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Sent: Wednesday, June 29, 2022 9:34 AM
To: PRMD-LCP-Update <PRMD-LCP-Update@sonoma-county.org>
Cc: Gary Helfrich <Gary.Helfrich@sonoma-county.org>; Don McEnhill <don@russianriverkeeper.org>
Subject: LCP Comments: Support for Public Access in Estero

EXTERNAL

Good morning,

Attached are Russian Riverkeeper's comments on the latest LCP Draft. We also plan to provide oral comment later this afternoon.

Best,
Jaime

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Jaime Neary || Staff Attorney

Russian Riverkeeper
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It's your River—we protect it!





June 29, 2022

Sonoma County Planning Commission
c/o Gary Helfrich
2550 Ventura Ave.
Santa Rosa, CA 95401

Submitted via email to: PRMD-LCP-Update@sonoma-county.org; Gary.Helfrich@sonoma-county.org

RE: Additional Local Coastal Plan 2021 Draft Updates; Support for Estero Public Access

Dear Planning Commission:

On behalf of Russian Riverkeeper (RRK), I welcome the opportunity to submit these additional comments for the “Local Coastal Plan 2021 Draft Updates,” specifically in relation to the issue of public access. Russian Riverkeeper is a local nonprofit that has been successfully protecting the Russian River watershed since 1993. Through public education, scientific research, and expert advocacy, RRK has actively pursued conservation and protection for the River’s mainstem, tributaries and watershed. Our mission is to inspire the community to protect their River home, and to provide them with the tools and guiding framework necessary to do so. For that reason, we submit the following comments, requesting that the Sonoma County Local Coastal Plan include policy language that explicitly states it is necessary to protect public access to all public trust resources in the coastal zone, including the Estero Americano.

I. Public Access is Protected Under State Law

California has a long history of protecting public access to our public trust and natural resources, especially in our coastal areas, in the form of our State Constitution and in both our State statutory and common laws. It is paramount that Sonoma County take steps to ensure our county’s rich and diverse public trust and natural resources remain open to the public to access and experience in accordance with California law. The people of this State and this County place the importance of public access to the outdoors and the continued health of our diverse environments in the highest regard, and that should not be hindered.

California State Constitution, Article 10, Section 4 – Forbids individual, joint and corporate landowners from obstructing free navigation. It provides that “the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.” It also forbids landowners “to exclude the right of way to [navigable] water whenever it is required for any public purpose.”

California Public Trust Doctrine – Protects navigable waterways, as defined and used under California law, for certain public uses. These uses include, but are not limited to, public uses of waterways for navigation, commerce, fishing, recreation, birding, paddling, hiking, natural aesthetics, and environmental protection. The State Lands Commission and California Coastal Commission review projects affecting tidal and non-tidal waterways for consistency with the public trust doctrine. The Estero Americano is a navigable waterway under California law and is



known to support public uses like navigation, fishing, recreation, birding, hiking, and scientific study and protection.

Clean Water Act & North Coast Basin Plan – The Clean Water Act requires that every effort be made to improve the beneficial uses of area waterways. The Basin Plan lists all of the waterways and tributaries draining into the basin as well as their beneficial or potential beneficial uses. Navigation, Rec-1, Rec-2, and Commercial and Sport Fishing are four such beneficial uses identified in the Estero Americano. Public access is necessary to improve and benefit use of these beneficial uses of the Estero Americano.

California Coastal Act – Adopted in 1976, the California Coastal Act guides how the land along the coast of California is developed, while emphasizing the importance of public access, and the preservation of sensitive coastal and marine habitat and biodiversity. Specifically, the Coastal Act holds that one of its goals is to “[m]aximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles...,”¹ and other applicable laws.

ESHAs – The Coastal Act protects Environmentally Sensitive Habitat Areas (ESHA) by limiting habitat disruption to only uses dependent on those resources. The Coastal Commission has determined that public nature trails are considered a resource dependent use, including things like hiking and educational trails, low-impact camping, educational signage and kiosks, research, and restoration. To prevent impacts that may significantly degrade an ESHA, areas around an ESHA and recreation areas are to be designed in a way to prevent those impacts and to ensure continuity between those habitat and recreation areas.² Nothing in the Coastal Act precludes low impact, public access trail development in an ESHA, and statements to the contrary are misleading.

Water Quality – The Coastal Act recognizes the importance of water quality to continued ecological and human health in the coastal zone. “The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.”³ This component is important to remember in context of the larger, ongoing harms being perpetuated in the Estero by agricultural landowners.

Priority Activities – The Coastal Act prioritizes certain types of activities and development in the coastal zone, like visitor-serving commercial recreational facilities

¹ CAL. PUB. RES. CODE § 30001.5(c).

² CAL. PUB. RES. CODE § 30240. ESHA, CalTrans, <https://dot.ca.gov/programs/environmental-analysis/coastal-program/coastal-act-policy-resource-information/esha> (last visited June 28, 2022).

³ CAL. PUB. RES. CODE § 30231.



designed to enhance public opportunities for coastal recreation.⁴ This supports the need for sufficient bathroom facilities and trash receptacles such that public access can be done safely and without unintended impacts to the local ESHA.

Coastal Trail – The Coastal Trail seeks to implement aspects of the Coastal Act that promote public access, appreciation and stewardship of our natural resources, and non-motorized transportation. Though the Trail may vary in forms, it will eventually provide a continuous interconnected public trail system along the California coastline. The Coastal Commission indicates that the Trail “*should be designed and located to minimize impacts to environmentally sensitive habitat areas and prime agriculture lands to the maximum extent feasible. Where appropriate, trail access should be limited to pass and repass. Where necessary to prevent disturbance to sensitive species, sections of the trail may be closed on a seasonal basis. Alternative trail segments shall be provided where feasible. For situations where impact avoidance is not feasible, appropriate mitigation measures should be identified, including but not limited to use of boardwalks, reducing width of trails, protective fencing and drainage measures along edges of agricultural land, etc.*”⁵ This clearly supports the inclusion of public access trails in ESHAs like the Estero with the inclusion of certain design mitigations and/or time/place/manner restrictions.

It is clearly feasible and within the bounds of the Coastal Act to have public access trails and minimum supporting facilities within and abutting an ESHA. It is also feasible to minimize impacts to prime agricultural lands and operations. With protected public access points, it is expected some visitor growth will occur, but that does not equate to the site becoming the next Yosemite Valley with thousands of visitors each year. There are a variety of mitigation measures that can be put in place to help limit any negative impacts in accordance with the Coastal Act.

On balance, the property owners along the Estero are the likely source of most harms to the ESHA due to historic uses, and are now trying to unjustly use the Estero’s ESHA determination to continue those negative impacts out of view of the public eye, while simultaneously excluding public access to a public trust resource.

II. History of Public Access to Estero Americano in Sonoma County

Over the last decade, there have been multiple attempts to establish dedicated and easily accessible public access points to the Estero Americano in Sonoma County. Unfortunately, private landowners have stymied these attempts via various legal challenges and misleading easement purchases. We are seeing similar actions being taken by these same private landowners again now with this LCP.

A decade ago, the Sonoma County Agricultural Preservation and Open Space District purchased a conservation and trail easement over the Bordessa Ranch. “The purpose of the Conservation Easement was to preserve and protect the conservation values of the property, including natural

⁴ CAL. PUB. RES. CODE § 30222.

⁵ Coastal Trail, CA Coastal Commission, <https://www.coastal.ca.gov/access/ca-coastal-trail/coastal-trail.html> (last visited June 28, 2022).



resources, habitat connectivity, open space and scenic views, agricultural resources, and recreation and education. . . . The purpose of the Trail Easement was to ensure that trails and associated staging areas were established and made available to the public in perpetuity for low-intensity public outdoor recreational and educational purposes consistent with the purpose of the Conservation Easement to preserve and protect natural resources, habitat connectivity, open space and scenic views, and agricultural resources.”⁶

These easements, amongst other property purchases in the vicinity, were purchased with taxpayer dollars largely under the assumption that public access would become more readily available. Sadly, those expenditures have yet to realize any real progress towards increasing public access to the Estero. Though these failures to date do not fall on the County’s shoulders, the County must step up to protect those significant financial investments via continued support for public access to the Estero in the LCP. If taxpayers ever hope to see their dollars achieve the intended goal of public access, steps must be taken to ensure public access to the Estero remains a priority.

III. Public Access Can be Low Impact

It is true that the Estero Americano is identified as an ESHA, and thus, has a higher standard for any potential impacts and development in the area. However, that does not also mean that continued public access should be prohibited or that continued public access can only cause degradation or further harm to the ESHA. In contrast to what private landowners along the Estero have claimed, the Coastal Act encourages public access and the ongoing preservation of that access. Plus, there are ways to keep public access impacts to a minimum so as to ensure no significant impacts occur. In fact, continued public access may even help bring further attention to the ongoing issue of nutrient loading and erosion by private landowners such that water quality improvements to the ESHA are finally made and the Estero is no longer in need of a 303(d) impaired water listing.

The Coastal Act Supports Public Access:

To start, the Coastal Act does *not* state that it precludes public access in an ESHA. Rather, the Coastal Act iterates throughout its intent to protect and improve public access in the Coastal Zone. This intent extends throughout ESHAs as well, but in recognition of the presence of more sensitive habitats, the Act requires additional findings of no significant impacts and/or the inclusion of mitigation projects. Inclusion of a higher standard for ESHAs is reasonable and 100% doable in regards to the Estero. Examples of such public access points can be found across the State in areas like Morro Bay, San Luis Obispo, Newport Beach, Sonoma County, and others.⁷

⁶ Estero Trail Easement Project, Permit Sonoma 2-1 (December 2019), <https://permitsonoma.org/Microsites/Permit%20Sonoma/Documents/Pre-2022/Planning/Comprehensive%20Planning/Project%20Review/EIRs/Estero-Trail-Draft-EIR.pdf>

⁷ Trail/Multi-Use Path Examples Within Sensitive Habitat Areas, City of Santa Cruz, <https://www.cityofsantacruz.com/home/showpublisheddocument/23678/635418232770030000> (last visited June 28, 2022).



Here, private landowners have largely claimed the opposite is true and that public access must be restricted to protect the Estero from “significant degrad[ation].” Owners have also claimed that the County is proposing “broad public access over the [Bordessa] ranch.” None of these purported claims are true.

Due to the Coastal Act’s higher expectations for public access in ESHAs, certain mitigations would be put in place (e.g. path railings, vegetation buffers, boardwalks, etc) to ensure public access is limited to the designated path and any related facilities. The public would not be encouraged to or readily able to broadly access the ranch. Signage can also be used to help inform public access users that straying beyond the designated trails would be in violation of trespass laws. Parking areas can be sized to limit the number of trail users to avoid large crowds at any one time. Some private landowners along the Estero failed to acknowledge the potential to reduce any harms in a significant manner via use of mitigation measures. Again though, it is important to point out that the Coastal Act only requires mitigations and/or that a no significant impact finding be made—the answer is *not* the barring of public access.

Lastly, the completion of a Coastal Trail is a key programmatic goal of the California Coastal Commission and Coastal Conservancy as noted above. Completion of this Trail will benefit all citizens of California and the millions of visitors received each year—though this does not necessarily mean that all sections will be equally visited. The building out of this Trail will help ensure that all persons will have the right and opportunity to visit, learn from, and enjoy the wide variety of coastal ecosystems our State offers, when such public access may have previously been limited. Preserving public access to the Estero in this LCP is important to ensuring that the Trail moves closer to completion and persons are not prevented from accessing a wholly unique environment and public trust resource.

Low Impact Development is Feasible:

There are multiple low impact ways to establish and protect public access points such that there is either a “no significant impact” finding or mitigation measures can be imposed. The County can look to other similar trails throughout the State or to the numerous studies that have been done on low impact trail development.

Some examples of mitigation include:

- Choice of trail substrate
- Pathway buffers (e.g. trail railings and natural vegetation)
- Implementation of a reservation system like at Muir Woods
- Inclusion of low impact facilities so as to limit harms caused by lack of trashcans and bathrooms for those accessing the Estero, and to prevent any inadvertent trespassing allegations
- Restoration projects
- Invasive species removal
- Interpretive signage, as well as signage that helps identify areas that are and are not publicly accessible
- Narrower trails
- Use of existing developed roads and other maintained areas



These and other mitigation measures may still result in some development and disturbance to the ESHA, however, that disturbance can be managed such that impacts are not long-term or significant. Further, proper development and management of a low impact trail used solely for public access is going to have substantially less impact than the alternative with no designated path. Without designated access points, the chance of illegal walking paths and illegal cars creating rutted paths and trampled resources increases greatly. It is far better to have a managed path, than improperly maintained roads with

Through inclusion of these and/or other mitigation measures, any resulting harms to the ESHA itself will be negligible. Especially when in comparison to the historical and continuing harms stemming from poor water quality caused by agricultural uses along the Estero.

Ongoing Harms in the Estero Cause More Harm to the ESHA:

The Estero Americano Estuary is listed for 303(d) impairments for both nutrients and sediment, and is also known to have high concentrations of ammonia, copper, and bacteria resulting from agricultural activities.⁸ With little development along the Estero, it is clear that the primary source of these impairments (i.e. nitrates and manure) is local agriculture users.

Some private landowners involved in the agricultural industry have tried to claim that public access in the ESHA are responsible for water quality issues, and will only cause further harm to local seagrasses and other foliage in the Estero. However, this concern is minimal in comparison to the known damage to seagrasses and foliage that stems directly from poor water quality caused by agricultural uses.⁹ Agricultural pollutants are known to negatively impact dissolved oxygen, pH, turbidity, salinity, and other key water quality measures.¹⁰ All of which negatively impact the health and well-being of species living in the ESHA, especially when at higher concentration levels. If these commenters were really concerned over the continued health and preservation of the Estero as an ESHA, they would also be taking a harder look at how their own farming operations can be improved so as to reduce their own negative impacts to water quality.

By definition, an ESHA is

⁸ Final California 2018 Integrated Report, North Coast Regional Water Board, https://www.waterboards.ca.gov/water_issues/programs/tmdl/2018state_ir_reports_final/apx_b_north_factsheets/00109.shtml (last visited June 28, 2022); Estero Americano Critical Coastal Area, California Coastal Commission, <https://documents.coastal.ca.gov/assets/water-quality/ccc-factsheets/North-Coast/CCA%2020%20Estero%20Americano%20Factsheet%2012-16-19.pdf> (last visited June 28, 2022).

⁹ David Malmquist, *Study: long-term eelgrass loss due to joint effects of shade, heat*, VIMS (Feb. 13, 2017), https://www.vims.edu/newsandevents/topstories/2016/eelgrass_loss.php (noting that pollutants that lead to sedimentation and increased turbidity are some of the most harmful impacts to seagrass beds)

¹⁰ Agriculture & Water Quality in California, USDA: Natural Resources Conservation Service California, <https://www.nrcs.usda.gov/wps/portal/nrcs/detail/ca/water/?cid=stelprdb1248443> (last updated June 9, 2021).

¹¹ CAL. PUB. RES. CODE § 30107.5 (*emphasis added*).



known water quality impacts caused by agricultural uses, one could easily conceive the notion

Existing agricultural uses along the Estero are the most culpable when it comes to failure to achieve water quality standards and goals in the Estero—not any potential members of the public. Available data and scientific evidence clearly supports the fact that it is agricultural operations, not public access that is the primary cause of environmental degradation and impaired water quality.

IV. Conclusion

Thus, we respectfully request the Sonoma County Local Coastal Plan include policy language that explicitly states it is necessary to protect public access to all public trust resources in the coastal zone, including the Estero Americano. We appreciate the opportunity to provide comment and welcome any questions that you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Jaime Neary", written in a cursive style.

Jaime Neary
Staff Attorney
Russian Riverkeeper

A handwritten signature in black ink, appearing to read "Don McEnhill", written in a cursive style.

Don McEnhill
Executive Director
Russian Riverkeeper