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STAFF REPORT: APPEAL SUBSTANTIAL ISSUE DETERMINATION ONLY

Appeal No.: A-1-HUM-23-0030

Applicant: Travis Schneider

Local Government: County of Humboldt

Local Decision: Approval with Conditions

Location: 1506 & 1512 Walker Point Rd., Bayside, Humboldt County.

Project Description: (1) Demolish and remove existing 21,000 sq. ft. partially built structure, driveway, retaining walls, and 15,000 cubic yards of fill material; (2) restore habitat areas and install protective fencing, and (3) adjust lot lines between two parcels resulting in two vacant parcels of 2.45 acres and 3.65 acres.

Appellant: Commissioners Donne Brownsey & Caryl Hart

Staff Recommendation: Substantial Issue

IMPORTANT HEARING PROCEDURE NOTE

At the hearing for this item the Commission will not take testimony on staff's "substantial issue" recommendation unless at least three Commissioners request it. Prior to determining whether to take such testimony, the Commission may ask questions of the Applicant, aggrieved persons (i.e., generally persons who participated in some way in the local permitting process), the Attorney General, the Executive Director, and their

proxies/representatives prior to determining whether to take such testimony. If the Commission does decide to take testimony, then it is generally limited to three minutes total per side (although the Commission's Chair has the discretion to modify these time limits). Only the Applicant, the appellant, persons who opposed the application before the local government, the local government, and their proxies/representatives shall be qualified to testify during this substantial issue phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, then the Commission takes jurisdiction over the underlying coastal development permit (CDP) application and will then review that application at a future Commission meeting, at which time all persons are invited to testify. If the Commission finds that the appeal does not raise a substantial issue, then the local government CDP decision stands, and is thus final and effective. It takes a majority of Commissioners present to find that the grounds for the appeal raise No Substantial Issue.

SUMMARY OF STAFF RECOMMENDATION

The application that is the subject of this appeal was approved by Humboldt County on July 6, 2023. The County approved the subject application as a modification (amendment) to a CDP originally granted to the applicant by the County in August of 2017. The development authorized under the CDP modification is an attempt to resolve unpermitted development and violations of CDP conditions that occurred during construction of the development approved under the original County CDP.

The site is located just east of the City of Eureka in the Indianola area between the Eureka-Arcata Highway 101 corridor and Myrtle Avenue (Old Arcata Road). The two subject lots are 3.5 acres and 2.6 acres in size and largely undeveloped/partially developed. The project site borders (to the south and west) the 484-acre Fay Slough Wildlife Area managed by the California Department of Fish and Wildlife.

The original CDP approved by the County in 2017 authorized the following development on one of the subject lots (a vacant 3.5-acre lot located at 1506 Walker Point Road): construction of an 8,000-square-foot, 24-foot-high single-family residence with a daylight basement, attached 1,000-square-foot cellar, a 4-car garage, driveway with off-street parking spaces, onsite well and sewage disposal system, landscaping, and 1,500 cubic yards of cut and fill. No development was proposed or authorized on the adjacent lot to the south also owned by the applicant (1512 Walker Point Rd.). Conditions of approval identified areas on the property that were to remain off-limits to disturbance due to their ecological and cultural sensitivity, including a minimum 100-foot wetland setback area measured from the upper edge of riparian vegetation associated with the Fay Slough wetland complex as well as, generally, all areas below the 40-foot contour line elevation (elevations on the subject property range from less than 10 feet to over 50 feet). The County's approval of the original CDP was not appealable to the Commission, because all authorized development was to be sited at least 100 feet from wetlands to the west and south, and the property is not otherwise within an appealable area pursuant to Coastal Act section 30603(a).

Construction of the approved development began in approximately May of 2018 and continued until January of 2022 several weeks after a Stop Work Order was issued by the County in response to unauthorized grading and ground disturbance in prohibited areas with known sensitive resources. After posting the Stop Work order, the County documented three primary violations: (1) an unpermitted temporary road was developed on the adjacent property to the south in the designated wetland buffer areas (areas below the 40-foot contour and areas within 100 feet of Fay Slough-associated wetlands); (2) major vegetation removal occurred with heavy equipment on both subject properties within protected wetlands, wetland buffer areas, and other identified environmentally sensitive areas; and (3) the partially built residence was constructed in a location not in accordance with the final site plans approved under the 2017 permit and was substantially larger than permitted (instead of the 8,000 sf residence with 1,500 cubic yards of grading, a 21,000 square foot structure was constructed and approximately 15,000 cubic yards of fill material was imported to the site). The partially built residence was located less than 100 feet from wetlands associated with the Fay Slough wetland complex, a specific type of ESHA listed in the County's certified LCP.

After the County consulted with tribal governments and Commission staff, the applicant elected to apply for a CDP modification to (1) demolish and remove the existing partially built structure, driveway, retaining walls, and fill material; (2) restore habitat areas and install protective fencing, and (3) adjust the lot lines between the two subject parcels. The County granted the CDP Modification subject to various conditions of approval related to timing of work, final restoration plans, best management practices for demolition and grading, restoration monitoring and reporting, invasive species control, tribal monitoring, and additional requirements. Portions of the lot lines proposed to be adjusted are located within the Commission's retained CDP jurisdiction, and there may be some portions of the restoration work that also is within the Commission's retained jurisdiction. Thus, the development approved by the County in part necessitates Commission authorization as well. On September 7, 2023, the applicant submitted CDP Application No. 1-23-0664 for the proposed lot line adjustment.

The appeal raises two main contentions. Essentially, the development approved by the County does not: (1) provide reasonable mitigation measures for impacts to archaeological and tribal cultural resources, inconsistent with an LCP policy that incorporates section 30244 of the Coastal Act; and (2) adequately protect ESHA or provide for its continuance, inconsistent with an LCP policy that incorporates section 30240 of the Coastal Act.

With respect to the first contention, the approved CDP Modification imposed no mitigation requirements for documented impacts to archaeological and tribal cultural resources. Instead, mitigation requirements are directed by a separate Compliance Agreement that is not incorporated into the CDP conditions by reference. Even if the County had incorporated the Compliance Agreement by reference into the CDP conditions, the measures required under the agreement are not fully adequate to address all identified impacts. Because the cultural resources mitigation is not legally assured through the subject permit modification, the degree of legal and factual support

is low for the County's determination that reasonable mitigation will be implemented for development that impacted archaeological and tribal cultural resources.

With respect to ESHA and the County's decision that the authorized development will protect ESHA and associated buffers against significant disruption of habitat values, key information and analyses needed to inform mitigation and restoration requirements were omitted from the analysis, and the County's approval defers formulation of the mitigation (final grading/fill removal and ESHA restoration plans) to a future date without having objective standards (e.g., success criteria) to guide that later discretionary decision. In addition, the County's findings were based on incomplete maps and plans that did not depict all disturbed areas and required restoration areas.

Due to the significance of coastal resources affected by the County's decision, the potential for the decision to set an adverse precedent for future interpretations of the LCP (including in the review of future development of the vacant parcel at 1506 Walker Point Rd.), and the fact that the appeal raises issues of regional and statewide significance (including the protection of archaeological resources, tribal cultural resources, and ESHA), staff recommends the Commission find that Appeal No. A-1-HUM-23-0030 raises a substantial issue with respect to the grounds on which the appeal has been filed under section 30603 of the Coastal Act regarding consistency of the approved development with the certified LCP.

The motion to adopt the staff recommendation of Substantial Issue is found on [page 8](#).

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EXHIBITS

[Exhibit 1 – Location Maps](#)

[Exhibit 2 – Approved Plans under CDP Modification No. PLN-2022-17762](#)

[Exhibit 3 – Original Site Plan Approved in 2017](#)

[Exhibit 4 – ESHA Impact Assessment](#)

[Exhibit 5 – As Built Survey](#)

[Exhibit 6 – County Compliance Agreement](#)

[Exhibit 7 – CDP Jurisdiction Map \(unverified\)](#)

[Exhibit 8 – Proposed Lot Line Adjustment Map](#)

[Exhibit 9 – Drone View \(January 2022\) with Estimated 100-ft Wetland Setback Line](#)

[Exhibit 10 – County’s Notice of Final Local Action and Adopted Findings](#)

[Exhibit 11 – Appeal Filed by Commissioners Brownsey & Hart](#)

I. APPEAL JURISDICTION & PROCEDURES

A. APPEAL PROCEDURES

The Coastal Act provides that after certification of a local government's Local Coastal Program (LCP), the local government's actions on Coastal Development Permit (CDP) applications for development in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of their final CDP actions. During a period of ten working days following Commission receipt of a notice of final local action for an appealable development, an appeal of the action may be filed with the Commission.

Approvals of CDPs by cities or counties may be appealed if the authorized development will be located within the appealable areas, which under Coastal Act section 30603(a)(1) through (3)¹ include development located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) in other areas on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; or (3) in a sensitive coastal resource area. Approvals of CDPs by counties also may be appealed if the approved development is not designated as the principal permitted use under the county's certified zoning ordinance or zoning district map (Coastal Act section 30603(a)(4)). In addition, any development that constitutes a major public works project or a major energy facility that is approved or denied by a city or county may be appealed (Coastal Act section 30603(a)(5)).

In this case, Humboldt County's CDP approval is appealable to the Commission because the approved development is located within 100 feet of a wetland.

Section 30603(b)(1) of the Coastal Act states:

"The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division."

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. The Commission's consideration of appeals is a two-step process. The first step is determining whether the appeal raises a substantial issue that the Commission, in the exercise of its discretion, finds to be significant enough to warrant the Commission taking jurisdiction over the CDP application. The Commission is required to begin its hearing on an appeal, addressing at least the substantial issue question, within 49 working days of the filing of the appeal unless the applicant has waived that requirement, in which case there is no deadline.

¹ See Commission regulations 14 CCR § 13577 for guidance.

At the Substantial Issue determination stage, the Commission may only consider issues brought up by the appeal. The Coastal Act and the Commission's implementing regulations are structured such that "substantial issue" is presumed, and the Commission generally considers a number of factors in making such a determination. The term "substantial issue" is explained in section 13115(c) of the Commission's regulations as follows:

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

- 1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;*
- 2. The extent and scope of the development as approved or denied by the local government;*
- 3. The significance of the coastal resources affected by the decision;*
- 4. The precedential value of the local government's decision for future interpretations of its LCP; and*
- 5. Whether the appeal raises local issues, or those of regional or statewide significance.*

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

At the hearing for the subject appeal, the Commission will not take testimony on staff's "substantial issue" recommendation unless at least three Commissioners request it. Prior to determining whether to take such testimony, the Commission may ask questions of the Applicant, aggrieved persons (i.e., generally persons who participated in some way in the local permitting process), the Attorney General, the Executive Director, and their proxies/representatives. If the Commission does decide to take testimony, then it is generally limited to three minutes total per side (although the Commission's Chair has the discretion to modify these time limits). Only the applicant, the appellant, persons who opposed the application before the local government, the local government, and their proxies/representatives shall be qualified to testify during this substantial issue phase of the hearing. Others may submit comments in writing. It takes a majority of Commissioners present to find that the grounds for the appeal raise No Substantial Issue.

Should the Commission determine that a substantial issue exists, the Commission will consider the CDP application for the subject appeal de novo. The applicable test for the Commission to consider in a de novo review of a project is whether the proposed development is in conformity with the certified LCP and, if the development is between the sea and the first public road paralleling the sea (in this case it is not), the public access policies of the Coastal Act. If a de novo hearing is held, testimony may be taken from all interested persons. In this case, any consideration of a de novo application will occur at a future hearing.

B. LOCAL GOVERNMENT ACTION & FILING OF APPEAL

The application that is the subject of this appeal, Local Permit No. PLN-2022-17762, was approved by the County of Humboldt Planning Commission on July 6, 2023. The decision was not appealed locally. The County's Notice of Final Action (NOFA) for the project was received by Commission's North Coast District Office on July 24, 2023 (**Exhibit 10**). One appeal of the County's action was filed on August 7, 2023 by Commissioners Donne Brownsey and Caryl Hart (**Exhibit 11**). The appeal was filed in a timely manner, within ten working days of receipt by the Commission of the County's NOFA. Pursuant to section 30621(a) of the Coastal Act, a hearing on an appeal must be set no later than 49 working days after the date on which the appeal was filed with the Commission; however, according to Coastal Act section 30625(a), the applicant can waive that time limit. In this case the time limit was waived by the applicant on August 18, 2023.

II. SUBSTANTIAL ISSUE MOTION & RESOLUTION

Motion:

I move that the Commission determine and resolve that Appeal Number A-1-HUM-23-0030 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

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

Resolution:

The Commission hereby finds that Appeal No. A-1-HUM-23-0030 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved development with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

III. FINDINGS & DECLARATIONS FOR SUBSTANTIAL ISSUE

A. PROJECT DESCRIPTION & BACKGROUND

1. Approved CDP Modification that was Appealed

The project approved by Humboldt County authorizes the following development on two adjacent lots located at 1506 and 1512 Walker Point Rd., APNs 402-171-30 and 402-171-29 (**Exhibit 1**) under the ownership of applicant Travis Schneider: (1) demolish and remove existing 21,000 sq. ft. partially built structure, driveway, retaining walls, and 15,000 cubic yards of fill material; (2) restore habitat areas and install protective fencing, and (3) adjust lot lines between two parcels resulting in two vacant parcels of 2.45 acres and 3.65 acres. The County approved the subject application as a modification (amendment) to a CDP originally granted to the applicant by the County in August of 2017 (Local CDP No. CDP 17-016). Approved plans are included in **Exhibit 2**, and the County's NOFA describing the approved project is included in **Exhibit 10**.

The County granted the subject CDP Modification subject to various conditions of approval related to timing of work, final restoration plans, best management practices for demolition and grading, restoration monitoring and reporting, invasive species control, tribal monitoring, and additional requirements.

2. Original CDP for Development of the Site

The County-approved project that is the subject of this appeal was a modification (amendment) to a CDP originally granted to the applicant by the County in August of 2017 (Local Permit No. CDP 17-016). That CDP authorized the following development on a vacant 3.5-acre lot at 1506 Walker Point Road (APN 402-171-30): construction of an 8,000-square-foot, 24-foot-high single-family residence with a daylight basement, attached 1,000-square-foot cellar, a 4-car garage, driveway with off-street parking spaces, onsite well and sewage disposal system, landscaping, and 1,500 cubic yards of cut and fill. No development was proposed or authorized on the adjacent lot to the south also owned by the applicant (1512 Walker Point Road, APN 402-171-29). Approved plans for the original CDP are included in **Exhibit 3**.

The County's CDP approval was not appealable to the Commission, because all development was proposed to be sited at least 100 feet from wetlands to the west and south, and the property is not otherwise within an appealable area pursuant to Coastal Act section 30603(a).

The County granted the permit subject to various conditions of approval related to (among others) (1) protecting the native blackberry (*Rubus ursinus*) located on the parcel (except for any removal necessary within the development footprint), because "it provides cover, foraging and nesting habitat for a variety of bird species;" (2) designating areas below the 40-foot contour line on the parcel as non-buildable; (3) restricting vegetation removal or any other development within the 100-foot wetland protection area; and (4) generally minimizing grading and removal of natural vegetation.

3. Local CDP Violation and Related Local Enforcement Action

Based on a review of aerial imagery, the development permitted under the original CDP, specifically site grading and fill placement, began in approximately May of 2018, and by March of 2019 construction of the structure's foundation had begun. Construction of foundational elements of the development continued gradually over the next 2.5 years, with much of the structure's framing and roofing apparently in place by August of 2021. In December of 2021 the County received a complaint alleging major vegetation removal and construction equipment in protected areas of the property and adjacent property to the south. As explained in the June 30, 2023 County staff report published for the July 6, 2023 Planning Commission hearing on the subject appealed project:

In late December of 2021 it was brought to the attention of the County Planning and Building Department that grading and ground disturbance in prohibited areas had occurred which may have damaged a known tribal cultural resource. A Stop Work Order was posted on the property on December 27, 2021. This Stop Work Order has not yet been lifted.

The Stop Work Order was posted due to violations of both the approved Coastal Development Permit (CDP) and Building Permit. Conditions of approval identified areas that were to remain off-limits to disturbance due to their ecological and cultural sensitivity... In addition, the temporary access road was constructed without approval of a Coastal Development Permit. Lastly, instead of the 8,000 sf residence with 1,500 cubic yards of grading, a 21,000 square foot structure was constructed and approximately 15,000 cubic yards of fill material was imported to the site.

Associated with this project [i.e., the subject CDP modification that was appealed] and the unauthorized work are three primary issues:

1. A temporary road was cut into the area below the 40-foot contour and within the 100-foot nonbuildable area shown on the development plan and approved Coastal Development Plans. This road was also constructed within the required 100-foot wetland setback and within ESHA areas. Construction of this road required a Coastal Development Permit. A Coastal Development Permit was not obtained prior to its construction.
2. Major vegetation removal occurred with heavy equipment below the 40-foot contour and within the 100-foot protective setback established under the Coastal Development Permits and subdivision. This vegetation removal meets the definition of "major vegetation removal" in the Coastal Zoning Ordinance because it included removal of ESHA areas, specifically conflicted with the conditions of approval in the Coastal Development Permit, encroached within a one parameter wetland (approximately 440 square feet of vegetation removal occurred within the wetland) and

within a known tribal cultural resource. This removal occurred by a CAT 310 excavator fitted with a hydraulic mulcher head. Major vegetation removal in the Coastal Zone requires approval of a Coastal Development Permit. A permit was not obtained prior to this vegetation removal.

3. The residence was constructed in a location not in accordance with the approved site plans and substantially larger than permitted. The approved building permit showed the residence more than 100 feet from the on-site wetlands and approximately 130 feet from the southern property line. A survey of the location of the residence shows that the residence was constructed as close as 106.6 feet to the southern property line and within 100 feet of the one parameter wetland. While the original plans showed the residence to be more than 100 feet from the wetlands and therefore not appealable to the Coastal Commission, the location as constructed is within the Coastal Commission's appealable jurisdiction.

...

In an attempt to resolve the unpermitted development and CDP violations, the County planning and enforcement staff, in consultation with the Commission's district and enforcement staff and with representatives of the Wiyot Tribe, the Blue Lake Rancheria, and the Bear River Band of the Rohnerville Rancheria, directed the applicant to apply for a CDP Modification to restore areas disturbed below the 40-foot contour and permit the design changes for the house. To support the CDP Modification application, several studies were required, including an Archaeological Damage Evaluation, a wetland delineation and impact analysis (**Exhibit 4**), and an as-built survey (**Exhibit 5**).

Although the project modification was scheduled for the County Planning Commission's consideration in August and September of 2022, in both cases, as noted in the County staff report, "consensus over the project was not able to be achieved by all parties and ... the applicant asked for a continuance [at the September 2022 Planning Commission meeting] to a date uncertain."

After further discussions between County staff and Commission staff, as noted in the County staff report, "it was determined that a reduction of 100-foot setback to allow for the existing footprint cannot be found consistent with the adopted coastal plan policies and the residence is therefore unable to be permitted in its current location." Thus, by the spring of 2023, the applicant had a new proposal under the subject CDP Modification, as explained in the County staff report for this appeal:

Accordingly, the current proposal involves the removal of the partially constructed residence and the removal of the entitlement to construct a residence on the parcel, removal of all imported fill material, restoration of the site back to its natural grade and restoration of the Environmentally Sensitive Habitat Area and installation of protective fencing and a Lot

Line Adjustment to adjust the lot lines between two parcels resulting in two vacant parcels of 2.45 acres and 3.65 acres. The Lot Line Adjustment will establish a new parcel line with the majority of the property below the 40-foot contour line to be in a single parcel to be dedicated to the three Wiyot Area tribes, and a split-rail fence or similar type of simple fence to be constructed along the 40-foot contour. These project components will ensure that any future residential development will maintain the appropriate buffers established in the Humboldt Bay Area Plan (HBAP). The dedication of the property to the Wiyot Area tribes will ensure that the important cultural resource is protected in perpetuity.

Neither the County staff report nor conditions of approval of the CDP modification reference the separate Compliance Agreement that the applicant entered into with the County, which was effectuated on August 9, 2023 (**Exhibit 6**). The Compliance Agreement requires the applicant to record the proposed LLA and dedicate the larger adjusted parcel that contains sensitive resources below the 40-foot contour “to an entity agreed upon by the three Wiyot Tribes.” The agreement imposes timelines for transfer of lands and required restoration work, with all removal and demolition work required to be completed by July 31, 2024.

4. Portions of the Project in the Commission’s CDP Jurisdiction

One of the conditions of approval of the County’s CDP modification directs the applicant to obtain authorization from the Commission for any associated development in the Commission’s retained CDP jurisdiction. As noted in the County staff report for the CDP modification:

Portions of the lot line proposed to be adjusted are located within the Coastal Commission’s retained permit jurisdiction, and there may be some portions of the restoration work that is also within this retained jurisdiction. The Commission’s CDP jurisdiction relates to the historic tidal wetland area, which is generally associated within the lower wetland areas of the property. The project is recommended to be conditioned to require approval from the Coastal Commission prior to completion.

The western portion of the northern lot (1506 Walker Point Rd.) is in the Commission’s retained jurisdiction (**Exhibit 7**). The proposed lot line adjustment (LLA) and potentially some of the restoration work therefore require separate CDP authorization from the Commission since the applicant, County, and Commission did not agree to process a single consolidated CDP for the entirety of the proposed LLA development.

B. LOCATION & ENVIRONMENTAL SETTING

The project site is located at 1506 & 1512 Walker Point Rd., Bayside (**Exhibit 1**). The site is located just east of the City of Eureka in the Indianola area between the Eureka-Arcata Highway 101 corridor and Myrtle Avenue (Old Arcata Road). The two subject lots are 3.5 acres and 2.6 acres in size and largely undeveloped/partially developed.

Walker Point Road traverses a remnant marine terrace formation that rises nearly 100 feet above the surrounding lowland wetlands (diked former tidelands) associated with Humboldt Bay. Elevations on the subject site, which is located at the southwestern tip of Walker Point Road, range from approximately 5 feet to 50 feet (NAVD 88).²

The subject property is planned/zoned for rural residential uses (RR land use designation and corresponding RA zoning designation) 2.5-acre minimum lot size under the County's certified LCP (Humboldt Bay Area Plan and Coastal Zoning Regulations). Several combining zones overlay the site's base RA zone, including Archaeological Resource Area (A), Design Review (D), Flood Hazard Area (F), and Coastal Wetland Area (W).

The project site borders (to the south and west) the 484-acre Fay Slough Wildlife Area managed by the California Department of Fish and Wildlife. According to the CDFW website:

The 484-acre Fay Slough Wildlife Area is previously grazed land that has been restored to coastal and seasonal wetlands. Riparian woodlands occur along the eastern and southern edges of the area and are dominated by red alder and willows. Many species of resident and migratory songbirds utilize this habitat, as well as egrets, herons, and various raptors. There are also many species of reptiles and amphibians that occur in the area, including northern red-legged frogs, pacific chorus frogs, northwest salamanders, and newts.

The site is visible from several coastal public vantage points, including Highway 101, Myrtle Avenue, and the recreational lands of the Fay Slough Wildlife Area.

C. RELATED COMMISSION ACTIONS & PERMITS

1. LCP Amendment to Facilitate Mid-City Ranch Subdivision

The lots are in an area that was the subject of an LCP amendment certified by the Commission in 1988. The LCP amendment changed the land use designation and zoning of approximately 75 acres of land along Walker Point (known as the Belcher property or Mid-City Ranch) from Agriculture Exclusive (60-Acre minimum parcel size) to Rural Residential (2.5-acre minimum parcel size). The 75-acre area was the mostly upland portion of a much larger ranch ownership that was divided, through a lot line adjustment, from adjacent 350 acres of seasonal wetlands that were sold to the Wildlife Conservation Board and which now are part of the CDFW Fay Slough Wildlife Area. The lot line adjustment was not subject to CDP review since the Coastal Act specifically exempts from the definition of development those land divisions brought about in connection with the purchase of land by a public agency for public recreational use.

² Based on 2009-2011 CA Coastal Conservancy Lidar Project., accessible as a data layer in the County's Web GIS: <https://webgis.co.humboldt.ca.us/HCEGIS2.0/>.

Importantly, during both the local approval process and the Commission's consideration of the LCP amendment application, it was repeatedly discussed that a 100-foot-wide habitat protection buffer would be imposed to provide adequate separation between any future residential development and the wetlands and associated riparian areas on the western and southern edges of the 75-acre property. The 100-foot buffer would be measured from the upland extent of the riparian vegetation, and this requirement was memorialized in language added to the LCP. It also was noted that the required 100-foot buffer would serve to protect other sensitive resources known to occur on lowland areas of the property, including rare plants and cultural resources.

2. Permits for Mid-City Ranch Subdivision

After effective certification of the LCP amendment, both the Commission and the County processed a number of CDPs to authorize the Mid-City Ranch Subdivision project, which proposed to subdivide the 75 acres (62 acres of which were classified as uplands) that had been rezoned to RA-2.5/A,D,F,W to a number of rural residential lots.³ Commission approved CDPs include (1) CDP No. 1-99-031 approved in January of 2001, and which expired prior to permit issuance, authorizing Phases 1 and 2 of the three-phase subdivision project; (2) CDP No. 1-03-049 approved in October of 2003 reauthorizing Phases 1 and 2 of the subdivision resulting in 13 lots ranging in size from 2.53 acres to 29 acres; and (3) CDP No. 1-06-015 approved in April of 2006 authorizing Phase 3 of the subdivision to divide the 29-acre parcel into eight lots ranging in size from 2.5 to 6.9 acres.⁴ The lots that are the subject of this appeal were created under the 2006 CDP (Lots 17 and 18), and the project description finding in the staff report for CDP 1-06-015 notes that "The County-established 100-foot wetland setback boundary extends along the southern portion of Lot 17 and the southwestern portion of Lot 18."

In its findings for approval of the CDPs for the subdivision, similar to its findings for approval of the LCP amendment, the Commission found that the proposed division of and future development on the subject land was consistent with the ESHA, archaeological resources, and water quality protection policies of the Coastal Act because there would be a 100-foot wetland protection area imposed to buffer sensitive resources from future development on the upland portion of the lots, and because areas below the 40-foot elevation would also be restricted from development and impervious surfaces to promote runoff infiltration and water quality protection.

The Commission's CDP approvals included conditions restricting future exempt improvements to the single-family residences, such as fences, storage sheds, yard improvements, pathways, grading for landscaping improvements, or other minor development activities normally associated with single family residences. Such

³ As discussed above, the subject properties are bisected by the jurisdictional boundary between the Commission's retained CDP jurisdiction and the County's CDP jurisdiction. CDPs for the subdivision were required from both the Commission and County, and at the time, the Coastal Act did not provide for a CDP consolidation process (section 30601.3 went into effect in 2007).

⁴ For the 2001 report see <https://documents.coastal.ca.gov/reports/2001/1/F7a-1-2001.pdf>; for the 2003 report see <https://documents.coastal.ca.gov/reports/2003/10/W5c-10-2003.pdf>; and for the 2006 report see <https://documents.coastal.ca.gov/reports/2006/4/F6c-4-2006.pdf>.

improvements would require subsequent CDP review rather than qualifying as exempt pursuant to section 30610(a) of the Coastal Act to ensure such future development would avoid impacts to sensitive habitat areas.

3. Application Submitted to the Commission for Proposed LLA

On September 7, 2023, the applicant submitted CDP Application No. 1-23-0664 to adjust the lot lines between two subject parcels resulting in two parcels of 2.45 acres and 3.65 acres (**Exhibit 8**). As previously discussed, the subject lots are bisected by the CDP jurisdictional boundary between the Commission's retained jurisdiction and the County's. As such, the proposed LLA requires CDP authorization from both the County and the Commission. It's possible that some of the restoration work also is in the Commission's jurisdiction. CDP Application 1-23-0664 was filed as complete on January 5, 2023 and will be scheduled for the Commission's consideration in the coming months.

D. SUMMARY OF APPEAL CONTENTIONS

The appeal raises two main contentions:

1. The development approved by the County does not provide reasonable mitigation measures for impacts to archaeological and tribal cultural resources, inconsistent with an LCP policy that incorporates section 30244 of the Coastal Act.
2. The development approved by the County does not adequately protect ESHA or provide for its continuance, inconsistent with an LCP policy that incorporates section 30240 of the Coastal Act.

The appeal is attached as **Exhibit 11**.

E. SUBSTANTIAL ISSUE ANALYSIS

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for an appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the locally approved project's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act (where applicable). In this case, the appeal cites LCP policies related to protection of archaeological resources and environmentally sensitive habitat.

1. Archaeological & Tribal Cultural Resources

Excerpts of Applicable LCP Policies:

Humboldt Bay Area Plan (HBAP) Policy 3.18 states as follows:

*** *Where new development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

3.18-B-1:

1. *Reasonable mitigation measures may include but are not limited to:*
 - a. *Changing building and construction sites and/or road locations to avoid sensitive areas.*
 - b. *Providing protective cover for sites that cannot be avoided.*
 - c. *Where appropriate and with the approval of all parties concerned, provide for the removal or transfer of culturally significant material by a professional archaeologist or geologist.*

...

In addition, as discussed above, the subject properties are planned/zoned for Rural Residential uses (RR/RA), 2.5-acre minimum lot size, with an Archaeological Resource Area (A) combining zone (among other combining zones). Coastal Zoning Regulations (IP) section 313-16.1.1 lists the purpose of the A combining zone (for areas outside Shelter Cove) as follows:

The purpose of these regulations is to provide for reasonable mitigation measures where development would have an adverse impact upon archaeological and paleontological resources.

The IP standards of that section include the same mitigation measures as identified in the LUP.

Discussion

In reference to the local CDP violation described in finding III-A-3 above that was the impetus for the appealed application, the County's findings for approval state in part that "*The major vegetation removal that occurred without authorization did impact the archaeological site...*" and "*...the damage had a significant cultural impact and mitigation is necessary both for the cultural impact and to strengthen protection measures for the site.*" The County's findings go on to state "*Accordingly, reasonable mitigation is proposed under Section 3.18 of the HBAP in the form of a conveyance of property which encompasses the archaeological site and appropriate area for access to the site to the three Wiyot Tribes.*"

Despite these findings, the County approved project as conditioned does not require reasonable mitigation for impacts to archaeological resources as required by the LCP. There are no conditions attached to the modified permit that require the applicant to convey the property with sensitive resources or that specify to whom the property should be conveyed. Instead, the limited details on these directives are included in a

separate Compliance Agreement that is not mentioned or memorialized in the CDP findings or conditions and which would be difficult to enforce under the County's LCP. Even if the County incorporated the Compliance Agreement by reference into the CDP conditions, the measures required under the agreement are also not fully adequate to address all identified impacts. Effectuation of the lot line adjustment is a necessary precursor to land conveyance and to the realization of the County's intended mitigation for the impacts to archaeological and tribal cultural resources. However, neither the County's findings for approval nor the timelines specified in the Compliance Agreement related to LLA map recordation consider the possibility that the applicant could fail to obtain CDP approval from the Commission for the LLA, which would result in no reasonable mitigation measures provided for the project's impacts to archaeological and tribal cultural resources. Because the cultural resources mitigation is not legally assured through the subject permit modification, the degree of legal and factual support is low for the County's determination that reasonable mitigation will be implemented for development that impacted archaeological and tribal cultural resources.

Moreover, the County's approval did not impose future development restrictions over areas with known sensitive resources or specify the limited future uses that may be allowed in restricted areas (e.g., habitat restoration, resource preservation, and nature study uses). Rather than requiring the applicant to record an open space deed restriction over sensitive areas that would restrict future development in those areas and memorialize the intent outlined in the compliance agreement that those areas be protected for environmentally sensitive resource preservation and conveyance to an entity agreeable to the Wiyot Tribe, the Blue Lake Rancheria, and the Bear River Band of the Rohnerville Rancheria, the County's CDP approval relies on the successful implementation of an outside process (the Compliance Agreement process) with questionable enforceability and no direct integration into the approved CDP Modification as conditioned.

Given these issues, there is a low degree of legal and factual support for the County's findings that the CDP Modification as conditioned requires reasonable mitigation for development that impacted archaeological and tribal cultural resources.

2. Environmentally Sensitive Habitat Areas (ESHA)

Excerpts of Applicable LCP Policies (emphasis added):

HBAP Policy 3.21-B-2-d states in applicable part as follows (emphasis added):

Walker Point – RURAL RESIDENTIAL

The 62-acre upland area has soils suitable for septic systems. The planned maximum density shall be one unit per three acres, or a maximum total of 20 dwelling units and 20 parcels. No parcel shall be smaller than 2.5 acres.

Subdivision of the 62-acre area shall be subject to an easement creating a 100' habitat buffer measured upland from the wetland/riparian corridor around the area's perimeter (as mapped by Newton & Associates in June 1987)....

Subdivision of the area shall be subject to an offer to dedicate a public access easement from the terminus of Walker Point Road to the toe of Walker Point and around the western perimeter of the property adjacent to the lands now owned by the Wildlife Conservation Board.

Subdivision of the area shall also be subject to all other applicable LCP policies and the County's subdivision requirements including preparation of a detailed drainage analysis and construction of necessary drainage improvements prior to recordation of the Final Map...

HBAP Policy 3.30 states as follows:

**** 30240. (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.*

(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 such areas, and shall be compatible with the continuance of such habitat areas.

3.30-B-1:

1. Identification of Environmentally Sensitive Habitats

a. Environmentally sensitive habitats within the Humboldt Bay Planning Area include:

- 1) *Wetlands and estuaries, including Humboldt Bay and the mouth of the Mad River*
- 2) *...*
- 3) *Rivers, creeks, gulches, sloughs and associated riparian habitats, including Mad River Slough, Ryan Slough, Eureka Slough, Freshwater Slough, Liscom Slough, Fay Slough, Elk River, Salmon Creek, and other streams.*
- 4) *Critical habitats for rare and endangered species listed on state or federal lists.*

b. Proposed development occurring within areas containing these sensitive habitats shall be subject to conditions and requirements of this chapter... As an interim measure for habitat areas not currently identified on the maps, information obtained during the CEQA review process will be used by the County in reviewing applications for coastal development permits. The review of these sensitive habitat areas and the identification of appropriate land uses

and/or mitigation measures shall be in cooperation with the Department of Fish and Game...

3.30-B-6:

6. Wetland Buffer

a. No land use or development shall be permitted in areas adjacent to coastal wetlands, called Wetland Buffer Areas, which degrade the wetland or detract from the natural resource value. Wetland Buffer Areas shall be defined as:

1) The area between a wetland and the nearest paved road, or the 40 foot contour line (as determined from the 7.5' USGS contour maps), whichever is the shortest distance, ...

b. New development; except for:

1) development permitted in 3.30B2,3, and 4

2) wells in rural areas; and

3) new fencing, so long as it would not impede the natural drainage

shall be sited to retain a setback from the boundary of the wetland sufficient to prevent adverse effects to the wetland's habitat values.

c. ...

d. Outside an urban limit line, the setback shall be between 100 and 200 feet, depending upon the size and sensitivity of the wetland, drainage boundaries, vegetation, adjacent uses, and the potential impacts of the project on the wet habitat values. The precise width of the setback shall be sufficient to prevent significant effects to the wetland.

e. *In both urban and rural areas, setbacks of less than the distance specified above may be permitted only when the prescribed buffer would prohibit development of the site for principle use for which it is designated. Any such reduction in setback shall still retain the maximum setback feasible, and may require mitigation measures, in addition to those specified below, to ensure new development does not adversely affect the wetland's habitat values.*

f. All new development within the wetland buffer shall include the following mitigation measures:

1) *Not more than 25% of the lot surface shall be effectively impervious.*

- 2) *The release rate of storm runoff to adjacent wetlands shall not exceed the natural rate of storm runoff for a 50 year storm of 10 minute duration.*
 - 3) *Septic systems or alternative waste disposal systems must meet standards of the Humboldt-Del Norte Health Department and the Regional Water Quality Control Board.*
 - 4) *Areas disturbed during construction, grading, etc., within 100 feet of the mean high water line, shall be restored to original contours and sufficiently and promptly replanted with vegetation naturally occurring in the immediate area.*
 - 5) *Development and construction shall minimize cut and fill operations and erosion and sedimentation potentials through construction of temporary and permanent sediment basins, sediment basins, seeding or planting bare soil, diversion of runoff away from graded areas and areas heavily used during construction, and, when feasible, avoidance of grading during the rainy season (November through April).*
- g. The County shall request the Department of Fish and Game to review plans for development within 200 feet of the boundary of the wetland.*

3.30-B-8

8. *Coastal Streams, Riparian Vegetation and Marine Resources*

...

- *** 30231. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

...

- d. Riparian corridors on all perennial and intermittent streams shall be, at a minimum, the larger of the following:*
- 1) *100 feet, measured as the horizontal distance from the stream transition line on both sides.*

- 2) *50 feet plus four times the average percent of slope, measured as a slope distance from the stream transition line on both sides of intermittent and perennial streams.*
- 3) *Where necessary, the width of riparian corridors shall be expanded to include significant areas of riparian vegetation adjacent to the corridor, slides, and areas with visible evidence of slope instability, not to exceed 200 feet measured as a horizontal distance.*
- 4) *Notwithstanding the above riparian corridor width requirements, the width of the riparian corridor may be reduced where such a reduction would not result in the removal of woody vegetation, and the County determines, based on specific factual findings, that a reduction will not result in a significant adverse impact to the habitat. New structures, including houses, barns, sheds, etc., shall be placed a minimum of 50 feet from the stream transition lines.*

...

Discussion

The primary development authorized by the County's permit is demolition, removal, and restoration work intended to restore impacted ESHA and ESHA buffer areas damaged by the series of LCP violations discussed in Finding III-A-3 above. According to a habitat impact evaluation report ("Aquatic Resource Delineation") completed by Timberland Resource Consultants (TRC), including TRC's supplemental addendum to the report dated June 15, 2022 (**Exhibit 4**), the applicant's unpermitted activities impacted three types of natural communities totaling over 1.2 acres in size. The majority of impacts were related to mowing/masticating coastal bramble (*Rubus ursinus*) habitat and other habitats (with a CAT 310 excavator fitted with a hydraulic mulcher head). The TRC report lists *Rubus ursinus* habitat as a type of ESHA.⁵ The TRC report also documents impacts to riparian and wetland habitats along Fay Slough dominated by red alder (*Alnus rubra*), willows (*Salix* spp.), and *Rubus ursinus*, including unpermitted mowing and removal of five trees in this area (one willow and four red alder trees). As previously mentioned, the project site borders (to the south and west) the 484-acre Fay Slough Wildlife Area managed by CDFW. The affected riparian vegetation, including much of the *Rubus ursinus*, is directly associated with Fay Slough and its associated riparian complex, and as cited above, the LCP specifically identifies Fay Slough and its associated riparian habitat as a type of ESHA.

Also as cited above, the LCP requires a minimum 100-foot no disturbance wetland setback from the Fay Slough wetland and riparian complex, to be measured from the

⁵ In a Revegetation and Monitoring Plan report prepared by Kyle Wear dated August 2023 prepared after the County's action and submitted after the appeal was filed, *Rubus ursinus* habitat is classified as the "Salal - berry brambles" community type [*Gaultheria shallon* - *Rubus (ursinus)* Shrubland Alliance]. While this vegetation alliance is classified as S4 (not sensitive), the *Rubus ursinus* vegetation association within that alliance is classified as a sensitive natural community under the state (CDFW) ranking system (see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=153609&inline>, CaCode 63.901.05).

upland boundary of the riparian corridor. In addition, the LCP defines identifies an additional area of protection around wetlands referred to as “wetland buffer areas” (not to be confused with the wetland setback), which is an area that overlaps with a wetland setback area but can be larger in some situations. The wetland buffer area is defined as the area between the wetland and the nearest paved road or the 40-foot contour line – whichever is the shortest distance. The LCP limits development in both wetland setback areas and wetland buffer areas to protect adjacent wetlands, and in this case, there were conditions imposed on the original CDP requiring a minimum 100-foot wetland setback and prohibiting development (marking as “non-buildable on the plot plan”) areas below the 40-foot contour line.

As previously discussed, certain unauthorized development occurred in both the wetland setback area and wetland buffer area, including, in sum, unpermitted grading, mowing/major vegetation removal, road construction, and construction of a portion of the partially built residence (**Exhibit 9**). Because such development is not an allowable use in ESHA, in the wetland setback, or in the wetland buffer area, the County’s approval requires removal and restoration.

However, there is a low degree of legal and factual support for the County’s determination that the approved project as conditioned will restore and not significantly degrade sensitive setback areas and buffer areas where restoration activities have been authorized. Fundamentally, as no preliminary grading plans or description of fill removal and restoration methods were required to support the CDP modification application, the County’s findings and conditions do not address how work will be undertaken in a manner that will not significantly degrade sensitive areas or the adjacent park and recreation area. First, the County’s approval does not explain how it will be determined that all fill material has successfully been removed from site as required and the areas restored to preconstruction grades. For example, there is no requirement that the required site recontouring work (after fill removal) be field verified by an independent qualified professional to confirm the area has been restored to pre-disturbance grades. Also, the County’s approval does not require pre-disturbance surveys for nesting birds, even though work would be allowed to be conducted during the bird nesting season and is located immediately adjacent to a 484-acre wetland complex known for its many species of resident and migratory songbirds, including ground-nesting species (e.g., various species of sparrows) and species known to nest in abandoned structures (e.g., barn swallows). Furthermore, the County’s approval lacks requirements for the applicant to identify, prior to demolition/fill removal work, appropriate disposal location(s) for debris and fill material to ensure that the large volume of structural and soil fill to be removed (15,000 cubic yards of fill, as estimated by the County) will be properly disposed of at authorized sites capable of receiving the material(s).

Moreover, the County’s approval of the extent of required restoration and the lot line adjustment map was based on incomplete maps and plans submitted by the applicant/his consultants that did not depict all disturbed areas and required restoration areas (e.g., plotted on pre-disturbance aerial imagery), and the County did not verify that the 100-foot “no-disturbance” wetland setback as depicted on the TRC maps was accurately measured from the upland edge of the riparian zone based on pre-

disturbance measurements. For example, the County's findings did not completely analyze or discuss the extent of grading, fill, and structure encroachment into protected areas (e.g., no discussion of the structure itself and grading/fill encroaching into areas below the 40-foot contour and, in some cases, also into the wetland setback area), yet a review of current and past aerial and LiDAR imagery of the site compared with TRC habitat impact maps and survey maps from professional land surveyor Stephen Drake reveals structures (retaining walls and portions of the house foundation) and grading/fill extending into the 100-foot wetland protection zone and areas below the 40-foot contour west of the partially built residence (**Exhibit 9**). Moreover, the County's approval includes no directives or discussion to ensure that the future siting of onsite drainage features and the wastewater treatment/disposal septic system on the upper lot that may be redeveloped in the future will be sited in a manner that avoids significant degradation of sensitive resources and buffer areas immediately adjacent to the west and south. Thus, key information and analyses needed to inform the mitigation and restoration requirements were not considered. Furthermore, the County's approval defers formulation of the mitigation (i.e., final restoration plan required by condition of approval #8) to a future date without having objective standards to guide that later discretionary decision (e.g., no identified success criteria specified). Thus, there is a low degree of legal and factual support for the County's determination that the authorized development, including the reconfigured lots and future residential development that may occur on the upper lot, will protect environmentally sensitive habitat areas and associated buffers against significant disruption of habitat values.

3. Conclusion – Substantial Issue Determination

When considering a project on appeal, the Commission must first determine whether the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over the CDP application for such development. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of LCP and Coastal Act (where applicable) conformance. The Commission has in the past and, pursuant to section 13115(c) of its regulations, considered the following five factors in its decision of whether the issues raised in a given case are "substantial": (1) the degree of factual and legal support for the local government's decision; (2) the extent and scope of the development as approved or denied by the City; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the City's decision for future interpretations of its LCP; and (5) whether the appeal raises only local issues as opposed to those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

In this case, these five factors considered together support a conclusion that the appeal does raise a substantial issue as to the County-approved project's consistency with the certified LCP. Primarily, as discussed in these findings, the degree of legal and factual support is low for the County's determination that reasonable mitigation will be required for development that impacted archaeological and tribal cultural resources, because mitigation requirements are directed by a separate Compliance Agreement that is not incorporated into the CDP conditions by reference. Even if the County had incorporated

the Compliance Agreement by reference into the CDP conditions, the measures required under the agreement are not fully adequate to address all identified impacts. Because the cultural resources mitigation is not legally assured through the subject permit modification, the degree of legal and factual support is low for the County's determination that reasonable mitigation will be implemented for development that impacted archaeological and tribal cultural resources. With respect to ESHA and the County's decision that the authorized development will protect environmentally sensitive habitat areas and associated buffers against significant disruption of habitat values, key information and analyses needed to inform mitigation and restoration requirements were omitted from the analysis, and the County's approval defers formulation of the mitigation (final grading/fill removal and ESHA restoration plans) to a future date without having objective standards (e.g., success criteria) to guide that later discretionary decision. Therefore, the degree of factual and legal support for the local government's decision is not sufficient to address this matter.

As to the second factor, project scope, while the project is limited to two lots totaling six acres and largely involves demolition and removal activities, the extent and scope of the demolition, fill removal, and restoration is significant (removal of a 21,000 square foot structure and approximately 15,000 cubic yards of fill material), especially considering the low degree of factual and legal support for the County's decision that reasonable and sufficient mitigation will be required for ESHA protection and for the development's potential to further impact archaeological and tribal cultural resources. As the County's findings were based on incomplete maps and plans that did not depict all disturbed areas and required restoration areas, this factor also supports a finding of substantial issue.

The third factor (the significance of coastal resources affected) also supports a finding of substantial issue. As noted by the County's findings and as long documented for the subject sites (dating back to the LCP amendment and subdivision approvals of the 1980s, 1990s, and 2000s), there are significant archaeological resources, tribal cultural resources, and ESHA in the project vicinity. The project site borders the 484-acre Fay Slough Wildlife Area, an associated riparian complex of which extends onto the subject property (and is the subject of the authorized restoration activities).

Fourth, the County's decision could set an adverse precedent for future interpretations of the County's LCP, including on the review of future development of the vacant parcel at 1506 Walker Point Rd. (the smaller upper parcel as adjusted). The County's approval includes no directives or discussion to ensure that the future siting of onsite drainage features and the wastewater treatment/disposal septic system will be sited in a manner that avoids significant degradation of sensitive resources and buffer areas immediately adjacent to the west and south.

Finally, the project raises issues of regional and statewide significance, including the protection of archaeological and tribal cultural resources and ESHA. As discussed, it's unclear whether reasonable and sufficient mitigation will be required for ESHA protection and for development that impacted archaeological and tribal cultural resources.

Therefore, weighing these five factors together support a conclusion that the County's approval of a CDP for this project raises a substantial issue of LCP and Coastal Act conformity. For the reasons discussed above, the Commission finds that Appeal No. A-1-HUM-23-0030 raises a substantial issue with respect to the grounds on which the appeal has been filed under section 30603 of the Coastal Act regarding consistency of the approved development with the certified LCP.

A-1-HUM-23-0030 (Schneider)

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS

Humboldt County certified Local Coastal Program (Humboldt Bay Area Plan & Coastal Zoning Regulations)

Local record for Humboldt County CDP File No. PLN-2022-17762 (Schneider)

Humboldt County CDP File No. CDP 17-016 (Schneider)

Commission Post-Certification File No. 1-HUM-22-0433 (Schneider)

Damage Evaluation, May 2022 (William Rich & Associates)