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CALENDAR ITEM

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WP 5231 PRC 5231
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DENIAL OF APPLICATION

APPLICANT:

County of Del Norte
Department of Public Works
700 Fifth Street
Crescent City, California 95531

BACKGROUND:

Lake Earl and Lake Talawa are natural lakes along the Pacific Coast in Del Norte County. These lakes are depicted on the attached Exhibit "A". Each year, siltation causes a sand bar to develop at the mouth of Lake Talawa causing the lake levels to rise. Historically, the sand bar would give way when lake levels rose to approximately 12 feet Mean Sea Level (MSL). Periodically, man has breached the sand bar over the past 75 to 100 years, generally during the spring months, to protect adjoining agricultural lands and residential development from flooding.

The State Lands Commission first issued to the Del Norte County Flood Control District a permit to breach the lake over a ten-year period beginning February 1, 1977. That permit expired January 31, 1987. During this time, questions began to arise as to the appropriate level to which to drop the waters of the lakes for the summer season. Historically, lake levels were dropped to four feet (4') MSL. However, resource agencies raised concerns about potential impacts to the wetlands, wildlife, fisheries, and recreational values of the lakes. The County was encouraged to conduct an analysis of the impacts of the breaching before continuing its practice. To date, this analysis has not been completed.

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In 1987, the California Department of Water Resources (DWR), with the support of the permitting agencies involved, began what was originally planned as a two-year water level management study of lakes Earl and Talawa in cooperation with Department of Fish and Game (DFG). The objective of the study is to determine the most beneficial water level for the lakes throughout the year for fish and wildlife use, while considering the factors of flooding on adjacent land. The study was promoted by the permitting agencies in an attempt to resolve the breaching dilemma. The first phase of the study is to focus on monitoring the lake and nearby groundwater levels. Water quality and lake water level control alternatives would also be evaluated. The second phase of the study is to focus on addressing possible solutions to any water quality problems discovered during the first phase and to formulate a recommended management plan for the lakes in concert with DFG and Del Norte County. Unfortunately, the study has not been completed due to State funding problems. DWR now estimates that the study may be completed in June of 1992.

In 1989, the Commission issued a permit to DFG for breaching the sand. This permit expired on May 31, 1990. The sole purpose of the project, as presented by DFG staff, was to maintain a lake level necessary for a feeding area for migrating Aleutian Geese, an endangered species. The permit to DFG allowed for breaching to occur between October 15 and April 15 and when the lake elevation was at least six feet (6') above MSL. Another condition of that permit was that DFG develop a controlled breaching technique whereby the cut channel could be easily closed so that the lake elevation would not drop below four feet (4') MSL.

CURRENT STATUS

The dispute over appropriate lake levels continues to this day. The California Coastal Commission has authorized the County to periodically breach the sand bar for flood control purposes during the 1991-92 and 1992-93 rainy seasons. The Coastal Permit authorizes breaching to occur between September 1 and February 15, whenever the lake elevation reaches four feet above MSL.

DFG, working cooperatively with Del Norte County, has developed a proposed plan under which breaching of the sand bar would occur between September 1 and February 15, whenever the lake elevation reached eight feet (8') above MSL, and on February 15, if the lake elevation exceeded five feet (5') above MSL.

The County filed an application with the Corps of Engineers to periodically breach the sand bar, as set forth in the proposed plan developed by DFG. The Corps denied, without prejudice, the County's application. The Corps found that issuance of a permit to breach the sand bar without the completion of an Environmental Impact Statement (EIS) and without analysis of alternative methods is contrary to the public interest.

Nevertheless, on February 26, 1992, the Army Corps of Engineers issued a one time only authorization for the County to breach the sandbar at the lake level of approximately 10+ feet. The Corps permit states that the County must provide analysis of the potential impacts to human habitation and infrastructure at lake levels ranging from 9+ feet to +12 feet to determine the actual need for breaching at these levels, within 180 days of permit issuance (February 26, 1992).

On October 31, 1991, Del Norte County filed an application with staff of the State Lands Commission and on November 26, 1991, staff found that application to be complete. In light of the ongoing dispute as to appropriate lake levels and methods for breaching the sand bar, Commission staff notified the County that staff could not recommend Commission approval of the proposed breaching before the County planned to breach the sand bar at the end of February 1992. Nevertheless, the County did breach the sand bar as planned. In fact, the breaching appears to have dropped the lake level to one foot (1') MSL, releasing almost all the water in the lakes, in violation of the Corps permit. The Corps has therefore ordered the County to close the breach to a level sufficient to stop the flow of water out of the lakes.

Under these circumstances, Commission staff does not believe an after-the-fact permit to breach the sand bar is appropriate. Further, staff believes that before a permit is issued for future breaching activities, an environmental analysis should be conducted to assure that authorized lake levels do not result in significant adverse impacts to the resource values of the lakes area, as well as providing needed flood protection.

RECOMMENDATION FOR DENIAL:

Although the activity for which Del Norte County has submitted its application has already occurred without Commission authorization, we still have an active application for breaching the sand bar on file. For reasons set forth above, staff recommends denial of the County's application at this time. However, although the County has not applied to the Commission to restore the sand bar to a level sufficient to stop the flow of water from the lakes, as required by the Corps, staff recommends that the Commission not object to this activity, so long as it is conducted as directed by the Corps.

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OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), the staff has determined that this activity is exempt from the requirements of the CEQA because CEQA does not apply to projects which a public agency rejects or disapproves.

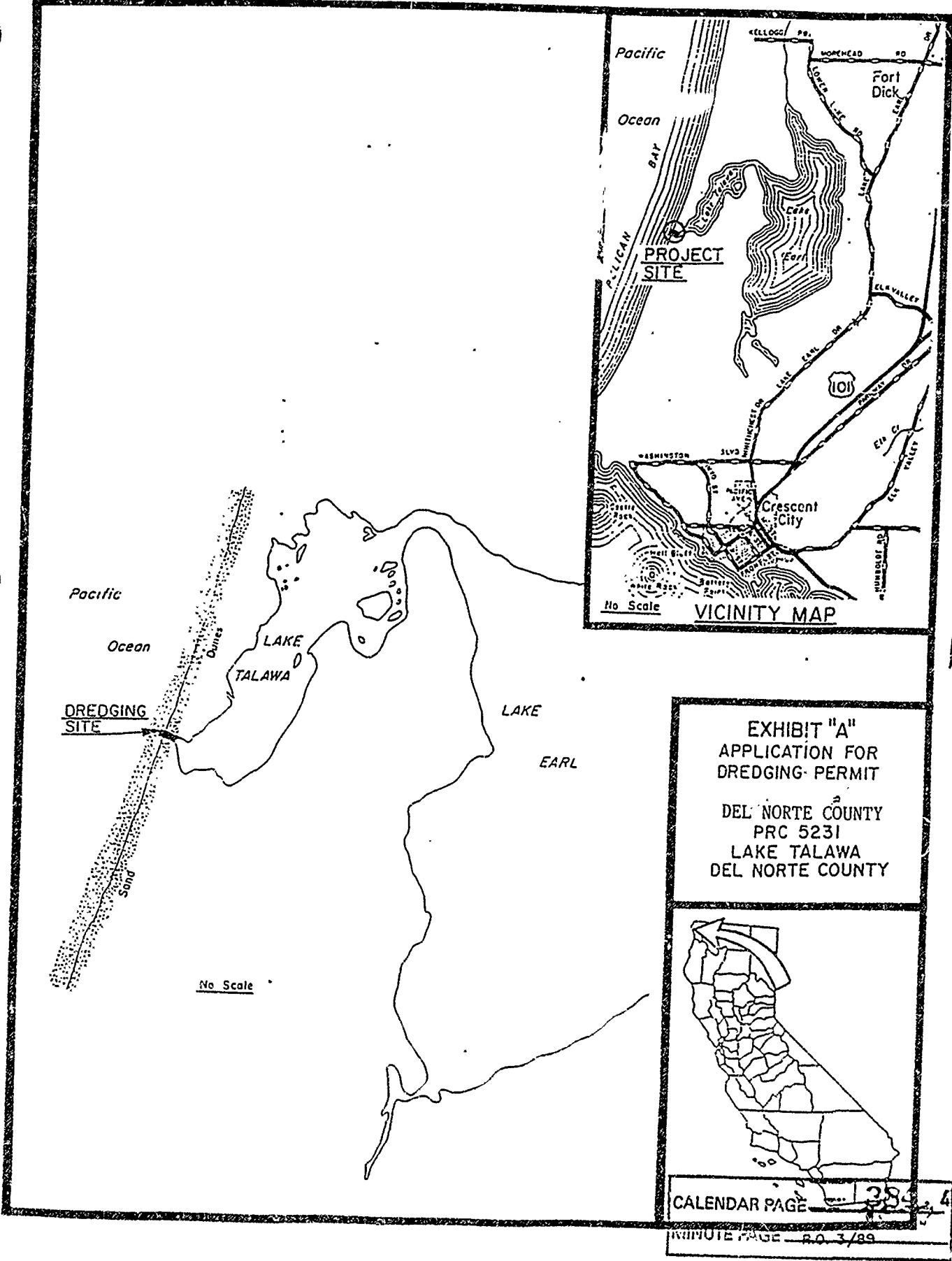
Authority: P.R.C. 21080(b)(5) and 14 Cal. Code Regs. 15270.

EXHIBIT:

- . A. Vicinity Site Map

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THIS ACTIVITY IS EXEMPT FROM CEQA, PURSUANT TO 14 CAL. CODE REGS. 15270, BECAUSE CEQA DOES NOT APPLY TO PROJECTS WHICH A PUBLIC AGENCY REJECTS OR DISAPPROVES.
2. DENY THE APPLICATION OF THE COUNTY OF DEL NORTE, DEPARTMENT OF PUBLIC WORKS, FOR A DREDGING PERMIT TO REMOVE SAND FROM TIDE AND SUBMERGED LAND AT THE OUTLET OF LAKE TALAWA TO THE PACIFIC OCEAN, DEL NORTE COUNTY.
3. AUTHORIZE STAFF TO ADVISE THE APPLICANT OF THE COMMISSION'S ACTION TO DENY.



DREDGING SITE

PROJECT SITE

VICINITY MAP

EXHIBIT "A"
APPLICATION FOR
DREDGING PERMIT

DEL NORTE COUNTY
PRC 5231
LAKE TALAWA
DEL NORTE COUNTY



CALENDAR PAGE 384
MINUTE PAGE P.O. 3/89