



**BOARD OF SUPERVISORS
COUNTY OF DEL NORTE
STATE OF CALIFORNIA**

RESOLUTION NO. 2008-

**RESOLUTION OF THE BOARD OF SUPERVISORS OF
THE COUNTY OF DEL NORTE ASSERTING LEGAL
STANDING AND FORMALLY REQUESTING
COORDINATION WITH ALL FEDERAL AND STATE
AGENCIES MAINTAINING JURISDICTION OVER LANDS
AND/OR RESOURCES LOCATED WITHIN DEL NORTE
COUNTY**

WHEREAS, Del Norte County is a legal subdivision of the State of California its governing body is composed of a five member elected Board of Supervisors serves as its chief governing authority; and

WHEREAS, Del Norte County Board of Supervisors. Del Norte County has a population of 27,850 people. Although there are approximately 1062 businesses in the county, the unemployment rate is 9.2% and its per capita personal income of its residents is \$17,856 (which is roughly one-half of the statewide average). The state and federal government own approximately 78% of the land in the county and manage these lands for parks, recreation and forest services purposes. The county is a Mecca for mining, hunting, fishing, four-wheeling, camping and other recreational activities.

WHEREAS, Del Norte County Board of Supervisors is charged

with supervising and protecting the tax base of the county and establishing comprehensive land use plans (including, but not limited to the General Plan) outlining present and future authorized uses for all lands and resources situated within the county; and

WHEREAS, Del Norte County is engaged in the land use planning process for future land uses to serve the welfare of all the citizens of Del Norte County; and

WHEREAS, the citizens of Del Norte County historically earn their livelihood from activities reliant upon natural resources on land and waters which produces natural resources and those activities are critical to the economy of Del Norte County; and

WHEREAS, the economic base and stability of Del Norte County is significantly dependent upon commercial and business activities operated on federally and state owned, managed, and/or regulated lands that include, but are not limited to recreation, tourism, timber harvesting, mining, livestock grazing, and other commercial pursuits; and

WHEREAS, as state and federal management polices and practices have practically eliminated the county's economic foundations in timber harvest and fishing, the county is attempting to create an economically sustainable future for its residents in the area of recreation and tourism.

WHEREAS, Title 12 of the Del Norte County Ordinance Code, Chapter 12.02 is entitled "Establishment of a Consultation and Environmental Review Process for State and Federal Plans, Programs and Projects." The ordinance states that the National Environmental Policy Act requires federal agencies to work to coordinate plans, functions, programs and resources with local government. The ordinance sets out local coordination procedures by requiring that: "federal agencies promoting plans, programs and projects which may adversely affect private citizens who contribute to the

economic stability of Del Norte County, shall assure that major consideration is given to protecting the environment without depriving county citizens of a decent home or their customs or cultures.”

WHEREAS, Del Norte County ordinance, Title 12, § 12.02, requires the federal government to prepare an Initial Assessment Report. Local, state and federal agencies are then required to “jointly” determine whether to conduct a “Coordinated Environmental Review and Assessment.”

WHEREAS, Del Norte County has adopted a General Plan that contains land use, safety and open space elements intended to specify plans and measures for managing the production of resources, for outdoor recreation and for public safety consistent with the edicts of California Constitution, Article XXVII, and the observance of specific Action Programs setting forth how the goals of the element will be achieved;

WHEREAS, Government Code section 65352 requires this county to refer any action to adopt or amend its general plan to areawide planning agencies and federal agencies with lands within the county; and

WHEREAS, the California Constitution has recognized Del Norte County's authority to exercise its local, police and sanitary powers, and the California legislature has recognized and mandated exercise of certain of those powers in specific statutes; and

WHEREAS, the California legislature has mandated in Government Code § 65300 that each county shall prepare a comprehensive plan, and stated legislative intent in Section 65300.9 that the county planning shall be coordinated with federal and state program activities, and has mandated in Section 65103 that county local plans and programs must be coordinated with plans and programs of other agencies; and

WHEREAS, Del Norte County desires to assure that federal and state agencies shall inform the Board of Supervisors of all pending or proposed actions affecting local communities and citizens within Del Norte County and coordinate with the Board of Supervisors in the planning and implementation of those actions; and

WHEREAS, the National Environmental Policy Act (NEPA), is intended to ensure that Federal agencies actively participate as cooperating agencies in other agency's NEPA processes. The CEQ regulations addressing cooperating agencies status (40 C.F.R. §§ 1501.6 & 1508.5) implement the NEPA mandate that Federal agencies responsible for preparing NEPA analyses and documentation do so "in cooperation with State and local governments" and other agencies with jurisdiction by law or special expertise. (42 U.S.C. §§ 4331(a), 4332(2)).

WHEREAS, The Intergovernmental Cooperation Act contains specific coordinated planning requirements for local, state and federal agencies. Presidential Executive Order 12372 requires federal agencies to coordinate actions and projects with local governments so that local impacts arising from federal projects may be identified.

WHEREAS, Title 36 of the Code of Federal Regulations, sets out the administration of the Forest Transportation System. The Transportation Plan set out at 36 C.F.R. § 212.53 requires the responsible official to "coordinate with appropriate ... county, and other local government entities when designating National Forest System roads...". 36 CFR § 212.6(a) provides that National Forest System Roads shall grant appropriate access across National Forest and other lands for ingress and egress to assure effective utilization of lands administered by the Forest Service and intermingled and adjacent private and public lands, and for the use and development of the resources upon which communities within or adjacent to the National Forests are dependent. Sub§ (c) provides that "roads and trails shall be permitted for all

proper and lawful purposes subject to compliance with rules and regulations governing the lands and the roads or trails to be used.”

WHEREAS, The Smith River Recreation Area (NRA) is located within Del Norte County. Public Law 101-612, entitled the Smith River Recreation Area Act, states that the NRA was established “for the purposes of ensuring the ... enhancement for present and future generations of the Smith River’s watershed’s outstanding wild and scenic rivers, ecological diversity, and recreation opportunities...” The administration of the NRA is required to coordinate “with other ... local government agencies in coordinating planning efforts throughout the Smith River watershed.”

WHEREAS, coordination of planning and management actions is mandated by federal laws governing land management including the Federal Land Policy and Management Act, 43 US § 1701, and 43 U.S.C. § 1712, regarding the coordinate status of a county engaging in the land use planning process, and requires that the "Secretary of the Interior [Secretary] shall...coordinate the land use inventory, planning, and management activities...with the land use planning, and management programs of other federal departments and agencies and of the state and local governments within which the lands are located"; and

WHEREAS, the coordination requirements of Section 1712 provide for special involvement by government officials who are engaged in the land use planning process; and

WHEREAS, Section 1712 sets forth the nature of the coordination required with planning efforts by government officials and subsection (f) of Section 1712 sets forth an additional requirement that the Secretary "shall allow an opportunity for public involvement" (including local government without limiting the coordination requirement of Section 1712 allowing land or resource management or regulatory agencies to simply lump local government in with

special interest groups of citizens or members of the public in general); and

WHEREAS, Section 1712 also provides that the "Secretary shall... assist in resolving, to the extent practical, inconsistencies between federal and non-federal government plans" and gives preference to those counties which are engaging in the planning process over the general public, special interest groups of citizens, and even counties not engaging in a land use planning program; and

WHEREAS, the requirement that the Secretary "coordinate" land use inventory, planning, and management activities with local governments, requires the assisting in resolving inconsistencies to mean that the resolution process takes place during the planning cycle instead of at the end of the planning cycle when the draft federal plan or proposed action is released for public review; and

WHEREAS, Section 1712 further requires that the "Secretary shall... provide for meaningful public involvement of state and local government officials... in the development of land use programs, land use regulations, and land use decisions for public lands"; and, when read in light of the "coordinate" requirement of Section 1712, reasonably contemplates "meaningful involvement" as referring to on-going consultations and involvement throughout the planning cycle, not merely at the end of the planning cycle; and

WHEREAS, Section 1712 further provides that the Secretary must assure that the federal agency's land use plan be "consistent with state and local plans" to the maximum extent possible under federal law and the purposes of the Federal Land Policy and Management Act and distinguishes local government officials from members of the general public or special interest groups of citizens; and

WHEREAS, the Environmental Protection Agency, charged with administration and implementation of the National

Environmental Policy Act (NEPA), has issued regulations which require that federal agencies consider the economic impact of their actions and plans on local government such as Del Norte County; and

WHEREAS, NEPA requires federal agencies to consider the impact of their actions on the customs of the people as shown by their beliefs, social forms, and "material traits," it reasonably follows that NEPA requires federal agencies to consider the impact of their actions on the rural, land and resource-oriented citizens of Del Norte County who depend on the "material traits" including recreation, tourism, timber harvesting, mining, livestock grazing, and other commercial pursuits for their economic livelihoods; and

WHEREAS, NEPA requires federal agencies to consider the impact of their actions on the customs, beliefs, and social forms, as well as the "material traits" of the people; and

WHEREAS, it is reasonable to interpret NEPA as requiring federal agencies to consider the impacts of their actions on those traditional and historical and economic practices, including commercial and business activities, which are performed or operated on federally and state managed lands (including, but not limited to recreation, tourism, timber harvesting, mining, livestock grazing, and other commercial pursuits); and

WHEREAS, 42 U.S.C. § 4331 places upon federal agencies the "continuing responsibility... to use all practicable means, consistent with other considerations of national policy to... preserve important historic, culture, and natural aspects of our national heritage"; and

WHEREAS, Webster's New Collegiate Dictionary (at 277, 1975) defines "culture" as "customary beliefs, social forms, and material traits of a group; the integrated pattern of human behavior passed to succeeding generations"; and

WHEREAS, in 16 U.S.C. § 1604, the National Forest Management Act, requires the Forest Service to coordinate its planning processes with local government units such as Del Norte County; and

WHEREAS, federal agencies implementing the Endangered Species Act, the Clean Water Act, the Clean Air Act, and the Outdoor Recreation Coordination Act (16 U.S.C. § 460I-1(c) and (d)) are required by Congress to consider local plans and to coordinate and cooperate directly with plans of local government such as Del Norte County; and

WHEREAS, Government Code § 65070 provides that preparation of state and regional transportation plans be performed in a cooperative process involving local government; and

WHEREAS, the California legislature has mandated in Section 65040 that the State Office of Planning and Research shall "coordinate, in conjunction with...local agencies: with regard to matters relating to the environmental quality of the state"; and

WHEREAS, in Water Code §§ 8125-8129 the California legislature has placed planning for non-navigable streams within the authority of county supervisors, and since such planning activities must be coordinated with natural resource planning processes of federal and state agencies; and

WHEREAS, in Streets and Highways Code §§ 940-941.2 the California legislature has placed the general supervision, management, and control of county roads and highways — including closing such roads and removing and preventing encroachment of such roads and highways, and since planning and actions with regard to such roads by any federal or state agency must be coordinated with the county; and

WHEREAS, in Public Resources Code § 5099.3 the California legislature has mandated coordination by the state with Del Norte County since it is a county "having interest in the planning, development, and maintenance of outdoor recreation resources and facilities."

WHEREAS, this resolution is a policy that shall be interpreted to be consistent with Del Norte General Plan and is a policy to assist in more effectively implementing County General Plan.

NOW THEREFORE BE IT RESOLVED that the Del Norte County Board of Supervisors does hereby assert legal standing and formally requests coordination status with all federal and state agencies maintaining jurisdiction over lands and/or resources located within Del Norte County.

BE IT FURTHER RESOLVED that the Clerk of the Board shall cause a copy of this Resolution to be transmitted to local, regional, state, and/or national offices of all federal and state agencies maintaining jurisdiction of lands and/or resources located within Del Norte County and to all federal and state elected representatives serving Del Norte County.

BE IT FURTHER RESOLVED that the Clerk of the Board is authorized and hereby directed to publish a copy of this Resolution in the Del Norte Triplicate, a newspaper of general circulation printed and published in the County of Del Norte, State of California.

PASSED AND ADOPTED this day of , 2008 by the Board of Supervisors of the County of Del Norte by the following polled vote:

AYES: Supervisors

NOES:

ABSENT:

DAVID FINIGAN, Chairman
Board of Supervisors

ATTEST:

APPROVED AS TO FORM:

Jeremi Ruiz, Clerk of the
Board of Supervisors, County
of Del Norte, State of California

DOHN R. HENION, County Counsel