STAFF REPORT
DEL NORTE LOCAL AGENCY FORMATION COMMISSION
December 12, 2007

TO: Del Norte County Local Agency Formation Commission

FROM: Darren McElfresh, Executive Officer

PROPOSOAL TITLE: *Del Norte County's Application (06-02) for Proposed Change of Organization (Dissolution) of Pacific Shores Subdivision California Water District.*

DATE APPLICATION ACCEPTED AS COMPLETE: September 24, 2007

AFFECTED AGENCIES: County of Del Norte, Pacific Shores California Subdivision Water District, Smith River Fire Protection District.

Initiated By:
Del Norte County Board of Supervisors

Recommendation:
The LAFCO Executive Officer is recommending that the Commission approve application (06-02) for "Proposed Change of Organization (Dissolution) of Pacific Shores Subdivision California Water District" submitted by the County of Del Norte Supervisors by taking the following actions:

1. Adopt the findings and determinations in the LAFCO Executive Officer's Report, *Del Norte LAFCO Determinations and Findings for the Dissolution of the Pacific Shores Subdivision California Water District* (attached).
2. Approve Resolution x-07 (enclosed) to approve the County of Del Norte's application to dissolve the Water District. Resolution x-07 sets forth:
    a. The plan and procedure for the dissolution of the Pacific Shores Subdivision California Water District.
    b. The specific factors required for consideration under the California Government Code § 56668 when reviewing proposals for dissolution.

Del Norte LAFCO Determinations and Findings for the Dissolution of the Pacific Shores Subdivision California Water District

I. Introduction

In 2006 the County of Del Norte ("County") submitted an application to Del Norte Local Agency Formation Commission ("LAFCO") to dissolve the Pacific Shores Subdivision California Water District ("Water District"). In its application for dissolution, the County is the designated successor agency "for the sole and exclusive purpose of winding up the affairs of the dissolved district" as there is no other entity in existence and as authorized under California Government Code section 57453. On September 24, 2007, LAFCO determined that the County's application was complete and issued a certificate of filing. After certifying that the application is complete, LAFCO is required to hold a public hearing within 90 days. Cal. Gov't Code 56658(i). LAFCO has set the hearing date for the County's proposal for December 18, 2007 and properly noticed this hearing with the issuance of the Notice of Public Hearing for LAFCO Application 06-02.

LAFCO is required to consider the following factors pursuant to California Government Code section 56668 when reviewing proposals.

(a) Population and population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years.

[As noted in the materials submitted to the County and Coastal Commission for the past 20 years, the area is uninhabited by permit; although staff has suspicions that various campers and squatters may exist; the area is designated as environmentally sensitive with a drainage basin problem of flooding. It is proximate to agricultural and forest lands with potential for little to low growth over the next 10 years, unless the law or technology drastically changes – compounding the likelihood of development is that nearly one half of the property lots inside the district are public lands distributed in a checkerboard fashion-see attached maps]

(b) Need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas. "Services," as used in this subdivision, refers to governmental services whether or not the services are services which would be provided by local agencies subject to this division, and includes the public facilities necessary to provide those services.

[Currently the District is unable to provide any water and sewer services, and has not been able to do so for the past 20 years, thus the affect of dissolution is technically on paper only. The probable future needs will only be necessary if the law changes drastically or a new technology surfaces which would allow large scale development in

sensitive areas and flood zones, or a new solution is presented to the board which has not yet disclosed.]

(c) The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county. [The adjacent areas are very rural and consist mostly of agricultural lands, forest lands, and public lands – thus the effect of the proposed action will have little impact on the adjacent areas and the County government.]

(d) The conformity of both the proposal and its anticipated effects with both the adopted commission policies on providing planned, orderly, efficient patterns of urban development, and the policies and priorities set forth in Section 56377. [

(e) The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016. [An often overlooked aspect and duty of Lafco, the commission must consider the protection/preservation of prime agricultural lands and resources, such as environmentally sensitive areas as the wetlands in the District. Until a plan is developed to address the sensitivities, development is not feasible.]

(f) The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting the proposed boundaries. [Here, so many of the district lots are owned by the Public that any proposed water treatment development may be seriously hampered even if the district was able to meet the concerns of the Coastal Commission, the County, etc,, and receive the necessary permits after complying with all CEQA requirements after addressing all of their litigation matters.]

(g) Consistency with city or county general and specific plans. [The county has not specific plans for development in this area as their maintenance and care of the area obviously has long been abandoned.]

(h) The sphere of influence of any local agency which may be applicable to the proposal being reviewed. [The sphere of influence of the Water District will be none existent if the district is dissolved; however, they currently are hampered and unable to provide any treatment for water and sewage, so there is no physical effect beyond the exercise of corporate powers.]

(i) The comments of any affected local agency. [Staff has received input from both the County and the Water District. Their respective positions are obvious and seen throughout this report. The county wants the district dissolved as they are the applicant. The Water District would like to continue to exercise their corporate powers to sue in an attempt to force various agencies Coastal Commission, Corp of Engineers, County of Del Norte, to overturn prior decisions, and apparently hope that sometime in the unknown future they will be allowed to provide water and sewer.]

(j) The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change. [Dissolution of the water district will not allow the receiving entity, the county, to provide services beyond winding up the affairs of the district.]

(k) Timely availability of water supplies adequate for projected needs as specified in Section 65352.5. [No water supplies have ever been supplied, although attempts have been made to various degrees over the past 20 years.]

(l) The extent to which the proposal will affect a city or cities and the county in achieving their respective fair shares of the regional housing needs as determined by the appropriate council of governments consistent with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7.

(m) Any information or comments from the landowner or owners. [The commission has received extensive comments from landowners and owners who object to the dissolution, which arrive daily.]

(n) Any existing land use designations. [Land use designations currently are problematic for the water district due to the areas environmentally sensitive areas and are what are causing the inability to receive appropriate permits from the Coastal Commission and County.]

The following Report sets forth the LAFCO's findings and determinations, in light of these factors, concerning Del Norte County's proposal to dissolve the Water District.

II. Background

A. Location

The Pacific Shores Subdivision ("Subdivision") is located on a dune formation in the northwest corner of the Lake Earl lagoon in Del Norte County, California. Lake Earl Lagoon is the largest estuarine coastal lagoon in the western continental United States. The Subdivision is approximately 1,486 acres and comprised of 1524 half-acre lots.

The Water District's jurisdiction encompasses the entire Pacific Shores Subdivision. In addition to the subdivided lands, the Water District was also intended to service the Erickson property (AP#105-030-42, 44 and 45). Appendix A shows the lands of the properties located within the Water District's jurisdiction.

B. History of the Pacific Shores Subdivision Property

Del Norte County ("County") approved the Subdivision in 1963. Although the County built miles of paved streets within the subdivision and installed a single-circuit, 12.5-kilovolt (kV) electrical transmission line (which lacks substation facilities), neither the Water District nor the County have made any further infrastructure improvements such as water or sewage facilities during the last 45 years. Despite the lack of infrastructure on the property, the lots sold out in two years, primarily purchased by residents of Southern California.

There is only one legal residence on the property and that building's original owner constructed it before the passage of the 1972 Coastal Initiative (Proposition 20) or

the federal Clean Water Act. Therefore, there was no requirement for either a coastal development permit or a modern septic system at the time. The State of California now owns that residence and parcel.

Throughout the 1970s, the Pacific Shores Property Owners Association ("Owners Association") did not obtain any building permits and no construction took place on the property. Meanwhile, the federal government and the state of California passed significant environmental legislation, including the Clean Water Act, Endangered Species Act, and the California Coastal Act. The state of California also acquired most of the land surrounding the lagoon and formed a wildlife area and state park. Sadly, these changes in the law have had a dramatic effect upon the ability of the Pacific Shores owners to get any projects approved or permitted by the State and County.

In 1985, the Owner's Association received Coastal Development Permit No. 1-85-38 from the California Coastal Commission to form a special district for purposes of levying a fee from property owners to fund a study. The purpose of the study was to survey the natural resources contained within the Subdivision and evaluate the potential for development within the Subdivision. No other coastal development permit has ever been issued for the Subdivision.

C. The Formation of the Water District and the Community Facilities District

In 1987, the Owners Association petitioned LAFCO to form the Pacific Shores Subdivision California Water District. The Water District was formed solely "for the purposes of providing water supply and distribution and sewage treatment and disposal." County of Del Norte Local Agency Formation Commission, Resolution No. 84-01 (1987). The Water District is a local agency comprised of an elected five-member Board of Directors.[1] The Directors serve a two-year term and the elections are staggered so at least two new directors are elected annually. The Directors receive $100 per board meeting and are reimbursed for their expenses and mileage. If Directors spend additional days on work-related obligations, they are compensated at $100 per day, up to five days a month.

The Board is a legislative body which meets on the third Saturday of every month in a hotel in Van Nuys, California, which is located in the Los Angeles metropolitan area. At the time of query, these meetings are posted 24 hours in advance at the hotel lobby, contrary to the dictates of the Brown Act. Cal. Gov't Code § 54954 (requiring that regular meetings of the legislative body of a local agency be posted at least 72 hours in advance). No hard copy notifications are sent. According to the Board of Directors, pertinent meeting documents are made available to the public through several methods. Agendas are sent out each month to the Board of Directors and an electronic copy is sent to property owners and others who have requested one; newsletters are sent out

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[1] Specific information on the operations of the Water District in the following two paragraphs came largely from the materials received from the District its Draft Municipal Services Review. *See* Del Norte LAFCO, Pacific Shores California Water District, Draft Municipal Service Review, (Mar. 28, 2005 draft).

electronically to the same list receiving electronic copies of the agenda, and all other property owners receive a hardcopy of the newsletter. Minutes from Board of Director meetings are electronically mailed on an irregular basis and are available in hardcopy by special request. The annual audit is sent to the State of California, as well as to the office of the Water District's legal counsel. (It is sent to the County of Del Norte as well.) Monthly Treasurer's reports are read at each meeting and copies are distributed to the Board. In the 2005, the Water District reported to Lafco as to having no employees.

In 1989 the Water District published the draft special study initially commissioned by the Owners Association, titled the Pacific Shores Subdivision Special Study ("Special Study"). Notably, the draft Special Study lacked any comprehensive information on the development potential for the property. The Water District has yet to publish an addendum or revised version of the Special Study to address this significant dearth of information. The Special Study did include information on the sensitive habitats contained in the Subdivision, namely the coastal sand dunes, and described the extensive wetlands located on and surrounding the property that represent a significant impediment to development.

After the publication of the draft Special Study in 1989, the Water District adopted Resolution No.89-1, stating its intention to form a Community Facilities District ("CFD") under the Mello-Roos Act, for the purpose of levying an annual special tax on lot owners to "provide funds to plan for, study, design, acquire, construct or finance the costs of public facilities authorized to be funded pursuant to the act including sewer facilities and water facilities."

The District's mailing address is located as 13220 Southport Ln. 170-F, in Seal Beach, Orange County, California, 90740. The last provided email address is PSSCWD@netscape.com.

III. Reasons for Dissolution

A. LAFCO finds the Water District Provides No Physical Services and the Subdivision is Unlikely to Ever Be Developed due to feasible and legal constraints

Currently the Water District is in an area that is inherently limited for future or no growth potential and that geographic, jurisdictional, and operations limitations exist that make it unlikely the Water District will ever receive a permit to construct water facilities.[2] Through the review process, LAFCO learned that the Water District has no physical infrastructure, no plan for financing any infrastructure, and no capital facilities and physical plants. It does not operate or maintain any water lines, facilities, or

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[2] The draft Municipal Service Review looked at nine different factors: Infrastructure Needs & Deficiencies, Growth & Population, Financing Constraints & Opportunities, Cost Avoidance Opportunities, Opportunities for Rate Restructuring, Opportunities for Shared Facilities, Government Structure Options, Evaluation of Management Efficiencies, and Local Accountability & Governance.

treatment centers. This is not to say that the Water District has not tried to accomplish these goals for the past 19 years. The District has run into many legal obstacles, such as wetlands and environmentally sensitive areas which have prevented the California Coastal Commission, Fish and Game, Army Corp of Engineers, and others from issuing any permits to allow the Water District to build the facilities in accordance with the Clean Water Act and Endangered Species Act, etc.

The California Superior Court recently expressed a similar opinion about the current operating state of the Water District:

> In this case, there is substantial evidence in the record indicating that the Pacific Shores Subdivision essentially has been moribund for decades due to regulatory and other constraints on development, and that it is not reasonably foreseeable at this time that it ever will be further developed. Petitioners have not cited to any evidence that would suggest that the Pacific Shores Subdivision is anything other than…a 'paper subdivision.' The EIR therefore was not required to address the merely hypothetical possibility that future development of the subdivision might occur.

See Tolowa Nation v. California Dept. of Fish & Game, No. 04CS01254 (Cal. Super. Ct. 2006) (final order denying petition for writ of mandate adopted Feb. 7, 2006).

B. The Water District Is Limited in How It Can Spend Taxpayer Dollars Under the Mello-Roos Act

In 1989 the Water District formed a CFD pursuant to the Mello-Roos Act to fund the construction of water and sewage facilities in the Subdivision, and in 1990, the Water District levied the first special tax pursuant to this authority. The special tax is levied on each lot in the subdivision and ranges in value from approximately $125 to $149.50. This tax is approximately four to five times the value of property taxes that each owner pays on an individual lot. *See* County of Del Norte Board of Supervisors, A Resolution of the Del Norte County Board of Supervisors Pursuant to Government Code Section 56654 Proposing Change of Organization of Pacific Shores Subdivision California Water District, Aug. 4, 2006. According to the applicant County, these special taxes have resulted in hundreds of lot-owners losing their equity in the subdivision as a result of tax defaults. Moreover, the special tax levied on lot owners has led to complaints regarding the Water District's special tax. *See id.*

Pursuant to California law, the proceeds of a special tax levied by a CFD may only be used to pay the cost of providing public facilities, services, and incidental expenses authorized by the Mello-Roos Act. Cal. Gov't Code § 53340(d). The Mello-Roos Act is very clear as to what services and facilities a CFD is authorized to finance through its special tax. The only public services that may be financed by a CFD are police protection services, fire and paramedic services, education and recreation services,

park maintenance, flood and storm protection services, and hazardous waste removal services. Cal Gov't Code § 53313. Moreover, the Mello-Roos Act specifies that only the public facilities and services described in a CFD's resolution of formation may be financed with the special taxes. Cal. Gov't. Code § 53330.

When voters initially approved the financing for the CFD, they approved it with an explicit understanding that the taxes would be used "to pay for facilities and services and the planning, study, design, and other incidental costs associated therewith," as well as the interest and principal on bonds sold to "construct, rehabilitate or acquire public facilities and costs incidental thereto." *See* Resolution 89-1 on the Statement of Votes Cast for the Community Facilities District No. 1 of the Pacific Shores Subdivision California Water District Special Tax, Bond, and Appropriations Limit Elections. In other words, when the property owners within the Subdivision voted to establish the CFD, they did so with the understanding that the special tax would be used to pay for the costs of water and sewage facilities. Unfortunately, the District has not been able to accomplish those goals for the past 19 years.

C. The applicant may claim that the Water District is in not in compliance with the Mello-Roos Act in Its Use of Funds

The argument is as follows: It has been nearly 20 years since the votes to approve the CFD were cast and still no water and sewage facilities have been built. Funds have instead been spent on various environmental studies, none of which have ever culminated in an agency approving or certifying an Environmental Impact Report (EIR); on litigation; and on reimbursement of Board of Directors expenditures in the exercise of the above.

In fact, at the Del Norte County Board of Supervisors regular public meeting on October 10, 2006 Water District President Dwayne B. Smith stated:

> We've spent all these millions of dollars, and all this time...and it's ended up with nothing...we haven't been able to put one foot of pipe in the ground....I would like to assure you the money is not to be spent on more lawyers, more lawsuits...and foolishness that is not going to get us anywhere...because we've done that now for 15 years. It's proved frutile [sic]. It's a ridiculous amount of money spent for nothing.

See Audio transcripts: Dwayne B. Smith, Water District President, addressing the Del Norte Board of Supervisors at a public meeting (Oct. 10, 2006) (audio transcripts maintained by the County of Del Norte).

Throughout the 1980s and 1990s, the Water District attempted at least three environmental studies. None of the studies was ever approved by any local, state or federal government agency, nor has the Water District been granted any development permits. These incomplete studies appear to have cost the Water District hundreds of

thousands of taxpayer dollars. *See* Pacific Shores Subdivision California Water District, News & Comments, June 30, 1993.

In the early 1990s, the Water District approved $226,800 in expenditures to produce an Administrative Draft Environmental Impact Report ("DEIR"). *See id.* In 1995, when the Water District published the DEIR, the Water District President Dwayne Bruce Smith announced:

> Your District has completed the Administrative Draft EIR..The taxpayers in the District have spent $860,000 in conducting the studies and producing the documents required by regulatory agencies. .....We look forward to all of this happening before the end of the year. Wouldn't it be a great Christmas present to be told you will now have permission to build a home on your land?

See A Message from the President, Pacific Shores Subdivision California Water District President Dwayne B. Smith, Pacific Shores Subdivision Cal. Water District, June 1995, emphasis added. While admirable, the District was still fraught with legal and practical challenges.

The County found the DEIR to be seriously deficient because it did not comply with the California Environmental Quality Act, lacked objectivity, failed to consider either mitigation of the significant effects of the project or alternatives to the project, and did not at all discuss the water and sewage systems that would be an integral part of any development project on the property. *See* Letter From County of Del Norte Community Development Department to Pacific Shores Water District Regarding Winzler & Kelly Draft Environmental Impact Report, July 24, 1995. In 1997, the Water District contracted with another environmental consulting firm, Chambers Group, to conduct a study for $205,000. After three years and at least $87,450 in expenditures, the Water District failed to complete any study and abandoned the project. *See* Pacific Shores Subdivision California Water District Audited Financial Statements, Fiscal Year End June 30, 1999, at 12.[3] Chambers did report to the Water District that the previous DEIR was "seriously inadequate" and the wetland surveys appeared to be accurate and were "not favorable to the project." *See* Project Data Review and Scope of Service, Pacific Subdivision Project, Prepared for PSSCWD by Chambers Group, Inc., Irvine, CA at 2, 12 (approved by PSSCWD on Dec. 21, 1996 and amended Feb. 15, 1997).

Moreover, in the past six years, the Water District still continues to be plagued by many legal challenges. It has used its taxpayer dollars to initiate several lawsuits against state and federal agencies on various legal grounds. For example, in 2004, the Water District sued the California Department of Fish and Game ("DFG"), the California State Lands Commission, and the County of Del Norte to challenge DFG's Environmental Impact Report ("EIR") for the Lake Earl Management Plan. The lawsuit alleged that the EIR failed to satisfy

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[3] *See* the Water District annual financial audits on file with the Del Norte County Auditor-Controller's Office for a detailed list of their expenditures, including litigation expenditures.

California Environmental Quality Act ("CEQA") requirements and that the proposed management plan for the Lake Earl amounted to a taking under the Fifth Amendment. In 2006, a California superior court dismissed the Water District's lawsuit as without merit. Having reviewed extensive documentation Superior Court Judge Raymond M. Cadei denied the District's petition, finding that "none of the petitioner's challenges have merit." Moreover, he characterized Pacific Shores as a "paper subdivision" and "hypothetical." *See Tolowa Nation v. California Dept. of Fish & Game*, No. 04CS01254 (Cal. Super. Ct. 2006) (order denying petition for writ of mandate). The District did not appeal this decision, nor did it pursue the takings portion of the case.

In 2004, the Water District filed suit against, among others, the United States Army Corps of Engineers, the United States Army, the California Department of Fish and Game, and various other agencies and individual state and federal officials in federal district court. The complaint alleged that the defendants had violated the Endangered Species Act, National Environmental Policy Act, and the California Environmental Quality Act. *See Pacific Shores Subdivision California Water District v. U.S. Army Corps of Engineers*, Case No. C-04-1401-SC (N.D. Cal. Aug. 20, 2004) (Order Dismissing Case). After all of the defendants filed motions to dismiss, the Water District did not respond to the motions and voluntarily dismissed the suit. The Water District then filed two more suits, one of which is still pending in federal court. *See Pacific Shores Subdivision California Water District v. Norton*, Case No. 04-2091 (HHK) (D.D.C. Aug. 9, 2005) (Second Amended Complaint). In 2007 the Water District filed yet another lawsuit against the California Coastal Commission, California Department of Fish & Game, County of Del Norte and the Board of Supervisors and several other non-governmental organizations and individuals for claims alleging civil rights violations, inverse condemnation, and conspiracy. *See Pacific Shores Subdivision et al v. Ca Dept. of Fish & Game et al*, Case No. 07AS01615 (Cal. Super. Ct., Apr. 6, 2007).

These legal expenditures comprised a significant proportion of the Water District's overall budget; in some years as high as 85% of expenditures were spent on legal and litigation support fees. As of 2006, the costs of litigation comprised the overwhelming percentage of the Water District's annual expenditures.

Appendix B hereto contains the proposed budget that the Water District provided to LAFCO during the 2005 Municipal Service Review process. The County may claim that none of the proposed expenses are directly related to the provision of water and sewage facilities. However, the District reports that it has been forced to file these suits in the attempt to fulfill its mandate to provide water by forcing through the legal process a hopeful grant of development permits. Nearly half of the $143,007 2005 budget is allocated for legal expenses ($63,402), while the remainder is divided among such proposed expenses as reimbursement of Directors ($13,115), insurance ($7,325), and other miscellaneous items.

The Water District continues to expend funds on such matters such as litigation. In 2006 the Water District expended $129,735, or 85 percent of its total expenditures, on

legal and litigation support fees. In 2005, the Water District expended $106,019, or 79.3 percent of its total expenditures, on legal fees. In 2004, the Water District expended $53,479, or 63.2 percent of its total expenditures, on legal fees. In 2003, the Water District expended $84,984, or 61.4 percent of its total expenditures on legal fees. In 2002, the Water District expended $68,625, or 55.1 percent of its total expenditures, on legal fees. And in 2001, the Water District expended $92,101, or 58.6 percent of its total expenditures on legal fees.

The Water District has been unable to achieve its stated goal of providing water and sewage facilities in the past 20 years, has no current plan to provide water or sewage facilities, and seems unlikely to ever successfully obtain a permit to provide the facilities unless two things occur. FIRST: there must be significant change in the law that essentially changes the laws that the Coastal Commission, federal Clean Water Act, Endangered Species Act, etc are designed to protect, or SECOND: there is a massive change in technological development that allows a large scale project to co-exist in a wetland that is prone to flooding. The Mello-Roos Act does not allow the any District to levy its special tax on lot-owners and use the revenue for purposes not authorized by its resolution of formation, which in this case is to provide water and sewage facilities to the taxpayers.

Recently two lot owners have filed a lawsuit against the Water District in California Superior Court on the basis that expending their tax monies on these lawsuits is illegal, and seeking an injunction to stop pending lawsuits and the recovery of funds for past illegal expenditures on such litigation and other unauthorized activities. *See* Maxine Curtis v. PSSCWD, Complaint for Declaratory Judgment, Injunctive Relief and Damages, Case No. 06CS01451, July 19, 2007. The outcome of the case is unknown, but it appears the Water District defaulted in the case (see attached default).

However, the contrary argument to the applicant's position is that unlike most defunct districts, the Water District board meets regularly and is simply exercising its corporate authority under law in efforts to forward the possibility of getting water and sewer, albeit by litigation. Sadly though, the fact is that due to legal impediments placed on the area by other agencies and laws, the District just has not been able to fulfill its purpose for the past 20 years. It has been 45 years since the area was slated as a speculative development. It is clear that many lot owners had their dreams of building their retirement and vacation homes by the sea. The district is viewed as their last hope to realize a return upon their investments. Unfortunately, the legal winds have not blown in their favor, rendering their hopes and dreams unfulfilled for the past 20 years. Understandably, various owners are upset and would like to see the district continue to exist.

IV. Service Considerations

A. Because Development in the Subdivision Appears to Not be Feasible, the County Does Not Intend to Provide Any Services

Currently, the Water District is providing no services to the Subdivision, nor has

it presented any plans to provide services. The County intends to continue to provide no services to the Subdivision and abandon any attempt to procure services. The County's Plan for Services approved on December 19, 2006 states "Therefor[e], the plan for services proposed by this dissolution is that the concepts of water and sewer systems be abandoned. Whether the Water District continues in existence or not, no services will be extended along the lines originally contemplated by the Water District." *See* County of Del Norte, Amended Plan for Provision of Services, Dec.19, 2006.

The County has put forth several reasons for abandoning any attempt to provide services to the Subdivision. Most significantly, approval for any development project on the property is unlikely to ever occur. As explained above, the Water District has never completed an environmental study or EIR that resulted in agency approval or certification. The environmental studies conducted and the statements of state and local agencies have repeatedly emphasized the difficulty of ever developing the individual properties or of establishing water and sewage system facilities on the property. A letter from the Coastal Commission to the Water District dated August 24, 2007 stated that "there are significant existing constraints on development within most of the subdivision that must be considered...."[4] *See* August 24, 2007 Letter from Peter Douglas, Executive Director, California Coastal Commission to Dwayne B. Smith, President, Pacific Shores Water District at 1 (attached in Appendix C). These constraints include environmentally sensitive areas near or within the subdivision, including estuarine areas, seasonal wetlands, and habitat for sensitive species; the seasonal flooding from the waters of Lake Earl; location in the Smith River and Lake Earl floodplains and tsunami zone, and the lack of infrastructure, such as water, sewage and electricity, to serve any development on the property.

The County reiterated this finding in its petition/plan for services when they observed that the "subdivision is a mosaic of wetlands in the wet winter months and contains a number of sensitive species and habitats." *See id.* at 4. The Water District's own environmental studies have noted the difficulty of establishing any development on the property: "A large portion of this subdivision is mapped as wetland. It may be possible over a period of one or more years to demonstrate that much of the mapped area is not...wetland. However, even if that were possible, the area of indisputable wetland remaining would likely still be quite large and would represent a significant impediment to development." *See* Pacific Shores Subdivision Special Study draft dated July 1, 1989, prepared for PSSCWD by Winzler & Kelly Engineers at 1. This study also noted that another "substantial impediment" is that the County's Local Coastal Plan designates the entire subdivision as environmentally sensitive dunes. *Id.* at 1.

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[4] A letter to the Coastal Commission where the Water District proposed using "holding tanks for drinking water served by water trucks and individual waste disposal systems such as...an electrified composting toilet," prompted the Coastal Commission's response. This letter suggests the Water District also recognizes the impracticability of providing water and sewage facilities to the Subdivision. See Aug. 7, 2007 Letter from Dwayne B. Smith, President, Water District, to the California Coastal Commission , Regarding Water and Sewage Service.

The Water District continued to pursue new environmental studies with different consultants, and received similar reports. After Del Norte County rejected a draft EIR in 1996, the District contracted with the Chambers Group of Irvine "to evaluate, revise and process a new EIR." *See* Project Data Review and Scope of Service Pacific Subdivision Project for Pacific Shores Subdivision California Water District ("PSSCWD"), Prepared by Chambers Group, Inc, at 1 (approved by PSSCWD on Dec. 21, 2006). The Chambers Group, however, confirmed that the 1993 wetlands delineation at the Subdivision was accurate and "not favorable to the project." *Id.* at 12.

Moreover, there is no need for services on the property because under the current law habitation on the property is illegal. The Coastal Commission noted that "because of the many sensitive coastal habitat issues, the Commission has not approved any requests for coastal development permits for construction of new residential structures at Pacific Shores." *See* August 24, 2007 Letter from Peter Douglas, Executive Director, California Coastal Commission to Dwayne B. Smith, President, Pacific Shores Water District at 4. In fact, the Coastal Commission has issued several cease-and-desist and restoration orders against persons inhabiting or developing these properties illegally, citing a total of seven Subdivision lots within the last two years.[5] Moreover, the Coastal Commission stated that "due to the location of this subdivision, the Water District is highly unlikely to resolve the problems of developing and implementing such systems to support residential buildout." *See* November 15, 2006 Letter from Meg Caldwell, Chair, California Coastal Commission to Del Norte LAFCO at 3. Nevertheless, during a Lafco staff onsite inspection of the District, staff noted what appeared to be approximately twenty non-permitted structures.

In addition to environmental concerns, the low density of the subdivision renders the cost of building sewage and water facilities economically prohibitive and renders development unlikely. The Coastal Commission concluded that "even under a theoretical ultimate development scenario involving the full build-out of all the remaining privately owned lots within the Pacific Shores subdivision that have not been purchased by public agencies, with a resulting overall density of only two dwellings per acre, assessments for paying the bonded capital improvement indebture associated with constructing a publicly-owned wastewater treatment plant, together with the pro rata share of fees to generate revenues necessary for the ongoing operation and maintenance of such a system render the option of a community sewer system economically infeasible." *See* California Coastal Commission letter to Del Norte LAFCO, re Del Norte Board of Supervisors Resolution Nos. 2006-060 and 2006-061, Nov. 15, 2007. Because approximately half of the Subdivision lots are now owned by the state of California, the cost of developing

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[5] Cease and Desist Order CCC-07-CD-07 and Consent Restoration Order No. CCC-07-RO-05 issued by CA Coastal Commission Oct. 11, 2007 re Butler-Gipson; Cease and Desist Order CCC-07-CD-05 and Restoration Order CCC-07-RO-03 issued by CA Coastal Commission Sept. 6, 2007 re Emerson, APNs 108-051-018, 108-051-019 and 107-182-10; Cease and Desist Order CCC-06-CD-08 issued Dec. 2006 re Wilson, APN 107-071-17; Cease and Desist Order CCC-06-CD-07, issued Sept. 14, 2006 re Wettengel, APN 108-071-02; Cease and Desist Order CCC-06-CD-04 issued June 14, 2006 re Kathlene Dawn Bicknell, APN 108-320-08.

water and sewage facilities for the remaining lots has effectively doubled. Again, the County echoed this position in its amended plan for services when it stated that "the concept of developing individual lots is also financially questionable." Del Norte Board of Supervisors, Resolution 2006-61, Amended Plan for Provision of Services Within the Territory Currently Within the Boundaries of the Pacific Shores Subdivision California Water District, Dec. 13, 2006.

V. Although the Proposed Dissolution Has No Environmental Impacts Under CEQA, a Negative Declaration was Prepared and Certified by LAFCO

Technically, the dissolution of the Water District is not subject to CEQA and no environmental review is legally required. That is, where it can be seen with certainty that the activity in question has no possibility of having a significant effect on the environment, CEQA review is not required. CEQA Guidelines § 15061(a)(3). The statute is not triggered by "organizational or administrative activities of governments that will not result in direct or indirect physical changes to the environment." CEQA Guidelines § 15378 (b)(5).

In this instance, the proposed dissolution is an organizational activity of government that will clearly and obviously lead to no physical changes in the environment. The Water District has no physical assets, apart from ownership of subdivision lots, operates no facilities, and provides no physical services. Because the County plans to continue to offer no services or facilities, there will be no physical impact on the environment.

Although CEQA review was not required for the County's proposal for dissolution, LAFCO found it prudent to conduct an environmental review. A negative declaration, with LAFCO listed as the lead agency and the County as the project sponsor, was prepared. On September 24, 2007 LAFCO approved and certified the negative declaration and the County's proposal for dissolution. The negative declaration reiterated that the dissolution of the Water District will result in no environmental impacts. Hence, LAFCO has properly considered any environmental impacts of the proposed dissolution.

VI. The Water District Board Protests the County's Application for Dissolution and requests an Election.

The Water District Board is protesting the County's application and requests election as noted by the attached resolution.

VII. Conclusion

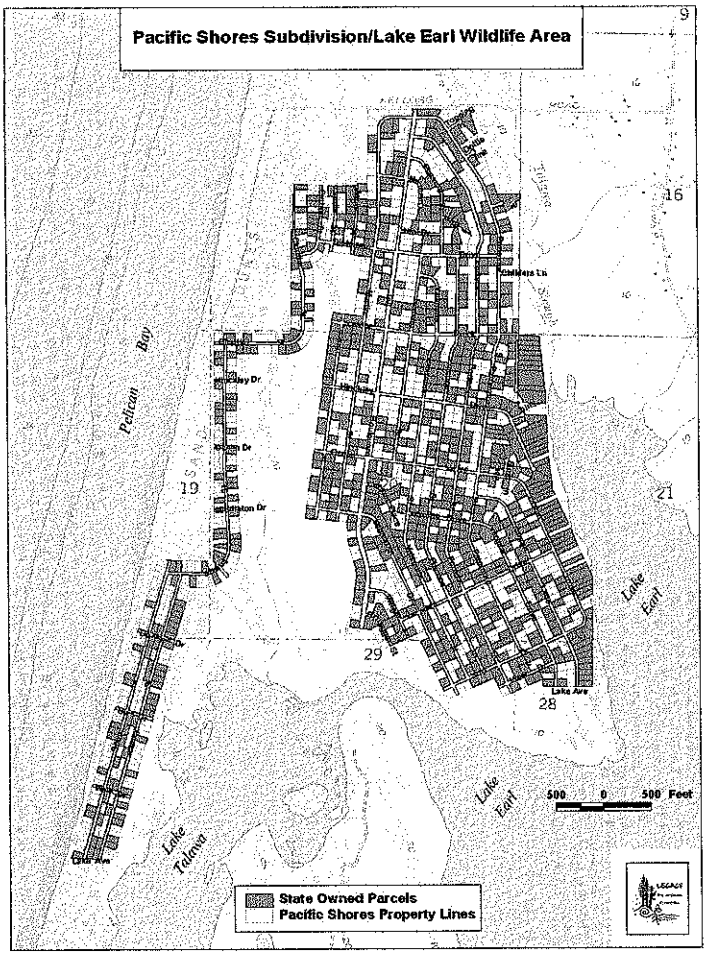
The Pacific Shores Subdivision California Water District has existed for twenty years and collected taxes for nearly 18 years. Since that time, the District has been plagued with legal challenges. In that time the District has not been able to or has been thwarted from completing a successful environmental study or development plan, or to

provide any water or sewage facilities to the Subdivision. In fact, development in the Subdivision is subject to numerous environmental and financial constraints, and it is highly unlikely that the Water District or any successor agency will ever obtain the requisite approvals for a development project unless a massive overhaul in the law is to occur, and/or a rapid change in technology happens, and/or the District comes up with an unknown viable method to deliver services that it has yet to disclose. Moreover, the Water District's continued use of the special tax levied under the Mello-Roos Act on lawsuits and other activities and on incomplete and inadequate environmental studies may be futile. However, seeing that this tax was initiated by the voters of the district, if the voters still desire to throw their tax money into what may appear as a black gaping hole in the hopes of filling it, it is their prerogative. Compounding the issue is the fact that the district's board is active and clearly exercising its corporate powers, unlike a typically abandoned district government. Further, dissolution may have a detrimental effect upon their current legal actions in federal court and locally.

Nevertheless the fact remains clear that for the past 20 years the People of the district have not received water, sewage, or onsite infrastructure on their property, no matter the source or cause of delay, some of which appears to be beyond the control of the water district and due to legal changes which have occurred overtime and beyond the control of the district's constituents. Unless the District or other proponents give a newfound method for development yet disclosed, the Del Norte Local Agency Formation Commission Executive Officer recommends dissolution of the Pacific Shores Subdivision California Water District unless the district's voters demand election pursuant to code.

Appendix A

Maps and drawings of properties in the jurisdiction of the Water District.


Pacific Shores Subdivision/Lake Earl Wildlife Area
Pelican Bay
Lake Talawa
Lake Earl
Lake Earl
Lake Ave
Lake Ave
Childers Ln
Dr
Dr
Dr
Dr
9
16
19
21
29
28
500 0 500 Feet
State Owned Parcels
Pacific Shores Property Lines

Appendix B

Proposed Budget for Fiscal Year: July 1, 2004 to June 30, 2005	
Legal Expenses	$63,402.00
Audits/CPA expense	$3,500.00
Telephone/FAX lines	$1,200.00
Directors' Fees	$6,000.00
Directors' Expenses	$4,115.00
Directors' Per Diem	$3,000.00
CPA Mahoney	$3,142.00
Newsletter	$2,000.00
Del Norte County Assessors	$1,900.00
Insurance-Liability	$7,325.00
Subscriptions/Periodicals	$126.00
Synergy Resource Solutions, Inc.	$21,000.00
Meeting Room	$1,500.00
North Coast Reimbursements	$24,429.00
P.O. Box Rental	$68.00
Miscellaneous Expenses	$300.00
Total	$143,007.00

Appendix C

Letters from California Coastal Commission

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

GRAY DAVIS, GOVERNOR

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET • SUITE 200
EUREKA, CA 95501-1865
VOICE (707) 445-7833
FACSIMILE (707) 445-7877

MAILING ADDRESS:
P. O. BOX 4908
EUREKA, CA 95502-4908

July 16, 2003

Members of the Board
Pacific Shores Subdivision California Water District
C/o James J. O'Connell III, President
PO Box 2151
Hawthorn, CA 90251-2151

Dear Members of the Board:

It has come to the attention of Coastal Commission staff that among Pacific Shores lot owners and possibly some members of the Pacific Shores Water District Board, there may be questions concerning which activities constitute "development" requiring a coastal development permit from the California Coastal Commission.

To facilitate a better understanding of the requirements of the Coastal Act, I have enclosed with this letter an explanation of the regulatory authority granted to the Commission, as well as pertinent sections of the law. I hope that this will provide the members of the Board with a clear understanding of requirements set forth in the Coastal Act. I also request that you publish the enclosed explanation in a future edition of the Water District's newsletter, to ensure that lot owners have a full understanding of their rights and obligations under the Coastal Act.

The district enforcement staff member responsible for enforcement activities in the north coast is Audrey McCombs. If you or anyone else has questions or would like to discuss any aspect of this letter or the enclosure, she can be contacted at the letterhead address, or at (707) 445-7833. I can be reached in our San Francisco office at (415) 904-5290.

Sincerely,

Nancy Cave
Northern California Supervisor of Enforcement
California Coastal Commission

cc: Del Norte County Supervisor Sarah Samples
Connie Stewart, Field Representative for Assemblymember Patty Berg
Ernie Perry, Director of Community Development for Del Norte County
Helen Furguson, Secretary, Pacific Shores California Water District

STATE OF CALIFORNIA – THE RESOURCES AGENCY

GRAY DAVIS, GOVERNOR

CALIFORNIA COASTAL COMMISSION
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MAILING ADDRESS:
P. O. BOX 4908
EUREKA, CA 95502-4908

July 16, 2003

Dear Pacific Shores Subdivison Lot Owners and Other Interested Parties:

Coastal Commission staff is aware that many questions have been raised about development on parcels in the Pacific Shores subdivision. The following information explains the state law that governs development within the coastal zone, the Coastal Act, especially those sections that are particularly relevant to Pacific Shores. We hope that this information will help lot owners and other concerned citizens better understand the rights afforded to and obligations imposed on property owners proposing to develop property within the coastal zone.

What authority does the Coastal Commission have to regulate development?

The Coastal Act states that activity defined as "development" within the coastal zone requires a coastal development permit (CDP).[i] The entire Pacific Shores subdivision lies within the coastal zone; therefore, all development at Pacific Shores requires a CDP. Del Norte County has a certified local coastal program for much of the County's coastal zone, and issues most of the CDPs in those areas. However, the Pacific Shores subdivision is within an "area of deferred certification," where no local coastal program has been certified. In areas of deferred certification, all CDP's are processed by the Coastal Commission directly, rather than by the local government.

What counts as development?

The definition of development in the Coastal Act is very broad, and is set forth in the attached notes.[ii] The kinds of activities that fall within the scope of development most relevant to Pacific Shores are described below.

- The placement or erection of any solid material or structure.
  - This includes, but is not limited to, such activities as 1) placing dirt or gravel on your property to create a pad to park a vehicle, 2) installing a culvert or drainage pipe, and 3) placing a shed, outhouse, fence, gate or any other structure on your property.
- Grading, removing, dredging, or extraction of any materials.
  - This covers any kind of landform alteration on your property, including digging by hand or with heavy equipment. It also includes filling-in wet areas and altering the natural drainage patterns.
- Change in the density or intensity of use of land.
  - This includes converting your property from a vacant unused parcel to one that is used as a residence or seasonal camping area.
- Construction of any structure.
  - This includes constructing any kind of physical structure, including, but not limited to, structures such as a shed, fence, gate, or house.
- Removal or harvesting of major vegetation.

- "Major vegetation" includes, among other things, native vegetation growing in areas that are wetlands or sand dunes. It also includes native vegetation that is habitat for sensitive, threatened, or endangered species. Habitat for sensitive, threatened, or endangered species constitutes "environmentally sensitive habitat areas" (ESHAs) which receive special protection under the Coastal Act. Removing plants associated with wetlands, sand dunes, and ESHAs constitutes development which first requires a CDP before removal occurs.

This list of activities that constitute development is not exhaustive – if you have any questions about whether or not an activity is "development", we encourage you to discuss your questions with Commission staff.

How do I apply for a coastal development permit (CDP) from the Commission?

The CDP application process involves submitting an application form, which includes a detailed description of the proposed development project, as well as supplementary information required to determine if the project is consistent with the policies found in Chapter Three of the Coastal Act. After receiving an application with all supplementary information, staff will review the application for completeness, and will inform the applicant as to what additional information, if any, is needed to complete the application. Once the application is complete, staff will analyze the proposed project for constancy with the Coastal Act, and prepare a report that recommends approval, approval with conditions, or denial of the project, based on whether or not the project is consistent with the Coastal Act. The application will be then be scheduled for consideration by the Commission at one of its monthly meetings.

The Coastal Act encourages public participation in the permitting and development process. The staff report is mailed to interested parties and property owners within 100 feet of the proposed development project. The Commission considers the CDP application at a public hearing, at which any interested member of the public is allowed to speak for or against the project. If you are unable to attend the hearing, you can submit comments in writing. After the public hearing, the Commission votes on whether or not to approve the project and grant or deny the CDP request.

Three policies in the Coastal Act are particularly relevant to proposed development at Pacific Shores. The first policy relates to environmentally sensitive habitat areas (ESHAs). Section 30240 of the Coastal Act requires that ESHAs be protected against significant disruption of habitat values, and that only uses dependent on those resources be allowed. This policy also requires that development in areas adjacent to ESHAs must avoid impacts that would significantly degrade those areas, and must be compatible with the continuance of the habitat area.[iii]

The Pacific Shores subdivision is located in an area of pervasive ESHAs, and CDP applications for development in Pacific Shores may require substantial supplementary biological information to allow the Commission to determine whether or not the proposed development project is consistent with these requirements of the Coastal Act. Depending on the scope of the development and the characteristics of the site, a wetlands delineation and/or a biological assessment may need to be submitted as part of a CDP application. Typically, project applicants hire a consulting firm to perform these studies. Generally speaking, if a project is inconsistent with the ESHA policies (or any other policies) of the Coastal Act, the Commission either will

condition the permit to require changes to make it consistent with the policies, or if that cannot be done, will deny the project.

A second policy of the Coastal Act particularly relevant to development at Pacific Shores relates to fill in wetlands. Section 30233 of the Coastal Act states that diking or filling of wetlands is only allowed for eight very specific purposes, such as the development of commercial fishing facilities, or for restoration purposes. Residential use is not among the eight purposes for which diking and filling of wetlands is allowed. A development project that proposes the placement of fill in wetlands for residential use would not be consistent with this section of the Coastal Act.[iv]

A third policy of the Coastal Act particularly relevant to development at Pacific Shores relates to the availability of public services and cumulative impacts on coastal resources. Section 30250 of the Coastal Act indicates that new residential development must be located in an area with adequate public services, including water and sewage disposal facilities. Sewage disposal facilities are especially problematic at Pacific Shores, because the presence of a very high water table in many cases precludes the use of septic systems. In addition, the Pacific Shores subdivision does not have a community-based sewer system or water system. An application for residential development at Pacific Shores must demonstrate that water supply and sewage disposal has been adequately addressed. This policy also indicates that new development must be located in areas where it will not have cumulatively significant adverse effects on coastal resources.[v]

The three policies of the Coastal Act noted above are not the only policies against which a project is analyzed for consistency, but they are particularly relevant to development at Pacific Shores. Every person has a right to apply for a CDP for any development project, and Commission staff helps project applicants as much as possible to understand potential inconsistencies of the project with the Coastal Act, and to discuss project modifications that might eliminate such inconsistencies. It is our job to make sure that development is carried out in accordance with state coastal law. There are some development projects at Pacific Shores for which staff can recommend approval, and some for which staff must recommend denial because of inconsistency with the Coastal Act. But we often cannot determine what the staff recommendation is likely to be until we have a specific project description and all the relevant supplementary information submitted as a CDP permit application.

If you are considering performing development on a lot at Pacific Shores, we encourage you to discuss your plans with Commission staff as early as possible in the process. You can arrange for a pre-application meeting with staff to review the project and identify issues of concern.

How does Commission staff enforce development regulations?

Any development performed at Pacific Shores (or anywhere in the coastal zone) without first securing a CDP is a violation of the Coastal Act's permit requirements discussed above. All reports of alleged Coastal Act violations are independently confirmed by Commission staff before an enforcement action is initiated.[vi] The Commission keeps the identity of persons reporting violations in confidential files.

Once a violation has been confirmed by Commission staff, we work with the violator to resolve the violation. There are two paths to resolution: the administrative path and the formal enforcement action path. An administrative resolution involves voluntary submission of a permit application to resolve the violation. Often, the submitted application is for removal of the

unpermitted development and restoration of the site to the condition it was in before the unpermitted development occurred. Any permit application submitted to resolve a violation must go through the same application procedure described above, including analysis for consistency with the Coastal Act, a public hearing, and a vote by the Commission.

Commission staff prefers to work with violators to resolve violations administratively, however, if a violation is not resolved voluntarily, formal remedies are available to the Commission.[vii] The Executive Director of the agency can issue a temporary cease and desist order, valid for ninety days and requiring the violator to cease all unpermitted development activities. After conducting a public hearing, the Commission can issue permanent cease and desist orders, as well as restoration orders requiring removal of the unpermitted development and restoration of the site to the condition it was in before the unpermitted development occurred. Violation of either a cease and desist order or a restoration order can carry fines of up to $6000 per day.

The Coastal Act also authorizes the superior court to impose liability for violation of the Coastal Act in an amount between $500 and $30,000. Knowing and intentional violation of the Coastal Act can carry liability between $1,000 and $15,000 per day for each day that the violation persists. In addition to these penalties, the Coastal Act authorizes exemplary damages.

Commission enforcement staff has recently opened several new violation cases for alleged unpermitted development activity on lots within the Pacific Shores subdivision. If you have unpermitted development on your property, we encourage you to contact Commission staff, so that we can work together towards resolving the situation. If you would like to report a suspected violation of the Coastal Act, please contact enforcement staff.

Who should I talk to if I have questions?

The permit analyst for the Pacific Shores subdivision is Jim Baskin. Please call Jim if you have any questions about what counts as development or how to apply for a permit. The enforcement staff member for the north coast area is Audrey McCombs. Please call Audrey to discuss any enforcement related issues. Both Jim and Audrey can be contacted at the North Coast District Office in Eureka, at (707) 445-7833. Additional information about the Commission and the permit process can be found on the Internet at www.coastal.ca.gov. Copies of the Coastal Act are available on-line at this site, or for $10.00 from our office.

Notes

[i] **Section 30600(a)** ...[A]ny person...wishing to perform or undertake development in the coastal zone...shall obtain a coastal development permit.

[ii] **Section 30106** "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 density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreation use; 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 harvest 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).

[iii] **Section 30240** (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

[iv] **Section 30233** (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource-dependent activities.

[v] **Section 30250** (a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources…

[vi] Sections 6254(f) and 6254(k) of the Public Records Act provide for exceptions to disclosure requirements in the case of law enforcement records. Please contact Commission enforcement staff if you have any questions about confidentiality.

[vii] Coastal Act sections 30802 and 30803 discuss provisions for civil liability. Sections 30809, 30810 and 30811 discuss cease and desist orders and restoration orders. Section 30821 provides for penalties for violations of cease and desist or restoration orders. Finally, section 30822 discusses exemplary damages.

ST TE OF CALIFORNIA – THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, GOVERNOR

CALIFORNIA COASTAL COMMISSION
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SAN FRANCISCO, CA 94105-2219
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TDD (415) 597-5885

November 15, 2006

Sarah Sampels, Chair, Del Norte LAFCO
Esteemed Members Leslie McNamer, Don Micheletti, Dennis Burns and Mick Scavuzzo
Darren McElfresh, Executive Officer
Del Norte LAFCO
508 H Street, Suite 2
Crescent City, CA 95531

Subject: Del Norte Board of Supervisors Resolution Nos. 2006-060 and 2006-061

Dear Chair Sampels, esteemed members and Executive Officer McElfresh:

On September 14, 2006 the California Coastal Commission issued its third Cease and Desist Order regarding unpermitted development activity taking place on property within the Pacific Shores subdivision in Del Norte County. The Commission issued the order to halt unpermitted residential development occurring on vacant lots within the subdivision. During the public hearing, the Commission became aware of recent action taken by the Del Norte County Board of Supervisors with respect to the Pacific Shores Subdivision California Water District.

On August 8, the Del Norte County Board of Supervisors considered and passed two resolutions. Resolution No. 2006-060 addresses the handling of funds derived from Chapter 8 lot sales in Pacific Shores. The Board directed the County Auditor-Controller to establish a special account within the treasury of the County and to transfer all proceeds of Chapter 8 sale of lots in the Pacific Shores Subdivision to said account. The account shall be held in trust and shall not be released except upon: (a) approval of a LAFCO plan for a change of organization setting forth terms and conditions for said monies, (b) further order of the Board of Supervisors, or (c) a final order of a court of competent jurisdiction.

Resolution No. 2006-061 proposes a change of organization of the Pacific Shores Subdivision California Water District. The County resolution noted that the Pacific Shores Subdivision California Water District ("Water District") was formed in 1987 "for the purposes of providing water supply and distribution and sewage treatment and disposal, and that the Water District created a Mello-Roos Communities Facilities District ("CFD") in order to raise money to pay expenses related to planning, study and administration needed to design and build public facilities.

For sixteen years, subdivision lot owners have paid substantial annual assessment special taxes to the CFD and Water District, totaling millions of dollars, but lot owners have yet to receive any water or sewer services nor have any plans been prepared or submitted that would lead to the construction of such necessary services. The Water District has spent virtually all its funds on legal fees, incomplete environmental studies (has started but not completed at least three

adequate water and sewage disposal infrastructure, and because of the many sensitive coastal habitat issues, the Commission has not approved any requests for coastal development permits for construction of new residential structures at Pacific Shores. The Water District was formed to find solutions to this lack of infrastructure and it has failed to do so. More importantly, due to the location of this subdivision, the Water District is highly unlikely to resolve the problems of developing and implementing such systems to support residential buildout. Therefore, at its September 14, 2006 meeting, the Coastal Commission unanimously voted to voice its support for Del Norte County Board of Supervisors' resolution actions. The Commission shares the Board's concern regarding the inaction of the Pacific Shores California Water District regarding the purpose for its formation. The Commission fully supports the County in its application to LAFCO to dissolve the Water District.

Sincerely,

Meg Caldwell

MEG CALDWELL
CHAIR
California Coastal Commission

Cc: Coastal Commissioners

bcc: Peter Douglas
Nancy Cave
Bob Merrill
Jim Baskin

STATE OF CALIFORNIA—THE RESOURCES AGENCY ARNOLD SCHWARZENEGGER, GOVERNOR

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August 24, 2007

Dwayne B. Smith, President
Pacific Shores Water District
13220 Southport Lane 170-F
Seal Beach, CA 90740

SUBJECT: Proposed Water and Sewage Service to Pacific Shores Subdivision

Dear Mr. Smith:

We have received your letter of August 7, 2007 stating that the Board of the Pacific Shores Water District is considering changing the plans for servicing the Pacific Shores Subdivision to the use of holding tanks for drinking water served by water trucks and individual waste disposal systems such as a Wisconsin Mound System or by an electrified composting toilet. Your letter notes the acquisition of numerous parcels at Pacific Shores by the Wildlife Conservation Board on behalf of the California Department of Fish & Game and asks for our support of a plan for development of the remaining lots using holding tanks for drinking water and individual waste disposal systems.

The Commission has consistently maintained the position that any comprehensive plan for future development within the Pacific Shores subdivision should be based on a specific study of the area that takes into account all of the resource, inundation, and infrastructure constraints on development. As I describe below, these constraints to development are significant and must be accounted for and a realistic assessment of what residential development would be possible under the Coastal Act should be performed before a long-range plan for future residential development is developed.

When the Coastal Commission initially certified the Del Norte County Land Use Plan component of the County's Local Coastal Program (LCP) in 1981, it declared the Pacific Shores subdivision to be an Area of Deferred Certification based on findings identifying numerous unresolved concerns about development impacts on numerous coastal resources. The Commission found that there are significant existing constraints on development within most of the subdivision that must be considered when establishing land use, density of development, and design standards for the development. Several significant environmentally sensitive areas lie within or in close proximity to the subdivided lots, namely seasonal wetlands, estuarine areas, and habitat for sensitive species. Many of these environmentally sensitive habitat areas cover whole lots and groups of lots within the subdivision. In addition, the subdivision is subject to seasonal inundation by the waters of Lakes Earl/Talawa. Furthermore, very little infrastructure

exists to serve development within the subdivision except approximately 27 lineal miles of roadway constructed with paved, chip-sealed, and/or gravel surfaces shortly after the subdivision was approved in 1963 and a single-circuit, 12.5-kilovolt (kV) electrical transmission line with no substation facilities. Only one permanent residence has been developed legally within the bounds of the subdivision. The residence was constructed prior to the 1972 Coastal Initiative (Proposition 20) and the Clean Water Act, and therefore did not require either a coastal development permit or installation of a septic disposal system consistent with contemporary design requirements. That residence is now owned by the California Wildlife Conservation Board. As your letter seems to acknowledge, developing water and sewage disposal infrastructure is highly improbable. Even under a theoretical ultimate development scenario involving the full build-out of all the remaining privately owned lots within the Pacific Shores subdivision that have not been purchased by public agencies, with a resulting overall density of only two dwellings per acre, assessments for paying the bonded capital improvement indebture associated with constructing a publicly-owned wastewater treatment plant, together with the pro rata share of fees to generate revenues necessary for the ongoing operation and maintenance of such a system render the option of a community sewer system economically infeasible.[1]

In its action in 1981to create the area of deferred certification, the Commission adopted findings indicating that the County should address the subdivision as a special study area and address the issues noted above for the purposes of developing adequate background information upon which the County can base a land use proposal reflective of Coastal Act resource protection policies. In 1985, the Commission granted a Coastal Development Permit (CDP 85-38) to the "Pacific Shores Property Owners" authorizing the "formation of a special district only for the limited purpose of financing and carrying out the special study required by the Commission's 1981 certification of Del Norte County's LCP," the action creating the area of deferred certification. The Commission's findings for approval of the permit stated that there is a need to establish a mechanism to fund and carry out the studies necessary to evaluate appropriate land use regulation at Pacific Shores, to aid efforts by the County to complete a certifiable LCP for the Pacific Shores Subdivision area. The findings stated that approval of the permit did not imply any future approval of development at Pacific Shores or any commitment to approval of any particular LCP provisions for the area. To date, no such special study has been prepared by the District or any other entity, and, consistent with the Commission's previous actions regarding Pacific Shores, the Commission staff continues to believe that a long-range plan for residential development of the area should only be prepared after a credible special study of the kind I describe above is completed.

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[1] See Commission adopted findings of fact for CDP 1-04-008 (Kathleen Dawn Bicknell). Further discussion regarding the infeasibility of development of a centralized publicly-operated treatment works can be found in the administrative record for *Tolawa nation, et al., v. California Department of Fish and Game, et al.*, County of Del Norte Superior Court Case No. 04 CS 01254.

As far as the Pacific Shores Water District Board's proposed use of holding tanks for drinking water served by water trucks and individual waste disposal systems such as a Wisconsin Mound System or electrified composting toilet to serve future residential development, if such proposals are potentially viable, the use of such facilities should be addressed under the special study process. However, we do not see evidence that such facilities would viably serve residential development at Pacific Shores and meet local health department and Regional Water Quality Control Board standards. To the contrary, based on discussions our staff has had with staff of the Del Norte County Heath Department and the Regional Water Quality Control Board, there appear to be very significant impediments to using onsite sewage disposal systems at Pacific Shores. We understand that it is very doubtful that any lot in the Pacific Shores subdivision possesses soils that would meet Basin Plan requirements for onsite sewage disposal systems, whether conventional or alternative. In addition, as many lots within the subdivision are inundated at least part of the year, we understand the high groundwater table would preclude the use of onsite sewage disposal systems. We understand that any proposed onsite sewage disposal system that does not meet Basin Plan requirements must be reviewed and approved directly by the Regional Water Quality Control Board, and that Regional Board staff is doubtful that any onsite sewage disposal system, conventional or alternative, would be feasible to use at Pacific Shores.

As a Local Coastal Program has never been certified for the Pacific Shores subdivision, the Coastal Commission continues to exercise coastal development permit authority over the subdivision. Anyone proposing residential or other development within the subdivision must apply directly to the Commission for a coastal development permit. A property owner may submit an application for development even though a special study and comprehensive plan referred to above has never been submitted to the Commission. However, the lack of a special study and a comprehensive plan for development based on such a special study that resolves the numerous resource, inundation, and infrastructure issues discussed above makes it very difficult for individual lot owners to submit a coastal development permit application with the information necessary for the Commission to determine that the proposed development is consistent with the Chapter 3 policies of the Coastal Act. For example, Section 30250 of the Coastal Act indicates that new residential development must be located in an area with adequate public services, including water and sewage disposal facilities, where it will not have cumulatively significant adverse effects on coastal resources. Section 30240 of the Coastal Act requires that Environmentally Sensitive Habitat Areas (ESHAs) be protected against significant disruption of habitat values, and that only uses dependent on those resources be allowed within the ESHAs. This policy also requires that development in areas adjacent to ESHAs must avoid impacts that would significantly degrade those areas, and must be compatible with the continuance of the habitat area. Therefore, to be deemed complete, an application for residential development at Pacific Shores must demonstrate, among other things, that both water supply and sewage disposal have been adequately addressed. This information would likely need to include septic system analyses by qualified consultants and at least preliminary approvals from the Health Department and

Regional Board that the proposed onsite waste disposal system is feasible and appropriate for the particular development site. In addition, information addressing the individual and cumulative impacts of the proposed residential development on sensitive habitat would be required. Depending on the scope of the development and the characteristics of the site, a wetlands delineation and/or substantial supplementary biological information may also need to be submitted.

Finally, your letter makes reference to statements alleged to have been made by a former Coastal Commission staff member to the effect that if half of the lots at the Pacific Shores Subdivision were committed to open space, the other half could be developed. We have not seen any source for these allegations and do not believe them to be true, as an individual staff member does not have the authority under the Coastal Act to "decree" that development is approved, as you state in your letter. Pursuant to the Local Coastal Program certification and coastal development control procedures established under Chapters 6 and 7 of the Coastal Act, respectively, only the appointed Commission would have the authority to approve such a development plan through certification of a local coastal program or the granting of a coastal development permit after public hearing. As I have noted above, no Local Coastal Program has been certified for the Pacific Shores Area and no coastal development permit has been granted to date for residential development at Pacific Shores.

In light of the above, I hope you understand that the District will not be able to move ahead with a comprehensive development plan for the lots at Pacific Shores until our concerns have been addressed. If you have any questions, please don't hesitate to call me (415-904-5201) or e-mail me at pdouglas@coastal.ca.gov.

Sincerely,

Robert S. Merrill

ROBERT S. MERRILL, DISTRICT MANAGER, FOR

PETER DOUGLAS
Executive Director

PD/css

cc: Del Norte County Board of Supervisors
Del Norte LAFCO
Pacific Shores Property Owners Association
Del Norte County Community Development Department, Attn: Ernie Perry
North Coast Regional Water Quality Control Board, Attn: John Short
Del Norte County Department of Environmental Health, Attn: Leon Perrault

Appendix D

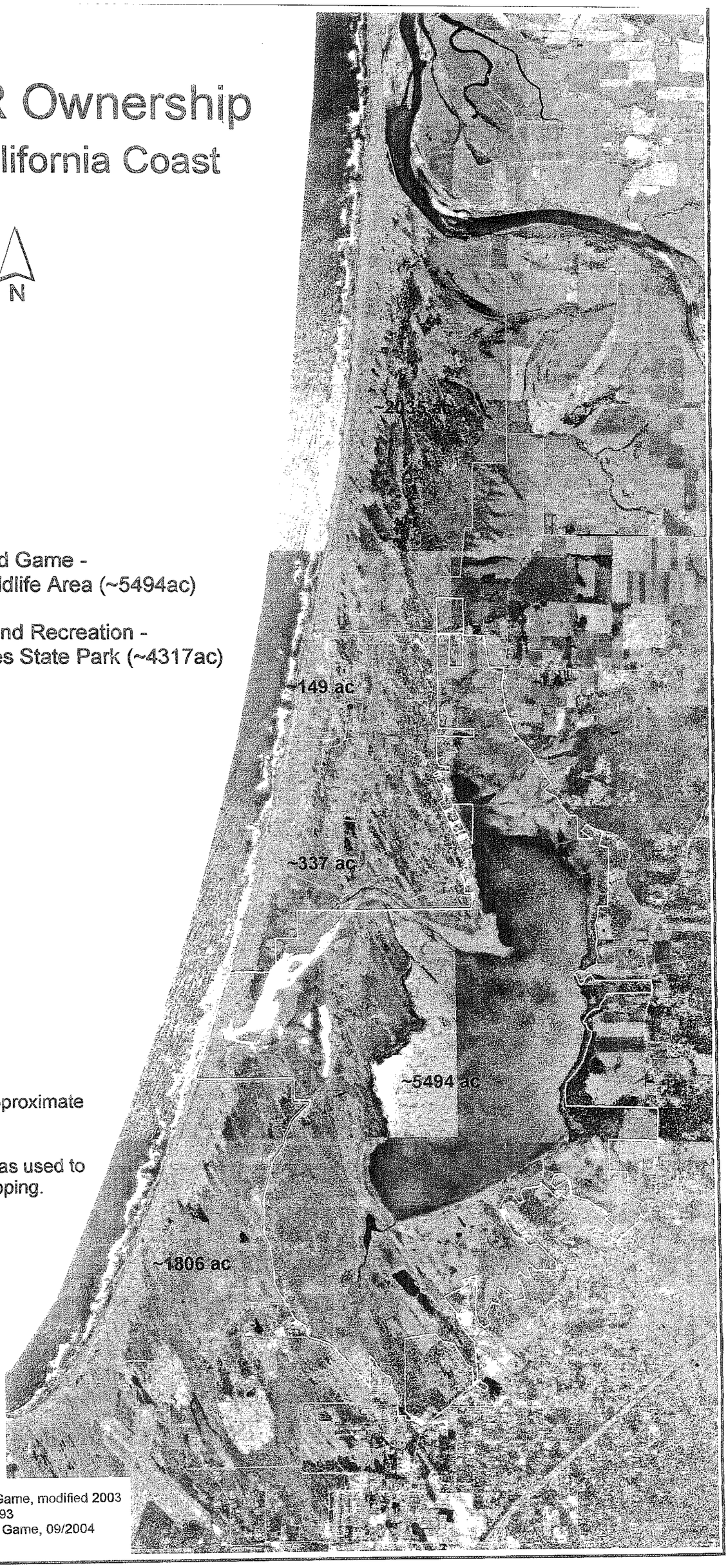
Referenced Maps from other Sources.

Fig. 3

DFG / DPR Ownership

Northern California Coast

N



LAND OWNERSHIP

Dept. of Fish and Game -
Lake Earl Wildlife Area (~5494ac)

Dept. of Parks and Recreation -
Tolowa Dunes State Park (~4317ac)

NOTES
This map is intended to show approximate ownership boundaries.

A buffer of the DPR boundary was used to prevent boundaries from overlapping.

Data: Ownership, CA Department of Fish and Game, modified 2003
DOQ, North Coast Information Cooperative, 1993
Map: Charlotte Peters, Department of Fish and Game, 09/2004
e:/GIS/Projects/DFG-DPR-ownership.mxd

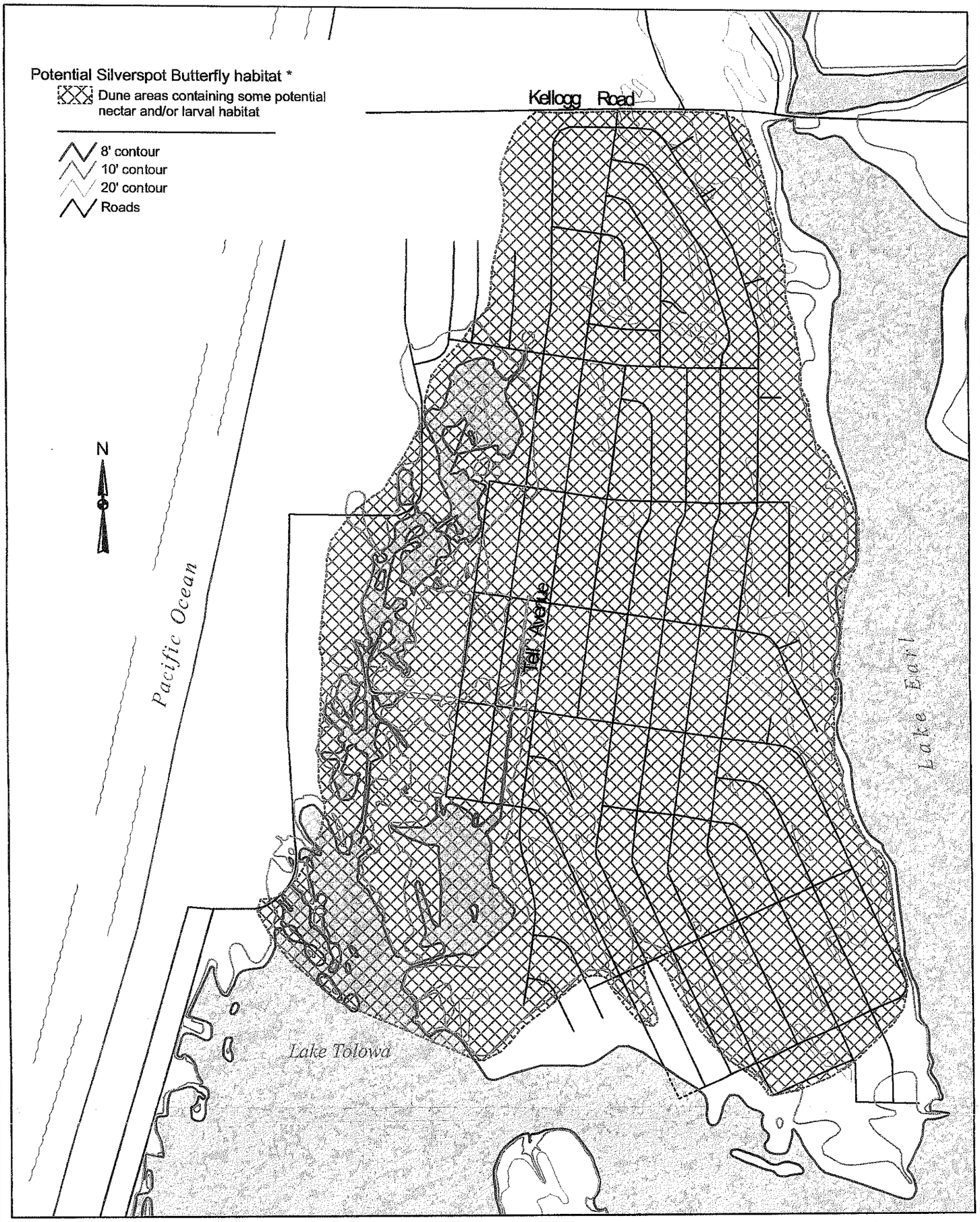


Figure 4-1. Potential Oregon Silverspot Butterfly Habitat In and Adjacent to the Lake Earl Wildlife Area

*** Potential habitat based on habitat characteristics. Oregon Silverspot Butterfly habitat may exist outside areas identified as potential habitat.**

This map is for planning purposes only.
Lake levels are shown at 8 feet MSL (California Department of Water Resources, 1988).
Potential habitat: California Department of Fish and Game and U.S. Fish and Wildlife Service (2002).
Contour data: California Department of Water Resources (1988), and USGS Topographic Quadrangles, 7.5-minute series.
Base data: California Department of Fish and Game.
Map by California Department of Fish and Game, Eureka (May 2003).

0 2500 Feet

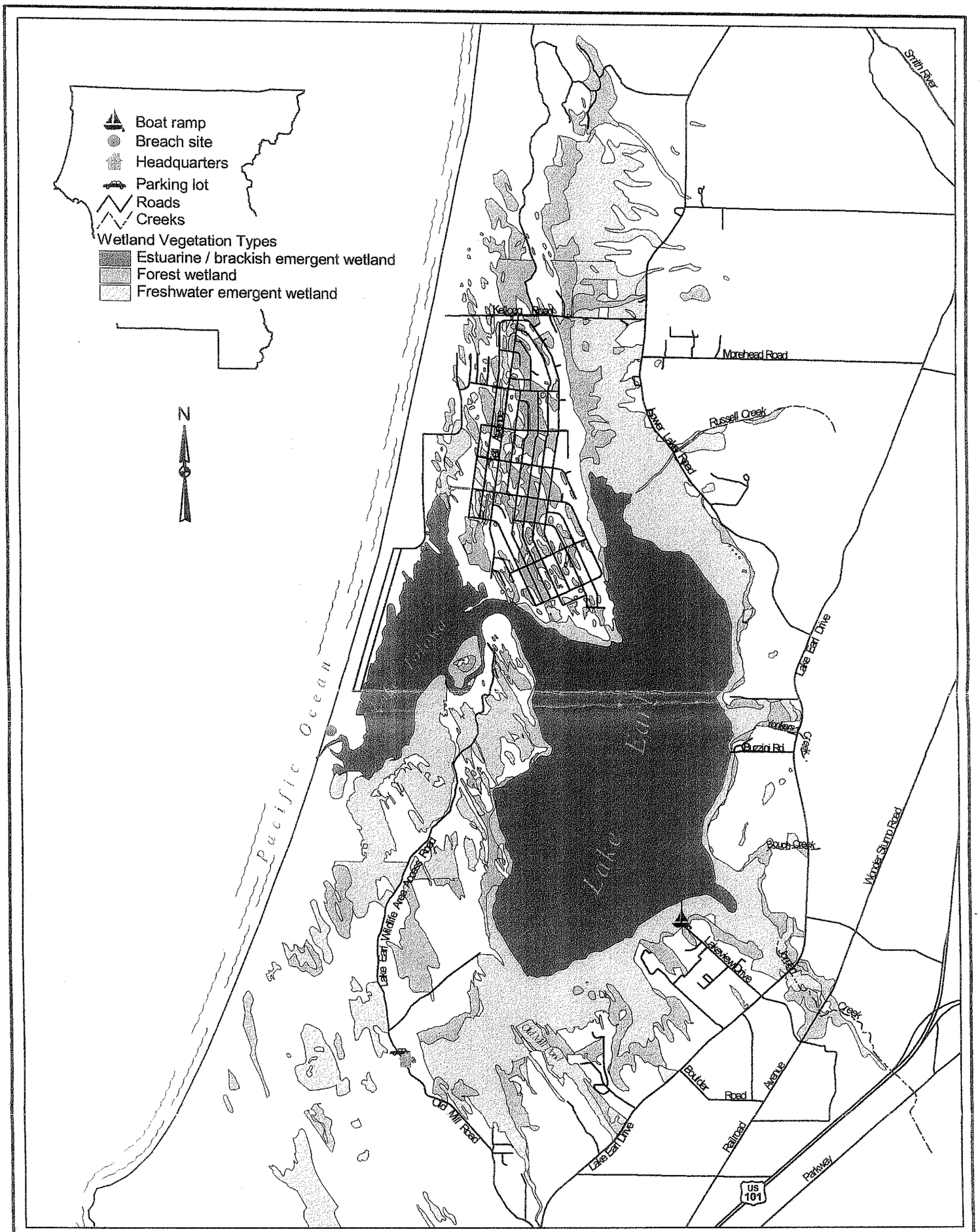


Figure 4-2. Major Wetland Types Present at Current Managed Water Surface Elevation (8'-10')

Also shows wetlands present for the preferred alternative (8-10'). Wetland maps at other alternatives would be considered similar to this map; however, data do not exist to map wetland types at the other alternatives.

This map is for planning purposes only.
Lake levels are shown at 8 feet MSL (California Department of Water Resources, 1988).
Vegetation: modified from Tetra Tech, Inc. (1999), Eicher (1988), and National Wetlands Inventory (1987), with aerial photograph verification.
Streams: California Department of Forestry and Fire Protection (2001).
Base data and facilities: California Department of Fish and Game.
Map by California Department of Fish and Game, Eureka (August 2002).

Scale 1:39320

0 2500 5000 7500 Feet

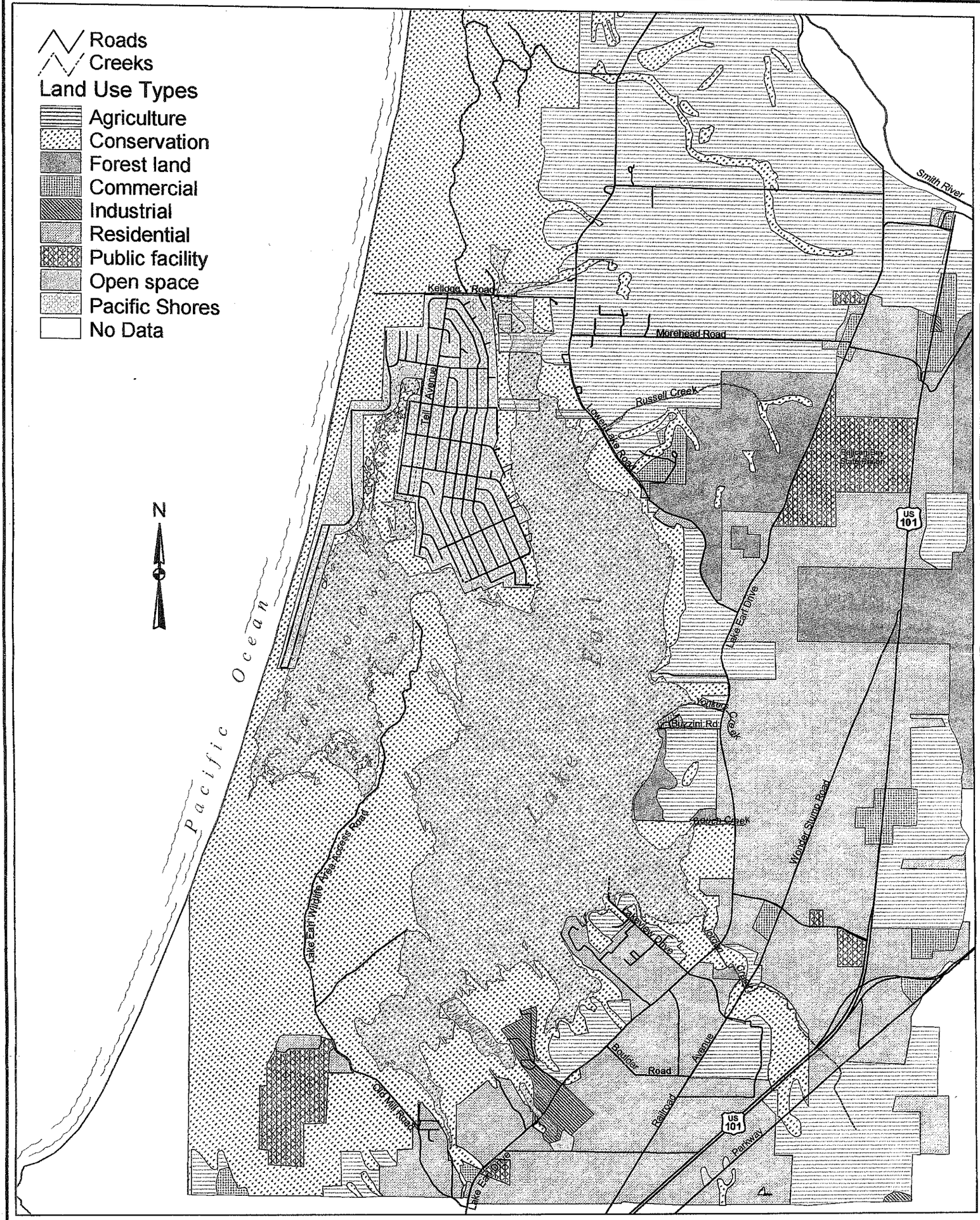


Figure 7. Existing Land Use Activities in and Adjacent to the Lake Earl Wildlife Area

This map is for planning purposes only.
Lake levels are shown at 8 feet MSL (California Department of Water Resources, 1988).
Existing Land Use: Modified from Crescent City/Lake Earl Area, Planning Area No. 3, Local Coastal Plan (1984), and Smith River Area, Planning Area No. 1, Local Coastal Plan (1984).
Streams: California Department of Forestry and Fire Protection (2001).
Base data: California Department of Fish and Game.
Map by California Department of Fish and Game, Eureka (August 2002).

Scale 1:39826

0 2500 5000 7500 Feet

Appendix E

Land Use Maps

County of Del Norte 2007 Land Use Plan/ County ZoningOverlay Of Pacific Shores Special Study Area zoning Excerpt

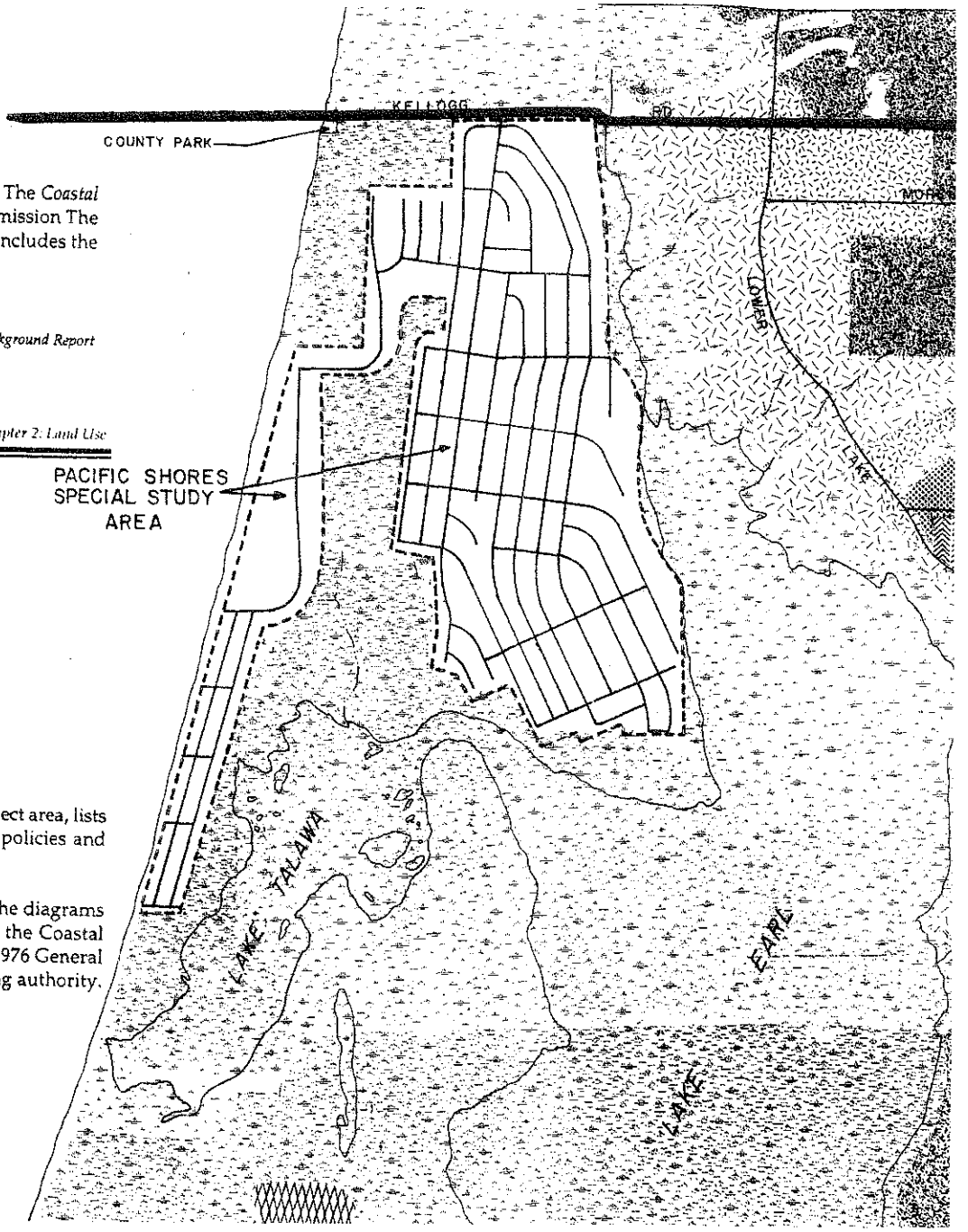
COASTAL ELEMENT

The *Coastal Element* of the General Plan was adopted February 1984, and updated July 1986. The *Coastal Element* is a portion of the Local Coastal Program (LCP) certified by the California Coastal Commission The *Harbor Plan*, discussed separately, also constitutes part of the certified LCP. The *Coastal Element* includes the following chapters:

- Marine and Water Resources;
- Recreation;
- Marhoffer Creek Wetland Special Study;
- Elk Creek Wetland Special Study;
- Land Resources (includes agriculture and forestry lands);
- Hazard Areas;
- Visual Resources;
- Public Works;
- Industrial;
- New Development; and
- Land Use.

Each chapter includes a background discussion, summarizes the Coastal Act policies for the subject area, lists existing local policies, then sets out Local Coastal Program (LCP) policies and specific area policies and recommendations.

The *Coastal Element* also includes the land use diagrams for the coastal zone planning areas. The diagrams for two areas within the coastal zone (see Figure 2-1) have, however, not been certified by the Coastal Commission: the Pacific Shores/Lake Earl area and the Pt. St. George area. In these areas, the 1976 General Plan land use provisions apply, while the Coastal Commission retains direct land use permitting authority.



Del Norte County General Plan Revision

REVISED DRAFT BACKGROUND REPORT

Prepared by

Mintier & Associates
Jones & Stokes Associates
Dowling Associates
Del Norte County Community Development Department

Under an award from

U.S. Department of Commerce
Economic Development Administration
Project Number 07-09-04068

May 1, 1998

MOBILEHOMES

The 1976 General Plan also includes a chapter entitled "Mobilehomes." This chapter describes tax issues relating to mobilehomes, details mobilehome policies, and sets out guidelines for mobilehome parks, including location and standards for site development and improvements.

LAND USE ELEMENT

The *Land Use Element* defines land use designations and standards. It also includes a table showing general plan - zoning compatibility. The *Land Use Element* includes seven separate land use maps, all at a scale of 1" = 24,000'. These cover three coastal zone areas (Smith River Area, Crescent City/Lake Earl Area, and Klamath Area) and five non-coastal zone areas (Crescent City Area, Smith River Area, Klamath Area, Gasquet Area, and Hiouchi Area). The *Land Use Element* includes a key map for the four non-coastal zone maps.

CITY OF CRESCENT CITY

The *Del Norte County General Plan* includes a chapter entitled "Crescent City" which the City of Crescent City adopted as its General Plan. This chapter describes existing conditions in Crescent City, including land use, the central business district, and city utilities, and incorporates the county General Plan elements for circulation, harbor, noise, seismic safety and safety, and housing. This chapter includes goals and development policies, and a set of land use designations specifically for Crescent City.

HOUSING ELEMENT

The County and the City of Crescent adopted a joint housing element, the *City of Crescent City & County of Del Norte Housing Element*, on August 24, 1992. The *Housing Element* includes six sections. The first section provides background information on the community, including population growth trends, and background on the economy and households in Del Norte County. The second section provides background information on housing, including discussions of housing stock, housing conditions, housing market areas, energy conservation, and an assessment of the 1984 Housing Element. The next section assesses housing needs, including special needs, assisted rental housing at risk of conversion to market-rate housing, and emergency and homeless shelter needs. The fourth section discusses vacant land and development sites, including separate discussions of vacant land in unincorporated Del Norte County and vacant land in incorporated Crescent City. This section also discusses surplus lands, homeless shelter lands, and analyzes the availability of services. The fifth section describes development constraints on housing, including state and federal governmental constraints, local governmental constraints, and nongovernmental constraints. The final section includes the goals, policies, and quantified objectives of the *Housing Element* for the 1992-1997 time frame.

Adoption of the *1992 Housing Element* supersedes the *1984 Housing Element* included under the General Plan cover. The 1984 element had superseded the County's first housing element, adopted in 1977.

COASTAL ELEMENT

The *Coastal Element* of the General Plan was adopted February 1984, and updated July 1986. The *Coastal Element* is a portion of the Local Coastal Program (LCP) certified by the California Coastal Commission The *Harbor Plan*, discussed separately, also constitutes part of the certified LCP. The *Coastal Element* includes the following chapters:

- Marine and Water Resources;
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- Elk Creek Wetland Special Study;
- Land Resources (includes agriculture and forestry lands);
- Hazard Areas;
- Visual Resources;
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- Industrial;
- New Development; and
- Land Use.

Each chapter includes a background discussion, summarizes the Coastal Act policies for the subject area, lists existing local policies, then sets out Local Coastal Program (LCP) policies and specific area policies and recommendations.

The *Coastal Element* also includes the land use diagrams for the coastal zone planning areas. The diagrams for two areas within the coastal zone (see Figure 2-1) have, however, not been certified by the Coastal Commission: the Pacific Shores/Lake Earl area and the Pt. St. George area. In these areas, the 1976 General Plan land use provisions apply, while the Coastal Commission retains direct land use permitting authority.

HARBOR PLAN

The *Harbor Plan*, adopted in 1976 and updated in 1986, is a part of the County's certified LCP. The *Harbor Plan* addresses land use and policy for the portion of the Crescent City Harbor area under Del Norte County's jurisdiction. The portion of the Harbor within the Crescent City limits is addressed in Crescent City's LCP.

The *Harbor Plan* describes existing Harbor plans and programs, existing Harbor facilities and development constraints, describes the land and water area requirements for optimum harbor development, establishes policies and criteria for future land use within the Harbor, and sets out a land use plan and implementation program for physical development of the Harbor.

2.3 LAND USE DIAGRAM

The most familiar part of any general plan is the map, or land use diagram, showing the types and locations of development called for in the plan. In order to accurately interpret the development implications of the plan, the reader must understand the intent of and the standards for each designation. This section describes the maps and accompanying standards that constitute the existing Del Norte County General Plan Land Use Diagram.

Land use designations and standards for the unincorporated county are found in three of the County's General Plan documents. The *Land Use Element* of the 1976 General Plan lists the land use designations, definitions, and related development standards. The Local Coastal Program's Land Use Plan (LUP) contains a separate set of land use designations for the coastal zone, along with their definitions and standards. The *Harbor Plan* describes existing and proposed land uses for the Crescent City Harbor area within unincorporated Del Norte County, and includes land use designations for future development in this area. Following are descriptions of the designations/categories presented in the 1976 Plan and the LCP's Land Use Plan (LUP).

Appendix F

Water District Resolution 2007-4

PACIFIC SHORES SUBDIVISION CALIFORNIA WATER DISTRICT
13220 SOUTHPORT LANE 170-F
SEAL BEACH, CA 90740

November 9, 2007

Mr. Darren McElfresh
Del Norte County Local Agency Formation Commission
508 H Street #2
Crescent City, CA 95531

Reference – Protest Hearing on November 26, 2007

Dear Mr. McElfresh,

Enclosed is Resolution No. 2007-4 of the Board of Directors of the Pacific Shores Subdivision California Water District, adopted pursuant to Government Code Section 56854, objecting to the proposed dissolution of the Water District and requesting a landowner election to confirm whether a majority protest of the proposed change of organization exists.

Please submit this Resolution to Del Norte County LAFCO and include this Resolution in the record of the protest hearing on November 26, 2007.

Yours truly,

Donna Fiery

Donna Fiery
Vice President
Pacific Shores Subdivision California Water District

RESOLUTION NO. 2007-4

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE PACIFIC SHORES SUBDIVISION CALIFORNIA WATER DISTRICT, ADOPTED PURSUANT TO GOVERNMENT CODE SECTION 56854, OBJECTING TO THE PROPOSED DISSOLUTION OF THE DISTRICT AND REQUESTING THAT THE DEL NORTE LOCAL AGENCY FORMATION COMMISSION ORDER THE CHANGE OF ORGANIZATION SUBJECT TO CONDITIONS OF APPROVAL AND THE CONFIRMATION OF THE LANDOWNERS

WHEREAS, on or about August 8, 2007, the Board of Supervisors of Del Norte County ("County") adopted Resolution No.2006-61, making application to the Del Norte Local Agency Formation Commission ("LAFCO") to initiate a change of organization to dissolve the Pacific Shores Subdivision California Water District ("District") and terminate the District's Community Facilities District (the "Project"); and

WHEREAS, the LAFCO designated itself the lead agency for the proposed change of organization, and prepared a draft Initial Study and Negative Declaration for the Project; and

WHEREAS, the District submitted written and oral comments to the LAFCO on the Initial Study and Negative Declaration issued by the LAFCO, the adequacy of the County application and on the proposed change of organization; and

WHEREAS, on September 24, 2007, pursuant to Government Code Section 56662, the LAFCO established November 26, 2007 as the date for the protest hearing on the County's application for change of organization; and

WHEREAS, the Board of Directors does not wish to have the proposed change of organization approved by the LAFCO without an election, as is otherwise allowed by Government Code Section 57102;

NOW THEREFORE, the Board of Directors of the Pacific Shores Subdivision California Water District does resolve, determine and order as follows:

1. The District's Board of Directors does NOT consent to the dissolution of the District, without the formal, informed consent of a majority of the landowners.

2. The District's Board of Directors requests that the LAFCO appropriately condition any order of dissolution to provide, specifically, for the transfer of the District's legal duties and responsibilities to a successor agency, and that the successor agency be required to satisfy the District's obligations and distribute its assets and appropriately wind up the District's CFD.

2. The District's Board of Directors therefore requests that the LAFCO conduct a landowner election to confirm whether a majority protest of the proposed change of organization exists.

3. The District's Board of Directors further requests that the landowner-voters of the Pacific Shores Subdivision be fully informed by the LAFCO of the determination to proceed with the dissolution of the District, and of any and all conditions placed by the Commission on the proposed change of organization and termination of the District's Community Facilities District, at the time the election ballots are provided to the landowners.

4. The District's Board of Directors further requests that the landowners of the Pacific Shores Subdivision be informed by the LAFCO that the proposed change of organization must be abandoned pursuant to Government Code Section 57090 if a majority of the landowners do not confirm the change of organization in the election, and that no substantially similar proposal for a change of organization of the same or substantially the same territory may be filed with the LAFCO within one year after the Commission's adoption of the certificate of termination.

PASSED, APPROVED AND ADOPTED this 15 day of SEPTEMBER, 2007, by the following vote of the Board of Directors of the Pacific Shores Subdivision California Water District:

Ayes: 5

Noes: 0

Absent/Abstain: —0—

President of the Board of Directors

ATTEST:

Secretary to the Board of Directors