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STAFF REPORT CDP APPLICATION

Application Number: 2-24-0867
Applicant: The Wildlands Conservancy
Project Location: The Estero Americano Coast Preserve just downcoast of Bodega Bay in unincorporated Sonoma County
Project Description: Improve a network of approximately five miles of public access trails leading to overlooks, kayak access points to the Estero Americano, and a restroom, all on the 547-acre Estero Americano Coast Preserve
Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The Wildlands Conservancy (TWC) proposes to create a network of approximately five miles of public access trails across the Estero Americano Coast Preserve with access to the Estero Americano itself, which is a long tidal estuary reaching some nine miles inland defining the border between Marin and Sonoma Counties. The Estero Americano area is almost entirely undeveloped, surrounded by former or currently used agricultural areas. The 547-acre Preserve is a former cattle ranch that was acquired by TWC in 2015, and TWC is in the process of habitat restoration for much of the site.

The Estero Americano and the beach at its seaward extent represent a unique and incredibly scenic area of the Northern California coast where there are currently no formalized public access facilities or public trails. There is a public accessway just off the Preserve property to the north (the Shorttail Gulch trail) that provides access to the beach just upcoast, and under certain tidal conditions one can reach the Estero by that means, but it is transient at best. Boats and kayaks can also make access to the area by sea and via the Estero, but that can also be a difficult trek, and essentially too long

for all but the most seasoned kayakers. Thus, the property has the potential to be a public access gem in this area, and the proposed trail and related improvements would significantly improve coastal public access to the Estero Americano and its beach as well as along this section of the Sonoma Coast.

The improved trails would run primarily along existing former agricultural roads and cattle paths, but TWC also proposes to add trail segments through mowing some grassy areas to create a simple single track within a 4-foot mowed area (to help reduce the risk of ticks and non-native seed dispersal). One trail would run roughly up the higher bluff on the parcel, with dramatic views over the property, the Estero, and the ocean. Another trail would run through the former farmstead area of the property, past an existing pond, and then along the coastal bluff where it would run down to the ocean and the mouth of the Estero. In the winter, when the Estero waters breach through to the Pacific Ocean, there would only a small beach access, but for most of the year the public could access a broad beach, surrounded by undeveloped lands, wildlife, and the waters of the Estero and the ocean. TWC also proposes additional amenities including an access gate and entrance at Shorttail Gulch, kayak pull-in areas along the Estero, and a small bathroom at the beach access area. The project also includes removal of dilapidated farm buildings and infrastructure and restoration of those areas as natural habitat.

Once the trail system is in place, public access to the trails on the preserve will begin at a gate on the property connected to the Shorttail Gulch Trail that connects to public streets in the adjacent Bodega Harbour residential subdivision. A central issue here is that the Bodega Harbour Homeowners Association (HOA) claims that access via the public streets and that public access easement (that was required in a 1977 Settlement agreement with the California Coastal Zone Conservation Commission) is impermissible. Although Sonoma County holds and manages the public easement, which has been providing for public pedestrian access trail use for over 20 years, the Bodega Harbour HOA remains the underlying property owner of the easement area and suggests that the proposed project will be an excessive burden on their property rights. However, there is no disputing that the easement is a public easement held by the County for public use, and it is clear to staff that that easement can be used in the ways envisioned by the proposed project, including because it allows for public pedestrian access, which is all that is proposed here; because there are no limits in the easement on the amount of pedestrian use; and because it does not appear there will be excessive traffic, parking, or pedestrian use that would burden the HOA in any case.

In conclusion, as proposed and conditioned, staff believes that the project represents an exciting opportunity to meet multiple Coastal Act and community objectives, including a new section of the California Coastal Trail (CCT).¹ Thus, staff recommends that the **Commission conditionally approve CDP 2-24-0867**. The motion and resolution for this recommendation can be found on page 4.

¹ It should also be noted that an existing aquaculture facility on site was permitted by the County many decades ago, and there are some questions as to whether it remains compliant with that CDP. TWC is cooperating with Commission enforcement staff to evaluate the consistency of the operation with the original CDP and measures to address any potential violations that may exist.

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[Exhibit 5 – Correspondence from the Bodega Harbour HOA](#)

[Exhibit 6 – Correspondence from The Wildlands Conservancy](#)

[Exhibit 7 – Transportation Impact Study](#)

1. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit 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 2-24-0867 pursuant to the staff recommendation, and I recommend a **yes** vote.*

Resolution to Approve CDP: *The Commission hereby approves Coastal Development Permit Number 2-24-0867 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with Chapter 3 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. Revised Final Public Access Trail Plans.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit two sets of the Revised Final Public Access Trail Plans to the Executive Director for review and written approval. The Plans shall be substantially in conformance with the proposed project description received in the CDP application and shall at a minimum also respond to and include the following additional elements:
 - a. Public Use Timing.** All trails and related amenities shall be open and available on a daily basis for general public use during daylight hours (i.e., from one-hour before sunrise to one-hour after sunset) within one year of CDP issuance.
 - b. Trail Detail.** The final siting and design of all the trails, the method of trail construction, a final trail signage plan with a language access component (i.e., providing for English as well as appropriate non-English languages), and the final siting and design of picnic tables, restrooms, and other recreational amenities shall be clearly identified.
 - c. Trail Adjustments.** The Plans shall provide that all trails shall be retreated/relocated over time in case of bluff erosion or other trail erosion from other events (e.g., extreme water runoff), where such relocation shall follow the same general alignment as the approved trails, shall include revegetation of the former trail area with native vegetation, and shall be implemented consistent with a plan to do so submitted to the Executive Director for review and written approval.

All requirements above and all requirements of the Executive Director-approved Revised Final Public Access Trail Plans shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition and the approved Revised Final Public Access Trail Plans.

- 2. Final Habitat and Mitigation Plan (HMMP).** WITHIN ONE YEAR OF CDP ISSUANCE, the Permittee shall submit a Final HMMP to the Executive Director for review and written approval. The Final HMMP shall be substantially in conformance with the habitat restoration proposal (titled "Mitigation for Trail Development" and dated received in the Coastal Commission's North Central Coast District Office on October 9, 2024; see [Exhibit 4](#)) except that the Final HMMP shall be modified where necessary to meet the following requirements:

- a. Impact Assessment.** Updated estimates of temporary and permanent impacts. "Temporary impacts" are those that do not involve significant ground disturbance and are restored within 12 months of initial construction activity disturbance. Any impacts that do not meet these parameters shall be considered "permanent impacts." For purposes of this project, the mowing of grasslands for trail use, when it includes sensitive species, shall be counted as permanent.

- b. Demolition Plan.** A final demolition plan for the demolition of the structures proposed for demolition.
- c. Replanting Plan.** A final replanting plan of the entire building envelope for all demolished structures.
- d. Mitigation Ratios.** The final demolition plan may update the number of structures proposed for demolition, so long as the combination of demolition and replanting ensures that the restoration meets at least the following ratios in terms of mitigation for the final impacts determined in Section 2.a above: 3:1 for EHSA creation or substantial restoration, 4:1 for wetlands creation or substantial restoration, and 6:1 for ESHA enhancement.
- e. Monitoring Plan.** A Monitoring Plan that provides bi-annual reports for at least five years covering monitoring, maintenance, and remediation activities for the mitigation of any permanent impacts. Each report shall document the condition of the revegetation and invasive species removal with photographs taken from the same fixed points in the same directions; a “performance evaluation” section where monitoring results are used to evaluate the status of the revegetation and invasive species removal efforts in relation to the interim and final success criteria in the final approved HMMP; and recommendations for work for the subsequent year needed to improve mitigation success. The Monitoring Plan shall also include:
 - 1. Provisions that the Year 1 monitoring report shall include a report on the demolition of structures and replanting.
 - 2. Provisions that the final monitoring report after five years that shall be submitted for the review and approval of the Executive Director at the conclusion of all on-site mitigation efforts consistent with the monitoring schedule in the final approved HMMP. The final monitoring report shall evaluate whether the revegetated areas conform to the goals, objectives, and success criteria set forth in the approved final HMMP. The final monitoring report shall summarize prior reports and provide a timeline of the overall progress and success and include sufficient detail to evaluate comprehensive mitigation compliance with the mitigation program and specified goals and success criteria set forth in the approved final HMMP.
 - 3. Provisions that if the final monitoring report indicates that the on-site revegetation and restoration efforts have been unsuccessful, in part or in whole, based on the approved success criteria, the Permittee shall submit within 90 days a revised or supplemental HMMP for the review and approval of the Executive Director to compensate for those portions of the original program which did not meet the approved success criteria. The revised or supplemental HMMP shall be prepared by a qualified restoration specialist and shall specify measures to remediate those portions of the original approved HMMP that have failed or have not been implemented in conformance with the original approved HMMP. The revised plan shall be processed as an amendment to this CDP, unless the Executive Director

determines that no amendment is legally required.

All requirements above and all requirements of the Executive Director-approved Final Habitat and Mitigation Plan shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition and the approved HMMP.

- 3. Protection of Archaeological and/or Tribal Cultural Resources.** The Permittee shall undertake the approved project in compliance with the following measures to protect archaeological and/or tribal cultural resources to the maximum extent feasible.
 - a. Tribal Consultation and Use Plan.** WITHIN ONE YEAR OF CDP ISSUANCE, the Permittee shall submit a Tribal Consultation and Use Plan to the Executive Director for review and written approval. The plan shall be based on consultation meetings with the Federated Indians of the Graton Rancheria and/or the Kashia Band of Pomo Indians (and other Native American Tribes that express interest and demonstrate historical use of the site if they become evident and upon agreement of all the parties). Where feasible, the Plan shall provide for a program of Tribal access and use of the site, including for traditional Tribal ceremonies. The plan shall also include provisions to ensure that public access and recreation minimize impacts to cultural resources on the site to the greatest extent feasible. If neither tribe responds to consultation requests, the Permittee may request a reduced plan submittal consistent with Special Condition 6 below, that only requires demonstrated consultation efforts.
 - b. Notification.** At least one month prior to commencement of any ground-disturbing construction activities, the Permittee shall (1) notify the representatives of Native American Tribes listed on an updated Native American Heritage Commission (NAHC) contact list, including but not necessarily limited to the Federated Indians of the Graton Rancheria and the Kashia Band of Pomo Indians; (2) invite all Tribal representatives on that list to be present and to monitor ground-disturbing activities; and (3) arrange for any invited Tribal representative that requests to monitor and/or a qualified archaeological monitor to be present to observe project activities with the potential to impact archaeological and/or tribal cultural resources.
 - c. Discovery Protocol.** If any tribal cultural deposits are discovered during the course of the project, all construction within 200 feet of such deposits shall cease and shall not re-commence until a qualified cultural resource specialist (which could be a person identified in subpart (b), above), in consultation with the relevant tribe(s), analyzes the significance of the find and, if deemed significant, prepares a supplementary archaeological plan for the review and approval of the Executive Director that evaluates and provides suggested measures related to the discovery. The Executive Director shall review the plan and either: (1) approve it and determine that its recommended changes to the project or mitigation measures do not necessitate an amendment to this CDP, or (2) determine that the changes proposed therein necessitate a CDP amendment.

The location of any and all identified archaeological and tribal cultural resources shall be kept confidential, and only those with a “need to know” shall be informed of their locations.

- d. Human Remains.** Should human remains be discovered on-site during the course of the project, immediately after such discovery, the on-site archaeologist and/or tribal monitor shall notify the Sonoma County Coroner within 24 hours of such discovery, and all construction activities shall be temporarily halted until the remains can be identified. If the County Coroner determines that the human remains are those of a Native American, the Coroner shall contact the NAHC within 24 hours, pursuant to Health and Safety Code Section 7050.5. The NAHC shall deem the Native American most likely descendant (MLD) to be invited to participate in the identification process pursuant to Public Resources Code Section 5097.98. The Permittee shall comply with the requirements of Section 5097.98 and work with the MLD person(s) to discuss and confer with the descendants all reasonable options regarding the descendants' preference for treatment. Within 5 calendar days of notification to NAHC, the Permittee shall notify the Coastal Commission's Executive Director of the discovery of human remains. The Executive Director shall maintain confidentiality regarding the presence of human remains on the project site.
- 4. Other Authorizations.** PRIOR TO COMMENCEMENT OF TRAIL OPERATIONS, the Permittee shall provide to the Executive Director evidence of other required authorizations, or alternatively evidence that no such authorizations are needed, for the development authorized by this CDP, including any necessary agreement from Sonoma County to use the Shorttail Gulch Trail. The Permittee shall inform the Executive Director of any changes to the project required by such entities, where such changes shall not be incorporated into the project until the Permittee obtains a Commission-approved amendment to this CDP, unless the Executive Director determines that an amendment is not legally required.
- 5. Future Permitting.** Any and all future proposed development related to this project, this project area, and/or this CDP shall be subject to the Coastal Commission's continuing CDP jurisdiction. This CDP authorizes limited future repair, maintenance, and/or improvement development that is determined by the Executive Director to: 1) fall within the overall scope and intent of this CDP; 2) be consistent with the Sonoma County LCP; and 3) not have any significant adverse impacts to coastal resources. Any development that the Executive Director determines does not meet such criteria shall require a separate CDP or a CDP amendment, as directed by the Executive Director.
- 6. Minor Modifications.** Minor adjustments to these special condition requirements, including to any Executive Director-approved plans, that do not require CDP amendments or new CDPs (as determined by the Executive Director) may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

- 7. Assumption of Risk, Waiver of Liability and Indemnity.** Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, to all of the following: (a) that the site may be subject to coastal hazards, including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, tsunamis, tidal scour, coastal flooding, fluvial flooding, landslides, bluff and geologic instability, bluff retreat, liquefaction, and the interaction of same, many of which may worsen with future sea level rise; (b) to assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (c) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (d) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

4. FINDINGS AND DECLARATIONS

A. Project Location

The proposed project would be located at the Estero Americano Coast Preserve located just downcoast of Bodega Bay in unincorporated Sonoma County, on the coastal bluffs west of Highway 1, between the Highway and the Pacific Ocean, partially within and just south of the town of Bodega Bay. The property is dramatically located directly on the Estero Americano, which is a long tidal estuary fed by freshwater from Estero Creek and reaching some nine miles inland, defining the border between Marin and Sonoma Counties. The Preserve borders the coastline for three-quarters of a mile and includes a one-mile stretch along the mouth of the Estero Americano. The Preserve includes coastal bluffs, riparian areas, inland coastal hills, a pocket beach area, and direct access to the Estero and a large beach at the mouth of the Estero. Much of the year, the beach is accessible and extensive, but in winter when the Estero waters breach, the main areas of the beach are generally cut off from access.

The Estero Americano area is almost entirely undeveloped other than agricultural operations, surrounded by former or currently used agricultural areas that are mostly dedicated to cattle grazing. In fact, the 547-acre Preserve site was historically used as a cattle ranch, and portions of the site are currently grazed today. The site was purchased by the Applicant, The Wildlands Conservancy (TWC) in 2015.² See [Exhibit 1](#) for regional location maps and [Exhibit 2](#) for photos of the site.

The Preserve is accessed via Estero Lane, a narrow road that comes from Highway 1 just south of Bodega Bay. Estero Lane is a partially paved and partially dirt road

² Additionally relevant here is that after purchase of the property, TWC entered into an agreement with Caltrans to undertake habitat restoration on the property to provide mitigation for the Caltrans bridge replacement project farther up the Estero, where Highway 1 crosses from Marin to Sonoma Counties just outside of Valley Ford (see CDP authorization 2-15-1354).

entering the Preserve from the northeast. Most of Estero Lane is a public road, but for a section before reaching the Preserve where it crosses private property. The TWC purchase of the property in 2015 and their agreement to provide habitat mitigation with Caltrans raised concerns for adjacent property owners over the potential the road could be used for public access, which triggered litigation from those property owners against TWC and Caltrans. That litigation was ultimately settled in 2020, granting TWC an easement for use of Estero Lane for access. TWC agreed to not allow the public to generally use the road, though the agreement did allow TWC to host four guided tours of the Preserve to the public through use of Estero Lane each year. Additionally, Caltrans was allowed to proceed to develop its habitat mitigation plans for the Preserve.

The Preserve also sits just south of a 1970s era residential subdivision known as Bodega Harbour. This development includes some 700 single-family residential units arranged in cul-de-sacs and loops, with an integrated golf course. Most of the subdivision development is private land; however, the roads are public, and the development includes several public access easements described below.

Lastly, the site also includes an old aquaculture facility that is currently used for small scale abalone farming. This facility was initially approved by the County in 1982. That approval allowed for a 12-tank fish farm on a 10-acre leasehold, an equipment storage barn, a manager's residence, and a pump house. The aquaculture facility operator entered a lease with the prior property owner, prior to TWC's purchase of the Preserve, that allows for 10-year lease renewals until it expires in 2093.³

B. Project Description

The Applicant proposes to provide improved public access throughout the coastal property through a network of approximately five miles of public access trails leading to a fairly unused public beach, overlooks, and kayak access points to the Estero Americano, all on the 547-acre Preserve.⁴ See [Exhibit 3](#) for the proposed project plans. The trails would run primarily along existing former agricultural roads and cattle paths, and TWC would create other trail segments through existing grassland by mowing. The trail is designed to be a simple single track, averaging 12 to 18 inches in width, with a mowed area up to two feet from trail center to reduce the risk of ticks and non-native seed dispersal. One trail would run roughly up the higher bluff on the parcel, with dramatic views over the property, the Estero, and the ocean. And another would run through the former farmstead area of the property, past an old pond, and then along the coastal bluff where it would run down to the ocean and the mouth of the Estero. TWC also proposes additional amenities, including a public access gate, kayak pull-in areas, a small port-a-potty bathroom near the beach access area, an informational kiosk, trail

³ The Commission's enforcement unit received a report related to the consistency between the development on the aquaculture site and the current use of the aquaculture operations with the prior aquaculture CDP approval by the County. The matter has been referred to the Commission's enforcement division to consider options for future action to address the violations, and TWC is cooperating with enforcement staff on that effort.

⁴ As proposed, the trails would be open daily to hikers and on-leash dog walking. Off-road vehicles, motorized transport, mountain biking, camping, and equestrian use would be prohibited.

signage, and picnic tables.

As discussed above, TWC is currently unable to provide general public access to the Preserve via Estero Lane. However, TWC notes that public access is allowable via the public streets in the Bodega Harbour development adjacent and north of the property, and via the public easements that abut TWC's Preserve property. As described in somewhat more detail below, Bodega Harbour is a major subdivision development on the Sonoma Coast that was proposed just as the Coastal Act was being crafted. Litigation between the Bodega Harbour developer and the California Coastal Zone Conservation Commission (i.e., the Commission's predecessor) ensued, which was ultimately resolved in a 1977 Settlement Agreement. That Settlement Agreement provided for two public access trails on Bodega Harbour property, one called the Pinnacle Gulch Trail, and one called Shorttail Gulch Trail (originally called Shirt-tail), where both access trails run roughly perpendicular to the shoreline and to the beach fronting the subdivision (see [Exhibit 1](#)). The Settlement Agreement also established an easement over the entire beach area of the property from mean high tide up to the top of the bluff. All trails and easements were granted to Sonoma County and are now managed by Sonoma County Regional Parks. The HOA at that time also deeded all roads to the County as public roads.

The Pinnacle Gulch Trail sits somewhat north of the Preserve property, following a ravine down from Mockingbird Drive. This trail includes a public parking lot at the top. Residential development separates Pinnacle Gulch trail from Shorttail Gulch Trail, which is directly adjacent to the Preserve and runs from Osprey Drive. Users of the future trails on the Preserve could park at the Pinnacle Gulch Trail head parking lot and walk on the streets to the Shorttail Gulch Trailhead, or park anywhere on the public streets near the Shorttail Gulch Trailhead where there is ample on-street public parking available.

Once on the Shorttail Gulch Trail, users would walk about hundred yards or so on that trail before diverting onto the Preserve. TWC would install a gate at the property line at that location. TWC intends to provide general public access to the Preserve as quickly as possible, but also proposes to phase in such access over time as a means of attempting to appease the concerns of the HOA and some other neighbors. Once the trail system is in place, as proposed TWC plans to continue to offer guided tours, now originating from the new access gate at the Shorttail Gulch Trail, and public kayaking access will be allowed at the established kayak pull out locations. Ultimately, TWC hopes to establish a caretaker unit on site to help manage all such access. TWC proposes that in the next couple of years they will renovate existing onsite housing and construct permanent public restrooms. As discussed below, TWC indicates that they are amenable to a condition that would ensure that general public access is provided within one-year of CDP issuance. At that time the gate would be open daily during the day,

Because the trail project includes some potential minor habitat impacts, this project also proposes some habitat restoration under this CDP. TWC is already restoring large segments of the property, primarily as mitigation for the Caltrans' Estero Americano Bridge Replacement project (approved by the Commission pursuant to CDP 2-15-1354, as well as other Caltrans projects). The restoration CDP application is being proposed

as a CDP Waiver and will come before the Commission at a subsequent hearing (see CDP Application 2-24-0346). TWC also continues to use portions of the site for livestock grazing, though now that will be pursuant to a grazing management plan that will protect and enhance habitat.

The Preserve contains multiple older farm buildings and random elements of now unused farm infrastructure. TWC proposes to remove some older buildings (while protecting the most historic buildings) and unused farm infrastructure (see TWC's mitigation proposal in [Exhibit 4](#)). Under this CDP application, TWC proposes to restore those areas with native vegetation, pursuant to a habitat mitigation and monitoring plan discussed below.

C. Jurisdiction and Standard of Review

The proposed project involves development in both the Commission's retained coastal development permit (CDP) jurisdiction, as well as in areas in Sonoma County's CDP jurisdiction under the County's LCP. Section 30601.3 authorizes the Commission to process a consolidated CDP application in such cases when the local government, the Applicant, and the Executive Director all agree to such consolidation. TWC has requested such consolidation, and on May 14, 2024, Sonoma County approved a resolution (24-0170) agreeing to CDP application consolidation of the project. In their resolution, Sonoma County requested that the Commission hearing on the matter be heard locally. The Executive Director also agrees to process a consolidated CDP for this item, and Commission staff has scheduled the item for the November 2024 hearing in San Francisco, which is a local hearing in the Commission's North Central District. Pursuant to Section 30601.3, the standard of review for the proposed project is the Coastal Act, with the certified Sonoma County LCP providing non-binding guidance.

D. CDP Determination

1. Public Access and Recreation

Applicable Coastal Act Provisions

The Coastal Act protects and requires the provision of public recreational access, and maximizing public recreational access opportunities is a fundamental Coastal Act objective. Relevant provisions include:

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. *(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, or (3) agriculture would be adversely affected...

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 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*

These overlapping Coastal Act provisions protect public recreational access to and along the beach/shoreline and to offshore waters for public recreational access purposes, particularly free and low-cost access. Specifically, Section 30210 requires the Commission to provide the general public maximum access and recreational opportunities, while Section 30211 prohibits development from interfering with the public's right of access. In approving new development, Section 30212 requires new development to provide access from the nearest public roadway to the shoreline and along the coast, save certain limited exceptions, such as existing adequate nearby access. Section 30213 protects lower cost forms of access, such as the free access available along the beach fronting the project site. Section 30220 protects coastal areas suited for ocean-oriented activities, such as the beach/offshore area here, for such purposes. Sections 30221 and 30223 protect oceanfront and upland areas, like this, for public recreational uses. And Section 30240(b) protects parks and recreation areas, like the public beach fronting the site, from degradation, and requires any allowed development to be compatible with the continuation of those areas. Finally, Section 30210's requirement to maximize access and recreational opportunities represents a different threshold than to simply provide or protect such access, and it is fundamentally different from other like provisions in this respect. Namely, it is not enough to simply provide access to and along the coast, and not enough to simply protect access; rather such access must also be maximized. This terminology distinguishes the Coastal Act in certain respects, and it provides fundamental direction with respect to projects along the California coast like this one.

Consistency Analysis

There are significant public access and recreation opportunities near the project area; Bodega Bay offers attractions such as Doran Regional Park, the Bodega Dunes

Campground, Salmon Creek, as well as the town and the harbor of Bodega Bay and numerous state beaches. Generally, in the area, visitors and residents may enjoy, among other activities, boating, birding, hiking, mountain biking, horseback riding, rock climbing, whale watching and fishing. The Estero Americano and the beach at its seaward extent, however, represent a unique, incredibly scenic area of the Northern California coast for which improved public access is quite limited, including TWC guided tours and via boat or kayak. Indeed, there is no formalized public access to the coast here from the beach terminus of the Shorttail Gulch Trail to Dillion Beach to the south, a stretch of some 4.5 miles, point to point (actual coastline would be longer). The Estero Americano itself is a rare undeveloped coastal estuary with a broad beach that is home to significant coastal wildlife species, and the area is considered one of the most biologically dynamic along this stretch of coast. The upland areas surrounding the Estero are also a prime location for coastal hiking opportunities, and replete with significant coastal views of coastal prairie lands, coastal bluffs, the estero, and the ocean. In short, improving public access and providing coastal recreation at such a coastal area lacking such improved public access fulfills numerous Coastal Act policies cited above. (See [Exhibits 1 and 2](#) for an overview of the location and setting.)

Acquisition of the Estero Americano Preserve parcel was funded in part by the State Coastal Conservancy, which contributed \$1 million. Conservancy support of the acquisition was intended to “provide public access to this historically privately held section of the stunning Sonoma coast.” The [Conservancy report](#)⁵ on the acquisition concluded that:

The property contains rare coastal prairie and estuarine habitats, is adjacent to and in close proximity to several protected lands and marine areas and provides for an extension and braiding of the California Coastal Trail. If acquired, it will provide a hiking experience of wild, coastal California with sweeping views of the Estero Americano, Point Reyes, Bodega Head, and Doran Beach with prime whale watching, wildflower, and wildlife observation opportunities.

The proposed development will complement existing grazing activities on the site with another high-priority Coastal Act use, namely an improved approximately 5-mile public trail system, including signage, picnic areas, kayak pull out areas, restrooms, and beach access. The proposed trails would also be part of and will formally add approximately $\frac{3}{4}$ mile to the California Coastal Trail (CCT) network, which is designed as a continuous interconnected public trail system along California's coast. The CCT, by definition, is intended to maximize access to ocean views and scenic coastal vistas and should be located as close to the ocean as possible.

It should be noted at the onset that TWC currently operates a similar, very successful public access program at Jenner Headlands in Sonoma County. There, TWC partnered with other state, federal and local entities to purchase that 5,630-acre property in 2009.

⁵ See Coastal Conservancy's Estero Ranch Acquisition Staff Recommendation dated October 1, 2015. The Coastal Conservancy report indicates that the total purchase price for the property was \$4 million. In addition to the \$1 million contribution from the Coastal Conservancy, the Sonoma County Agricultural Preservation & Open Space District contributed \$2 million, and the Gordon and Betty Moore Foundation contributed \$1 million.

TWC manages a similar network of freely accessible coastal trails on a historic ranch, with an onsite fulltime caretaker.

TWC uses Estero Lane for vehicular access to the Preserve. Estero Lane is a partially paved and partially dirt road entering the Preserve from the northeast. However, Estero Lane crosses private properties to reach the Preserve and those owners have refused to allow the public to use the road for access to the Preserve.⁶ Instead, as proposed, the public trail system will connect with existing Sonoma County public trails, Shorttail Gulch Trail and Pinnacle Gulch Trail, which themselves are accessible via public streets in the Bodega Harbour subdivision. These trails are just north of the Preserve, with the Shorttail Gulch Trail directly abutting the TWC property, and are both considered primary CCT segments.

As described above, the proposed trail system (see [Exhibit 3](#)), which would be a new and important formalized addition to the CCT, includes some five miles of hiking trails including some running along the top of inland hills and one that would run through the property, along the shoreline bluff, and include a connection to the Estero Americano and the beach fronting the site. In addition, the proposal includes a kayak pullout and picnic area on the Estero Americano. The amenities would all be accessible for no charge.

Overall, the public access improvements themselves are clearly consistent with Coastal Act policies that require maximization of public access because it will establish improved public access and recreational amenities where currently only limited access exists and these amenities will be free. Provided such access is available to the general public as soon as possible (here, given constraints, within one year of CDP issuance as discussed below) during daylight hours, the project can be found consistent with both Sections 30210 and 30213. It also preserves oceanfront/coastal lands for recreational use consistent with 30220, 30221, and 30223. The project elements providing for kayak pullouts and picnic areas are also consistent with the same provisions, as well as 30224.

In terms of parking, given the inability to access the property via Estero Lane, the project does not propose any parking, but public parking is currently available at the public parking lot on Mockingbird Drive at the trailhead for the Pinnacle Gulch Trail located approximately ½ mile from the proposed public access gate into the Preserve. Users here would walk along the public roads of Mockingbird Drive and Osprey Drive to reach the Shorttail Gulch Trail. There is also extensive on-street public parking available on public Osprey Drive and other public streets throughout the adjacent neighborhood (see [Exhibit 1](#)).

As relevant background for this project and this CDP application, as well as to provide impact analysis consistent with a regular CEQA documentation, TWC completed a Transportation Impact Study (see [Exhibit 7](#)). The analysis used a comparative study of

⁶ TWC recently settled litigation with these property owners over the use of Estero Lane. The settlement allows TWC to provide up to four guided tours to the Preserve using Estero Lane each year, but it does not accommodate general public access across those private properties.

other nearby access sites to generate information on anticipated trips, Vehicle Miles Travelled (VMT), traffic and emergency response impacts, and parking impacts. The Applicant's traffic and parking study concluded that there is adequate existing public parking to accommodate the increased demand projected to result from the proposed public access trail improvements and did not find any significant traffic impacts.

TWC intends to provide general public access to the Preserve as quickly as possible, but also proposes to phase in such access over time as a means of attempting to appease the concerns of the HOA and some other neighbors. Once the trail system is in place, TWC plans to continue to offer guided tours, now originating from the new access gate at the Shorttail Gulch Trail, and public kayaking access will be allowed at the established kayak pull out locations. Ultimately, TWC expects that in the next couple of years they will renovate existing onsite housing and construct permanent public restrooms. However, the important and long missing public coastal access here should be provided as soon as possible, and TWC indicates that they are amenable to a condition that would ensure that general public access is provided within one-year of CDP issuance (as implemented through Special Condition 1). Special Condition 1 also requires that within one-year of CDP issuance that the gate be open during daylight hours (and the Commission notes that it has consistently interpreted such hours to extend from one-hour before sunrise to one-hour after sunset).

The proposed project also includes a signage program, although the exact language, number, size, and locations of signs has not been submitted. Special Condition 1 also requires, prior to the start of construction, the applicant to submit to the Executive Director for review and approval, a Final Signage Plan that includes additional detail regarding final proposed signage installations including type, size, design, text, and location, and includes signage in both English and appropriate non-English languages (including at least Spanish). This condition also requires that the signs be generally subordinate to the character and setting of the location, be the minimum necessary to ensure safe access, and not have ESHA impacts. Special Condition 1 also requires the Applicant to provide the final location of all the proposed trails, the method of trail construction, and plans/specifications for the final location of picnic tables, restrooms, and other recreational amenities.

Use of Shorttail Gulch Trail for Access

As noted above, access to the Preserve currently is limited. Estero Lane accesses the property, but it also crosses private land, and those property owners are not willing currently to allow public access across their properties. Thus, the Applicant proposes to access the Preserve via the existing Shorttail Gulch public access trail that lies adjacent to the Preserve. We note that use of this trail would be very short, only about 350 feet.

The Shorttail Gulch Trail is located atop two public access easements held and operated by Sonoma County (they were required in 1973 and 1976, when the first phase of the adjacent Bodega Harbour residential subdivision was approved and pursuant to a 1977 settlement agreement with the California Coastal Zone Conservation Commission for the completion of the subdivision, respectively), and it is located on land owned by the Bodega Harbour HOA. The HOA opposes the proposed project (see their correspondence in [Exhibit 5](#)).

Primarily, the HOA alleges that the Shorttail Gulch public access trail easement is only intended to facilitate access along the Shorttail Gulch Trail to the shoreline along its designated route. In other words, the HOA asserts that the public access easement is limited to providing only direct access to the shoreline across the HOA property, and not allowed to be used to connect to other public accessways or public properties, like the trails at the Preserve. And the HOA argues that the proposed project would essentially “overburden” the public access easement. The Commission does not agree and provides the following background and history regarding the easement in question.

In 1972, when voters approved the Coastal Zone Conservation Act (i.e., “The Coastal Initiative”, the predecessor to the Coastal Act), several large residential subdivisions were being proposed/developed on the Sonoma and Marin County coastlines. One of these was the above-referenced Bodega Harbour residential subdivision. In 1973, when the new North Central Coastal Zone Conservation Commission came into being and asserted CDP jurisdiction over the subdivision, a legal dispute with the developer ensued. Resolution of this dispute was achieved on June 1, 1977, via a settlement agreement between the developer (TransCentury Properties, Inc.) and the California Coastal Zone Conservation Commission. That settlement agreement reduced the originally proposed scale of residential development approximately in half, to a total of 725 single-family home-sites, and set aside areas that were proposed for residential use to permanent open space (along with a neighboring unsubdivided property known as the Bruhn Ranch). In the settlement agreement TransCentury willingly agreed to dedicate the streets for public use to the County, and also conveyed various portions of the site to Sonoma County for public access, specifically:

- A “public pedestrian shoreline easement” along the beach and bluff property from the mean high tide line to the top of the bluff or line of first significant vegetation where there is no bluff for maintenance and preservation.
- A public “pedestrian access easement” from Mockingbird Road through Pinnacle Gulch to the beach (subsequently named the Pinnacle Gulch Trail) and sufficient land to accommodate 20 public parking spaces.
- A public “pedestrian access easement” between the existing (at the time of the settlement)⁷ public easement in Shorttail Gulch,⁸ and Osprey Drive.

These easements required by the settlement agreement were conveyed to the County, and consistent with their terms, the County has assumed responsibility for maintenance and operation of the trails. The Pinnacle Gulch Trail opened in the 1980’s and the

⁷ The public access easement existing at the time of the 1977 settlement agreement was dedicated to the County in October 1973 as part of the Bodega Harbour subdivision development. The 1973 easement primarily encompasses the vertical portion of the Shorttail Gulch trail, while the 1977 easement provides lateral access between Osprey Drive and 1973 easement. The proposed TWC access gate is located adjacent to the 1977 easement. Thus, public access between Osprey Drive and the Preserve is located entirely on the 1977 easement (see [Exhibit 1](#)).

⁸ In the settlement agreement, the trail was referred to as “Shirt-Tail Gulch.” However, the trail is now known as “Shorttail Gulch.”

Shorttail Gulch Trail opened in 2004. The required no-fee parking lot was constructed sometime prior to 2002 (see [Exhibit 1](#)).

As indicated above, the HOA opposes the project's use of the Shorttail Gulch easement as a means of gaining access to the Preserve and suggests that, at the time of the settlement agreement, the parties did not envision access would extend onto adjoining private or public lands, but only would be on land owned at the time by the developer. TWC disagrees and contends that the existing public easement entitles members of the public to use the easement to access beach and public trails, including the new proposed public trail on the subject site (see their correspondence in [Exhibit 6](#)). The Commission concurs. TWC also describes how the public now has a legal property interest in the Preserve based on the Coastal Conservancy's grant and TWC's dedication of a Recreation Conservation Covenant to Sonoma County. That property right gives the public the right to access the Preserve for low intensity public recreation such as hiking, and the public can only access the Preserve to make use of those rights via the Shorttail Gulch trail.

In reviewing the relevant arguments, the Commission concludes that the settlement agreement does not prohibit use of the easement for public access to Preserve. Instead, the settlement agreement mandates that: "...A reasonable public pedestrian easement between the existing public easement in Short-tail Gulch and Osprey Drive shall be dedicated to Sonoma County...". While the HOA argues that use of the public access easement to access the adjacent public access trails is not reasonable, and that the intent of the easement was limited to access to the beach areas seaward of the Bodega Harbour development, neither the settlement agreement nor the easement itself says as much. In fact, the settlement agreement does not define the word reasonable and the prohibition on the use of a public access easement to facilitate public access is clearly an unreasonable interpretation. While it is generally described in the grant deed as intended to connect an existing easement through Shorttail Gulch to the beach with public roads planned in the development, the easement is only described as a "pedestrian access easement." This gives the public the right to use the easement as pedestrians. Ultimately, all easements are by necessity defined as being between two or more distinct locations. But that does not mean that the public may not make use of that easement and divert off onto other areas on which it has public rights of access.

The HOA argues that using the Shorttail Gulch Trail to access the trails on TWC's adjacent parcel would also "increase the burden upon and impose a new burden on the servient estate" of the HOA, because they argue that the easement is narrowly defined as an access to the beach on the HOA property. Although the purpose at the time may have been to ensure access to the beach on the HOA property, the easement is generally described as a "pedestrian access easement." As such, while clearly non-pedestrian uses such as motor vehicles would exceed the scope of the easement, it is not clear here what use would be a new excessive burden on the easement nor clear if the public can even overburden a public easement as any member of the public has a right to use that easement. Again, use of the trail will only extend for some 350 feet.

Presumably, the HOA is concerned that more people will come and use the trail, some of whom will turn off Shorttail Gulch Trail and transition to the trails on the TWC

property. Yet, the easement is only defined as a pedestrian access easement and did not set any limits on the number of users. Public access easements are generally open to all members of the public and are not overburdened if they become popular. If the Shorttail Gulch Trail was substantially more popular, then presumably that would be within the allowable use of the easement as defined by the HOA. Here, it appears merely that some small number of users will make use of the trail as they normally would but divert from the route to the beach onto the trails on the Preserve, where they have public rights of use. Indeed, some users will likely use the Shorttail Gulch Trail to access the beach on the HOA property but walk south along the shoreline at low tide and return via the trails on the TWC property. The HOA's position implies that this is permissible but a trip in the opposite direction is not.

The HOA has also not submitted any evidence demonstrating there will be an excess number of users or any associated problems with that increase, and indeed, a traffic study conducted by TWC concluded that the new trail use will not significantly increase parking or traffic issues in the HOA area. Any increased parking use, it should be noted, would take place on public roads in areas with open public on-street parking. Lastly, the responsibility for trail maintenance resides with the easement holder, Sonoma County, and there would thus be no increase in the burden of trail maintenance on the HOA.

All told, the easement at issue here is described generally as a "pedestrian access easement." Members of the public will access it and make use of it as pedestrians exactly in the same way as always – heading toward the shoreline or back. Some of these pedestrians will divert from the trail and connect onto trails on the Preserve. There is nothing in the settlement or the easement, that would suggest that this use is impermissible. In fact, since the trail was opened for public use over 20 years ago, it is logical to presume that trail user numbers have increased over time. There has been continuing population increase in the nearby Bay Area and there continues to be an increased desire for outdoor recreational opportunities. In addition, as temperatures rise in inland areas due to climate change, coastal park managers are seeing an increase in demand for coastal park facilities. And as sea levels rise and the beaches shrink in size, there will be more demand for near shore inland trails to provide for coastal trail recreation. Also, coastal locations often have cooler and cleaner air than hotter and more inland areas experience. With such growing need for coastal recreation, it would be a great public detriment to read into public easements some arbitrary limit on the number of people making use of such public trails. Ultimately, the easement is described as a "public pedestrian easement," it is not defined as an easement for some limited number of people. Moreover, the County has responsibility for trail ownership and maintenance, so those issues do not appear to be a burden for the HOA either.

The proposed project, including a public access gate adjacent to the Shorttail Gulch Trail and the improved public access trails, are located entirely on property owned by TWC and on property on which the public owns a recreational right of access. Access to them will occur on a public pedestrian easement owned on behalf of the public by the County. Therefore, public pedestrians making use of the trail do not need to seek out specific permission from Sonoma County to make use of the trail, even if they are diverting onto the TWC property. Still, some coordination on use of the County trail

seems appropriate, and therefore Special Condition 4 requires the Applicant to provide evidence of any necessary agreements from the County in this regard.

In conclusion, the HOA's contentions are without merit. It should also be noted that the residents of the HOA will be a primary beneficiary of the opening of the new trail system as they would be able to walk from their homes to enjoy this previously private parcel of coast fronting land. In short, improving public access and providing coastal recreation at such a coastal area lacking such improved public access is consistent with the Coastal Act's public access and recreation provisions.

2. Environmental Justice

Applicable Coastal Act Provisions

The Coastal Act explicitly identifies the need to advance equity and environmental justice and allows the Commission to consider coastal resource issues and impacts through that lens. The Coastal Act states:

30604(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.*

Section 30604(h) allows the Commission to evaluate environmental justice considerations when making permit decisions. As defined in Section 30107.3(a) of the Coastal Act, "environmental justice" means "the fair treatment and meaningful involvement of people of all races, cultures, incomes and national origins, with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." Section 30107.3(b)(4) states that environmental justice includes, "[a]t a minimum, the meaningful consideration of recommendations from populations and communities most impacted by pollution into environmental and land use decisions."

To implement its Coastal Act environmental justice authority, the Commission adopted an Environmental Justice Policy ("EJ Policy") to guide and inform its decisions and procedures in a manner that is consistent with the provisions in, and furthers the goals of, Chapter 3 of the Coastal Act and certified LCPs. Among other things, the EJ Policy specifies the reviewing lens through which the Commission will implement environmental justice principles in its planning and permitting decisions. For public access, the EJ Policy says the following:

The Coastal Act's mandates to provide maximum access and recreational opportunities for all, and to protect, encourage, and provide lower-cost visitor and recreational opportunities embody fundamental principles of environmental justice. The Commission reaffirms its long-standing commitment to identifying and eliminating barriers, including those that unlawfully privatize public spaces, in order to provide for those who may be otherwise deterred from going to the beach or coastal zone. The coast belongs to everyone, and access cannot be denied or diminished on the basis of race, ethnicity, income socio-economic status, or place of residence or other factors listed in the Policy Statement.

The Commission's EJ Policy recognizes that open access to all residents is an Environmental Justice concern. When it comes to environmental justice and coastal public access, it is not necessary to find underserved or environmental justice communities directly adjacent to a project location. Rather coastal access serves a broad area of residents that travel to the coast, often from farther away inland communities, to enjoy free recreation. The Sonoma coast in particular serves lower-income groups and environmental justice communities from Sonoma County and the broader Bay Area region. According to the Sonoma County Environmental Justice Technical Report published May 2024,⁹ the nearby census tracts to the project area are considered low-income communities.¹⁰ Further, there are many linguistically isolated¹¹ communities in Sonoma (to the tune of 11% of the County being linguistically isolated), with Spanish being the most spoken language in these households.

Here, the Bodega Harbour HOA and the private landowners along Estero Lane seek to raise barriers to coastal public access and deter visitors that are not residents of the wealthy HOA community or adjoining properties from accessing this area of the Sonoma Coast. Instead, by virtue of their opposition they essentially seek to deny and diminish coastal access based on socio-economic status and place of residence.

The proposed project will provide enhanced public recreational opportunities for everyone. It will also include signage in English and Spanish to further increase accessibility to communities in Sonoma County. TWC has stated that they are committed to providing free public access on the Preserve trails and the existing public parking areas are also free of charge. Thus, the project is an important coastal access addition that supports the Commission's efforts for greater environmental justice and the more equitable distribution of environmental benefits throughout the state.

3. Environmentally Sensitive Habitat Areas and Wetlands

Applicable Coastal Act Provisions

While the Coastal Act includes a mix of broad and specific provisions to address a variety of coastal resources, one of the more unique and seminal provisions is how it protects sensitive habitats. The Coastal Act states:

Section 30107.5. "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 developments.

Section 30233. (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable

⁹ See Sonoma County Environmental Justice Technical Report, Rincon Consultants, Inc., May 2024.

¹⁰ A census tract with household incomes at or below 80 percent of the statewide median income or household incomes at or below the threshold designated as low income by the Department of Housing and Community Development's list of state income limits adopted pursuant to Section 50093 of the Government Code.

¹¹ Households that are considered linguistically isolated are those households where no person over the age of 14 speaks English proficiently.

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, and shall be limited to the following:... (7) Nature study, aquaculture, or similar resource dependent activities.

Section 30240. *(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.*

In short, Section 30240 only allows resource-dependent use in environmentally sensitive habitat area (ESHA) that does not in any way lead to significant disruption of ESHA habitat. Moreover, when the proposed development is proposed adjacent to ESHA (see Section 30240(b)), such development is required to be sited and designed so as not to lead to impacts that would significantly degrade such ESHA areas. The Section 30240(b) test is designed to ensure that indirect degradation of ESHA is also appropriately avoided, and, depending on the type of proposed development and the type of ESHA involved, typically involves the use of habitat buffers and minimization measures for the development (e.g., limitations on noise, lights, and activities, types of plants, domestic animals/pets, etc.). Similarly, Section 30233 limits impacts to coastal wetlands to certain allowable uses and requires similar feasible mitigation measures to minimize adverse environmental effects.

Consistency Analysis

TWC has completed various technical reports related to possible habitat impacts of the project, including wetland delineations, special status plant and wildlife surveys, a biological resources survey documenting potential trail impacts on habitat, as well as a proposed habitat mitigation plan. These reports match those the Commission typically reviews in a CEQA EIR or equivalent document.

Based on those reports, and a Commission ecologist review of the materials and the site, as well as a Commission ecologist site visit in October 2024, despite the long history of cattle grazing, ESHA and wetlands exists on the property. The area where the project is proposed includes purple needlegrass grassland, Sitka willow thickets, coastal terrace prairie, and intermittent and ephemeral streams (which constitute ESHA for the purposes of the Coastal Act). The project generally follows existing ranch roads or existing cattle trails and overall avoids ESHA impacts. However, some of the trail project would involve mowing of existing grasslands that include the above-referenced ESHAs. Because the mowing would be sustained over time and the trail used by visitors, the mowing could be considered a permanent ESHA impact. The trail would cross a few ephemeral streams; however, the trail would not include any direct or permanent development in the streams. With respect to the intermittent and ephemeral streams that will be bisected by the trail system, TWC proposes to implement simple natural elements to facilitate crossing (e.g., steppingstones or logs, would not mow in these areas, and trail users will be able to skip over the waters). Near the pond, however, the

existing cattle trail does cross an area that could be considered a wetland.

Analytically, the first question is whether the proposed project is allowable in these habitat types. Coastal Act Section 30240(a) specifically allows resource-dependent uses such as low-intensity public access trails, restoration, and scientific research/nature study in ESHA, and the Commission has a long history of allowing such projects in ESHA so long as they are designed to avoid those impacts as much as possible, and mitigation measures are implemented to address those impacts.¹² Similarly, Section 30233(7) allows public access and restoration trails that impact wetlands under certain circumstances.

Likewise, the proposed trail complies with Section 30240(a) and 30233's requirements because the project is sited and designed so as not to lead to impacts that would significantly degrade ESHA or wetland areas. The trail is as minimal as possible, using existing roadways and trails to the greatest extent feasible, and only mowing grasslands in other areas. The trail is generally narrow in size and does not include any major, permanent or hard infrastructure development. As conditioned, any sign placement for the trail will avoid direct impacts to wetlands and ESHA. Lastly, in terms of Section 30240(b), the trail project is sited and designed to prevent impacts that would significantly degrade ESHA and is compatible with the continuance of adjacent ESHA.

Finally, consistent with the Section 30240 and 30233, TWC is proposing compensatory mitigation for the project's limited habitat impacts in this application. TWC has submitted a draft Habitat Mitigation Plan ("Mitigation for Trail Development" proposal), that proposes the removal of existing dilapidated and unused farm infrastructure, and the replanting of these areas with native vegetation, as well as wetland creation/enhancement. The proposed plan adequately provides compensatory mitigation to meet the typical mitigation ratios the Commission has accepted in numerous projects (3:1 for ESHA creation or substantial restoration, 4:1 for wetlands creation or substantial restoration, and 6:1 for ESHA enhancement, etc.). The mitigation plan is included as [Exhibit 4](#). Special Condition 2 requires the submittal of a final

¹² The following is a non-comprehensive list of some of the projects the Commission has approved that include such low-key trail development through ESHA. The trails in these projects include paved and unpaved trails and boardwalks, and some provide pedestrian-only access while others allow multi-use access, including bicycles and wheelchair access: CDP 3-24-0020 (Cayucos Connector Trail - multi-use public trail through bluff ESHA), CDP 2-07-018 (Sonoma County Regional Parks – multi-use path consisting of crushed rock, located in coastal scrub habitat containing sensitive plant species); CDP 3-01-101 (Del Monte Beach re-subdivision – boardwalk through dune habitat); 3-01-003 (Grover Beach Boardwalk – boardwalk through dune habitat); CDP 3-87-258 (Asilomar State Beach Boardwalk – boardwalk through dune habitat); CDP A-3-SLO-04-035 (PG&E Spent Fuel Storage – unpaved paths through coastal terrace prairie habitat); CDP 3-05-071 (Morro Bay Harborwalk – paved road and paved trail through dune habitat); CDP A-1-MEN-06-052 (Redwood Coast Public Access Improvements – unpaved paths through rare plant habitat and riparian habitat); 80-P-046-A1 (Humboldt County Public Works Subdivision – compacted gravel trail through riparian habitat); CDP 3-00-092 (Monterey Dune Recreation Trail and Parking Lot – paved multiuse path through dune habitat); CDP 1-07-005 (Crescent City Harbor Trail North Segment – Class I and Class III multiuse trails involving some wetland fill); CDP 3-97-062 (Sand City bike path – paved path through dune habitat); CDP 3-06-069 (Fort Ord Dunes State Park Improvements – unpaved path through dune habitat); CDPs 3-98-095 and 3-98-095-A1 (Elfin Forest Boardwalk – boardwalk through terrestrial habitat ESHA); CDP 6-06-043 (Otay River Valley Regional Park trails – decomposed granite trails through coastal sage scrub and wetland habitat).

Habitat Mitigation and Monitoring Plan that includes documentation of final ESHA and wetland impacts of the trail project, documents the final selection of appropriate removal of unused farm infrastructure, includes final plans for habitat restoration, and details project monitoring. The Plan will build on an already identified suite of measures identified in the project's biological resources technical report to minimize impacts to sensitive habitats and will further require the applicant mitigate for impacts to the affected purple needlegrass grassland and coastal terrace prairie habitats.

In conclusion, the project is in a rural area comprised of a mix of habitat types, including ESHA and wetlands. But the project is a type of use allowed within these habitat types, is designed to avoid these impacts as much as possible, and the Applicant, through Special Condition 2, is required to implement further avoidance and mitigation measures, and thus the proposed project can be found consistent with Coastal Act ESHA and wetland requirements.

4. Archaeological Resources and Tribal Consultation

Applicable Coastal Act Provisions

Section 30244 of the Coastal Act requires development projects to implement reasonable mitigation measures to protect identified archaeological or paleontological resources, and states:

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

Consistency Analysis

The Commission acknowledges Tribal sovereignty and understands that California's Tribes and their members have long served as stewards of the state's important coastal resources and possess unique and valuable knowledge and practices for conserving and managing these resources in a sustainable manner, and in a manner consistent with the spirit and intent of the Coastal Act. The Commission's Tribal Consultation Policy (adopted on August 8, 2018)¹³ recognizes the importance of State efforts to protect Tribal Cultural Resources and improve communication and coordination with Tribes, and it sets out a tribal consultation process that is fully consistent with, and complementary to the nature of, the Commission's goals, policies (including Section 30244), and mission statement. Tribal cultural resources can be sites, features, cultural landscapes, sacred places, and objects with cultural value and can also qualify as archeological, paleontological, visual, biological, or other resources that the Commission is tasked with protecting pursuant to the Coastal Act. Coastal Act Section 30244 requires that development be sited and designed to prevent impacts to archeological and tribal cultural resources. Construction activities that disturb soils (e.g., grinding, tilling, disking, and digging/excavating) could damage historical or archaeological resources. These activities could also inadvertently damage human remains.

¹³ See <https://documents.coastal.ca.gov/assets/env-justice/tribal-consultation/Adopted-TribalConsultation-Policy.pdf>.

The Preserve sits at an important location on the mouth of the Estero Americano, teeming with wildlife and biological resources. As such, it was an important location for Native American use and is likely rich in cultural and archeological resources. Pomo and Coastal Miwok Native American Tribes originally inhabited this region, subsisting on the abundance of coastal resources including coastal streams flush with salmon, seafood and shellfish from productive coastal waters and beaches, and diverse bird life native to riparian, wetland, and beach habitats. Evidence of Pomo and Miwok settlements can be found throughout this area generally, and undiscovered cultural sites are also likely. White American settlers began arriving in the mid-19th century and transformed the landscape to support cattle grazing.

TWC's archaeological consultants contacted the Native American Heritage Commission (NAHC) in 2021, and a Sacred Lands File search was returned as negative. TWC completed an archeological survey report in 2022 that would be consistent with typical CEQA documentation. TWC also reached out to the Native American tribes who may also have knowledge of cultural resources in the project area, as identified by the NAHC. The Federated Indians of the Graton Rancheria (FIGR) that represent a specific set of the historic Pomo community that used this region initiated project consultation. The project site is one of deep cultural significance to the FIGR. TWC staff consulted with members of the FIGR, and they undertook a site survey of possible resources on the property. TWC continues to consult with FIGR on this public access project and the long-term use of the site.

Consistent with the Commission's Tribal Consultation Policy, Commission staff reviewed the tribal consultation undertaken by TWC. Commission staff wrote to all tribal representatives and individuals identified by the NAHC as relevant to inform them of the Project's CDP application and the Commission's upcoming hearing on the Project, to offer consultation, and to advise them of the opportunity to provide comments for the CDP hearing. On September 12, 2024, Commission staff met with members of the FIGR to discuss the project. Overall, the FIGR expressed support for the public access project, but discussed the importance of the site and the need to protect cultural and archeological resources. The FIGR also expressed an interest in some future access and use of the site for Tribal ceremonies or other uses. Commission staff discussed this possibility with TWC staff, who were supportive of the concept generally.

Coastal Act Section 30244 requires that reasonable mitigation measures be employed where development could adversely impact archaeological or paleontological resources. In this case, the development of the trail is unlikely to have such impacts given there are no earth digging or grading operations. Rather, the trail will utilize existing gravel areas or simply mow grasses. However, the proposed ESHA mitigation for the project described above would involve some earth moving and grading, at least to a minor degree, to remove slab foundations from the farm buildings. There is also a chance that over time, public use of trails could create erosion or other impacts that could disturb cultural and archeological resources. Although the project does not propose any ground disturbing activities for the public access trails, and those activities should be very limited for the removal of older disused farm infrastructure, Special Condition 3 applies the Commission's regularly used conditions related to inadvertent discovery of cultural or archeological resources. Furthermore, given that the FIGR, TWC, and the

Commission have all expressed an interest in the potential tribal access and use on this historic site, Special Condition 3 requires that TWC continue consultation with FIGR and if feasible, develop a plan for Tribal use on the site, including provisions for some access, signage related to tribal history, and for possible use of the site for Tribal ceremonies. Special Condition 3 also requires TWC to extend these options to any other tribes that request it, when that tribe demonstrates historical use of the area, and all parties agree. The Kashia Band of Pomo Indians of the Stewarts Point Rancheria are a tribe that often works in conjunction with the FIGR on the Sonoma coast.

In conclusion, based on the tribal consultation and outreach performed by TWC and the Commission, the Commission finds that the proposed Project, as conditioned, includes reasonable mitigation measures to protect archaeological or paleontological resources consistent with Coastal Act Section 30244.

5. Other

Visual Resources

The Sonoma County coastline is iconic and reveals coastal bluffs providing vistas of the Pacific Ocean, tucked-away coves, and striking rocky beaches to the west. To the east, the regional landscape is composed of layers of pastoral rolling hillsides, grassy terraces, rock outcroppings, and conspicuous ridgelines. Given the abundance of coastal visual resources in the project area, avoiding or minimizing visual impacts is essential. The main public views of the project area are from the adjacent public streets in the Bodega Harbor subdivision, Shorttail Gulch Trail, the Estero, and the beach and ocean. Because the project scope is limited to low impact public access improvements, the proposed development is not anticipated to significantly adversely impact public coastal views or degrade the existing visual character. The project would maintain existing scenic views in the project area, as existing views would remain largely unchanged. More significantly, the public trails and access points will greatly expand the available views of the coast for the public. Thus, the Commission finds that the proposed development, as conditioned, can be found consistent with Coastal Act visual resources protection provisions.

Coastal Hazards

TWC completed a Geotech and Geological Evaluation report equivalent to that which would be found in a CEQA process document and including a bluff retreat analysis. Overall, the proposed project entails development of public access improvements directly along the shoreline in an area potentially subject to an array of coastal hazards, including those associated with sea level rise. Because the project site is located at the top of a coastal bluff, approximately 175-feet above the Pacific Ocean, it is therefore not subject to coastal flooding or tsunamis. As proposed, the closest distance between the blufftop edge and any portion of the proposed access trail would be 30 feet, consistent with the Applicant's geotechnical report recommended setback to accommodate a 20-year design life. To anticipate longer timeframe needs to adapt to sea level rise and erosion, Special Condition 1 allows for minor relocations of the trail inland over time, when consistent with the current trail alignment, without ESHA impacts, and with replanting (if necessary) of prior trail areas. Moreover, Special Condition 7 requires the Applicant's assumption of risk, waiver of liability, and indemnification of the Commission.

The project appropriately avoids and mitigates the adverse effects of coastal hazards. The project would not exacerbate existing coastal hazard risks. Thus, the Commission finds that the proposed project, as conditioned, would minimize risks to life and property from geologic and flood hazards and assure stability and structural integrity, consistent with Coastal Act Section 30253.

Other Agency Approvals

The project may require authorization from other entities, including Sonoma County. Specifically, while it is a public easement for which the public is not required to ask the County's permission to use, the Commission wants to extend the courtesy of ensuring that the County provides any authorizations it deems necessary. Again, though, the trail is open to the public, and public members will use the trail as they normally would, so it would also appear no formal authorization is necessary. In any case, to ensure that the Applicant can carry out the proposed project consistent with the terms and conditions of this CDP, and to ensure that the proposed project is authorized by all applicable entities, Special Condition 4 requires the Applicant to submit written evidence of these other entities' authorizations of the project (as conditioned and approved by this CDP) or evidence that such authorizations are not required.

Minor Changes

Although a great deal of thought and planning has gone into the proposed project, including as it is affected by CDP terms and conditions, oftentimes minor unforeseen issues present themselves in complicated projects of this nature, particularly as construction gets underway, and it is important that the CDP is nimble enough to account for potential minor changes. Thus, minor adjustments to special condition requirements that do not require a CDP amendment or a new CDP (as determined by the Executive Director) may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources (Special Condition 6).

Future Development

The project site presents complicated coastal resource issues, and is the site of another Commission CDP application, as well as this CDP, and the Commission finds that it is critical that any future development associated with the approved development be considered in that context. Thus, Special Condition 5 provides that any and all future proposed development related to this project, this project area, and/or this CDP shall be subject to the Coastal Commission's continuing CDP jurisdiction. At the same time, the Commission also recognizes that there may be limited/minor repair, maintenance and improvement development that can be covered under this CDP, provided the Executive Director determines it to: 1) fall within the overall scope and intent of this CDP; 2) be consistent with the Sonoma County LCP; and 3) not have any significant adverse impacts to coastal resources. Any development that the Executive Director determines does not meet such criteria shall require its own CDP authorization. Again, see Special Condition 5.

6. Violation

As described earlier, Coastal Act and LCP violations exist on the subject property including, but not necessarily limited to: (1) consistency between the aquaculture development on the site and the current use of the aquaculture operations with the prior aquaculture 1981 CDP approval by the County. The aquaculture site includes the building facility itself, but also piping running down to the Estero, pump facilities on the beach, and various fencing structures. The aquaculture facility itself is a leased operation, which predates TWC's purchase of the property. TWC has agreed to work with Commission staff to evaluate the consistency of the operation with the 1981 County-issued CDP and to take measures to address any potential violations.

Although development has taken place without CDP authorization prior to submission of this CDP application, the Commission's consideration of this CDP application has been based solely upon measuring consistency of the proposed project against the applicable Coastal Act/LCP provisions. Commission review and action on this CDP application does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of any development undertaken on the subject site without a CDP, or of any other development, except as otherwise expressed herein.

7. California Environmental Quality Act (CEQA)

CEQA Section 21080.5(d)(2)(a) prohibits a proposed development from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the development may have on the environment.

The Commission's review, analysis, and decision-making process for CDPs and CDP amendments has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required by CEQA (CCR Section 15251(C)). Accordingly, in fulfilling that review, this report has analyzed the relevant coastal resource issues with the proposal and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources. All above findings are incorporated herein in their entirety by reference.

Accordingly, the Commission finds that only as modified and conditioned herein will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA. As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects that approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. If so modified, 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).

5. APPENDICES

A. Substantive File Documents¹⁴

- CDP Application 2-24-0867
- CDP Application 2-24-0346
- CDP 2-15-1354
- Transportation Impact Study for the Estero Americano Coast Preserve Trails Project, W-Trans (August 12, 2024)
- Geologic Evaluation Coastal Bluff Retreat and Erosion – Bodega Bay Overlook Trail Estero Americano Coast Preserve, Miller Pacific Engineering Group (August 30, 2022)
- Delineation of Potential Jurisdictional Waters of the U.S. and Waters of the State of California Estero Americano Preserve Trails Project, WRA, Inc. (March 2022)
- Special-status Plant Survey Results for the Estero Americano Preserve Trails Project, WRA, Inc. (March 25, 2022)
- Biological Resources Technical Report Estero Americano Coastal Preserve Trails Project, WRA, Inc. (March 2022)
- Mitigation for Trail Development Estero Americano Coastal Access Project, Wildlands Conservancy (received in the Coastal Commission's North Central Coast District Office on October 9, 2024)
- Archeological Survey Report and Historic Architecture Resource Evaluation Estero Americano Coast Preserve, Alta Archeological Consulting, March 18, 2022
- 1977 Settlement Agreement, TransCentury Properties, Inc. vs. California Coastal Zone Conservation Commission, Superior Court of the State of California County of Sonoma, June 1, 1977

B. Staff Contact with Agencies and Groups

- Sonoma County Planning Department
- Federated Indians of the Graton Rancheria

¹⁴ These documents are available for review in the Commission's North Central Coast District office.