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# W11a

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Hearing Date: 9/6/2023

## STAFF REPORT: APPEAL SUBSTANTIAL ISSUE DETERMINATION ONLY

**Appeal No.:** A-1-TRN-20-0069

**Applicant:** City of Trinidad

**Appellant:** Kimberly A. Tays

**Local Government:** City of Trinidad

**Local Decision:** Approval with Conditions

**Location:** Van Wycke Street right-of-way, City of Trinidad, Humboldt County.

**Project Description:** Past and continued (for up to six months) temporary closure of the Van Wycke trail due to unsafe conditions.

**Staff Recommendation:** No Substantial Issue

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### IMPORTANT HEARING PROCEDURE NOTE

This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally, and at the discretion of the Chair, testimony is limited to 3 minutes total per side (although the Chair has the discretion to modify these time limits). Please plan your testimony accordingly. Only the applicant, appellants, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify; others may submit comments in writing (14 CCR § 13117). The Commission will accept the appeal for a full de novo review unless it determines that the appeal raises no substantial issue. Otherwise, the Commission takes jurisdiction over the underlying

coastal development permit (CDP) application and will review that application at a future Commission meeting, at which time all persons are invited to testify. If the Commission finds that the appeal does *not* raise a substantial issue, then the local government CDP decision stands, and is thus final and effective.

## **SUMMARY OF STAFF RECOMMENDATION**

The City of Trinidad approved a Coastal Development Permit (CDP) authorizing the past (after-the-fact) and continued temporary closure (for a maximum duration of six months) of an approximately 165-foot-long segment of the Van Wycke trail. The City took action to close the trail segment following an increase in erosion leading to unsafe conditions, and in response to recommendations from the City's insurance company to close the trail until permanent repairs are made.

The appeal raises several public access contentions, primarily regarding: (1) maximizing public access consistent with public safety needs, (2) the public's right of access to the sea where acquired through use (i.e., potential prescriptive rights), and (3) providing alternative public access during trail closure in an equivalent time, place and manner. Staff recommends that none of the contentions raise a substantial issue as to the approved project's consistency with the certified LCP. The City's findings acknowledge that foot traffic along the unpaved trail could exacerbate ongoing erosion and vegetation disturbance, and there is a high degree of factual support for the City's determination that temporarily closing a portion of the Van Wycke trail will protect the fragile bluff resource while public access to and along the coast remains available (including along alternative routes and at either end of the short closure). In this case, overall, the temporary closure for a period of six months of a portion (approximately 165 feet) of the Van Wycke Trail will not interfere with the public's right to access the sea, and access to the shoreline is still available either by walking along the shoulder of Edwards Street or along the Western part of Van Wycke Street.

The extent and scope of the project is relatively limited, as it consists of temporarily closing a 165-foot-long unpaved portion of trail that has failed and continues to erode. Due to this limited scope and alternative access routes, the significance of affected coastal resources (access) is minimal. The City's decision does not involve any novel LCP interpretive issues and would not set an adverse precedent for future interpretations of the City's LCP. Finally, while the project does raise issues of regional or statewide significance (primarily regarding maximizing public access to and along the coast), there is a high degree of legal and factual support that the approved project as conditioned will continue to protect coastal resources consistent with the LCP. Staff therefore recommends that the Commission, after public hearing, determine that the appeal contentions do not raise a substantial issue of LCP conformance.

The motion to adopt the staff recommendation of No Substantial Issue is found on [page 4](#).

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**APPENDICES**

[Appendix A](#). Substantive File List

**EXHIBITS**

- [Exhibit 1](#) – Regional and Vicinity Maps
- [Exhibit 2](#) – Circulation Plan Map from Land Use Plan
- [Exhibit 3](#) – Site Photos
- [Exhibit 4](#) – Resolution Adopted by Yurok Tribe
- [Exhibit 5](#) – City’s Final Local Action Notice and Staff Report
- [Exhibit 6](#) – Appeal Filed by Kimberly A. Tays

## I. MOTION AND RESOLUTION

Staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the Commission would not take jurisdiction over the underlying CDP application for the proposed project and would not conduct further hearings on this matter, and that the local government CDP decision stands and is thus final and effective. To implement this recommendation, staff recommends a **yes** vote on the following motion which, if passed, will result in the recommended no substantial issue finding. If the motion fails, then the Commission will have found a substantial issue and will take jurisdiction over the subject CDP application; however, the de novo portion of the hearing will be held at a future date. The motion passes only by an affirmative vote of a majority of the Commissioners present.

### Motion:

I move that the Commission determine that Appeal Number A-1-TRN-20-0069 **raises no substantial issue** with respect to the grounds on which the appeal has been filed under Section 30603, and I recommend a **yes** vote.

### Resolution:

The Commission finds that Appeal No. A-1-TRN-20-0069 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved development with the certified Local Coastal Program and/or the public access policies of the Coastal Act.

## II. FINDINGS AND DECLARATIONS

### A. Site Description and Project Background

#### PROJECT AND SITE DESCRIPTION

The approved development is the after-the-fact authorization of the City's action to temporarily close an unpaved portion of the Van Wycke Trail where ongoing landslide activity has eroded a portion of the trail to a state of disrepair, rendering it unsafe for public access. Van Wycke Trail is part of the public trail system identified on Plate 4 ("Circulation Plan Map") included as part of the City's certified Land Use Plan (LUP; [Exhibit 2](#)). The approximately 165-foot-long unpaved stretch of temporarily closed trail follows the street right-of-way and connects on both sides to nearly 300 feet of paved surface along Van Wycke Street. The physical development associated with the temporary closure includes approximately 3-foot-tall T-posts connected by a single chain affixed with "Trail Closed" signage at each end of the trail ([Exhibit 3](#)).

The subject trail is situated downslope and south of Edwards Street along a bluff overlooking Trinidad Bay within the City of Trinidad. The trail is located on an uplifted marine terrace and features views of Trinidad Bay and Trinidad Head.

Edwards Street runs from west to east and is the southernmost street providing vehicular access from the City's core area down to the harbor. Van Wycke Street intersects with Edwards Street at its eastern extent ("upper Van Wycke Street") before descending downslope and westward, ultimately connecting to Galindo Street that in turn "loops" back to Edwards Street approximately 670 feet to the west ([Exhibit 1](#)).

#### PROJECT BACKGROUND

Following a risk management assessment report prepared in December 2018 by the City's insurance provider PARSAC (Public Agency Risk Sharing Authority of California<sup>1</sup>), and a subsequent site visit by the General Manager of PARSAC on June 24, 2019, the City took action to replace its signage warning of risk of hazards at Van Wycke Trail with the aforementioned T-posts, chain, and new signage informing the public of trail closure. Upon learning of the closure, Commission staff met with City staff on September 18, 2019 to discuss the permitting requirements of trail closure.

The City's findings for approval of after-the-fact authorization and continued temporary closure of the trail acknowledge an ongoing effort to identify solutions for repairing the trail, dating back to approximately 2010, when the City Council authorized a local consulting firm to pursue grant funding for repairs while the City commissioned the preparation of geologic and feasibility reports. In 2019, the City prepared an Initial Study and Mitigated Negative Declaration (MND) for a proposed "Van Wycke Bicycle and Pedestrian Connectivity Project" with funding from CalTrans. On March 8, 2019 Commission staff submitted comments expressing concerns over the extent of proposed improvements that would involve "construction of a retaining wall on a geologically unstable area that has been subject to recent landslide activity without evaluating other feasible, less environmentally damaging alternatives that would also increase pedestrian and bicyclist connectivity through town." ([Appendix A](#)). In its findings for approval of the subject project, the City notes that its MND was adopted on April 17, 2019, however the final trail design was not completed due in part to concerns about soil disturbance from Native American groups.

The City's August 19, 2020 findings for approving the subject project also describe a series of stakeholder outreach meetings that began in early 2020 to discuss alternatives but were stalled due to the COVID-19 pandemic outbreak. At that time the City indicated the preferred project, at least in terms of the Caltrans funding, would be to construct a sidewalk and other improvements on Edwards Street to increase pedestrian safety,

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<sup>1</sup> The Civic Business Journal's website at [www.civicbusinessjournal.com](http://www.civicbusinessjournal.com) states that PARSAC "...is a risk sharing Joint Powers Authority providing general liability coverage. PARSAC offers a variety of self-funded and group-purchase programs, including general liability, employment practices, worker's compensation, property, special events, and fidelity bonds. PARSAC has membership consisting of 37 cities..."

including adding vista points near trail closures to enable visitors to enjoy the same views as before.

As described in Finding B (“Local Government Action”) below, the August 19, 2020 approval by the Planning Commission was appealed, and the matter was subsequently considered by City Council at its hearing on November 10, 2020. Several members of the public provided comments on the project both during the Planning Commission and City Council hearings, mainly in opposition of the temporary trail closure. Comments were also provided by representatives of the following Native American groups: (1) Trinidad Rancheria representative expressing the current project was only evaluating the temporary trail closure and that more steps would be taken before any permanent trail closure would be considered, (2) Tsurai Ancestral Society representative expressing support of both temporary and permanent trail closure, for the protection of cultural resources, and (3) Yurok Tribe representatives, supporting trail closure. Yurok Tribe representatives also transmitted a Resolution (Resolution No. 20-110) adopted October 8, 2020 in support, among other things, of the closure of the Van Wycke Trail, in recognition that “the use, development, and repair of the Van Wyke [sic] Trail...will harm Yurok cultural resources, sacred items, and burials and have a harmful impact to the Yurok Tribe, the Tsurai Village, and Yurok cultural lifeways...” ([Exhibit 4](#)).

## **B. Local Government Action**

On July 15, 2020, the Trinidad Planning Commission opened its publicly noticed hearing on local Coastal Development Permit (CDP) Application No. 2020-01 to consider a request by the applicant, City of Trinidad, for temporary closure (past and continued) of the Van Wycke Trail within the City’s right-of-way, due to unsafe conditions. The City requested temporary closure for a period of up to two years, with an option to extend the closure for an additional year if needed for planning and funding of repairs. The hearing was continued until August 19, 2020 to allow the Trails Subcommittee to discuss the project at its next meeting scheduled for August 18.

On August 19, 2020, comments were shared from individuals of the Trails Subcommittee rather than representing the subcommittee due to a lack of a quorum. The Trinidad Planning Commission approved the temporary trail closure with a modification to Condition of Approval No. 1 allowing the duration of the closure for six months rather than two years, which was met with unanimous approval.

The Planning Commission’s approval was appealed to the City Council on August 25, 2020. On November 10, 2020, the City Council upheld the Planning Commission’s approval of the CDP.

## **C. Appeal Jurisdiction and Procedures**

### **Appeal Jurisdiction and Grounds for Appeal**

The Coastal Commission effectively certified City of Trinidad’s local coastal program (LCP) in 1980. After certification of an LCP, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development

permits (CDPs). Pursuant to Coastal Act section 30603, the City's approval of the subject project is appealable to the Commission because the approved development is located: (1) between the sea and the first public road paralleling the sea; and (2) within 300 feet of the top of the seaward face of a coastal bluff. The grounds for an appeal are limited to an allegation that the approved development does not conform to the standards set forth in the certified Local Coastal Program (LCP) or the public access policies set forth in the Coastal Act.

### **Appeal Procedures**

Coastal Act section 30625(b) requires the Commission to hear an appeal unless it determines that no substantial issue exists with respect to the grounds on which the appeal has been filed. The term "substantial issue" is explained in section 13115 of the Commission's regulations as follows:

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

- (1) the degree of factual and legal support for the local government's decision;
- (2) the extent and scope of the development as approved or denied by the local government;
- (3) the significance of the coastal resources affected by the decision;
- (4) the precedential value of the local government's decision for future interpretations of its LCP; and
- (5) whether the appeal raises only local issues as opposed to those of regional or statewide significance.

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

Even when the Commission chooses not to hear an appeal, an appellant nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, section 1094.5.

Commission staff has analyzed the administrative record for the approved project, including, but not limited to, the City's Final Local Action Notice for the approval ([Exhibit 5](#)), the appellant's claims ([Exhibit 6](#)), and the relevant requirements of the Coastal Act and certified LCP. Staff is recommending that the Commission find that the appeal of the City's action raises no substantial issue with respect to the grounds on which the appeal was filed.

In this case, because staff is recommending that the appeal raises no substantial issue, the Commission will hear arguments and vote on the substantial issue question. Generally, and at the discretion of the Chair, qualified persons will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission on the substantial issue question are the

applicant, the appellant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised.

If the Commission determines that the appeal does not raise a substantial issue, the local government approval will stand. If the Commission determines that the appeal raises a substantial issue, the Commission would continue the de novo portion of the appeal hearing to a subsequent meeting.

#### **D. Filing of Appeal**

One appeal was timely filed with the Commission's North Coast District Office on November 30, 2020, within 10 working days of receipt by the Commission of the City's Notice of Final Action. The appeal was filed by Kimberly A. Tays ([Exhibit 6](#)). No other appeals were received by the Commission. The appellant participated in the local CDP application and decision-making process (i.e., submitted comments, testified at the local hearing, and filed a local appeal prior to appealing to the Commission) and thus qualifies as an "aggrieved person" pursuant to Coastal Act Section 30801 and Title 14, California Code of Regulations, Section 13111. On December 11, 2020, the applicant, City of Trinidad, submitted a signed copy of a waiver of the 49-working-day deadline for opening the Commission hearing on the appeal.

#### **E. Summary of Appeal Contentions**

The appeal contends that the City's approval is not consistent with its certified LCP and the public access policies of the Coastal Act. The appeal includes six grounds, raising the following three main contentions (listed in no particular order):

1. The approved temporary trail closure is inconsistent with the public access policies of the Coastal Act and certified LCP because the City's approval: (1) interferes with rather than maximizes public access, and (2) could interfere with prescriptive rights. The appeal further contends that (3) the City did not adequately evaluate alternative public access that may offer an equivalent pedestrian experience during the temporary trail closure, other than walking along Edwards Street.
2. The installation of above-ground water utility lines near the trail are unpermitted and interfere with public access. Furthermore, the City failed to analyze the cumulative impacts from nearby trail interferences and proposed trail closures.
3. The City has failed to maintain the Van Wycke Trail, leading to its closure.

The full appeal document is included in [Exhibit 6](#). For the reasons discussed below, the Commission finds that only contention 1 above presents valid grounds for appeal and does not raise a substantial issue of conformity of the approved development with the



policies and standards of the City's certified LCP or with the public access policies of the Coastal Act.

## **F. Substantial Issue Analysis**

### **1. VALID CONTENTIONS REGARDING PUBLIC ACCESS**

The appeal contends that the approved project as conditioned is inconsistent with the public access policies of the Coastal Act and Trinidad's certified LCP, because it: (1) interferes with rather than maximizes public access, and (2) could interfere with prescriptive rights. The appeal further contends that (3) the City did not adequately evaluate alternative public access that may offer an equivalent pedestrian experience during the temporary trail closure, other than walking along Edwards Street. Specifically, the appeal contends that the project is inconsistent with sections 30001.5, 30210, 30211, and 30214 of the Coastal Act.

#### APPLICABLE COASTAL ACT AND LCP POLICIES

**Section 30001.5 of the Coastal Act** states in part:

The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

(a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.

(b) Ensure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.

(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

...

**Section 30210 of the Coastal Act** states:

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 of the Coastal Act** states:

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 of the Coastal Act** states, in relevant part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) Adequate access exists nearby

**Coastal Act section 30214** requires in part (Emphasis added):

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to [Section 4 of Article X of the California Constitution](#). Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under [Section 4 of Article X of the California Constitution](#).

**Policy 5 of the LUP's "Unstable Slopes" chapter** states:

Where access trails must traverse steep slopes they should be located away from unstable areas and improvements should be provided to minimize erosion and slope failures. Existing trails which are creating these problems should either be improved or closed.

**Policy 64 of the LUP's "Recreation" chapter** states:

A formal pedestrian trail system should be marked out around Trinidad. The system should include the beaches, the existing Trinidad Beach State Park trails, and ascend the bluff at Galindo Street to provide convenient pedestrian access from Edwards Street to the harbor, the Old Wagon Road from Wagner Street to

Parker Creek Trail, the private road extending from Scenic Drive along the east branch of Parker Creek to the beach, and the beach extending southeasterly from Parker Creek to the city limits. (Refer to the Circulation Plan map for delineation of the trail system.) The system should be advertised in visitor information and mapped at the visitor information center.

### DISCUSSION

The public access policies of the Coastal Act and certified LCP provide for the protection and enhancement of all people's opportunity to access the coast and require that maximum access and recreational opportunities be provided consistent with public safety needs. Section 30210 of the Coastal Act requires that maximum public access shall be provided consistent with public safety needs and the need to protect natural resource areas from overuse. Section 30211 of the Coastal Act requires that development not interfere with the public's right to access gained by use or legislative authorization. Section 30214 of the Coastal Act provides that the public access policies of the Coastal Act shall be implemented in a manner that takes into account the capacity of the site and the fragility of natural resources in the area.

#### **a. Contention that Approved Project Interferes with and Does Not Maximize Public Access**

The appeal contends that the approved project closes the only non-motorized trail in the neighborhood that affords people "intimate views of the expansive coastline, ocean, harbor, offshore rocks and marine life" and this closure thereby redirects people to a busy street surrounded by urban development and limited ocean views. The appeal asserts that the approved temporary closure of the Van Wycke Trail is unnecessary and questions the City's factual support for closing the trail, calling recommendations provided by the City's insurance provider "arbitrary." The appeal further asserts that the trail closure occurred to appease property owners situated upslope of the trail.

#### Capacity of the Site to Sustain Use

As stated above, Section 30210 of the Coastal Act states in applicable part that "maximum access and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect ... natural resource areas from overuse." Section 30214(a)(2) and (a)(3) expressly require that the public access policies take into account the capacity of the site to sustain use and the appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area. The certified LCP similarly acknowledges the development constraints in unstable areas. Policy 5 of the Trinidad certified Land Use Plan's "Unstable Slopes" chapter provides that where access trails must traverse steep slopes, improvements should be provided to minimize erosion and slope failures, and where existing trails are creating these problems they should either be improved or closed. The City's findings acknowledge that the site of proposed trail closure is within an area mapped as "unstable" and "questionably stable" on Plate 3 of the certified LUP.

The City's insurance provider PARSAC prepared a Risk Management Assessment Report ("PARSAC report") for the City dated December 10, 2018, which is included as part of the City's staff report for the project ([Exhibit 5](#)). The PARSAC report's Executive Summary states in part:

The PARSAC risk assessment is a comprehensive evaluation of a City's risk management programs, including compliance with Cal/OSHA and other governmental regulations. The risk assessment report should be used as an educational tool for the City to determine areas for improvement in its risk management and safety programs. In general, findings related to worker safety are regulatory requirements, whereas findings related to the general liability exposures are based on government code, case law, and standards of care. By focusing on improving risk management processes and systems, the City has a greater potential to impact its total cost of risk.

The PARSAC report acknowledges that many of the trails observed during a site visit were in poor condition and states "While signage was posted to warn walkers of potential hazards, the City will need to work with PARSAC to ensure that City is able to maintain "trail immunity" in the event a claim is presented against the City." The PARSAC report included specific recommendations for two trails, the Axel Lindgren Memorial Trail and the Van Wycke Trail, which were both identified as in need of repairs. Regarding the Van Wycke Trail, the PARSAC report states in part:

Several portions of the trail have experienced severe erosion and present a significant fall hazard, as the trail is at the edge of a bluff. Although the City has put up warning signs indicating that the bluff is unstable, based upon its current condition the trail should be closed until permanent repairs are made. A chain or other type of barricade with signage indicating that the trail is closed should be installed.

The City's findings also describe the current condition of the Van Wycke Trail as subject to ongoing erosion resulting from an active landslide, stating in part "There is a 'slump earthflow' in this area that is slowly and continually moving downslope, that has compromised the integrity of the existing retaining wall and the trail beyond simple repairs and maintenance." The findings additionally state:

The trail is perched along the upper edge of a steep slope and significant earth movement has occurred in places, resulting in the City having to close the trail. A wooden retaining wall built to stabilize the worst section has been gradually torn apart over the last 10 years by the hillside's movement. The worst stretch has sunk more than five feet in just the last few years. At the east end, the concrete encasing the City's stormdrain is serving as the trail surface.

As noted in the City's findings for approval, the City has in the past commissioned geologic studies of the project site to help inform repair options, as discussed further in Finding F.1.b., below. Site investigations conducted in December 2010 and January 2011 as part of a reconnaissance-level geotechnical assessment (Busch Geotech,

2011; [Appendix A](#)) documented evidence of active erosion and bluff failure within and near (upslope and downslope of) the trail. A “Coastal Landslide Hazard Evaluation” of existing slope hazards and landslide data within Trinidad, prepared by SHN for the City on October 18, 2019 ([Appendix A](#)), states in part “Earthflow deformation at the western end of the segment, along Van Wycke Street, has already encroached into the alignment of the Van Wycke trail. Continued movement in this area is inevitable, which will continue to impact this alignment.” Commission staff have visited the site on several occasions over the course of several years and have observed the increase in erosion at the site over time.

Thus, the Commission finds that there is a high degree of factual support for the City’s determination that temporarily closing a portion of the Van Wycke trail will protect the fragile bluff resource, while public access to and along the coast remains available, consistent with the public access policies of the Coastal Act and the certified LCP including, but not limited to, sections 30210 and 30214 of the Coastal Act and LCP Policy 5. In addition, the extent and scope of the approved project as conditioned is relatively limited, as it consists of the temporary closure of a 165-foot-long unpaved portion of trail that has failed and continues to erode. Due to this limited scope, the significance of affected coastal resources is minimal.

#### Maximizing Access Consistent with Public Safety Needs

The appeal asserts that the safety of redirecting the public onto Edwards Street as an alternative to walking along the eroded bluff edge trail was not fully and fairly evaluated, inconsistent with Coastal Act section 30210.

The City’s findings acknowledge that foot traffic along the unpaved trail could exacerbate ongoing erosion and vegetation disturbance. In finding the project consistent with Coastal Act sections 30001.5 and 30210, the City states “the project is consistent with these sections, because the trail currently poses a risk to public safety and is subject to further erosion and instability.” The City further found that:

Although Edwards Street does not have sidewalks, parking on the south side was removed and striping for a pedestrian walkway were added around 2003. People have commented that they feel less safe on this route...but the City does not have a record of any car/pedestrian incidents that have occurred, and the Edwards Street route poses less risk than the failing Van Wycke Trail.

The appeal also questions the duration of trail closure, citing in part an uncertainty over the future of the trail once the six months have lapsed and highlighting that the trail was closed for over a year prior to obtaining authorization for the closure. The City’s findings acknowledge the need for additional time to more fully evaluate alternatives and outreach to stakeholders, including engagement with the community and Native American groups. Although City staff recommended a period of two years for the temporary closure, the Trinidad Planning Commission authorized temporary trail closure for a period not to exceed six months, and the City Council upheld the decision on

appeal, as reflected in local Condition of Approval No. 1, which states “This approval is for continued closure of the trail for a maximum of six months.”

In this instance, there is a high degree of legal and factual support for the City’s determination that temporarily closing a failing portion of the trail provides maximum access consistent with public safety needs, consistent with sections 30210 and 30214 of the Coastal Act and LUP Policy 5. The City further determined that Edwards Street provides an alternative means of providing public access to coastal view points and the beach. Furthermore, the approved temporary trail closure minimizes the creation and use of “social trails” adjacent to the eroding trail segment, which could adversely affect sensitive resources in the project vicinity (though the public still is able to walk around and has continued to ignore/bypass the posted/chained closure sign to continue to use the eroding trail). Finally, as mentioned above, the extent and scope of the approved project is limited, involving the temporary closure of a 165-foot-long unpaved portion of trail, with the City required to obtain additional CDP authorization for a longer-term closure if needed.

**b. Contention That Temporary Closure May Interfere with Prescriptive Rights**

The appeal contends that the approved project may interfere with established prescriptive rights inconsistent with Coastal Act section 30211. While the City’s findings indicate the temporary trail closure would only occur within the City right-of-way, the appeal asserts that a land survey map prepared in 2010 for a city-sponsored trail connectivity project depicts portions of the Van Wycke Trail traversing upslope private property.

The Commission notes that prescriptive rights of public access to the shoreline do not accrue over publicly owned lands. Coastal Act section 30211 requires, in applicable part, that development not interfere with the public’s right of access to the sea where acquired through use (i.e., potential prescriptive rights or rights of implied dedication).<sup>2</sup> In general, when evaluating the conformance of a project with Coastal Act section 30211, the City (or the Commission on appeal) cannot determine whether public prescriptive rights actually do exist; rather, that determination can only be made by a court of law. However, the approving authority is required under section 30211 to prevent development from interfering with the public’s right of access to the sea where acquired through use or legislative authorization. As a result, where there is substantial evidence that such rights may exist, the approving authority must ensure that proposed development would not interfere with any such rights.

The City’s action authorized the temporary closure of the trail in order to allow the City time to seek funding and coordinate with stakeholders to repair the trail or develop long-term options for alternative access and permanent trail closure if deemed necessary. In its findings for approval, the City stated in part:

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<sup>2</sup> Prescriptive Rights refer to public rights that are acquired over private lands through use.

Consistent with section 30211, this temporary closure will not interfere with the public's right to access the sea, because alternative access around the closure will be maintained along Edwards Street between upper Van Wycke and Galindo Streets. From there, Galindo Street can be used to rejoin Van Wycke Street. Although Edwards Street does not have sidewalks, parking on the south side was removed and striping for a pedestrian walkway were added around 2003...Coastal access and viewsheds are still provided on Edwards Street. In addition, the minimum length of trail has been closed, so pedestrian access, and the coastal views, are still available on either side of the closure.

In this case, overall, the temporary closure for a period of six months of a 165-foot-long portion of the Van Wycke Trail will not interfere with the public's right to access the sea. Therefore, the Commission finds there is no substantial issue of conformance with Coastal Act section 30211.

**c. Contention That City's Alternative Fails to Provide Equivalent Access**

As discussed further in Finding F.1.a., above, while arguably less desirable to some, the City has identified a feasible alternative access route to the shoreline along Edwards Street. However, the appeal contends that the City did not adequately evaluate alternative public access that may offer an equivalent pedestrian experience during the temporary trail closure, other than walking along Edwards Street. Section 30214 of the Coastal Act identifies the need to regulate the time, place and manner of public access depending on the facts and circumstances in each case.

Under the approved project as conditioned, the access leading to Van Wycke Trail remains unchanged, and this access continues to afford the public views to and along the coast during the temporary trail closure. The Van Wycke Trail is accessed either at the east end of Van Wycke Street where it intersects Edwards Street, or at the west end of Van Wycke Street where it intersects with Galindo Street. The approximately 165-foot-long unpaved stretch of temporarily closed trail connects on either side to nearly 300 feet of paved surface along Van Wycke Street.

Even prior to the temporary trail closure, the public would access the Van Wycke Trail by walking along Edwards Street ([Exhibit 3, photo 10](#)). As described in Finding A above, access to the trail occurs one of two ways, either by: (1) parking along Edwards Street then walking along a portion of Edwards Street to its intersection with Van Wycke Street and then walking along Van Wycke Street to the trail; or, (2) parking or walking along Galindo Street (or along the western portion of Van Wycke Street) to access Van Wycke Street and the trail from the west ([Exhibit 1, page 2](#) and [Exhibit 3, photos 7-8](#)). Access leading to the unimproved trail segment is still available for affording people intimate coastal views but does not currently offer a throughfare from Galindo Street to Edwards Street. In its findings for approving the temporary closure of Van Wycke Trail, the City stated in part,

...Only the section posing the hazard is being closed, and alternative access exists nearby on Edwards Street...Coastal access and viewsheds are still provided on Edwards Street. In addition, the minimum length of trail has been

closed, so pedestrian access, and the coastal views, are still available on either side of the closure.”

A park bench is situated in a grassy area at the end of the western portion of Van Wycke Street, approximately 140 feet from the trail closure, and continues to afford the public unobstructed views of Trinidad Bay away from Edwards Street despite the temporary trail closure ([Exhibit 3, photos 7-8](#)).

In addition to identifying equivalent access to viewsheds along Van Wycke Street and to the shoreline via Edwards Street during the temporary trail closure, the City has continued to explore long term alternatives that include varying degrees of trail repair or permanent closure and improvements instead to nearby access areas and has identified the need to temporarily close the trail while working with the public and other stakeholders to determine the preferred course of action and pursue additional funding as needed.

Thus, although the approved project as conditioned will have a temporary impact on the public’s access to a non-motorized strip of trail, the Commission finds that the City’s identified alternative shoreline access route maintains access to the same intimate coastal views adjacent to the trail in an equivalent time, place, and manner consistent with Coastal Act section 30214.

## **2. INVALID CONTENTIONS**

### **a. CONTENTION REGARDING ALLEGED UNPERMITTED TRAIL OBSTRUCTION**

The appeal contends that the City installed above-ground water main and storm water drain pipes (“utility pipes”) that interfere with coastal access and create visual blight. The appeal further contends that the City installed the utility pipes without the benefit of CDP authorization and failed to evaluate the cumulative impacts from this and other nearby trail interferences and proposed trail closures.

#### DISCUSSION

According to the appellant, the utility pipes were installed beginning on November 16, 2020 in association with emergency repairs needed to stabilize the City’s compromised water supply and stormwater lines. The City’s public meeting records from October 13, 2020 indicate the above ground lines were needed as a temporary repair following the discovery of a leak in the water line and concerns over the integrity of the existing storm drain line.<sup>3</sup>

In addition to the utility lines, the appeal identifies limitations of several nearby trail systems, such as unpermitted signage along Wagner Street Trail, inadequate maintenance of Axel Lindgren Memorial Trail, erosion issues along Parker Creek Trail,

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<sup>3</sup> On April 19, 2023, the City took action to approve a CDP for a water pipeline replacement project (local CDP No. 2023-02) that includes removing the temporary above ground water line referenced by the appellant.



future anticipated closure of Galindo Street Trail, and unauthorized dumping of debris along Van Wycke Trail (VWT). The appellant contends “These cumulative impacts must be taken into account when considering the proposed closure of the VWT, as they are taking a toll on public coastal access and trails in Trinidad.”

In its review of the appeal, the Commission must consider the project as approved. This contention does not assert that the approved project is inconsistent with the standards of the certified LCP but rather relates to the permit process. The alleged unpermitted developments are not part of the subject project the City approved and therefore are not directly before the Commission on appeal. Therefore, the Commission finds that these contentions are not valid grounds for appeal and do not raise a substantial issue of LCP conformance.

#### **b. CONTENTION REGARDING DEFERRED MAINTENANCE**

The appeal contends that no efforts have been made to maintain or repair the Van Wycke Trail for public access, thereby leading to its state of disrepair that triggered the need for temporary closure. The appeal further contends that the City failed to evaluate the cumulative impacts from poor trail maintenance of the subject trail and nearby trails when considering the temporary closure of the Van Wycke trail.

#### DISCUSSION

As described in **Finding II.C.** (“Appeal Jurisdiction and Procedures”), the grounds for an appeal are limited to an allegation that the approved development does not conform to the standards set forth in the certified LCP or the public access policies set forth in the Coastal Act. This contention does not assert that the approved project is inconsistent with the standards of the certified LCP but rather relates to maintenance of the existing trail. Neither the Coastal Act nor the City’s certified LCP mandate repair and maintenance of trail structures. Therefore, this contention is not a valid ground for appeal and does not raise a substantial issue of LCP conformance.

### **3. CONCLUSION**

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

statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

In this case, these five factors considered together support a conclusion that the appeal does not raise a substantial issue as to the City-approved project's consistency with the LCP. The City's findings along with prior geologic investigations and the PARSAC report support the City's decision to temporarily close the trail. The Commission finds there is substantial factual and legal support for the City's decision. The City included Condition of Approval No. 1 specifying the approval for continued trail closure for a maximum of six months. As the City addressed the relevant coastal resource concerns, the Commission assigns more weight to this factor in the substantial issue analysis.

The extent and scope of the project is relatively limited in scale as it consists of temporarily closing a 165-foot-long unpaved portion of trail that has failed and continues to erode. Due to this limited scope, the significance of affected coastal resources, here one route of access, is minimal. The City's decision does not involve any novel LCP interpretive issues and would not set an adverse precedent for future interpretations of the City's LCP.

Finally, while the project does raise issues of regional or statewide significance (primarily regarding maximizing public access to and along the coast), as previously discussed, there is a high degree of legal and factual support that the approved project as conditioned will continue to protect coastal resources consistent with the LCP.

Therefore, especially given the high degree of factual and legal support for the City's decision and condition of approval, consideration of the five factors together support a conclusion that the appeal of the City's approval as conditioned does not raise a substantial issue of LCP conformity. For the reasons stated above, the Commission finds that Appeal Number A-1-TRN-20-0069 does not present a substantial issue with respect to the grounds upon which the appeal was filed under section 30603 of the Coastal Act, and the Commission declines to take jurisdiction over the CDP application for this project.

**APPENDIX A  
SUBSTANTIVE FILE DOCUMENTS**

Busch, R.E. January 15, 2011. "Slope Instability along Part of the Van Wycke Trail, Trinidad, CA". Unpublished report prepared for City of Trinidad by Busch Geotechnical Consultants, Arcata, California.

City of Trinidad Certified Local Coastal Program

City of Trinidad's Local Record for CDP No. 2020-01

City of Trinidad. January 2019. Draft Initial Study and Mitigated Negative Declaration, Van Wycke Bicycle and Pedestrian Connectivity Project, within Edwards Street and Van Wycke Streets City Rights-of-Way, Trinidad (SCH #2019012051).

File for Coastal Development Permit Appeal Number A-1-TRN-20-0069

Gedik, T. March 8, 2019. "Preliminary (Pre-CDP Application) Comments for Proposed Bicycle and Pedestrian Connectivity Project, within Edwards Street and Van Wycke Streets City Rights-of-Way, Trinidad (SCH #2019012051)." Commission staff comments provided to City of Trinidad.

Simpson, G. October 18, 2019. "Coastal Landslide Hazard Evaluation, City of Trinidad, California." Unpublished report prepared for City of Trinidad by SHN Consulting Engineers and Geologists, Arcata, California.