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Subject: Schneider coastal development permit-record#PLN-17762-Meeting 08-18-2022
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Attachments: [Schneider Coastal Development Permit-Record#PLN-17762-Meeting-0818-2022.pdf](#)

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He'ba'lou Humboldt County Planning Commission, Mr. Ford, and Mr. Johnson,

Attached please find additional comments from the Wiyot Tribe regarding the Schneider Coastal Development Permit Modification, Record Number PLN-17762 on the agenda for the August 18, 2022 Planning Commission meeting.

Thank you,

-M

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RE: Title: Schneider Coastal Development Permit Modification, Record Number PLN-17762 (filed 05/12/2022), Assessor's Parcel Number: 402-171-030, 402-171-029, Meeting date: Thursday August 18, 2022.

He'ba'lou Honorable Commissioners,

The Wiyot Tribe objects to the issuance of the Coastal Development Permit and Special Permit Modification to Travis Schneider for an alteration in the configuration and location of a single-family residence as proposed in Application Number PLN-2022-17762. The record shows that the site contains a Tribal Cultural Resource that is significant to the Wiyot Tribe and other Tribes in the area. The conditions of approval recommended by the Planning Commission staff are legally and procedurally deficient. The Planning Commission should defer action on the application until ample time is provided for the Wiyot Tribe and other interested Tribes to conduct government-to-government consultation with the Planning Commission in order to promulgate and adopt measures that will either avoid further damage to the Tribal Cultural Resource or lessen the impact to a degree that is acceptable to the Wiyot Tribe and other Tribes. The significance of the Tribal Cultural Resource at this site to the culture and way of life of the Wiyot Tribe. Full compliance with applicable law requires adequate time to resolve the numerous ambiguities and uncertainties in the proposed conditions of approval. At the heart of respect for tribal sovereignty and tribal interests is meaningful consultation that allows thorough and robust consideration of protective measures. The process that has been followed here falls far short of that bedrock principle. Harmonious relations between the Wiyot Tribe and Humboldt County, and future collaboration on matters of mutual concern, require more consistent adherence to meaningful consultation guidelines.

The Wiyot Tribe urges the Planning Commission to reject the recommendation of staff that the project be found to be exempt from environmental review under the CEQA Guidelines.

The California Legislature has established as state law and policy that “a substantial adverse change to a tribal cultural resource has a significant effect on the environment.” AB 52, Section 1(b)(9). The damage assessment conducted by William Rich and Associates acknowledges that the Wiyot Tribe regards the disturbance of cultural resources at the site as “culturally significant” and that, as a result, stronger protection measures need to be put in place. This fact supports a finding, contrary to the staff recommendation, that the unauthorized work at the site constitutes a substantial adverse change to a tribal cultural resource and that, as a result, a significant effect on the environment has occurred within the meaning of AB 52. Yet the staff inexplicably recommends that the Commission adopt a finding of complete exemption from CEQA. Environmental review is necessary in order to fully investigate, evaluate and mitigate impacts to Wiyot cultural resources at the site. The staff recommendation ignores the connection the Legislature made between impacts to cultural resources and effects on the environment.

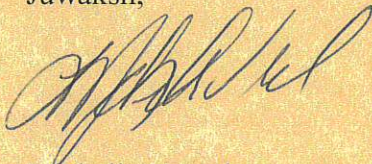
Consultation under AB 52 is deemed complete when the parties “agree to measures to mitigate or avoid a significant effect . . . on a tribal cultural resource.” Public Resources Code § 21080.3.2(b)(1). The Wiyot Tribe does not agree that the recommended conditions of approval will mitigate or avoid significant adverse impacts to the Tribal Cultural Resources at the site. As a result, additional consultation is required before the law is fully complied with. The record reflects that the Planning Commission’s decision here is appealable to the California Coastal Commission. The tribal consultation policy of the Coastal Commission requires the Planning Commission to demonstrate that the consultation process with Indian Tribes was completed before the appealable decision was made. California Coastal Commission Tribal Consultation Policy, at page 9 (adopted August 8, 2018). The Planning Commission will be unable to make that showing on this administrative record.

The Wiyot Natural Resources Department (WNRD) has documented the ethnobotanical and ecological importance of Da’dedi’lhl or the Walker Point area, which means sunshine in the Wiyot language Soulatluk, most likely due to its prominence in the cultural landscape and the grandiose viewshed it provides to the south across the vast estuarine wetlands of Freshwater Creek, Eureka, and Fay sloughs. Da’dedi’lh is a diverse vegetation mosaic of mixed redwood, Sitka spruce, grand fir, and Douglas fir forest, pepperwood stands (*Umbellularia californica*), northern coastal scrub, riparian, coastal prairie, and saltmarsh habitats. Walker Point also provides examples of the culturally important and rare hazelnut (*Corylus cornuta* ssp. *californica*) scrub vegetation community, which is an indicator of past Wiyot management. This vegetation diversity provides important habitat for wildlife and migratory birds. Ground disturbance, unpermitted vegetation removal, and illegal road construction at the Schneider development has impacted ecologically and culturally significant habitat areas (ESHA’s) that have protections under CEQA, including red alder (*Alnus rubra*) and California blackberry (*Rubus ursinus*) communities and the Fay slough wetland ecotone. Ground disturbance within the protected 100-foot wetland setback and Walker Point cultural site appears to have promoted the invasion of non-native bull thistle (*Cirsium vulgare*) and grading within and above steep slopes has the potential to exacerbate erosion within the midden. Presently the restoration plan provided by the developer falls short of evaluating and mitigating the full impacts to the vegetation, soils, and slope at the site and needs further refinement and input from the Wiyot

Tribe. A host of invasive plant species threaten the site and a diversity of coastal prairie and scrub species, along with native tree species should be installed to help stabilize disturbed soils and exclude weed establishment while shielding the development from view and ensuring to represent the botanical diversity of Da'dedi'lh. The WNRD needs fiscal support to appropriately evaluate eco-cultural restoration needs and comment on existing and inadequate restoration plans. The WNRD view the Walker Point ridge as a keystone community in the larger Wiyot eco-cultural landscape and project impacts to the properties ESHA's constitute significant negative impacts to these unique, rare, and diverse ecological communities, making mitigation difficult and in need of a more thorough evaluation and planning effort than the current process has allowed.

The Wiyot Tribe and other affected Tribes recommended nine mitigation measures, which the staff concludes would be implemented in several conditions of approval. The description of the conditions, however, is at such a high level of generality so as to make monitoring and enforcement of those conditions problematic. To take one example, the Tribes recommended "[d]edication of a permanent conservation easement to the Wiyot Area Tribes encompassing the archaeological site and associated wetlands habitat along with dedication of a pedestrian easement for access." Staff Recommendation at page 5. Condition of Approval Number 6 purports to implement this mitigation recommendation. However, the condition does not require that the conservation easement be permanent; it does not identify the conservation values the easement must protect; it does not specify how the easement may be enforced (a serious concern in light of the unauthorized work that has occurred at the site); and it does not require the applicant to negotiate the terms of the conservation easement, only that he record it once negotiated. Nor does this condition explain how three Tribes would function as easement holders. Moreover, there is no explanation about how the costs of implementing and enforcing a conservation easement will be covered. Are the Tribes expected to pay those costs or will the applicant be required to do so? These deficiencies illustrate endemic problems with the other conditions that are designed to implement tribally-recommended mitigation measures. These problems underscore the need for additional consultation as necessary to clarify these ambiguities and to ensure that the tribally-endorsed mitigation measures are in fact fully implemented.

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Michelle Vassel
Tribal Administrator