal by owner for on-site use and commercial timber harvest pursuant to CDF timber harvest requirements are to be considered as allowable uses within one-hundred foot buffer areas."

The report states that the project is located immediately adjacent to an existing residence, where an opening within the stand already exists, and where only a few spruce trees would need to be removed. The ESHA at the proposed development consists of a mid-seral Sitka spruce stand. The report states that this ESHA provides little resources for sensitive wildlife species, and therefore there would be no significant impacts to wildlife species. The integrity of the spruce stand would be maintained; therefore, this project meets the condition where development should be sited and designed with the least impact upon the ESHA. Further discussion regarding impacts to ESHA are included in this attached report.

It should be noted that, while this report recommends a 70 foot setback from the edge of delineated wetlands, the Del Norte County LCP requires that reductions to the minimum 100 foot buffer shall be made in consultation with the California Department of Fish and Wildlife (CDFW). CDFW staff and the Planning Division were unable to make findings necessary to reduce the minimum buffer for the house. However, given the constraints on the parcel and minimal areas to locate the septic system, CDFW agreed that the well could be located within the 100 foot buffer due to potential for environmental health concerns if the well were to be located closer to the septic system. Please refer to the attached emails between Kelsey McDonald, CDFW Environmental Scientist, and Jacob Sedgley, Planner, dated August 4 through 5, for full correspondence on this item.

Addendum to Biological Assessment for Groom Property, Lot 9, Lakeside Loop, Del Norte County.

On May 12, 2022, the Environmental Review Committee requested that the following items be addressed in the biological documents for the project:

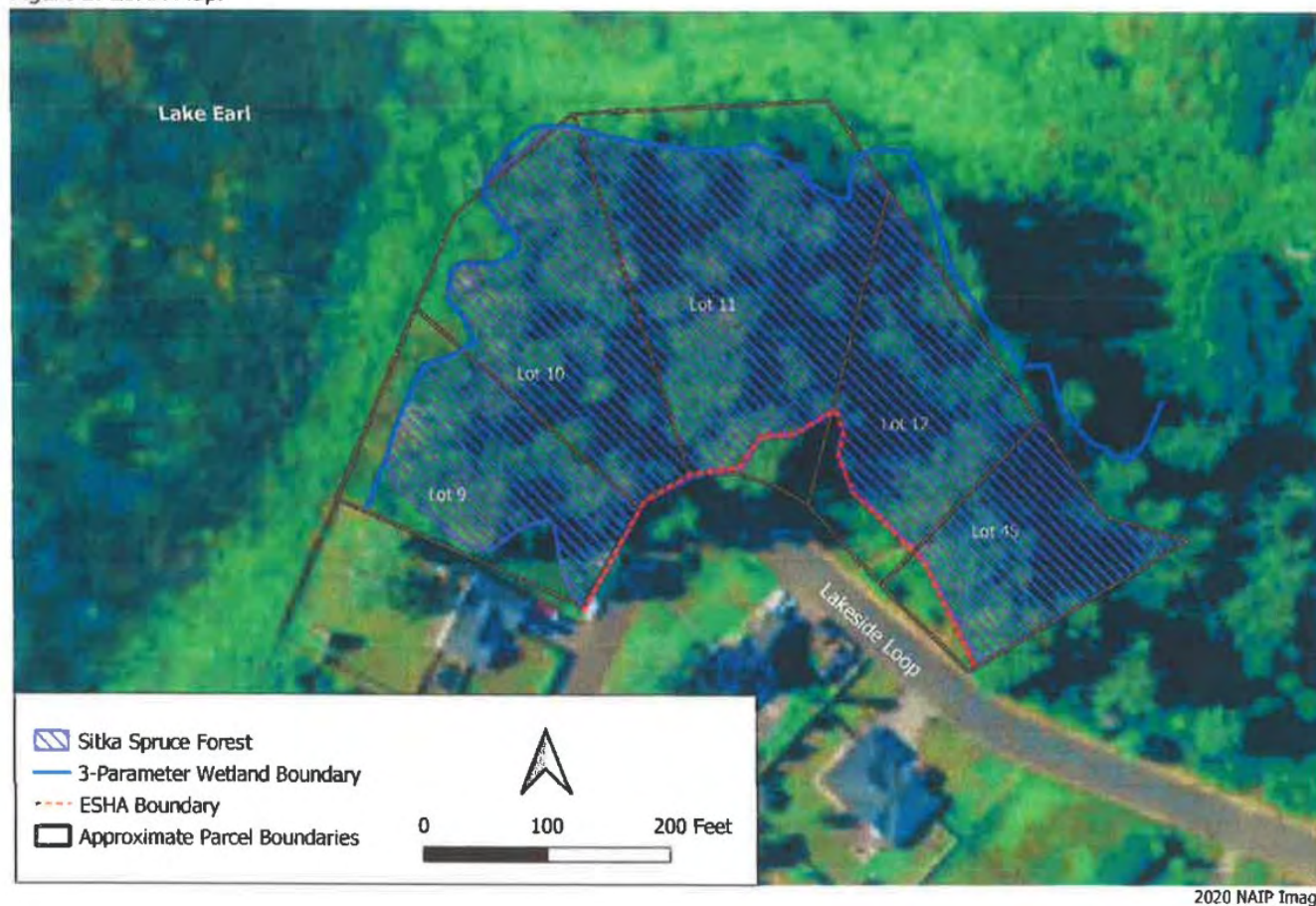
1. Complete botanical surveys as recommended in Section 6 of the Botanical Resources Assessment;
 - a. Include a minimum of two surveys, one in the spring and one in the summer;
2. Alternatives analysis of environmental impacts from specific development scenarios on parcels,
 - a. Including a no project alternative, as recommended in Section 6 of the Botanical Resources Assessment;
3. Bald Eagle Study includes conflicting information relative to the Botanical Resources Assessment.
 - a. Amend and update to reflect current recommendations;
4. Narrative on how impacts to nesting birds will be avoided;
5. Narrative of all trees planned for removal including tree type, diameter, and location (including a map), and other relevant details;
6. Soil Analysis report;
7. Septic design and plot map including the following:
 - a. Setbacks from wells, septic systems, buildings, streams, and slopes;
 - b. Location of wells on neighboring parcels, including setbacks;
8. Documentation from a certified well driller confirming that proposed well location is possible to drill;
 - a. Proposal for reaching well location with all drilling equipment including any tree or vegetation removal and all other impacts to the parcel;
 - b. Narrative addressing impacts to ESHA from drilling of well; and,
9. Submit Exception Request Form – Del Norte County SRA Fire Safe Regulations for Dead-End Roads.

Item 1 was addressed with the subsequent submittal of the *Botanical Survey Results McNamara Subdivision (Lots 9-12 & 45)* prepared by Kyle Wear, dated July 2022. Item 2 was originally deemed unnecessary; however, after consultation with California Coastal Commission staff, an alternatives analysis was submitted in September 2022. Items 3 and 4 were addressed in the addendum. Item 5 was addressed in the addendum and detailed that a total of four trees were subject to removal at the site where the house is proposed. A soils evaluation, documentation from a certified well driller, septic system design, and exception request form were also requested as items 6, 7, 8, and 9, and were addressed, but are not part of the biological documentation. Please refer to the full ERC minutes, dated May 12, 2022 for more detail on these items.

Botanical Survey Results prepared by Kyle Wear

Surveys of the subject parcel were conducted by Kyle Wear on April 19 and July 19, 2022. ESHA in the form of a Sitka spruce forest was mapped as follows:

Figure 2. ESHA Map.



The botanical survey included as *Appendix C* of the initial biological assessment made several recommendations. The California Coastal Act and the County's LCP limit the types of development in ESHA to only those dependent on the resource such as hiking trails. The parcels are part of an existing, approved, and mostly developed subdivision. Most of the parcels are ESHA and it is not possible to develop them consistent with their principally intended use without impacting the Sitka spruce forest. In such cases, the report states that projects may be approved for uses that would otherwise not be permitted in ESHA using the legal principle of "economically beneficial use." The development must be the "least environmentally damaging alternative."

Determining the least damaging alternative for the site will require analysis of specific development alternatives ("alternatives analysis"). In general, the development should be as far away from the wetlands along Lake Earl as possible and should minimize clearing of spruce forest. The report details that measures to reduce environmental impacts may include, but are not limited to, clustering of structures, smaller project footprints, building as close to the road as possible, and minimizing impermeable surfaces.

As such, Planning Division staff has prepared the following analysis examining existing surrounding development, whether or not the proposal is consistent with similar property in the vicinity, and alternatives that could be considered to minimize impacts to ESHA located on the property.

Existing Surrounding Development and Alternatives Analysis

An analysis of the existing surrounding development was prepared by Planning Division staff. There is little guidance for how to prepare such an analysis; however, Coastal Commission staff did recommend contents including assessor's parcel number, parcel address, parcel owner name, number of stories, parcel size in acres and square feet, total house size (including second story and garage, if applicable), total house footprint (excluding garage), garage size, and applicable permit numbers for each parcel. In addition to this, staff opted to include other measures including lot coverage percentage (house only), number of bedrooms, number of bathrooms, year built, and other notes. As part of this analysis, staff looked at all parcels within Book 110, Page 45 of the Assessor's Parcel Maps, which contained a total of 45 residences including 15 two-story residences. A 46th residence was excluded from the analysis, as the residence included a basement area as well as a small, undeveloped attic area. Staff felt the development was an outlier in the analysis that was significantly different from any other home in the immediate area. The full analysis, including all requested information, can be found in the attachments to this staff report. Analysis relevant to discussion of what size development can be reasonably expected is included below.

The proposed residence includes a total footprint, including the garage, of 2,395 square feet. The proposed residence would represent the 21st largest development in terms of total house footprint, including the garage. The average footprint, including the garage, for the entire neighborhood is approximately 2,331 square feet, making the proposed residence only 64 square feet larger than the average. When considering only two-story residences, the average total footprint decreases to 2,276 square feet, making the residence 119 square feet larger than the average. The proposed development would cover approximately 7.97% of the lot, representing the 6th lowest lot coverage percentage in the entire neighborhood. The average lot coverage for the entire neighborhood is 10.11%. When considering only two-story residence, the development would represent the 4th lowest lot coverage percentage where the average would decrease to 10.09%.

The proposed development includes a residence that is almost exactly the average footprint value for the surrounding neighborhood. Additionally, the applicant is proposing one of the smallest developments in terms of lot coverage percentage when compared to all other development in the nearby area. Staff finds that the scale of residential development proposed by the applicant is consistent with similar property in the vicinity.

Several alternative sites were considered for the project, including siting of the house and various configurations of the well and septic locations that would also work while maintaining maximum feasible setbacks from the delineated wetland area. Alternative proposals were extremely limited due to the limited building area, well and septic setbacks, and minimum 100-foot buffer from delineated wetlands. Given that the vast majority of the parcel is designated as ESHA, it is impossible to site a house such that it would have no impacts to the designated ESHA and would ultimately align with all standards and policies of the Del Norte County LCP. As such, the current proposal is sited to remove the least number of trees while allowing for development of size consistent with the rest of the neighborhood. According to the *Addendum to Biological Assessment for Groom Property, Lot 9, Lakeside Loop, Del Norte County*, the proposal would require the removal of four Sitka spruce trees in order to site development in the proposed location. Additionally, Stover Engineering has indicated that while available wastewater disposal area is tight, they should still have enough flexibility to deflect the pressurized lateral around trees as necessary, instead of removing trees to place the septic system.

The *Biological Assessment for Groom Property, Lot 9, Lakeside Loop, Del Norte County*, assessed seven criteria used for siting development adjacent to ESHA that assisted in the development of alternative proposals. Those seven criteria are listed below, with analysis pulled directly from the report.

1. Biological Significance of Adjacent Lands: The proposed project is at the south end of the Lake Earl Marsh complex, on upland land south of the lake. Lake Earl is an important waterfowl migration and wintering area. Bald eagle roosting and wintering habitat is located around the lake.
2. Sensitivity of Species to Disturbance: The only species which might be sensitive to disturbance from this project might be the bald eagle. However, as described in the Bald Eagle Habitat Assessment, there would be no significant impacts to eagles from this project.
3. Susceptibility of Parcel to Erosion: The proposed project site is located on relatively flat ground with minimal potential for erosion. There is a slight gradient to the north at the north end of the property, however a sediment fence between construction and the lake would be recommended. Any erosion or sediment movement from construction would be controlled using best management practices (BMP's). A silt-retention fence between the ESHA and the project site, to be erected during any and all construction activities.
4. Use of Natural Topographic Features to Located Development: The project house is to be located at the far western edge of the lot, adjacent to an existing house, and close to the street, where an existing opening in the spruce stand occurs. This minimizes impacts to the remainder of the spruce stand to the east.
5. Use of Existing Cultural Features to Locate Buffer Zones: No cultural features are available to buffer the ESHA.
6. Lot Configuration: The proposed single-family residence would be located at the far eastern edge of the lot, adjacent to an existing house, and close to the street. There is no better location on the lot for minimizing impacts to natural resources.
7. Type and Scale of Development Proposed: The proposed house is two-storied, to reduce the overall footprint of the house on the environment, and fits the scale and type of housing which has already been built on Lakeside Loop.

Reasonable Expectation to Develop

The applicant, Connie Evans, has indicated that her grandparents first purchased the original approximately 500 acre parcel that contained this parcel in the 1960's for approximately \$41,000. The applicant has indicated that it is difficult to determine what the fair market value would have been at that time for lot 9, or all the acreage and buildings her parents acquired, because her widowed grandmother sold lot 9, and all the rest of the property to the applicants father. The price was within the family, and likely not based on any market values at the time. The applicant has indicated that this particular lot was part of what was previously a cattle ranch beginning in the 1960's through the 1980's.

In 1981, the parcel was subdivided into three parcels and a remainder, as shown in Book 5 of Parcel Maps, Page 17. Parcel 1, a 244.26 acre parcel largely containing the wetlands surrounding the current development on what is now Lakeside Loop, is indicated to have been transferred by the family to the State of California where current day ownership still lies. Her mother continued to own the rest of the land after her father passed away, and her mother did a title transfer to the applicant and two of her brothers in the 2013 (Document # 20132706). The zoning for the parcel was originally agricultural and then changed to the current zoning when the subdivision that created lot 9 was approved.

As it stands today, the property at hand is a legally created parcel (as shown in Book 10 of Maps, Page 120) that met all standards and policies in place at the time of its creation, including the California Coastal Act. Additionally, the applicant and her family have retained contiguous ownership of the parcel since the subdivision was approved and recorded. The original intent behind the creation of the parcel was, and continues to be, for residential development. Given the results of the analysis of surrounding parcels, staff finds that the applicant's proposal is within reason of what can be expected for the area.

Analysis of Regulatory Takings

The Supreme Court has identified two types of regulatory takings. The first is the "categorical" formulation identified in *Lucas v. South Carolina Coastal Council*. ((1992) 505 U.S. 1003, 1014.) In *Lucas*, the Court held, without examining the related public interest, that regulation that denied all economically viable use of property was a taking. (Id. at p. 1014.) The *Lucas* Court emphasized, however, that this category is extremely narrow, applicable only "in the extraordinary circumstance when no productive or economically beneficial use of land is permitted" or the "relatively rare situations where the government has deprived a landowner of all economically beneficial uses" or rendered it "valueless." (Id. at pp. 1016- 1017 (emphasis in original); see also *Riverside Bayview Homes* (1985) 474 U.S. 121, 126 [regulatory takings occur only under "extreme circumstances"].)

The second circumstance in which a regulatory taking might occur is under the three-part, ad hoc test identified in *Penn Central Transportation Co. v. New York*. ((1978) 438 U.S. 104, 124 ("Penn Central")) Here, if a government action will not deny all economically viable use, this test requires an examination into the character of the government action, its economic impact, and its interference with reasonable, investment-backed expectations. (Id. at p. 134; *Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1005.) In 2001, the Court reinforced that the *Lucas* categorical test and the three-part *Penn Central* test were the two basic situations in which a regulatory taking might be found. (*Palazzolo v. Rhode Island* (2001) 533 U.S. 606, 616 [rejecting *Lucas* categorical test where property retained value following regulation, but remanding for further consideration under the *Penn Central* test].)

A denial of this residence would effectively be a denial of any other redesign of the project and likely constitute a categorical and/or *Penn Central* regulatory taking of the applicant's property, since there is no design that will satisfy all Coastal Act or LCP concerns. Staff believes that the project, as conditioned, will mitigate all significant adverse environmental effects to the greatest extent feasible while providing for a reasonable use of the property that will avoid an unconstitutional taking of private property consistent with Coastal Act Section 30010 which reads as follows:

"The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States."

Therefore, the Commission must approve the project in a form that allows reasonable use of the property, while minimizing impacts to coastal resources to the maximum extent feasible. This project has been conditioned to include several mitigation measures that will work to protect the wetlands and other biological resources associated with the parcel, while ensuring that the applicant is able to use the parcel for some economically beneficial use.

Conditions of Approval

This project is conditioned to reduce impacts to ESHA to the maximum extent feasible while still allowing some development activities to take place. Items below highlight a select few of those conditions, and provide more detail on what they will entail and why they are necessary for this permit.

Condition No. 9: Open Space Development Restrictions

The purpose of this condition is to limit any disturbance of existing natural conditions to that which would improve upon the existing condition of the area. The conditions gives room for removal of non-native vegetation, planting of native vegetation, additional vegetation removal for fire-safe compliance purposes, and installation and maintenance of buried utility lines. For reference, the Section 30106 of the California Coastal Act defines development as follows:

"Development' means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; [...] change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511). [...]."

Condition No. 10: Deed Restriction

Prior to issuance of the Coastal Development Permit, the applicant shall submit documentation demonstrating that the applicant has executed and recorded against the parcel(s) a deed restriction indicating: (1) that the Del Norte County Planning 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 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 and 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. The deed restriction will serve largely the same purpose as the Notice of Conditional Approval, which is standard condition for all other Coastal Development Permits approved by the Del Norte County Planning Commission.

Condition No. 11: Limitations on Tree Removal

The purpose of this condition is to afford additional protections to trees that are located within the 100 wetland buffer. Given that the house will be located close to the edge of the buffer, the condition also allows for a process for trees to potentially be removed and allows flexibility for each situation to be considered (i.e. a hazardous, unhealthy tree). This condition was negotiated and agreed upon between Planning Division staff and CDFW staff.

Condition No. 13: Landscaping Plan and Tree Removal

This condition requires submittal of a landscaping plan detailing tree removal, removal of invasive species, any proposed revegetation, and an implementation schedule. This permit is necessary so that

the Planning Division is able to monitor the project for compliance with multiple conditions related to tree removal, nesting birds, and other wetland protections. The plan itself is required to be prepared by a qualified biologist or botanist, and will be restricted to only allow for native species to be planted in the area.

Additionally, to help in the establishment of vegetation, rodenticides are sometimes used to prevent rats, moles, voles, gophers, and other similar small animals from eating the newly planted saplings. Certain rodenticides, particularly those utilizing blood anticoagulant compounds such as brodifacoum, bromadiolone and diphacinone, have been found to pose significant primary and secondary risks to non-target wildlife present in urban and urban/wildland areas. As the target species are preyed upon by raptors or other environmentally sensitive predators and scavengers, these compounds can bio-accumulate in the animals that have consumed the rodents to concentrations toxic to the ingesting non-target species. The main purpose of this condition is to minimize this potential significant adverse cumulative impact to environmentally sensitive wildlife species. The required recordation of a deed restriction identifying all applicable special conditions attached to the permit will provide notice to future owners of the terms and limitations placed on the use of the property.

Recommendation

The following condition is proposed to be added to the conditions below at the October 5, 2022, Planning Commission meeting. This condition was omitted by staff when preparing the original conditions for the Environmental Review Committee meeting:

16. If any approved tree removal is to occur during the migratory bird nesting season (February 1 to August 15), a migratory bird nest survey shall be conducted by a qualified wildlife biologist prior to any tree removal. If any nests are identified, all tree removal on the parcel shall be halted until the nests are determined by the biologist to be completely vacated;

The Environmental Review Committee conducted a field review of the parcel on May 6, 2022. All issues identified upon field review of the parcel have been addressed in this staff report. A Visual Resources Analysis was not prepared for this project as the project is not visible from any view corridors or viewpoints identified in the certified LCP. This application has been found to be exempt from environmental review under the California Environmental Quality Act as a Class 3 Categorical Exemption. Staff and the ERC recommend approval of the Coastal Development Permit with all findings and conditions listed below.

5. FINDINGS:

- A) The project is consistent with the policies and standards of Title 21 of the Del Norte County Code and the Del Norte County Local Coastal Program (LCP), with the exception of the Marine and Water Resources Chapter, Section VI (General Policies), Subsection C (LCP Policies), Part 6, related to development within Environmentally Sensitive Habitat Areas;
- B) The proposed development will occur within an Environmentally Sensitive Habitat Area (ESHA); however, the following findings are made:
 - a. The resources as identified will not be significantly degraded by the proposed development;
 - b. There is no feasible less environmentally damaging alternative; and,

- c. All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted;
- C) No location exists on the property to site development outside of ESHA. To require development to be completely sited outside of ESHA would eliminate all economically viable use of the property and be considered a regulatory taking. The project has been developed to minimize impacts of any proposed work within the ESHA. Several alternatives were considered to minimize the impact on ESHA and the proposed development represents the least environmentally damaging alternative, as it minimizes tree removal within the ESHA while still maintaining the minimum 100 foot setback from wetland areas and minimum setbacks between the well and septic system. Mitigation measures have been developed with the guidance of a professional biologist and the mitigation measures are included as conditions of approval for this permit;
- D) The applicant and her family have made significant investment to subdivide and subsequently develop the lot involved in this project. The family has owned the parcel since the 1960's and has invested an unknown amount of money to legally create and develop the parcel including purchasing the original parcel, investing money to subdivide the large parcel to create this lot, pave a road to provide access to this and surrounding parcels, purchase designs for the residence, prepare biological and botanical studies, and complete the permits necessary for future development of the site. The applicant has made this investment based on reasonable investment-backed expectations deriving from the knowledge that residential development is principally permitted in the R1B-13 zone district;
- E) In order to assess if the applicant's expectation to build a two-story residence with a footprint of 1,995 square foot and a 400 square foot garage was similar to comparable single-family homes in the area, 45 comparable single-family residences of the subject property were examined. The average footprint in terms of square footage is 2,331 square feet (including residence and garage) for the 45 properties, which is comparable to the 2,395 square foot residential footprint requested by the applicant. Staff and the Planning Commission find that the scale of residential development proposed by the applicant is consistent with similar property in the vicinity;
- F) A deed restriction precluding future development activities, beyond repair and maintenance activities for existing improvements, balances the need for utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state, pursuant to Public Resources Code Section 30001.5;
- G) The project is exempt from requirement of the California Environmental Quality Act as a Class 3 Categorical Exemption (CCR 14 §15033);
- H) Pursuant to Section 21080.5(d)(2)(A) of the California Public Resources Code, all alternatives and feasible mitigation measures that would substantially lessen a significant adverse effect that the activity may have on the environment have been considered and incorporated into the final project proposal;
- I) The Notice of Conditional Approval which will formalize acceptance and acknowledgement of the conditions of approval by the applicant and provide constructive notice to subsequent owners and other parties of interest; and,
- J) Approval of the project as conditioned will not adversely affect the health or safety of persons residing or working in the neighborhood of the project site, and will not be materially detrimental to public welfare or injurious to property or improvements in the neighborhood.

6. CONDITIONS:

1. This coastal development permit is for the placement of a single-family home. Changes in the development of the project may require additional Planning Commission approval;

2. Prior to issuance of the Building Permit, a Notice of Conditional Approval (NOCA) for this project shall be recorded at the applicant's expense;
3. Issuance of the Building Permit shall be subject to final review and approval by the Building Inspection Division;
4. The project shall be developed in substantial accord with the submitted plot plan;
5. The Development shall comply with the California Fire Code applicable at the time of complete application (8/11/22);
6. 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 (2) years from the date of final approval. Application for extension of the permit must be made prior to the date of expiration;
7. All construction shall comply with Section 14.16.027 and Section 14.16.028 of Del Norte County Code regarding the addressing and the posting of address numbers;
8. Exterior lighting is required to comply with Title 21 Coastal Zoning – General Provisions – Chapter 21 Section 46.50 which requires that all direct lighting be confined to the subject premises. All exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress, egress, and use of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward;
9. No development, as defined in Section 30106 of the Coastal Act, shall occur in the open space area generally depicted on Exhibit A, which includes all areas of the subject property north and west of the authorized residence (including garage), except for:
 - a. Removal of non-native vegetation; installation of erosion control measures installed pursuant to Condition No. 13 and installation of drainage improvements installed pursuant to Condition No. 19;
 - b. The following development, if approved by the Planning Commission: planting of native vegetation to improve the habitat value of the ESHA buffer, additional vegetation removal for fire-safe compliance purposes, installation and maintenance of buried utility lines.
10. Prior to issuance of the Coastal Development Permit, the applicant shall submit to the Community Development 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 Community Development Director: (1) indicating that, pursuant to this permit, the Del Norte County Planning 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 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;
11. No tree removal shall be permitted within one-hundred feet of the wetland, as delineated in the report entitled 'Botanical Resources Assessment McNamara Subdivision (Lots 9-12 & 45)' prepared by Kyle Wear. If tree removal within the one-hundred foot buffer is proposed for any reason in the future, the homeowner at the time shall contact both the Del Norte County Community Development Department, Planning Division, and the California Department of Fish and Wildlife (CDFW) prior to any removal. The Planning Division, in consultation with the California Department of Fish and Wildlife, shall determine if tree removal can be permitted for safety, or other reasons as deemed appropriate. Any proposed tree removal within the 100-foot

wetland buffer shall require a coastal grading permit, subject to review by the Del Norte County Planning Commission;

12. Prior to issuance of the Building Permit, flagging of the 100-foot setback from wetlands, as delineated in the report entitled 'Botanical Resources Assessment McNamara Subdivision (Lot 9-12 & 45)' prepared by Kyle Wear, shall be complete. Flagging shall be completed by a qualified biologist or botanist and verified in the field by the Planning Division;
13. Prior to issuance of the Building Permit, the applicant shall submit a landscaping plan detailing tree removal and mitigation including methods of invasive species removal, any proposed revegetation, and a schedule for implementation, for approval by the Del Norte County Planning Division. This plan shall include all area outside of the wetland and wetland buffer. This document shall be prepared by a qualified biologist or botanist. No other vegetation removal shall be permitted. Landscaping and English ivy removal activities on the property shall comply with the following standards and limitations:
 - a. Only native plant species shall be planted. All proposed plantings shall be obtained from local genetic stocks within Del Norte County. If documentation is provided to the Community Development Director that demonstrates that native vegetation from local genetic stock is not available, native vegetation obtained from genetic stock outside of the local area may be used. 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 government of the State of California or the United States shall be utilized within the property;
 - b. The use of rodenticides containing any anticoagulant compounds, including, but not limited to, Bromadiolone, Brodifacoum or Diphacinone shall be prohibited; and,
 - c. English ivy shall be controlled on the property by girdling ivy plants that encroach into the canopy layer at the base of trees that are infested with the plant.
14. This coastal development permit includes a well within the 100-foot setback from wetlands. If the location of the well is found to be infeasible, the applicant shall contact the Del Norte County Community Development Department, Planning Division. Changes to the well location will require additional Planning Commission review. No other development shall be permitted within the 100-foot setback from wetlands. Construction and maintenance of the well shall be in compliance with all other project conditions;
15. It shall be the applicant's responsibility to assure that the following Best Management Practices (BMPs) occur concurrent with and after the completion of all project operations:
 - a. No construction material, debris, or waste shall be placed or stored where it may be subject to erosion and dispersion. Any and all debris resulting from construction activities shall be removed immediately. Any debris inadvertently discharged into nearby waters shall be recovered immediately and disposed of consistent with the requirements of this coastal development permit;
 - b. Construction vehicles shall be restricted to designated haul routes. Construction equipment and materials shall be stored only in designated staging and stockpiling areas as depicted on the final approved plans. Equipment shall not be in contact with nearby waters at any time;
 - c. Any fueling and maintenance of construction equipment shall occur only within designated staging areas. Mechanized heavy equipment and other vehicles used during the construction process shall not be refueled or washed within 100 feet of nearby waters;
 - d. Fuels, lubricants, and solvents shall not be allowed to enter the coastal waters. Hazardous

- materials management equipment including oil containment booms and absorbent pads shall be available immediately on-hand at the project site, and a registered first-response, professional hazardous materials clean-up/remediation service shall be locally available on call. Any accidental spill shall be rapidly contained and cleaned up; and,
- e. Best Management Practices (BMPs) shall be implemented to control erosion from the disturbed area and prevent sediment and potential pollutants from entering nearby waters and/or native habitat plant communities during project construction and excavation.
16. If Planning Division staff becomes aware of any breach in permit compliance or any unforeseen sensitive habitat issues, the Planning Division staff shall inform the applicant, and the applicant shall cease work. If significant impacts or damage occur to sensitive habitats or to wildlife species, the applicant shall be required to submit a revised, or supplemental, program to adequately mitigate such impacts. The revised, or supplemental, program shall be submitted to the Planning Division for review and approval;
 17. Should any archaeological resources be found during project activities, construction activities shall be halted until an evaluation of the find is made by either a qualified archaeologist or representatives of the local tribes. Any mitigation measures that may be deemed necessary must have the approval of the local tribes and the County of Del Norte, and shall be implemented by a qualified archeologist representing the County of Del Norte prior to resumption of construction activities. If human remains are exposed by a project related activity, the County of Del Norte shall comply with California State Health and Safety Code, Section 7050.5, which states that no further disturbance shall occur until the County Coroner has made the necessary findings as to the origin and disposition pursuant to California Public Resources Code, Section 5097.98;
 18. 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;
 19. Prior to the issuance of the corresponding building permit, the applicant shall submit an erosion and runoff control plan to the Engineering and Surveying Division for review and acceptance. The erosion and runoff control plan shall demonstrate that during and post construction, erosion and runoff on the site will be controlled to avoid adverse impacts to adjacent properties and water resources. The erosion and runoff control plan shall include arrows showing the direction of flow from the construction site, temporary erosion and runoff control methods (e.g. silt fence), and permanent erosion and runoff control methods (e.g. grass seed and straw). An engineered plan is not required unless requested by the County Engineer;
 20. Prior to the issuance of the building permit, the applicant shall obtain an encroachment permit from the Engineering and Surveying Division for the following improvements, at a minimum, in the County's right(s)-of-way and shall construct said improvements prior to project completion: driveway approach;

21. The activities associated with this permit are within the State Responsibility Area and shall comply with all provisions of Title 19 – SRA Fire Safe Regulations;
22. Prior to the issuance of the building permit, Chapter 19.04 – Administration shall be satisfied. This includes: ☐ Title; ☐ Purpose; ☐ Scope; ☐ Local Ordinances; ☐ Provisions for Application of these Regulations; ☐ Inspection Authority; ☐ Inspections; ☐ Exception Intent; ☐ Exceptions to Standards; ☐ Request for Exceptions; ☐ Appeals; ☐ Definitions; ☐ Distance Measurements; and ☒ **Maintenance of Defensible Space Measures.**
 - a. For “Maintenance of Defensible Space Measures” the property owner consents to a “Notice of Requirement for Maintenance” being recorded against the property.
23. The applicant has submitted a Del Norte County SRA Fire Safe Regulations Exception Request Form to the Community Development Department for the following: **Dead-End Roads**. As an independent action, the Community Development Director will process the request and determine if an exception with mitigation will meet the intent of the SRA Fire Safe Regulations. Any portion of the Exception Request that does not meet the intent of the SRA Fire Safe Regulations with mitigation shall comply with the Title 19 – SRA Fire Safe Regulations. Prior to the issuance of the certificate of occupancy/completion or as specified in the Exception Request Determination, the approved mitigation associated with the Exception Request shall be implemented (for approved exceptions) and Title 19 – SRA Fire Safe Regulations (for unapproved exceptions). The Exception Request Determination is dated **TBD**.
24. Prior to the issuance of the certificate of occupancy/completion, Chapter 19.08 – Emergency Access and Egress shall be satisfied. This includes: ☐ Intent; ☐ Road Width; ☐ Roadway Surface; ☐ Roadway Grades; ☐ Roadway Radius; ☐ Roadway Turnarounds; ☐ Roadway Turnouts; ☐ Roadway Structures; ☐ One-Way Roads; ☒ **Dead-End Roads**; ☐ Driveways; and ☐ Gated Entrances.
25. Prior to the first structure inspection, Chapter 19.12 – Signing and Building Numbering shall be satisfied. This includes: ☐ Intent; ☐ Size of Letters, Numbers and Symbols for Street and Road Signs; ☐ Visibility and Legibility of Street and Road Signs; ☐ Height of Street and Road Signs; ☐ Names and Numbers on Street and Road Signs; ☐ Intersecting Roads, Streets and Private Lanes; ☐ Signs Identifying Traffic Access Limitations; ☐ Installation of Road, Street and Private Lane Signs; ☒ **Addresses for Buildings**; ☒ **Size of Letters, Numbers and Symbols for Addresses**; and ☒ **Installation, Location and Visibility of Addresses**.
26. *** If any approved tree removal is to occur during the migratory bird nesting season (February 1 to August 15), a migratory bird nest survey shall be conducted by a qualified wildlife biologist prior to any tree removal. If any nests are identified, all tree removal on the parcel shall be halted until the nests are determined by the biologist to be completely vacated.
27. *** Herbicides and pesticides, if used at all, shall be applied by hand application or by other means that will prevent leakage, percolation, or aerial drift into the beach sand and ocean water. Said chemicals shall not be toxic to fish or wildlife or persistent in the environment.

*** Added per Board of Supervisors Public Hearing, December 13, 2022.



County of Del Norte
Board of Supervisors

Board Report

AGENDA DATE: December 13, 2022

TO: Del Norte County Board of Supervisors

FROM: Jacob Sedgley, Planner
Community Development
981 H Street, Suite 110
Crescent City, CA 95531
(707) 464-7254

SUBJECT: Appeal of Project Approval – Coastal Development Permit for a New
Residence, B36878C

RECOMMENDATION FOR BOARD ACTION:

11:15 A.M. Conduct a Public Hearing to uphold the Planning Commission's approval of a Coastal Development Permit for a New Residence (B36878C) and add conditions 26 and 27 regarding nesting birds and the use of lawn chemicals as requested by the County Planner.**

DISCUSSION/SUMMARY:

Connie Evans has submitted a coastal development permit application for the construction of a new single-family residence. The parcel is located on the northwest corner of Lakeside Loop, in close proximity to the wetlands associated with the Lake Earl Wildlife Area. The area is zoned R1-B13 or One-Family Residential with a 13,000 square foot minimum lot size, and has a General Plan Land Use designation of RN or Rural Neighborhood. The parcel was originally created as part of the McNamara Subdivision, as shown in Book 10 of Maps, Pages 119-120. The proposal includes provisions for a two-story residence measuring 30 feet in height from ground to peak elevation and a footprint of 2,395 square feet. The living area of the residence includes three bedrooms and two bathrooms, den and living room areas, and a two-car garage. The residence would be served by an on-site well and an on-site sewage disposal system.

The proposal lies within the County's Post Local Coastal Program Certification Appeals Jurisdiction. As such, it was the responsibility of the Planning Commission to determine whether or not the project was consistent with provisions of both the Local Coastal Program (LCP) and Title 21 of the Del Norte County Code (DNCC). Aspects of the County's LCP relevant to this proposal are discussed at length in the attached staff report. On October 5, 2022, the project proposal was heard by the Del Norte County Planning Commission and ultimately approved with no changes. Discussion at the Planning Commission meeting included one question regarding how the breach regime of Lake Earl would affect the property in question.

On October 17, 2022, the project was appealed to the Board of Supervisors pursuant to DNCC §14.06.060 and §21.51.020.

DISCUSSION OF APPEAL:

The appeal points out 18 separate reasons for the appeal of the project. Each is discussed below.

Appeal Item #1:

The appellant contends that the application contains incomplete mapping and that the staff report prepared by staff does not demonstrate that the least environmentally damaging alternative was selected. The County staff disagrees with this contention. On the mapping, requesting one single map containing all of the information on the proposal would not help to clarify the proposal. Listing the area delineated as an Environmentally Sensitive Habitat Area (ESHA), along with the location of the house, septic system, delineated wetlands, elevation contours, subdivision information, and well location, would likely result in extremely cluttered mapping for the project. Additionally, staff making such a request would likely cause the applicant to incur significant costs for mapping information that is readily available throughout the application. Information requested by staff was provided by the applicant and their consultants in the form they thought was best and can be understood by both staff and the general public. If there are questions regarding any of the mapping, the staff is always on standby to answer any questions and no questions regarding the mapping were received at any time by staff.

On the staff report not identifying the least environmentally damaging alternative, staff contends the points made in the appeal. The documentation provided by the applicant determined that the existing siting of the house would cause the least amount of damage to ESHA, while allowing for development consistent with the rest of the neighborhood. The appeal also contends that the surrounding neighborhood is not a fair area for comparison. Preparation of the neighborhood data was done per the advice of Doyle Coyne, Coastal Program Analyst, who stated in an email dated September 8, 2022, that:

"Depending upon the information that is submitted in response to the information requested above, the approving authority may also need to assess whether the applicants had a reasonable expectation to build a house and related development at the building footprint size that is currently proposed. Therefore, the applicants should submit County records (typically obtained from the Office of the Tax Assessor and/or Planning and Building Services) that document the total house ground cover square footage and garage ground cover square footage of the existing development on the subject site and of other developed residential lots within the area surrounding the subject parcel that was present at the time of purchase of the subject parcel. The data should be provided for all parcels with the same land use and zoning as the subject properties within close proximity to the subject site, and should include at least the following:

- 1. Assessor's Parcel Number;*
- 2. Parcel Physical Address;*
- 3. Parcel Owner Name;*

- 4. Whether the development is single-story or 2-story;*
- 5. Parcel size, in acres and square feet;*
- 6. Total house size, in square feet (including square footage of a second story, if applicable);*
- 7. Total garage size, in square feet (including square footage of a second story, if applicable);*
- 8. Total ground cover square footage (i.e., size of development footprints, excluding lofts and/or second stories) for house, garage, and related developments (e.g., decks, driveway, etc.); and*
- 9. Coastal development and building permit numbers, with approval dates, for each parcel."*

Staff prepared the analysis such that the sample size and resulting comparison data would be statistically significant (greater than 30 homes, the sample size was 45 residences). Additionally, this analysis was done to ascertain what size of development could reasonably be expected in this neighborhood. The inclusion of other homes outside of this neighborhood would invalidate the purpose of the analysis, which was to look at a nearby development.

Appeal Item #2:

The appellant argues the need for a cultural resources survey. Cultural resource surveys are not standard within the coastal zone and it would be extremely onerous on applicants for staff to begin requesting them for every single coastal development permit within the county. Staff recognizes the need to protect cultural resources in the area and planning processes would have triggered a requirement for a study if it was determined to be necessary. First of all, a representative of the Tolowa Dee-ni' Nation sits on the Environmental Review Committee (ERC) that first reviewed this permit in May 2022. The permit was seen by the Committee at the following 2022 ERC meetings with no request made for further evaluation of cultural resources: May 12, July 14, August 11, and September 15. Additionally, the Planning Division maintains an archive of documentation on cultural resources within the county. It is a standard practice for the Planning Division to review this archive for any resources that may be located on or in close proximity to the project area. This archive was searched and no resources were identified in the immediate area. As such, the project is conditioned to provide maximum protection for any cultural resources that may be inadvertently unearthed during any ground-disturbing activity associated with the development of the parcel.

Appeal Item #3:

Staff contests that the testing was done during an unusually dry period. Utilizing the same data source as the appellant, staff noted that NOAA data shows that from October through December of 2021, just prior to when the wetland delineation was performed (late January), there were 29.82 inches of precipitation. 2002-2022 mean for all October to December periods was 29.99 inches. Due to the planet's changing climate, Del Norte County is seeing less precipitation every year and less-than-average numbers, when compared to the 127-year record, are to be expected. When looking at a 20-year record, recorded winter precipitation levels do not appear to be exceptionally dry. Finally, staff would like to point out that the NOAA rankings have likely changed since this appeal was prepared; the January 2022 period

is now listed as the 16th driest on record for Del Norte County (listed as 14th in appeal documents), while November 2021 through January 2022 period is now listed as the 20th driest on record (listed as 19th in appeal documents).

Additionally, the botanist who prepared the survey is a qualified professional in his field with over 25 years of experience performing these kinds of surveys in northern California. The surveys at hand were sent to individuals from the California Department of Fish and Wildlife for review, where no questions regarding the method of the survey were raised.

Appeal Item #4:

The appellant requests that additional surveys of herons and egrets be conducted by a professional specializing in these species to analyze the immediate and cumulative impacts and disturbance to these sensitive species of development on lots 9-12, 45, and 46-47. He indicates that there are heron or egret rookeries nearby. According to Mr. Galea's report, he did not identify any heron or egret rookeries nearby or shown within two miles in the CNNDDB.

However, the CNNDDB mapping included in his report shows two heron nests within two miles. The appellant estimates that the activity is within approximately half of a mile from lot 9, and closer to lots 10-12 and 45-48. According to Mr. Galea, suitable habitat for a rookery does not exist on lot 9 as there is a relatively modest layer of trees between the road and the lake (personal communication, December 5, 2022). Herons and egrets do not nest in areas of full exposure to the wind. As noted in the appeal letter, a successful heron nest was identified within the 22-acre forest located north of lot 9 as recently as 2022. The 22-acre parcel is a denser forest that provides the protection needed from the wind. With regard to new development causing disturbance to herons or egrets, the rookeries identified in the CNNDDB are already closer to existing development than the subject parcel. The focus of this response and others is that the Evans coastal development permit is limited to lot 9 as no development permits have been filed for the other lots.

Appeal Item #5:

The Del Norte County Environmental Health Division (EHD) is the local agency that reviews and issues permits for alternative onsite wastewater treatment systems (OWTS). When reviewing an OWTS site evaluation, the EHD may require a new site evaluation or other soil testing if it determines that prior to the site evaluation approvals were based on testing and/or reporting that incomplete, insufficient, or incomparable with known information or a given area, or for a site where subsequent excavation or other activities may have altered the suitability of the lot for accommodating the OWTS. In regards to 210 Lakeside Loop, Crescent City, CA 95531, the EHD observed that the Michael Young and Associates (MYA) site evaluation and Stover Engineering's report is complete, adequate, and provided all the required information. Based on the information received, a new site evaluation would not be required. Additionally, it should be noted that work incorporated into the 1988 on-site sewage disposal testing, "included extensive ground water monitoring data to determine the highest anticipated ground water level." This report identifies the highest historical level of Lake Earl at elevation 10.1 feet mean sea level. This elevation was used when determining what systems would be appropriate for each of the lots. As stated in the appeal, the lake is now managed at an elevation of 8-10 feet mean sea level.

The effects of the increased breach regime on septic systems were previously analyzed in the June 2003 Draft Environmental Impact Report (EIR) for the Lake Earl Wildlife Area (LEWA) Management Plan. On page S-14 of the report, when addressing public health and safety, the report states that "the Department's analysis indicates that, when the lagoon surface is in the range of eight feet to ten feet, inundation is not likely to affect water supply wells or septic systems."

Appeal Item #6:

See item 7 below.

Appeal Item #7:

The well location was determined by Planning Division staff to be located outside of the Zone AE flood zone, as mapped by the Federal Emergency Management Agency, and no flood hazard analysis was required. The original subdivision map prepared for the subdivision in the late 1980s did indicate that the well was to be placed in the wetland. As such, the original proposal for the parcel indicated the same. Upon visiting the parcel prior to the May 12, 2022, ERC meeting, staff recognized that the well would be located within a wetland and likely within the flood zone, and subsequently requested that the applicant submit an alternative proposal for the well and septic locations. The current location of the well is indicated to be approximately 150 feet from the edge of Lakeside Loop, while the Zone AE flood zone begins just over 200 feet from the edge of Lakeside Loop.

Appeal Item#8:

At no point does the staff report compare this development to the development on lot 8. The only mention of the adjacent residence is in reference to the fact that the proposed residence is sited to be closer to the existing development to avoid cutting more Sitka spruce than is absolutely necessary. There are also scattered references to lot 8 in order to assess the proper locations to place the well and septic, such that they will meet minimum setbacks to avoid well contamination of either the new or existing development. Additionally, the Community Development Department does not have a record of any permits for the fence located on lot 8. The Planning Division agrees with the Friends of Del Norte's assessment stating that lot 8 is a "good example of what to avoid." For this reason, the permit is conditioned with a number of limitations on the 100-foot non-development buffer including the use of pesticides, planting of non-native species, and other mitigation measures incorporated into the project. Additionally, staff is in favor of adding limitations on lawn and yard chemicals that could be used for the new development.

The appellant mentions that the staff report does not analyze ongoing conflicts between duck hunters and the properties. The Lakeview boat launch is not located on Lakeside Loop, and the development of the property would not block off any current public access to the lake. Additionally, the development is located completely on private property. Duck hunting in the Lake Earl Wildlife Area is an area of contention in the county. However, staff does not see a nexus nor the potential for significant impacts between this development and the use of the Lake Earl Wildlife Area.

Appeal Item #9:

Staff is in favor of prohibiting the use of yard and lawn chemicals within the 100-foot setback, as shown on the plot plan. This point is further discussed in point 18 below.

Appeal Item #10:

The development is not located within the tsunami run-up zone and is located beyond the maximum tsunami inundation line. Tsunami maps prepared by the California Office of Emergency Services (CalOES) are conservative and represent the worst-case scenario for tsunami situations. The claim that the "ounty tsunami maps show that a tsunami may engulf nearly this entire subdivision" is incorrect.

Appeal Item #11:

The appellant requests that a new assessment of the "relationship and the environmental impacts from the existing development is needed as per LCP sections 30231 and 30240." Requesting that the applicant analyze impacts from existing development in the area is far outside the scope of this building permit. Placing such a request on this permit would not likely meet the need for rough proportionality between the condition exacted and the projected impact of the development (Dolan, 512 U.S. at 391.).

Appeal Item #12:

Wildlife corridor analyses are typically performed in areas that connect wildlife populations separated by human activities. While the parcel is delineated as ESHA, it would not be typical of an area where there would be significant migration between two separate habitat areas. Without expansion of the request in the appeal, staff is unclear on the need for such a study.

Appeal Item #13:

A visual resources analysis was not prepared for this project as the project is not visible from any view corridors or viewpoints identified in the certified LCP. Visual resources analyses are only required, "Within portions of residential zone districts visible from view corridors and viewpoints designated in the Local Coastal Program Visual Resources Inventory. The staff had previously reviewed the Visual Resources Inventory and determined that the development would not be visible from any of the view corridors or viewpoints listed therein.

Appeal Item #14:

Issue 14 is in regard to the use of nearby developments as comparable developments. This point was previously addressed in issue 2.

Appeal Item #15:

Staff maintains that a Class 3 Categorical Exemption from provisions of the California Environmental Quality Act does apply to this project. The applicant quotes a portion of 14 CCR §15303 claiming that the exemption only applies to urbanized areas. The full language of section (a) of the exemption provides for one-single family residence within a residential zone, in addition to up to three single-family residences in urbanized areas. The full language is quoted below.

"Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include but are not limited to:

- 1. One single-family residence, or a second dwelling unit in a residential zone. In urbanized areas, up to three single-family residences may be constructed or converted under this exemption."*

Zoning for the parcel is R1-B13 or One-Family Residence District with a 13,000 square foot minimum lot size, which is a residential zone designation. The parcel is not located within an urbanized area and does not need to be given that the first portion of section (a) applies. The applicant has provided a significant body of evidence showing that little or no impact would occur on environmental resources in the area. Proximity to resources does not constitute an environmental impact unless there is evidence to the contrary, documentation of which has not been provided by the appellant.

Appeal Item #16:

The focus of this response and others is that the Evans coastal development permit is limited to lot 9 as no development permits have been filed for the other lots. The Planning Division cannot consider the impacts of proposals that do not exist, and the lots were created through a legal subdivision process that considered the cumulative impact of the subdivision at the time. The lots should be treated as individual lots, as if they were sold to a variety of individuals, regardless of ownership status.

Appeal Item #17:

A deed restriction was required in the form of Condition 10. Prior to issuance of the Coastal Development Permit, the applicant shall submit documentation demonstrating that the applicant has executed and recorded against the parcel(s) a deed restriction indicating: (1) that the Del Norte County Planning 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 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 and 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. The deed restriction will serve largely the same purpose as the Notice of Conditional Approval, which is standard condition for all other Coastal Development Permits approved by the Del Norte County Planning Commission.

Appeal Item #18:

Mitigations for the project were determined by the Planning Commission to be adequate in

protecting resources located on and near the parcel to the maximum extent feasible while allowing for some economically beneficial use of the property. However, staff is in favor of amending the conditions to those specifically requested in the appeal.

STAFF RECOMMENDATION:

Two conditions are proposed to be added to this permit. Condition 26 is in regard to the need to protect nesting birds and was intended to be added at the Planning Commission meeting. The language for this condition is below and is identical to the one proposed in the staff report. Condition 27 is the proposed language resulting from the appeal and is in regard to lawn chemicals.

26. If any approved tree removal is to occur during the migratory bird nesting season (February 1 to August 15), a migratory bird nest survey shall be conducted by a qualified wildlife biologist prior to any tree removal. If any nests are identified, all tree removal on the parcel shall be halted until the nests are determined by the biologist to be completely vacated.

27. Herbicides and pesticides, if used at all, shall be applied by hand application or by other means that will prevent leakage, percolation, or aerial drift into the beach sand and ocean water. Said chemicals shall not be toxic to fish or wildlife or persistent in the environment.

In consideration of the responses provided therein, staff recommends that the Board uphold the decision of the Planning Commission and add conditions 26 and 27 as requested by staff.

ALTERNATIVES:

Approve the appeal by the member of the public, thereby denying the approval of the project as conditioned by the Del Norte County Planning Commission.

FINANCING:

N/A

OTHER AGENCY INVOLVMENT:

California Coastal Commission (subject to appeal of local decision)

CHILDREN'S IMPACT STATEMENT:

This section meets the following outcome measures for children in Del Norte County:

- No impact to Children as a result of this action.

ATTACHMENTS:

1. Staff Report - Evans - B36878C
2. PC MINUTES 10-05-22 FINAL

3. Evans Coastal Permit Appeal_10.17.22 (5)

APPROVALS:

Heidi Kunstal, Director

Kylie Goughnour , Clerk of the Board

Approved - 12/6/2022

Final Approval - 12/6/2022

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
1385 EIGHTH STREET, SUITE 130
ARCATA, CA 95521
(707) 826-8950
NORTHCOAST@COASTAL.CA.GOV

**APPEAL FORM****Appeal of Local Government Coastal Development Permit****Filing Information (STAFF ONLY)**

District Office: North Coast

Appeal Number: A-1-DNC-22-0071Date Filed: December 29, 2022Appellant Name(s): Friends of Del Norte**EXHIBIT NO. 7****CDP APPEAL NO.
A-1-DNC-22-0071**

(Evans)

**Appeal Filed by Friends
of Del Norte****APPELLANTS**

IMPORTANT. Before you complete and submit this appeal form to appeal a coastal development permit (CDP) decision of a local government with a certified local coastal program (LCP) to the California Coastal Commission, please review [the appeal information sheet](#). The appeal information sheet describes who is eligible to appeal what types of local government CDP decisions, the proper grounds for appeal, and the procedures for submitting such appeals to the Commission. Appellants are responsible for submitting appeals that conform to the Commission law, including regulations. Appeals that do not conform may not be accepted. If you have any questions about any aspect of the appeal process, please contact staff in the Commission district office with jurisdiction over the area in question (see the Commission's [contact page](#) at <https://coastal.ca.gov/contact/#/>).

Note regarding emailed appeals. Please note that emailed appeals are accepted **ONLY** at the general email address for the Coastal Commission district office with jurisdiction over the local government in question. For the North Coast district office, the email address is NorthCoast@coastal.ca.gov. An appeal emailed to some other email address, including a different district's general email address or a staff email address, will be rejected. It is the appellant's responsibility to use the correct email address, and appellants are encouraged to contact Commission staff with any questions. For more information, see the Commission's [contact page](#) at <https://coastal.ca.gov/contact/#/>.

Appeal of local CDP decision
Page 2

1. Appellant information¹

Name: Friends of Del Norte (FODN)
Mailing address: PO Box 144 Crescent City, CA, 95531
Phone number: 707 954-2118 (just for this appeal)
Email address: jonnecovault@gmail.com (just for this appeal)

How did you participate in the local CDP application and decision-making process?

☐ Did not participate ☒ Submitted comment ☒ Testified at hearing ☒ Other

Describe: We communicated with County and Coastal staff; submitted an extensive written appeal of the Planning Commission decision; paid the \$100 appeal fee; attended the Board of Supervisors hearing on the appeal; two FODN board members spoke at the hearing. Please see more on attached sheet.

If you did *not* participate in the local CDP application and decision-making process, please identify why you should be allowed to appeal anyway (e.g., if you did not participate because you were not properly noticed).

Describe: _____

Please identify how you exhausted all LCP CDP appeal processes or otherwise identify why you should be allowed to appeal (e.g., if the local government did not follow proper CDP notice and hearing procedures, or it charges a fee for local appellate CDP processes).

Describe: In 2004 FODN opposed the development of lot #47 on Lakeside Loop and won our appeal to the Coastal Commission. We were made aware of the Evans project in mid- August 2022 and intended to comment at a scheduled ERC meeting... Please see attached sheet for continuation.

¹ If there are multiple appellants, each appellant must provide their own contact and participation information. Please attach additional sheets as necessary.

Extension of Response to Appeal of local CDP decision, pg 2:

How did you participate in the local CDP application and decision making process?

Describe:

We were made aware of the Evans project in mid-August 2022. In early September 2022 Friends of Del Norte (FODN) communicated with Heidi Kunstal, the Director of Del Norte County Community Development Department regarding notices for ERC meetings which we were not getting. Upon learning that the Evans Project, CDP B36876-APN 110-450-009, on Lakeside Loop, Crescent City, CA 95531 had passed the Planning Commission process, FODN submitted an extensive written appeal to the Del Norte County Board of Supervisors (DNCBOS) on October 17, 2022, and paid the appeal fee of \$100. The County planning staff responded in part to our points, by proposing two additional conditions and including parts of our appeal in their Board Report. FODN board members Jonnel Covault and Janet Gilbert testified before the DNCBOS on Dec. 13, 2022.

Please identify how you exhausted all LCP CDP appeal processes... Describe:

FODN had opposed the development of adjacent lot #47 in this subdivision in 2004 and successfully appealed to the Coastal Commission, whereupon developers dropped the project. Once we learned of the Evans project, we intended to comment regarding our concerns at a scheduled ERC meeting on October 13, 2022. However, because the ERC received requested updated information early, the project went before the Planning Commission on October 4 and was approved. The Director of Del Norte County Community Development Department, Heidi Kunstal, apologized for the confusion and emailed us the forms for the local appeal process. After hearing our appeal and testimony from 2 FODN board members, the development was approved on Dec. 13, 2022. In our testimony before the DNCBOS we expressed our concern that the development of lot #9 would set precedent for the development of other lots; #10-12 and 45-48, all predominantly ESHA and part of a contiguous mature spruce forest bordering Lake Earl. Our concern was amplified by the references to "5 lots" in the Botanical Resource Assessment (BRA) by Kyle Wear, March 22, 2022, in the project Staff Report. References to 5 lots were made in the BRA cover letter, also on page 1 of the assessment, and in figures #1 and #2. Survey sample points were taken on lots #11 and #12. We also testified to our concerns about Climate Change and shoreline Wildlife Corridors, and noticed that these issues had not been addressed.

Appeal of local CDP decision
Page 3

2. Local CDP decision being appealed²

Local government name:	Del Norte County, CA	
Local government approval body:	Del Norte County Board of Supervisors	
Local government CDP application number:	B36878C / APN 110-450-009	
Local government CDP decision:	<input checked="" type="checkbox"/> CDP approval <input type="checkbox"/> CDP denial ³	
Date of local government CDP decision:	Dec. 13, 2022	

Please identify the location and description of the development that was approved or denied by the local government.

Describe: The proposed coastal development #B36878C is for a new single residence on lot #9 at 210 Lakeside Loop, Crescent City, 95531. It is a shoreline lot partially in delineated wetlands and extending into Lake Earl. The proposed dwelling is approximately 2,395 sq. feet, with a 100' non-development set back from wetlands. A well will be placed within the set back due to set backs for the septic system. 4 Sitka Spruce trees will be removed. Approval by DNCBOS is contingent on mitigation in the form of invasive species removal and added conditions #26, regarding protection of bird nests, and #27 limiting the use of pesticides and herbicides. The developer Ms. Evans, owns 5 undeveloped shoreline lots; #9-12 and #45, all almost entirely ESHA. Lots #9-12 and #45-48, along with a 22 acre remainder parcel, are part of a contiguous mature Spruce forest, all primarily ESHA. In response to FODN concerns that approval of this residence could set precedent for developing all the Evans' lots and lots #46-48, the DNCBOS said in their Board Report that they "cannot consider proposals that do not exist".

² Attach additional sheets as necessary to fully describe the local government CDP decision, including a description of the development that was the subject of the CDP application and decision.

³ Very few local CDP denials are appealable, and those that are also require submittal of an appeal fee. Please see the appeal information sheet for more information.

Appeal of local CDP decision
Page 4

3. Applicant information

Applicant name(s): Friends of Del Norte

Applicant Address: PO Box 144, Crescent City, CA 95531

4. Grounds for this appeal⁴

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. For appeals of a CDP denial, grounds for appeal are limited to allegations that the development conforms to the LCP and 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.

Describe: We have attached a separate document detailing the multiple grounds for
this appeal. The grounds include, but are not limited to, the following ways
in which the CDP does not conform to LCP policies: Lot 09 and the four
additional lots under this ownership are partially submerged in the Lake
Earl lagoon during part of each year. The CDP and wetland delineation do
not conform because there is no mapping, acknowledgement, assessment
or protection of the Lake Earl ESHA. The wetland delineation is flawed in
other ways as well. This lot(s) is also in the combined Smith River/Lake
Earl floodplain. The LCP does not allow direct impacts to ESHA, and the
County has not demonstrated that this is the least damaging alternative
possible, and has not conditioned the development sufficiently to compen-
sate for the degree of damage. There are visual resource issues also.

⁴ Attach additional sheets as necessary to fully describe the grounds for appeal.

Appeal of local CDP decision
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5. Identification of interested persons

On a separate page, please provide the names and contact information (i.e., mailing and email addresses) of all persons whom you know to be interested in the local CDP decision and/or the approved or denied development (e.g., other persons who participated in the local CDP application and decision making process, etc.), and check this box to acknowledge that you have done so.

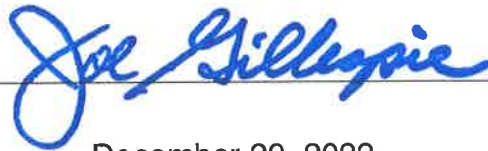
☒ Interested persons identified and provided on a separate attached sheet

6. Appellant certifications

I attest that to the best of my knowledge, all information and facts in this appeal are correct and complete.

Print name Joe Gillespie, President, Friends of Del Norte

Signature



Date of Signature December 29, 2022

7. Representative authorization

While not required, you may identify others to represent you in the appeal process. If you do, they must have the power to bind you in all matters concerning the appeal. To do so, please complete the representative authorization form below and check this box to acknowledge that you have done so.

☒ I have authorized a representative, and I have provided authorization for them on the representative authorization form attached.

⁵ If there are multiple appellants, each appellant must provide their own certification. Please attach additional sheets as necessary.

⁶ If there are multiple appellants, each appellant must provide their own representative authorization form to identify others who represent them. Please attach additional sheets as necessary.

CALIFORNIA COASTAL COMMISSION

455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400

**DISCLOSURE OF REPRESENTATIVES**

If you intend to have anyone communicate on your behalf to the California Coastal Commission, individual Commissioners, and/or Commission staff regarding your coastal development permit (CDP) application (including if your project has been appealed to the Commission from a local government decision) or your appeal, then you are required to identify the name and contact information for all such persons prior to any such communication occurring (see Public Resources Code, Section 30319). The law provides that failure to comply with this disclosure requirement prior to the time that a communication occurs is a misdemeanor that is punishable by a fine or imprisonment and may lead to denial of an application or rejection of an appeal.

To meet this important disclosure requirement, please list below all representatives who will communicate on your behalf or on the behalf of your business and submit the list to the appropriate Commission office. This list could include a wide variety of people such as attorneys, architects, biologists, engineers, etc. If you identify more than one such representative, please identify a lead representative for ease of coordination and communication. You must submit an updated list anytime your list of representatives changes. You must submit the disclosure list before any communication by your representative to the Commission or staff occurs.

Your Name Joe Gillespie

CDP Application or Appeal Number 1-DNC-22-0883

Lead Representative

Name Jonnel Covault
Title Board member Friends of Del Norte
Street Address 601 Cooper Ave
City Crescent City
State, Zip CA 95531
Email Address jonnelcovault@gmail.com
Daytime Phone 707 954 2118

Your Signature 

Date of Signature December 29, 2022

Additional Representatives (as necessary)

Name _____
Title _____
Street Address. _____
City _____
State, Zip _____
Email Address _____
Daytime Phone _____

Name Tom Wheeler/ EPIC
Title _____
Street Address. 145 G Street, suite A
City Arcata
State, Zip CA 95521
Email Address www.wildcalifornia.org
Daytime Phone 707 822 7711

Name _____
Title _____
Street Address. _____
City _____
State, Zip _____
Email Address _____
Daytime Phone _____

Name _____
Title _____
Street Address. _____
City _____
State, Zip _____
Email Address _____
Daytime Phone _____

Your Signature _____

Date of Signature December 29, 2022

THESE PAGES ARE AN EXTENSION OF THE FRIENDS OF DEL NORTE CDP APPEAL FORM, Question 4) Grounds for Appeal. Appeal of the Del Norte County decision re:
APPLICANT: EVANS, CONNIE – Coastal Development Permit for a Residence – B36878C – APN 110-450- 009 located 210 Lakeside Loop, Crescent City, CA 95531.

THIS IS THE ORDER OF THE FOLLOWING DISCUSSION:

- **Summary of reasons for finding Substantial Issue.**
- **Notes re potential Unity of Ownership Issues.**
- **Extension of CDP Appeal Form question 4) Grounds for Appeal**

Why there should be a finding of Substantial Issue

We have taken the liberty of inserting a few points into the text of section 13115 regarding Substantial Issue, please forgive us for this shortcut. Our text is highlighted.

14 CCR § 13115

§ 13115. Substantial Issue Determination.

Currentness

(a) At the meeting next following the filing of an appeal with the Commission or as soon thereafter as practical, the executive director shall make a recommendation to the commission as to whether the appeal raises a substantial issue within the meaning of Section 30625(b).

(b) Unless the Commission finds that the appeal raises no substantial issue as to conformity with the certified local coastal program or, in the case of a permit application for a development 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) that there is no substantial issue with regard to the public access and public recreation policies of Chapter 3 of the Coastal Act of 1976, the Commission shall consider the application de novo in accordance with the procedures set forth in Sections 13057-13096.

(c) When determining whether the appeal raises a substantial issue, the Commission may consider factors, including but not limited to:

(1) the degree of factual and legal support for the local government's decision;

(2) the extent and scope of the development as approved or denied by the local government; The LCP is dated 1983, the subdivision was approved in the 1980s, most of the documents pertaining to the subdivision are close to forty years old. During the intervening decades the environmental conditions (and Lake Earl Wildlife Area management plans) have changed dramatically. The CDP purports to affect one small lot, but in fact the applicant owns five adjacent lots which have already been surveyed in preparation for development which would cause additional damage to ESHA(s). There are a total of 9 undeveloped lots that will be affected, as will the 22 acre Sitka spruce ESHA with which the forest on these lots is contiguous.

(3) the significance of the coastal resources affected by the decision; The development is sited in Sitka spruce forest ESHA, requiring the removal of some of these trees. The margin of the lot is submerged in the Lake Earl Coastal Lagoon, which the Coastal Act recognizes as one of California's 19 most important wetlands, and which is the largest estuarine lagoon of this type on the West Coast. The lagoon and its uplands are recognized as a biodiversity hotspot and important location on the Pacific

Migratory Flyway. The lagoon is ESHA, the Sitka spruce forest remnants are ESHA and provide shelter as wildlife corridors. It is also possible that there will be impacts to endangered Tidewater goby.

(4) the precedential value of the local government's decision for future interpretations of its local coastal program; This decision will set many precedents and cause cumulative impacts to ESHAs and visual resources. These lots are not just *on* the shoreline, their margins are actually *in* the lagoon during part of each year, as well as partially in the Smith River floodplain. These lots have sat undeveloped, with some rewilding, for decades now. The development is in ESHA, the development damages ESHA, the development fails to adequately measure and describe ESHAs and all impacts to ESHAs. This approach to this one lot (lot 09) in this CDP will be replicated, and set precedents for the nine adjacent undeveloped lots at this Lakeside Loop location. The location is on a peninsula jutting out into Lake Earl. There is no comparable development, there is no development with this density in the margin habitat of such a precious water body, anywhere else in the county. The eastern shoreline of Lake Earl is otherwise larger acreages of public land or rural with larger private properties and some trees. However development pressure will continue to build, and the private lands on the eastern shore of Lake Earl are a likely focus where precedents will be applied. A much larger property owned by Ms. Evans, which is located immediately south of Lakeside Loop, may be a development focus soon under its new business name McNamara Meadows. Visual resources along the eastern shore of Lake Earl are part of an important viewshed seen from popular trails across the water in the Lake Earl Wildlife Area.

(5) whether the appeal raises only local issues as opposed to those of regional or statewide significance. The development of one ESHA, and the relationship to another ESHA, are of statewide significance. 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 future Del Norte spruce habitat may be a refugia for this particular ecology in California. 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.

The Commission may, but need not, assign a particular weight to a factor.

(d) The Commission may ask questions of the applicant, any aggrieved person, the Attorney General or the executive director prior to determining whether or not to hear an appeal. A majority vote of the members of the Commission present shall be required to determine that the Commission will not hear an appeal.

How this involves an assessment of the Unity of Ownership, with regards to the development plan as well as the regulatory takings issue

We ask that the Commission investigate the Unity of Ownership issues as they relate to this proposed development of one of several properties, some adjacent and some nearby, owned by the same owner. See discussion that follows for details.

INTRODUCTION TO GROUNDS FOR APPEAL

The Coastal Commission has a long history with this subdivision called Lakeside Loop, and with these periphery lots that have their margins submerged in Lake Earl during part of the year. Please read the attachment “Lot 47, Coastal Appeal text...” This 2004 appeal of a CDP for another Lakeside Loop periphery by the Friends of Del Norte (Friends) reviews some of this Commission history, and discusses many of the same issues that are involved in this lot 09 CDP. It also contains references to numerous relevant documents which were submitted to the Arcata office in 2004. We know that you will also read our October 17th 2022 appeal of this current CDP to the Board of Supervisors. We have attached a copy for your convenience. Regarding the following issues, we intend to submit photos, additional maps, and other helpful information later. Instead of lot 009, we refer to lot 09.

GROUNDs for Appeal ONE: The margins of Lot 09 and the four additional lots owned by Evans are partially submerged in the Lake Earl lagoon during part of the year. This permit and the wetland delineation do not conform to the following LCP policies because there is no mapping, acknowledgement, assessment, or protection of the Lake Earl lagoon ESHA where it currently rises on Lot 09, and nor any acknowledgement that future adaptive management may change the relationship of this lot to the lagoon. The Sitka spruce ESHA is acknowledged, but the lagoon ESHA is not. Future needs, including flexibility, for adaptive management of California’s largest estuarine coastal lagoon are not protected, even though climate change, climate chaos and extreme weather, are all advancing. Because of this failure to map, acknowledge, assess, and protect, the County cannot claim that environmentally sensitive habitat areas are protected against any significant disruption of habitat value. The County cannot claim that this development is compatible with the continuance of such habitat areas. Therefore this CDP does not conform to the LCP policies.

LCP Policy, Marine and Water Resources,

LCP IV: Sensitive Coastal Habitats:

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

Wetlands: Lake Earl and the ponds and sloughs in the Lake Earl and coastal dune region are designated as principle location of ESHA.

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.

5. Water conservation measures (e. g., flow restrictors, industrial recycling of usable waste waters) should be considered by present users and required in new development to lessen cumulative impacts on existing water systems and supplies.

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. (Emphasis added.)

We contend that the surface water of the largest estuarine coastal lagoon in the contiguous western states is ESHA, and should be part of the overall and specific evaluation of this proposed development. “Lakes” Earl and Tolowa are two connected lobes of one estuarine lagoon, the largest of this type in California and cited in the Coastal Act as one of the 19 most valuable coastal wetlands. The lagoon has a direct and undeniable relationship to this subdivision, which was less true 40 years ago, and which is awkward for the County to acknowledge – everything from the inundation of property margins to birds using these trees to hunt ducks to duck hunters getting too close to these houses, and more. In other words one can also say this subdivision has the relationship to the Lake Earl Wildlife Area.

Environmental conditions have changed drastically since the subdivision was approved nearly 40 years ago. When the subdivision was approved, the maximum lagoon water elevation was 4ft msl. In fact this CDP uses the same old 4ft map! After well-documented, considered and litigated restoration of this great lagoon, the goal for the maximum water elevation is now 8-10ft msl, although CDFW is on record in their EIR with a goal of adaptive management to guide the future. With the greatly increased surface waters of the lagoon, since the late 1980s, duck hunters now enjoy hunting near this development, and hunters do occasionally violate CDFW rules about maintaining distance from structures. The Sitka spruce forest on this lot (and on contiguous properties) has matured and become much more valuable to wildlife.

This permit approved by the County will allow development of valuable ESHA as well as removal of mature ESHA trees, but fails to assess the relationship/potential negative impacts to the lagoon ecology, and fails to fully assess forest ESHA. The County also fails to fully consider all feasible alternatives for development configuration and size. It appears the only map showing the project in relationship to Lake Earl, in all the permit documents, is in the Galea Biological Assessment on pg. 23 of the Staff Report, Figure 1. This is the outdated 4ft msl map of the lagoon, which Mr. Galea refers to as “Location of ...Project relative to Lake Earl and Surrounding Development.” The location of the lagoon on this map is misleading and incorrect because lagoon water level elevations occur on the property. The County Staff Report (Staff Report) for APP# B36878C has an “ESHA MAP” on page 6, Figure 2, which shows the Sitka spruce forest ESHA but fails to include the lagoon ESHA.

Based on the County map that we submitted as Attachment #1, Lakeside Loop lots #s 7-12 may represent the greatest challenge to future adaptive management of the lagoon. This is the only subdivision with this density of development on the immediate shoreline of the lagoon.

Lagoon water elevations do not appear on either the conceptual site plan for lot 9 on page 2 or in Figure 2 ESHA/wetland map in the final Staff Report. We asked for the information in both these maps to be overlaid on one base map, so that at minimum the lagoon elevations of 10ftmsl and 12ftmsl can be seen (and assessed) in relation to the wetland mapping, ESHA buffers and locations of all development. (This map was *not* provided by the County planners. We have used highlighter and marker on it.)

Looking at this map, it is striking how much more the proposed development of this and the remaining undeveloped periphery lots may impact and challenge future lagoon adaptive management options, when compared to most of Lakeside Loop lots that have already been developed, except for lot 8. Although lot 8 is developed, it is clear that lots 7-12 are particularly impacted by higher lagoon elevations of 10ft and 12ft, relative to most of the other already built out homes in Lakeside Loop. (It would be relevant to review the map the elevations examined in CDFW's 2003 EIR which were the alternatives of 4ft and 8-10ft and 12-14ft.)

Of course adaptive management does not necessarily mean higher lagoon levels. Equally, however, future adaptive management might mean sustaining higher water levels over longer periods of times than currently experienced when the lagoon is breached at close to 10ft msl during the winter. Many factors would need to be analyzed, including climate change, diminishing rainfall, and changing, more extreme rainfall patterns. It would also be necessary to update the hydrology analysis.

Recent breaching patterns are related to historic patterns of rainfall and intensity of storms, all of which are now changing. (See rainfall records.) Another issue which is unexamined re lagoon management is the time it takes for lagoon to close back up, i.e. the time required for the sandbar to rebuild and close. To lagoon watchers, it is clear that this is also changing, in part because the intensity of storms is changing. In the future, in order to conserve surface water levels for spring, summer and fall seasons, it may be necessary to let the lagoon stay higher over many months as it did during 2008. In that year the lagoon stayed close to 10ft msl through the spring and into the summer months. For one thing, this can be important for nesting waterfowl, and is part of the reason that generally no breaching is allowed after February 15th. There may even be times when the decision is taken to forestall breaching because for example the spring is forecasted to be exceptionally dry. In the past the Board of Supervisors made such a decision!

Permits for breaching must be periodically reviewed and renewed, and environmental conditions will continue to change. What is an example of how adaptive management may be critical for protecting at least the current restoration of the lagoon? During the Lake Earl Management Plan EIR process in the early 2000's, the Friends submitted a lagoon hydrology analysis conducted by the prestigious Bay Area firm of Phil Williams and Associates. (The Commission has this on file.) This analysis used all available County and DWR gauge records of lagoon water elevations over many years, and then applied "hindcasting" to determine how lagoon management might maximize water levels over the longest period of time, and how to thus maximize inundation of the valuable periphery marshes around the lagoon during the

nesting/most productive seasons. The finding was quite specific, and suggested that breaching at a certain time and water level might accomplish these goals. Obviously the results of such a study will change over time especially with the climate changes already noted. Whatever happens in the future, it is almost certain that the state of California will have a strong vested interest in conserving the west coast's largest estuarine lagoon.

At the very least, current and prospective owners of undeveloped lots 7 and 9-12 and 45-48 should be notified in a deed restriction of lagoon fluctuations and the Smith River flood zone (which is 12 ft.) There are no guarantees at this location in terms of future flooding.

On this same note, as discussed in the CDFW Lake Earl Management Plan EIR documents (2003 and later), the historic records show that occasionally it is not possible to breach the lagoon as desired because of prolonged storms and unsafe conditions on the Lake Tolowa sandbar where breaching happens. As per CDFW and County historic records, the lagoon has exceeded 10ft msl on a number of occasions. 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.) See also the section below re the Smith River Floodplain.

See also the Friends of Del Norte appeal of Lakeside Loop lot 47.

In the excerpt below from the Oct 5th Planning Commission final meeting minutes, the Commission is discussing Evans/lot9. Director Kunstal provides the Commissioners with information, perhaps inadvertently implying that CDFW purchased land around the perimeter of Lake Earl up to the 12ft contour. Yet our attachment #1 shows the 12ft contour nearly bisecting lot 09, so in the case of this subdivision this is incorrect. We have great respect for the competence and long service of Director Kunstal and her planning staff, who have done a good job with some of the very challenging circumstances of this subdivision and lot 09. However we can't help but observe that it is difficult and awkward for the County to address all relevant current issues, which hopefully the Commission *will* be able to address.

Excerpt from MINUTES
DEL NORTE COUNTY PLANNING COMMISSION
REGULAR MEETING – October 5, 2022

“...Commissioner Peters stated he had a question about the breaching of Lake Earl and how would that affect the property in question. Director Kunstal stated that the lots were created when there was a different breach regime that was quite a bit lower than now. Presently Staff worked off of a breach regime that allowed seeking emergency permits once the lake reached eight feet. She stated the home site on this property would be over twelve feet. Once it hits nine or ten feet the County begins applying for the permits because at that point Kellogg Road and portions of Lower Lake Road become inundated, as well as roads within the Pacific Shores subdivision. The County would always have an interest in making sure the lake doesn't rise to a level that would impact private property. Commissioner Peters stated then was the property at a significantly higher elevation than Lower Lake. Director Kunstal stated that this was correct. In the late 90's or early 2000 the California Department of Fish and Wildlife acquired land along the lake perimeter up to the twelve foot contour. Director Kunstal said she believed Ms.Evans' (applicant) parents may have sold some land back and forth to Fish and Wildlife. She stated

this was during a different breach regime. She stated she felt confident that by considering the permit it would not result in harm to the home from the lake.”

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, and 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. A bridge over Tolowa Slough and some road work would address the other issues mentioned. We apologize but there is no 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.

Again, please review the Friends’ lot 47 appeal re the relationship of these properties to Lake Earl.

GROUNDNS for Appeal TWO: Wetland delineation

The wetland delineation is incorrect and does not conform to the following LCP policies because it does not provide a base map with topographic lines or lagoon water elevations. Also, as already stated, mapping and delineation do not show the lagoon ESHA wetland boundary, or acknowledge that the lagoon is a wetland feature as per the LCP. And finally, all five of the applicant’s lots were delineated for wetlands, but no soil pit was dug on lot 09 (only dug on adjacent properties, and during a dry winter). Yet documents in the record suggest that wetlands on these properties may occur between 7-10ft msl. Therefore we are concerned that the wetland delineation and boundary are incorrect. Therefore we are also concerned that the wetland buffer was not properly considered, and certainly it was not considered in relationship to the lagoon ESHA. The adequacy of the proposed buffer to protect the identified resource cannot be evaluated, if the resource is not fully identified.

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 Policy, Marine and Water Resources,

LCP IV: Sensitive Coastal Habitats:

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

Wetlands: Lake Earl and the ponds and sloughs in the Lake Earl and coastal dune region are designated as principle location of ESHA.

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.

Environmentally-Sensitive Habitat Areas:

Coastal Wetland - Land within the coastal zone which may be covered periodically or permanently with shallow water...***Farmed wetlands*** shall be defined as wetland areas which are used for agricultural purposes such as grazing, planting or forage during parts of the year. (Emphasis added)

An area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities. First is whether a habitat or species is rare. Second is whether a habitat or species is especially valuable. And third is that an ESHA are those areas that could be easily disturbed or degraded by human activities and developments. All three elements must be present.

The lagoon is a wetland, which typically has been periodic in its fluctuation between approximately 8-10ft msl on lot 09 – but not always. As already noted, in the past the lagoon water level has been high up on this very property for an extended period. To conform with the LCP Policy, the County and Applicant should have mapped, on a base map, the lagoon as an ESHA as well as a wetland feature. The elevations should appear clearly on the wetland map as well. This is particularly significant because soils were not evaluated on lot 09.

The County Staff Report, pg. 6, Figure 2, “ESHA Map” identifies a “3-Parameter Wetland Boundary” but this is incorrect because no soils parameter was measured on lot 09, because no soil pit was dug on lot 09. The Biological Assessment shows that two soil pits were dug on Evans’ adjacent lots, not lot 09. Typically a wetland delineation involves soil, vegetation, hydrology (three parameters) and topography. This is even more important when one considers other evidence which is part of this record: In discussing the on-site septic system,

Mr. Ward Stover attaches and cites to the original Michael Young & Associates (MYA) study conducted for the subdivision many decades ago. Mr. Young states on page 2 of his 1988 letter to Richard McNamara that he observed on some of these properties “traces of soil mottling beginning at approximately the elevation 7ft msl to elevation 10ft msl.” Mottling is an indicator of hydric soils. However this was not followed up. It should be followed up now because when Mr. Young wrote his 1988 letter, the lagoon had been managed (more or less, not always successfully) for tidal and very low levels, with breaching at approximately elevation 4ft msl, for decades and perhaps as long as 100 years. 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. (CDFW restored lagoon levels to 8-10ft msl in the late 1980s. Prior to that point, both the Coastal Commission and the Army Corps of Engineers had granted permits allowing breaching at 4ft msl, which means that the lagoon would have fluctuated between 1-2ft msl to 4ft msl.)

The County Board Report (prepared for BOS Hearing on Dec. 13th) says that only lot 09 is being considered in this application, and that the other lots owned by Evans can’t be considered. The County maintains they can only deal with the one lot submitted to them, lot 09. Therefore they should require a complete wetland (and lagoon) delineation process on lot #9. The County shouldn’t be allowed to have it both ways. However the biological studies were conducted on all five lots owned by Evans (at this location), and the wetland delineation failed to take a soil sample from lot 09.

CDFW approved the placement of the well slightly above the 12ft msl floodplain elevation and in the wetland buffer. Did CDFW staff understand that part of this lot is actually in the lagoon? Did CDFW staff know the elevations? Did they examine the historic record compiled for the Lake Earl Management (LEWA) Plan? (The LEWA record contains two hydrology studies with the County and CA Dept. of Water Resources (CA Data Exchange Center) historic records for the Lake Earl gage) Did CDFW staff understand that the well was virtually in the floodplain? Are the 1988 elevations overlaid on the plot map that we found in the County Assessor files, accurate? (re Attachment #1)

Drilling the well in the wetand buffer will have impacts. It appears that these are unexamined, and have not been assessed by the County or any agency. In the County staff report, and in the July County Environmental Review Committee (ERC) minutes, there is included a bid to drill the well on lot 09 from the Rich Well Drilling & Pump company out of McKinleyville. The bid states only: “We went out and look at the area were (sic) the well is supposed to be drilled and seen that with some brush clearing that we could drill at that location. There may need to be some grading to level the site for rig Safety (sic).” There is no further detail. Yet the July 2022 meeting minutes state that the County Environmental Review Committee (ERC) had requested a full proposal for reaching the well location with all equipment...and a narrative re impacts to ESHA from drilling the well. (Item 8, a and b) This Rich bid on an invoice form is not a proposal nor a narrative. It is in fact a red flag because of unspecified vegetation removal and “some grading.” Apparently this issue never came back to the ERC for their review, as there is no further mention of the well drilling proposal or impacts in the August or September ERC minutes. There is no other bid. It appears that in this the County is not conforming to its LCP policies.

GROUNDNS for Appeal THREE: The Smith River Floodplain, combined with Lake Earl floodplain. This development does not conform to the LCP Flood Hazard Policies (see below) because this is an “inappropriate development in flood prone areas.” A critical utility appears to be immediately next to a flood prone area, and there is no discussion in the County Staff or Board report regarding the floodplain elevations, and there are no mitigations suggested or implemented. Neither is there any discussion of the flood plain as an environmental resource, etc. As already stated, the County has located the residential well just above the 12ft msl flood hazard zone, and has not recognized or mitigated potential impacts. Again, any available elevation maps are unofficial, unclear and date from the 1980s. 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 09. Climate change/chaos may make such events more frequent in the future. Please also see Friends of Del Norte Coastal appeal of Lakeside Loop lot 47 re this issue (attached).

LCP Hazard Areas, IV. D. 3. Policies for Flood Hazards:

P-1. The County shall maintain and continue to implement its existing flood plain zoning districts, thereby continuing its policies to discourage inappropriate development in flood prone areas. (emphasis added)

P-3. Critical utility facilities shall not be located in flood prone areas, unless appropriate mitigating factors are implemented. (emphasis added)

P-5. The Coastal Program’s land use policy shall recognize that flood plains have unique and significant public values, including wildlife habitats or recreational, aesthetic and scientific value, open space, and groundwater recharge. The value of the flood plain as an environmental resource and the public benefits to be derived from it should be considered.

GROUNDNS for Appeal FOUR: This development does not conform to the LCP because Del Norte County’s LCP does not allow for direct impacts to ESHA, and the County has not demonstrated that the least damaging alternative has been determined, and the mitigation measures are not sufficient to compensate for the damage to ESHA(s).

Regarding the inadequacy of mitigation measures, please see the next section, GROUNDNS for Appeal FIVE.

As noted on Page 13 of the Biological Assessment (Galea - March 2022) the County’s LCP only allows for resource dependent uses within ESHA. Residential development does not constitute a resource dependent use. While we appreciate that the County has consulted with CDFW regarding the setbacks from wetlands as outlined in the LCP, it appears that the Sitka Spruce Forest ESHA will be significantly damaged. The Botanical Resource Assessment (Wear – Feb 2022) on pg. 6, delineates Sitka Spruce Forest on the project site and designates Sitka spruce forest as ESHA on pg. 5. No determinations of setbacks from Sitka Spruce Forest appear to have been made, and in fact, the proposal includes the removal of Sitka spruce trees. Therefore, the County is unable to make the findings that the project is consistent with

the County's LCP.

As the County approved development of this parcel, a takings analysis was needed and the least damaging alternative was to be determined.

As requested by Coastal staff, the County has attempted to show that Evans can reasonably expect to build a relatively large house comparable to those already existing in this Lakeside Loop section of the Vipond subdivision. First, we contend that this is not reasonable because the environmental documents for this subdivision are nearly 40 years old, and meanwhile the environmental conditions have changed dramatically, as stated above. This proposed development should be evaluated in terms of existing environmental conditions. The size of the proposed development should not be compared to the built out lots because many decades have passed in the interim, and the lagoon management plan and other environmental conditions are different, particularly for these nine undeveloped lots numbered 7, 9-12 and 45-48. We have already discussed, with reference to the map in Attachment #1, that lagoon water elevations are much more of an issue for the remaining undeveloped periphery lots than the interior lots. Different sizes of buildings, in different configurations, should be considered. The County didn't provide any alternative maps of development sizes and configurations.

Two precedent cases invoking Coastal Act Section 30010 are excerpted below; we contend that the County hasn't met these standards in the analysis of lot 09:

In the first precedent the Coastal Commission had the following requirements of the owner in Trask Substantial Issue (Friends of Del Norte and James Snow appeal), A-1-DNC-07-036, Oct. 12, 2006, page 28:

“It is possible that alternative sitings, configurations, and/or sizes of the residence and accessory structure would result in a reduction in the amount of vegetation removal necessary for compliance with CDF defensible space requirements, which, in turn, could reduce the potential impacts of the vegetation removal on ESHA in the area. Therefore, the Commission needs to receive an alternatives analysis for the residence and accessory structure that addresses **all feasible alternative configurations, sizes, and sitings available on the property** for the residence and accessory building. The alternatives analysis should consider how the proposed residence size relates to the range of residence sizes in the surrounding residential vicinity. **A discussion of the “no project” alternative for the accessory structure should also be included. For each alternative, proposed vegetation removal per CDF defensible space requirements should be depicted for both “Area A” and “Area B”** (see Exhibit No. 6) as described above for the Vegetation Analysis. **The map should depict precisely which of the mapped existing individual trees and shrubs (and herbaceous plants as generally mapped) will be affected, as well as snags, downed logs, leaf litter, and other features.** The map should discern which vegetation is proposed for limbing, and to what extent, and which is proposed for complete removal.”

As per the Trask precedent, the County has not provided “all feasible alternative configurations, sizes and sitings” available on lot 09. The County has not provided a serious examination of a “no project alternative for the accessory structure,” which could mean that the house could be smaller and differently configured without the garage, rather than destroy ESHA. Also in the Biological Assessment Mr. Galea mentions that the house could be located

closer to the road, but he dismisses that option pretty quickly. We think it should be re-examined by the Commission. Certainly leaving all the trees in place as part of a forest has greater habitat value. Putting the house closer to the road might require some creative adaptations in design, but the road doesn't see much traffic and the house would likely allow wonderful and compensatory views out the back windows of spruce and Lake Earl. Larger windows might provide "world class" water views through the trees.

The Unity of Ownership issues might suggest that there should be a discussion of how "the property" is defined, as five contiguous lots are owned by Evans. The owner had the Biological Assessment, notably the wetland delineation and botany surveys, conducted on all five lots, suggesting intent to develop them all, but there is no discussion of this. Perhaps a feasible, less damaging development site might be found on the adjacent lots. 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.

In the second precedent the Coastal Commission had the following requirements of the owner in McNamara Substantial Issue (Friends of Del Norte appeal re lot 47 in Lakeside Loop), A-1-DNC-04-043, Trinity Development Applicant:

After the Commission found Substantial Issue in the Friends appeal of lot 47, on January 3, 2005 Coastal Planner Jim Baskin wrote a follow-up letter to the McNamara family and Trinity Development, requesting significant additional information re wetlands and bald eagles before the de novo hearing could be scheduled. In addition, to evaluate project consistency with Section 30010, he asked for 11 different categories of information.

We ask that these 11 questions be incorporated here as a standard. There was at least one question that the County has not addressed, which is taken from the letter as "question (4) Whether a general plan, zoning or similar land use designations applicable to the property changed since the time the property was purchased." Because the property is partially covered by Lake Earl during some part of each year, a major change affecting this property is the adoption by the State of California/CDFW of the Lake Earl Wildlife Area Management Plan, which supports the restoration of Lake Earl water levels. We believe, but have not checked the records, that the County Board of Supervisors supported the adoption of this plan. They certainly participated in the process and commented on it.

GROUNDNS for Appeal FIVE: This development does not conform to the LCP because it has not been conditioned to reduce impacts to ESHA to the maximum extent feasible, and thus the development is not the least damaging alternative possible. The evaluation of the ESHA is inadequate and flawed, causing the conditions (aka mitigations) imposed to be inadequate. The damage to ESHA to make room for the buildings, as well as potential future and cumulative impacts are not sufficiently mitigated.

Del Norte County's LCP does not allow for direct impacts to ESHA. The County Staff Report page 10 says "this project is conditioned to reduce impacts to ESHA to the maximum extent feasible."

12 Friends of Del Norte Appeal to Coastal Commission, of Del Norte County Board of Supervisors Action approving CDP for Evans/lot 09 in Lakeside Loop, December 30, 2022.

GAPS IN BIOLOGICAL ASSESSMENT, EAGLES, HERONS, EGRETS, GOBIES

Please read the Friends' appeal to the Board of Supervisors submitted October 17, 2022, and review the related attachments. In that document, and in the updated information below, we discuss gaps in the biological assessment and related. The appeal item numbers below refer to the numbered items in our Oct. 17th appeal.

The 2004 lot 47 Lakeside Loop appeal by the Friends of Del Norte documented that these trees are used by roosting and hunting Bald eagles and presumably additional species, such as herons and egrets, for roosting. USFWS also verified the presence of eagles here, which still have protections, and protecting roosting birds from disturbance has great value. Please see that section in the Friends' appeal, attached. Mr. Galea looked only for large nests.

Regarding Friends' Board of Supervisors Appeal Item #4, Herons, Egrets:

Regarding the County staff Board Report and the heron "issue," the following two paragraphs are taken from communication with professional wildlife biologist, D.Jaques, PEL, pers. comm., as follows:

It is true that nesting herons and egrets can be negatively affected by wind, and development of Lot 9 will exacerbate that problem. The Sitka Spruce forest is relatively small and vulnerable to strong winds. In 2022 a nest in the 22 acre tract at a new tree very near a forest clearing failed after strong spring winds. Half-grown chicks were found dead on the forest floor. Following this loss, the adults re-nested and succeeded to fledge two chicks the second time. Although this stand tract may be marginal habitat due to its relatively small size, it has improved over time rather than become degraded, partly due to an adjacent conservation easement on private lands. The forest currently offers unique and very important habitat to wading birds and raptors surrounding Lake Earl. Since the initiation of nesting in 2005, great blue herons have moved around in the forest using a variety of trees, possibly evading predation, and trying to locate the best nest platforms. Tree removal related to the development of lot 9 will make trees in the adjacent forest more vulnerable to wind, possibly reducing the functional size of that tract to nesting herons in the future.

Regarding nest tree proximity to existing development. The impacts of new construction activities (e.g. noise and tree felling) are different than impacts from existing development and may have greater potential for harm to nesting birds during the breeding season. Human activities from new neighbors can affect sensitive nesting bird species in many ways. For example another heron nest loss in 2022 was due to a curious neighbor flying a drone too close to the nest after several months of investment in the breeding effort (D. Jaques, PEL, pers. comm.).

Appeal Item #8, Lack of analysis of issues/conflicts between Duck Hunting and Residences:

The Lakeview boat launch is nearby and Lake Earl is popular with duck hunters. When the subdivision was approved, nearly 40 years ago, the lagoon waters at an approximate maximum of 4ft were out in the middle of Lake Earl, in the distance. Today the lagoon waters climb up onto the Lakeside Loop periphery lots, and hunters can be near the houses. Bald

eagles also like to hunt ducks!

Issues with Lakeside Loop residents have happened in the past, and development of lot 9 and the additional 6-7 periphery lots will increase the potential for conflict. Some years ago a Lakeside Loop resident with a home on the south side of the periphery lots saw two duck hunters in a boat come so close to their house that the resident could see smoke issuing from the rifles that had been shot. Reportedly the shooting was a little wild and toward the houses, and the CDFW Warden, Sheriff and Police ended up coming out to talk to the duck hunters. (Pers. comm. M. Driscoll)

Appeal Item #12: The need for assessment, and protection, of the wildlife corridor.

A functional network of connected wildlands is essential to the continued support of California's diverse natural communities in the face of human development and climate change. Strategies for maintaining and enhancing functional ecological connectivity through local and regional land-use and management plans are outlined in the Essential Habitat Connectivity Report (CDFW 2010). (<https://wildlife.ca.gov/Conservation/Planning/Connectivity/CEHC>)

Wildlife professionals and residents along the east side of Lake Earl are well aware of its busy wildlife corridor: Roosevelt elk, deer, bear, cougar, fox, coyote, and a great diversity of bird species use the remnant forest along the eastern edge of Lake Earl in the vicinity where lot 9, and the remaining undeveloped ~10 lots; this is documented in part with a local wildlife camera and observation. (D.Jaques, PEL, pers. comm. Please note that this camera is located between Lakeview Drive and the Lakeside Loop lots 9-12 and 45-48.) The mammals and birds are navigating between higher quality habitats separated by human activities. Because this Lakeside Loop is the **only** subdivision with this density that was approved on the immediate shoreline of Lake Earl and Lake Tolowa, this subdivision is potentially a major obstacle for these navigating animals. The more densely the edge is developed, which is precisely what is at stake here, the more difficult it becomes for the wildlife to reach more favorable habitats to the north, south, and west. The "Tolowa Dunes elk herd" at nearly 200 animals is the largest elk herd in the county, and according to CDFW documentation in various subgroups these elk make a large circuit which utilizes the east side of Lake Earl to travel between the northernmost sections of TDSP/LEWA and around to the southernmost and central sections. (Pers. comm. CDFW biologist/elk specialist Carrington Hilson) Elk are not the only animals and birds using this corridor, but because they are collared and tracked by CDFW their movements have been documented.

As mentioned in the Visual Resources discussion, the east side of Lake Earl is also the location of numerous CDFW Lake Earl Wildlife Area (LEWA) properties where wildlife lives and shelters while moving through larger territories. Our short response window here does not allow for submittal of maps/aerials, but we can submit them later. However just looking at the aerials it is clear that animals need only navigate through the Lakeside Loop part of the subdivision and then swim/work the edge across/around to the large undeveloped McNamara parcel* to the south, and then other LEWA properties further south, and so on, making their way around the lagoon and over to the larger body of the LEWA and Tolowa Dunes State Park in the Old Mill Road vicinity.

(*Note re possible Unity of Ownership issues: It appears that Connie Evans may also own this large undeveloped McNamara parcel as well and is planning to develop it, as she and her husband recently listed a new business name at this location --2860 Lake Earl Drive-- called

“McNamara Meadows.” This Fictitious Business Name Statement was filed with the County Clerk on Sept. 16, 2022. This property is on the eastern edge of Lake Earl just south of Lakeside Loop and Vipond marsh, and extends to the shoreline. Decisions regarding the periphery Lakeside Loop lots may set precedents for potential development of McNamara Meadows as well.)

Tidewater goby

Mr Galea does not include the endangered Tidewater goby in his list of special status species, although he discusses the threatened Oregon silverspot butterfly and other listed species which are less likely to be in this area. As per the Tetra Tech report re Lake Earl, which the Commission has on file, Tidewater gobies prefer the lagoon margins, at least during certain seasons. Tetra Tech contains many maps of goby habitat in Lake Earl. It is possible that some impacts to gobies may occur along the margin of this lot, and as well as the other periphery lots.

CONDITIONS/MITIGATIONS

Some of the ways in which the County has conditioned this project are no doubt well-intentioned but are too weak, vague, and could be misleading for prospective new owners; these should be tightened up. Again, this is about development in an ESHA and sets a precedent for adjacent and similar properties. Currently the conditions are not the maximum feasible mitigation for destruction of ESHA, which merits a higher standard. Please see our appeal of October 17th, and please consider the following new comments.

The condition prohibiting additional tree removal (beyond the four to be removed to accommodate the house) reads as if more trees can be removed for almost any reason. This condition is currently stated as: “The Planning Division, in consultation with the California Department of Fish and Wildlife, shall determine if tree removal can be permitted for safety, or other reasons as deemed appropriate.” “Other reasons as deemed appropriate” is too broad; at least more specific examples of reasons should be given, because we assume these conditions are going into the Deed Restrictions, and thus are educational and cautionary for owners and potential buyers. Also a situation where development is to occur in an ESHA calls for more specific and narrow precedents.

There are four problems with the County’s condition for English ivy removal as stated. We realize that the County intended for a plan to be submitted however we don’t want the language in the CDP to start things off with the wrong priorities. The County Staff Report says: “Prior to issuance of the Building Permit, the applicant shall submit a landscaping plan detailing tree removal and mitigation including methods of invasive species removal, any proposed revegetation, and a schedule for implementation, for approval by the Del Norte County Planning Division.....c. English ivy shall be controlled on the property by girdling ivy plants that encroach into the canopy layer at the base of trees that are infested with the plant.” First, a plan crafted by an expert is a good idea but during project scoping CDFW requested to review a plan with specific details, for invasive species removal; this condition does not specify their review. Second we have examined the trees on lot 09 and have seen far worse ivy

infestations; this ivy can be girdled relatively easily, and the standard should be eradication and not “control.” The County’s guidance is a low bar. Third, the method stated is vague; girdling should create a two foot gap in the strands, at the base of the tree, and then removal on the ground should proceed from the base of the tree and outward, etc. Fourth, the guidance is misleading; it reads as if only trees where the ivy has encroached into the canopy layer should be tackled or prioritized. However this will almost certainly cause more damage to the ESHA and surrounding remnant forests, as once the ivy goes up a tree (or any vertical) it is able to start maturing and fruiting, and birds are able to spread the berries. This is primarily how ivy spreads to new locations

We appreciate the two new conditions that the County created in response to our appeal to the Board of Supervisors. Again however in terms of the relationship of this lot to the lagoon ESHA, we feel that these should be re-examined and that more specific restrictions are needed if any chemicals are used on these lots. We suggest that the maximum feasible conditioning to compensate for destruction of ESHA would also include a prohibition against creating a lawn. It is thought provoking to see the neighbor’s lawn on lot 08 reaching down into the lagoon to a point where abruptly native vegetation starts. The Commission has a photo of this on file. Photos will be forwarded.

GROUND FOR Appeal SIX: WATER QUALITY AND SEPTIC SYSTEM

Please read the section starting on page 17 in the attached Lot 47 Friends Coastal Appeal, which lays out the history of the subdivision septic system design, and Coastal involvement. 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 the 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 that this issue requires much greater scrutiny.

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.

GROUND for Appeal SEVEN: VISUAL RESOURCES, HIGHLY SCENIC AREAS.

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 highly 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.” Further the meaning of “established” in this policy is not clear. Further the character of the existing land uses in the view across the water shows off other sections of the Lake Earl Wildlife Area, or the views are rural with large private parcels with houses tucked into the trees here and there, except for this subdivision. The development of these lots will stick out like a sore thumb. As already stated, this is the only subdivision with this density on the Lake Earl shoreline. If these 9 lots are built out, there will be significant cumulative visual impacts which should be conditioned/mitigated if and when these lots are developed.

Aesthetics V. C. LCP Policies: *The visual resources of Del Norte County are important to the County’s tourist economy and are a continuing source of enjoyment to its residents. Policies designed to maintain the scenic resources in the Coastal Zone of Del Norte County are stated here:*

- 1. The County encourages the continuation of existing land uses, where appropriate, to maintain open views in highly scenic areas.*
- 2. Proposed development within established highly scenic areas shall be visually compatible with their scenic surroundings, by being reflective of the character of the existing land uses while conforming to the land use criteria. As set forth in the land use component and subsequent zoning ordinance.*

The Del Norte County LCP criteria, which the lagoon area meets, for designating highly scenic areas are as follows:

- 1. Views of special interest to the general public (e.g., Pacific Ocean, lighthouses, old growth forest).*
- 2. Visually distinctive scenes resulting from unique contrasts or diversity in landscape patterns (e.g., offshore rocks, forested uplands).*
- 3. Views with special integrity or unimpaired conditions (e.g. open space, nature preserves).*

Further, re the LCP criteria, we contend that these are “views of special interest to the general public.” The views east from these trails described by us above and across the waters of Lake Earl feature some mature Sitka spruce tree groves on the opposite shoreline with a backdrop of foothills covered by old growth redwood trees, and then the Siskiyou mountain peaks and Siskiyou Wilderness Area. These are “visually distinctive scenes resulting from (the) unique contrasts” provided by this immense stretch of Lake Earl’s open water meeting the far shoreline, with some forested as well as open uplands.

Please see our written appeal to the Board of Supervisors re this issue. Please also read the Friends’ lot 47 appeal re Visual Resources.

Thank you for your investment of time and consideration of our appeal.