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STAFF REPORT: APPEAL SUBSTANTIAL ISSUE DETERMINATION ONLY

Appeal No.: A-1-TRN-24-0035

Applicant: City of Trinidad

Appellant: Tom Davies and Kathleen Lake

Local Government: City of Trinidad

Local Decision: Approval with Conditions

Location: Axel Lindgren Memorial Trail, City of Trinidad, Humboldt County. (APNs 042-091-004 and -005)

Project Description: Continued temporary closure for up to one year of the Axel Lindgren Memorial Trail due to unsafe conditions.

Staff Recommendation: No Substantial Issue

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 continued temporary closure for up to one year of the Axel Lindgren Memorial Trail (ALMT) due to unsafe conditions. The trail had been closed since February 2023 due to substantial erosion that had occurred over the winter, which had washed out the bottom portion of the steep trail. The 400-foot-long trail runs along a steep coastal bluff from Edwards Street to Old Home Beach. Parker Creek Trail, located east of the ALMT, is currently open and also provides public access to Old Home Beach.

The ALMT is located in a culturally and geologically sensitive area. The current alignment of the trail was built in the late 1990s under the direction of the Tsurai Ancestral Society (specifically Axel Lindgren) and the Yurok Tribe and follows much of the traditional route used by the Yurok, with an exception at the top of the trail and the bottom 80-foot portion of the trail near the beach. The trail is named in honor of Axel Lindgren, a lineal descendant of the Tsurai and long-time caretaker of the Tsurai Village (southernmost village within the Yurok Tribe's ancestral territory).

The appeal raises contentions regarding public access, cultural resource policies, and ancillary and procedural issues. 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 the trail closure is temporary, and that material progress has been made in repairing and reopening the trail. The stated purpose and need of the extended closure, as explained in the City's findings for approval, is to provide time for the City to work with stakeholders to develop and plan additional trail repair options needed due to substantial damage to the lower portion of the trail that were discovered last year, which rendered through vertical access infeasible along the existing trail route. The staff report states in part: "Reopening the trail in its current condition would present a significant safety hazard for the public due to the 10 to 12-foot almost vertical drop at the toe of bluff." The City's findings conclude that temporary closure is necessary due to the unsafe conditions and the need to plan feasible repair options to establish a safe and stable route that provides public access in a manner that protects fragile coastal resources in the surrounding area.

The extent and scope of the approved development is relatively limited in scale, as it consists of temporarily closing a trail that currently does not provide safe access to the beach due to erosion and for which alternatives for rerouting the lower eroded portion of the trail in a manner that protects coastal resources are currently being evaluated. Due to the limited scope of the approved project, the significance of coastal resources affected by the temporary trail closure 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, especially given the high degree of legal and factual support for the City's decision.

Though 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. The City's findings for approval document several ongoing efforts that are underway to identify solutions for repairing and reopening the ALMT. The City also included Condition of Approval No. 1 specifying the approval for continued temporary trail closure would expire one year after going into effect, "unless an extension is granted by the Planning Commission based on the need for more time to obtain funding and/or further explore repair and access alternatives if the Planning Commission finds that substantial progress has been made in the interim time period." Any extension granted by the Planning Commission would be a one-time extension only. Future extensions would require a separate CDP that would be appealable to the Commission.

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 8](#).

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APPENDICES

[Appendix A](#). Substantive File List

EXHIBITS

[Exhibit 1 – Regional and Vicinity Maps](#)

[Exhibit 2 – Site Photos](#)

[Exhibit 3 – City’s Final Local Action Notice and Staff Report](#)

[Exhibit 4 – Appeal Filed by Tom Davies and Kathleen Lake](#)

I. APPEAL JURISDICTION & PROCEDURES

A. APPEAL PROCEDURES

The Coastal Act provides that after certification of a local government's Local Coastal Program (LCP), the local government's actions on Coastal Development Permit (CDP) applications for development in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of their final CDP actions. During a period of ten working days following Commission receipt of a notice of final local action for an appealable development, an appeal of the action may be filed with the Commission. The Coastal Commission effectively certified City of Trinidad's LCP in 1980.

Approvals of CDPs by cities or counties may be appealed if the authorized development will be located within the appealable areas, which under Coastal Act section 30603(a)(1) through (3)¹ include development located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) in other areas on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; or (3) in a sensitive coastal resource area. Approvals of CDPs by counties also may be appealed if the approved development is not designated as the principal permitted use under the county's certified zoning ordinance or zoning district map (Coastal Act section 30603(a)(4)). In addition, any development that constitutes a major public works project or a major energy facility that is approved or denied by a city or county may be appealed (Coastal Act section 30603(a)(5)).

In this case, the City's approval of the subject project is appealable to the Commission because the approved temporary trail closure constitutes a major public works project (Coastal Act section 30114(c); 14 CCR §13012(b)) and 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 (Coastal Act sections 30603(a)(1), -(a)(2), and -(a)(5)).

Pursuant to Coastal Act section 30603(b)(1), 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.

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 Commission's consideration of appeals is a two-step process. The first step is determining whether the appeal raises a substantial issue that the Commission, in the exercise of its discretion, finds to be significant enough to warrant the Commission taking jurisdiction over the CDP application. The Commission is required to begin its hearing on an appeal, addressing at least the substantial issue

¹ See Commission regulations 14 CCR § 13577 for guidance.

question, within 49 working days of the filing of the appeal unless the applicant has waived that requirement, in which case there is no deadline.

At the Substantial Issue determination stage, the Commission may only consider issues brought up by the appeal. The Coastal Act and the Commission's implementing regulations are structured such that "substantial issue" is presumed, and the Commission generally considers a number of factors in making such a determination. The term "substantial issue" is explained in section 13115(c) 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.

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 3](#)), the appellant's claims ([Exhibit 4](#)), 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 opposed the project application 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, following testimony and a public hearing, the Commission determines that the appeal does not raise a substantial issue, then the Commission does not take jurisdiction over the underlying CDP application and 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. The applicable test for the Commission to consider in a de novo review of a project is whether the proposed development is in conformity with the certified LCP and, if the development is between the sea and the first public road paralleling the sea (as is the case here), the public access policies of the Coastal Act. If a de novo hearing is held, testimony may be taken from all interested persons.

B. LOCAL GOVERNMENT ACTION & FILING OF APPEAL

On July 17, 2024, the Trinidad Planning Commission opened its publicly noticed hearing on local Coastal Development Permit (CDP) Application No. 2024-09 to consider a request by the applicant, City of Trinidad, for the continued temporary closure of the Axel Lindgren Memorial Trail due to unsafe conditions. The trail had been closed since February 2023 due to substantial erosion that had occurred over the winter, which had washed out the bottom portion of the steep trail. The City requested temporary closure for a period of up to one year in order for the City to work with stakeholders to develop and plan additional trail repair options. The Planning Commission unanimously denied the CDP asserting that adequate progress had not been made to reopen the trail, and that reopening of the trail had not been adequately prioritized. The Planning Commission decision was appealed to the City Council on July 30, 2024 by the City of Trinidad mayor, Cheryl Kelly.

On August 13, 2024, the City Council unanimously reversed the decision of the Planning Commission, resulting in conditional approval of the CDP for a continued temporary closure (for up to one year) of the Axel Lindgren Memorial Trail due to unsafe conditions and the need for additional time to develop both short- and long-term repair options. The City Council's findings for approval state in part:

“Because (1) the closure is truly temporary, even if long-term; (2) the trail is located in a culturally and geologically sensitive area; (3) the trail presents a public safety hazard in its current condition; and (4) material progress toward developing a proposal to repair and reopen the trail is being made; therefore the project can be found to be consistent with applicable policies and regulations, including Trinidad General Plan Policy 64 and Coastal Act § 30221.”

The City's action includes one (1) condition of approval that states: “Because the approval is for a temporary trail closure, the CDP shall expire after one year of going into effect, unless an extension is granted by the Planning Commission based on the need for more time to obtain funding and/or further explore repair and access alternatives if the Planning Commission finds that substantial progress has been made in the interim time period.”

One appeal was timely filed with the Commission's North Coast District Office on August 26, 2024, within 10 working days of receipt by the Commission of the City's Notice of Final Action. The appeal was filed by Kathleen Lake and Tom Davies ([Exhibit 4](#)). The appellants participated in the local CDP application and decision-making

process (i.e., submitted comments, and testified at the local hearing) and thus qualify as “aggrieved persons” pursuant to Coastal Act Section 30801 and Title 14, California Code of Regulations, Section 13111. On September 5, 2024, 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.

II. SUBSTANTIAL ISSUE 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-24-0035 **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-24-0035 does not raise 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.

III. FINDINGS AND DECLARATIONS FOR NO SUBSTANTIAL ISSUE

A. SITE DESCRIPTION

The project approved by City of Trinidad, as described in the City’s Notice of Final Action ([Exhibit 3](#)) authorizes continuing a temporary closure of the Axel Lindgren Memorial Trail (ALMT) for a duration of up to one year, with a target to reopen the trail by Memorial Day weekend 2025.

As detailed below, in February 2023,² the City authorized temporary closure of the trail for six months (or as extended by the Planning Commission for good cause) until

² Local CDP No. 2023-03; Appendix A

repairs could be made, after a significant erosion event eliminated a portion of the trail at the toe of the bluff. After administratively approving two extensions of time on the 2023 CDP, a change in circumstances and conditions of approval prompted the City to process a new CDP application and approve the current CDP (local Permit Application No. 2024-09).

The trail begins atop a steep 160-foot-tall coastal bluff, at a vista point near the intersection of Edwards Street and the end of Trinity Street, on property owned by the City of Trinidad ([Exhibit 1](#)). The 400-foot-long trail descends the bluff and provides access to Old Home Beach, a sandy beach on the north side of Trinidad Bay. The trail itself features open water views of Trinidad Bay. The City staff report describes the trail as the designated primary access trail to Old Home Beach. Parker Creek Trail, located east of the ALMT, is currently open and provides public access to Old Home Beach as well. Land uses adjacent to the trail are primarily open space.

The physical development associated with the temporary closure includes fencing and “Trail Closed” signage at both the top of the ALMT (along the edge of the vista point), and at the base of the trail upslope of the beach ([Exhibit 2](#)). Following approval of the temporary trail closure authorized by CDP No. 2023-03, the signage and fencing were authorized to be installed under a separate CDP (local CDP No. 2023-05, approved in May of 2023; [Appendix A](#)) and were authorized to remain for as long as the trail is closed. The City’s approval of the CDP for the fencing and signage was not appealed. Thus, although the fencing and signage at the site are associated with the trail closure, the physical development associated with the trail closure is not part of the project approved by the City’s CDP Application No. 2024-09 that is the subject of this appeal.

The trail is on land zoned and designated as Open Space (OS) and within an area designated on the City’s certified Land Use Map as the Tsurai Study Area (TSA), where additional development restrictions, enhanced permit application and review requirements, and conditional authorizations apply. The State Coastal Conservancy holds a conservation easement over the TSA for the purpose of preserving public access and for the protection of natural and cultural resources. The area, including, but not limited to, the TSA, is home to the Tsurai Village and is listed in the California Register of Historic Places (California Historical Landmark No. 838 registered November 3, 1969) in recognition of the prehistoric Yurok Indian community that occupied the village from approximately 1620 until 1916. The Tsurai Village is the largest, southernmost village within the Yurok Tribe's ancestral territory. Reaching around 65,000 acres in size, the Tsurai Village was home to ancestors of Axel Lindgren (for whom the subject trail is named) since time immemorial. Those ancestors were also the Head family and medicine people for the Tsurai, and through that birthright, Axel Lindgren himself was a caretaker of the village while growing up and living in Trinidad. Despite opposition at times from adjacent property owners and others, Axel Lindgren maintained the traditional trail that ran down the bluff through the village and kept it open.

The current alignment of the trail was built in the late 1990s in conjunction with a court settlement agreement between the City, the State, and a local resident (Frame vs.

Trinidad et al, Humboldt County Superior Court # DR920104).³ The trail was constructed by and under the direction of the Tsurai Ancestral Society (specifically Axel Lindgren) and the Yurok Tribe and follows much of the traditional route used by the Yurok, with an exception at the top of the trail and the bottom 80-foot portion of the trail near the beach. In August of 1999, the City Council formally named the trail in honor of Axel Lindgren, a lineal descendant of the Tsurai and long-time caretaker of the village and cemetery, among other attributes.

B. 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. As summarized below, the appeal filed by Tom Davies and Kathleen Lake discusses the following contentions (listed in no particular order):

1. Public Access: The approved temporary trail closure is inconsistent with the public access policies of the Coastal Act and certified LCP because the City's approval interferes with and minimizes, rather than maximizes, public access.
2. Cultural Resource Policies: The City Council erroneously applied Policy 69 of its certified Land Use Plan.
3. Ancillary and Procedural Issues: These include lack of transparency of Tsurai Management Team meetings associated with trails, and the City Council lacking the authority to hear the appeal.

The entire appeal is included as [Exhibit 4](#).

C. SUBSTANTIAL ISSUE ANALYSIS

Pursuant to sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for an appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the locally approved project's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, the appeal contends that the approved project as conditioned is inconsistent with the public access policies of the Coastal Act, and cultural resource and recreation policies in Trinidad's certified LCP.

1. Public Access

As summarized above, the appeal raises several contentions alleging project inconsistencies with the City's certified LCP and the public access policies of the Coastal Act. The appeal contends that the extension of temporary trail closure interferes with the public's right of access to the sea; that the ALMT is the trail to Old Home Beach

³ The trail was originally approved by the City in 1996 and appealed to both the City and the Coastal Commission (Appeal No. A-1-TRN-96-029). The Commission determined that the appeal that was filed by Trinidad Civic Club and Mickey Fleschner did not raise a substantial issue.

that requires the least restriction on time, place, and manner, in order to not affect the rights of others (specifically those of property owners adjacent to other nearby trails, namely Parker Creek Trail and Wagner Street Trail); and that the ALMT is the primary trail to Old Home Beach. The appeal further contends that the temporary one-year extension of the trail closure is not temporary due to the length of time the trail has already been closed, paired with the history of another trail in Trinidad (Van Wycke) that has been closed through a series of approvals of CDPs authorizing continued trail closure time extensions for over five years. The appeal also contends that the cumulative impact is that public access is being minimized and reduced rather than maximized through this extended closure of ALMT specifically, and within the City of Trinidad in general through the compounded effect of other trail closures within the City.

EXCERPTS OF 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, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30212.5 of the Coastal Act states:

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

Section 30214 of the Coastal Act 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](#).

Section 30221 of the Coastal Act states:

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.

While there are no policies in the City's certified LCP specific to the subject trail, Policy 5 of the Land Use Plan (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.

In addition, Policy 64 of the certified 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.

PROJECT BACKGROUND

Prior to authorizing trail closure under the CDP that is the subject of this appeal, the City took earlier actions related to trail closure. Following multiple storm events which resulted in erosion at the toe of the bluff and the beach-end of the trail during the winters of 2022 and 2023, the City issued an emergency CDP for the temporary closure of the ALMT in February 2023. Under this emergency action, the City installed signage indicating that the trail was closed and placed sawhorse barriers, which deterred entry to the trail. The City then approved the follow-up CDP No. 2023-03 on April 19, 2023 authorizing a six-month closure of the trail, until November 9, 2023. Separately, on May 17, 2023, the City approved CDP 2023-05 authorizing installation of temporary fencing and signage at both ends of the trail, which were authorized to remain in place until the trail was reopened. Two extensions to the CDP for the closure of the trail were issued as non-appealable administrative actions by the City, as allowed by Condition 1 of CDP No. 2023-03. The extensions authorized the trail closure until August 3, 2024, a year and a half after the original trail closure date.

However, rather than opening the trail in August of 2024, the City processed the subject CDP (local CDP Application No. 2024-09) to authorize an additional one-year closure of the trail due to unsafe conditions. The stated purpose and need of the extended closure is to provide time for the City to work with stakeholders to develop and plan additional trail repair options needed due to substantial additional damage to the lower portion of the trail that occurred last year, which rendered through vertical access infeasible along the existing trail route. In particular, the City's findings for approval acknowledge that substantial additional erosion occurred at the base of the trail "that has essentially

separated the toe of the bluff from the rock outcrop that provided the traditional path to the beach.” The additional significant erosion was first noted during a site visit undertaken in May 2024 with the City Engineer, trail design consultants from RCAA (Redwood Community Action Agency), and representatives from Tsurai Ancestral Society.⁴ The extent of the erosion rendered some of the repair options initially contemplated and pursued (such as installing new cable steps at the toe of the slope) likely infeasible.

DISCUSSION

The City of Trinidad’s LCP was certified in 1980, many years prior to approval and construction of the Axel Lindgren Memorial Trail. Thus, although the appeal describes the ALMT as “the primary access trail” to Old Home Beach in association with a prior court settlement³, the City’s certified LCP (including but not limited to Land Use Plan Policy 64) do not recognize the ALMT or designate the ALMT as the primary trail. Although the temporary closure prevents shoreline access from the bluff top where the trail begins, the public can still access the vista point upslope of the trail and continue to enjoy unobstructed views of Trinidad Bay from above. The City’s findings also acknowledge that public access to the shoreline remains available at other nearby trails.

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 30212 states in applicable part that “public access from the nearest public roadway and along the coast shall be provided in new development projects except where it is inconsistent with ... the protection of fragile coastal resources.” Section 30214(a)(2) and (a)(3) expressly require that the public access policies 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 taking 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.

In approving the temporary trail closure extension on appeal (following the Planning Commission’s denial of the closure extension), the City Council found the project to be consistent with the Coastal Act’s public access policies and with the certified LCP, and relied on City staff’s analysis and findings within the Planning Commission staff report to support their findings for approval. The City’s findings establish the following facts in support of the extension of the temporary closure, stating in part:

Because (1) the closure is truly temporary, even if long-term; (2) the trail is located in a culturally and geologically sensitive area; (3) the trail presents

⁴ The Tsurai Ancestral Society (TAS) is a non-federally recognized tribe that is culturally an integral part of the project area. The Tsurai Ancestral Society is made up of documented lineal descendants of the Tsurai village. The TAS website (<https://www.tsuravillage.org/history>) states in part: “The Tsurai Village has been in existence since time immemorial. Being over 65,000 acres in size, Tsurai was the largest southernmost village of the Yurok Tribe.”

a public safety hazard in its current condition; and (4) material progress toward developing a proposal to repair and reopen the trail is being made; therefore the project can be found to be consistent with applicable policies and regulations, including Trinidad General Plan Policy 64 and Coastal Act § 30221.

As discussed in the City's findings and further in Finding III.C.2 below, the ALMT is within the traditional access route for the nucleus of the Tsurai Village and Ceremonial Trail and is thus recognized as a Tribal Cultural Resource. The trail is also located within the Tsurai Study Area on lands designated and zoned Open Space in the City's certified LCP. The City's findings describe "a complex situation in a sensitive area" including finding that "...the City cannot move forward with a repair without approval from the Tsurai Ancestral Society (TAS) (and others) per the requirements and limitations of General Plan Policy 69 and Zoning Ordinance § 17.16.080."⁵ The City's findings document ongoing efforts to coordinate with the TAS through site visits and meetings with the Tsurai Management Team.

As indicated in the City's staff report, the trail is also located within an area designated as unstable and questionably stable based on Plate 3 of the Trinidad General Plan. The City's findings for approval also cited Coastal Act sections 30001.5 and 30210, stating in part, "The project is consistent with these sections, because the trail currently poses a risk to public safety and the closure is only temporary." The staff report also states, "Reopening the trail in its current condition would present a significant safety hazard for the public due to the 10 to 12-foot almost vertical drop at the toe of bluff." The staff report references Coastal Act section 30214(a), and states that, "This temporary closure is necessary due to the unsafe conditions caused by wave erosion that has compromised the integrity of the trail and the toe of the bluff." The staff report further acknowledges that large winter storms in 2022-23 and again in 2023-24 caused the significant erosion that necessitates continued trail closure. Although the City initially contemplated repairing eroded access by installing cable steps at the toe of the slope, the staff report describes discovery of more significant erosion during a site visit in May 2024 as follows:

The vegetation is very thick, and even with a machete, access is difficult. However, it became apparent that substantial erosion has occurred that has essentially separated the toe of the bluff from the rock outcrop that provided the traditional path to the beach. Based on the site visit, the City Engineer recommended a bridge be developed between the rock and base of the realigned trail. Therefore, a simple, light-touch option for opening the traditional alignment in the short term is likely not feasible. GHD began working on a preliminary bridge design at the direction of the City Manager. But after initial review, it has been estimated that just a

⁵ The City's and appellants' references to Zoning Ordinance section 17.16.080 is interpreted as referring to the Trinidad Municipal Code which has not been certified as part of the LCP. However, much of the language within Trinidad Municipal Code (TMC) Title 17 comes verbatim from the certified Zoning Ordinance of the City of Trinidad (ZOTC). TMC Chapter 17.16 comprises provisions regarding Open Space or OS Zone" for which ZOTC section 4.02 would be the certified equivalent.

bridge selection study to evaluate different bridge options and provide information (such as geologic stability, permitting requirements, construction access, and funding options) about each option so that an informed decision on how to proceed can be made is estimated to cost around \$40K.

The Planning Commission staff report states, “Although the temporary closure will affect public access during the closure, it is necessary to protect public safety and will provide time for staff to develop and plan.” The City’s findings for approval also acknowledge ongoing efforts that have occurred thus far to identify solutions for repairing the ALMT, including: (1) coordination with a geologist and the City Engineer to identify potential solutions; (2) meeting on site with the City’s Engineer, trail specialists from RCAA, and representatives from TAS; (3) presenting updates at monthly meetings to the Planning Commission; (4) participating in meetings with the Tsurai Management Team⁶ and representatives from TAS to identify design options for both short-term and long-term repairs to the trail; (5) separately applying for a CDP and use permit (Local permit No. 2024-12, Appendix A) to allow for vegetation removal in the area of the trail in order to assess conditions and plan trail improvements; and (6) pursuing grant funding to fund the costs of studies and trail repairs. To this effort, GHD has prepared a technical memorandum with funding granted to TAS by the Seventh Generation Fund for Indigenous Peoples that details long-term construction and design options.⁷ This shows that progress has been made toward reopening the trail.

The City Council’s adopted Action states:

“Motion to uphold the appeal, reverse the Planning Commission's decision, and approve CDP #2024-09 for the continued closure of the ALMT as recommended by staff and with the following stipulations: (1) City will commit discretionary trail funds to the project; (2) dedicate City staff time to search and apply for eligible grants; (3) staff will provide monthly reports and progress assessments to the Council; and (4) set Memorial weekend 2025 as the target for reopening.”

The City also included Condition of Approval No. 1 specifying the approval for continued temporary trail closure would expire one year after going into effect, “unless an extension is granted by the Planning Commission based on the need for more time to obtain funding and/or further explore repair and access alternatives if the Planning Commission finds that substantial progress has been made in the interim time period.” Any extension granted by the Planning Commission would be a one-time extension

⁶ The Tsurai Management Team (TMT) is comprised of representatives of the Tsurai Ancestral Society (TAS), City of Trinidad, State Coastal Conservancy (SCC), and the Yurok Tribe. The TMT meets periodically to discuss management of cultural resources, recreational uses, and natural resources within and adjacent to the TSA.

⁷ The Technical Memorandum dated June 30, 2023 was presented to the Trinidad City Council at its October 8, 2024 meeting and is available online at <https://www.trinidad.ca.gov/media/7486> (see pdf pages 31-69).

only. Future extensions would require a separate CDP that would be appealable to the Commission.

Thus, there is a high degree of legal and factual support for the City's determination that the project, as approved, and based on the temporary nature of the extended closure and evidence that progress has been made toward the goal of re-opening the trail before the one-year timeframe of the subject closure, is consistent with public access policies of the Coastal Act.

2. Cultural Resource Policies

The appeal contends that the City erroneously applied LUP and IP cultural resource protection policies "...as justification for overruling the Planning Commission and extending the trail closure for the third time.⁸" The appellants further assert that: (a) any ground disturbance would be limited to the bottom ten (10) feet of the trail where winter storm surges naturally disturb the area for at least six months each year; and (b) "There is no need to again get Policy 69 concurrence to simply do the routine repair and maintenance that the ALMT and all similar trails are always going to need because of the nature of their juncture with the beach and the storm surges that occur each winter..."

EXCERPTS OF APPLICABLE LCP POLICIES:

Policy 69 of the LUP's "Cultural resources" chapter states:

Within the Tsurai Study Area, shown on Plate 1B, the State Historical Preservation Officer, in cooperation with the lineal descendants of Tsurai and the Northwest Indian Cemetery Protective Association, shall investigate and establish definitive boundaries around Tsurai. There shall be no disturbance, vegetative removal or construction, except for a protective fence around the burial ground, on lands designated as Open Space within the Tsurai Study Area without the approval of the lineal descendants of Tsurai, Trinidad Rancheria, City of Trinidad, and the State Historic Preservation Officer. Lands designated as Special Environment within the Study Area may be developed as provided in the Special Environment regulations provided that the State Historic Preservation Officer is consulted and reasonable measures are required to mitigate any adverse impacts on this cultural resource.

Section 4.02 (aka Chapter 17.16) of the Implementation Plan (IP) for the Open Space zone includes among other policies the following:

The open space zone is intended to be applied to areas designated open space in the Trinidad general plan. The purpose of this zone is to maximize preservation of the natural and scenic character of these areas including protection of important wildlife habitat and cultural resources, and to ensure that the health and safety of the public is ensured through

⁸ Appeal Section 6, Page 7 (pdf page 17 of Exhibit 4)

careful regulations of development in areas affected by geologic instability, steep slopes, tsunamis and flood hazards. The following regulations in this chapter shall apply in all open space zones. [Ord. 166 § 4.02, 1979].

(aka Zoning Ordinance of the City of Trinidad (ZOCT) section 17.16.020)

A. *Principal permitted uses:*

1. *Public and private open space, wildlife habitat;*
2. *Low-intensity recreation on publicly controlled lands and waters such as beachcombing, hiking, fishing;*
3. *Pedestrian travel within public access easements consistent with the trail system identified in the general plan;*

...

Section 4.02(C)(5) (aka ZOCT section 17.16.080) "Cultural resources" states:

Within the portion of the Tsurai Study Area zoned Open Space any soil disturbance, removal of vegetation, placement of temporary or permanent structures, or establishment of a use identified in Subsection A1 shall require a use permit. Except for a fence to protect burial grounds, no soil disturbance, removal of vegetation, structural improvements or use shall be permitted unless it has been approved by the Trinidad City Council, the State Historic Preservation Officer, the Trinidad Rancheria and the lineal descendants of Tsurai. [Ord. 166 § 4.02(C)(5), 1979].

DISCUSSION

As indicated above, the grounds for an appeal pursuant to Coastal Act section 30603(a) shall be limited to an allegation that the approved development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Here, the appellant does not assert that development was approved inconsistent with certified LCP and (in the case of public access) Coastal Act policies but rather contends that the City misapplied certain LCP requirements in establishing its findings for approving the extension of the temporary trail closure. However, the City's action to approve the temporary trail closure does not evaluate the conformity of the trail closure with the LCP policies cited above; nor is it required to do so, since the CDP for the extension of the trail closure is procedural- it does not propose physical development—and, thus, does not involve any of the developments identified in certified LUP Policy 69 or Zoning Code section 4.02(C)(5) (aka ZOCT section 17.16.080). The City's findings do however acknowledge the LCP policy requirements that must be addressed as part of any future repairs to the trail. The City Council staff report states:

"[T]his is a complex situation in a sensitive area. It is staff's opinion that the ALMT should not be reopened in its current state, because there is an almost vertical 10-to- 12-foot drop at the bottom of the trail where it intersects with the beach. And the City cannot move forward with a repair without approval from the Tsurai Ancestral Society (TAS) (and others) per the requirements and limitations of General Plan Policy 69 and Zoning

Ordinance § 17.16.080. However, staff are continuing to work towards and are making progress on an interim repair plan in cooperation with the Tsurai Management Team (TMT).”

Contrary to the appellants’ assertions, any development (as defined in Coastal Act section 30106), even for “routine repair and maintenance” requires a coastal development permit, in part due to the site’s location within 50 feet of the edge of a coastal bluff.⁹ With exception of a fence to protect burial grounds, the above cited LCP policies require any development within the portion of the Tsurai Study Area zoned Open Space to obtain approval by the Trinidad City Council, State Historic Preservation Officer, the Trinidad Rancheria and the lineal descendants of Tsurai if it involves any of the following: soil disturbance, removal of vegetation, structural improvements or general use.

Therefore, contentions asserting the misapplication of cultural resource protection provisions of the certified LCP do not present valid grounds for an appeal and do not raise a substantial issue of LCP conformance.

3. Ancillary and Procedural Issues

Appellants assert that meetings outside of the CDP process have been held that do not allow the public to participate. The appeal also contends that the appeal to the City Council was not valid because the Mayor appealed the Planning Commission’s decision, and the Mayor was not an aggrieved person.

DISCUSSION

As described in Finding I.A (“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. These contentions do not assert that the approved project is inconsistent with the standards of the certified LCP but rather relates to public participation, and the City’s appeal policies and procedures.

Therefore, contentions regarding stakeholder meetings and local appeal procedures are not valid grounds for an appeal and do not raise a substantial issue of LCP conformance.

D. CONCLUSION – SUBSTANTIAL ISSUE DETERMINATION

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,

⁹ 14 CCR section 13252(a)(3)

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 and coastal access policies of the Coastal Act.

The Commission finds that there is substantial factual and legal support for the City’s decision to find that its approval conforms with the public access provisions to maximize public access consistent with the protection of fragile coastal resources. The site-specific constraints and circumstances outlined in the City’s findings support the City’s decision to continue the temporary closure of the trail. The contentions concerning the duration of the closure as minimizing rather than maximizing public access, and the effect of the temporary trail closure on access to nearby trails do not undermine the high degree of legal and factual basis for the City’s approval. As the City addressed the relevant coastal resource concerns, and established factual evidence that solutions are actively being pursued to timely reopen the trail, the Commission assigns more weight to this factor in the substantial issue analysis.

The extent and scope of the approved development is relatively limited in scale as it consists of temporarily closing a trail that currently does not provide safe access to the beach due to erosion (and for which alternatives for rerouting the lower eroded portion of the trail in a manner that protects coastal resources are currently being evaluated). Furthermore, the site is located within a Tribal Cultural Resource and registered California Landmark in an area designated on the City’s Land Use Map as the Tsurai Study Area, where additional development restrictions, enhanced permit application and review requirements, and conditional authorizations apply for any proposed trail improvements. The approved temporary trail closure does not affect nearby trails where public access to the shoreline remains available.

The third factor (the significance of coastal resources affected) also supports a finding of no substantial issue. Due to the limited scope of the approved project, the significance of affected coastal resources affected by the temporary trail closure is minimal.

Fourth, 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, especially given the high degree of legal and factual support for the City’s decision, as discussed above.

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. The City's findings for approval document several ongoing efforts that are underway to identify solutions for repairing the ALMT. The City also included Condition of Approval No. 1 specifying the approval for continued temporary trail closure would expire one year after going into effect, "unless an extension is granted by the Planning Commission based on the need for more time to obtain funding and/or further explore repair and access alternatives if the Planning Commission finds that substantial progress has been made in the interim time period." Any extension granted by the Planning Commission would be a one-time extension only. Future extensions would require a separate CDP that would be appealable to the Commission.

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-24-0035 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

City of Trinidad Certified Local Coastal Program

City of Trinidad. Coastal Development Permit, Design Review, Use Permit, and Grading Permit No. 2023-05 for the installation of temporary fencing at the top and bottom of the Axel Lindgren Memorial Trail. Staff Report and Conditions of Approval for May 12, 2023 Planning Commission. Hearing materials accessible online at:

<https://trinidad.ca.gov/media/5646>. Hearing accessible online at

<https://www.youtube.com/live/XAlvt1QKf3c>

City of Trinidad. Coastal Development Permit No. 2023-03E for the extension of temporary closure of the Axel Lindgren Memorial Trail. Staff Report and Conditions of Approval for October 18, 2023 Planning Commission. Hearing materials accessible online at:

<https://www.trinidad.ca.gov/media/7511>. Hearing accessible

online at https://youtu.be/DgnFh_ZZqWc?si=GCvxRr_Emi4Hc0t

City of Trinidad. Coastal Development Permit No. 2023-03 for the temporary closure of the Axel Lindgren Memorial Trail. Staff Report and Conditions of Approval for April 19, 2023 Planning Commission. Hearing materials accessible online at:

<https://www.trinidad.ca.gov/media/5666>

City of Trinidad's Local Record for CDP Application No. 2024-09

File for Coastal Development Permit Appeal Number A-1-TRN-24-0035