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STAFF REPORT CDP APPLICATION

Application Number: 2-22-0102

Applicant: California Department of Transportation

Project Location: Western side of Highway 1 in in the unincorporated Marshall area of Marin County fronting the historic Marshall Tavern site.

Project Description: Transfer of approximately 1,218 square feet of state highway right-of-way to the adjoining Marshall Tavern property.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

Caltrans proposes to transfer an area of state highway right-of-way to a private land owner to serve as a public lateral access easement. The transfer area is an approximately 5-foot wide and 245-foot long strip of land running along the front of the historic Marshall Tavern along and seaward of the paved portion of Highway 1, adjacent to Tomales Bay in Marin County. This transfer is related to CDP 2-06-017, which was approved by the Commission in 2012 and has subsequently been amended three times, the latest in March 2022. That CDP, as amended, allows for the reconstruction of the historic inn and operation of six “vacation-rental” style suites, a public recreational pier, restroom and concession to the north of the inn, and related work. A condition of the amended CDP requires the property owner to dedicate and provide for at least a 5-foot public access walkway along the length of the property fronting Highway 1, providing access to the shoreline and a public recreational pier also required by the CDP. Some of the area necessary for the public accessway is located in Caltrans right-of-way, due to the fact that the Tavern itself was built to the property line (and, in fact, partially over it and onto the right-of-way). Following discussions between Caltrans, staff, and the Marshall Tavern Permittee, Caltrans has agreed to transfer the above-referenced strip

of land to the Permittee to facilitate the public access improvements required by CDP 2-06-017.

Section 30609.5 of the Coastal Act applies to any transfer of state-owned land between the first public road and the sea to private ownership, such as this, and only allows such transfers when an adequate public interest in the land is retained in such a way as to facilitate public access. Here, the transfer is predicated on the Permittee maintaining this area for public access, and would be nullified if such public access were not provided. Thus, as conditioned to codify these requirements in this CDP, staff recommends that the Commission approve a CDP for the transfer. The motion to approve the CDP with conditions is found on page 4 below.

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EXHIBITS

- Exhibit 1 – Vicinity Map
- Exhibit 2 – Marshall Tavern Project Area and Shoreline View
- Exhibit 3 – Public Access Easement Depiction
- Exhibit 4 – Draft Director’s Deed Grant

1. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **approve** a CDP with conditions for the proposed development. To implement this recommendation, staff recommends a **yes** vote on the following motion. Passage of this motion will result in approval of the CDP as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Motion: *I move that the Commission **approve** Coastal Development Permit Number 2-22-0102 pursuant to the staff recommendation, and I recommend a **yes** vote.*

Resolution to Approve CDP: *The Commission hereby approves Coastal Development Permit Number 2-22-0102 for the proposed development and adopts the findings set forth below on the grounds that the development as conditioned will be in conformity with the Chapter 3 policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

2. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid, and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

3. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Approved Project.** This CDP authorizes the transfer of approximately 1,218 square feet of state land ("Transfer Parcel", as depicted in [Exhibit 3](#)), to the adjoining private property for public recreational access purposes only, and consistent with the terms of the Draft Caltrans Director's Deed Grant submitted by Applicant (see [Exhibit 4](#)), and subject to the terms and conditions of this CDP.
2. **Final Director's Deed Grant.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit to the Executive Director for review and approval a Final Caltrans Director's Deed Grant for recordation for the Transfer Parcel (see [Exhibit 3](#)), substantially consistent with the Draft Caltrans Director's Deed Grant submitted by Applicant (see [Exhibit 4](#)), and consistent with the terms and conditions of this CDP. The final deed grant shall include terms that (1) the Transfer Parcel shall be reserved for public recreational access use without interference; and (2) that in the event the Transfer Parcel is ever not reserved for public recreational access or public recreational access is restricted therein, the Permittee shall execute its right of termination over the deed grant. The final deed grant shall also include a legal description of the entire parcel or parcels governed by this CDP. Within ninety (90) days of approval of the final draft, the Permittee shall submit documentation demonstrating that the Permittee has executed and recorded the final deed grant.
3. **Execution of Termination.** In the event that Permittee determines that the Transfer Parcel is not open and retained entirely for public recreational access, or the Commission's Executive Director makes such determination and sends Permittee written notice to that effect, the Permittee shall, within sixty (60) days of such notice: 1) exercise its power of termination in the Director's Deed Grant and 2) submit to the Executive Director for review and approval a new entity to manage the Transfer Parcel for public recreational access uses, which shall be a public or non-profit entity with experience in managing public recreational access accessways and/or easements. If the Executive Director determines that the adjustments to ownership legally require a CDP amendment, the Permittee shall apply for an amendment to this CDP within 60 days of being informed of the Executive Director's determination. The Executive Director may extend any deadline above if the Executive Director determines that Permittee has: (a) been diligently pursuing compliance with the above requirements, and (b) demonstrated good cause for any identified delays.
4. **Other Authorizations.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall provide to the Executive Director written documentation of authorizations from all entities from which such authorization is necessary for the approved project, including at a minimum the California State Lands Commission and Marin County, or evidence that no such authorizations are required from each of these entities. The Permittee shall inform the Executive Director of any changes to the project required by any other such authorizations. Any such changes shall not be incorporated into the project until the Permittee obtains a Commission amendment

to this CDP, unless the Executive Director determines that no amendment is legally required.

4. FINDINGS AND DECLARATIONS

A. Project Location

The project site is located along Highway 1 adjacent to the eastern shore of Tomales Bay in Marin County (see [Exhibit 1](#)), directly in front of the historic Marshall Tavern at 20105 and 20125 Highway 1, in the unincorporated Marshall area of Marin County (see [Exhibit 2](#)). The project area is a section of state highway right-of-way along western side of Highway 1 bounded by the historic Marshall Tavern building and Tomales Bay to the west, an undeveloped parcel owned by the State Lands Commission (APN 106-020-32) to the south, and the J. Shields & Sons Coal and Feed building to the north. The Hog Island Oyster Company is also directly north of the site. Some shoulder roadside parking exists north of the site, and the State Lands Commission parcel south of the site provides an informal gravel parking area between Highway 1 and Tomales Bay. The Marshall Tavern property itself is located primarily on historic tidelands, and the state retains a public trust easement protecting the property for public trust uses including public recreation and public access. The specific area proposed for the transfer is a five-foot wide and 240-foot long strip of Highway 1 right-of-way nearest the Tavern and covering some 1,218 square feet (the “Transfer Parcel”) along the roadside shoulder in front of the historic tavern building (see [Exhibit 3](#)).

B. Project History

This project is a proposed transfer of land, however, the project stems from CDP 2-06-017, as amended, for the above-described adjacent Marshall Tavern property. [CDP 2-06-017](#) was approved by the Commission in December 2012 and authorized the redevelopment of the Marshall Tavern as a bed and breakfast with a gravel parking area and associated development.¹ CDP 2-06-017 has since been amended three times, the latest in March 2022 (CDP 2-06-017-A3). The CDP, as amended, allows for the reconstruction of the historic inn and operation of 6 “vacation-rental” style suites, a public recreational pier, restroom, and concession to the north of the inn, and related work. A condition of that CDP requires the property owner to provide at least a 5-foot-wide public accessway and easement for lateral public access across the length of the property along Highway 1, providing access to the shoreline and a public recreational pier also required by the CDP.

As a result of ongoing condition compliance efforts, Commission staff and the Marshall Tavern Permittee became aware that a portion of the area required to be set aside for the CDP-required lateral public access was partially located in an area that Caltrans considered to be state Highway 1 right-of-way. Subsequently a dispute arose whether the area necessary for the lateral public accessway and easement was owned by the Permittee for the Marshall Tavern redevelopment or it was located in the Caltrans’ right-of-way. Eventually, the two parties settled litigation on the matter by agreeing that Caltrans would transfer the area necessary for the CDP-required lateral public

¹ The Tavern has been vacant since 1990 and was condemned by Marin County in 1992, and the project was seen as a way to restore this historic structure for visitor-serving and public access uses.

accessway and easement from the state right-of-way to the owner of the Marshall Tavern property to allow the owner to record the necessary public access easement.

C. Project Description

The proposed project would transfer the above-described strip of right-of-way of land from Caltrans ownership to the adjoining private property for the sole purpose of providing public access, and subject to reversion if the land is not used in that way and/or if public access therein is unduly restricted. See the Draft Caltrans Director's Deed Grant that would transfer the property, subject to such criteria, in [Exhibit 4](#).

D. Standard of Review

The proposed project involves development on historic tidelands in the Commission's retained coastal development permit (CDP) jurisdiction. In addition, the proposed project relates to prior Coastal Commission CDP decisions and requirements, including the CDP for the original development on the Marshall Tavern site. As a result, the standard of review for the proposed project is the Coastal Act with the certified Marin County LCP providing non-binding guidance.

E. Public Access and Recreation

Applicable Provisions

Coastal Act Section 30604(c) requires that every CDP issued for any development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and public recreational policies of [Coastal Act] Chapter 3." The proposed project relates to parcel of land located seaward of the first public road, Highway 1, and thus this finding needs to be made in this case. Coastal Act Sections 30210 through 30224 specifically require that public access be not only protected but maximized. In particular:

Section 30210. *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211. *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30212.5. *Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.*

Section 30213. *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred....*

Section 30220. *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Section 30221. *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Section 30222. *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

Section 30223. *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Section 30224. *Increased recreational boating use of coastal waters shall be encouraged ...*

Additionally, Section 30609.5 of the Coastal Act protects rights of public access in the transfer or sale of any land owned by the state to a private owner:

Section 30609.5. *(a) Except as provided in subdivisions (b) and (c), no state land that is located between the first public road and the sea, with an existing or potential public accessway to or from the sea, or that the commission has formally designated as part of the California Coastal Trail, shall be transferred or sold by the state to any private entity unless the state retains a permanent property interest in the land adequate to provide public access to or along the sea. In any transfer or sale of real property by a state agency to a private entity or person pursuant to this section, the instrument of conveyance created by the state shall require that the private entity or person or the entity or person's successors or assigns manage the property in such a way as to ensure that existing or potential public access is not diminished. The instrument of conveyance shall further require that any violation of this management requirement shall result in the reversion of the real property to the state. ... (e) As used in this section, "state land" means any real property in which the state or any state agency has an ownership interest including, but not limited to, a fee, title, easement, deed restriction, or other interest in land. It does not include land in which a city, county, city and county, or district has an ownership interest. applies to any transfer of state-owned land between the first public road and the sea to private ownership.*

Analysis

The proposed transfer area is located between the first road and the sea (here Tomales Bay), is owned by the state (through Caltrans), connects to an open public area along the shoreline, provides existing and potential public access to/from the sea, and

therefore meets the definition of “state land” to which Section 30609.5 applies. Section 30609.5 requires that in any such transfer of applicable state land the state retain a permanent property interest in the land adequate to provide public access to and along the sea. In any such transfer, the instrument of conveyance must require that the private entity manage the property so as to ensure that “existing or potential public access is not diminished,” and that the “instrument of conveyance shall further require that any violation of this management requirement shall result in the reversion of the real property to the state.”

In this case, Caltrans has submitted a Draft Caltrans Director’s Deed Grant ([Exhibit 4](#)) for the transfer of the property that requires that the transfer area be retained for public recreational access, and that in the event the area is not reserved for public recreational access, Caltrans has the right, and shall exercise that right, to terminate the transfer and take back the property. Moreover, CDP 2-06-017, as amended, requires that the receiving property owner in this case retain this same area as a lateral public recreational accessway and easement through a recorded deed restriction.

Because the instrument of conveyance contains language consistent with the terms of Section 30609.5 and because the instrument of conveyance and terms of CDP 2-06-017 both protect public recreational access in the state land to be transferred, the proposed transfer complies with the specified terms of 30609.5 related to the instrument of conveyance and therefore retains for the state a “permanent property interest adequate to provide public access to or along the sea,” consistent with Section 30609.5.

Although the Draft Caltrans Director’s Deed Grant complies with these Section 30609.5 requirements, certain mapping depiction details are being finalized, signatures will need to be obtained on a final transfer document consistent with these terms, and the deed will need to be recorded to assure that no matter the proposed use on the transferred land going forward, the State’s interest in reserving this land for public recreational access in perpetuity is guaranteed. Therefore, **Special Condition 2** requires the submittal of a Final Caltrans Director’s Deed Grant for the review and approval of the Executive Director, consistent with the Draft Caltrans Director’s Deed Grant and all terms and conditions of this CDP. Additionally, in the event there is a future need to exercise the termination clause, this CDP includes **Special Condition 3** that requires Caltrans to exercise its power of termination in the event the Transfer Parcel is not reserved for public recreational access. In that event, **Special Condition 3** requires Caltrans to submit to the Commission’s Executive Director a proposed new entity to manage the transferred land. If the Executive Director determines that the adjustments to ownership legally require a CDP amendment, then the condition also requires Caltrans to apply for an amendment to this CDP.

Regarding the requirements of the above-referenced Coastal Act public recreational access provisions, the transfer, as conditioned, will ensure that the land is used only for public recreational access purposes, and it will facilitate the development of a public recreational accessway along the Marshall Tavern, as required by CDP 2-06-017, thus improving public recreational access at this location. Therefore, the CDP as conditioned is consistent with the Coastal Act’s public recreational access provisions, as well as Section 30609.5.

F. Other Coastal Resources

CDP 2-06-017, as amended, analyzed that proposed project for consistency with various other Coastal Act policies. Here, the proposed project is limited to the transfer of property that will facilitate compliance with CDP 2-06-017, and it does not itself raise any additional coastal resource concerns that are not already addressed by CDP 2-06-017. Any future development of the transferred ROW property not already authorized by CDP 2-06-017 would require a coastal development permit that conforms to Chapter 3 of the Coastal Act or the Marin County LCP, as appropriate. Lastly, to account for the potential for other authorizations that may be required for this transfer (e.g., from the California State Lands Commission, Marin County, etc.), **Special Condition 4** requires evidence of such authorizations.

Therefore, the proposed project as conditioned can also be found consistent with other Coastal Act coastal resource protection provisions.

G. CEQA

Section 13096 of Title 14 of the California Code of Regulations requires that a specific finding be made in conjunction with CDP applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

Caltrans, acting as the lead CEQA agency, determined that the proposed project was exempt from further CEQA review pursuant to CEQA Guidelines Section 15312 for sale of surplus government property. The Coastal Commission's review and analysis of CDP applications like this has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of environmental review under CEQA. The preceding findings in this report have discussed the relevant coastal resource issues with the proposal, and the CDP terms and conditions identify appropriate mitigations to avoid and/or lessen any potential for adverse impacts to said resources. Further, all public comments received to date have been addressed in the preceding findings, which are incorporated herein in their entirety by reference.

As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as conditioned, would have on the environment within the meaning of CEQA. Thus, if so conditioned, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

H. Appendices

A. Substantive File Documents

- CDP 2-06-017 (December 2012)
- CDP 2-06-017-A1 (May 2013)
- CDP 2-06-017-A2 (October 2015)

- CDP 2-06-017-A3 (March 2022)
- Marin LCP

B. Staff Contacts with Agencies and Groups

- Caltrans
- East Shore Planning Group