

CALIFORNIA COASTAL COMMISSION

455 MARKET ST, SUITE 300
SAN FRANCISCO, CA 94105-2219
FAX (415) 904-5400
TDD (415) 597-5885



W9a, 9b, & 9c

Staff: SW-SF
Staff Report: 01/22/26
Hearing Date: 02/04/26

STAFF REPORT: Recommendations and Findings for Consent Cease and Desist Order No. CCC-26-CD-01, Consent Restoration Order CCC-26-RO-01, and Consent Administrative Penalty No. CCC-26-AP3-01

Cease and Desist Order No: CCC-26-CD-01

Restoration Order No: CCC-26-RO-01

Administrative Penalty No: CCC-26-AP3-01

Related Violation File No: V-1-22-0015

Owner and Entity Subject to these Orders and Actions: Travis Schneider and
Stephanie Bode

Location: 1506 Walker Point Rd., Assessor's Parcel Number
402-171-030 and 1512 Walker Point Rd.,
Assessor's Parcel No. 402-171-029; Bayside,
Humboldt County.

Violation Description: Unpermitted development and violations of
Humboldt County CDP No. 17-016/SP-17-015 ("the
CDP") that include, but are not limited to: 1) removal
of protected vegetation from within a required 100'
"Wetland Protection Area"; 2) construction of a
house much larger in size and footprint than
approved in the CDP in size, by enlarging the house
by approximately 13,000 square feet; 3)
encroaching into the 100' Wetland Protection Area;
4) transporting onto the site, and subsequent
grading of, an amount of fill that exceeded the
volume authorized in the CDP by approximately
13,500 cubic yards; 5) incursion into and

disturbance of known cultural resources with heavy machinery; 6) mowing of vegetation within an environmentally sensitive habitat area; 7) installation of a road, which included grading and scraping within the “Wetland Protection Area” and other areas required by the CDP to be protected; and 8) the placement of additional fill material in areas required to be protected by the CDP.

Substantive File Documents: Public documents in Consent Cease and Desist Order No. CCC-26-CD-01, Consent Restoration Order No. CCC-26-RO-01; and Consent Administrative Penalty No. CCC-26-AP3-01; Exhibits 1 through 14; and Appendix A of this staff report.

CEQA Status: Categorically Exempt (Cal. Code of Regs., tit.14, §§ 15061(b)(2), 15307, 15308, and 15321(a)).

SUMMARY OF STAFF RECOMMENDATION AND FINDINGS

Overview

This case involves a property owner that obtained a local Coastal Development Permit for the construction of a house on a vacant parcel near Humboldt Bay, which included a number of conditions specifically designed to protect cultural resources, wetlands, and environmentally sensitive habitat area (“ESHA”) on the parcel. These conditions were critical to ensure that development would not occur in certain areas that contained these unique and sensitive resources. In this case, the owners of the Properties¹, did not comply with these permit conditions and undertook development in the very locations where such development was restricted, which, as described later in the staff report, had significant negative impacts on coastal resources including wetlands, ESHA, and cultural resources. These Properties are located in an area that is highly significant to the Wiyot area tribes, which includes citizens of Wiyot ancestry, including the Blue Lake Rancheria, Wiyot Tribe, and Bear River Band of the Rohnerville Rancheria. There is no other known or similar site in the Humboldt Bay region that contains such uniquely well-preserved cultural materials. This site contains known significant cultural resources that were damaged through Respondent’s unpermitted development on the Properties, including Respondent’s use of heavy machinery to place fill in and grade areas that were restricted from such development through the CDP conditions designed to protect the wetland buffer area and cultural resources.

¹ The unpermitted development occurred at 1506 and 1512 Walker Point Rd., Bayside in Humboldt County (referred to as the “Properties.”)

The unpermitted development (and violation of CDP conditions) occurred on the Properties owned by Travis Schneider and Stephanie Bode ("Respondent") and includes but is not limited to: constructing a house that was significantly different from and larger than the development approved in the CDP, which also encroached into the designated wetland buffer area and destroyed environmentally sensitive habitat and known cultural resources; installing an unauthorized rocky road on the adjacent parcel where no development was authorized; and removing major vegetation, including riparian and coastal bramble vegetation.

The house, which was partially constructed, differed significantly from that which was permitted. The house was permitted to be 8,000 square feet and the CDP authorized 1,500 cubic yards of fill. Instead, the partially constructed house was 21,000 square feet and there had been 15,000 cubic yards of fill material imported to the site. In addition, the location of the house differed from that approved in the permit, and moreover, it encroached into the wetland buffer area, which was to be protected under the permit conditions and County's Local Coastal Program ("LCP") (Exhibit 1).

The unpermitted development conducted on the Properties also affected protected resources. In installing the unauthorized road, Respondent graded and scraped the land within the wetland buffer area and placed fill within the wetland buffer area, which also had the effect of removing protected native vegetation, including riparian and coastal bramble vegetation, including native Blackberry, which was specifically protected by the CDP conditions and is culturally significant to the Wiyot area tribes. This activity also occurred within an area containing known important cultural resources, which were damaged through the use of heavy machinery in areas within the designated buffer and setback areas. The existence of the cultural resources was known to Respondent, as the Wiyot area tribes had specifically communicated their locations to Respondent prior to construction. The full extent of the negative impacts to the sensitive riparian and coastal bramble vegetation and cultural resources will be explained more fully below.

Location of and Habitat on the Properties

The site is located directly adjacent to and upslope from the Fay Slough Wildlife Area and Fay Slough itself, which is a tidally influenced wetland connected to Humboldt Bay. The estuarine and freshwater wetlands of the Fay Slough Wildlife Area provide critical habitat for rare plants, federally listed fish, and other animals and sensitive natural communities, among other ecological and important functions such as storing floodwater and protecting adjacent areas. The establishment of a wetland buffer area was a required condition in the CDP and through the LCP. The wetland buffer area was designed to protect the wetland resources and also provides important ecological functions, such as contributing important organic debris that is transformed into nutrients, which support the marine food web (e.g., wood, leaf litter, and other organic matter from these areas provide nutrients for life at the base of the food web). Vegetation in these areas supports insects and other prey resources, which are eaten by juvenile salmon and other fish and wildlife that inhabit the adjacent wetlands. Vegetation of wetland buffer areas also provides cover for aquatic and wetland-

associated species and foraging habitat for birds and other wildlife. Wetland buffer areas also capture contaminants; by absorbing or filtering contaminated stormwater runoff, soils and vegetation in these wetland buffer areas can prevent pollutants from entering coastal waters. In addition, wetlands provide critical flood control, as they can collect and store excess surface water, which prevents downstream flooding. Healthy wetland buffer areas support rich and diverse communities of animals that depend on the areas for feeding, breeding, refuge, movement, and migration.

As noted, the Properties are located adjacent to and within an identified archaeological site, one of the earliest known Wiyot village sites. The Properties are of significant historical and cultural significance to the Wiyot area tribes, including the Blue Lake Rancheria, the Bear River Band of the Rohnerville Rancheria, and the Wiyot Tribe. These Properties are a pre-colonial Wiyot habitation site, and there is no other known similar site in the Humboldt Bay Region. The proximity of the Properties to Humboldt Bay adds to the unique history and connection of the Wiyot area tribes to these Properties, given that the sacred center of the Wiyot universe is located at Tuluwat, an island within Humboldt Bay. Due to the sensitivity of the area, the precise location and nature of these cultural resources are not being identified here; however, these Properties have been documented and formally recorded and are eligible for the California Register of Historical Resources. The site contains possible Wiyot burial sites, house and fire pits, and other tools and cultural resources that offer valuable insights for the Wiyot area tribes. Further, the native Blackberry (*Rubus ursinus*), which was protected specifically by the CDP conditions and negatively impacted as a result of the unpermitted development, is culturally and historically significant to the Wiyot area tribes. The unpermitted development, specifically the use of heavy machinery, which has the clear potential to churn and disturb the known cultural resources located on the Properties, damaged the sensitive cultural resources, despite specific CDP conditions designed to protect these resources.

Permit and Violation History

On September 7, 2017, Humboldt County (the “County”) issued Coastal Development Permit No. 17-016/SP-17-015 (“the CDP”), which authorized, pursuant to a suite of conditions intended to protect the resources on and near the site, the construction of an approximately 8,000 square foot residence with an attached 1,000 square foot cellar, four garage parking spaces and two driveway parking spaces, and approximately 1,500 cubic yards of cut and fill, all located at 1506 Walker Point Road (Exhibit 2). At the time of the CDP issuance, 1506 Walker Point Road was a vacant 3.5 acre lot. Respondent also owns the adjacent 2.6-acre lot to the south, 1512 Walker Point Road, where no development at all was proposed or authorized, but where unpermitted development took place, as more fully discussed below. Both properties are located east of the City of Eureka between the Eureka-Arcata Highway 101 corridor and Myrtle Avenue. The Properties border (to both the south and west) the 484-acre Fay Slough Wildlife Area managed by the California Department of Fish and Wildlife (CDFW) (Exhibit 3).

Condition 9 of the CDP required a minimum 100-foot wetland setback area, measured from the upper edge of riparian vegetation associated with the Fay Slough wetland complex, where no development could occur, as well as requiring additional conditions to protect vegetation within the designated wetland buffer area. The wetland buffer designated by the LCP on the subject site is demarcated by the 40-foot contour elevation line, and conditions of the CDP also directed that no development could occur below this 40-foot contour elevation line (Exhibit 2). In addition, as evidence of the concerns about cultural resources on this site, the CDP included a number of conditions to protect known cultural resources in the area, including one that specified that if any cultural resources were discovered during construction, construction must cease within the immediate area and that a 50-foot buffer area around the discovered cultural resources be maintained until a qualified archaeologist and appropriate Tribal Historic Preservation Officer(s) ("THPO") could be consulted.

Construction began in approximately May of 2018, and continued for several years at a slow pace. However, on January 19, 2022, Commission staff received a copy of a letter from the County, addressed to Respondent, stating that a Stop Work Order had been posted at 1506 Walker Point Rd. on December 27, 2021, based on violations of the CDP (Exhibit 4 and Exhibit 5). The County documented three primary violations: 1) an unpermitted rocked road on the adjacent property to the south at 1512 Walker Point Road, located in the designated wetland buffer area (areas below the 40-foot contour and areas within 100 feet of Fay Slough-associated wetlands), 2) major vegetation removal conducted with heavy equipment on both parcels, within protected wetlands, the wetland buffer areas, and other areas with ESHA, and 3) the residence, which was partially constructed, had been built in a location not in accordance with the final site plans and was less than 100 feet from wetlands, and was more than two and half times larger than permitted (instead of the 8,000 square foot residence as approved, it was 21,000 square feet) (Exhibit 5). Further, the County letter stated that since the date of the letter, additional work had been conducted at the Properties, further violating the CDP conditions, as Respondent continued construction on the house and conducted further unpermitted development within the wetland buffer area (Exhibit 5). It also came to light that some of the development was occurring on the adjacent parcel (1512 Walker Point Rd.), despite the fact the permit only covered development at 1506 Walker Point Rd.

After receiving this information, Commission staff began working with the County to ensure compliance with the CDP and Stop Work Order and to investigate the extent of the violations. On February 4, 2022, Commission staff were contacted by members of the public who alleged that additional violations of the CDP had occurred also in violation of the LCP and the Coastal Act and provided documentation of Respondent's incursion into the cultural resource areas and removal of environmentally sensitive and protected vegetation. Specifically, this unpermitted development was in violation of Coastal Act Section 30240 and 30233 and Humboldt County LCP Humboldt Bay Area Plan (HBAP) policies 3.30 (protection of ESHA), 3.18-B-1 and 313-16.1.1 (protection of archeological resources), and 3.30-B-6 (wetland buffer protections).

Additionally, Commission staff received a copy of a letter dated February 11, 2022, from the Blue Lake Rancheria, one of the Wiyot area tribes for whom these Properties are extremely culturally significant, addressed to the County, in which specific violations of the CDP were documented, including the incursion into cultural resource areas and the removal of vegetation from within ESHA (Exhibit 6). Despite the Stop Work Order issued in December 2021 and the notice from the Blue Lake Rancheria, Respondent continued work on the Properties, continuing to further damage the sensitive vegetation and cultural resources. In addition, Respondent had been personally informed by the Wiyot area tribes of the cultural significance of the Properties and known cultural resources prior to any construction beginning on the Properties. Following receipt of this information, Commission staff visited the Properties on March 1, 2022, and confirmed the violations described above.

Beginning in March 2022, Respondent approached the County to amend the CDP to include, "the removal of unpermitted temporary access road and [a] revised home location." Commission Planning staff then reviewed the proposed changes and sent letters and emails to the County on June 27, 2022, and August 8, 2022, in which staff conveyed concerns with the incomplete restoration, demolition, and fill removal plans that Respondent submitted to the County. These concerns included the fact that the application as submitted and the proposed recommendations for a permit amendment did not appear to be consistent with the LCP or the Coastal Act and did not fully resolve the violations. These letters also included the fact that the mitigation measures proposed for the County permit amendment did not restore all of the native vegetation, only the native Blackberry, and did not contain adequate provisions to protect the cultural resources (Exhibit 7 and Exhibit 8).

On August 18, 2022, the County Planning Commission heard Record No. PLN2022-17762, an action to amend the CDP to authorize all of the unpermitted development "after the fact". At this meeting, the matter was continued to September 1, 2022. The hearing was controversial, and at the conclusion of the hearing, the decision on the approval of the CDP amendment was postponed to a later, unspecified date (Exhibit 9).

On June 26, 2023, Commission staff were informed of a new proposal that included provisions to remove unpermitted materials and to restore the Properties to their pre-construction grade.

The new modification to the CDP was approved by the County Planning Commission at its July 6, 2023, meeting, and was subsequently appealed by two Coastal Commissioners on August 7, 2023 (Appeal No. A-1-HUM-23-0030) (Exhibit 10). On March 15, 2024, the Coastal Commission adopted the staff recommendation and found that "Substantial Issue" existed with respect to the grounds on which the appeal was filed (Exhibit 11). The Coastal Commission's appeal included a finding that the County's approval of the amended CDP did not provide reasonable mitigation measures for impacts to archeological and tribal cultural resources (Exhibit 11). The Wiyot tribe offered comments in support of the finding of Substantial Issue due to the lack of mitigation measures to protect cultural resources (Exhibit 12).

On August 9, 2023, Respondent entered into a Compliance Agreement with Humboldt County that required corrective actions towards remedying the outstanding violations on the Properties (Exhibit 13). However, while the Compliance Agreement attempted to provide greater mitigation measures to address the impacts of the unpermitted development and address the situation at the site, the terms of the Compliance Agreement were not incorporated into the amended CDP, and the agreement did not provide a complete resolution that would have addressed all identified impacts nor would it have fully resolved the violations under the Coastal Act.

Because the Commission found “Substantial Issue,” the Commission took jurisdiction over the permit application and reviewed the CDP application *de novo*. With the CDP application no longer in the County’s purview, the County requested, pursuant to Coastal Act Section 30810(a) and to provide for an efficient and coordinated resolution, that the Commission take the lead in addressing the LCP violations in the County LCP jurisdiction. The Commission had a pending *de novo* application and separate pending Coastal Development Permit application for a lot line adjustment, which Respondent has since withdrawn.²

Throughout this history, Commission Enforcement and Planning staff worked closely and collaboratively with County Planning staff to investigate and analyze the issues here, and their efforts, input, and actions are greatly appreciated.

The Proposed Resolution

Despite the prior history that occurred on the Properties, Respondent has worked closely and cooperatively with Commission Enforcement staff to reach the proposed Consent Cease and Desist Order No. CCC-26-CD-01, Consent Restoration Order No. CCC-26-RO-01, and Consent Administrative Penalty No. CCC-26-AP3-01, collectively referred to herein as, the “Consent Agreement.” The proposed Consent Agreement has three general components. First, through the proposed Consent Agreement, Respondent has agreed to submit and implement a Restoration Plan to restore the Properties to their pre-violation condition and to monitor the site for a period of at least five years to ensure the long-term success of the restoration. The Restoration Plan contains requirements to remove the physical items of unpermitted development and non-native, invasive plant species located on the Properties, install temporary erosion control measures, conduct remedial grading, and revegetate the Properties with native vegetation. Further, the Restoration Plan requires that Respondent provide funding for Tribal Monitors, including multiple monitors when necessary, during all activities that involve ground disturbance, as well as provisions to protect any cultural resources that are discovered during restoration activities.

² The Properties are bisected between the Commission’s retained jurisdiction and the CDP jurisdiction delegated to Humboldt County pursuant to its certified LCP. As such, the County’s CDP modification only authorized the lot line adjustment for those portions of the lots within the County’s jurisdiction.

Second, through the proposed Consent Agreement, Respondent has agreed to record an offer to dedicate fee title of both parcels (1506 and 1512 Walker Point Road) to a tribe, public agency, or non-profit ("Grantee") at no cost to the Grantee. The goal of the offer to dedicate is that one, or all, of the Wiyot area tribes (the Blue Lake Rancheria, Wiyot Tribe, and Bear River Band of the Rohnerville Rancheria) will accept the offer to dedicate. Through this dedication in fee, the critical cultural resources, wetlands, and ESHA located on the Properties, totaling 6.1 acres of land, will be permanently protected.

Finally, Respondent has agreed, through the proposed Consent Agreement, to pay \$400,000 in administrative penalties, \$300,000 of which shall be paid to the Violation Remediation Account, which is an account held by the State Coastal Conservancy to fund and support other beneficial projects, such as restoration, public access, recreation projects, and educational programs. The remaining \$100,000 shall be paid to the Grantee to provide funds for stewardship of the Properties.

In the aggregate, the proposed Consent Agreement will address all of the violations on the Properties, will attempt to address the harm that has occurred to the tribal and cultural resources in a significant and thoughtful way, and will result in restoration of important ecological and cultural resources in a collaborative framework. While the cultural resources that were damaged due to the unpermitted development at the Properties may not be able to be fully restored, the Restoration Order contains key provisions that will protect the remaining cultural resources and the Consent Agreement represents a meaningful opportunity to return ancestral land to one, or all, of the Wiyot area tribes. The Properties contain sensitive cultural resources and critical riparian and wetland buffer habitat, and this agreement is a historic opportunity to permanently protect this land, ensuring no further damage is done to the cultural resources and wetlands habitat present at the site.

Staff therefore recommends that the Commission **APPROVE** Consent Cease and Desist Order No. CCC-26-CD-01, Consent Restoration Order CCC-26-RO-01, and Consent Administrative Penalty CCC-26-AP3-01.

The three motions can be found on pages 10 through 12.

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APPENDIX A

Consent Cease and Desist Order No. CCC-26-CD-01; Consent Restoration Order CCC-26-RO-01; and Consent Administrative Penalty No. CCC-26-AP3-01

EXHIBITS

- Exhibit 1 Area Map and Photographs
- Exhibit 2 Coastal Development Permit No. 17-016/SP-17-015
- Exhibit 3 Surrounding Area Map, Map of Fay Slough Wetlands
- Exhibit 4 Humboldt County Stop Work Order
- Exhibit 5 Letter from Humboldt County to Travis Schneider and CCC staff, dated 1/19/22
- Exhibit 6 Letter from Blue Lake Rancheria, dated 2/11/22
- Exhibit 7 CCC Letter to Humboldt County, dated 6/27/22
- Exhibit 8 Email from CCC Staff to Humboldt County, dated 8/8/22
- Exhibit 9 PLN2022-17762, Humboldt County Planning Commission
- Exhibit 10 Appeal No. A-1-HUM-23-0030
- Exhibit 11 CCC Staff Report finding Substantial Issue, dated 3/15/24
- Exhibit 12 Letter from the Wiyot Tribe and Janet Eidsness, dated 3/12/2024
- Exhibit 13 Executed Settlement Agreement between Travis Schneider and Humboldt County, dated 8/9/23
- Exhibit 14 Notice of Intent to Commence Cease and Desist Order, Restoration Order, and Administrative Penalty Proceedings, dated 7/17/24

I. MOTIONS AND RESOLUTIONS

Motion 1: Consent Cease and Desist Order

I move that the Commission **issue** Consent Cease and Desist Order No. CCC-26-CD-01 to Travis Schneider and Stephanie Bode, pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in adoption of the resolution immediately below and issuance of the Consent Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Approve the Consent Cease and Desist Order:

The Commission hereby issues Consent Cease and Desist Order No. CCC-26-CD-01, as set forth in Appendix A, and adopts the findings set forth below on the ground that development has occurred without the requisite Coastal Development Permit and in violation of a coastal development permit, in

violation of the Coastal Act, and that the requirements of the Consent Cease and Desist Order are necessary to ensure compliance with the Coastal Act.

Motion 2: Consent Restoration Order

I move that the Commission **issue** Consent Restoration Order No. CCC-26-RO-01 to Travis Schneider and Stephanie Bode, pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in adoption of the resolution immediately below and the issuance of the Consent Restoration Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Approve the Consent Restoration Order:

The Commission hereby issues Consent Restoration Order No. CCC-26-RO-01, as set forth in Appendix A, and adopts the findings set forth below on the grounds that 1) development has occurred on the Properties without a coastal development permit, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage.

Motion 3: Consent Administrative Civil Penalty Action

I move that the Commission **issue** Consent Administrative Penalty No. CCC-26-AP3-01 pursuant to Section 30821.3 of the Coastal Act to Travis Schneider and Stephanie Bode, pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in adoption of the resolution immediately below and the issuance of the Consent Administrative Penalty. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Administrative Civil Penalty Action:

The Commission hereby assesses an administrative civil penalty by adopting Consent Administrative Penalty No. CCC-26-AP3-01, as set forth in Appendix A, and adopts the findings set forth below on the grounds that activities have occurred on properties owned by Travis Schneider and Stephanie Bode without a coastal development permit, in violation of the Coastal Act, and that these activities have violated the Coastal Act provisions for the protection of

coastal resources other than public access, including the protection of cultural resources, wetlands, and environmentally sensitive habitat areas.

II. HEARING PROCEDURES

The procedures for a hearing on a Cease and Desist Order and Restoration Order pursuant to Section 30810 and 30811 are outlined in the Commission's regulations at California Code of Regulations, Title 14 ("14 CCR") Section 13185 and Section 13915. The requisite procedure for imposition of administrative penalties pursuant to Section 30821.3 of the Coastal Act (Pub. Resources Code, Div. 20) are governed by Section 30821.3(b), which specify that penalties shall be imposed by majority vote of all Commissioners present at a public hearing in compliance with the requirements of Section 30810, 30811, or 30812. Therefore, the procedures employed for a hearing to impose administrative penalties may be the same as those used for a Cease and Desist Order and Restoration Order hearing.

For a Cease and Desist Order hearing and Restoration Order hearing and an Administrative Penalty action, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding, including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where actual controversy exists. The Chair may then recognize other interested persons, after which the chair may allow the alleged violators to use any reserved rebuttal time to respond to comments from interested persons and may then allow staff to respond to the testimony and to any new evidence introduced.³

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 14 CCR Section 13185 and 13195, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commission may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner so chooses, any questions proposed by any speaker in the manner noted above.

Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order and Restoration Order and impose an Administrative Penalty. Passage of the motions above as recommended by staff will

³ Note that there are currently in use virtual hearing procedures, available at <https://www.coastal.ca.gov/meetings/rules-procedures/>

result in the issuance of the Consent Cease and Desist Order and Consent Restoration Order and imposition of the Consent Administrative Penalty.

III. FINDINGS FOR CONSENT CEASE AND DESIST ORDER NO. CCC-26-CD-01, CONSENT RESTORATION ORDER NO. CCC-26-RO-01, AND CONSENT ADMINISTRATIVE PENALTY NO. CCC-26-AP3-01⁴

A. Description of Property

The properties subject to this enforcement action are located at 1506 Walker Point Rd (Assessor's Parcel Number 402-171-030) and 1512 Walker Point Rd (Assessor's Parcel Number 402-171-029), Bayside, Humboldt County, defined as the Properties throughout this staff report (Exhibit 1). The Properties are 3.5 acres and 2.6 acres in size, respectively, and are located east of the City of Eureka, in the Indianola area between the Eureka-Arcata Highway 101 corridor and Myrtle Avenue (Old Arcata Road). 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 (Exhibit 3).

B. History of the Properties and Indigenous Peoples

The Properties are located in an area that is highly significant to the Wiyot area tribes, including the Blue Lake Rancheria, Wiyot Tribe, and Bear River Band of the Rohnerville Rancheria. The Properties and the surrounding area are located on a pre-colonial Wiyot habitation site, which is significant to the larger Wiyot Tribal Landscape of *Wigi* (Humboldt Bay). These specific Properties are associated with the unique culture and history of the Wiyot people in the Humboldt Bay region, and have been culturally and historically significant to the Wiyot peoples since time immemorial. The cultural site at the Properties was a uniquely well-preserved pre-contact Wiyot village first documented by L.L. Loud in 1918 and formally recorded at CA-HUM-53 by Janet Eidsness in 1987. The site is eligible for inclusion in the California Register of Historical Resources because of its significance to the Wiyot people (Exhibit 6). There is a high potential that the cultural materials located on the Properties include associated Wiyot burials, house and fire pits, flaked and groundstone tools, as well as other cultural resources and is of high cultural significance to the Wiyot people.

There is no other known site in the Humboldt Bay region similar to this area, and while the cultural resources that have been damaged or destroyed by the unpermitted development may never be recovered, the proposed Consent Agreement would, among

⁴These findings also hereby incorporate by reference the Summary at the beginning of this January 22, 2026 staff report ("Staff Report: Recommendations and Findings for Consent Cease and Desist Order No. CCC-26-CD-01, Consent Restoration Order No. CCC-26-RO-01, and Consent Administrative Penalty No. CCC-26-AP3-01"), in which these findings appear, which section is entitled, "Summary of Staff Recommendations and Findings."

other things, protect the Properties in perpetuity, ensuring that the cultural resources are protected in perpetuity (Exhibit 6). In addition, and as discussed in the Resolution Section in the Summary and below, through the dedication of the Properties, with the intent of the dedication to allow one, or all, Wiyot area tribes, to take ownership of the parcels, this proposed Consent Agreement would return Indigenous lands to their original stewards, emphasizing sovereignty, ecological restoration, and cultural revival. The proposed Consent Agreement also provides funds to the Grantee for stewardship of the land, and while all restoration work would be undertaken by Respondent, the funds can also be used for future ecological restoration and habitat enhancement.

This settlement offers a historic opportunity to return additional ancestral land to the Wiyot area tribes, and specifically Properties located near Humboldt Bay, including near Tuluwat, the sacred center of the Wiyot universe. While much work remains to be done to restore ancestral land, this Consent Agreement would return these Properties to the Wiyot area tribes and provide funding for additional ecological restoration and support ongoing stewardship of the Properties.

C. Permit and Violation History

The County issued Coastal Development Permit No. 17-016/SP-17-015 on September 7, 2017 (Exhibit 2). The CDP authorized the construction of an 8,000 square foot residence with an attached 1,000 square foot cellar, four garage parking spaces, two driveway parking spaces, and approximately 1,5000 cubic yards of cut and fill, all on the main lot located at 1506 Walker Point Road (Exhibit 2). No development was proposed or authorized by the CDP on the adjacent lot also owned by Respondent (1512 Walker Point Road). The CDP contained nine conditions of approval that had to be fulfilled before the building permit would be issued, in addition to several ongoing requirements and development restrictions (Exhibit 2).

Condition No. 2 states:

The native blackberry (*Rubus ursinus*) located on the parcel should be retained whenever possible as it provides cover, foraging and nesting habitat for a variety of bird species. Any vegetation/brush removal which may be necessary to clear the development footprint must be conducted outside of the bird breeding season (generally March 1 to August 15).

Condition No. 8 states:

All areas below the 40-foot contour line shall be marked non-buildable on the final plot plan submitted to the Building Division.

Condition No. 9 states:

Development shall be consistent with the recommendations of the June 30, 1987 biological report for the site [...] which include the following measures: a) removal

of vegetation from within the designated “Wetland Protection Area” shall not be permitted except as provided in Section 3.30 of the Humboldt Bay Area Plan, b) maintaining the diversity of the understory vegetation wherever possible, and the retention of all snags and dying trees where allowed by safety considerations.

Additionally, the CDP contained three “Requirements/Development Restrictions” that run for the life of the project (Exhibit 2). The most pertinent of those restrictions, No. 2, states in part:

Grading and removal of natural vegetation shall be minimized to protect natural landforms and soften the visual impact of the project on neighboring parcels.

Further, the CDP contained a provision that specifies if cultural resources are encountered during construction, the contractor on site shall cease all work in the immediate area and within a 50 foot buffer of the discovery location (Exhibit 2). If such a discovery were made, a qualified archaeologist and the appropriate Tribal Historic Preservation Officer(s) were to be contacted to evaluate the discovery and develop a treatment plan.

The conditions of approval specifically identified areas on the Properties that were to remain off limits to any development 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. In addition, all areas below the 40-foot contour line elevation (elevations on the Properties range from less than 10 feet to over 50 feet) were to also remain off limits (Exhibit 2). For wetland areas around Humboldt Bay, such as the Fay Slough wetland complex, the County’s certified LCP designates areas below the 40-foot elevation contour line as “wetland buffer areas” where certain development restrictions apply. This 100-foot wetland setback area and the associated wetland buffer area restrictions were designed to protect the critical wetland habitat but also to protect known sensitive cultural resources at the property.

Construction began in approximately May 2018 on the Properties, despite development being approved solely at 1506 Walker Point Rd. and not 1512 Walker Point Rd. On January 19, 2022, Commission staff received a copy of a letter from the County, addressed to Respondent, stating that a Stop Work Order had been posted at APN 402-171-030 (1506 Walker Point Rd., the main parcel) on December 27, 2021, for violations of the CDP (Exhibit 4 and 5). The letter also stated that since the Stop Work Order was posted, additional work had been conducted on the Properties, further violating the CDP condition. After receiving the letter, Commission staff began to work with County staff to ensure compliance with both the Stop Work Order and the CDP. The County documented three primary violations that had occurred on both Properties (1) an unpermitted temporary road was developed on the adjacent parcel to the south (1512 Walker Point Rd.) 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 had occurred with heavy equipment on both parcels within protected

wetlands, wetland buffer areas, and other areas with ESHA; and (3) the partially built residence was constructed in a location not in accordance with the approved final site plans and dramatically differed from the approved site plans, which allowed only an 8,000 square foot residence with 1,500 cubic yards of fill. Instead, the partially built residence was 21,000 square feet and there had been 15,000 cubic yards of fill material imported to the site. The residence was also being constructed less than 100 feet from wetlands associated with the Fay Slough wetland complex, violating the CDP requirements. The County letter also stated that Respondent would need to meet with the THPOs and a qualified archeologist recommended by the Wiyot area tribes to conduct an archeological damage assessment.

On February 4, 2022, Commission staff were also contacted by members of the public who alleged that additional violations of the CDP had occurred also in violation of the County's Local Coastal Program ("LCP") and the Coastal Act, including Coastal Act Section 30240 and 30233 and HBAP Policy 3.18-B-1, 313-16.1.1, 3.21-B-2, 3.30-B-6, and 3.40-B-1. On February 11, 2022, Commission staff also received a copy of a letter from the Blue Lake Rancheria, addressed to the County, in which specific violations of the CDP were documented, including the incursion into cultural resource areas and the removal vegetation located within ESHA (Exhibit 6). In addition, the letter stated that Respondent had refused permission for THPOs to physically inspect the Properties to conduct an archeological damage assessment (Exhibit 6). Despite the Stop Work Order and documented violations of the CDP, Coastal Act, and LCP, Respondent continued work on the Properties through at least February 16, 2022. On March 1, 2022, Commission staff visited the Properties and confirmed the violations documented by the County and members of the public, as described above.

Beginning in March 2022, Respondent then approached the County to amend the original CDP to include "the removal of [the] unpermitted temporary access road and [a] revised home location." Commission Planning staff then reviewed the proposed changes and sent letters to the County on June 27, 2022, and August 8, 2022, in which staff conveyed that the restoration, demolition, and fill removal plans that Respondent submitted to the County were not adequate to address the violations. Specifically, staff stated that the application as submitted and the proposed recommendations from the County did not appear to be consistent with the LCP or the Coastal Act and did not fully resolve the violations. The County Planning Commission heard Record No. PLN2022-17762, the action to amend the CDP to authorize the unpermitted development after-the-fact, on August 18, 2022 (Exhibit 9). At that meeting, after significant public comment and discussion, the County Planning Commission continued the matter to the September 1, 2022, Planning Commission meeting. At the September 1, 2022, meeting, the CDP modification was again continued to a later date.

Following these hearing postponements, Commission staff worked with County staff, as well as Blue Lake Rancheria, Wiyot Tribe, Bear River Band of the Rohnerville Rancheria, and the California Department of Fish and Wildlife to attempt to develop a resolution through the CDP process that could resolve the LCP and Coastal Act violations on the Properties.

Commission staff were informed on June 26, 2023, of a new proposal that included provisions to remove unpermitted materials and to restore the Properties to their pre-construction grade. This new proposal was scheduled for the July 6, 2023, County Planning Commission meeting. The new modification to the CDP was approved by the Planning Commission at its July 6, 2023, meeting and subsequently appealed by two Coastal Commissioners on August 7, 2023 (Appeal No. A-1-HUM-23-0030) (Exhibit 10).

On March 15, 2024, the Coastal Commission heard and adopted the staff recommendation and found that a “Substantial Issue” existed with respect to the grounds on which the appeal was filed. The Commission found that the County’s approval of the amended CDP did not provide sufficient mitigation measures for impacts to archeological, cultural, and tribal resources and was not consistent with the County LCP (Exhibit 11). On August 9, 2023, Mr. Schneider entered into a Compliance Agreement with Humboldt County, which required Mr. Schneider to undertake corrective actions toward remedying the outstanding violations on the Properties (Exhibit 13). While the Compliance Agreement attempted to provide greater mitigation measures to address the impacts of the unpermitted development and address the situation at the Properties, the terms of the Compliance Agreement had not been incorporated into the amended CDP and the agreement did not provide a complete resolution that would have addressed all identified impacts nor would it have fully resolved the violations under the Coastal Act. As a result of the Commission finding Substantial Issue, the Commission took jurisdiction over the permit application and can review the CDP application de novo. With the CDP application no longer in the County’s purview, the County requested, pursuant to Coastal Act Section 30810(a) and in order to provide for an efficient and coordinated resolution, that the Commission also take the lead on addressing the LCP violations located in the County LCP jurisdiction.

As part of the normal process to move towards a Consent Agreement, on July 17, 2024, the Executive Director of the Commission sent a Notice of Intent to Commence Cease and Desist Order, Restoration Order, and Administrative Civil Penalty Proceedings (“NOI”) to Respondent as a step towards resolving the outstanding permit violations, civil liabilities, and LCP violations (Exhibit 14). Since that time, Commission staff have coordinated with the three Wiyot area tribes, as well as the County staff and CDFW, to develop a resolution that would restore the Properties and address the civil liabilities associated with the unpermitted development. Through collaborating with the Blue Lake Rancheria, Wiyot Tribe, and Bear River Band of the Rohnerville Rancheria, the proposed Consent Agreement includes provisions to ensure that tribal monitors are included in the restoration process and that they are paid for their time and effort, including provisions to pay for more than one tribal monitor when restoration work involves multiple instances of ground disturbance simultaneously so that more than one cultural monitor is needed and allowing for additional tribal monitors to observe restoration work throughout the process. As described more fully, below, the Consent Agreement also requires Respondent, to prepare a Cultural Resources Survey and Cultural Materials Plan, to protect and preserve any cultural materials on the Properties. The Plan also requires an on-site pre-meeting with Archeological Specialists, the Native

American Most Likely Descendants (MLDs) and Native American Monitors to ensure that all procedures to protect cultural resources are understood and followed during all Restoration Work. The Cultural Resources Survey and Cultural Materials Plan must contain specific provisions about how to document, screen, rebury, and/or transport any cultural materials, including cultural midden materials, human remains, and archeological features.

The unpermitted development caused significant harm to cultural resources, wetlands habitat, and ESHA located on the Properties. Through this proposed Consent Agreement however, Respondent has agreed to restore the Properties to their pre-violation condition, remove all physical items of unpermitted development, record an offer to dedicate fee title of both of the parcels (at no cost to the Grantee) to ensure the Properties are protected in perpetuity, and pay an additional \$400,000 administrative penalty to address the civil liabilities that have accrued from the violation, \$100,000 of which shall be paid to the entity that assumes ownership of the Properties to provide funds for stewardship of the parcels.

IV. BASIS FOR ISSUING CONSENT CEASE AND DESIST ORDERS

A. Statutory Provision

The statutory authority for issuance of this Cease and Desist Order is provided in Coastal Act Section 30810, which states, in relevant part:

- (a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, an activity that (1) requires a permit from the commission without securing the permit, or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program... or any requirements of this division which are subject to the jurisdiction of the certified program or plan, under any of the following circumstances:
 - (1) The local government... requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.
 -
- (b) The cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.

B. Factual Support for Statutory Elements

The following paragraphs set forth the basis for the issuance of the Consent Cease and Desist Order by providing substantial evidence that the development meets all of the required grounds listed in PRC Section 30810 for the Commission to issue the Consent Cease and Desist Order.

The statutory provision requires the Commission to demonstrate that Respondent either undertook an activity that requires a CDP from the Commission where Respondent did not secure one or undertook activities that were inconsistent with a previously issued CDP. In fact, both grounds for issuance of an order under 30810 are met here.

In this case, it is uncontroverted that Respondent did not have a CDP for much of the development at issue here and as noted above, the unpermitted development is also inconsistent with the underlying CDP, in size, location, and in a manner not consistent with the CDP conditions. Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the Coastal Zone must obtain a CDP. Development is defined broadly by Coastal Section 30106, which states, in relevant part:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; ... grading, ... 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;... change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure...; and the removal or harvesting of major vegetation..."

Here, the development inconsistent with the permit and the unpermitted development conducted includes, but is not necessarily limited to, the: 1) removal of protected vegetation from within a required 100' "Wetland Protection Area"; 2) construction of a house much larger in size and footprint than approved in the CDP in size, by enlarging the house by approximately 13,000 square feet, and location; 3) encroaching into the 100' Wetland Protection Area; 4) transporting onto the site, and subsequent grading of, an amount of fill that exceeded the volume authorized in the CDP by approximately 13,500 cubic yards; 5) incursion into and disturbance of known cultural resources with heavy machinery; 6) mowing of vegetation within ESHA; 7) installation of a road, which included grading and scraping within the "Wetland Protection Area" and other areas required by the CDP to be protected; and 8) the placement of additional fill material in areas required to be protected by the CDP. In addition, the unpermitted development occurred, in part, at 1512 Walker Point Rd., for which no CDP was obtained, and therefore all development located on that property is unpermitted development. Moreover, the CDP condition regarding discovery of cultural resources would have required monitors if such resources had been found or affected, and no such monitoring was provided. The violations on 1506 Walker Point Rd were undertaken in direct

violation of the underlying CDP and the special conditions required therein which were designed to protect cultural resources, wetlands, and ESHA, among other resources. Therefore, the criterion required for issuance of a Cease and Desist Order is met here.

V. BASIS FOR ISSUING CONSENT RESTORATION ORDER

A. Statutory Provision

The statutory authority for issuance of this Consent Restoration Order is provided in Section 30811 of the Coastal Act, which states, in relevant part:

In addition to any other authority to order restoration, the commission... may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission, local government, or port governing body, the development is inconsistent with this division, and the development is causing continuing resource damage.

B. Factual Support for Statutory Elements

The following paragraphs set forth the basis for the issuance of the Consent Restoration Order by providing substantial evidence that the development meets all of the required grounds listed in PRC Section 30811 for the Commission to issue the Consent Restoration Order.

1) Development has occurred without a Coastal Development Permit

The first of the three criteria listed required in Section 30811 above, that is, that development has occurred without a coastal development permit, has been satisfied, as discussed in Section IV, above.

2) Development is Inconsistent with the Coastal Act

The unpermitted development described herein is inconsistent with the resource protection policies enumerated under the Coastal Act and the HBAP, including Coastal Act Section 30233 and HBAP 3.30-B-6 (limited fill of wetlands and creating a Wetland Buffer Area) and Coastal Act Section 30240 and HBAP 3.30-B-1 (protecting and defining Environmentally Sensitive Habitat Areas), in addition to Coastal Act and LCP policies that protect cultural resources.

Environmentally Sensitive Habitat Areas:

Coastal Act Section 30240 states:

- (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.

The violations at issue here did not involve uses dependent on the resources and were not sited and designed to prevent impacts to ESHA and are inconsistent with Section 30240.

HBAP Policy 3.30-B-1 mirrors Coastal Act Section 30240 but further defines specific areas near the Properties as ESHA, including sloughs and associated riparian habitats and specifically identifies Fay Slough as ESHA (emphasis added):

1. Identification of Environmentally Sensitive Habitats
 - a. Environmentally sensitive habitats within the Humboldt Bay Planning Area include...
 - 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.
 - b. Proposed development occurring within areas containing these sensitive habitats shall be subject to conditions and requirements of this chapter...

Coastal Act Section 30107.5 defines ESHA:

“Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development.

The violations included the removal of large areas of “major vegetation,” including large areas of native Blackberry. This vegetation removal meets the definition of “major vegetation removal” because it included removal of ESHA areas, riparian vegetation, specifically conflicted with the CDP conditions, and encroached into the wetland buffer area (Exhibit 11) Importantly, the CDP specifically contained provisions to protect the native Blackberry (*Rubus ursinus*) habitat on the site, which provides, among other things, cover, foraging, and nesting habitat for a variety of birds, including resident and migratory songbirds, including ground-nesting species and species known to nest in abandoned structures (Exhibit 11). There were also documented impacts to both riparian and wetland habitats along Fay Slough dominated by red alder (*Alnus rubra*) and willows (*Salix* spp.), in addition to the native Blackberry. These Properties border, both to the south and west, the Fay Slough Wildlife Area. The affected riparian vegetation, including much of the native Blackberry, is directly associated with Fay

Slough and the associated riparian complex, which is specifically identified in the LCP as a type of EHSA (Exhibit 11).

Grading and the placement of fill within this ESHA is clearly inconsistent with the ESHA protection policies of the Coastal Act and HBAP, and therefore, the unpermitted development is inconsistent with Section 30240 and the analogous policies in the HBAP.

Wetlands Habitat:

Coastal Act Section 30233 states in part,

“(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...”

The violations at issue here involved development that did not minimize adverse environmental effects on coastal waters and wetlands and are inconsistent with Section 30233.

HBAP Policy 3.30-B-6 defines the “Wetland Buffer Area” as:

- 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...

HBAP Policy 3.30-B-6 also specifies protections for the “Wetland Buffer Area” as (excluding exceptions not relevant here):

- b. New development....shall be sited to retain a setback from the boundary of the wetland sufficient to prevent adverse effects to the wetland's habitat values.
- 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.
- f. All new development within the wetland buffer shall include the following mitigation measures...

- 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.

Wetlands are extremely rare and one of the most important ecosystems in California. California has lost upward of 90% of its historical wetlands, and California's remaining wetlands, including those located on the Properties and the adjacent property, such as the Fay Wetland Slough, are critical, vanishing habitat and support numerous resident and migrant wildlife species. Many species of resident and migratory songbirds utilize this valuable habitat, as well as egrets, herons, and various raptors. CDFW has also identified many species of reptiles and amphibians that occur throughout the area, including northern red-legged frogs, Pacific Chorus Frogs, northwest salamanders, and newts.

In addition to the importance of the wetlands to birds, amphibians, reptiles, and fish, wetlands also provide habitat for sensitive plants and sensitive natural communities. The wetlands on the subject site are part of a complex of tidal and freshwater wetlands associated with the Fay Slough Wildlife Area. The affected property is hydrologically connected to Fay Slough, which is a tidal tributary to Humboldt Bay. The wetland buffer area on the subject site designated to protect the wetland and riparian resources on and adjacent to the site itself provides important ecological functions, such as (1) contributing organic debris that is transformed into nutrients, which support the marine food web (e.g., wood, leaf litter, and other organic matter from these areas provide nutrients for life at the base of the food web); (2) supporting insects and other prey resources, which are eaten by juvenile salmon and other fish and wildlife that inhabit the adjacent wetlands; (3) providing cover for aquatic and wetland-associated species and foraging habitat for birds and other wildlife; (4) capturing contaminants by absorbing or filtering contaminated stormwater runoff, soils and vegetation prevent pollutants from entering coastal waters, which helps to protect water quality; and (5) supporting communities of animals that depend on the buffer areas for feeding, breeding, refuge, movement, and migration.

In addition to playing a critical role in the ecosystem, wetlands also play a very significant role in providing flood control and addressing the increasing number of storms, as they have the ability to collect and store excess surface water, which prevents downstream flooding, especially critical with climate change and sea level rise. Finally, wetlands have the ability to sequester and store significant amounts of carbon dioxide from the atmosphere and ocean, thus playing a vital role in mitigating climate change. Healthy wetlands habitat can also help with shoreline protection and water filtration, including helping to address the significant negative impacts from sea level rise.

The unpermitted development occurred, in large part, in wetlands, riparian habitat, and the designated wetlands buffer area, which was explicitly required to be protected from development under the CDP conditions and HBAP Policy 3.30-B-6. Further, Fay Slough, and the surrounding wetlands habitat, wetlands buffer area, and associated

riparian vegetation, including the native Blackberry, is specifically identified in the LCP as a type of ESHA. The unpermitted development had the effect of removing large amounts of vegetation, both within the wetlands buffer area and outside of it, including native Blackberry, as mentioned above, which was specifically protected by the CDP conditions (Exhibit 11). Unpermitted development, including the partial construction of the house, access road construction, unpermitted grading, and major vegetation removal occurred within the wetland setback identified in the CDP and HBAP Policy 30-B-6. (Exhibit 11). The unpermitted development negatively impacted wetlands and the wetlands buffer area and had the potential to cause erosion into the wetlands.

Therefore, the unpermitted development is inconsistent with the Coastal Act and HBAP and thus the second of the three criteria for issuance of the Consent Restoration Order has been met.

4) The Violations are Causing Continuing Resource Damage

The third and final criterion for issuance of a restoration order is that the development at issue is causing continuing resource damage. 14 CCR Section 13190(a) defines the term “resource” as it is used in Section 30811 of the Coastal Act as follows:

‘Resource’ means any resource that is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.

The term “damage” in the context of Restoration Order proceedings is defined in Section 14 CCR 13190(b) as follows:

‘Damage’ means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development.

The term “continuing” is defined by 14 CCR Section 13190(c) of the Commission’s regulations as follows:

‘Continuing’, when used to describe ‘resource damage’, means such damage, which continues to occur as of the date of issuance of the Restoration Order.

The ESHA and wetlands, among other resources, located on the Properties are afforded protection under the Coastal Act, as described above, and are therefore “resources” as defined in Section 13190(a) of the Commission’s regulations. The Unpermitted Development included removal of major vegetation and vegetation within ESHA, placement of fill and other solid materials, and grading within the wetlands and wetland buffer area habitats, among other things. Through the imported fill material or land disturbance or both, invasive plant species have colonized the site, further

degrading habitats and spreading to other sensitive habitats in the vicinity. The lack of fully recovered ESHA, wetlands, and wetland buffer area at the Properties has reduced the area of wetlands and ESHA, and the damage is continuing the degradation of wetlands and ESHA and threatening adjacent wetlands and ESHA.

Without restoration of the areas impacted by the Unpermitted Development, the damage caused by the unpermitted development are continuing and will continue to occur. The persistence of these impacts constitutes “continuing resource damage,” as defined in Section 13190 of the Commission’s regulations. As a result, the third and final criterion for the Commission’s issuance of the proposed Restoration Order pursuant to Coastal Act Section 30811 is therefore satisfied.

VI. ENVIRONMENTAL JUSTICE

The following discussion does not directly address a required element of Section 30810 of the Coastal Act, and the findings in this section are therefore not essential to the Commission’s ability to issue a Cease and Desist Order. This explanation is, however, important for context, and for understanding the totality of impacts associated with the violations under the Coastal Act and for noting that this proposed resolution would provide a land dedication to protect the resources at the Property in perpetuity.

The Coastal Act supports consideration of environmental justice issues when evaluating actions under the Coastal Act.

Section 30107.3 defines Environmental Justice as:

... the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

Section 30604 requires:

(h) When acting on a coastal development permit, the issuing agency, or the commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state.

Although the Coastal Act’s environmental justice provisions were not the standard of review at the time of the CDP approval by the County in 2017, as part of implementing the Coastal Act’s environmental justice provisions, the Commission adopted an Environmental Justice Policy in 2019,⁵ committing to consider environmental justice principles, consistent with Coastal Act policies, in the agency’s decision-making process and ensuring coastal protection benefits are accessible to everyone.

⁵ The policy and related material are available at <https://www.coastal.ca.gov/env-justice/>

The Properties and their natural and cultural resources are extremely important to several California Native American tribes, as well as the general public. The unpermitted development damaged and destroyed known cultural resources despite CDP conditions that were imposed to avoid cultural resources and monitor construction activities. The Wiyot area tribes care deeply about the cultural resources at the Properties that were impacted by the unpermitted development, especially given the significance of this area as one of the earliest Wiyot village sites. The proximity of the Properties to Humboldt Bay adds to the cultural significance of these Properties to the Wiyot area tribes and demonstrates how important these Properties are to the larger Wiyot Tribal Landscape surrounding Humboldt Bay. The cultural resources at the Properties are associated with the deep history and unique cultural and connection of the Wiyot peoples to the Humboldt Bay region since time immemorial.

While the full extent of the damage to cultural resources will not be known until Respondent completes the required restoration and cultural resource evaluation, there are provisions in the proposed Consent Agreement to ensure that adequate cultural monitoring is conducted throughout the restoration work to prevent further damage to any cultural resources. Through the proposed Consent Agreement, Respondent will implement a comprehensive cultural monitoring plan, including paying monitors for their time and work, requiring multiple monitors when there are multiple instances of ground disturbance occurring at one time, and allowing additional monitors to observe the restoration.

VII. BASIS FOR ISSUING CONSENT ADMINISTRATIVE PENALTY ACTION

A. Statutory Provisions

The statutory authority for imposition of administrative penalties for violations of non-access provisions of the Coastal Act is provided in the Coastal Act in Public Resources Code Section 30821.3, which states, in relevant part:

- (a) In addition to any other penalties imposed pursuant to this division, a person, including a landowner, who is in violation of any provision of this division other than public access, including, but not limited to, damage to archaeological and wetlands resources and damage to environmentally sensitive habitat areas, is subject to an administrative civil penalty that may be imposed by the commission in an amount not to exceed 75 percent of the amount of the maximum penalty authorized pursuant to subdivision (b) of Section 30820 for each violation. The administrative civil penalty may be assessed for each day the violation persists, but for no more than five years.

In addition, Sections 30820 and 30822 create potential civil liability for violations of the Coastal Act more generally. Section 30820(b) also provides for daily judicial penalties, as follows:

Any person who performs or undertakes development that is in violation of [the Coastal Act] or that is inconsistent with any coastal development permit previously issued by the commission . . . , when the person intentionally and knowingly performs or undertakes the development in violation of this division or inconsistent with any previously issued coastal development permit, may, in addition to any other penalties, be civilly liable . . . in an amount which shall not be less than one thousand dollars (\$1,000), nor more than fifteen thousand dollars (\$15,000), per day for each day in which the violation persists.

Section 30822 states:

Where a person has intentionally and knowingly violated any provision of this division or any order issued pursuant to this division, the commission may maintain an action, in addition to Section 30803 or 30805, for exemplary damages and may recover an award, the size of which is left to the discretion of the court. In exercising its discretion, the court shall consider the amount of liability necessary to deter further violations.

Through the proposed Consent Agreement, Respondent has agreed to undertake actions and payments to resolve their financial liabilities under all of these sections of the Coastal Act.

B. Application to Facts

This case, as discussed above, includes violations of the Coastal Act involving unpermitted development and development inconsistent with a permit and inconsistent with the resource protection policies of the Coastal Act, including Section 30233 and 30240, and which trigger application of Section 30821.3. As described above, the unpermitted development had the effect of negatively impacting wetlands and ESHA, and cultural resources, among other resources. Therefore, pursuant to PRC Section 30821.3 the Commission may impose administrative civil penalties for the violations of the Coastal Act.

1. Exceptions to Section 30821.3 Liability Do Not Apply

Under Section 30821.3(h) of the Coastal Act, in certain circumstances, a party who is in violation of the non-public access provisions of the Coastal Act can nevertheless avoid imposition of administrative penalties by correcting the violation within 60 days of receiving written notification from the Commission regarding the violation if certain other conditions are met. This “cure” provision of Section 30821.3(h) is inapplicable to the matter at hand. For 30821.3(h) to apply, there are three requirements, all of which must be satisfied: 1) the violation must be remedied consistent with the Coastal Act within 60 days of receiving notice, 2) the violation must not be a violation of a permit condition, and 3) the party must be able to remedy the violation without performing additional development that would require Coastal Act authorization.

In this case, the violation is a violation of a permit condition and was not resolved within 60 days, and remedying the violation does require additional development, so therefore the cure provision is not available to the Respondent.

In addition, Coastal Act Section 30821.3(f) states:

(f) In enacting this section, it is the intent of the Legislature to ensure that unintentional, minor violations of this division that only cause de minimis harm will not lead to the imposition of administrative penalties if the violator has acted expeditiously to correct the violation.

Section 30821.3(f) is also inapplicable in this case. As discussed herein, the unpermitted development caused significant harm to ESHA, wetlands, and cultural resources. In addition, as noted above, the violation is not unintentional or minor, did cause harm that was not de minimis, and therefore Section 30821.3(f) is not applicable.

2. Penalty Amount

Pursuant to Section 30821.3(a) of the Coastal Act, the Commission may impose penalties in “an amount not to exceed 75 percent of the amount of the maximum penalty authorized pursuant to subdivision (b) of Section 30820 for each violation.” Section 30820(b) authorizes civil penalties of not be less than one thousand dollars (\$1,000) and not more than fifteen thousand dollars (\$15,000), per day for each day in which each violation persists. Therefore, the Commission may authorize penalties pursuant to Section 30821.3(a) in a range up to \$11,250 per day for each violation. There are multiple Coastal Act violations at issue here. For the purposes of calculating the penalty for this consensual administrative penalty, however, in light of Respondent’s willingness to enter into this Consent Agreement, and because Respondent worked diligently and expeditiously with staff to reach an amicable resolution that features significant nonmonetary contributions of land that provides benefits that would not come from a pure cash contribution, in this specific case and under these particular fact patterns, the Commission is reducing the portion of Respondent’s penalty amount to be assessed in cash to \$400,000 under Section 30821.3 of the Coastal Act.

Section 30821.3(a) sets forth the time for which the penalty may be collected by specifying that the “administrative civil penalty may be assessed for each day the violation persists, but for no more than five years.” While Section 30821.3 of the Coastal Act provides for the daily assessment of penalties for each day a violation persists, given the facts at hand and nature of the resolution in this case and the fact that these violations are being resolved in the proposed settlement and both avoid litigation and the attendant costs and delay in implementation, Commission staff recommends a lower penalty assessment.

In this case, construction of the house began in early 2018 and a Stop Work Order was posted by the County on December 27, 2021. While Section 30821.3 is applicable here, Section 30820(a) and (b), among other penalty provisions in Chapter 9 of the Coastal At

are also applicable. For purposes of this case, the Commission is resolving all Respondent's Coastal Act liabilities through this Consent Agreement, including the Consent Administrative Penalty Actions. Therefore, administrative penalties for the impacts to wetlands, ESHA, and cultural resources, among others, have accrued for at least several years.

However, this proposed resolution agreed to by Respondent includes a number of very significant elements, including both monetary elements and elements in lieu of cash payments that will, when implemented, confer hugely significant benefits to both the environment and the community, including the Wiyot people, and would provide benefits in excess of what a pure monetary payment could provide. The proposed Consent Agreement will not only provide for the restoration of the Properties to their pre-violation condition but also includes the agreement by Respondent to offer to dedicate fee title to both parcels to a Grantee, at no cost to the Grantee, who will manage and protect the sensitive wetlands habitat and cultural resources on the Properties in perpetuity for the purpose of protecting habitat, open space, and cultural resources. This non-monetary portion of the penalty is clearly of very significant value and will permanently protect the Properties and the ESHA and cultural resources they contain and is a critical element of the proposed resolution.

Finally, in addition to the protection and dedication of the parcels in fee as noted above, and in light of the manner in which Respondent has worked diligently and creatively with Commission Enforcement staff to craft a resolution that will benefit the habitat and cultural resources, Staff recommends a lower monetary penalty element than is provided for under Section 30821.3. To avoid costly litigation and to recognize the effort of Respondent to endeavor to rectify this violation, staff recommends assessment of an administrative penalty that includes (1) dedication, at no cost, of the Properties to a tribe, non-profit, or government agency for the purpose of protecting the open space, habitat, and cultural resources located on the Properties and (2) payment of an additional monetary penalty of \$400,000, \$300,000 of which shall be paid to the Violation Remediation Account of the State Coastal Conservancy and \$100,000 of which shall be paid directly to the Grantee who accepts the land dedication of both parcels. This proposed resolution will satisfy the goals of restoring and preserving ESHA, wetlands, and cultural resources, while ensuring that State resources can be used elsewhere, rather than being used in contentious and protracted litigation.

As discussed immediately below, Commission staff thoroughly analyzed the factors enumerated by the Coastal Act in crafting the proposed Consent Administrative Civil Penalty calculations for the Commission's approval, and the Commission concurs with staff's analysis. Under Section 30821.3(c), in determining the amount of administrative penalty to impose, the statute incorporates the elements of Section 30820: "the Commission shall take into account the factors set forth in subdivision (c) of Section 30820."

Section 30820(c) states:

In determining the amount of civil liability, the following factors shall be considered:

- (1) The nature, circumstance, extent, and gravity of the violation.
- (2) Whether the violation is susceptible to restoration or other remedial measures.
- (3) The sensitivity of the resource affected by the violation.
- (4) The cost to the state of bringing the action.
- (5) With respect to the violator, any voluntary restoration or remedial measures undertaken, any prior history of violations, the degree of culpability, economic profits, if any, resulting from, or expected to result as a consequence of, the violation, and such other matters as justice may require.

30820(c)(1): The nature, circumstance, extent, and gravity of the violation;

Applying the factors of Section 30820(c)(1), the violations at hand warrant the imposition of substantial civil liability. The violations involve removal of sensitive wetland habitat and wetland buffer area vegetation and vegetation within ESHA, despite clear CDP conditions that required the avoidance of all wetlands and wetland buffer areas. Further, the violations damaged and destroyed cultural resources, despite evidence prior to any construction activity occurring demonstrating that there were known cultural resources at the Properties, the site's historical and current significance to the Wiyot area tribes, and clear CDP conditions requiring avoidance under the 40' contour line (i.e., avoidance of the designated wetland buffer area). The damage to ESHA, wetlands, and cultural resources has persisted on the Properties for an extended period of time, which has, for example, a detrimental impact on the sensitive migratory and resident birds and wildlife that live in the wetlands habitat. Therefore, this factor warrants a high penalty.

30820(c)(2): Whether the violation is susceptible to restoration or other remedial measures;

With respect to Section 30820(c)(2), the violation can be partially remedied going forward, and compliance with this Consent Agreement moving forward will ensure that the Properties are restored through removing the physical items of unpermitted development, revegetation with native plants, and extended monitoring. The proposed Consent Agreement also requires the dedication of both parcels in fee, which will protect this valuable habitat in perpetuity. However, the damaged and destroyed cultural resources cannot be remedied going forward. There are provisions in the proposed Consent Agreement that require extensive tribal monitoring, including funding for monitors during all restoration work. Through the dedication of both parcels, one, or all, of the Wiyot area tribes, can accept the land dedication and steward the Properties in

perpetuity, thereby ensuring these cultural resources are protected. In addition, the proposed Consent Agreement provides funding for the Grantee to help steward the Properties, which would allow the Grantee to further protect and evaluate any cultural resources on the Properties. Therefore, a moderate to high penalty is warranted under this factor.

30820(c)(3): The sensitivity of the resource affected by the violation;

Section 30820(c)(3) requires consideration of the resources affected by the violation in assessment of the penalty amount. The resources affected by the violation are wetlands, ESHA, and cultural resources. Wetland habitat is extremely rare, and vanishing throughout California. Wetlands are particularly sensitive resources due to how easily it is disturbed by human activity, the valuable habitat it provides for resident and migratory birds, as well as fish, amphibians, reptiles, and mammals, and ability to assist in mitigating climate change through water filtration and other methods. The violations destroyed sensitive wetland habitat through mowing, placement of fill, grading, and removal of vegetation. The violations also disturbed known cultural resources at what is one of the earliest known Wiyot village sites. These cultural resources, once damaged, cannot be replaced. Therefore, this factor warrants a high penalty.

30820(c)(4): The cost to the state of bringing the action;

Section 30820(c)(5) takes into account the cost to the state of bringing this action. In this case, a moderate amount of Commission staff time was spent to bring this matter to a resolution. Further, much of this time was also spent coordinating with County staff, the three Wiyot area tribes, and other state agencies, and staff spent relatively little time negotiating with Respondent due to Respondent's cooperation, as compared with other similar cases. The proposed resolution would enable the State to avoid litigation entirely and save it the costs and delays to restoring critical wetlands habitat. Therefore, this factor warrants a low penalty.

Section 30820(c)(5): Voluntary restoration or remedial measures, prior history of violations, degree of culpability, economic profits, and such other matters as justice may require.

Section 30820(c)(5) requires evaluation of the entity that undertook and/or maintained the unpermitted development, whether any voluntary restoration or remedial measures were undertaken, whether the violator has any prior history of violations, the degree of culpability, economic profits, if any, resulting from, or expected to result as a consequence of the violation, and such other matters as justice may require. As to culpability, Respondent should have known that wetlands, ESHA, and cultural resources were protected, given the specific CDP conditions requiring their avoidance during construction as well as existing law. However, it does not appear that Respondent profited economically from the Unpermitted Development. Although

Respondent is a well-known developer in the area, this was a single-family home, built for Respondent.

Therefore, this factor warrants a moderate penalty.

Aggregating these factors, and in light of the nonmonetary obligations noted above, Commission staff concluded that a moderate penalty is justified here. Staff recommends that the Commission exercise its prosecutorial discretion and adopt staff's recommendation for the imposition of a penalty consisting of both (1) the nonmonetary element of protection and dedication of the two parcels in fee to a non-profit, tribe(s), or government entity approved by the Executive Director, and (2) a monetary penalty in the amount of \$400,000.

Therefore, the staff recommends that the Commission issues the Consent Administrative Penalty CCC-26-AP3-01, attached as **Appendix A** of this Staff Report.

VIII. CONSENT AGREEMENT IS CONSISTENT WITH CHAPTER 3 OF THE COASTAL ACT

The Unpermitted Development significantly impacted coastal resources, including ESHA, wetlands, and Cultural Resources. The Unpermitted Development is therefore inconsistent with the resource protection policies of the Coastal Act, and the resource damage caused by the Unpermitted Development will continue unless the unpermitted activities cease and the Properties are properly restored. Issuance of the Consent Agreement is essential to resolve the violations and to ensure compliance with the Coastal Act.

The proposed Consent Agreement, attached to this staff report as Appendix A, is consistent with the resource protection policies found in Chapter 3 of the Coastal Act. The Consent Agreement requires and authorizes Respondent to, among other things, cease and desist from conducting any unpermitted development, prepare and implement a restoration plan, and offer to dedicate fee title of both parcels to a nonprofit, tribe, or government agency approved by the Executive Director.

The Restoration Plan required by the Consent Agreement includes several components: a Cultural Resources Survey and Cultural Materials Plan, a Temporary Erosion Control Plan, a Removal Plan, a Revegetation Plan, a Remedial Grading Plan, and a Monitoring Plan. The Consent Agreement requires specific, detailed measures to ensure the protection of cultural and coastal resources as Respondent carries out the approved plans consistent with the Consent Agreement.

Failure to provide the required restoration of ESHA and wetlands would result in the continued loss of ESHA and wetlands, inconsistent with the resource protection policies of the Coastal Act.

Therefore, as required by Section 30810(b), the terms and conditions of this Consent Agreement are necessary to ensure compliance with the Chapter 3 policies of the Coastal Act.

IX. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Commission finds that issuance of the Consent Agreement, to restore the Properties, among other things, as well as the implementation of the Consent Agreement, are exempt from the requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21000 *et seq.*, for the following reasons. First, the CEQA statute (section 21084) provides for the identification of “classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from [CEQA].” *Id.* at § 21084. The CEQA Guidelines (which, like the Commission’s regulations, are codified in 14 CCR) provide the list of such projects, which are known as “categorical exemptions,” in Article 19 (14 CCR §§ 15300 *et seq.*). Because the Commission’s process, as demonstrated above, involves ensuring that the environment is protected throughout the process, one of those exemptions apply here: the exemption covering enforcement actions by regulatory agencies (14 CCR § 15321).

Secondly, although the CEQA Guidelines provide for exceptions to the application of these categorical exemptions (14 CCR § 15300.2), the Commission finds that none of those exceptions applies here. Section 15300.2(c), in particular, states that:

A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

CEQA defines the phrase “significant effect on the environment” (in Section 21068) to mean “a substantial, or potentially substantial, adverse change in the environment.” The Consent Agreement is designed to protect and enhance the environment, and it contains provisions to ensure, and to allow the Executive Director to ensure, that they are implemented in a manner that will protect the environment. Thus, this action will not have any significant effect on the environment, within the meaning of CEQA, and the exception to the categorical exemptions listed in 14 CCR section 15300.2(c) does not apply. An independent but equally sufficient reason why that exception in section 15300.2(c) does not apply is that this case does not involve any “unusual circumstances” within the meaning of that section, in that it has no significant feature that would distinguish it from other activities in the exempt classes listed above. This case is a typical Commission enforcement action to protect and restore the environment and natural resources.

In sum, given the nature of this matter as an enforcement action that will ensure the environment is protected throughout the process, and since there is no reasonable possibility that it will result in any significant adverse change in the environment, it is categorically exempt from CEQA.

X. SUMMARY AND FINDINGS OF FACT

1. The properties that are the subject of this Consent Agreement are 1506 Walker Point Rd. (APN 402-171-030) and 1512 Walker Point Road (APN 402-171-029); Bayside, Humboldt County.
2. Travis Schneider and Stephanie Bode are the owners of the Properties.
3. Coastal Act Section 30810 authorizes the Commission to issue a cease and desist order when the Commission determines that any person has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the Commission without securing a permit, or (2) is inconsistent with a permit previously issued by the Commission and those elements have been met here.
4. Coastal Act Section 30811 authorizes the Commission to issue a restoration order when the Commission determines that (1) development has occurred without a coastal development permit from the commission, (2) the development is inconsistent with the Coastal Act, and (3) the development is causing continuing resource damage and those elements have been met here.
5. Unpermitted Development as defined above has been undertaken by Respondent and occurred without a CDP on the Properties that includes: removal of vegetation, incursion and construction within the 100' "Wetlands Protection Area," unpermitted grading and fill, installation of an unauthorized road, grading and scraping below the 40' contour (the designated wetland buffer area), incursion and disturbance of known cultural resources with heavy machinery, and mowing of environmentally sensitive habitat areas within and around the designated wetland buffer area. Development as defined above, which is inconsistent with a CDP issued under the Coastal Act has been undertaken by Respondent.
6. The statutory authority for imposition of administrative penalties is provided in Section 30821.3 of the Coastal Act. The criteria for imposition of administrative civil penalties pursuant to Section 30821.3 of the Coastal Act have been met in this case. Sections 30820 and 30822 of the Coastal Act create potential civil liability for violations of the Coastal Act more generally.
7. The parties agree that all jurisdictional and procedural requirements for issuance of and enforcement of the Consent Agreement have been met and Respondent agrees to comply with and implement the terms of the Consent Agreement.
8. The work to be performed under the Consent Agreement, if completed in compliance with the Consent Agreement and the plan(s) required therein, will be consistent with Chapter 3 of the Coastal Act.

9. As called for in Section 30821.3(c), the Commission has considered and taken into account the factors in Section 30820(c) in determining the amount of administrative civil penalty to impose. The penalty required in the Consent Agreement is an appropriate amount when considering those factors.