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STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal No.: A-1-DNC-22-0071

Applicant: Connie Evans

Appellant: Friends of Del Norte

Local Government: County of Del Norte

Local Decision: Approval with Conditions

Location: 210 Lakeside Loop, adjacent to Lake Earl and five miles north of Crescent City (APN 110-450-09), Del Norte County.

Project Description: Construct a two-story single-family residence with a 2,395-square-foot footprint and attached two-car garage plus driveway, onsite water well and septic system.

Staff Recommendation: Substantial Issue

IMPORTANT HEARING PROCEDURE NOTE

Please note that at the hearing for this item the Commission will not take testimony on staff's "substantial issue" recommendation unless at least three Commissioners request it. The Commission may ask questions of the Applicant, aggrieved persons (i.e., generally persons who participated in some way in the local permitting process), the Attorney General, the Executive Director, and their proxies/representatives prior to determining whether or not to take such testimony. If the Commission does decide to take testimony, then it is generally limited to three minutes total per side (although the

Commission's Chair has the discretion to modify these time limits). Only the Applicant, persons who opposed the application before the local government, the local government, and their proxies/representatives shall be qualified to testify during this substantial issue phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, then the Commission takes jurisdiction over the underlying coastal development permit (CDP) application and will then review that application at a future Commission meeting, at which time all persons are invited to testify. If the Commission finds that the appeal does not raise a substantial issue, then the local government CDP decision stands, and is thus final and effective.

SUMMARY OF STAFF RECOMMENDATION

On December 13, 2022, the Del Norte County Board of Supervisors conditionally approved a coastal development permit to construct a two-story residence measuring 30 feet in height from ground to peak elevation, with a footprint of 2,395 square feet, including an attached two-car garage. The residence would be served by an on-site well and an on-site sewage disposal system. The site is zoned R1-B13 (One-Family Residential with a 13,000 square foot minimum lot size) and has a General Plan Land Use designation of RN (Rural Neighborhood). The project is located on a 0.69-acre parcel that extends to the southeast shoreline of the Lake Earl coastal lagoon.

The primary issues raised in the appeal relate to the approved development's conformity with the certified LCP policies regarding protection of Environmentally Sensitive Habitat Areas (ESHAs), providing adequate services to support the approved development; preventing the siting of development in flood prone areas; and ensuring the visual compatibility of the approved development with the character of the surrounding area.

Regarding protection of ESHAs, a stand of rare Sitka spruce forest ESHA covers the entirety of the property and the four adjacent properties owned by the applicant. The construction of the approved residence necessitates the removal of four Sitka spruce trees from within the Sitka spruce forest ESHA on the subject lot ("Lot 9") and development of a water well within the wetland ESHA buffer adjacent to Lake Earl. The appellant contends that although the County authorized a non-resource dependent use in/adjacent to ESHAs to avoid a constitutional takings, the approved development is not the least environmentally damaging feasible alternative and fails to include all feasible mitigation measures capable of reducing and eliminating project impacts and is therefore inconsistent with the ESHA protection policies of the certified LCP. The appellant additionally asserts that wetlands may extend beyond the delineated boundaries and the factual evidence supporting the county's determination that development avoids direct wetland impacts is low because the wetland delineation did not include any data sampling points from the subject property.

In evaluating comparable developments nearby, the County acknowledges that the total footprint of the residence and attached garage is larger than nearby residential development and doesn't account for additional impacts associated with constructing the driveway or maintaining required fire-safe clearances. Although the County

determined its conditional approval would mitigate all adverse environmental effects to the greatest extent feasible, the County did not identify or require a feasible mitigation site either on-site or off-site, or require revegetation of impacted areas, prior to permit approval. Additionally, mitigation measures such as the County's Condition 9 "Open Space Development Restrictions" allow for development such as "additional vegetation removal for fire-safe compliance purposes..." within the open space-restricted area. Thus, the County's findings do not support the conclusion that the extent of the authorized development is appropriate for the site in terms of approving the least environmentally damaging, feasible alternative (such as by reducing the number of bedrooms, total footprint of the residence, length of the driveway, and proximity of development to the road). Furthermore, the approved development does not include all feasible mitigation measures capable of reducing or eliminating project-related impacts.

The appellant also contends that the County's findings are not supported by facts demonstrating that: (a) adequate services exist to support the approved development, and (b) the approval avoids siting development in flood prone areas, as required by the certified LCP. Although the County's staff report indicates the site will be served by an on-site well and an on-site sewage disposal system, no determination has been made as to whether an adequate water supply exists on the property to serve the single-family residence and there is no indication that a CDP was ever obtained to first drill a test well to demonstrate an adequate water supply. It is also unclear from the local record whether the approved well would be sited outside of the FEMA-designated flood hazard zone. The conceptual site plan sketch in the County's staff report shows the approximate location of the 12-foot contour line but does not include the 13-foot flood zone contour line in relation to the proposed well location. Thus, there is not a high degree of factual support for the County's decision that the approved project is consistent with the flood damage prevention provisions of the certified LCP. Additionally, the adequacy of the septic system relied on soils data from 1988 and the local record lacks any information demonstrating how soil testing conducted in 1988 under a different flood regime would remain valid under current conditions.

Finally, the appeal contends that the approved project will not be sited or designed to protect public views or be visually compatible with the character of the surrounding area. The County's findings indicate 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. However, the findings do not address whether the visual effects of removing four trees from the site were considered, or include any visual stimulations, photographs taken from nearby designated viewpoints, or evaluate alternative building sizes with reduced visual impacts. Thus, the degree of legal and factual support for the County's decision is low and is not sufficient to demonstrate that the approved development as conditioned will be sited and designed to protect public views and be visually compatible with the character of the surrounding area.

Staff believes the degree of legal and factual support for the County's decision is low, the appeal raises issues of statewide concern, and there is precedential value to the County's decision with respect to future interpretations of the LCP. Staff therefore recommends that the appeal raises substantial LCP conformity issues and that the

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Commission take jurisdiction over the CDP application for the proposed project. If the Commission does so, then the de novo hearing on the merits of the CDP application would be scheduled for a future Commission meeting after the applicant provides certain information requested in Section G of this report.

The motion to adopt the staff recommendation of Substantial Issue is found on [Page 6](#).

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APPENDICES

[Appendix A](#). Substantive File List

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EXHIBITS

[Exhibit 1](#) – Regional and Vicinity Maps

[Exhibit 2](#) – Parcel Map

[Exhibit 3](#) – Project Plans

[Exhibit 4](#) – ESHA Map from February 2022 Botanical Resources Assessment

[Exhibit 5](#) – FEMA Map of Flood Hazard Zones

[Exhibit 6](#) – Notice of Final Local Action

[Exhibit 7](#) – Appeal Filed by Friends of Del Norte

I. MOTION AND RESOLUTION

Motion:

I move that the Commission determine and resolve that Appeal No. A-1-DNC-22-0071 does not present a substantial issue with respect to the grounds on which the appeal has been filed under section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

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

Resolution:

The Commission hereby finds that Appeal No. A-1-DNC-22-0071 presents a substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS

A. Local Government Action

On October 5, 2022, the Del Norte County Planning Commission conditionally approved the coastal development permit for Applicant Connie Evans to construct a two-story residence measuring 30 feet in height from ground to peak elevation, with 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 ([Exhibit 3](#)). The County granted its approval subject to 25 special conditions, including but not limited to conditions requiring submittal of a landscaping plan and mitigation plan, best management practices for water quality protection, submittal of an erosion control plan, standards for exterior lighting; and procedures for the inadvertent discovery of archaeological resources.

The Planning Commission's approval was appealed to the Board of Supervisors on October 17, 2022. On December 13, 2022, the County Board of Supervisors upheld the Planning Commission's approval of the CDP and added two conditions (Condition 26 and 27) regarding nesting bird survey requirements and limitations on the use of lawn chemicals, as recommended by the County staff.

B. Project Setting

The project is located on a 0.69-acre parcel that extends to the southeast shoreline of Lake Earl, approximately five miles north of Crescent City on the northwest corner of Lakeside Loop off of Vipond Drive ([Exhibit 1](#)). The site is zoned R1-B13 (One-Family Residential with a 13,000 square foot minimum lot size) and has a General Plan Land Use designation of RN (Rural Neighborhood). The subject property is located outside of the urban/rural boundary where public water and public sewer systems are not available. Consequently, all of the lots within the subdivision rely upon private, on-site wells and septic systems.

The parcel is part of a subdivision that is known as McNamara Subdivision Phase I that was created through a series of subdivisions dating back to the 1980's. The subject parcel is known as Lot 9 of the McNamara Subdivision Phase I (See [Exhibit 2](#)). The approved residential development is located on the westernmost of five contiguous undeveloped parcels owned by the applicant.

The subdivision occupies part of a peninsula that juts out into Lake Earl. Lake Earl is not a lake, but rather a coastal lagoon that connects to a smaller lagoon known as Lake Tolowa. The 6,100-acre Lake Earl Wildlife Area encircles portions of the subdivision and borders the northwestern property line of the subject parcel. The California Department of Fish and Wildlife administers the Lake Earl Wildlife Area for the protection of sensitive habitat areas and to provide hunting and fishing opportunities. This portion of the wildlife area adjacent to the subject parcel contains forested wetlands that extend to the shoreline of an arm of Lake Earl. As Lake Earl is a coastal lagoon, water levels can vary dramatically. Currently, lake levels are managed by breaching the sand spit between Lake Earl and the ocean when lake levels reach an elevation of 8-10 feet above mean sea level (msl). At times during the winter when lake levels rise, the shoreline of the lagoon will be within or close to the property boundaries. At other times of the year when lake levels are lower, the shoreline will be much farther away.

C. Appeal Jurisdiction and Procedures

Appeal Jurisdiction and Grounds for Appeal

The Coastal Commission effectively certified Del Norte County's local coastal program (LCP) in 1983. After certification of an LCP, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (CDPs). Pursuant to Coastal Act Section 30603, the County's approval of the subject project is appealable to the Commission because the approved development is located: (1) between the sea and the first public road paralleling the sea; and (2) within 100 feet of a wetland and estuary. The grounds for an appeal are limited to an allegation that the approved development does not conform to the standards set forth in the certified Local Coastal Program (LCP) or the public access policies set forth in the Coastal Act.

Appeal Procedures

Coastal Act section 30625(b) requires the Commission to hear an appeal unless it determines that no substantial issue exists with respect to the grounds on which the appeal has been filed. The term “substantial issue” is defined in section 13115 of the Commission’s regulations as follows:

“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;
- (3) the significance of the coastal resources affected by the decision;
- (4) the precedential value of the local government’s decision for future interpretations of its LCP; and
- (5) whether the appeal raises only local issues as opposed to those of regional or statewide significance.

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

Even when the Commission chooses not to hear an appeal, an appellant nevertheless may obtain judicial review of the local government’s coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, section 1094.5.

In this case, because the Commission staff is recommending that the appeal raises a substantial issue, unless three Commissioners object, it is presumed that the appeal raises a substantial issue, and the Commission may proceed to its *de novo* review at the same or subsequent meeting without taking public testimony during this phase of the appeal hearing.

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

D. Filing of Appeal

The Commission’s North Coast District Office received the County’s Notice of Final Local Action ([Exhibit 6](#)) on December 15, 2022. On December 29, 2022, the Commission received an appeal of the County’s approval from Friends of Del Norte

[\(Exhibit 7\)](#). The appeal was filed in a timely manner, within ten working days of receipt by the Commission of the County's Notice of Final Action.

E. Summary of Appeal Contentions

The appeal includes seven grounds, raising the following four main contentions:

1. The approved project authorizes a non-resource dependent use in/adjacent to Environmentally Sensitive Habitat Areas (ESHAs) to avoid a constitutional takings, but is not the least environmentally damaging feasible alternative and fails to include all feasible mitigation measures capable of reducing and eliminating project impacts and is therefore inconsistent with the ESHA protection policies of the certified LCP.
2. The approved development does not demonstrate that adequate services exist.
3. The approved development does not conform to the LCP's flood hazard avoidance policies.
4. The approved project is inconsistent with visual resource policies of the certified LCP.

All of the contentions raised in the appeal present valid grounds for appeal in that they each allege the project's inconsistency with policies of the Del Norte County certified LCP. The appellants' contentions are discussed in further detail below. The relevant LCP and Coastal Act policies are shown in full in [Appendix B](#).

F. Substantial Issue Analysis

As stated in Finding C of this report, the grounds for an appeal of a CDP issued by the local government are the project's conformity with the policies of the certified LCP and (if applicable) with the public access policies of the Coastal Act. Each of the following appeal contentions raises a substantial issue regarding consistency with the policies of the certified LCP.

1. Protection of Wetland and Sitka Spruce ESHAs

The construction of the approved residence necessitates the removal of four Sitka spruce trees from within a stand of Sitka spruce forest ESHA and development of a water well within wetland ESHA buffer. The appellant asserts the approved project is inconsistent with the County's wetland and other ESHA protection policies of the Del Norte County certified LCP, including, but not limited to, Policies VI-C.6 (Environmentally Sensitive Habitat Areas) and VII-D.4 (Wetlands Policies and Recommendations) of the LUP's Marine and Water Resources chapter, because the approved development is not an allowable use in wetlands or other ESHA.

Furthermore, although the County has indicated that direct impacts to wetlands are avoided, the appellant contends that the facts supporting the County's action are lacking

because: (a) a wetland delineation conducted for the subject property and adjacent parcels did not include collection of any data samples from the subject site, (b) the delineation did not provide a base map with any topographic lines or lagoon water elevation levels, and (c) the delineation did not identify the lagoon itself as a wetland and an ESHA feature. The appellant also raises concerns that the approved development is not compatible with the continuance of the adjacent ESHA of Lake Earl and its associated habitat areas, inconsistent with the certified LCP, citing potential conflicts between the approved development and nearby wildlife corridors, heron and egret nesting areas, and duck hunters who use the adjacent Lake Earl Wildlife Area owned and managed by California Department of Fish and Wildlife (CDFW).

The County staff report refers to a February 2022 Botanical Resources Assessment prepared for Lots 9-12 and 45 in the subdivision and states in part, “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.” LUP Policy VI-C.6 of the County of Del Norte LUP’s Marine and Water Resources chapter states:

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

The appellant has highlighted the significance of the rarity of Sitka spruce forest ESHA at this location (situated near the southernmost range of its habitat) and the adjacent Lake Earl coastal lagoon, stating in part that the lagoon is recognized as “one of California’s 19 most important wetlands, and... 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.”

The Sitka spruce forest alliance¹ has been assigned a rare plant community ranking of G5_S2 by CDFW. This ranking recognizes this vegetation community is globally abundant (G5) but imperiled in the state (S2). Additionally, CDFW Biogeographic Data Branch indicates that natural communities with ranks of S1-S3 are also considered sensitive (VegCAMP 2018 ²). In California, the Sitka spruce forest alliance is found only along the coast in select locations extending from Humboldt County to the Oregon border. North of the state, it is far more abundant, found in areas of maritime influence extending into central Alaska. Given its relative rarity in California, this stand represents

¹ Sawyer, J. O., Keeler-Wolf, T., & Evens, J. M. (2008). *A Manual of California Vegetation* (Second ed.). Sacramento, CA: California Native Plant Society Press.

² <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities>

one of only a handful of Sitka Spruce populations at the southernmost portion of the forest's range.

The U.S. Fish and Wildlife Service has characterized Lake Earl and Lake Talawa as comprising “one of the most unique and valuable wetland complexes in California.” The lagoon system supports numerous habitat types including emergent wetlands, open water, mudflats, flooded pastures, woodland, sand beach, and riverine habitat. Lake Earl is an important resting and wintering area of the Pacific Flyway and is visited by, or home to, over 250 species of birds. Forty species of mammals are known to occur within the coastal lagoon floodplain environs. In addition, several federal- and/or state-listed threatened, endangered, or candidate species of plants and animals, and fish, amphibian, and avian “species of concern” are known to occur at Lake Earl.

Because of the extremely high fish and wildlife values of the lagoon and adjacent wetlands, CDFW included Lake Earl as one of the 19 coastal wetlands identified in the 1974 report entitled, “Acquisition Priorities for Coastal Wetlands of California.” To better manage the wildlife and fisheries resources in and around the lagoon, in 1979, CDFW and the California Department of Parks and Recreation acquired more than 5,000 acres of land within or adjacent to Lake Earl and Lake Talawa and the Fish and Game Commission designated the property as a wildlife area in 1980. An additional 2,600+ acres of land is leased from the State Lands Commission by the CDFW. Today, 6,100 acres of land and water area under management by CDFW lies within the boundaries of the Lake Earl Wildlife Area (LEWA). Since 1991, CDFW has continued to purchase property from willing sellers who own land around the lagoon that is below 10 feet msl.

The appellant also raises concerns about the precedential value of the County's action in approving the development, stating that “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 subject property and the adjacent three properties are currently listed for sale, with a sale pending on the subject property, according to the website Zillow.com³.

Substantial Issue with Respect to the Extent of Impermissible Residential Development in Wetlands and other Non-wetland ESHA

The approved development site will impact at least Sitka spruce ESHA, but possibly also directly impact wetland habitats. The appeal has raised questions as to whether wetland areas surrounding Lake Earl have been fully delineated and mapped. The local record includes a February 2022 document entitled “Botanical Resources Assessment for the McNamara Subdivision (Lots 9-12 and 45)” prepared by a botanical consultant. An exhibit in the report labeled “Figure 2. ESHA Map” ([Exhibit 4](#)) depicts a “wetland

³ https://www.zillow.com/homedetails/210-Lakeside-Loop-Crescent-City-CA-95531/68551327_zpid/

boundary” and “ESHA Boundary” spanning five contiguous parcels and depicts four unpaired sample points collected on other parcels but does not include any wetland sampling data points from the subject property to establish the basis for the delineated boundary.

It is also unclear whether ESHA impacts resulting from the proposed driveway were evaluated, and whether wetland features may exist within the driveway footprint. The local record includes an older plot plan for the site labeled “Figure 3. Plot Plan of the Groom Lot showing wetland boundary (W) and house placement” that shows a “group of *Salix* sp. and *Cascara*” within the footprint of the proposed driveway and septic system. The biological reports prepared for the project site identify the presence of arroyo willow (*Salix lasiolepis*-FACW) and cascara (*Frangula purshiana*-FAC), which are both wetland indicator species according to the U.S. Army Corps of Engineers National Wetland Plant List,⁴ however the willow and cascara feature was not included in the wetland delineation or depicted on the final Conceptual Plan included in the County’s staff report.

The Botanical Resources Assessment also appears to rely on coarse-scale mapping rather than soil pit data in determining whether hydric soils exist on the project site. For example, the assessment refers to major soil components having non-hydric soil ratings but does not acknowledge the hydric components of the soil series⁵ that could only be identified through onsite soil sampling and that could contribute to a positive wetland determination.⁶

Additionally, the wetland delineation included in the Botanical Resources Assessment does not contain site topography or lagoon water elevations and does not depict the location of proposed developments in relation to wetland boundaries. A discrepancy also exists between the wetland boundary depicted in Figure 2 of the Botanical Resources Assessment ([Exhibit 4](#)) and the “Lakeside Loop Conceptual Plan” ([Exhibit](#)

⁴ U.S. Army Corps of Engineers 2020. National Wetland Plant List, version 3.5 <http://wetland-plants.usace.army.mil/> U.S. Army Corps of Engineers, Engineer Research and Development Center Cold Regions Research and Engineering Laboratory, Hanover, NH.

⁵ The U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) provides coarse-scale mapping (mapped at 1:24,000 scale) for the project area showing major components of the “Timmons and Lepoil Soils, 0 to 2 percent slopes” (Map Unit 185) as nonhydric, while several minor, unmapped map unit components are hydric. The USDA NRCS Web Soil Survey Hydric Soils List for All Components on the project site is accessible online at <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>

⁶ The USDA NRCS Web Soil Survey instructs in part:
“Hydric soils are identified by examining and describing the soil to a depth of about 20 inches...It is always recommended that soils be excavated and described to the depth necessary for an understanding of the redoximorphic processes. Then, using the completed soil descriptions, soil scientists can compare the soil features required by each indicator and specify which indicators have been matched with the conditions observed in the soil. The soil can be identified as a hydric soil if at least one of the approved indicators is present. Map units that are dominantly made up of hydric soils may have small areas, or inclusions, of nonhydric soils in the higher positions on the landform, and map units dominantly made up of nonhydric soils may have inclusions of hydric soils in the lower positions on the landform.”

[3](#)) depicted on page 17 of the County's staff report. Furthermore, information presented in the appeal suggests that the margins of the subject property are partially submerged in the Lake Earl lagoon during part of the year and that wetland features associated with the lagoon may extend beyond mapped boundaries, but lagoon levels in relation to wetland mapping isn't addressed in the Botanical Resources Assessment.

It is also unclear whether the County's analysis of impacts to ESHA accounts for maintaining minimum defensible space setbacks between vegetation and development. Instead of accounting for distances between remaining Sitka spruce trees on the site and the approved development, the County included as Condition 9 "Open Space Development Restrictions" that explicitly authorize "...additional vegetation removal for fire-safe compliance purposes..." within the open space-restricted area.

Thus, the degree of factual support for determining the extent of impacts to ESHA as provided in the local record is low because: (a) the wetland boundary delineation is not supported by any on-site data points, soil sampling, or site topography demonstrating the location of wetland boundaries in relation to the approved development, and (b) impacts to Sitka spruce ESHA described in the County's findings and supporting biological reports do not account for impacts resulting from construction of the driveway or maintaining required fire-safe clearances.

Substantial Issue with Respect to Whether Approved Project is Least Environmentally Damaging Feasible Alternative

The appellant further contends that the County has not demonstrated that the least damaging alternative has been determined. While the County has indicated that development must occur within Sitka spruce ESHA inconsistent with the habitat protection policies of the LCP to avoid a taking of private property, the County must still comply with the requirements of the LCP to the maximum extent possible. As described in Finding A above, the approved development authorizes construction of a 30-foot-tall two-story residence, with a ground-floor footprint of 2,395 square feet. The residence includes three bedrooms and two bathrooms, den and living room areas, and an attached two-car garage ([Exhibit 3](#)). The approved development also includes construction of a driveway, well, and septic system. The County staff report does not specify the total size of the residential development, but an analysis of surrounding development included in the local record shows the total house square footage at 3,125 square feet.

The County's findings for approval describe the alternatives analysis in part as follows:

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.

Although the County acknowledges that limited options exist for locating the proposed development elsewhere on the property, the analysis does not evaluate the feasibility of reducing the footprint of the development to reduce impacts to ESHA. Instead, the County compares the proposed development to 45 existing developments within the surrounding neighborhood, including 15 two-story residences. The County's analysis does not indicate whether other developments required -- and were issued -- coastal development permits and does not indicate whether the developed lots used in the analysis were similarly constrained with all-ESHA parcels. Even if all parcels used in the analysis were similarly constrained and subject to similar permit requirements, the County's findings indicate that the approved development will be larger on average than other nearby developments. For example, the County's findings state in part:

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 County's analysis also does not account for impacts associated with construction of the driveway depicted on the conceptual site plan included in the staff report and does not evaluate alternatives such as reducing the length of the driveway and siting the house closer to the road. It is also unclear from the County's analysis whether the size of the septic system and leachfield could be reduced by downsizing the residence from three bedrooms to two, thereby further reducing impacts from the development on ESHA.

Therefore, the County findings raise a substantial issue of conformity with the certified LCP policies requiring protection of ESHAs because the County has not established that the approved development is the least environmentally damaging feasible alternative.

Substantial Issue with Respect to Implementing All Feasible Mitigation Measures

The appellants also contend the approved development has not incorporated all feasible mitigation measures to offset project impacts. The County's approval includes several conditions intended to minimize impacts to ESHA. The County's findings state in part: "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..." The County's approval includes among other conditions, Condition No. 9 (Open Space Restrictions), Condition No. 10 (Deed Restriction), Condition No. 11 (Limitations on Tree Removal), and Condition No. 13

(Landscaping Plan and Tree Removal). However, none of the conditions require compensatory mitigation for direct impacts to ESHAs. Although the County included Condition No. 13 requiring submittal of a landscaping and tree removal plan, the condition does not require revegetation (instead requiring only the submittal of “any proposed revegetation” and methods of invasives removal), and the County did not identify or require a feasible mitigation site either on-site or off-site prior to permit approval.

Additionally, as noted above, neither the County’s findings nor the biologist’s analysis identify additional impacts to ESHA that will occur as a result of maintaining any required defensible space cleared vegetation area around structures and property lines, and thus do not evaluate mitigation measures necessary to compensate for direct impacts to ESHA beyond the physical footprint of the approved development. Instead, Condition No. 9 allows several exceptions to allowable development within the designated open space area, including:

- 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; [and]
- 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.

Because the record indicates the entire site, and adjacent sites owned by the applicant, all comprise Sitka spruce forest and wetland ESHAs, it is not clear where and how compensatory mitigation can be provided without adversely affecting existing ESHA and how the total amount of ESHA can be expanded to provide the required mitigation.

2. Adequacy of Services

The appellant contends that the County approved the project without demonstrating adequate services exist to serve the development. Specifically, the appellant asserts that: (a) environmental studies associated with the approved well site are lacking; (b) potential impacts associated with well drilling, including the potential to impact wetlands or site the well within flood-prone areas, were not evaluated prior to project approval; and (c) the septic system siting and design relied on outdated studies with site conditions different from those that exist now.

Del Norte County’s certified Local Coastal Program Zoning Enabling Ordinance Chapter 21.19.010 (“R-1 One-family Residence District”), as modified by the 13,000 minimum lot size imposed by the B Combining District, requires in part that “Lot sizes suitable for building are dependent on the availability of public water and sewage systems with the minimum of [thirteen thousand] square feet permitted only where one or both systems are available.” Rather than connecting to public services, the County’s approval relies on the development of an on-site well and sewage disposal system.

Although the County's staff report indicates the site will be served by an on-site well and an on-site sewage disposal system, no determination has been made as to whether an adequate water supply exists on the property to serve the single-family residence and there is no indication that a CDP was ever obtained to first drill a test well to demonstrate an adequate water supply. Instead, the local record includes preliminary recommendations from the County's Environmental Review Committee⁷ in May 2022 recommending against filing the application complete until a certified well driller addressed the feasibility of drilling a well at the site in terms of: (1) identifying impacts to the parcel to reach the well site, including potential tree or vegetation removal; and (2) whether direct impacts to ESHA would result from drilling the well. The local record does not include evidence that either issue was addressed. Furthermore, Condition 14 of the County's approval acknowledges that the well would be developed within 100 feet of wetlands and states in part, "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..."

The appellant also asserts that determinations regarding suitability for an on-site wastewater treatment system (OWTS) relied on outdated studies with site conditions different from those that exist now. In particular, the appeal notes that the June 7, 2022 OWTS design uses the results of soil testing and surface elevation of Lake Earl from the November 10, 1988 study prepared by Michael Young and Associates (MYA) to design the proposed septic system. The appellant asserts that at the time the 1988 sewage disposal evaluation was prepared, lagoon levels had been managed closer to four (4) feet msl, whereas currently the lagoon level is managed closer to 8-10 feet msl.

It is unclear whether changes in the flood regime may have altered the soil's suitability for the proposed OWTS design. The 1988 MYA report describes site conditions at 4.5 msl at the time of field investigations, with the highest historical level of Lake Earl being elevation 10.1 msl. The 1988 MYA report states in part "If a change in conditions occurs such as a change in the size of the project, change in the location of the disposal field, change in the disposal system specifications, a substantial physical change to the property or other similar change, it will be necessary to review this report and the data herein in the context of those changes. This could require additional field and laboratory work to confirm site suitability and/or to modify the specifications for the on-site sewage disposal system." Furthermore, the June 2022 report indicates that "due to restrictions placed on the parcel for well locations subsequent to the 1988 report, the available disposal area has been reduced." Thus, the current OWTS design involves changes in the size and specifications of the disposal system, and substantial physical changes in the lagoon flood regime affecting the project site.

Although the local record indicates that Del Norte County Environmental Health Division (EHD) determined the MYA evaluation and June 2022 Stover Engineering report were

⁷ As further defined by [Del Norte County Code](#) section 22.040.030(K), Del Norte County's Environmental Review Committee (ERC) reviews permit applications and provides recommendations to the advisory lead agency prior to local action on CDP applications.

adequate because the studies reference the highest anticipated groundwater level at 10 feet msl, it is unclear from these studies whether the soil capacity could sustain inundated conditions at the higher lagoon levels and the local record lacks any information demonstrating how soil testing conducted in 1988 under a different flood regime would remain valid under current conditions.

Thus, the degree of legal and factual support for the County's decision is low and does not sufficiently demonstrate that adequate services exist to serve the approved development.

3. Relationship of Development to Flood Hazard Area

The appellant contends that as approved, the well would be located in a flood hazard zone. The appellants further contend that approval of the well in the flood hazard zone is inconsistent with LUP Flood Hazard Policy IV-D.3 of the Hazard Areas chapter of the LUP, which discourages inappropriate development in flood prone areas.

Although Del Norte County LUP Policy IV-D.3 requires in part, as subsection P-3, that "Critical utility facilities shall not be located in flood prone areas, unless appropriate mitigating factors are implemented" ([Appendix B](#)), the LUP refers to "critical facilities" within the preceding section as comprising "high intensity and/or public use structures." However, Del Norte County's certified ZEO Chapter 21.45 provides additional LCP policies for flood damage protection, including from new construction and substantial improvements of any structure and ZEO section 21.45.030.B establishes "Areas of Special Flood Hazard" using the criteria set forth by the Federal Emergency Management Agency (FEMA). FEMA's website describes flood hazard zones⁸ in part as follows:

Flood hazard areas identified on the Flood Insurance Rate Map are identified as a Special Flood Hazard Area (SFHA). SFHA are defined as the area that will be inundated by the flood event having a 1-percent chance of being equaled or exceeded in any given year. The 1-percent annual chance flood is also referred to as the base flood or 100-year flood. SFHAs are labeled as Zone A, Zone AO, Zone AH, Zones A1-A30, Zone AE, ... and Zones V1-V30. Moderate flood hazard areas, labeled Zone B or Zone X (shaded) are also shown on the FIRM, and are the areas between the limits of the base flood and the 0.2-percent-annual-chance (or 500-year) flood. The areas of minimal flood hazard, which are the areas outside the SFHA and higher than the elevation of the 0.2-percent-annual-chance flood, are labeled Zone C or Zone X (unshaded).

Del Norte County ZEO section 21.45.040 states in part that any application for a development permit within any area of special flood hazards established in section 21.45.030.B provide the following (Emphasis added):

⁸ FEMA's website glossary definition of Flood Zones, including Special Flood Hazard Areas, is accessible online at <https://www.fema.gov/glossary/flood-zones>

...Application for a development permit shall be made on forms furnished by Del Norte County and may include, but not be limited to plans in triplicate drawn to scale showing:

1. The nature, location, dimensions and elevation of the area in question, existing or proposed structures, storage of materials and equipment and their location;
2. Grading information showing existing and proposed contours, any proposed fill, and drainage facilities;
3. Proposed locations of water supply, sanitary sewer, and other utilities;
4. Location of the regulatory floodway when applicable;
5. Base flood elevation information as specified in 21.45.030.B or 21.45.040.C.2;
6. Proposed elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
7. Proposed elevation in relation to mean sea level to which any structure will be floodproofed, as required in 21.45.050.A.3;...

It is unclear from the local record whether any of the development associated with the installation of the well would occur within the SFHA. Page five of the appeal states in part "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." A County staff report prepared for the local appeal hearing states in part on page 5:

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.

The local record does not provide any mapping depicting the elevation where the well would be situated and lacks any documentation of the FEMA mapping that the County relied on to make its determination. An excerpt of the Flood Insurance Rate Map (FIRM) with effective date of November 26, 2010⁹ for the project site, accessed from FEMA's

⁹ FEMA FIRM Map No. 06015C0220F, effective November 26, 2010 (accessed online at <https://msc.fema.gov/portal/search?AddressQuery=210%20lakeside%20loop%2C%20crescent%20city>)

website, shows a portion of the property to base flood elevation of 13 feet msl is within Zone AE, and the remainder of the property is within unshaded Zone X ([Exhibit 5](#)). The staff report includes a hand-sketched conceptual site plan ([Exhibit 3](#)) that depicts the well situated slightly east of a line labeled “12’ Contour Line.” The location of the well in relation to the 13-foot msl FEMA base flood elevation is not shown.

Page 10 of the appeal further states “...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.”

The County’s findings do not provide the elevations of any of the approved development and do not specify the base flood elevation of the FEMA maps that were relied on in making its determination that development would be sited outside of the Zone AE flood zone. The conceptual site plan sketch shows the approximate location of the 12-foot contour line but does not include the 13-foot flood zone contour line in relation to the proposed well location. Thus, there is not a high degree of factual support for the County’s decision that the approved project is consistent with the flood damage prevention provisions of the certified LCP.

4. Protection of Visual Resources

The appellant contends that the approved development is inconsistent with the visual resource protection policies of the certified LCP. The appellant further contends that the site meets the criteria for designation as a highly scenic area warranting additional viewshed protections required by the LCP.

The LCP recognizes the exceptionally scenic nature of the views to and along the coast in proximity to the proposed development through its inclusion of the Lake Earl Area and vistas along nearby Lakeview Drive and Buzzini Road public access points within its “Visual Resource Inventory.” Such areas are so designated because they possess “particular visual distinctiveness, integrity, harmony and/or [are] of special interest to the general public.” The County LCP does not formally designate any areas within the coastal zone portions of Del Norte County as “highly scenic.” Instead, the LUP designates numerous locales as either “View Points” or “View Corridors.” Thus, the majority of the LCP’s policies and standards regarding visual resource protection are not applicable to the project site and its surroundings, as they specifically address designated “highly scenic areas,” of which there are currently no areas in the County so designated.

While not being located within a formally decreed “highly scenic area,” the approved development would nonetheless be subject to the policies of the LUP as the policies relate to the protection of the significant aesthetic amenities of the areas appearing in the Visual Resource Inventory. To this end, the effects of grading, utility placement, the

[%20ca#](#)), supersedes [FIRM Map No. 06015C0220E](#) dated September 26, 2008, which previously depicted the entirety of the subject lot as within Flood Zone A.

height and bulk of the residence, its placement and orientation, the selection of exterior building materials and colors, and landscaping are to be considered in the interest of reducing the impacts of new development on the designated visual resources of the area. The closest designated coastal scenic "Viewpoints" are located at Lakeview Drive and Buzzini Road. The County staff report states: "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." However, there is a lack of legal and factual support in the local record to support that conclusion. First, the applicant did not provide photographs or visual simulations showing the proposed development site in relation to nearby Viewpoints. Second, the staff report does not specify whether the County considered the visual effect of removing four trees from the site on the visibility of the approved development from nearby designated Viewpoints. Third, the County acknowledges in the staff report that the size of the proposed development is approximately 119 square feet larger in its footprint than the average for nearby two-story residences. Fourth, the County's analysis does not consider alternative building designs or configurations that may involve smaller development footprints or reduced visual impacts.

Thus, the degree of legal and factual support for the County's decision is low and is not sufficient to demonstrate that the approved development as conditioned will be sited and designed to protect public views or to be visually compatible with the character of the surrounding area.

5. Conclusion

When considering a project on appeal, the Commission must first determine whether the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over the CDP application for such development. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of LCP and Coastal Act (where applicable) conformity. The Commission has in the past and, pursuant to section 13115(c) of its regulations, considered the following five factors in its decision of whether the issues raised in a given case are "substantial": (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 County; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the County's decision for future interpretations of its LCP; and, (5) whether the appeal raises only local issues as opposed to those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well. In this case, these five factors considered together support a conclusion that the appeals do raise a substantial issue as to the County-approved project's consistency with the LCP.

As discussed in the above findings, the degree of legal and factual support for the County's decision is not sufficient to demonstrate that wetland and Sitka spruce forest ESHA would be protected against any significant disruption of habitat values, that only uses dependent on such resources would be allowed within such areas, or that

development approved in areas adjacent to ESHA would be sited and designed to prevent impacts that would significantly degrade such areas. Legal and factual support also is lacking in the County's findings to support the County's conclusions that: (a) adequate services exist to support the approved development, (b) the approval avoids siting development in flood prone areas; and (c) development will be sited and designed to protect public views or to be visually compatible with the character of the surrounding area.

As to project scope, while the approved development is limited to new development on a single residential lot and while the County has indicated approval of a residential development was necessary to avoid an unconstitutional taking of private property, the County approved a structure that is larger than surrounding houses without evidence demonstrating that the houses the County relied on for comparison were similarly constrained by all-ESHA lots as compared to the subject development. As the County's findings do not support the conclusion that the extent of the authorized development is appropriate for the site in terms of approving the least environmentally damaging, feasible alternative (such as by reducing the number of bedrooms, total footprint of the residence, length of the driveway, and proximity of development to the road), this factor also supports a finding of substantial issue.

The third factor (the significance of coastal resources affected) also supports a finding of substantial issue. The project, as approved by the County, could significantly degrade wetland and Sitka spruce ESHA inconsistent with LCP policies cited above. These inconsistencies have far-reaching consequences and thus, when considered cumulatively throughout the limited extent of Sitka spruce habitat, raise a substantial issue.

Fourth, the County's decision could set an adverse precedent for future interpretations of the County's LCP, including on the review of future development of the vacant parcels in the immediate vicinity of the subject property that are similarly almost entirely covered by ESHA. For example, the applicant owns the four adjacent undeveloped parcels, which are currently for sale in addition to a pending sale of the subject property. The County's approval authorizes residential development in ESHA, inconsistent with the resource protection policies of the LCP, and the approved house is larger than the average house in the surrounding area.

Finally, the project raises issues of regional or statewide significance, including the protection of Sitka spruce ESHA. The significance of the coastal resources affected by the decision is high because the action would directly impact Sitka spruce forest ESHA at the southernmost extent of its range where its biodiversity is greatest. Furthermore, the approved development does not include all feasible mitigation measures capable of reducing or eliminating project-related impacts.

Therefore, especially given the low degree of factual and legal support for the County's decision and conditions of approval, consideration of the five factors together support a conclusion that the County's approval of a CDP for this project raises a substantial issue of Coastal Act and LCP conformity. For the reasons stated above, the Commission finds

that Appeal Number A-1-DNC-22-0071 presents a substantial issue with respect to the grounds on which the appeals have been filed under section 30603 of the Coastal Act regarding consistency of the approved development with the certified local coastal program.

G. Information Needed for De Novo Review

Section 30621 of the Coastal Act instructs the Commission to provide for a de novo hearing on all appeals where it has determined that a substantial issue exists with respect to the grounds on which an appeal has been filed. If the Commission finds substantial issue as recommended above, staff also recommends that the Commission continue the de novo portion of the hearing to a subsequent date. The de novo portion of the appeal hearing must be continued because the Commission does not have sufficient information to determine what, if any, development can be approved, consistent with the certified LCP.

As discussed above, and in other respects not directly related to the appeal contentions, the County's record does not contain critical information needed for a full de novo review of the application. Given that the project the Commission will be considering *de novo* has come to the Commission after an appeal of the local government action, the Commission has not previously been in the position to request information from the applicant needed to determine if the project can be found to be consistent with the certified LCP. This section identifies information the Commission will need to evaluate the development under *de novo* review for consistency with the certified LCP.

1. Clarification Regarding Project Applicant(s) and Agent(s).

There is conflicting information in the documents included in the local record regarding who is the project applicant and whether any agents are proposed to act on behalf of the applicant.¹⁰ Therefore, submittal of this information is needed.

2. Project Plans

a. Site Plan, Floor Plans, and Elevations

The County staff report describes the proposal as a three-bedroom, two-bathroom, two-story single-family residence with attached garage and a footprint of 2,395 square feet. The staff report does not specify the total size of the residence (including both stories). Although it appears from the conceptual floor plans included on page 19 of the staff report that total area of the residence is approximately 3,287 square feet, the plans are not to scale and many of the measurements are not entirely legible. Furthermore, an analysis of existing development included in the local record indicates the total square footage of the proposed development is 3,125 square feet but does not include the basis for this calculation. Additionally, some of the site plans in the local record depict a

¹⁰ The County staff report indicates that the project applicant is Connie Evans, but biological documents in the local record were prepared for Bill Groom, and the June 2022 septic design report indicates it was prepared "on behalf of the proposed buyer of the property." Property Transaction reporting indicates the property is owned by Connie Jager and Richard McNamara.

driveway but lack specifications on the dimensions or materials to be used. Therefore, updated plans are needed to evaluate the full development proposed, including the driveway, yard, grading, vegetation removal for fuel modification, etc. The updated plans should be scalable, produced at a legible scale, and include dimensions and total square footage (including the base footprint and second story area) for the proposed development.

b. Exterior lighting plans

Given the potential impacts to visual and ESHA resources associated with the project and the LCP policy directives to protect public views and ESHA, exterior lighting plans are needed to understand whether proposed lighting may affect public views or sensitive habitats on the property and in the project vicinity.

c. Drainage and Runoff Control Plan

To properly address potential impacts to water quality and to ensure that site drainage is managed in a manner that directs site runoff to adequately sized (for the amount of expected runoff) permeable areas outside of ESHA and away from Lake Earl, the applicant must provide a Drainage and Runoff Control Plan. The plan should include measures to control runoff and minimize the potential for erosion both during construction and post-construction with the goal of protecting water quality and sensitive habitat on the site, including the areas associated with Lake Earl. The plan must include provisions for addressing all of the following: (a) minimizing the potential for discharge of sediment off-site or to coastal waters during construction by use of appropriate BMPs; (b) managing construction materials, equipment, and waste to minimize the potential for pollutant discharge; (c) minimizing soil compaction and the removal of non-invasive vegetation during construction to retain the natural stormwater infiltration capacity of the soil and other water quality benefits, and (d) revegetation post-construction of disturbed soil areas. The drainage plan component should address drainage and runoff associated with the proposed new impermeable surfaces (paved areas, building areas).

3. Wetland Delineation on Lot 9 and Evaluation of Appropriate Buffer Width

As indicated in Finding F above, the appeal has raised questions as to whether wetland areas surrounding Lake Earl have been fully delineated and mapped. The local record includes a February 2022 document entitled “Botanical Resources Assessment for the McNamara Subdivision (Lots 9-12 and 45)” prepared by a botanical consultant. An exhibit in the report labeled “Figure 2. ESHA Map” ([Exhibit 4](#)) depicts a “wetland boundary” and “ESHA Boundary” spanning five contiguous parcels and depicts four unpaired sample points collected on other parcels but does not include any wetland sampling data points from the subject property to establish the basis for the delineated boundary.

The Botanical Resources Assessment similarly appears to rely on coarse-scale mapping rather than soil pit data in determining whether hydric soils exist on the project site. For example, the assessment refers to major soil components having non-hydric

soil ratings but does not acknowledge the hydric components of the soil series¹¹ that could only be identified through onsite soil sampling and that could contribute to a positive wetland determination.¹²

Additionally, the wetland delineation included in the Botanical Resources Assessment does not contain site topography or lagoon water elevations and does not depict the location of proposed developments in relation to wetland boundaries. A discrepancy also exists between the wetland boundary depicted in Figure 2 of the Botanical Resources Assessment and the “Lakeside Loop Conceptual Plan” depicted on page 17 of the County’s staff report. Furthermore, information presented in the appeal suggests that the margins of the subject property are partially submerged in the Lake Earl lagoon during part of the year and that wetland features associated with the lagoon may extend beyond mapped boundaries, but lagoon levels in relation to wetland mapping isn’t addressed in the Botanical Resources Assessment.

Therefore, to determine the full extent of all wetlands on the subject property including the estuarine wetlands associated with Lake Earl lagoon, a current wetland delineation should be prepared by a qualified biologist and should include, but not be limited to: (1) a mapped delineation of all Coastal Commission-jurisdictional wetland features at a legible scale that includes all proposed developments (including but not limited to mapped locations of all temporary and permanent impacts) superimposed on the map containing site topography, including 12- and 13-foot contour elevations measured above mean sea level; and (2) copies of all original wetland delineation data forms completed in the field. Wetland features should be delineated using the wetland delineation methodology of the currently applicable U.S. Army Corps of Engineers (ACOE) 1987 Wetland Delineation Manual and May 2010 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region. Documentation of wetland vegetation indicator status should follow the most recent version of the currently recognized ACOE National Wetland Plant List (https://wetland_plants.usace.army.mil). Jurisdictional wetland determinations within the coastal zone should apply the Coastal Act definition of wetlands, as further defined by Section 13577 of the Commission’s regulations. Each significant wetland area should

¹¹ The U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) provides coarse-scale mapping (mapped at 1:24,000 scale) for the project area showing major components of the “Timmons and Lepoil Soils, 0 to 2 percent slopes” (Map Unit 185) as nonhydric, while several minor, unmapped map unit components are hydric. The USDA NRCS Web Soil Survey Hydric Soils List for All Components on the project site is accessible online at <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>

¹² The USDA NRCS Web Soil Survey instructs in part:
“Hydric soils are identified by examining and describing the soil to a depth of about 20 inches...It is always recommended that soils be excavated and described to the depth necessary for an understanding of the redoximorphic processes. Then, using the completed soil descriptions, soil scientists can compare the soil features required by each indicator and specify which indicators have been matched with the conditions observed in the soil. The soil can be identified as a hydric soil if at least one of the approved indicators is present. Map units that are dominantly made up of hydric soils may have small areas, or inclusions, of nonhydric soils in the higher positions on the landform, and map units dominantly made up of nonhydric soils may have inclusions of hydric soils in the lower positions on the landform.”

contain at least one set of paired sample points (spaced no more than 20 feet apart) across the wetland boundary to demonstrate the determination of the wetland-upland boundary.

In addition, the wetland study should evaluate the impacts of the proposed development on the wetland and recommend an appropriate buffer width between proposed new development and the wetland(s) that will be adequate to protect the resources of the delineated wetland(s). A minimum buffer width of 100 feet should be applied unless an evaluation is provided demonstrating that a width of less than 100 feet will be adequate to protect the resources of the wetland from degradation.

4. Updated Biological Surveys

The appeal asserts that Tidewater goby inhabit portions of the project area. The Commission needs to receive an updated biological report that addresses the potential for Tidewater goby to inhabit suitable habitat areas within the project area and, if present or potentially present, recommended measures to ensure potential impacts to tidewater gobies and their habitats are avoided during construction and post-construction.

5. Submittal of Evidence of Adequate Water Supply and Septic Capacity

As indicated above, the appeal has raised questions about the adequacy of on-site water and septic systems to serve the proposed development, citing in part concerns that the well would be located slightly above the 12-foot mean sea level (msl) floodplain elevation and potentially within flood-prone areas. Although the County's staff report indicates the site will be served by an on-site well and an on-site sewage disposal system, there is no indication whether onsite testing was conducted and no determination has been made as to whether an adequate water supply exists on the property to serve the single-family residence. Therefore, a coastal development permit must first be obtained for a hydrological study involving the drilling of a test water well(s) or other demonstration of proof of water by a qualified hydrologist. The results of the hydrological study or other proof of available water is needed to evaluate whether adequate water will be available to serve development of the parcel, consistent with the certified LCP.

The appeal also raises concerns that determinations regarding suitability for an on-site wastewater treatment system (OWTS) relied on outdated studies with site conditions different from those that exist now. In particular, the appeal notes that the June 7, 2022 OWTS design uses the results of soil testing and surface elevation of Lake Earl from the November 10, 1988 study prepared by Michael Young and Associates (MYA) to design the proposed septic system. The appellants assert that at the time the 1988 sewage disposal evaluation was prepared, lagoon levels had been managed closer to four (4) feet msl, whereas currently the lagoon level is managed closer to 8-10 feet msl.

Although the local record indicates that Del Norte County Environmental Health Division (EHD) determined the MYA evaluation and June 2022 Stover Engineering report were adequate because the studies reference the highest anticipated groundwater level at 10

feet msl, it is unclear from these studies whether the soil capacity could sustain inundated conditions at the higher lagoon levels and the local record lacks any information demonstrating how soil testing conducted in 1988 under a different flood regime would remain valid under current conditions. Therefore, evidence of adequate septic capacity must also be provided, including providing either updated soil analysis or supporting evidence from EHD demonstrating how the 1988 soil studies remain valid under current conditions. If onsite soil sampling is needed, a CDP shall first be obtained authorizing on-site septic testing prior to commencement of any field work.

6. Building Site and Design Alternatives Analysis

As discussed above, LUP Marine and Water Resources Policy VI.C.6 states that environmentally sensitive habitat areas (ESHA) 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 ESHA 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 record before the County demonstrates that there is no site available on the property where development could occur outside of the environmentally sensitive Sitka spruce forest habitat areas. Therefore, an analysis is needed to explore whether there are feasible less environmentally damaging alternative designs or locations that would further minimize ESHA impacts. This analysis should consider the current proposed development (building site and design, primary and replacement leachfields, water well and driveway as approved by the County) and relative to alternatives for siting and design of the residential structure and access driveway (and other associated development) that would reduce the total footprint of the development. Consideration should be given, at a minimum, to reducing the size of the residence and attached garage, siting development closer to the street to reduce the size of the driveway, and other alternatives. The analysis should (a) include a detailed site plan for each alternative, (b) quantify the square footage of coverage and ground disturbance associated with each alternative and include a biological assessment of the potential direct and indirect impacts to any associated vegetation removal and (c) discuss all other applicable limitations and restrictions on development that may affect the feasibility of development in the specified locations (i.e., required setbacks from septic and water infrastructure, property lines, access drives, and fire safety minimum clearances, etc.)

7. Information Needed to Evaluate Project Consistency with Coastal Act Section 30010

As discussed above, the County determined the entire site to be Sitka spruce ESHA with wetland ESHA also present on portions of the property. In such instances, application of the ESHA and ESHA buffer policies of the certified LCP to the project may, by themselves, require denial of the project as proposed. However, the Commission must also consider Section 30010, and caselaw interpreting the Constitutional prohibition on taking of private property without just compensation.

As part of its consideration of this project on *de novo*, the Commission will need to evaluate whether an alternative proposal could be approved consistent with the LCP's ESHA policies, and if not, whether denial of the project would result in an unconstitutional taking of private property for public use. In order to make that evaluation, the Commission would need additional information from the applicants concerning the applicants' reasonable investment-backed expectations to make such determinations prior to holding a *de novo* hearing on the project as described below. Although the local record includes some information regarding the applicant's expectation to develop the property, the County's analysis does not address all of the information identified below.

Therefore, in order for the Commission to review this project *de novo*, the landowner(s) of the property that is the subject of A-1-DNC-22-0071 must provide the following specific information for the property that is subject to A-1-DNC-22-0071 as well as all property in common contiguous ownership, *i.e.* any immediately adjacent property also owned by the landowner:

- a. When the property was acquired, and from whom;
- b. The purchase price paid for the property;
- c. The fair market value of the property at the time it was acquired and the basis upon which fair market value was derived;
- d. Whether a general plan, zoning, or similar land use designations applicable to the property changed since the time the property was purchased. If so, identify the particular designation(s) and applicable change(s).
- e. At the time the property was purchased or otherwise acquired, or at any subsequent time, whether the project has been subject to any development restriction(s) (e.g., restrictive covenants, open space easements, etc.), other than the land use designations referred to in the preceding question;
- f. Whether the size or use of the property changed in any way since it was acquired. If so, identify the nature of the change, the circumstances and the relative date(s);
- g. Whether a portion of, or interest in, the property was sold or leased since the time the applicants purchased or acquired it, and the relevant date(s), sales price(s), rent assessed, and the nature of the portion or interest sold or leased;
- h. A copy of any title report, litigation guarantee or similar document that might have been prepared in connection with all or a portion of the property, together with a statement of when the document was prepared and for what purpose (e.g., refinancing, sale, purchase, etc.);
- i. The approximate date and offered price of any offers to buy all or a portion of the property since the time the applicants purchased or otherwise acquired the property;

- j. The costs associated with ownership of the property on an annualized basis for the last five calendar years. These costs should include, but not necessarily be limited to, the following:
 - property taxes
 - property assessments
 - debt service, including mortgage and interest costs
 - operation and management costs;
- k. Whether apart from any rent received from leasing all or a portion of the property (see question “g” above), current or past use of the property generates any income. If the answer is yes, the amount of generated income on an annualized basis for the past five calendar years and a description of the use(s) that generates or has generated such income.

8. Submittal of Revised County Parcel and House Size Data for Surrounding Permitted Developments

As discussed above, the Commission must evaluate whether the size of the proposed development is consistent with the natural resource policies of the Del Norte County certified LCP. As part of the analysis of impacts to natural resources, the Commission will evaluate whether the size and location of the home are the least environmentally damaging alternative and assess whether the applicant had a reasonable expectation to build a house and related development at the building footprint size that is currently proposed. While the local record contains some information about existing developments on some of the surrounding parcels, it does not contain all of the information to Commission needs to evaluate the proposed development. For example, it is unclear whether the parcels evaluated by the County all received coastal development permits and whether the properties included similar constraints as the subject property.

Therefore, the applicant must update the “Analysis of Existing Development” included in the local record by submitting County records (typically obtained from the Office of the Tax Assessor and/or Planning and Building Services) identifying the zoning designation of properties used for comparison and including in the analysis parcels with a zoning designation of RN/ [R1-B13] that are located northwest of Lake Earl Drive and situated between the west side of China Creek Court and the east side of Vipond Drive. Most of the items below have been included in the local record, with exception to subpart i and additional clarifications as noted in subpart j below.

- a. Assessor’s Parcel Number;
- b. Parcel Physical Address;
- c. Parcel Owner Name;
- d. Whether the development is single-story or 2-story;
- e. Parcel size, in acres and square feet;

- f. Total house size, in square feet (including square footage of a second story, if applicable);
- g. Total garage size, in square feet (including square footage of a second story, if applicable);
- h. 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, yard, etc.); and
- i. Coastal development and building permit numbers for each parcel. The local record includes permit numbers for all lots used in the analysis but does not specify whether the permit included approval and issuance of a coastal development permit. Therefore, please provide this information.
- j. The analysis of existing development included in the local record does not specify whether any of the lots used in the analysis were similarly constrained by ESHA or other site limitations. Therefore, please provide this information where feasible (note information may need to be obtained from County staff reports or application records) and if unavailable please specify accordingly.

9. Submittal of Mitigation and Monitoring Plan

A plan is needed that details the proposed approaches to mitigating impacts to ESHAs, including but not limited to replacement planting associated with removal of trees and native vegetation, enhancement planting of native vegetation within reduced wetland buffers, and habitat restoration. The mitigation and monitoring plan should provide a narrative description and preliminary plans for the proposed mitigation area and additionally include information on (1) the type and amount of habitat proposed to be created or restored to mitigate for permanent impacts; (2) the location of the proposed mitigation area(s); (3) existing conditions and habitat of the mitigation area(s); (4) target conditions of the proposed mitigation area(s); (5) proposed methods for establishing the mitigation area(s); (6) success standards for determining the success of the mitigation proposal, (7) a proposed monitoring plan to evaluate mitigation success, and (8) remediation provisions should the success standards not be achieved. (6) a monitoring and remediation plan for the proposed mitigation area.

If the information provided in Item 3 above identifies additional wetlands on site that may be impacted by proposed development, the Commission will need to receive details of whatever mitigation is proposed for any wetland fill impacts of the project to evaluate consistency of the development with the feasible mitigation requirements of MWR section VII-D, part 4. Therefore, additional mitigation measures shall be provided that include the following as supplements to the information specified above: (a) the mitigation ratio of wetlands created to wetlands filled, (b) an explanation of how the temporal loss of habitat values between the time of wetland disturbance and the restoration of habitat values will be accounted for, and (c) details of the wetland mitigation site including the extent of any existing wetlands and other habitats existing at the site and how those resources would be affected by the mitigation plan implementation.

10. Flood Hazard Analysis

The appellant contends that the approved development is not sited and designed to prevent inappropriate development in flood prone areas as required by Section IV.D.3 of Del Norte County's LUP Policies for Flood Hazards. According to FEMA's flood map for the project area (Flood map 06015C0220F, effective on 11/26/2010), the base flood elevation is 13 feet msl. The conceptual site plan presented in local record shows proposed well relative to the 12-foot msl contour but does not show the well site in relation to the 13-foot base flood elevation. Therefore, a flood hazard analysis is needed that demonstrates how the proposed development would avoid siting development within flood-prone areas unless appropriate mitigating factors are proposed and implemented. The flood hazard analysis should include, among other items, a site plan depicting the proposed locations of water supply, sanitary sewer, and other utilities in relation to base flood elevation and other site topography; and grading information showing existing and proposed contours, any proposed fill, and drainage facilities.

11. Visual Assessment

For a de novo review of the project's consistency with LCP visual resource protection policies, the Commission will need a visual assessment that includes information relating to what components of the project, if any, will be visible from viewpoints designated in the certified LCP. The analysis should include visual simulations of the project from key and representative public viewpoints. In particular, the analysis should include photographs of the project site taken from the Buzzini Road and Lakeview Drive designated viewpoints and should address whether the site would be visible following proposed tree removal. If the visual analysis demonstrates the project will be visible from any view corridors or viewpoints designated in the LCP, additional information will be needed regarding: 1) the styles and materials of the proposed development, and whether it is compatible with existing development in the immediate neighborhood, 2) an assessment of the overall size, height and bulk of the proposed development compared to existing residences in the immediate neighborhood, 3) an assessment of whether alternative size, siting, and design components exist that could feasibly avoid or lessen any impacts to visual resources, and 4) demonstration that the proposed development would: (a) be visually compatible with the character of the surrounding area, (b) be sited and designed to protect views to and along the ocean and scenic coastal areas, and (c) minimize the alteration of natural landforms as required by section 21.50.080 of the certified LCP's ZEO.

Without the above information, the Commission cannot reach a final determination concerning the consistency of the project with the natural resources protection policies of the LCP, and what development may need to be approved to comply with Coastal Act Section 30010. Therefore, before the Commission can act on the proposed project de novo, the applicant must submit all the above-identified information.